

ZIMBABWE

Submission to the Commonwealth Ministerial Action Group, January 30, 2002.

Summary	2
Freedom of expression	2
Rule of Law	2
Violence	3
Recommendations to the Commonwealth.....	3
Background: “Firm Action Against Violence and Intimidation”—Zimbabwe’s Abuja Commitment.....	4
Freedom of Expression.....	6
Restrictions on Foreign Correspondents	6
Harassment and Attacks on Journalists	7
Legal Moves Against Associated Newspapers of Zimbabwe.....	9
Interception of Communications	10
Threats to Human Rights Activists.....	11
Continued Monopoly of Broadcasting	11
“Freedom of Information” Legislation	12
Law Reform and the Rule of Law	14
Amendments to the Land Acquisition Act.....	14
Public Order and Security Act.....	16
Electoral Law.....	17
Organized Violence by State Agents and Ruling Party Supporters	18
Bulawayo.....	19
APPENDIX: THE ABUJA AGREEMENT.....	23

Summary

On September 8, 2001, the Commonwealth Ministerial Action Group (CMAG), established in 1995 to monitor Commonwealth member states' respect for democracy and the rule of law, brokered an agreement with the Zimbabwe government over the continuing crisis in that country. At a meeting in the Nigerian capital, Abuja, Zimbabwe agreed to end illegal occupations of farms, promoted by the government since February 2000, and respect the rule of law. In return, the United Kingdom and other "international partners" pledged to support the land reform process.

Written into the agreement were a number of commitments that the Zimbabwe delegation, headed by Foreign Minister Stan Mudenge, made to the meeting. These included: no new farm occupations; removal of occupiers of farms that were not listed for resettlement; restoration of the rule of law to the land reform programme; respect for freedom of expression; and firm action against violence and intimidation.

This report looks at a number of the explicit commitments made by the Zimbabwe government at Abuja and reviews how these have been respected in practice. Almost immediately after it had signed the agreement, there were indications that the government was retreating from the promises made. In the following months, it has become yet clearer that the government's commitment to the agreement was only on paper. Human Rights Watch is preparing a separate report on the issues surrounding land reform. This memorandum focuses on more general concerns about respect for the rule of law. In particular Human Rights Watch concludes the following:

Freedom of expression

Freedom of expression has been under assault both through legal restrictions and constant harassment and violence. A new bill gives the government the power to determine who may practice as a journalist and prohibits foreign news organizations from employing whom they choose. Although the bill has been rejected by the parliamentary committees responsible for both media and legal affairs, the government apparently remains determined to have it enacted before the forthcoming presidential elections. Despite the passage of a law earlier in 2001 legalizing private broadcasting, no broadcasting licences have been issued. The government retains a tight control over the publicly-funded Zimbabwe Broadcasting Corporation.

The privately-owned *Daily News*—the only independent daily newspaper—has been the target of a constant campaign of harassment by the frivolous application of criminal charges. The police have made no progress in investigating bombings of the newspaper's premises in April 2000 and January 2001.

Journalists and newspaper vendors are subject to constant harassment, threats, and violence by the police and by government sponsored militia (often led by veterans of the liberation war and thus often known as war veterans). Supporters of the opposition Movement for Democratic Change are victims of violence and exclusion from their jobs for the expression of their political views. Acts of violence against opposition supporters are carried out with total impunity by supporters of the ruling party.

Rule of Law

Government, state agencies such as the police, and supporters of the ruling party all display a disregard for the constitution, statute law, and the decisions of the courts. New legislation—enacted by decree—on the land issue purports to legalize unlawful land occupations dating back to May 2000. This is intended to bypass unfavorable Supreme Court rulings. Judges have resigned after violent

threats—and no offer of protection from the authorities. A Supreme Court that is now balanced in the government's favor revisits previous judgments in order to reverse them.

New legislation on public order and security was passed on January 10 and will drastically infringe several constitutional rights, including freedom of assembly, freedom of expression, and freedom of movement.

Violence

Thousands of Zimbabweans, almost all of them presumed supporters of the opposition, farmers and farm workers, have been the victims of political and land-related violence since the Abuja agreement. There has been no perceptible effort on the government's part to restrain its supporters from violence. In a number of documented instances since the Abuja agreement, notably in mid-November in Zimbabwe's second city Bulawayo, the police have escorted and protected supporters of the ruling party engaging in criminal acts of violence.

In conclusion, not only have the terms of the Abuja agreement not been respected: official disrespect for the rule of law and constitutionally guaranteed rights has, if anything, increased during the past four months.

Recommendations to the Commonwealth

At its next meeting, on January 30, 2002, the Commonwealth Ministerial Action Group will consider whether formally to place Zimbabwe on its agenda—that is to review its compliance with the fundamental standards, principles and values of the organization. Human Rights Watch strongly believes that Zimbabwe should be placed on the CMAG agenda and that the government should be given a series of clearly specified conditions that it must immediately fulfil to be regarded as in compliance with the Commonwealth's Harare Declaration, which commits Commonwealth members to democratic governance, failing which it may face suspension at the next Commonwealth Heads of Government Meeting. These should include:

- Withdrawal or repeal of legislation in violation of constitutional rights and restrictive of political activity, including Public Order and Security Act, Access to Information and Protection of Privacy Bill, recent regulations amending the Land Acquisition Act, amendments to the Electoral Act, and amendments to the Labour Relations Act.
- Prompt review of other existing legislation to establish its consistency with the Constitution.
- Clear public instructions to the police and other law enforcement agencies that perpetrators of public violence should be dealt with, with the full force of the law.
- Prompt disciplinary measures against police and other law enforcement officers who fail to adhere to these instructions.
- Instructions to the police and prosecuting authorities to investigate all serious acts of public violence with a view to bringing prosecutions.

It must be stressed that these are *minimum* conditions, without which the present climate of lawlessness will continue. The atmosphere of intimidation has been so intense that presidential elections scheduled for March 9-10, 2002 cannot be free and fair. However, the immediate cessation of violence, accompanied by these minimum steps, would begin to reestablish an environment in which political debate can take place freely and the Zimbabwean people will lose the fear of participating in the democratic process.

Background: “Firm Action Against Violence and Intimidation”—Zimbabwe’s Abuja Commitment

In recent years, and in particular since February 2000, when the government was defeated in a referendum to approve a new constitution, a political crisis has escalated in Zimbabwe. This crisis has been presented by the government and by the ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), as a conflict about issues of land reform, a key issue since before independence. Zimbabwe’s long liberation struggle, culminating in the installation of a democratically elected government in 1980, is often described as having been “about” land. This is an oversimplification—it was at least as much about the disenfranchisement of the overwhelming majority of the black population. However, there is no denying the centrality of the land issue. Land reform efforts since independence have failed to redress injustices in land distribution. It was still the case by 2000 that six million black Zimbabweans lived on sixteen million hectares of communal land owned by the Zimbabwean state, while 4,500 mainly white commercial farmers owned over eleven million hectares of the richest land. The blame for this continuing imbalance has been argued between the Zimbabwean and donor governments, especially the British, the former colonial power.

The 1990s were a period of increasing popular discontent in Zimbabwe. Opposition was spearheaded by the trade unions and civic organizations. The issue of constitutional reform became a unifying banner, to the point where in 1999 the government felt obliged to set up its own commission to draft a new constitution. It was now that the land issue, which had not been a key government priority for some years (judged by budgetary allocations and political statements), was again pushed to center stage. The main aim of the civic groups campaigning for constitutional reform was to reduce presidential powers and remove various repressive laws, many of them dating back to the colonial period. The Constitutional Commission draft, by contrast, increased and entrenched presidential powers. The government also inserted into the draft a controversial clause, Section 57, requiring the United Kingdom, as the former colonial power, to provide compensation for land that was compulsorily acquired. If it did not do so, then land could be taken without compensation. A new opposition party, the Movement for Democratic Change (MDC) was formed in late 1999, and campaigned against the government draft, along with many organizations from civil society more generally.

The Constitutional Commission draft was put to a referendum in February 2000, where voters decisively rejected it. This was the first time that ZANU-PF had been defeated in a national vote since 1980. President Robert Mugabe promised to respect the vote. However, two things happened in quick succession. The government announced that it was amending the Constitution and Land Acquisition Act to incorporate the provisions of Section 57 of the rejected Constitutional Commission draft. Secondly, bands of people began occupying white-owned farms, often led by members of the Zimbabwe Liberation War Veterans Association. Many of these occupations were accompanied by significant violence against farm owners and farm workers, much of it apparently organized by army personnel.

Parliamentary elections were held in June 2000, and presidential elections are scheduled for March 2002. ZANU-PF won the June 2000 election, but only narrowly. Out of 120 constituencies, the ruling party won in only sixty-two. The opposition is widely believed to have won a majority of the popular vote—clearly of significance for the presidential poll—but after eighteen months the Registrar General’s office has still been unable to publish the figures. The elections were marked by violence and intimidation, particularly directed against MDC candidates and supporters, white farm owners and black farmworkers, teachers, civil servants, journalists, and residents of rural areas believed to support opposition parties. While there was some reciprocal violence by MDC supporters against the ruling party, all systematic monitoring showed opposition supporters as the majority of victims, and ZANU-PF supporters as the majority of perpetrators. The Zimbabwe Human Rights NGO Forum, basing its findings on information received by its constituent organizations, found that at least eighty people had died in pre (72) and post (8) election political violence, up to the end of the

year.¹ There was also widespread criticism of the conduct of the poll, of media bias, and the legal framework provided by the Electoral Act.

The eighteen months from the parliamentary election to the present have seen an escalation of the violence. Senior judges, including Chief Justice Anthony Gubbay, have resigned after death threats. The government, rather than taking action against those issuing the threats, has stated that it was unable to provide protection to the judges. Chief Justice Gubbay was replaced by Justice Godfrey Chidyausiku, a former attorney general. The government ignored a ruling by the existing Supreme Court bench that its “fast track” land resettlement programme was unconstitutional. In December 2001, the new bench led by Justice Chidyausiku overruled the earlier Supreme Court ruling, and stated that the land seizures under the fast track process were lawful.

The situation in Zimbabwe has drawn international attention to the country from the United Nations, the Southern African Development Community (SADC), as well as states with important bilateral relations with Zimbabwe, including the U.S. and Britain. In particular, the Commonwealth, of which Zimbabwe is a member, has become increasingly critical of the situation in that country. The Commonwealth Ministerial Action Group (CMAG), established in 1995 to monitor member states’ respect for democracy and the rule of law, has come under increasing pressure to put the situation in Zimbabwe on the agenda for its regular meetings and has attempted to negotiate a resolution to the crisis.

On September 8, 2001, CMAG brokered an agreement with the Zimbabwe government over the continuing crisis in that country. At a meeting in the Nigerian capital, Abuja, Zimbabwe agreed to end all illegal occupations of farms and respect the rule of law. In return, the United Kingdom and other “international partners” pledged to support the land reform process.

The Abuja agreement stated:

Land is at the core of the crisis in Zimbabwe and cannot be separated from other issues of concern to the Commonwealth such as the rule of law, respect for human rights, democracy and the economy. A programme of land reform is, therefore, crucial to the resolution of the problem.

It went on to say:

The orderly implementation of the land reform can only be meaningful and sustainable if carried out with due regard to human rights, rule of law, transparency and democratic principles. The commitment of the government of Zimbabwe is therefore crucial to this process.

Written into the agreement were a number of commitments that the Zimbabwe delegation, headed by Foreign Minister Stan Mudenge, had made to the meeting. These included:

- No new farm occupations;
- Removal of occupiers of farms that were not listed for resettlement;
- Restoration of the rule of law to the land reform programme;
- Respect for freedom of expression;
- Firm action against violence and intimidation.

¹ Angela Cheater, *Human Rights and Zimbabwe’s June 2000 Election* (Harare: Zimbabwe Human Rights NGO Forum Human Rights Research Unit, January 2001), p. 35; for detailed statistics see also *Human Rights Monitor 2000 Annual Report* (Harare: Zimbabwe Human Rights NGO Forum, 2001).

In addition the Zimbabwe Government signalled its commitment to previous Commonwealth declarations on human rights and the rule of law made in Harare in 1991 and Millbrook in New Zealand in 1995. (The full text of the Abuja agreement is in Appendix 1.)

Many Zimbabwean critics of the government were unhappy with the Abuja agreement. In particular, the statement that “Land is at the core of the crisis” is disputed by the opposition Movement for Democratic Change and by many civic groups. They argue that it is President Robert Mugabe’s reluctance to relinquish political power that is “at the core” of the crisis. Legitimate as land grievances may be, critics maintain they have been mobilized over the past two years for largely unrelated reasons.²

This report does not address the substance of the land issue. That is the subject of a forthcoming study. Rather, this report looks at a number of the explicit commitments made by the Zimbabwe government at Abuja and reviews how these have been respected in practice. These include:

- Respect for the right of freedom of expression;
- Respect for the rule of law;
- An end to political violence and violence during land occupations.

Very shortly after it had signed the agreement, there were indications that the government was retreating from the commitments made at Abuja. Information Minister Jonathan Moyo was reported as saying that the Abuja agreement, which has not been widely disseminated within the country, contained no commitment for the government to end violence: “Not in the agreement. This is not a secret agreement. There is no such condition in the agreement,” Moyo was reported as saying.³ Yet the wording on the government’s commitment “to take firm action against violence and intimidation” is unambiguous.

Freedom of Expression

Restrictions on Foreign Correspondents

Prior to the Abuja agreement, the Zimbabwe government had acted to restrict coverage of the situation in the country by foreign media. In early 2001, a correspondent of the Johannesburg *Mail and Guardian* did not have her accreditation renewed. Joseph Winter, the correspondent of the British Broadcasting Corporation (BBC) had his accreditation revoked. A number of armed men, later officially described as “immigration officers,” broke into his home. He fled the country. The government subsequently denied accreditation to any BBC correspondent.⁴

The Zimbabwe government’s resolve to implement the freedom of expression provision in the Abuja agreement appears to have lasted no more than a few days. In early September 2001, the Information Ministry denied accreditation to four foreign correspondents—from the London *Times* and *Daily Telegraph*, the BBC and Voice of America—to cover a meeting of heads of state of the

² For example, “Press Release: Zimbabwe in Crisis Co-ordinating Committee”, 25 October 2001. This states: “The well intended Commonwealth effort may abet the continued violation of citizens’ rights, by concealing them from international scrutiny through a narrow fixation with land reform. Our position is clearly that the violence that has made Zimbabwe the subject of Commonwealth attention was and is related more to the election process than the land question. It is a fact that the violence flared up following the government’s defeat in the February 2000 Constitutional referendum and pending the Parliamentary elections in which Zanu PF lost 58 seats to the opposition.”

³ United Nations Integrated Regional Information Network (IRIN), “Zimbabwe made no deal to stop violence – Moyo,” September 26, 2001.

⁴ Media Institute of Southern Africa, “Journalists flee Zimbabwe,” February 19, 2001; Media Institute of Southern Africa, “Government suspends BBC accreditation,” July 27, 2001.

Southern African Development Community in Harare.⁵ After the expulsion of the BBC's resident correspondent, the government had refused accreditation to its Johannesburg-based regional correspondent, Rageh Omaar. In September it also refused accreditation to BBC sports correspondents to cover a cricket tour of the country by the England team.

In November, the threats to foreign correspondents became more serious. The *Herald* of November 23 carried a front-page denunciation of six local correspondents for foreign newspapers and news agencies, as well as Richard Carver, a British human rights activist who writes occasional columns for the *Daily News*. The six foreign correspondents were Basildon Peta of the *Independent* (London and Johannesburg), Dumisani Muleya of *Business Day* (Johannesburg), Jan Raath of the *Times* (London), Peta Thornycroft of the *Daily Telegraph*, Andrew Meldrum of the *Guardian* (London), and Angus Shaw of Associated Press. All six are either Zimbabweans or permanent residents in the country. The government stated that: "This kind of media terrorism will not be allowed especially when it is used by people who claim to be human rights activists."⁶

The attack on all seven was couched in the language of the "war against terrorism" by the United States and its allies:

We too will not make any difference between terrorists and their friends or supporters. For these reporters to continue aiding and inflaming is morally wrong because journalists are ethically bound to tell a complete, balanced, fair and accurate story. That is what is lacking on all these reports and this is unacceptable.⁷

"Terrorism" in this context referred to the activities of the opposition MDC, and in particular reporting of the murder of war veterans' leader Cain Nkala (see below).

Harassment and Attacks on Journalists

In 1999, a private company, Associated Newspapers of Zimbabwe (ANZ), launched the *Daily News*, the first independent newspaper in Zimbabwe. The new paper rapidly gained ground at the expense of the government-controlled *Herald* and *Chronicle*. As its influence spread, it became a target for increasingly heated rhetoric from government ministers and violence by government backed militia. In April 2000 there was a firebomb attack on the building housing the *Daily News* editorial offices. Information Minister Jonathan Moyo denounced the foreign press corps for being responsible, on the basis that they had arrived quickly at the scene of the explosion.⁸ A South African press photographer was arrested and held in police custody for a few days before being released without charge. There were no other arrests. In January 2001, only hours after the paper had been denounced by Minister Moyo, the *Daily News*' Harare printing press was blown up.⁹ Again, those responsible have not been identified.

Since the Abuja agreement, the *Daily News* has continued to suffer harassment. Mduduzi Mathuthu, a journalist with the paper based in Bulawayo, was arrested on September 8, 2001, along with Loughty Dube of the *Zimbabwe Independent*, on the allegation that they had trespassed in a police station. The journalists had gone to Bulawayo central police station seeking a comment on the arrest of the bodyguards of the Bulawayo MDC member of parliament David Coltart. Their arrest was ordered by the chief inspector in charge of the law and order section. The journalists' press accreditation cards were confiscated before they were released.¹⁰

⁵ *Zimbabwe Independent*, September 14, 2001.

⁶ *Herald*, November 23, 2001.

⁷ *Ibid*.

⁸ Media Monitoring Project Zimbabwe, *Election 2000: The Media War*, Harare, 2000, p. 94.

⁹ Media Institute of Southern Africa, "Daily News printing press bombed," January 29, 2001.

¹⁰ Media Institute of Southern Africa, "Journalists arrested, press accreditation confiscated," September 11, 2001.

Barely a week later government-sponsored militia attacked Mathuthu and three *Daily News* colleagues at an occupied farm near Wedza, east of Harare. The other three were reporter Collin Chiwanza, photographer Urgurnia Mauluka, and their driver. The four had gone to the farm to report on attacks on the homes of farm workers. The four *Daily News* staff were attacked with bicycle chains and sticks, as well as being punched and kicked. All four needed medical treatment for injuries to their faces and limbs. Police officers were present when the attack took place, but took no action.¹¹

On November 3, Information Minister Jonathan Moyo ordered his security guards to eject Mathuthu from a meeting the minister was addressing at the Bulawayo Press Club. According to Mathuthu, Moyo had described MDC MP David Coltart, a human rights lawyer, as a murderer and a racist. Mathuthu had asked the minister how he squared this with the fact that in the 1980s Coltart had represented a number of clients (who had been detained during the Matabeleland crackdown during that period) who were now senior members of the ruling party.

Two weeks later, on November 18, Mduduzi Mathuthu and a photographer, Grey Chitiga, were arrested and held overnight by police. The police stated that the two journalists were present when MDC supporters allegedly abducted Ndabezinhle Moyo. The *Herald* claimed that the MDC supporters were trying to force Moyo to admit that the Central Intelligence Organisation had murdered war veterans' leader Cain Nkala. The pro-government media reported that Mathuthu and Chitiga were to be charged under the Law and Order Maintenance Act, but they were released the following day without charge.¹²

Mathuthu's ordeal was not over. On November 28, the police picked him up for questioning about a report published in August, which had stated that people had walked out of a rally during a speech by Vice-President Joseph Msika. According to Mathuthu's lawyer, he had been charged under the Law and Order Maintenance Act with publishing false news likely to cause alarm or despondency, or disturbing public peace. The provision carries a maximum prison sentence of seven years.¹³ However, in June 2000 the Supreme Court had declared that this provision breached the constitutional guarantee of freedom of expression. The ruling related to the case against two other journalists, Mark Chavunduka and Ray Choto of the *Standard*, who had been detained and tortured by the army in 1999.¹⁴ The decision was widely publicized at the time and it is barely credible that the police were unaware that this section of the Law and Order Maintenance Act was no longer operative. The other question about the case is why it took the police three months after Mathuthu's report of the Vice-President rally before concluding that it had caused "alarm and despondency."

Mduduzi Mathuthu is by no means the only journalist targeted. The *Daily News* reported on November 5, 2001, that an officer of the Central Intelligence Organisation had chased and threatened to kill Philemon Bulawayo, a freelance photographer working for the paper.¹⁵

On December 1, ruling party demonstrators in Harare attacked the offices of the *Daily News*, smashing windows. The demonstrators, who were led by a former deputy mayor of Harare and a member of parliament, also beat an independent photographer, Cyrus Nhara, with bottles and sticks. He told the Media Institute of Southern Africa that the demonstrators attacked him for filming them,

¹¹ Media Institute of Southern Africa, "Daily News journalists, photographer and driver attacked," September 18, 2001; United Nations Integrated Regional Information network (IRIN), "Three journalists assaulted by 'war veterans' – RSF," September 19, 2001.

¹² Media Institute of Southern Africa, "Journalist arrested, independent newspapers destroyed, news crew attacked," November 19, and "Reporters released," November 20, 2001.

¹³ Media Institute of Southern Africa, "Reporter picked by police, charged," December 3, 2001.

¹⁴ ARTICLE 19 press release, June 5, 2000.

¹⁵ *Daily News*, November 5, 2001; Media Institute of Southern Africa, "Central Intelligence officer attacks photographer outside court," November 6, 2001.

saying that only the government-controlled Zimbabwe Broadcasting Corporation was allowed to film. They stole his film footage and he also lost his spectacles and shoes. The police took no action.¹⁶

Those who sell the newspapers have also come under attack. In the days immediately after the Abuja agreement was signed, government backed militia in Mudzi District in Mashonaland East announced that they were “banning” the *Zimbabwe Independent*, *Standard*, and *Johannesburg Sunday Times* from the district because of the papers’ alleged support for the MDC. Earlier the papers had been banned from distribution in two other districts in the same province. Government-backed war veterans’ militia seized copies of the papers from their distribution point at Kotwa business centre. The local suppliers had asked the papers not to supply them with any more copies.¹⁷ Vendors in Bindura, in Mashonaland Central, reported similar problems, with an entire consignment of the *Zimbabwe Independent* being returned unsold.¹⁸

In October 2001, police arrested newspaper vendors in Harare. Police spokesperson Wayne Bvudzijena denied that newspaper vendors were targeted and said that the move was to enforce city by-laws. What he did not adequately explain was why national police, rather than their municipal counterparts, were engaged in enforcing by-laws. Newspaper vendors told the *Zimbabwe Independent* that the arrests normally took place on Fridays—they day that the paper appears.¹⁹ Fifteen vendors had been arrested on October 12, for example, according to one of the newspaper distribution companies.

The following month in Bulawayo the war veterans’ threats against newspaper vendors turned violent. In the course of a demonstration against the MDC on November 16, veterans beat up vendors selling private newspapers and destroyed thousands of copies of the *Daily News*, *Financial Gazette* and *Zimbabwe Independent*. MDC supporters in turn beat up a news crew from the government-controlled *Chronicle* and burned its car.

Legal Moves Against Associated Newspapers of Zimbabwe

“*They tried the bombs and failed and now they have come up with something else*” – Geoffrey Nyarota, Editor in Chief, *Daily News*

In addition to police harassment of *Daily News* journalists and unexplained bomb attacks on the *Daily News* offices, the government has used other means to harass the *Daily News* and its parent company.

After the bombing of its printing press in January, ANZ sought additional local investment from a company called Renaissance Asset Management. This new investment was unsuccessfully challenged in the High Court by Diamond Insurance, a minority shareholder in ANZ that is controlled by prominent figures in the ruling party, ZANU-PF.²⁰ An appeal in the Supreme Court is pending.

On October 25, the police picked up four ANZ shareholders who were alleged to have sworn perjured affidavits in favor of the Renaissance investment. Among the four was Judith Todd, a

¹⁶ Media Institute of Southern Africa, “Photojournalist attacked, independent newspapers destroyed,” December 3, 2001.

¹⁷ *Zimbabwe Independent*, September 14, 2001.

¹⁸ *Zimbabwe Independent*, December 7, 2001.

¹⁹ *Zimbabwe Independent*, October 19, 2001.

²⁰ Media Institute of Southern Africa, “Zimbabwe’s independent ‘The Daily News’ faces closure,” November 7, 2001; Basildon Peta, “Mugabe threatens to force closure of critical newspaper,” *Independent*, November 7, 2001.

prominent human rights activist who had been detained, embarked on a hunger strike, and was forced by the former Rhodesian authorities. The four were released without charge.²¹

A week later, on November 2, Richard Mbaiwa, the director of the Zimbabwe Investment Centre (ZIC), wrote to ANZ's lawyers telling them that the company's investment certificate had been cancelled and that various "criminal violations" were being referred to the "appropriate authorities." In reality the ZIC could not cancel the certificate, since it had expired in July 2000. An investment certificate is only required for overseas investment in a Zimbabwean company. ANZ had let their certificate lapse since they were not seeking further foreign investment. The matter had been referred to the ZIC by Diamond Insurance in relation to the Renaissance case. Yet, Renaissance is a Zimbabwean company and therefore no investment certificate was required, as Mbaiwa must have known.²²

Mbaiwa also alleged that information had been falsified at the time ANZ was formed. He claimed that one of the shareholders, Motley Trading, owned by *Daily News* editor-in-chief Geoffrey Nyarota and Wilf Mbanga, was not a registered company.

On November 8, police arrested Nyarota and Mbanga without a warrant. They were held overnight and then taken to court to be charged with providing false information to the ZIC. The offence carries a maximum penalty of Zimbabwe \$4000 (about U.S.\$70 at the official exchange rate, or U.S.\$14 at the parallel rate). The procedure was extraordinary, given the nature of the alleged offence. Ten days later, when he dismissed the charges, the magistrate criticized the police for arresting Nyarota and Mbanga rather than proceeding by summons.

Interception of Communications

On November 23, 2001, police arrested Jimmy Shindi, a manager at Econet Wireless, one of the country's leading cellular phone companies. Shindi was initially charged with obstructing the police, or alternatively defeating the course of justice, before charges were dropped. The reason for his arrest was his refusal to provide police with records of calls made on twelve specified accounts. The basis for his refusal was both the company's confidentiality policy and the failure of the police to produce a search warrant. Police said that they were seeking information about "terrorist" activities by the MDC.²³

Only a week earlier, Econet had dropped the political news service that it provided in text messages to its subscribers. The move was seen by analysts as a move to protect itself from political harassment. The company has a long history of legal confrontation with the government, having spent several years in the courts seeking to break the government monopoly of telephone services.²⁴

Two nongovernmental human rights organizations reported to Human Rights Watch that they believed that their email was being intercepted in the period since the Abuja agreement. One organization stated that the problem dated back many months and that hardly any emails sent inwards or outwards reached their destination. The other organization stated that this was a new problem, which it attributed to the current climate of escalated attacks on "terrorists" and their supporters. Both organizations rely on email not only for private communications, but also for regular distribution of publications. Anecdotal evidence suggests that interception of email is a much wider problem—but one that by its very nature is almost impossible to document.

²¹ *Daily News*, October 26, 2001.

²² Media Institute of Southern Africa, "Zimbabwe's independent 'The Daily News' faces closure," November 7, 2001.

²³ *Business Day*, November 26, 2001; Media Institute of Southern Africa, "Police raids offices of Cellphone Company," November 26, 2001.

²⁴ Media Institute of Southern Africa, "Cell-phone provider scraps political news service," November 19, 2001.

The government certainly has the legal powers to intercept communications. Sections of the Post and Telecommunications Act, passed in 2000, allow the government to give both general and specific instructions to communications providers—including telephone companies and Internet service providers—to intercept communications or to provide the authorities with other relevant information about clients. It is an offence for the provider to disclose that it has provided such information.²⁵

The constitutionality of these provisions has never been tested. Section 20(1) of the Zimbabwe Constitution says: "Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence."

When Econet was raided in November, a company spokesperson stated that it regularly provided such information to the authorities; the problem on this occasion was simply that the police arrived without a warrant.²⁶

Organizations whose emails are being obstructed believe that this is being done directly by the government rather than by Internet service providers. This is because messages constantly fail to reach their addressee. However, given the provisions of the Post and Telecommunications Act, this has not been confirmed.

Threats to Human Rights Activists

Documentation of continuing abuses by the government and ruling party depends to a large degree on the work of domestic human rights organizations. These have come under increasing threat. Four representatives of Zimbabwean human rights organizations were refused entry into Malawi on grounds of "national security" at the time of the SADC summit in January 2002.²⁷ The official *Herald* newspaper has made repeated allegations that human rights groups, in particular the Amani Trust, have been "funding covert operations" against ZANU-PF and have acted as conduits for foreign funding of the MDC.²⁸ Both the Amani Trust, which provides psychological support for victims of organized violence, and the MDC have denied the allegations.²⁹ However, the repeated harassment and interrogation of the organization's staff in Bulawayo (see below) has been a more practical interference in its day-to-day activities.

Continued Monopoly of Broadcasting

As in most African countries, radio is the main source of political information for the bulk of the population. The long-standing legal monopoly of broadcasting by the government-controlled Zimbabwe Broadcasting Corporation (ZBC) was ended in September 2000 by a Supreme Court ruling that it was unconstitutional in terms of Section 20(1), which guarantees freedom of expression.³⁰ However, broadcasting remains a de facto government monopoly.

The president promptly enacted new regulations under the Presidential Powers Act, establishing a Broadcasting Authority of Zimbabwe (BAZ) with powers to licence private broadcasters. However,

²⁵ Post and Telecommunications Act, 2000, sections 98 and 103.

²⁶ Media Institute of Southern Africa, "Police raids offices of Cellphone Company," November 26, 2001.

²⁷ UN Integrated Regional Information Network, January 23, 2002.

²⁸ *Herald*, November 28, 2001 and January 17, 2001. The *Herald* generally refers to it as the "Armani" Trust, although the organization's name derives from the Swahili word for peace rather than the Italian fashion designer.

²⁹ *Herald*, November 28, 2001 and *Standard*, January 20, 2002.

³⁰ Media Institute of Southern Africa, "State broadcaster's monopoly nullified by Supreme Court Ruling," September 25, 2000.

the requirements for qualifying for a broadcasting licence are so stringent that in the opinion of many, including the ZANU-PF-controlled parliamentary legal committee, they are impossible to satisfy and hence do not meet the requirements of the Supreme Court ruling. In April 2001, the regulations were enacted into a law, over the objections of the parliamentary legal committee.

The parliamentary legal committee thought that the new law discriminated in favour of the ZBC and against private broadcasters (in violation of section 23 of the constitution). It also felt that the law denied unsuccessful applicants for a broadcasting licence the right to a judicial review of the decision against them (in breach of section 18 of the constitution).³¹

Civil society critics of the government amplified these objections to the new law. Issuing of licences is the sole prerogative of the minister, following the advice of an authority that is composed of his own appointees. Some provisions, such as an insistence that broadcasting licensees be 100 percent Zimbabwean owned and that they carry 75 percent local content, are held to be impractical and intended to ensure that no independent broadcasters can qualify. Equally, the limitation of licences to two year periods (one year for community stations) makes it unlikely that anyone would risk the investment. Other provisions, such as the allocation of air-time for the government to “explain” its policies, or the prohibition on community stations broadcasting political matter, are clearly an interference with broadcasters’ editorial freedom.³²

The claim that the law is designed to prevent private broadcasting rather than facilitate it is borne out by the fact that, more than a year after it was established, the BAZ has not licensed a single private broadcaster. One candidate for a television licence, Oscar Kubara of Munhumutapa African Broadcasting Corporation, told a local newspaper that he had been informed that BAZ would not accept applications for broadcasting licences until April 2002—after the presidential elections.³³

Meanwhile the ZBC, despite a much-trumpeted “relaunch” in November 2001, continues to act as an uncritical cheerleader for the government and ruling party.³⁴

“Freedom of Information” Legislation

The Access to Information and Protection of Privacy Bill, published in December 2001, contains hardly a single provision that could be said to broaden public access to information and several that do the opposite. Its protections of privacy apply almost entirely to the “privacy” of the president or other public officials from media scrutiny. The serious limitations on access to information contained in inherited colonial legislation such as the Official Secrets Act and the Protected Areas Act are preserved.

Section 89 of the bill reproduces almost verbatim wording from the Law and Order Maintenance Act that were ruled to be unconstitutional by the Supreme Court in the case of *Chavunduka and Choto*, concerning statements likely to cause “fear, alarm or despondency.”³⁵ Section 69 of the bill says that no journalist shall bring into hatred or contempt, ridicule, or excite disaffection against the

³¹ Media Institute of Southern Africa, “Government body declares new broadcasting regulations unconstitutional,” October 19, 2000.

³² Media Monitoring Project Zimbabwe, *Is this the broadcasting system that you want?* Harare, 2001.

³³ *Zimbabwe Independent*, September 21, 2001.

³⁴ The Media Monitoring Project Zimbabwe documents the shortcomings of the ZBC—and the rest of the media— on a weekly basis: <http://www.icon.co.zw/mmpz>

³⁵ In *Chavunduka & Anor v Minister of Home Affairs & Anor*, (2000) 8 BHRC 390, the Supreme Court found that S50(2)(a) of the Law and Order Maintenance Act, which criminalized the publication of “false statements” likely to cause “fear, alarm and despondency” was contrary to s.20 of the constitution, which guarantees freedom of expression.

president, law enforcement officials, or the administration of justice. The bill is full of broadly worded provisions of this type that effectively limit the scope of freedom of expression in the media.³⁶

But the nub of the bill is the section dealing with accreditation of journalists and the media. Section 86 states: “No journalists shall work in Zimbabwe without being accredited,” and that “the Minister shall prescribe the form and manner in which journalists shall be accredited.” The bill establishes a Media Commission, part of whose function is as an accreditation body. The commission may accredit an applicant if it is satisfied that the applicant “possesses the prescribed qualifications.”

Several provisions of the bill were considered unconstitutional by parliamentary committees responsible for media and, more importantly legal affairs. In response, the government made a number of minor amendments. Notably it retreated on a provision that all correspondents for foreign news organizations must be Zimbabwean nationals, but still required that they should be permanent residents. It appeared that there was still considerable opposition to the bill among ZANU-PF parliamentarians and, as of January 24, it was still unclear whether the bill would be passed into law.³⁷

The government argues that such measures are necessary to protect the public from unprofessional, malicious, and inaccurate reporting. But, as the Media Institute of Southern Africa pointed out in its submission to the Parliamentary Portfolio Committee reviewing the bill, there is already a voluntary media complaints body—and the minister of information had instructed the government-controlled media not to participate in it.³⁸

There is now an extensive array of jurisprudence from both national and international courts establishing that the licensing of journalists is an unacceptable interference with editorial independence and thereby with freedom of expression itself. The most notable of these was an opinion of the Inter-American Court of Human Rights, which differentiated journalists from certain professions that may legitimately be regulated by law, such as medicine or the law:

The problem results from the fact that Article 13 [of the American Convention] expressly protects freedom to seek, receive and impart information and ideas of all kinds...The practice of journalism consequently requires a person to engage in activities that define or embrace the freedom of expression which the Convention guarantees.

This is not true of the practice of law or medicine, for example.³⁹

While this decision does not bind Zimbabwe, it reflects an important prevailing trend in international law. The African Charter on Human and Peoples’ Rights and the International Covenant on Civil and Political Rights (ICCPR)—both of which Zimbabwe has ratified—protect freedom of expression and freedom of information in similar terms to those in Article 13 of the American Convention on Human Rights.

Where African courts have been required to adjudicate on these issues, they have tended to reach similar conclusions. The Supreme Court of Ghana, for example, offered this explanation of the decision by the drafters of the country’s constitution to opt for a National Media Commission independent of the government of the day:

³⁶ A full analysis of the bill, including the inadequacy of its provisions for access to information, is to be found in Media Institute of Southern Africa, “Submission to the Parliamentary Portfolio Committee on Transport and Communications on the Access to Information and Protection of Privacy Bill,” December 10, 2001.

³⁷ *Daily News*, January 24, 2002.

³⁸ *Ibid.*

³⁹ Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of November 13, 1985.

...the committee recommended an independent Press Commission to be set up to perform the functions hitherto discharged by the Minister of Information with respect to the public sector press...Indiscriminate control of the mass media by the government of the day may contribute a serious obstacle to the full realisation of the objectives of the media in achieving its freedom and independence which is effectively guaranteed by the Constitution.⁴⁰

However, the Zimbabwean bill goes even further in its attempts to restrict the practice of journalism. Section 93 of the original draft stated that “Any journalists who will be accredited in Zimbabwe will have to be a citizen of and domiciled in Zimbabwe.” Section 101 of the original specified that only journalists accredited under Zimbabwean law may represent foreign media organizations. As revised, the bill gives ministerial discretion as to whether a foreign correspondent may work in Zimbabwe. Any resident correspondent for a foreign media organization must be either a Zimbabwean citizen or a permanent resident. The draft is not in accordance with Article 19 of the ICCPR, which states that: “freedom of expression...shall include freedom to seek, receive and impart information and ideas of all kinds, *regardless of frontiers*, either orally, in writing or in print, in the form of art, or through any other media of his choice. Article 2(1) of the ICCPR states that the rights enshrined in the covenant shall be guaranteed without discrimination, including on the basis of nationality.

This xenophobic current continues in the sections of the Bill dealing with foreign investment in the media. Section 70 of the original draft stated that only Zimbabwean citizens and companies that are wholly owned by Zimbabwean citizens may invest in the media. As amended (Section 68) the bill does allow foreign investment in the media, but requires a Zimbabwean controlling interest in any media company.

Placing a limit on foreign investment in the media may in some exceptional circumstances be legitimate and would not in itself be a breach of Article 19 of the ICCPR. But in a context where the exchange rate of the Zimbabwean currency is plummeting, along with its foreign exchange reserves, there is no possibility of a new Zimbabwean media organization being established without substantial foreign investment. This is doubly true in a capital intensive sector such as broadcasting.

Law Reform and the Rule of Law

As with the new legislation on Access to Information and Protection of Privacy, the Zimbabwe government seems often to proceed on the assumption that if it enacts a law—however much it curtails rights— then this constitutes the “rule of law,” and that outside bodies will be more reluctant to criticize behavior that falls, apparently, within Zimbabwean law, as distinct from acts of violence that fall clearly outside it.

Amendments to the Land Acquisition Act

A clear case in point is the amendments to the Land Acquisition Act (originally passed in 1992) enacted in November 2001. The Supreme Court had ruled that the government’s “fast track” land resettlement program had failed to comply with the procedural guarantees set out in the Act.⁴¹ These included a right of appeal to a judicial authority against an administrative decision to designate land for compulsory acquisition. It was only when that appeal had been heard (and dismissed) that acquisition and resettlement could go ahead. Meanwhile, the reality was that land occupations were continuing with complete disregard for the law. The Supreme Court had also ruled, in December 2000, that the fast track programme had failed to comply with the procedures for land acquisition set

⁴⁰ *New Patriotic Party v. Ghana Broadcasting Corporation*, Supreme Court of Ghana, Writ no. 1/93, 30 November 1993 (unreported) at 23-4.

⁴¹ See Zimbabwe Human Rights NGO Forum, *Complying with the Abuja Agreement: Two Months Report*, December 17, 2001, Appendix 2.

out in Section 16 of the constitution.⁴² The government took a dual approach: both to revisit the Supreme Court decision with a favorably composed bench, and to amend the law to remove the right of appeal.

The amendments to the Land Acquisition Act were brought into effect by recourse to the president's special prerogative under the Presidential Powers (Temporary Measures) Act. This act was passed not long before Parliament finally lifted a twenty-five-year state of emergency in 1990. At the time, the rationale for these powers was to deal with matters threatening the very life of the nation. International standards governing the use of emergency powers have clearly established that special powers that may be needed in situations of genuine emergency may not be used as a normal means of governance. In practice, the president's power to enact six-month temporary legislation without taking it to parliament has been used whenever the government wanted quick action without parliamentary scrutiny, on almost any issue. (For example, the 2001 Broadcasting Services Act was preceded by almost identical presidential regulations.)

The Land Acquisition Act amendments allow the government to start subdividing land and resettling people as soon as an acquisition order has been issued. Previously an acquisition order had to be confirmed by a judicial body, the Administrative Court. A landowner also had the right of appeal to a higher court against the decision of the Administrative Court. This amendment was backdated to May 23, 2000, with the intention of retrospectively legalizing land seizures that did not comply with the requirements of the act. Both aspects are fundamentally at odds with generally accepted principles of due process and the rule of law (including section 18 of the Zimbabwean constitution), which prescribe that a law may not have retroactive effect and that a person may have the right to seek a judicial remedy for grievances. The amendments also create an offence of interfering with the land seizures, carrying a maximum penalty of two years imprisonment.

In December 2001, the Supreme Court ruled again on the fast-track land reform, one year after it had declared the process unconstitutional.⁴³ Chief Justice Chidyausiku refused an application from the Commercial Farmers Union to recuse himself on the grounds that he had previously made public political statements on the land reform issue. The CFU also argued that two of the judges had been beneficiaries of the government's acquisition of commercial farms. By a majority of four to one, the court ruled that the government had taken adequate steps to deal with violence on commercial farms. Chief Justice Chidyausiku said that to expect the government to bring about a totally crime-free environment on commercial farms would be "inconsistent with the concept of the rule of law and its practical application." The four judges who ruled in favour of the government were all appointed in the last few months, since the resignation of Chief Justice Gubbay after threats to his life. Three senior judges were not appointed to hear this case, while the one who did, Justice Ahmed Ebrahim, delivered a dissenting judgement. Ebrahim concluded that the court was simply revisiting the judgment already made by the Supreme Court under Chief Justice Gubbay. He also found that with the persistence of haphazard squatting and violence, it was impossible to say that the rule of law had been restored to the commercial farming areas.⁴⁴

The chairman of the Bar Council, Advocate Adrian de Bourbon SC, said that the judgment marked the end of the rule of law in Zimbabwe. De Bourbon was advocate for the Commercial Farmers' Union in the case and was strongly rebuked by the court for the manner in which he had applied for the Chief Justice's recusal. The court said that it was the "first and last time" that such "contempt" would go unpunished.⁴⁵ The court had nothing to say about the repeated failure by the government, police, and war veterans militia to observe and enforce court judgments and injunctions restraining them from squatting and violence on commercial farms.

⁴² Ibid.

⁴³ See Zimbabwe Human Rights NGO Forum, *Complying with the Abuja Agreement: Two Months Report*, December 17, 2001, Appendix 2.

⁴⁴ *Financial Gazette*, December 6, 2001; *Zimbabwe Independent*, December 7, 2001.

⁴⁵ *Herald*, December 4, 2001.

Public Order and Security Act

In January Parliament passed a new Public Order and Security Act to replace the Law and Order Maintenance Act (LOMA), sections of which the Supreme Court had ruled were unconstitutional. In November 2001, the Supreme Court dismissed charges of terrorism and incitement to public violence against MDC leader Morgan Tsvangirai, under sections 51 and 58 of the Law and Order Maintenance Act. The court found these provisions unconstitutional in terms of section 20, the protection of the right to freedom of expression.⁴⁶ In a speech in September 2000, Tsvangirai had urged Mugabe to leave office peacefully, raising the possibility of his violent overthrow if he did not.

The Public Order and Security Bill was published shortly after the decision in the case against Tsvangirai, just before the parliamentary Christmas recess. As with other recent pieces of legislation, the government's drafters have taken no notice of Supreme Court rulings on the constitutionality of various provisions—indeed the new law goes further than any other law on the Zimbabwean statute book in restricting constitutional rights:

- People must give seven days' notice before holding any public protest. The police may prohibit a meeting or procession if a senior police officer believes it may lead to public disorder. The only right of appeal is to the Minister of Home Affairs, not to a judge. The police may ban demonstrations in a particular area for up to three months.
- There is a maximum ten-year prison sentence for anyone who disturbs the peace—an offence that is extremely broadly defined.
- Anyone who organizes a group that pressurizes the government through violence—or by activities such as boycotts or civil disobedience—could be liable to a twenty-year prison sentence.
- There is a maximum sentence of five years for anyone who communicates a false statement intending to undermine public confidence in a law enforcement or security service, the armed forces, the defence or economic interests of Zimbabwe, or an essential service. This is similar to the section of Law and Order Maintenance Act ruled unconstitutional by the Supreme Court.
- A person may be imprisoned for up to one year for a statement that engenders hostility, hatred, contempt, or ridicule towards the president.
- Those arrested on charges of subverting constitutional government, insurgency, banditry, sabotage, or terrorism and related offences may be held for up to seven days without charge. The normal period provided for in the Criminal Procedure and Evidence Act is forty-eight hours.
- The courts have no discretion to grant bail to those charged with certain serious offences. These include “subverting constitutional government” or inciting other to do so. This includes advocating boycotts or other forms of civil disobedience.
- It is compulsory to carry identity cards. The Supreme Court ruled in 1997 that citizens were not required to carry their identity card at all times, this being an interference with their constitutional right to freedom of movement.⁴⁷

This extraordinary law clearly raises the prospect of blanket prohibitions on any form of public protest and the criminalization of the most routine political discourse. The police already use the investigation of trivial offences a means of constantly harassing the opposition. Now they will have the option of removing people from circulation for a week before any challenge can be mounted. The act contains several provisions on which the Supreme Court has already given clear constitutional rulings: on incitement, false statement, and identity cards.

⁴⁶ BBC News, November 20, 2001.

⁴⁷ *Elliot vs Commissioner of Police & Anor*, (1997) 2 CHRLD 295.

Electoral Law

In late 2001 the government introduced a series of amendments to the Electoral Act. When parliament first voted on these, on 8 January 2002, a number of ZANU-PF members stayed away, with the result that the amendments were defeated. The government immediately reintroduced the amendments, and succeeded in passing them.

The amendments cover five areas, all of which have an extremely negative impact on the people's right to vote:

- the franchise
- monitors and observers
- voter education
- the voters' roll
- election materials.

Effective disenfranchisement of large sections of the population is perhaps the most serious of these. The intention is for the presidential election, unlike the referendum, to be held on the basis of parliamentary constituencies, although it is a national vote. This means that people may register and vote only in the parliamentary constituency where they live permanently and can fulfil newly stringent requirements to prove residence. This will disenfranchise anyone who is outside the constituency where they are resident—for example, because they have been forced out of their homes by political violence. Only diplomatic and military personnel will be allowed to vote by post, which will disenfranchise the hundreds of thousands of Zimbabweans living outside the country and who previously had the vote.

Election *monitors*, with the right to bring any irregularity to the attention of the relevant authorities, request that they be rectified, and report on the irregularity and any corrective measures to the Electoral Supervisory Commission (ESC), can only be “public servants”—that is, government employees—appointed by the ESC and trained by the Registrar-General's office. The ESC is directly appointed by the president (it is not an independent electoral commission), while the Registrar-General's office is the civil service body that is running the election. In past elections nongovernmental organizations have done an effective job in monitoring elections and intervening to correct abuses. The effect of the amendments would be to dispense with independent monitors. Foreign election *observers*, who can bring irregularities to the attention of the authorities at constituency level but have no right to request that they be addressed, can only attend the elections at the invitation of the Minister of Foreign Affairs. The president originally stated that whites will not be invited, while the Minister of Information has ruled out “enemies of the state.” Under the threat of sanctions from the European Union, the government has indicated that it may accept observers from most European countries except Britain.

The effect of these amendments is to impose serious obstacles to credible independent scrutiny of the elections.

As in many countries, the electorate is highly dependent on independent civic organizations for information about the voting process, including matters such as how to make sure that their name is on the voters' roll. Under the proposed amendments, only the Electoral Supervisory Commission may carry out voter education. Nor can foreign funds be used for voter education, except by the ESC. The effect of this will be to deprive many Zimbabweans of vital information to enable them to exercise their right to vote.

The amendments give considerable new powers to the Registrar-General to alter or correct entries on the voters' roll. The Registrar-General's poor management of the voters' roll has been a source of controversy in past elections. The present incumbent is seen as a partisan political appointee and there

are serious fears that this new power would be used to interfere with voting entitlement on ZANU-PF's behalf. Previous polls, including the 2000 parliamentary elections, have been marked by late publication of the voters' roll and consequent last-minute amendments.

The amendments contain provisions criminalizing posting of election materials on walls, trees, and buildings without the permission of the owner. The effect will be to make large-scale posting of campaign posters and handbills illegal.

The cumulative effect of these amendments make a free campaign and vote impossible.

Organized Violence by State Agents and Ruling Party Supporters

There has been no perceptible change in the pattern of organized violence since the signing of the Abuja agreement. Some incidents have been widely reported, such as the attack on MDC leader Morgan Tsvangirai on his way to a political rally in October. That particular incident was noteworthy because, according to witnesses, a police inspector was present when some fifty people attacked Tsvangirai's convoy. The inspector took no action, and a police spokesperson later denied that he had been there.⁴⁸

Zimbabwean human rights organizations have documented forty-eight deaths in political violence during 2001, nineteen of them in the four months from the beginning of September when the Abuja accord was signed. In October, November, and December the Human Rights NGO Forum recorded 333 cases of torture and 533 of unlawful arrest or detention.⁴⁹ These figures are likely to be underestimates. In almost all cases the perpetrators of organized violence are state agents or supporters of the ruling party. In almost all cases, the victims are supporters of the MDC, farmworkers, farmers, and civil society activists such as students and trade unionists.

Also targeted are professionals, such as teachers and medical personnel in government service. One of the bizarre and under-reported aspects of the Zimbabwe crisis is the extent to which the ruling party's supporters are attacking the state itself, particularly those parts of it that are concerned with the delivery of services to the public. Teachers in Gokwe in Masvingo Province, for example, report being forced to attend ZANU-PF meetings and to buy party cards. In some cases they have been forced out of the district.⁵⁰ In September, according to press reports, war veterans' leader Joseph Chinotimba led an attack on officials at the Harare municipal authority. Chinotimba and the other attackers were municipal police officers.⁵¹

On September 28, 2001, police prevented a demonstration by the National Constitutional Assembly, a coalition of organizations leading the demand for constitutional reform, in Harare. Some 150 riot police armed with batons and teargas, and with dogs, blocked all entrances to African Unity Square, where the demonstration was to assemble. The demonstrators had obtained a court order in advance, instructing police not to interfere with the demonstration. The officer in charge ignored it.⁵² On November 21, police reportedly arrested thirty-five people attending a protest against amendments to the electoral laws. Police armed with shotguns, teargas, shields and batons had deployed in advance of the demonstration, which was not violent.⁵³ Eleven University of Zimbabwe students were

⁴⁸ Zimbabwe Human Rights NGO Forum, *Political Violence Report: November 2001*, December 2001.

⁴⁹ *Ibid.*, and Zimbabwe Human Rights NGO Forum, *Political Violence Report: October 2001*, November 2001; and *Political Violence Report: December 2001*, January 2002.

⁵⁰ *Daily News*, December 10, 2001.

⁵¹ *Financial Gazette*, November 28, 2001.

⁵² IRIN, September 28, 2001.

⁵³ *Daily Telegraph*, November 22, 2001.

reportedly arrested on November 27, when they tried to protest over the death of another student, Lameck Chemvura, who was thrown from a train by soldiers the previous week.⁵⁴

Although much violence has taken place in the context of land invasions, one of the notable threads that runs through almost all cases reported is either the complicity of the statutory security agencies or their failure to take action. Zimbabwean human rights organizations have recorded literally hundreds of incidents.

Take, for example, this testimony of an MDC supporter from a village near Mushumbi Pools in Guruve North District. He and several others were told to go to the war veterans' Chitepo Base. This is how one of them described his treatment:

[Joseph] Masauki [the war veterans' chairman] then began to catalogue our "crimes" as MDC members though they were otherwise lawful activities. Masauki and another war veteran called Emmanuel Kamukiyana and Bibby and Zuze then ordered us into an ant-bear's hole. We were then ordered to yap and bark like dogs and come out with a kill. After being ordered out our legs were tied up in ropes, our t-shirts removed and our trousers lowered. We were asked to lie prone and then assaulted on the buttocks with thick poles, slapped on the face and kicked with booted feet. This continued for about 2 hours. We were then ordered to roll in hot sand then tied up and further beaten. After that, buffalo thorns were smeared all over our bodies. The process was repeated in which we were told to roll around in hot sand. We were dizzy after that but were beaten up when we fell down. This lasted for about 5 hours. They made us grind our teeth and swallow sand. We were released around 4pm.

We failed to seek medical treatment because if you are treated at any hospital beaten once, this is known and the police refuse to supply referral forms.

Four other testimonies corroborate this one. Some of them state that a police constable was present for part of the torture. All of them said that they had not reported the matter to the police, as the local police chief is a war veteran and has said that he will not help MDC supporters.⁵⁵

The same pattern of police complicity with the ruling party and its militias is exhibited in another incident from Mberengwa East reported by Human Rights NGO Forum. On 10 November, four men approached Ravengai Sikhucha and another person, accusing them of having committed an "offense"—the distribution of MDC material. The four were the police officer in charge of Mataga Police Station, himself a war veteran, another police officer, an official of the Central Intelligence Organization and another man. Ravengai Sikhucha's companion escaped but Sikhucha was punched, kicked and beaten with sticks. He was then forced into a Nissan truck and driven away. He was later found dead. The police say that he fell off the back of the truck.⁵⁶

Bulawayo

In the late evening of November 5, 2001, Cain Nkala, a Bulawayo war veterans' leader, was abducted from his home by ten men armed with Kalashnikov assault rifles. He was taken away in a truck and later strangled to death. His body was found in a shallow grave near Solusi University on November 13.

Nkala had been charged in connection with the abduction and "disappearance" on June 19, 2000 of Patrick Nabanyama, the election agent for MDC MP David Coltart. Nkala was alleged by several witnesses to be one of seven war veterans who beat Nabanyama at his home in Nketa, bundled him

⁵⁴ *Daily News*, December 3, 2001.

⁵⁵ Zimbabwe Human Rights NGO Forum, *Political Violence Report: November 2001*, December 2001.

⁵⁶ *Ibid.*

into a station wagon and took him to the nearby War Veterans' Association offices. Nabanyama was never seen alive again.

After several days' delay, police opened a docket on Nabanyama's abduction. The seven war veterans, including Nkala, were charged, but the case had not come to court by the time of Nkala's abduction and murder. Nkala and the others were charged with aggravated kidnapping rather than murder because no body had been found. In October 2000, the president proclaimed a general amnesty for all offences of pre-election violence, except for murder and rape. Since the seven involved in Patrick Nabanyama's "disappearance" had been charged with a lesser offense, they would benefit from that amnesty.

Over the days after Cain Nkala's abduction, police conducted an illegal search of the MDC offices in Bulawayo and arrested a number of MDC supporters in connection with the case. While the provincial chairperson of ZANU-PF described the abduction as "terrorism" and attributed it to British Prime Minister Tony Blair, the private press speculated that it may have been carried out by a rival faction within the War Veterans' Association.⁵⁷ According to this version, Nkala felt that he and his colleagues had been made scapegoats for the Nabanyama abduction and was threatening to reveal the complicity of more senior figures.

At 11:30pm on November 12, 2001, Noma Nabanyama, the daughter of Patrick, was picked up from her home by members of the Central Intelligence Organization. After confiscating MDC documents, human rights videos and her passport, they took her with her aunt and sister to Pumula police camp. They demanded to see the photographs of Noma with her father in Australia. Noma Nabanyama had in fact travelled to Australia in advance of the postponed Commonwealth Heads of Government Meeting (originally scheduled for October 2001, but postponed to March 2002 because of the events of September 11, 2001, in the U.S.) to lobby on her father's case and to publicize the human rights situation in Zimbabwe. She was questioned in detail about her visit to Australia, before being released.

The following day, Cain Nkala's body was discovered. Somewhat surprisingly, a Zimbabwe Broadcasting Corporation television crew was present. ZBC broadcast that police had been led to the grave by MDC members who had confessed to the crime. Some insight into the value of any confessions emerged during subsequent bail hearings. One of those charged, Khetani Andrew Sibanda, testified that he had confessed to the crime and implicated others among the accused after he had been assaulted by plain clothes police officers:

They started kicking me all over the body until I fell off a chair on which I was seated. It was then that I told them that I was prepared to tell them the truth and we agreed that I would do so in Bulawayo.⁵⁸

Sibanda showed the court a wound that he said had been caused by being bitten by Nkala during the kidnapping.⁵⁹ Yet the medical report showed the wound had been caused by a sharp instrument, not by teeth.⁶⁰

Another of the accused, Remember Moyo, also told the court that he had been beaten into signing a confession:

⁵⁷ A view that was later reinforced by interviews with members of Cain Nkala's family. See the *Standard*, November 18, 2001.

⁵⁸ *Herald*, November 27, 2001.

⁵⁹ *Herald*, November 28, 2001.

⁶⁰ *Daily News*, December 4, 2001.

I was handcuffed at the back and I was in leg-irons. The police started assaulting and kicking me. They forced apart my legs and Detective Inspector Martin Matira kicked me in the private parts and I lost consciousness. They then took me to the Mbembesi Police Station where I was detained.⁶¹

Meanwhile, the government and the media controlled by it had been exploiting Nkala's murder to escalate tension. Vice-President Joseph Msika made a speech threatening "if they are looking for a bloodbath they will certainly get it."⁶² The *Chronicle* called in its front-page headline: "Arm war vets, says province." The article beneath it argued that "without arms, war veterans are vulnerable to attacks by opponents."⁶³

The arrival of the ZBC's chief political correspondent to cover the discovery of Nkala's body was fortuitous and unexplained. On camera, the decomposing body was dragged out by the heels. Home Affairs Minister John Nkomo implied that the murder was the work of those with training from the former Rhodesian elite counter-insurgency unit "...this is an operation very reminiscent of what the Selous Scouts used to do and we can read and see very clearly a similar pattern in this particular area."⁶⁴

On November 16, war veterans and ZANU-PF leaders assembled in Bulawayo and marched to City Hall, under police escort and armed with axes, sticks, and sjamboks (leather whips). Along the way bystanders were targeted for violent attack, especially whites. One old woman had her windscreen smashed and was beaten. She later had to have glass surgically removed from her eye.⁶⁵ Schoolchildren were also attacked. The police took no action to stop the violence.⁶⁶ At City Hall the marchers assembled to hear brief speeches against "terrorism" from the march leaders: former Home Affairs Minister Dumiso Dabengwa and local war veterans' leader Jabulani Sibanda. They then attacked City Hall, heading for the mayor's office. The mayor – a member of the MDC elected in September – had already fled but they ransacked his office, taking his briefcase and destroying papers. It was noted that ZANU-PF members of the City Council had not parked their cars at City Hall that morning, suggesting that the attack was premeditated.⁶⁷ Still the police did not intervene.

The demonstration then went to the Bulawayo MDC office, still accompanied by police. The latter did nothing as the demonstrators knocked down a wall and smashed windows to the office. An eyewitness described what happened next:

I saw a black 20 litre plastic container being taken from a police open truck land-rover in a canvas canopy, army green in colour. I saw the 20 litre container being taken into the MDC offices. This happened as the group was recklessly beating onlookers. Realising this, we all ran for dear life. When we finally came out we heard people shouting that the MDC offices were burning.⁶⁸

This account is confirmed by another eyewitness account in the possession of Human Rights Watch. As the building burned, the police remained in front of it, preventing anyone from tackling the fire. Onlookers attacked the police and then took burning material from the building to the headquarters of ZDECO, the Zimbabwe Distance Education College, owned by Dr. Sikhanyiso Ndlovu, one of the ZANU-PF leaders present at the demonstration. The building was burned and serious damaged.

⁶¹ *Herald*, November 28, 2001.

⁶² *Herald*, November 12, 2001.

⁶³ *Chronicle*, November 12, 2001.

⁶⁴ ZBC, *Newshour*, November 13, 2001.

⁶⁵ Eyewitness testimony in the possession of Human Rights Watch.

⁶⁶ *Ibid.*

⁶⁷ Eyewitness testimonies in the possession of Human Rights Watch.

⁶⁸ Eyewitness testimony in the possession of Human Rights Watch.

At this stage, none of those arrested in connection with the murder of Cain Nkala had been charged or had even been visited by a lawyer – in breach of the constitutional requirement that they be brought before a judicial authority within forty-eight hours. The numbers of those arrested was increasing. The government press announced, completely incorrectly, that one Bulawayo MP, Fletcher Dulini-Ncube, had fled the police. In fact the reason he was not at home was that he was in Parliament in Harare. On his return to Bulawayo he handed himself in to police. Dulini-Ncube, an elderly diabetic, was held in police custody in very poor conditions. The authorities delayed several days before releasing him, even after a Supreme Court order granting him bail.

Two others of the fourteen charged in connection with the murder, Simon Spooner and Silas Sibanda, were successful in their applications for bail. But when they reported to the police in compliance with their bail conditions, they were redetained, Spooner on December 7. The police said that they were appealing against the High Court decision to grant bail. Yet this can only be done after leave has been given by the Supreme Court and the bailed person may not be redetained in the meanwhile.⁶⁹ Spooner was finally released on December 15.⁷⁰

The events surrounding the murder of Cain Nkala have been examined in some detail because they exhibit characteristics that run through the current situation in Zimbabwe:

- Abuse by the police (the torture of suspects) and their complicity in the abuses of others (the November 16 demonstration).
- Partiality on the part of the police.
- A constant stream of provocative statements and inaccurate reports from official spokespeople and the government-controlled media. Often this appears to be directly in contempt of judicial proceedings, yet those responsible are not rebuked, let alone brought to justice.
- Impunity for the ruling party and its supporters to carry out acts of violence against the opposition and the public, unchecked and unpunished.

⁶⁹ ZWNews, December 7, 2001.

⁷⁰ *Standard*, December 16, 2001.

APPENDIX: THE ABUJA AGREEMENT

The meeting recognised that as a result of historical injustices, the current land ownership and distribution needed to be rectified in a transparent and equitable manner. It also agreed on the following:

- Land is at the core of the crisis in Zimbabwe and cannot be separated from other issues of concern to the Commonwealth such as the rule of law, respect for human rights, democracy and the economy. A programme of land reform is, therefore, crucial to the resolution of the problem
- Such a programme of land reform must be implemented in a fair, just and sustainable manner, in the interest of all the people of Zimbabwe, within the law and constitution of Zimbabwe
- The crisis in Zimbabwe also has political and rule of law implications which must be addressed holistically and concurrently. The situation in Zimbabwe poses a threat to the socio-economic stability of the entire sub-region and the continent at large
- The need to avoid a division within the Commonwealth, especially at the forthcoming CHOGM [Commonwealth Heads of Government Meeting] in Brisbane, Australia, over the situation in Zimbabwe
- The orderly implementation of the land reform can only be meaningful and sustainable if carried out with due regard to human rights, rule of law, transparency and democratic principles. The commitment of the government of Zimbabwe is therefore crucial to this process.

The committee recognises the need for the adoption of confidence-building measures to ensure the implementation of the conclusions of the meeting. In this regard, the meeting welcomed assurances given by the Zimbabwe delegation as follows:

- Commitment to the Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme on the Harare Declaration
- There will be no further occupation of farm lands
- To speed up the process by which farms that do not meet set criteria are de-listed
- For farms that are not designated, occupiers would be moved to legally acquired lands
- Acceleration of discussions with the UNDP [United Nations Development Programme] with a view to reaching agreement as quickly as possible
- Commitment to restore the rule of law to the process of land reform programme
- Commitment to freedom of expression as guaranteed by the constitution of Zimbabwe and to take firm action against violence and intimidation
- Invitation by the foreign minister to the committee to visit Zimbabwe.

The meeting agreed, in the overall context of the statement, that the way forward is for Zimbabwe's international partners

- to engage constructively with the UNDP and the government of Zimbabwe in pursuing an effective and sustainable land reform programme on the basis of the UNDP proposals of December 2000
- to respond positively to any request from the government of Zimbabwe in support of the electoral process
- to continue to contribute to poverty reduction programmes for the benefit of the people of Zimbabwe and that those partners present (Australia, Canada and United Kingdom) would actively pursue these objectives.

The meeting also welcomed the re-affirmation of the United Kingdom's commitment to a significant financial contribution to such a land reform programme and its undertaking to encourage other international donors to do the same.