



## **A Call to Action: The Crisis in Zimbabwe SADC’s Human Rights Credibility on the Line**

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## I. Introduction

On August 16-18 2007, the Southern African Development Community (SADC) Heads of State and Government will meet at their annual summit in Lusaka, Zambia. The summit will provide SADC member states with an opportunity to take action on one of the most critical situations in the region: the political and human rights crisis in Zimbabwe. Their response will be scrutinized carefully in the region and beyond. The credibility of SADC's commitment to the promotion of human rights and the rule of law is on the line.

In response to the brutal police beating of over 50 opposition members and civil society activists on March 11, 2007 in Zimbabwe, SADC leaders convened an extraordinary summit on March 28 in Dar es Salaam, Tanzania to address the political crisis in Zimbabwe. In the communiqué following the summit, SADC mandated South African President Thabo Mbeki to mediate talks between the opposition and the ruling party, and report back to the SADC troika on progress.<sup>1</sup> The summit also mandated SADC Executive Secretary Tomaz Salamao to undertake a study of the economic situation in Zimbabwe and to propose measures on how SADC could assist Zimbabwe recover economically.<sup>2</sup> The summit also called for enhanced diplomatic contacts with Zimbabwe to assist with the resolution of the situation in Zimbabwe; appealed to Britain to honor its compensation obligations with regards to land reform; and called for the lifting of all forms of sanctions against Zimbabwe. Regrettably, the communiqué made no mention of the arrests and beatings of opposition and civil society leaders or the broader human rights situation in Zimbabwe.

Although little has been said publicly about the progress of the mediation talks, President Mbeki's delegation has met with the two Secretaries General of the two factions of the opposition Movement for Democratic Change (MDC),<sup>3</sup> and initiated

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<sup>1</sup> Communiqué from the 2007 Extraordinary Summit of Heads of State and Government Held in Dar es Salaam, United Republic of Tanzania, 28-29 March 2007.

<sup>2</sup> Ibid.

<sup>3</sup> The MDC split into two factions in November 2005 after disagreements over whether the MDC should run for senate elections. One faction is led by Morgan Tsvangirai and the other is led by Arthur Mutambara.

one meeting between representatives of the government and the MDC.<sup>4</sup> SADC Executive Secretary Tomaz Salamao visited Zimbabwe in April and July to assess the economic situation in the country.<sup>5</sup>

Human Rights Watch welcomed SADC's decision to seek to bring an end to the crisis in the country. The world now looks to SADC to curb the abuses taking place in Zimbabwe, and ensure stability and security in the region. The political and economic reforms suggested by the SADC Heads of State and Government can only be sustainable if they are accompanied by respect for the basic human rights of all Zimbabweans.

Human Rights Watch has been closely monitoring the human rights situation in Zimbabwe for the past seven years. State-sponsored harassment, attacks, arbitrary arrests, beatings, and torture of opposition members, civil society activists, and independent media workers continue unabated. For example, on July 25, police arrested and assaulted in custody more than 200 activists from the National Constitutional Assembly (NCA) when they attempted to demonstrate against the Constitutional Amendment Bill in Harare.<sup>6</sup> Many of the activists reportedly sustained serious injuries including fractured limbs and extensive soft tissue injuries.<sup>7</sup> On July 3, 2007, more than 15 students were injured when police used unnecessary force to disrupt peaceful protests against university "top-up fees" by thousands of students at the University of Zimbabwe in Harare.<sup>8</sup> Four days later, police forcibly disrupted another meeting at the university and arrested seven students. Several students were seriously injured and one sustained a broken leg after police beat students with batons.<sup>9</sup> On June 6, 2007, up to 20 members of the organization Women of Zimbabwe Arise (WOZA) were arbitrarily arrested and detained after engaging in

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<sup>4</sup> "Zimbabwe Government and opposition hold talks under South African mediation," Associated Press, June 18, 2007.

<sup>5</sup> "SADC Secretary, Staff Visit Zim for Retreat," *The Herald*, July 10, 2007.

<sup>6</sup> Voice of America radio interview with NCA National Director Ernest Mudzengi, July 27, 2007; see also "NCA Activists Beaten while in Police Cells," *Zimbabwe Independent*, July 27, 2007.

<sup>7</sup> Jan Raath, "Babies Abandoned as Police Beat Mothers," *The Times*, July 27, 2007.

<sup>8</sup> Statement from the Zimbabwe National Students Union (ZINASU), emailed to Human Rights Watch, July 9, 2007.

<sup>9</sup> *Ibid.*

peaceful protests in Bulawayo.<sup>10</sup> Riot police reportedly beat the women as they tried to disperse and two of the detained women were reportedly beaten in custody.

The continuing use of arbitrary and excessive use of force by the police and other agents of the government of Zimbabwe calls into question its commitment to ending the political crisis in the country, and creates a huge obstacle to finding a viable solution to this crisis. The regional consequences of violence and intimidation, and the economic crisis in Zimbabwe, have become increasingly clear—with millions of Zimbabweans fleeing the country to neighboring states.

The SADC mediation talks must incorporate human rights concerns and set clear benchmarks for progress. This memorandum provides a brief summary of human rights concerns in Zimbabwe and proposes a number of actions to help tackle the crisis.

## **II. Taking Action to Address the Human Rights Crisis**

SADC member states have identified peace, security and the promotion of human rights as key concerns within the region. The Declaration and Treaty of SADC calls on SADC and its member states to act in accordance with several principles which include solidarity, peace, and security as well as human rights, democracy, and the rule of law.<sup>11</sup> According to the declaration, one of the key objectives of SADC shall be to “consolidate, defend, and maintain democracy, peace, security, and stability.”<sup>12</sup>

Human Rights Watch believes that ensuring respect for human rights and the rule of law in all Southern African countries is essential to peace and security in the region. The regional ramifications of the deteriorating human rights situation in Zimbabwe have already been witnessed. The potential further threat of destabilization and lawlessness

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<sup>10</sup> WOZA statement, June 6, 2007, [http://www.kubatana.net/html/archive/archorg\\_index.asp?orgcode=womo10](http://www.kubatana.net/html/archive/archorg_index.asp?orgcode=womo10) (accessed July 22, 2007); see also Zimbabwe Lawyers for Human Rights statement “WOZA arrests and detention,” emailed to Human Rights Watch, June 7, 2007.

<sup>11</sup> Declaration and Treaty of SADC, Windhoek, Namibia, August 17, 1992, [http://www.sadc.int/key\\_documents/treaties/sadc\\_treaty.php](http://www.sadc.int/key_documents/treaties/sadc_treaty.php) (accessed, July 22, 2007), arts. 4 (b) and (c).

<sup>12</sup> Amended Declaration and Treaty of SADC, art. 5 (c).

to the entire region—and the international perceptions of Southern Africa that are created by Zimbabwe’s flouting of international human rights standards—make this a crucial issue for all the governments of the region and for the credibility of SADC.

It is vital that the Heads of State and Government of SADC send a clear, visible, and unambiguous message from their August 2007 summit, repudiating the Zimbabwean government’s policy of political repression through laws and through the unaccountability of Zimbabwe’s police, army, and security forces, and setting out a clear commitment to a leadership role for SADC.

### **A. The Deployment of Human Rights Monitors**

SADC must ensure that the Zimbabwean government makes demonstrable progress towards ending human rights abuses, prosecuting those who perpetrate such abuses, strengthening the rule of law, implementing judicial reforms, and ensuring the rights to freedom of association and expression. To that end, Human Rights Watch urges the SADC Heads of State to deploy SADC human rights monitors to independently monitor and publicly report on the human rights situation in Zimbabwe. With presidential and parliamentary elections scheduled for March 2008, the early presence of human rights monitors would be an important step towards creating an environment in which free and fair elections can take place and in which democratic institutions could be reestablished in Zimbabwe.

This would be entirely consistent with one of SADC’s stated objectives, which is to “promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the African Union and the United Nations respectively.”<sup>13</sup>

### **B. Priority Areas of Concern**

In addition to the deployment of independent human rights monitors, Human Rights Watch urges SADC and its member states to continue to exert sustained pressure on the government of Zimbabwe in the following areas:

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<sup>13</sup> SADC Protocol on Politics, Defence and Security Co-operation, Blantyre, Malawi, August 14, 2001, art. 2 (g).

## 1. Freedom of Association and Assembly

Zimbabwean citizens are routinely arrested for peacefully and publicly expressing their opinions. The police in Zimbabwe have often used key provisions of legislation such as the Public Order and Security Act (POSA), Miscellaneous Offences Act (MOA), and more recently the Criminal Law (Codification and Reform) Act to justify arrests that violate basic rights. The police have used provisions in POSA to strictly monitor public meetings or violently disrupt peaceful demonstrations.<sup>14</sup> Nongovernmental organizations such as WOZA and the NCA have been regularly victimized by these laws. In the past seven years, hundreds of members of both organizations have been arbitrarily arrested and detained under the Criminal Law (Codification and Reform) Act, POSA, and MOA.<sup>15</sup>

The broad wording of POSA and the misapplication of some provisions of the act<sup>16</sup> have resulted in repeated violations of the rights of Zimbabweans to freely assemble, or organize peaceful demonstrations.<sup>17</sup> The charges against many of the activists arrested under POSA are either dropped or dismissed in court.

SADC should call on the government of Zimbabwe to:

- Repeal or amend all national legislation that is incompatible with international human rights law and standards including the African Charter on Human and Peoples' Rights. In particular, repeal or substantially amend the Criminal Law (Codification and Reform) Act, the Public Order and Security Act (POSA), the Miscellaneous Offences Act (MOA), and the Access to Information and Protection of Privacy Act (AIPPA).

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<sup>14</sup> For more on the police use of POSA and other laws to justify arbitrary arrests, see Human Rights Watch, *You Will Be Thoroughly Beaten: The Brutal Suppression of Dissent in Zimbabwe*, Volume 18, No. 10(A), November 2006, <http://hrw.org/reports/2006/zimbabwe1106/zimbabwe1106web.pdf>.

<sup>15</sup> Ibid.

<sup>16</sup> The police have loosely interpreted certain provisions of POSA to justify arrests. For example, Section 24 of POSA merely requires that police be notified ahead of time about a public meeting; once the police have been notified the meeting can go ahead. However, police authorities often insist that police permission—and not mere notification—is required to hold public meetings, gatherings or demonstrations. This permission is granted or withheld on arbitrary grounds and is frequently denied to activists who try to hold public meetings or demonstrations.

<sup>17</sup> Ibid.

- Uphold its international obligations to respect the rights to freedom of expression, assembly, and association, and cease arrests, harassment, and detention of individuals based on their peaceful religious or political views. The government must respect the rights of citizens to hold political opinions varying from that of the state. These rights are enshrined in Zimbabwe's constitution; the African Charter on Human and Peoples' Rights (ACHPR), ratified by Zimbabwe in 1986; and in other international treaties.
- Persons should only be arrested and detained in accordance with international due process standards, such as are found in the ACHPR and the International Covenant on Civil and Political Rights. This includes being promptly charged before a judicial authority, having prompt access to legal counsel, being secure from torture and other mistreatment, and being permitted visits by family members.

## *2. Torture and Cruel, Inhuman, or Degrading Treatment*

Torture and other mistreatment of activists by police and members of Zimbabwe's intelligence services remains a serious and systemic human rights problem in Zimbabwe. Detainees in police custody are at significant risk of torture. Acts amounting to torture that Human Rights Watch has documented include severe beatings that involved being punched, kicked, and struck with batons; beatings on the soles of the feet; repeated banging of detainees' heads against walls; and the shackling of detainees in painful positions.<sup>18</sup> In some cases torture is an element of coercive interrogations, while in others it is used as a form of punishment for the activists' perceived leanings or intentions.

Cases of torture that Human Rights Watch has documented include the arrest and torture of 15 trade unionists from the Zimbabwe Congress of Trade Unions on September 13, 2006, the frequent torture of student activists in police custody, and acts amounting to torture that were perpetrated against the 50 opposition and civil society activists in police custody on March 11, 2007.<sup>19</sup>

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<sup>18</sup> Human Rights Watch, *You Will Be Thoroughly Beaten: The Brutal Suppression of Dissent in Zimbabwe*.

<sup>19</sup> Ibid. See also Human Rights Watch, *Bashing Dissent: Escalating Violence and State Repression in Zimbabwe*, Volume 19, No. 6(A), May 2007, <http://hrw.org/reports/2007/zimbabwe0507/zimbabwe0507web.pdf>.

The government has done little to address the issue of torture and mistreatment of detainees in police custody. Incidents of torture by the police and intelligence officers are rarely investigated. To Human Rights Watch's knowledge, the government has not investigated, prosecuted, or disciplined any security officials or police officers for their role in the torture and abuse of detainees in any of the cases documented by Human Rights Watch.

SADC should call on the government of Zimbabwe to:

- Commit to eradicating torture by acting in accordance with and ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and issuing a standing invitation to the UN Special Rapporteur on torture with a view to developing a set of recommendations to end torture.

### *3. Freedom of Expression and Information*

There continue to be serious limits to freedom of expression and information in Zimbabwe, particularly in the form of threats of closure of independent media organizations, as well as the intimidation, arbitrary arrest, and criminal prosecution of journalists. The government's actions seem primarily designed to inhibit criticism of government officials and institutions, and to muzzle independent reporting and commentary on the political situation in the country.

In the last five years, Zimbabwe's government has enacted laws that give it discretionary control over which actors may practice journalism and operate a media outlet, as well as broad powers to prosecute persons critical of the government. Legislation such as the Criminal Law (Codification and Reform) Act, POSA, and AIPPA—which requires registration and accreditation of journalists—continue to be selectively used to restrict independent media activity. AIPPA has also been used to restrict the flow and content of national and international media coverage.<sup>20</sup> The law requires all journalists and media houses to register with the government. While in and of itself this is not a problem, Human Rights Watch has found that the government run Media and Information Commission (MIC) has used AIPPA to threaten newspapers with closure if they are

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<sup>20</sup> For more on AIPPA see Human Rights Watch, *Not a Level Playing Field: Zimbabwe's Parliamentary Elections in 2005*, March 21, 2005, <http://hrw.org/backgrounders/africa/zimbabwe0305.pdf>.



deemed to be critical of the government. Owners of media houses who do not register with the MIC face up to two years in prison if convicted.<sup>21</sup> An amendment passed on January 7, 2005, provides for criminal penalties to journalists who operate without accreditation.<sup>22</sup> Under the Criminal Law (Codification and Reform) Act, journalists convicted of publishing or communicating falsehoods “prejudicial to the state” face up to 20 years imprisonment and up to one year imprisonment if convicted of undermining the authority of or insulting the president.<sup>23</sup>

In March and April 2007, the government arrested several journalists when they tried to report on the unrest in the aftermath of the events of March 11.<sup>24</sup> On April 1, independent journalist Gift Phiri was arrested in Harare and reportedly tortured while in police custody. He was released on bail after four days in custody, and charged with practicing without a license and “abusing journalistic privilege” under section 79 (1) and section 80 (1)(b) of AIPPA.<sup>25</sup>

SADC should call on the government of Zimbabwe to:

- Repeal or amend all national legislation that is incompatible with international human rights law and standards that guarantee the rights to freedom of expression and information. In particular, repeal or substantially amend the Criminal Law (Codification and Reform) Act, Public Order and Security Act (POSA), and the Access to Information and Protection of Privacy Act (AIPPA), which provide criminal punishment for expression deemed insulting or offensive to the government.
- Ensure that press laws and regulations are in accordance with international human rights law and standards regarding freedom of expression and information, including the Declaration on Freedom of Expression in Africa, and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

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<sup>21</sup> Access to Information and Protection of Privacy Act of 2002.

<sup>22</sup> CAP 10: 27, AIPPA Amendment Act, 2004, entered into force January 7, 2005, section 83.

<sup>23</sup> Criminal Law (Codification and Reform) Act [Chapter 9:23] Act 23 / 2004, entered into force July 1, 2006, sections 31 and 33.

<sup>24</sup> Human Rights Watch, *Bashing Dissent: Escalating Violence and State Repression*.

<sup>25</sup> Ibid.

#### *4. Harassment and Obstruction of Civil Society Activists, including Human Rights Defenders*

The determination of human rights defenders to expose abuses and to create conditions for the respect of Zimbabweans' rights has made them targets of the authorities which often use repression and intimidation to silence human rights advocates during the course of their daily work. Human rights defenders are repeatedly subjected to threats, arbitrary arrests, and harassment by the government. For example, the authorities arrested and detained for three days human rights lawyers Alec Muchadehama and Andrew Makoni outside the High Court in Harare on May 4, 2007, after submitting court papers on behalf of an opposition activist they were representing.<sup>26</sup>

SADC should call on the government of Zimbabwe to:

- Respect the rights of human rights defenders to do their work in the promotion of human rights, and issue a standing invitation to the African Commission Special Rapporteur on Human Rights Defenders.
- Issue clear instructions to the police not to interfere with the legal activities of local and international NGOs. Ensure that any incidents of unlawful interference are investigated and appropriate remedial actions are taken.
- Ensure that authorities act in accordance with the UN Declaration on Human Rights Defenders.

#### *5. Excessive Use of Force by Police and other Security Forces*

The police use of excessive force against unarmed and peaceful demonstrators in Zimbabwe has become a common occurrence. On several occasions police have beaten protestors with truncheons and rifle butts and on some occasion have used tear gas and fired on peaceful protestors.

For example, on May 8, 2007, police in Harare beat several lawyers who were gathered outside the High Court to protest the unlawful arrest of two other lawyers

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<sup>26</sup> Statement by Zimbabwe Lawyers for Human Rights, emailed to Human Rights Watch, May 7, 2007.

Alec Muchadehama and Andrew Makoni.<sup>27</sup> Police forced some of the lawyers including Beatrice Mtetwa, president of the Zimbabwe Law Society, into a police truck before driving to a secluded area and reportedly beating them.<sup>28</sup>

Police have also used unnecessary lethal force against unarmed demonstrators and other activists. For example, MDC member Gift Tandare was killed when police opened fire on unarmed demonstrators during clashes with the police in the immediate aftermath of the March 11 prayer meeting.<sup>29</sup> On March 12, two MDC supporters were seriously injured when police opened fire on mourners at the funeral of Gift Tandare. The police have not investigated any of the shootings.<sup>30</sup>

SADC should call on the government of Zimbabwe to:

- Ensure that all police officers act in accordance with the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials when policing demonstrations.
- Bring to account any law enforcement officials who use excessive force. All those who are implicated in such abuses should be disciplined or prosecuted as appropriate.

## 6. Impunity

Impunity is a major problem in Zimbabwe, with the government doing little to investigate allegations of human rights abuses by the police and other state agents or to bring those who commit such abuses to justice. The investigation and prosecution of officials implicated in rights violations has regularly been blocked by the state's political manipulation of the police; the obstruction and prevention of human rights organizations from investigating accounts of human rights violations; the undermining of the independence of the judiciary and the circumvention of the

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<sup>27</sup> Statement by Zimbabwe Lawyers for Human Rights, emailed to Human Rights Watch, May 9, 2007.

<sup>28</sup> Ibid.

<sup>29</sup> Human Rights Watch, *Bashing Dissent: Escalating Violence and State Repression in Zimbabwe*.

<sup>30</sup> Ibid.

rule of law; and the lack of an independent mechanism within the police forces to deal with abuses carried out by the police.

Few of the abuses documented by Human Rights Watch have been investigated by the police.

SADC should call on the government of Zimbabwe to:

- Conduct prompt, independent, and impartial investigations into all allegations of arbitrary arrest and detention; excessive use of force and torture; and cruel, inhuman, and degrading treatment by police and other state agents. All those who are implicated in such abuses, whatever their rank, should be disciplined or prosecuted as appropriate.
- Establish an independent civilian police body to investigate complaints against the Zimbabwe Republic Police.
- Achieve greater transparency and accountability in the legal and penal systems and work towards the establishment of an independent and impartial judiciary.

### **III. Conclusion**

The political and human rights crisis in Zimbabwe requires urgent and effective leadership at the regional level. Human Rights Watch has been encouraged by the contribution that SADC Heads of State and Government have made in addressing the crisis in Zimbabwe. However, SADC Heads of State and Government now need to take the next step and address the concerns highlighted in this paper. Failing that, prospects for a peaceful and democratic Zimbabwe will remain elusive.

The implementation of the recommendations detailed in this paper, within a clear time-frame to be established by SADC, is key to reestablishing respect for human rights and the rule of law, and to ending impunity in Zimbabwe. The implementation of these recommendations will also support South Africa's political mediation efforts.

Human Rights Watch therefore reiterates its call to the assembled SADC Heads of State and Government to send a strong message from their meeting: the Zimbabwean government should cease violating human rights with impunity, and SADC must exert more sustained political pressure and follow the situation more closely on the ground through a team of independent human rights monitors. Only in this way can SADC hope to nurture a political and economic revival in Zimbabwe.