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ZIMBABWE: MOVING FROM WORDS TO ACTION

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

This memorandum follows the visit to Zimbabwe by an Amnesty International delegation led by Secretary General Irene Khan from 13 to 18 June 2009. The delegation met with Vice President, Hon Joyce Mujuru; Minister of Defence Hon Emmerson Mnangagwa; Minister of State in the President's Office, Hon Didymus Mutasa; Minister of Education, Senator David Coltart; the co-Ministers of Home Affairs, Hon Kembo Mohadi and Hon Giles Mutsekwa; Minister of National Housing and Social Amenities Hon Fidelis Mhashu; Minister of State (Organ on National Healing) Senator Sekai Holland; Deputy Minister of Justice Hon Jessie Majome and Speaker of the House of Assembly, Hon Lovemore Moyo. Days after the visit, Irene Khan met with Prime Minister Morgan Tsvangirai in the United Kingdom.

Amnesty International undertook the visit to engage with the Zimbabwean authorities and assess the human rights situation in the country since the creation of an Inclusive Government in February 2009¹. In addition to meeting with senior government officials the delegation met with a wide range of civil society representatives, victims of human rights violations in rural and urban areas as well as African and European diplomats.

Although the human rights situation has improved compared to the period between March and September 2008², Amnesty International is concerned about on-going blatant violations of human rights including continued harassment and intimidation of human rights and political activists, journalists and lawyers. Zimbabwean police continue to arrest, assault and charge people for exercising their internationally guaranteed rights to peaceful assembly, freedoms of association and expression. For example, while the Amnesty International delegation was in Zimbabwe seven members of the activist organisation Women of Zimbabwe Arise (WOZA) were arrested and denied access to their lawyers on 17 June in Bulawayo after participating in a peaceful demonstration. On 18 June, while Amnesty International's Secretary General was holding a press conference at the Meikles Hotel in Harare, four WOZA activists and a cameraman from the state-owned Herald newspaper were arrested and beaten by police about 50 metres from the hotel. The WOZA activists were denied access to medical treatment as a punishment for their activism and detained overnight, while the cameraman was released on the same day and police apologised to the Herald.³

Despite the apparent politicisation of the police force there is no sense of urgency on the part of government to reform the police force in Zimbabwe which over the years has been used as an instrument to silence government critics. There is need to undertake an urgent review of the operations of the Law and Order section of the Zimbabwe Republic Police (ZRP) and the anti-riot police in order to bring their operations in line with international standards on law enforcement.

The Zimbabwean government should also take measures to strengthen the voice of civil society which is crucial in the absence of a parliamentary opposition. The rights to freedom of assembly, association, and expression must be guaranteed. In light of the current constitution-making process, no meaningful debate can take place without freeing the media

and ending the harassment and intimidation of people who hold dissenting views.

Amnesty International is also deeply concerned about the on-going prosecution of 15 victims of enforced disappearance, including prominent human rights defender, Jestina Mukoko. The organization is urging the government to conduct an independent investigation into their disappearance in 2008 and into the allegations of torture by their abductors. Those responsible should be held accountable.

While talking to victims of human rights violations and civil society leaders Amnesty International delegates observed a strong sense of fear and anxiety about the possibility of violence in future elections in Zimbabwe. A climate of fear persists as most perpetrators responsible for the torture, killing and maiming of perceived political opponents in the run up to the June 2008 presidential elections are roaming free. In some parts of the country failure by the government to hold perpetrators accountable was triggering retributive attacks against those suspected of looting property from mainly MDC supporters.

Amnesty International wishes to draw the attention of the Inclusive Government to the urgent need to take measures to end the culture of impunity for serious human rights violations by holding all perpetrators accountable. Addressing Zimbabwe's long history of impunity enjoyed by state and non-state actors is a critical step in ensuring non-repetition of human rights violations and ensuring true and lasting national healing.

Zimbabwe is among a few African countries that still retain the death penalty in law and in practice, though there has not been an execution carried out under the death penalty laws since 2005. Amnesty International is therefore urging the new government to take the opportunity created by the current constitution making process⁴ to abolish the death penalty. Such an action will also go a long way in improving the image of the country internationally. The death penalty is an inhuman and degrading form of punishment which has no place in a society that is guided by human rights principles.

Amnesty International delegates found the humanitarian situation in Zimbabwe to be grim. The scrapping off of the worthless Zimbabwe dollar in February has brought mixed fortunes to Zimbabweans. On one hand, the introduction of multiple foreign currencies has stabilised prices and resulted in the availability of food stuff on the market. On the other hand, most people in Zimbabwe have no access to foreign currency to pay for education, health and other services. In rural areas people are resorting to barter trade. Amnesty International is urging the Inclusive Government and the donor community to give special attention to economic and social rights.

Amnesty International is concerned about the repeated failure by the previous government to provide an effective remedy to victims of mass forced evictions that took place in 2005. Hundreds of thousand of these victims continue to suffer in silence living in deplorable conditions. Equally, millions of Zimbabwe's children's education is at stake following the near collapse of the education sector.

Amnesty International believes that the setting up of an Inclusive Government is a great opportunity for Zimbabwe's political leadership to establish a new political order where human rights are respected, protected and fulfilled. However, the realization of this new

order depends on the commitment of President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara to fully implement the Global Political Agreement (GPA) and to fulfil Zimbabwe's obligations under international human rights law.

1. BACKGROUND

In March 2007, following the much publicized torture of opposition political leaders and human rights activists at Machipisa police station in Harare, the Southern Africa Development Community (SADC) convened an emergency summit in Tanzania and appointed former South African president Thabo Mbeki to facilitate dialogue between the MDC and ZANU-PF. SADC mediation resulted in amendment of repressive laws such as the Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA) and the Electoral Act in an effort to improve the operational environment for the political parties taking part in the March 2008 general election. These elections were held in a relatively peaceful environment compared to previous elections held since 2000. For the first time since Zimbabwe gained independence in 1980, ZANU-PF lost control of parliament and President Mugabe came second in the first round of the presidential election⁵. Since the leading presidential candidates did not get more than 50 per cent of the vote, as required by the Electoral Act, a second round was set for 27 June 2008.

In the run up to the June 2008 elections, a wave of state-sponsored violence broke out in Zimbabwe concentrated mainly in rural areas, townships and farming areas where the MDC had made significant gains in the March elections. National and international human rights organizations documented cases implicating "war veterans"⁶ and other ZANU-PF supporters, soldiers and other security agents in most reports of torture, killings and beatings of perceived political opponents of ZANU-PF. A few cases were reported in which MDC supporters were implicated in inter-party violence. Local human rights organizations recorded at least 190 violence-related deaths and more than 9,000 people treated for torture related injuries including hundreds of cases involving broken legs and arms. The situation was so severe that at one point a respected international NGO reported that the country had run out of crutches. An estimated 25,000 people were displaced and had to take refuge in urban areas while thousands of teachers left the rural areas to escape the violence, and some left for neighbouring countries.⁷

On 15 September 2008 the two formations of the Movement for Democratic Change led by Prime Minister Morgan Tsvangirai (MDC-T) and Deputy Prime Minister Arthur Mutambara (MDC-M) and President Robert Mugabe's ZANU-PF signed the Global Political Agreement which paved way for the setting up of the Inclusive Government. After months of wrangling over the allocation of key ministries, which was mediated SADC, a unity government was sworn in on 13 February 2009. SADC and the African Union are guarantors of the inter-party agreement.

The GPA commits the three main political parties in Zimbabwe to put an end to '*polarisation*,

divisions, conflict and intolerance which has characterised Zimbabwean politics and society in recent time.' and *'to re-orient [their] attitudes towards respect for the Constitution and all national laws, the rule of law,'* and [to] accept and acknowledge the *'values of justice, fairness, openness, tolerance, equality, non-discrimination and respect of all persons without regard of race, class, gender, ethnicity, language, religion, political opinion, place of origin or birth'*. The parties also undertake to *'act in a manner that demonstrates respect for the ...values of justice, fairness, openness, tolerance, equality, respect of all persons and human rights.'*⁸

In addition to much publicized violations of civil and political rights, Zimbabweans have endured an unprecedented erosion of their economic, social and cultural rights. A combination of factors including poor rain fall, a politicized land reform programme and a shortage of farming inputs, mainly seed and fertilizer, for communal farmers⁹ have contributed to serious food insecurity which has resulted in nearly half of the population being dependent on food aid. A shortage of seed and fertilizer for communal farmers in 2007 and 2008 also contributed a serious drop in food production¹⁰. By 1986 communal farmers were responsible for almost 60 per cent of Zimbabwe's total maize output¹¹. Early responses by local and international humanitarian organizations and financial support from the international community have helped to avert mass starvation in Zimbabwe since 2000.

In 2008 Zimbabwe's education system, once a model for Africa, came to a halt putting the education of millions of children at stake. In 2007 and 2008, nearly 20,000 teachers left their jobs as a direct result of the combined effect of the deteriorating political and economic conditions. However, 90 per cent of the country's teachers are now back at work following a number of incentives introduced by the new government, although schools lack books, furniture and other infrastructure. Strikes by teachers' unions also remain a constant threat as a result of the poor working conditions teachers endure. The health sector also suffered as a result of the political crisis and adequate health care remains inaccessible to the majority of the population. High unemployment and the continued harassment and intimidation of perceived supporters of the MDC in rural areas drove many young people, including teachers and doctors, to flee to neighbouring countries.

The new government has put in place an emergency recovery plan which requires in excess of US\$5 billion funding¹². However, Zimbabwe's traditional donors, western countries, have cautiously welcomed the Inclusive Government and have called on the government to implement confidence building measures that include an end to on-going human rights violations before they resume giving development aid. Concern has also been raised over lawlessness on some commercial farms where a number of farmers have been attacked by supporters of ZANU-PF. Some of the farms are supposed to be protected under bilateral investment agreements. Western countries have also called for the reform of the Reserve Bank of Zimbabwe which stands accused of diverting donor funds to partisan agendas. Withholding of donor support is affecting the country's ability to revive the social sectors including education.

The polarisation that exists in Zimbabwe is also mirrored at the international level between the African countries and Western governments, which are unable to reach a consensus on how to tackle Zimbabwe's decade-long political and economic crisis. Following the signing of the GPA, African countries called for the West to lift sanctions imposed on the Mugabe

government at the beginning of the Zimbabwe crisis, while the EU and the USA government insist on seeing measures implemented by the Inclusive Government showing a shift from the old order.

2. ENFORCED DISAPPEARANCES,¹³ TORTURE, UNLAWFUL DETENTIONS AND UNFAIR TRIALS

From October to December 2008, at least 23 human rights defenders and MDC activists were subjects of enforced disappearance and were only discovered at various police stations in Harare on 22 and 23 December. They were handed over by their abductors to the Law and Order section of the ZRP. Despite their disappearance being a crime under international law, none of the abductors was arrested nor was the conduct of the responsible state agents investigated.

Following the abductions of the 23 activists, the government denied knowledge of their whereabouts¹⁴. They were held incommunicado and several were tortured in an attempt to force them to confess to charges of recruiting people to undergo military training in Botswana for the purpose of committing acts of insurgency, banditry, sabotage or terrorism in Zimbabwe; or to committing acts of insurgency, banditry, sabotage or terrorism by causing explosions at police premises in Harare and at the Manyame River Bridge near Norton in August and November 2008.

The MDC formation led by Prime Minister Tsvangirai also claims that seven of its members who reportedly disappeared between October and December 2008 remain unaccounted for. Gwenzi Kahiya is reported to have disappeared on 29 October from Zvimba; Ephraim Mabeka, Lovemore Machokoto, Charles Muza and Edmore Vangirai reportedly disappeared around 10 December from Gokwe; Peter Munyanyi disappeared around 13 December in Gutu South; and Graham Matehwa disappeared in Makoni South around 17 December. The whereabouts of these men remain unknown. Amnesty International was told by the co-Ministers of Home Affairs that the seven detainees were not in police custody although the police had not spoken to potential witnesses to establish the circumstances around the victims' disappearance¹⁵.

Enforced disappearance is a crime under international law, which undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms. Any act of enforced disappearance places the victims outside the protection of the law and inflicts severe suffering on them and their families. Enforced disappearance constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or

punishment¹⁶.

Incommunicado detention¹⁷ (detention without access to the outside world) facilitates torture, ill-treatment and “disappearances”. Prolonged incommunicado detention can be in itself a form of cruel, inhuman and degrading treatment.

Although Zimbabwe is not a state party to the Convention Against Torture (CAT), Section 15 of the Constitution of Zimbabwe outlaws torture, as do the African Charter and International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a party. Section 15(1) of the constitution reads: No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

Amnesty International is not aware of any investigations conducted by the government in order to bring the perpetrators of the disappearance and torture of the activists to justice. In fact the government has attempted to cover up these serious crimes and taken measures to indemnify the perpetrators, including initial attempts to conceal the identities of those responsible for the disappearance of the victims. All of the victims of the enforced disappearances identified their abductors as state security agents. Attempts to cover up the alleged security forces' involvement in the enforced disappearances perpetuates the crime and reinforces the culture of impunity that has thrived in Zimbabwe.

Also of concern is that detainees abducted from the end of October to the second week of December 2008 were only presented to court on 23 December. The victims were held incommunicado allegedly by state security agents for well beyond the 48 hours provided under Zimbabwe's constitution. Anyone arrested or detained must be brought promptly before a judge or another officer authorised by law to exercise judicial power. The detainees were also repeatedly denied access to medical treatment despite court orders compelling the government to allow them access to a doctor.

Amnesty International believes that a detainee or prisoner should have prompt access to a doctor whenever an allegation of torture or ill-treatment is made or when there is suspicion that torture or ill-treatment has taken place. This is a crucial measure not only to ensure the good health of the detainee but also in obtaining evidence for prosecution of the perpetrator. Such access should not be dependent on the institution of an official investigation of the allegation of torture or ill-treatment.

Although most of the detainees were later granted bail in February and March 2009, three men, Gandhi Mudzingwa, Andrison Shadreck Manyere and Kisimusi Chris Dhlamini were denied bail. The three men were temporarily released from custody after the government failed to file a notice to appeal within seven days, a requirement under Section 121 of the Criminal Procedures and Evidence Act. On 17 April 2009 the three detainees were released on bail only for Mudzingwa and Dhlamini to be placed under armed guard, first by prison guards on 20 April, and later by police guards. The two men had remained in hospital where they were receiving treatment for over two months when they were granted bail. They were finally released on bail in May nearly six months after they were abducted by state security agents.

The case of the 23 detainees has all the hallmarks of a political trial similar to those seen

previously in Zimbabwe where defendants have been arbitrarily arrested, denied access to lawyers and then had trumped up charges brought against them, only to have the charges dropped or for them to be acquitted by the courts after lengthy and highly publicised trials.

Amnesty International is concerned that the police in Zimbabwe and the Office of the Attorney General appear to be condoning arbitrary arrest, unlawful detention and covering up the crimes of torture, other ill-treatment and enforced disappearances.

Recommendations to the government of Zimbabwe:

- Immediately disclose the whereabouts of the seven individuals who reportedly disappeared in 2008; or immediately and impartially investigate circumstances around their disappearance. If these people are in the custody of state security agents, the government must allow full access to their lawyers and family, including access to quality medical care;
- The government of Zimbabwe should demonstrate its total opposition to torture and other ill-treatment, and “disappearances” by condemning these practices unreservedly whenever they occur. It should make clear to all members of the police, military and other security forces that torture and other ill-treatment, and “disappearances” will never be tolerated;
- The government of Zimbabwe should ensure that the practice of incommunicado detention should be ended and that all detainees are brought before an independent judicial authority without delay after being taken into custody. Detainees should have access to relatives, lawyers and doctors without delay and regularly thereafter;
- Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit torture and other ill-treatment, and “disappearances”. Officials with chain-of-command responsibility who order or tolerate torture and other ill-treatment, and “disappearances” by those under their command should be held criminally responsible for these acts;
- The government of Zimbabwe should ensure that detainees are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts and other with a legitimate interest, such as the International Committee of the Red Cross. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a detainee is held and under what authority, and to ensure the detainee’s safety;
- The government of Zimbabwe should provide safeguards during detention and interrogation. All detainees should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. The government should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention;

- The government of Zimbabwe should prohibit torture and other ill-treatment, and “disappearances” in law. The government should adopt laws for the prohibition and prevention of torture and other ill-treatment, and “disappearances” incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the International Convention for the Protection of All Persons from Enforced Disappearance and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and “disappearances”, and the essential safeguards for their prevention must not be suspended under any circumstances;
- All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals;
- Those responsible for torture or other ill-treatment, and “disappearances” should be brought to justice. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment or “disappearances”;
- The government of Zimbabwe should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment;
- It should be made clear during the training of all officials involved in the custody, interrogation or medical care of detainees that torture and other ill-treatment and “disappearances” are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment;
- Victims of torture or other ill-treatment and “disappearance” as well as their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation;
- The government of Zimbabwe should ratify without reservations the UN Convention against Torture and its Optional Protocol, as well as the International Convention for the Protection of All Persons from Enforced Disappearance.

3. REPRESSION OF HUMAN RIGHTS DEFENDERS¹⁸, MEDIA WORKERS AND PERCEIVED POLITICAL OPPONENTS

Amnesty International is concerned about the restrictive environment in which Zimbabwean human rights defenders and media workers operate. Despite the creation of the Inclusive

Government, dozens of human rights defenders and political activists continue to face charges arising from exercising the internationally guaranteed rights to peaceful assembly, freedoms of association and expression. Several journalists have been arrested for exercising the right to freedom of expression¹⁹ despite the fact that freedom of expression is guaranteed in Section 20 of the Constitution of Zimbabwe and contained in Article 9 of the African Charter and Article 19 of the ICCPR to which Zimbabwe is a state party. The manner in which media laws are implemented discriminates against those perceived to be opponents of ZANU-PF.

The police have also categorised as criminal all legitimate activities of human rights defenders, as recognized in the UN Declaration on Human Rights Defenders²⁰ and reaffirmed by the African Commission on Human and Peoples' Rights in their Resolution on the Protection of Human Rights Defenders in Africa. Since 2000, Amnesty International has documented numerous cases involving hundreds of human rights activists who were victims of arbitrary arrest, unlawful detention, use of excessive force and torture while in police custody. In addition, detainees have been denied bail, medical care, water, food and access to lawyers and family as a form of punishment for their activism.

Some units within the ZRP, particularly the Law and Order Section of the Criminal Investigations Department of the ZRP and the anti-riot police have been identified by victims as the most notorious for using torture, excessive force, arbitrary arrest and unlawful detention as tools of repression against perceived political opponents since 2000. For example, on 18 June 2009 four members of WOZA and a cameraman from the state-owned Herald newspaper were assaulted and arrested by the anti-riot police just outside the Meikles Hotel in central Harare while Amnesty International was holding its press conference. The WOZA activists were severely beaten after they were arrested and later denied medical treatment reportedly "as a punishment for embarrassing the government in front of international visitors."

Recommendations to the government of Zimbabwe:

- Give full recognition the important role human rights defenders and civil society organizations play in the promotion and protection of human rights. Civil society organizations can play a critical role in the context of the current constitution making process. The government must take measures to create an environment that ensures the full participation of all Zimbabweans in framing a new constitutional order by removing all obstacles to the enjoyment of the rights to peaceful assembly, freedom of association, and freedom of expression, including restrictions under AIPPA and POSA such as restrictive accreditation of media workers and criminalization of peaceful demonstrations.
- Immediately cease all intimidation, arbitrary arrest and unlawful detention of human rights defenders and media workers. Amend or repeal repressive laws such as POSA, AIPPA, sections of the Criminal Law (Codification and Reform) Act and the Broadcasting Service Act which restrict media freedom and the work of human rights defenders.
- Allow local and international media to operate freely.

Recommendations to the international community:

- SADC and AU countries should speak out against restrictions on the work of human rights defenders, political activists, journalists and lawyers, including their arbitrary arrests and unlawful detentions. They should raise their concerns in bilateral and multilateral engagements with the Zimbabwean government.
- Donors should ensure that adequate funding and resources are available to enable human rights defenders to undertake their work to promote and protect their own human rights and those of their families and communities.
- Donors should also continue to support human rights defenders at all levels in Zimbabwe to participate in key national processes, including in the context of constitution making and the search for a national strategy to address past human rights violations.

4. THE ZIMBABWE REPUBLIC POLICE

The ZRP has been instrumental in silencing government critics since 2000 and is the main institution responsible for serious human rights violations in Zimbabwe. Police have consistently suppressed the rights to peaceful assembly and association, as well as perpetrating torture and other ill-treatment of human rights defenders, political activists and other government critics. Police have arbitrarily arrested, unlawfully detained and tortured human rights defenders and political activists. Officers from the ZRP have used excessive force to break up peaceful protests, often inflicting serious injuries on victims. Detained human rights defenders and political activists have frequently and repeatedly been denied access to lawyers, family, food and medical attention. Two units within the ZRP have been identified by Amnesty International as primarily responsible for the suppression of these rights.²¹

The Law and Order section of the Criminal Investigations Department is responsible for the majority of human rights violations committed by police officers against human rights defenders and political activists. In executing its duties, the Law and Order section appears to have operated in a partisan manner. Detainees seen as opponents of the government have frequently been subjected to physical and psychological torture and have also often been detained for prolonged periods. None of the officers alleged to have been involved in violations documented by Amnesty International since 2000 have been brought to justice.

The anti-riot unit of the ZRP has consistently used excessive force to break up peaceful demonstrations by human rights defenders, political opposition activists and other government critics. Since 2000 thousands of peaceful demonstrators have sustained serious injuries as a result of use of excessive force by police.

Despite compelling evidence of politicisation of the Zimbabwe's security sector, including their involvement in the 2008 political violence, Amnesty International delegates observed a lack of urgency to undertake reforms to restore public confidence in the army and the police

force.

Amnesty International is concerned that violations of human rights by the ZRP, mainly of human rights defenders and political activists, persists with total impunity²². Lack of accountability appears to be more of an institutional culture as opposed to lack of a legal framework or knowledge of how bring those responsible to book.

Despite the welcome ruling by a Harare magistrate in July 2009 which ordered the Zimbabwean government to investigate the alleged assault of four women human rights activists by police while in custody, there remains a need for the Zimbabwean authorities to get to the bottom of these and other similar allegations.²³

Amnesty International is concerned that police officers who commit such human rights violations appear to enjoy protection from higher officers in the command chain who repeatedly deny allegations of human rights violations despite compelling medical evidence and victims' accounts confirming torture and other ill-treatment of detainees taking place in police custody.²⁴

Failure by the ZRP to ensure accountability for violations highlights the urgent need for an independent and impartial police oversight mechanism which is accessible to the public to investigate such allegations and ensure that perpetrators do not enjoy impunity.

Amnesty International welcomes the enactment of the Zimbabwe National Security Council Act in March which takes over the functions of the Joint Operations Command (JOC).²⁵ However, nearly six months since the law was passed the National Security Council (NSC) has only met once and little or no progress has been made in the fulfilment of its mandate to facilitate reforms of the ZRP and other security organizations in accordance with Zimbabwe's human rights obligations.

Recommendations to the government of Zimbabwe:

- Prioritize the reform of the Law and Order section of the Zimbabwe Republic Police, as well as the anti-riot unit, to ensure officers from these units are not used as instruments to perpetrate human rights violations. With a pro human rights institutional culture and respect for the rule of law, the ZRP can be a critical institution to ensure personal safety and protection of the human rights of all people in Zimbabwe. The ZRP leadership should stop encouraging abuse of the law by preferring politically motivated charges against perceived political opponents as well interfering with investigations to assist those accused of human rights violations to evade being held accountable;
- Zimbabwe Republic Police officers should receive comprehensive and ongoing training in human rights standards and their implementation. If the new government is unable to undertake this exercise it should immediately seek international support and collaborate with civil society organizations to implement such training;
- Members of the anti-riot police should receive comprehensive and ongoing training in how to comply with international standards on the use of force, including the UN Basic Principles on the Use of Force or Firearms by Law

Enforcement Officials;

- Zimbabwe Republic Police officers responsible for human rights violations should be removed from their posts according to impartial and politically independent individualized procedures which comply with the requirements of due process and non-discrimination. These procedures should be non-punitive, but should cooperate, such as by sharing evidence, with authorities conducting criminal investigations into past human rights abuses;
- Mechanisms should be developed for vetting members of the security forces and other state institutions;
- Immediately convene a meeting of the NSC and in line with its mandate, the NSC must facilitate reforms of the ZRP and other security organizations in accordance with Zimbabwe's human rights obligations.

5. IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Zimbabwe is going through a transitional process brought about by the GPA signed in September 2008. Past experience show that often such agreements are followed by processes to offer indemnity to individuals or groups of individuals from previous governments and/or non-state actors who may be responsible for serious human rights violations.²⁶ Although measures such as amnesties are adopted ostensibly to promote national unity and reconciliation, they often become an obstacle for accountability and prevent true reconciliation. Amnesties for perpetrators of human rights violations such as enforced disappearances, torture and extra-judicial killings are prohibited under international law, as they deny the right of victims to justice. As such, Amnesty International has consistently opposed, without exception, amnesties, pardons and similar measures of impunity that prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparation to victims and their families.

During meetings with senior government officials across the political divide in June, Amnesty International expressed concern over failure to implement measures to tackle the spectre of impunity for human rights violations which has stalked Zimbabwe's pre and post independence history. Amnesty International and other international and national human rights organizations have, over the last nine years, documented extensive and serious human rights violations in Zimbabwe including torture²⁷ and other ill-treatment, political killings, enforced disappearances, arbitrary arrests, unlawful detentions and denial of access to the outside world (families, lawyers, medical treatment) for political activists, human rights defenders and media workers. Government critics and perceived political opponents have been systematically denied their rights to freedom of expression, association and assembly as form of punishment for holding opposing views.

Failure to deal with these concerns risks prolonging and intensifying the pain felt by the victims and their families and the suffering of the Zimbabwean people in general. It also effectively gives a green light to the perpetrators to continue.

5.1 VICTIMS DEMAND JUSTICE AND COMPENSATION

Amnesty International is concerned that thousands of victims of human rights violations have been left to rebuild their lives without support from the government. Amnesty International interviewed scores of victims of the 2008 human rights violations before and after the establishment of the Inclusive Government, including during a visit by the organisation's Secretary General in June 2009. Victims expressed extreme anxiety over the fate of perpetrators and the government's strategy for dealing with the past. Victims felt that their voices were being ignored. Lack of reparation meant many were struggling to rebuild their lives without any support.

In a worrying development since the establishment of the new government, victims of beatings and torture as well as those whose property was destroyed or looted by known perpetrators in their communities, are resorting to individual retribution after being frustrated by the lack of action by police. Victims told Amnesty International that police were indifferent to their plight. Police were quick to arrest people trying to claim back their property while taking no steps to bring to justice those accused of torture and other crimes targeted at MDC supporters in 2008. In some instances police told victims to wait until they had received directives from their superiors to act against known perpetrators of the 2008 election related human rights abuses. Although the co-Ministers Home Affairs denied knowledge of such orders²⁸, no clear explanation was given about the apparent failure by police to act against known perpetrators in communities.

Widespread impunity for human rights violations fosters further conflict and makes it impossible for society to heal. In effect, it perpetuates the underlying abuses. While Amnesty International condemns individual acts of violence or retaliation, the organization has repeatedly called on the government to take steps to prevent such incidents by providing justice, truth and reparations to all victims of human rights violations.

Amnesty International welcomed reports in May 2009 that police were collecting information on the 2008 election violence; however no further action against the perpetrators was taken by the police.²⁹

5.2 RECENT MEASURES ADOPTED BY THE GOVERNMENT THAT COULD HELP ADDRESS ZIMBABWE'S LONG HISTORY OF IMPUNITY

Amnesty International welcomes the appointment of the Ministers of State responsible for the organ on National Healing and Reconciliation.³⁰ However, the organisation is concerned that the government has prioritised provision of psychosocial support to victims at the expense of establishing the truth and facilitating national dialogue on how to address the hard core human rights violations and pushing for necessary security reforms to guarantee non-repetition of human rights violations.³¹ The ministry's priorities are in stark contradiction with the calls being made by victims for truth justice, and reparations.

Under Article 2(3) of the ICCPR states are obliged to ensure that victims of human rights violations have the right to an effective remedy. Similarly, Article 7 of the African Charter provides that every person has the right to appeal to competent national bodies against violations of their internationally recognized human rights.

Zimbabwe's national healing strategy should ensure that human rights violations by the security forces in parts of Matabeleland and Midlands provinces in the 1980s are fully investigated and ensure that the victims and their families receive adequate reparations, including compensation for their suffering.³² Victims also need to establish the truth and to see justice in force.

The GPA also makes reference to human rights violations perpetrated before the country attained independence. However, Amnesty International stresses that any transitional justice mechanism should not be designed in such a way that its broad mandate serves to defer implementing concrete measures to address the plight of all victims of human rights violations.

5.3 POLITICAL WILL – THE KEY TO COMBATING IMPUNITY

One of the major obstacles to holding perpetrators of human rights violations accountable has been the unwillingness or inability of the Zimbabwean police to carry out investigations of alleged human rights violations that constitute criminal offences under national law. Failure to bring perpetrators of human rights violations to justice in Zimbabwe can be attributed mainly to interference by senior leadership of the ZRP. Low to middle ranking officers of the ZRP have told Amnesty International that they were under superior orders not to investigate cases in which MDC supporters were victims. These claims have been corroborated by numerous victims who narrated to Amnesty International similar responses from the police in different parts of the country when they went to report attacks by ZANU-PF supporters.

However, there are a few cases where police have investigated reports of human rights abuses, and perpetrators have been successfully prosecuted. For example, in April 2009 three ZANU-PF supporters in Chiredzi, who were leaders at a ZANU-PF camp at Mkwesine Administration Hall A, were convicted for assaulting a female MDC supporter in the run up to the 27 June elections. The three men, Vengai Zihura, Eukeria Muvengwa and Alick Ziwende were charged with assault. Eukeria Muvengwa and Alick Ziwende were both sentenced to 24 months imprisonment while Vengai Zihura was sentenced to 30 months imprisonment, getting an additional six months for sexually assaulting the victim.³³ In June 2009 a senior government minister told Amnesty International that about 60 members of the Zimbabwe defence forces were arrested by police for alleged involved political violence. However, it was not clear whether they were also convicted.

Recommendations to the government of Zimbabwe:

The Zimbabwe government should create a long-term strategic action plan to ensure that the truth is told, that justice is done and that reparations are provided to all the victims of past human rights violations.

- Establish an independent commission of inquiry

The government of Zimbabwe should establish an independent commission of inquiry to look into all aspects of the human rights violations in Zimbabwe since 2000, and in particular in the context of the elections in 2008. The terms of reference of the commission and its membership should be determined on the basis of broad public consultation with all sectors of society, including in particular the victims.

The members of the commission should be appointed on the basis of their recognized impartiality, competence, integrity and independence. Efforts should be made to ensure adequate representation of women as well as of other groups whose members have been especially vulnerable to human rights violations.

The commission and each of its members should have the strongest possible guarantees of independence including establishment in law, security of tenure and other immunities and privileges. They must be independent of the executive functions of government, free of political pressures and able to carry out their work without interference from the authorities or from other agencies or bodies under investigation. The commission should be provided with transparent funding and sufficient material and human resources to carry out its work.

The commission's investigations should cover all violations of human rights. In particular it should focus on violations that constitute crimes under international law, and should endeavour to safeguard evidence for use in the administration of justice. Its inquiries should relate to all individuals allegedly responsible for violations of human rights, whether they ordered them or actually committed them, as perpetrators or accomplices.

The terms of reference of the commission should mandate it to include in its final report recommendations on legislative and other action to combat impunity.

- The government should undertake prompt, thorough, independent and impartial investigations of violations of human rights and ensure that those responsible for crimes, particularly crimes under international law and other human rights violations, are brought to justice.

Investigations should cover those responsible at all levels, whether they committed, ordered or were otherwise complicit in crimes, and whether they were public officials or employees or were acting in another capacity.

The fact that a perpetrator acted on the orders of the government or of a superior should not exempt him or her from criminal responsibility.

Effective steps should be taken to ensure the protection of victims and other witnesses against intimidation or reprisals.

The fact that violations were committed by a subordinate should not exempt that subordinate's superiors from criminal responsibility if they knew or had reason to know that the subordinate was committing or was about to commit such a crime and did not take all necessary measures they could to prevent or punish it.

Public officials and employees who are subject to criminal or disciplinary proceedings should be suspended from official duties during those proceedings.

Any provisions on disclosure or repentance in order to encourage revelation of the truth should not provide for exemption from criminal or other responsibility.

In the case of violations which constitute crimes under international law, there should be no amnesties, pardons or similar measures which prevent the emergence of the truth, a final judicial determination of guilt or innocence, and full reparation for the victims.

- The government should ensure that victims receive reparation and have the possibility to seek redress in civil or other proceedings from those responsible for human rights violations against them. The right to reparation must apply to all injuries suffered by victims and must include measures of restitution, compensation, rehabilitation and satisfaction;
- The government should design its plan taking into consideration existing peace building initiatives by civil society organizations, as well as community initiatives to provide remedies to victims of human rights violations. The action plan should be developed in a coordinated process of national consultation and tailored to the particular country situation. Concerned parties, including victims, national and international civil society organizations, human rights defenders, and persons belonging to minority and vulnerable groups should be fully involved in the discussions. Particular attention should be paid to ensure consultations with those groups who have been marginalized in political processes, especially women, and ethnic or other minorities. They should be encouraged to express their views about the crimes which require remedy, and the methods of working which are most likely to ensure effective participation;
- The government of Zimbabwe should ratify the Rome Statute of the International Criminal Court.

Recommendation to the international community:

- Donors should use their influence to support victims of past human rights violations to have their voices heard and to access justice and reparations.

6. ABOLITION OF THE DEATH PENALTY

Amnesty International believes that the constitutional reform process provided for under Article 6 of the GPA is an opportunity for the government of Zimbabwe to demonstrate its commitment to human rights and live up to its international obligations by including the abolition of the death penalty in the new supreme law.

Chapter 3(12) of the current Constitution of Zimbabwe states that “No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a

criminal offence of which he has been convicted." The death penalty is currently legislated for in the Criminal Law (Codification and Reform) Act [Chapter 9:23], the Criminal Procedure and Evidence Act [*Chapter 9:07*] and the Defence Act [Chapter 11:02]. Amnesty International welcomes the recent hiatus in executions and notes that to the organization's knowledge no one has been hanged since 2005.³⁴

Zimbabwe has gone some way in restricting the use of the death penalty. For example, while at independence there were nine crimes which were punishable by death under Zimbabwean law; this has gradually been reduced to three. The death penalty can be invoked for the crime of treason,³⁵ where the act of insurgency, banditry, sabotage or terrorism results in the death of a person,³⁶ for murder³⁷ and for attempted murder or incitement or conspiracy to commit murder.³⁸ Other than treason and murder, mutiny is the only other crime punishable by death. The method of execution is hanging and by firing squad.³⁹

Amnesty International believes that the death penalty is the ultimate cruel, inhuman and degrading punishment and constitutes a violation to the right to life. The right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment are recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

Recent decades have witnessed a global trend away from the use of the death penalty to such an extent that an execution has become a rare event. In 2008, only 25 countries carried out executions, four of them in Africa.⁴⁰ One hundred and thirty nine countries have abolished the death penalty in law or in practice and only 58 retain capital punishment. Most recently Burundi abolished the death penalty in April 2009.

Amnesty International regrets that on 18 December 2008 Zimbabwe voted against the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly. However, 106 countries voted in favour of a moratorium while 34 abstained, and only 46 countries were opposed. The resolution is the latest representation of the view of the international community that executions have no place in the 21st century.

Africa has made steady process towards becoming a continent free from executions. Fourteen African states have abolished the death penalty for all crimes, 23 are considered abolitionist in practice⁴¹ and 16 nations retain the death penalty. Of the 14 member states of SADC, six are abolitionist for all crimes, four are abolitionist in practice and four retain the death penalty. However, it should be noted that only Botswana has carried out executions in recent years.

In November 2008 the African Commission on Human and Peoples' Rights adopted a resolution calling upon state parties to the African Charter to observe a moratorium on executions with a view to total abolition of the death penalty. The resolution expresses concern at the failure of some African states to give effect to UN resolutions and the African Commission's own resolution (1999) calling for a moratorium. The resolution also expresses concern at the application of the death penalty in conditions not respectful of the right to a fair trial and other human rights. By adopting the resolution the African Commission has aligned itself with the global trend towards abolishing the death penalty.

Regrettably, in the Kariba Draft Constitution the death penalty is provided for in the case of murder, indicating that it is the intention of ZANU-PF and the two factions of the MDC to retain the death penalty in the new constitution.⁴²

6.1 DEATH PENALTY NOT A DETERRENT TO VIOLENT CRIMES

Amnesty International believes that retaining the use of the death penalty in Zimbabwe will not help to deter violent crime. The best deterrent to violent crime lies in guaranteeing a high chance of capture and conviction of criminals. This assertion, supported by various research studies, was clearly stated by the Constitutional Court of South Africa:

"We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system".⁴³

Crime may be reduced through having better trained and equipped police officers, eradicating poverty and improving education amongst other things. Political leaders in Zimbabwe need to present effective means of addressing the situation that do not endorse or contribute to further violence, continue the cycle of violence, or create more misery through violence.

The Zimbabwe Council of Chiefs has also expressed its support for the abolition of the death penalty, reportedly arguing that by hanging those who wilfully take the life of another, [society is] lowering [itself] to the level of the criminal.⁴⁴

Furthermore, applying the death penalty in a context where principles of fair trial are not observed increases the risk of execution of innocent people. As documented by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the death penalty is often imposed and carried out after unfair trials, where the most basic human rights of the defendants are violated, including the right to be presumed innocent, the right to be represented by legal counsel, the right to be tried by an independent and impartial court, the right to appeal to a higher tribunal and the right to petition for clemency or commutation of the death sentence. Often confessions and other evidence elicited under torture are admitted as evidence in court proceedings that resulted in the imposition of the death penalty.⁴⁵

In Zimbabwe, torture is routinely used by police in investigations rendering most criminal convictions unsafe. Amnesty International over the years has raised concern with the Zimbabwean authorities over the widespread use of torture of hundreds of individuals in police custody. Zimbabwe has also experienced a breakdown of the rule of law in the last 10 years and fair trials in most instances cannot be guaranteed.

In the United States of America, since 1973, 131 people condemned to death have been released because they were found to be innocent or their convictions rested on insufficient evidence against them. Some of them had come close to execution after years on death row. These repeated errors in death penalty cases have been especially due to irregularities committed by prosecution or police officers, recourse to unreliable evidence, or incompetence on the part of defence lawyers.⁴⁶

Similarly, in Zimbabwe, the risk of executing innocent people cannot be ruled out.

In addition, the death penalty is discriminatory and is often used disproportionately against the poor, minorities and members of racial, ethnic and religious communities. It is therefore contrary to Articles 2 and 7 of the UDHR. It is ultimately a denial of the dignity and worth of the human person, affirmed in the preamble to the UDHR.

Amnesty International is therefore calling on Zimbabwe's political leadership to support a call for the abolition of the death penalty in Zimbabwe in the context of the current constitutional reform. This is an opportunity to significantly improve the human rights record of Zimbabwe and protect the population from an egregious violation of fundamental human rights.

Abolition of the death penalty in Zimbabwe will bring the country into league with a progressive trend in Africa where more countries are abolishing this inhuman and degrading punishment. Bringing about abolition requires courageous political leadership, leadership which will be exercised in the defence of human rights.

Recommendations to the government of Zimbabwe:

- Establish an immediate moratorium on executions as a first step towards abolishing capital punishment;
- Immediately commute all death sentences to terms of imprisonment;
- Incorporate abolition the death penalty for all crimes in the current constitutional making process;
- Ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty;
- Encourage initiatives to educate the public on the uncertainty of the deterrent effect of capital punishment (UN document No. A/CONF87/9, paragraph 68). A better public understanding of crime prevention and criminal justice would produce more support for anti-crime measures which are genuine and not merely palliative.

7. VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

While the most recognized human rights violations in Zimbabwe are of civil and political rights, Zimbabweans have also endured unprecedented erosion of their economic, social and cultural rights. Notably, the 2005 government programme of mass forced evictions and the collapse of the education system continue to affect millions of people who are suffering silently. As the international community continues to focus on violations of civil and political rights and insist on the government's fulfilment of these rights before releasing much needed

development assistance, Amnesty International is urging both the inclusive government and the donor community to give equal attention to violations of the rights to adequate housing and education. The political impasse between donors and the Zimbabwe government has serious consequences for the fulfilment of the economic, social and cultural rights of the people of Zimbabwe. Donor assistance is needed to enable people to access adequate housing and for education for millions of Zimbabwe's children.

7.1 RIGHT TO ADEQUATE HOUSING

Following the launch of Operation Murambatsvina in 2005, a programme of mass forced evictions and demolitions of homes and informal businesses, an estimated 700,000 people lost their homes and/or livelihoods in Zimbabwe. The majority of the victims continue to live in destitution and their lives have been further complicated by subsequent political crises. Amnesty International is concerned that four years after the forced evictions, the government of Zimbabwe has failed to provide an effective remedy for the victims. The government has an international obligation to provide a prompt remedy for human rights abuses⁴⁷ and should make this a priority for the new administration.

In June 2005 the government launched Operation Garikai/Hlalani Kuhle (Better Life), and claimed it would provide housing to those who lost homes during Operation Murambatsvina. However, in a report published in September 2006, Amnesty International found that very few of the victims of Operation Murambatsvina had benefited from Operation Garikai/Hlalani Kuhle.⁴⁸ The government repeatedly made misleading statements, including to the African Commission on Human and Peoples' Rights, presenting Operation Garikai/Hlalani Kuhle as a programme under which houses were built by the government for victims, without mentioning that under Operation Garikai/Hlalani Kuhle many people were allocated small bare plots of land on which they had to build their own homes with no assistance, and that at least 20 per cent of any houses built were earmarked for civil servants, police and soldiers.

The 2005 evictions drove most of the victims deeper into poverty. Anna Tibaijuka, the UN Special Envoy on Human Settlements Issues in Zimbabwe noted, after her mission to Zimbabwe, that the majority of the victims of Operation Murambatsvina were people who were already living in poverty. She also highlighted the impact of the forced evictions on the lives of people:

"Hundreds of thousands of women, men and children were made homeless, without access to food, water and sanitation or health care, Education for thousands of school age children has been disrupted. Many of the sick, including those with HIV and AIDS, no longer have access to care. The vast majority of those directly and indirectly affected are the poor and disadvantaged segments of the population. They are, today, deeper in poverty, deprivation and destitution, and have been rendered more vulnerable".⁴⁹

The government has failed to ensure that the replacement housing built under Operation Garikai/Hlalani Kuhle, complies with the requirements for 'adequacy' of housing identified by the Committee on Economic, Social and Cultural Rights. Far fewer houses were built compared to the number of those destroyed, and many of the "built" houses were uninhabitable, lacking doors, windows, toilets and access to clean water. They were also unaffordable for the majority of the victims because the scheme required people to pay deposits and provide proof of income. Since Operation Murambatsvina resulted in the

destruction of at least 32,538 small and micro-businesses across the country, creating a loss of livelihood for 97,614 people (mostly women) who were targeted indiscriminately, many could not afford to access replacement housing.

Some 4,205 out of a targeted 7478⁵⁰ houses were constructed under Operation Garikai/Hlalani Kuhle compared to 92,460 housing structures destroyed during Operation Murambatsvina, and construction in many areas appeared to stop after the existing houses were built in late 2005. The government of Zimbabwe continues to be in breach of its obligation to provide a prompt and effective remedy and reparations to individuals, whose human rights were violated.⁵¹

In April 2009, the government announced that the management of the Garikai/Hlalani Kuhle project⁵² will be restructured by the end of May 2009. In June 2009 the government told Amnesty International delegates that it was going to conduct a comprehensive national audit on housing including Operation Garikai.

Recommendations to the government of Zimbabwe:

- End all forced evictions, including through prohibiting, preventing and enforcing a clear prohibition on forced evictions. Develop, adopt and implement guidelines for evictions which comply with international human rights law. Until such steps have been taken, issue a moratorium on mass evictions;
- Ensure a minimum degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats to all persons;
- Take immediate measures to provide effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition to all victims of forced evictions;
- Ensure that all victims of forced evictions have access to, at the very least, minimum essential levels of shelter, clean water, sanitation, health services and education, including through the provision of humanitarian assistance where necessary;
- Subject Operation Garikai/Hlalani Kuhle to a comprehensive review to bring it in line with the human rights obligations of the government of Zimbabwe. Develop a comprehensive human rights-based housing programme to address the housing needs of all victims of Operation Murambatsvina. At the very least, the programme should provide security of tenure to all victims. While allocating resources under the programme, the government should give priority to the most marginalized and vulnerable groups and ensure that it is implemented in a non-discriminatory manner. The programme should also be developed in genuine consultation with, and the participation of, the affected communities;
- Fully implement the recommendations contained in the 2005 Report of the UN Special Envoy on Human Settlement Issues in Zimbabwe.⁵³

Recommendations to the international community:

- Amnesty International urges donors to support a non-discriminatory and human rights-based housing programme in order to address immediate needs of victims. The organization also urges donors to ensure that humanitarian assistance programmes, including those providing emergency or temporary shelter, receive sufficient funding to ensure minimum essential levels of the right to an adequate standard of living, including adequate food, water and housing. Donors should also ensure their humanitarian assistance is based firmly on the human rights principle of non-discrimination.

7.2 RIGHT TO EDUCATION

Amnesty International is concerned at the retrogression in the enjoyment of the right to education, particularly primary education in Zimbabwe brought about by the closure of schools in 2008 as a result of economic and political instability in the country. Although the decision to give an allowance of US\$100 in February saw nearly 90 per cent of teachers returning to work, Zimbabwean schools are in dire need of teaching materials, text books, exercise books, chalk, desks and other furniture. Many schools were looted or vandalised while they were not operational. One teacher in Harare told Amnesty International in March that she had just nine text books to share between the 40 children in her class, some of whom were forced to stand during lessons because of the lack of chairs and desks.

Zimbabwe adopted a universal primary education policy soon after independence and the Education Act, 1987 provided for tuition-free primary education.⁵⁴ By 2000, Zimbabwe had 88.4 per cent trained and 11.6 per cent untrained primary school teachers, out of an increased total of 66,640.⁵⁵ In 2002, the net enrolment for primary school was 93 per cent. Consequently, literacy levels for 15 – 24 year olds rose from 95 per cent to 98 per cent between 1992 and 1999. The achievement in high enrolment and literacy rates was mainly due to the universal primary education policy adopted soon after independence.

In contrast, as a result of the combined effect of economic collapse and violence against teachers in rural areas, the Ministry of Education estimates that some 20,000 teachers left their jobs in 2007 and 2008. In the run up to the June 2008 elections some schools in rural areas were taken over by ZANU-PF supporters and used as torture centres during the election violence. In February 2009, after a routine assessment, UNICEF reported that 94 per cent of Zimbabwe's rural schools were closed. Examinations from 2008 remain unmarked⁵⁶. UNICEF also reported that 66 out of 70 schools visited were abandoned. Those schools that were operational had only a third of children in attendance. A Level examination results were only released in May 2009.

Zimbabwe is a state party to the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the African Charter on the Rights and Welfare of the Child. The three treaties place an obligation on the Zimbabwean government to guarantee the right to education, including free and compulsory primary education.

Domestic law in Zimbabwe also provides for the right to education. Article 4 of the Education Act explicitly states the right of every child in Zimbabwe to education. Article 5 states that it is the objective in Zimbabwe that primary education for every child of school-

going age shall be compulsory.

7.2.1 GOVERNMENT SCHOOL FEES STRUCTURE AN OBSTACLE TO ACCESS TO EDUCATION

After the setting up of the Inclusive Government in February 2009, the Ministry of Education announced a new fees structure which, required families in low density urban areas to pay \$150 per term and families in high density urban areas to pay \$20 per term for primary school fees. Although the government announced that primary school education in rural areas was free, school were charging levies which were also unaffordable. In May 2009 the government reduced primary school tuition fees for urban parents, but still required them to pay \$5 and \$10 per term in low density and high density urban areas respectively.

The government of Zimbabwe is obligated under Article 13 (2) (a) of the International Covenant on Economic, Social and Cultural Rights and Article 28 of the Convention on the Rights of the Child to ensure that “primary education shall be compulsory and available free to all”.⁵⁷

Amnesty International considers the introduction of tuition fees to be a deliberately retrogressive measure and that the government of Zimbabwe has not discharged the burden placed on it under the Covenant to justify such a measure.⁵⁸

7.2.2 UNAFFORDABLE SCHOOL FEES

With over 90 per cent formal unemployment, the new fees structure is unaffordable for the vast majority. Rural communities and the urban poor are particularly vulnerable as they bear the burden of caring for the bulk of Zimbabwe’s more than one million children orphaned by the AIDS pandemic.⁵⁹ Many are dependent on food aid and were also exposed to political violence in the run up to the 27 June 2008 presidential elections.

Parents are struggling even to pay the levies demanded from them by the School Development Associations (SDAs). Unlike tuition fees, the levies are not set by the government. The SDAs, which are made up of parents and teachers, set levies to cover the maintenance of the schools and other such requirements.⁶⁰

Amnesty International is concerned that high tuition fees and levies will perpetuate the practice of prioritising boys’ education over that of girls by families who face harsh economic realities.⁶¹

7.2.3 PERSISTING HARASSMENT AND INTIMIDATION OF TEACHERS

Teachers who spoke to Amnesty International in March 2009 expressed serious concerns about their safety, and noted that they would be particularly vulnerable in future elections.

The 2008 election violence specifically targeted teachers, mostly in rural schools. Many were forced to take refuge in urban areas or in neighbouring countries. Teachers were targeted because they were perceived to be sympathetic to the MDC, and as a result of unsubstantiated allegations by the previous government that teachers, who traditionally have always constituted the bulk of election officials, had manipulated the March election in favour of the MDC.⁶² Amnesty International is not aware of any investigations by the Public Service Commission (PSC), a statutory body which employs all government workers, on the reports of harassment and intimidation of teachers and other civil servants by ZANU-PF

supporters.

7.2.4 SANCTIONS AND LACK OF RESOURCES - NO EXCUSE NOT TO FULFIL THE RIGHT TO EDUCATION

The previous government and some ministers in the current government have attributed the government's failure to fulfil economic, social and cultural rights to sanctions imposed by the European Union and the United States of America. However, the imposition of sanctions or other restrictive measures do not take away a state's obligations to fulfil economic, social and cultural rights under the ICESCR.⁶³

Equally, Zimbabwe's economic situation and the serious lack of funds in the state coffers does not excuse the Zimbabwean state from striving to ensure the realization of the right to free primary education. "[E]ven where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. [E]ven in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."⁶⁴

If the government of Zimbabwe is unable to meet its core obligations under the ICESCR it should genuinely seek international support. Under Article 2 (1) of the ICESCR governments are required to undertake "to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Recommendations to the government of Zimbabwe:

- The government of Zimbabwe should abolish all fees for primary school education. The government should ensure that no retrogressive measures are taken in relation to the right to education and should seek international cooperation and assistance to ensure the minimum essential levels of the right to education: free and compulsory primary education;
- The government of Zimbabwe must ensure the realization of the right to education, in particular the right to free and compulsory primary education through the improvement of material conditions for teaching staff and the provision of a living wage;
- The government of Zimbabwe must put in place the necessary mechanisms to ensure that resources allocated by the international community to education (and other sectors) are fully accounted for in a transparent manner and reach the intended beneficiaries in a non-discriminatory manner;
- The PSC should work with the Zimbabwe Republic Police to ensure that impartial and independent investigations are carried out into the torture and ill-treatment of teachers and other civil servants that took place between the March and June elections in 2008. Similarly, investigations into the use of schools as torture camps during the elections should also be carried out. Those found to be responsible should be brought to justice and victims should receive redress. Such measures would be a first step to ensuring the safety of the teachers and improving the environment in which they are working. In addition, the PSC must take steps to

end harassment and intimidation of teachers in rural areas by supporters of ZANU-PF.

Recommendations to the international community:

- While the primary obligation clearly lies with the Zimbabwean authorities to ensure that the right to education is realized, the international community also has an important role to play in assisting the government of Zimbabwe to fulfil its minimum core obligations in relation to the right to education. Amnesty International urges the donor countries to work with the Zimbabwean government to establish robust and effective mechanisms to ensure that there is full transparency and accountability in the use of all development assistance in support of the realization of minimum essential levels of economic, social and cultural rights;
- Donor assistance to support fulfilment of the right to education in Zimbabwe should prioritise support to the government of Zimbabwe to realize the right to free and compulsory primary education, including ensuring the removal of user fees and other charges which constitute an obstacle to the full realization of the right to education.

1 The new government in Zimbabwe, known as Inclusive Government, was established in February 2009 following the signing of the Global Political Agreement facilitated by the Southern African Development Community (SADC) signed on 15 September 2008 by the two formations of the Movement for Democratic Change (MDC) and the Zimbabwe African National Union – Patriotic Front (ZANU-PF).

2 See Amnesty International, Zimbabwe: Time for Accountability AFR/46/028/2008, October 2008.

3 Herald report, 19 June 2009.

4 Article 6 of the Global Political Agreement provides for a new constitution over a period of 18 months.

5 After a long delay the Zimbabwe Electoral Commission announced the presidential election result which gave 47.8% to Morgan Tsvangirai of the MDC, 43.2% to President Robert Mugabe, 8% to Simba Makoni and 0.6% to Langton Towungana.

6 “War veterans” in this context refers to a faction of veterans of Zimbabwe’s war of independence fought between 1965 and 1979, though many of those who call themselves “war veterans” were too young to have participated in the war. The faction often uses violence in its campaign in support of ZANU-PF often with the acquiescence of ZANU-PF politicians.

7 Amnesty International, Zimbabwe: A trail of violence after the ballot, June 2008, (AI Index AFR 014/2008).

8 See preamble of the Global Political Agreement.

9 The term “communal farmers” is used to refer to subsistence farmers and small scale land holders.

10 Disruptions on commercial farms that started in 2000 also saw the occupation by government supporters of farms that were producing seed while fertilizer manufacturing companies could not import inputs to make fertilizer as a result of a shortage of foreign currency.

11 Rohrbach D.D. (1989), The economics of smallholder maize production in Zimbabwe: implications for food security, pp 11, MSU International Development Papers, Michigan State University, USA.

12 Zimbabwe government, Short Term Emergency Recovery Plan (STERP), March 2009.

13 The International Convention for the Protection of All Persons from Enforced Disappearance defines “enforced disappearance” as: ‘the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or

acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'

14 On 3 December 2008 when Jestina Mukoko was abducted by armed state security agents. Police denied knowing about her abduction and even opened a kidnapping docket when a report was made by her family.

15 Amnesty International meeting with co-Ministers of Home Affairs, Hon Kembo Mohadi and Hon Giles Mutsekwa, June 2009.

16 The systematic practice of such acts is of the nature of a crime against humanity.

17 Incommunicado detention, as used by Amnesty International, covers people held in custody with or without charge who are deprived of access to family and friends, lawyers and doctors. Incommunicado detention may occur before or after being brought before a judiciary authority. Incommunicado detention is not the same as solitary confinement. A detainee denied access to the outside world may share a cell with, or have contact with, other detainees.

18 Amnesty International understands human right defenders to be 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 to redress the violations suffered by their relatives. 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 because of what they do, not because of their job or profession.

19 On 11 May 2009, Vincent Kahiya and Constantine Chimakure editors of the Zimbabwe Independent were arrested and detained. They were charged with publishing an article which is "wholly or materially false with the intention to generate public hostility towards the police, the military and the prison service" under Section 31 of the Criminal Law (Codification and Reform Act). Police also summoned Mike Curling, a director of publishers of the Zimbabwe Independent, who was also made to sign a 'warned and cautioned' statement. Kahiya and Chimakure were released the following day after being granted bail. Prior to this arrest, the editor of the state-owned The Chronicle newspaper Brezhnev Malaba and reporter Nduduzo Tshuma had been charged with criminal defamation under the same law in March after the paper published an article in February alleging police involvement in a maize scandal at the state-controlled Grain Marketing Board.

20 Article 12 of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of the State to Promote Universally Recognised Human Rights and Fundamental Freedoms, adopted by the UN General Assembly in 1998, 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 other arbitrary action as a consequence of his or her legitimate exercise of the rights."

21 See Amnesty International, *Zimbabwe: Time for Accountability* AFR/46/028/2008, October 2008

22 Section 29 of the Police Act (Chapter 11:10) provides for trial of officers by "(a) the High Court; or (b) a magistrates court; or a board of officers, or (d) an officer in terms of section thirty-four". According to clause 21 of the Schedule it is an offence for a member of the ZRP to use "unnecessary violence towards, or neglecting or in any way ill-treating any person in custody or other person with whom he may be brought into contact in the execution of his duty."

23 Amnesty International press release, 9 July 2009 "Zimbabwe needs an independent and impartial

oversight body" <http://www.amnesty.org/en/news-and-updates/news/zimbabwe-needs-impartial-and-independent-police-oversight-body-20090709>. The four women from the activist organization Women of Zimbabwe Arise (WOZA) were arbitrarily arrested by police on 18 June after engaging in a peaceful demonstration to commemorate World Refugee Day. The four women were arrested about 50 metres outside a hotel in Harare where Amnesty International's Secretary General was holding a press conference on 18 June. Police assaulted the activists and are reported to have accused them of embarrassing the government in front of international visitors.

24 Principle 24 of The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires that superior officers should be held responsible "if they know, or should know" that their subordinates "are resorting or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use."

25 The Joint Operations Command is a powerful group made up of senior military, intelligence, prison and police officials, and government representatives. Many of them publicly stated their loyalty to President Mugabe, some going as far as to declare that they would not salute Morgan Tsvangirai if he was elected leader.

26 For example Zimbabwe (1980 & 1987); South Africa (1994).

27 Under the ICCPR the government has an obligation to criminalize and to prosecute all acts of torture, including any act that constitutes complicity or participation in torture. International law permits any state in the world to exercise universal jurisdiction over all acts of torture, including attempts to commit torture, complicity in torture and participation in torture.

28 Amnesty International secretary-general's meeting with Co-Ministers of Home Affairs Hon Kembo Mohadi and Hon Giles Mutsekwa, June 2009.

29 Interview with Minister of Home Affairs, Hon Giles Mutsekwa SW Radio 20 March 2009. <http://www.newzimbabwe.com/pages/interview80.19599.html>

30 Article 7.1 (c) of the GPA provides for the setting up of a mechanism to 'properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of the victims of pre and post independence political conflicts.

31 In separate meetings with Vice President Joice Mujuru and Minister of State Sekai Holland in June 2009 Amnesty International delegates were told that the priority for the government was to provide counselling for the victims of political violence. The strategy, as explained to the delegates, did not include investigating alleged human rights violations by the state security agents or bringing perpetrators to justice.

32 Between 1982 and 1987, thousands of unarmed civilians in parts of Matabeleland and Midlands provinces were killed, tortured and disappeared some at the hands of dissidents and most as a result of the actions of government agencies. The disturbances ended after the signing of an agreement between ZANU-PF and the late nationalist Joshua Nkomo's Zimbabwe African People's Union and the merger of the two opposing parties. No one was held accountable for the systematic violations of human rights.

33 The Zimbabwe Times article, 18 April 2009, *Jubilation as ZANU-PF militiamen jailed*, <http://www.thezimbabwetimes.com/?p=15360>.

34 Amnesty International has recorded a total of 68 executions since independence. It is reported that there are currently more than 40 people on death row, including one woman. The last known execution in Zimbabwe was in July 2005.

35 Article 20(1b) of the Criminal Law (Codification and Reform) Action [Chapter 9:23]

36 Article 23(1v)(A) of the Criminal Law (Codification and Reform) Action [Chapter 9:23]

37 Section 337 of the Criminal Procedure and Evidence Act [Chapter 9:07] and Article 47(2) of the Criminal Law (Codification and Reform) Action [Chapter 9:23]

38 Section 337 of the Criminal Procedure and Evidence Act [Chapter 9:07] and Article 47(3) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]

39 Section 75(2)(b) of the Defence Act [Chapter 11:02].

40 Egypt, Botswana, Sudan and Libya.

41 Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made a public commitment not to use the death penalty.

42 The Kariba Draft Constitution was drawn up by the two formations of the MDC and ZANU-PF in Kariba in September 2007.

43 Statement made by the Constitutional Court of South Africa, when abolishing the death penalty as unconstitutional in 1995.

44 Opinion piece printed in the state newspaper, The Herald, on 14 July 2007

<http://raceandhistory.com/selfnews/viewnews.cgi?newsid1184416072.69908.shtml>.

45 For the reports of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, please see: <http://www.ohchr.org/english/issues/executions/index.htm> For Amnesty International's reports on the death penalty, please see: <http://web.amnesty.org/pages/deathpenalty-index-eng>.

46 See

http://www.amnestyusa.org/Fact_Sheets/The_Death_Penalty_Claims_Innocent_Lives/page.do?id=1101086&n1=3&n2=28&n3=99.

47 See, 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, Principle 2: "If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by...(c) Making available adequate, effective, prompt and appropriate remedies, including reparation."

48 Amnesty International, *Zimbabwe: No justice for victims of forced evictions*, AI Index: AFR 46/005/2006.

49 Report by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Fact Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina.

50 Amnesty International meeting with Minister of Housing and Social Amenities, June 2009.

51 The right to an effective remedy is recognised in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. The Committee on Economic, Social and Cultural Rights has also emphasised the obligation of states to provide effective remedies and that victims of violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition (General Comments No. 12 and 14).

52 Government of Zimbabwe, The government of Zimbabwe 100-day plan – Getting Zimbabwe working again, page 19, 29 April to 6 August 2009. The plan was approved by the Zimbabwe Cabinet on 28 April 2009.

⁵³ See footnote 42.

⁵⁴ *Zimbabwe Millennium Development Goals 2004 Progress Report*, p. 25 available at <http://www.undg.org/index.cfm?P=87&f=Z>.

⁵⁵ *Zimbabwe Millennium Development Goals 2004 Progress Report*, pp. 23 - 24 available at <http://www.undg.org/index.cfm?P=87&f=Z>.

⁵⁶ UNICEF, *Zimbabwe education crisis worsens*, http://www.unicef.org/infobycountry/media_47915.html, 10 February 2009.

57 The obligation to provide primary education for all is an immediate duty of all State parties to the

Covenant and governments are obliged to prioritise the introduction of compulsory, free primary education. The Committee on Economic, Social and Cultural Rights has also emphasised that “there is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources”. See General Comment No. 13: The Right to Education (Article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, para. 43.

58 In February, a means test system was put in place by the Ministry of Education, meant to assist parents who could not afford the new fees structure. However, it is yet to be seen whether this measure will be effective. If the vast majority of families require a means test and qualify for the exemption from payment of tuition fees, it will indicate that the fees structure is fundamentally flawed. The fees structure needs to take account of the high unemployment levels and the very low incomes of the bulk of Zimbabwe’s employed people. For example, each of Zimbabwe’s civil servants, an estimated at 250,000 people, get a monthly allowance of US\$100 from which they have to pay for transport, accommodation, food and other basic necessities, including the education of their children.

59 UNICEF estimate.

60 Amnesty International was told a parent in rural Bindura district, who is also a member of a SDA who said that 75 per cent of parents at her school were unable to pay the \$1 development levy⁶⁰ because they had no source of income.

61 UNICEF press release, 18 October 2006, <http://mediaglobal.org/article/2006-10-27/un-launches-girls-education-initiative-in-zimbabwe>.
http://www.unicef.org/media/media_36452.html

62 In December 2008, Amnesty International spoke to teachers and other professionals from rural areas who had fled to South Africa after being attacked by war veterans and other ZANU-PF supporters and accused of being sympathetic to the MDC. The Progressive Teachers Union of Zimbabwe (PTUZ) reported that seven of its members had been killed and about 60 tortured during the election violence.

63 Under the ICESCR: “*The imposition of sanctions does not in any way nullify or diminish the relevant obligations of the State party. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship*”, See ICESCR General Comment No. 8, para 7.

64 ICESCR General Comment No. 3, paras 11 and 12.

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