



**UNIVERSAL PERIODIC REVIEW – HUMAN RIGHTS COUNCIL  
UN COMPILATION REPORT – MARCH 2011  
ZIMBABWE UN COUNTRY TEAM**

**I. BACKGROUND AND INTRODUCTION**

1. The UN report was compiled by an inter-agency team<sup>1</sup> put together by the UN Resident Coordinator. The process involved extensive literature review, consultations and compiling of agency specific reports, which were then consolidated into the UN Compilation Report. Technical support was received from the Office of the United Nations High Commissioner for Human Rights (OHCHR) through its Headquarters and the Regional Office for Southern Africa. This report covers a review of all three generations of human rights.

**a. Scope of international obligations**

2. Zimbabwe has ratified/acceded to a number of key international and regional human rights instruments (Annex 1, Status of International Human Rights Instruments in Zimbabwe).

3. Zimbabwe has committed itself to achieving the Millennium Development Goals (MDGs) and other agreed International Development Goals.<sup>2</sup> The country reports on the status and progress in attaining the MDGs and prepares the National Human Development Reports (NHDR). Further, the country implements and regularly reports on the progress in the implementation of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS.

**b. Constitutional and legislative framework**

4. The Constitution of Zimbabwe was drawn up as part of the Lancaster House Agreement (1979) primarily to transfer power from the colonial authority to an independent Zimbabwe. An attempt to review the Constitution was made in 1999-2000; but the draft produced was rejected through referendum.<sup>3</sup> However, the Constitution has been amended periodically, with nineteen amendments to date.

5. The latest Constitutional Amendment No. 19 was passed in February 2009. This amendment formalised the Global Political Agreement (GPA), which was signed by ZANU-PF and the two MDC formations on 15 September 2008, and later led to the formation of the Government of National Unity (GNU). The GPA was brokered by SADC based on the African Union mandate following the contested 2008 Presidential elections.

6. Constitutional Amendment No. 19 also introduced requirements of governance and economic reforms, specifically stating that there should be a process to bring about a new constitution for

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<sup>1</sup> UNRCO, UNDP, UNICEF, UNAIDS, UN WOMEN, UNESCO, UNHCR, IOM, WHO, ILO

<sup>2</sup> MDG Status Report, 2010

<sup>3</sup> Hertsing N. (eds), 2009, *Constitution in Transition: Academic Inputs for a New Constitution in Zimbabwe*, page 8

Zimbabwe. The constitution-making process is underway and should culminate in a referendum on a draft Constitution, possibly before the end of 2011.

7. The current Constitution stipulates the political rights to which Zimbabwean citizens are entitled to and outlines provisions to secure protection of law and measures for enforcement of protective provisions. The current Constitution outlines the provisions related to protection of fundamental rights and freedoms in Chapter III - Declaration of Rights. The Constitution provides for protection of the right to life; right to personal liberty; protection from slavery and forced labour; protection from inhuman treatment; protection from deprivation of property; protection from arbitrary search or entry; protection of freedom of conscience; freedom of expression; freedom of assembly and association; freedom of movement; and protection against discrimination. According to the Constitution, an international treaty does not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament.

9. Zimbabwe has a dual law system constituting customary law and general law. Customary law is interpreted as the law applicable to people observing a traditional lifestyle while general law comprises of laws created by statute applicable to people observing a modern lifestyle. The general law is predominantly a mixture of Roman–Dutch law and English common law.

### **c. Institutional and human rights structure**

10. Pursuant to Constitutional Amendment No.19, the executive authority under the GPA is shared between the President, the Prime Minister and the Cabinet. The legislative authority of Zimbabwe is vested in Parliament. The President is also able to make law under the Presidential Powers (Temporary Measures) Act. The judicial authority of Zimbabwe is vested in the Supreme Court, the High Court and Courts Subordinate, the Magistrate Courts, Small Claims Court and Traditional Courts. Special courts, such as the Labour Court, the Victim Friendly Courts, the Commercial Court and the Administrative Courts can be established by legislation.

11. In line with Constitutional Amendment No.19, the Zimbabwe Human Rights Commission was established in 2010 to promote and protect human rights. The statute to guide the functions of the Commission has not yet been enacted. The statute is crucial in setting out the structure and functions of the secretariat of the Commission and its conditions of service. The statute will also give clarity on powers of the Commission against broad and generalized provisions in the Constitution. An office of the Public Protector has also been established under the current Constitution to protect citizens against administrative injustice. Moreover, an Organ for National Healing, Reconciliation and Integration (ONHRI) has been established in the context of the GPA.

11. There also exists a Commissioner for Refugees (CoR), who has the overall responsibility for refugee protection, including provision of facilities and services for reception and care. Specific administrative decisions related to immigration issues concerning refugees and asylum seekers are taken directly by the Department of Immigration and the Zimbabwe Republic Police.

### **d. Policy measures**

12. The provisions of the Declaration of Rights are implemented through specific policies, strategies, programmes and plans; these include: the Victim Friendly System for survivors of violence against children and gender-based violence, the National Gender Policy, the National Educational Strategic Plan for Education for All towards 2015, the National Health Strategy for Zimbabwe (2009-2015), the National Child Survival Strategy (2010-2015), the Village Health Worker Programme, the National Policy on HIV and AIDS and National AIDS Strategic Plan, the National Action Programme for Water and Sanitation, and the Employment Policy 2010.

13. Vulnerability of households and high levels of poverty caused by the economic crisis of the last decade are addressed through Short Term Economic Recovery Programmes (STERPI&II) and the draft Medium Term Plan (2011-2015) that feature pro-poor macro-economic strategies. Support to

most vulnerable children has been delivered through the National Action Plan (NAP) for Orphans and Vulnerable Children (2006-2010). The second phase of the NAP, with strong focus on social protection, runs from 2011. A Basic Education Assistance Module (BEAM) that provides school and examination fees assistance has been implemented in Zimbabwe since 2001, ensuring continued access to education by orphans and vulnerable children (OVC).

14. However, implementation of policy frameworks and strategies remains a challenge due to multiple factors, including economic constraints and capacity gaps.

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **a. Cooperation with international human rights mechanisms**

15. Zimbabwe cooperates with key UN human rights mechanisms. However, reporting to treaty bodies has been lagging behind since 2000, with many reports overdue. Certain improvements were observed recently, such as: the second CEDAW state party report combining the 2nd - 5th reporting periods was submitted in 2009; and the periodic report on the Convention on the Rights of the Child has been compiled and is awaiting Cabinet approval. Zimbabwe needs to strengthen its cooperation with UN special procedures and facilitate invitations to conduct fact finding missions.

### **b. Implementation of international human rights obligations**

#### **i. *Equality and non discrimination***

16. The current Constitution provides for the protection against discrimination on the grounds of race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability. The Constitution is silent on discrimination on the basis of sexual orientation.

17. Discrimination of HIV positive people is prohibited under the National HIV and AIDS Policy. Non-discrimination in respect of employment is covered by the Statutory Instrument (SI 202) of 1998. HIV screening for purposes of employment is prohibited. Moreover, protocols for AIDS research are reviewed by the Medical Research Council of Zimbabwe (MRCZ) and other appropriate review ethics committees.

18. A number of laws have been passed to promote women's rights; for example, in the equitable devolution of matrimonial property, the surviving spouse and children become the primary beneficiaries in a deceased person's estate. However, the implementation of laws can be affected by the primacy of customary law as per section 23 of the Constitution. Also, the Guardianship of the Minors Act provides a married father with the legal right of guardianship for the children, whereas the mother only has a right to be consulted. At the same time, as a result of a Supreme Court ruling, women can now apply for their children's passports independent of the father.<sup>4</sup>

#### **ii. *The right to life, liberty and security of persons***

##### **• Use of excessive force**

19. In the African and UN peacekeeping missions in which it has participated, the Zimbabwe Republic Police (ZRP) has been regionally and internationally recognised as a well-trained force that discharged its mandate satisfactorily. However, concerns have been noted on the use of excessive force in handling some cases in Zimbabwe.<sup>5</sup>

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<sup>4</sup> Margaret Dongo vs Registrar General and another, Supreme Court Case No. 6/2010

<sup>5</sup> *Mwachinduka v. Minister of Home Affairs*, HC 56-2006, HC 3240/02), High Court, Harare, 17 May 2006); meeting with the ZCTU, 16 Aug. 2009, Gweru.

- Gender based violence

20. The Demographic Health Survey (DHS) of 2005-2006 suggests that violence of all types is a significant issue, particularly for girls and women. The Victim Friendly System established in the country seeks to deliver comprehensive and specialized psychosocial care, as well as medical, legal and referral services to survivors of sexual abuse through Victim Friendly Police Units (VFU), Courts and Clinics.

- Enforced disappearances/torture and ill treatment

21. In December 2008, several people were arrested on suspicion of engaging in unlawful military training. The suspects were arrested and detained for several weeks before court appearances. During this time, and at the time they appeared before the court, the suspects reported that they had been tortured and ill treated. Consequently, the Supreme Court ordered permanent stay of prosecution in all the cases.<sup>6</sup>

### **iii. Administration of justice and the rule of law**

22. The judiciary has been facing capacity limitations which have negatively affected the quality of case management. The high costs of legal fees also limit access to justice for poor populations. In some instances, there are perceptions that prescribed orders by the court are ineffective due to defiance of court orders.<sup>7</sup>

23. Section 121 of the Criminal Procedure and Evidence Act allows the state to appeal against the order granting a bail. This effectively means that a person granted bail could be incarcerated for a further seven days.<sup>8</sup>

24. There is no specialized juvenile justice system, although the government is currently designing a pre-trial diversion program for children who commit non-violent property or other minor offences. Minors who commit crimes are not eligible to access the Victim Friendly System and suffer from a lack of specialized legal and other assistance, although in many cases these children are victims of abuse and neglect themselves. The criminal age of responsibility for children is set at seven years, amongst the lowest in the world; this subjects children, particularly boys, to corporal punishment and imprisonment.<sup>9</sup>

25. Legal aid support in the country is limited and under-resourced. There are currently only 17 legal aid lawyers in Zimbabwe, all of whom are situated in the large cities of Harare and Bulawayo.

### **iv. Prison conditions**

26. Zimbabwe has legislation that covers prisoners' rights, such as the Prison Act [Chapter 7:11] and the Prison Regulations, which address issues of clothing, hygiene and health care among others. The economic challenges faced by the country in the past several years negatively affected the conditions in prisons, manifesting in food and safe water shortages, inadequate clothing, and limited access to medical treatment. Female prison populations have also suffered due to lack of sanitary wear and facilities as well as amenities for babies and infants.<sup>10</sup>

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<sup>6</sup> Jestina Mukoko vs. Attorney General Supreme Court Case No: 36/09.

<sup>7</sup> Matinenga vs Minister of Home Affairs High Court Case No: 2951/08 where police defied a court order to release Advocate Matinenga after court found no evidence to support public violence charge. See also Biti vs Commissioner General and others High Court Case No. 3089/08 where police refused to obey an order to produce one Biti before the court after he was charged with high treason.

<sup>8</sup> Chiyangwa vs. State & others Supreme Court case No: 1/2004

<sup>9</sup> Situation Analysis on the Status of Women and Children in Zimbabwe: A call for reducing disparities and improving equity 2005-2010, UNICEF 2010

<sup>10</sup> Ministry of Justice and Legal Affairs, Interministerial Committee on Human Rights and Humanitarian Law Prison Visits Report 2010. See also Second Quarterly Report 2009 to UNDP by Zimbabwe Lawyers for Human Rights incorporating Prison Tour ( 4-9 April 2009) Report

27. Overcrowding is still a challenge in some prisons; and attempts are being made to reduce prison populations through alternative sentencing, which imposes non custodial sentences.<sup>11</sup> Some holding cell facilities have been declared not suitable for human detention by the courts. For example, the Supreme Court declared that the conditions of holding cells at Matapi police station violate the right to freedom from inhuman and degrading treatment.<sup>12</sup>

28. In addition, access to justice for incarcerated persons was significantly curtailed by lack of fuel to transport accused persons to court hearings and the high costs of accessing legal representation. The government led legal aid mechanism, which offers pro bono legal aid, is not able to meet demand for services. While there are improvements in the food situation in prisons, other challenges remain to be addressed.<sup>13</sup>

#### **v. Right to privacy, marriage and family life**

29. Within the Customary Marriages Act, polygamy is accepted. The payment of *lobola* (bride price) is also a common practice.

#### **vi. Freedom of expression, association, assembly, movement and participation**

- Media and freedom of expression

30. The current Constitution protects the freedom of expression and provides for the establishment of the Zimbabwe Media Commission tasked, inter alia, to uphold and develop freedom of the press. Both public and privately owned newspapers are operational in the country. At the same time, there is only one public broadcaster and no private and independent media broadcasters. Zimbabwe ranked 136 out of 175 states according to the World Press Freedom Index. In one instance, the Media Commission of Zimbabwe (MCZ), which was responsible for the regulation of media, was found by the court to be biased.<sup>14</sup> The new Zimbabwe Media Commission has since replaced the MCZ in an effort to facilitate a better media landscape.

- Association and assembly

31. While there is provision in the Constitution for the right of association, the Public Order and Security Act (POSA) has been seen to be restrictive, hindering people from fully enjoying the right to assembly.<sup>15</sup> Numerous meetings for political parties and civil society groups have been denied. A number of cases have been taken to the courts to contest this.<sup>16</sup> A private members bill was introduced to Parliament in 2010 to amend POSA. It now awaits further debate in parliament before it can be finalized.

32. In November 2008, the Governing Body of the ILO decided to set up a Commission of Inquiry, in accordance with article 26, paragraph 4, of the ILO Constitution, to examine the complaints filed by a number of delegates to the International Labour Organisation Conference of June 2008 concerning the observance by the Government of Zimbabwe of Conventions Nos. 87 and 98 on freedom of

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<sup>11</sup> Ibid

<sup>12</sup> Nancy Kachingwe and another vs Minister of Home Affairs and another Supreme Court Case No: 145/2004

<sup>13</sup> Ministry of Justice and Legal Affairs, Interministerial Committee on Human Rights and Humanitarian Law Prison Visits Report 2010. See also Second Quarterly Report 2009 to UNDP by Zimbabwe Lawyers for Human Rights incorporating Prison Tour( 4-9 April 2009) Report

<sup>14</sup> Associated Newspapers of Zimbabwe Pvt Ltd vs the Media Commission of Zimbabwe case No: AIPP No.1/2003 where the court found the chairperson of the Media Commission to have bias against the Daily News in refusing them a license to operate.

<sup>15</sup> Zimbabwe Congress of Trade Unions VS Officer Commanding Harare District and another 2002 (1)ZLR 323

<sup>16</sup> Biti vs Minister of Home Affairs Supreme Court Case No: 9/2002, where police powers to restrict meetings based on provisions of POSA were challenged. See also, MDC VS Commissioner of Police and others Supreme Court Case No: 142/2008 where a police ban to hold political meeting in Harare and Chitungwiza was pronounced ahead of the 2008 elections.

association.<sup>17</sup> In April 2010, the Government of Zimbabwe informed ILO that it accepted the recommendations and welcomed the guidance and support of the ILO in their implementation.

- Participation in public and political life

33. Since 2000, parliamentary and presidential elections in Zimbabwe have resulted in contested outcomes. In 2008, a total of 105 election petitions were filed, 68 by MDC(T) and 37 by ZANU-PF.<sup>18</sup>

34. The disagreement over results of the 2008 presidential elections caused many incidences of violence, loss of human life, displacement, and property loss. This was recorded in election observer reports, including those written by SADC and the AU. This prompted the AU to mandate SADC to facilitate negotiations amongst Zimbabwe's main political parties, subsequently resulting in the Government of National Unity, which is currently in place.

35. In order to create a conducive environment for free and fair elections, the Zimbabwe Electoral Commission (ZEC) and other electoral management bodies have sought assistance to build their internal capacity. The Ministry of Justice and Legal Affairs proposed a range of legislative reforms to strengthen the legal framework for conducting elections.

36. Children's right to participation have been recognized through their participation in the constitution-making process, in which 4,000 children's views, priorities and ideas were heard. Moreover, women interest groups contributed to constitution-making during the public outreach programme.

**vii. Right to social security and to an adequate standard of living**

37. According to the 2003 Poverty Assessment Study Survey (PASS II), the population living below the Total Consumption Poverty Line (TCPL) rose from 55 percent of total population in 1995 to 72 percent in 2003.

38. The situation is likely to have worsened due to sharp economic decline between 2000 and 2008, with women and children being the most affected. The feminization of poverty in Zimbabwe is manifested through a higher prevalence rate of poverty among female-headed households, with 68 percent of female headed households living under TCPL in 2003.<sup>19</sup>

39. People with disabilities experience a slightly higher prevalence of extreme poverty at 61 percent, compared to those without disabilities at 58 percent. At the same time, rural households experienced higher prevalence of poverty.<sup>20</sup>

40. The high level of malnutrition attributed to food insecurity and poor caring practices, including low rates of exclusive breast feeding, are responsible for mortality and ill health among children under five.<sup>21</sup> The percentage of underweight children under-fives rose from 13 percent in 1999 to 18 percent in 2003 and stood at 15 percent in 2010.<sup>22</sup>

41. Access to basic social services for children, including social security, has been hindered by delays with issuing birth certificates: only 37 percent of children under the age 5 have birth certificates.<sup>23</sup> This also means that children's right to a name has not been fully realized.

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<sup>17</sup> Government of Zimbabwe of Conventions Nos. 87 and 98 on freedom of association

<sup>18</sup> *Zimbabwe geared up for another election? Then and now: 2008 Election in retrospect*, at page 108, A publication of the Zimbabwe Lawyers for Human Rights, 2010.

<sup>19</sup> Millennium Development Goal Status report, 2010

<sup>20</sup> Ibid

<sup>21</sup> Zimbabwe Nutrition Survey 2010

<sup>22</sup> Millennium Development Goal Status report, 2010

<sup>23</sup> Multiple Indicator Monitoring Survey , 2009,

42. The National Social Security Authority (NSSA) is legally empowered, through the National Social Security Authority Act Charter, to enforce social security legislation. However, the national social security system has been ineffective in cushioning pensioners when they retire or catering for adequate compensation for workers injured at work places.<sup>24</sup> However, the recent revision of the National Action Plan for OVC and the establishment of a national social cash transfer programme targeting extremely poor households could lead to improvements in this area.

**viii. Right to education and to participate in the cultural life of the community**

43. The Education Act meets the basic requirements of Article 28 of the CRC.<sup>25</sup> The country has consistently maintained high levels of primary school enrolment and literacy rates. The net enrolment ratio increased from 81.9 percent in 1994 to 98.5 percent in 2002. Literacy rates were pegged at 88 percent in 2006; and total adult literacy rate for 2000-2007 was 91 percent.<sup>26</sup> However, with the economic decline, there has been a gradual decrease in enrolment and completion rates. The net enrolment ratio was recorded at 91 percent in 2009 (MIMS), while completion rates dropped from 82.6 percent in 1996 to 68.2 percent in 2006 (2010 MDG Status Report). The movement of people as a result of land resettlement has impacted on access to education.<sup>27</sup> Moreover, long distances from home to school affects 14 percent of children nationally.

44. There has been gender parity in elementary school and near parity at lower secondary level. However, gender disparities tend to increase in upper secondary and higher levels, with lower representation and completion rates for girls. Females are under-represented in universities (39.52 percent) and polytechnics (44.28 percent), while they are over-represented in primary teachers' colleges (71.82 percent) and secondary teachers' colleges (63.09 percent).<sup>28</sup>

45. At the primary school level, education is tuition-free, although there are other fees or levies parents and guardians have to bear. The Ministry of Education is providing core text books and stationery to all primary schools through the Education Transition Fund (ETF).

46. According to the 2010 MDG Status Report, quality indicators, such as examination results, quality of the curricula and textbooks, teacher morale, and professional leadership and supervision at schools, have shown a sharp deterioration between 1990 and 2009. According to the Education at a Glance 2009 by MoESAC, pass rate for Grade 7 exam declined from 60-70 percent to 39.4 percent from 2004 to 2009. In the 2009 sample survey, 90 percent of teachers indicated that they were demoralised and dissatisfied with the conditions of service, including poor salaries. In addition, most syllabi are between 10 – 26 years old and are thus outdated.

**ix. Right to health**

47. Zimbabwe adopted the Primary Health Care Concept in 1980 to ensure access to Health for all citizens. The economic decline of the last decade has had a severe impact on the ability of the public sector to deliver on basic services and brought a decline in the health indicators. For example, the under-five mortality rate rose from 77/1,000 live births in 1994 to 86/1,000 live births in 2009 (MIMS 2009), while the maternal mortality rate increased from 283 per 100,000 live births in 1994 to 725 per 100,000 in 2007.<sup>29</sup>

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<sup>24</sup> Pensioners, workers cry over NSSA remittances, The Standard 6 November 2010.

<sup>25</sup> Ministry of Education, Sports and Culture, 2004.

<sup>26</sup> State of the World's Children, 2009

<sup>27</sup> Government of Zimbabwe (2003). *Poverty Assessment Study Survey (PASS)*. Harare: Ministry of Public Service, Labour and Social Welfare

<sup>28</sup> Government of Zimbabwe (2009). *Baseline report on the status of human capital development and training institutions in Zimbabwe*. Harare: Ministry of Higher and Tertiary Education.

<sup>29</sup> Zimbabwe Maternal and Peri-Natal Mortality study, 2007, Munjanja et al.

48. The National Health Strategy for Zimbabwe (2009-2013): Equity and Quality in Health - A People's Right, has been designed to reverse the decline. The Strategy sets out the targets towards the attainment of the health-related MDGs through ensuring universal access to quality services.

48. However, the practice of user fees hampers access to essential health services, especially for populations who are poor and vulnerable, including IDP communities. User fees severely limit access to essential free health services at primary, district and provincial care levels for children under the age of five and pregnant women. While 93 percent of women aged 15-49 years who gave birth during the two years preceding the 2009 Multiple Indicator Monitoring Survey received antenatal care (ANC) during pregnancy at least once (recommended – four), 39 percent of the women delivered at home. The immunization status for one year old children against measles is at 73 percent while the recommended coverage is at least 90 percent. Religious practices by some members of apostolic groups also prevent access to health services, including immunization. Moreover, stunting prevalence (moderate and severe) among the under fives is 33.8 percent.<sup>30</sup>

49. The 2009 HIV Estimates Report indicates that an estimated 1.2 million Zimbabweans are living with HIV, of them 45,224 are children under 15. About 90 percent of infections in children are ascribed to mother-to-child transmission. The country has introduced early infant diagnosis of HIV and improved access to treatment and care services for children. Despite intensive scale up of treatment, the paediatric AIDS coverage is at 37 percent, and the adult ART coverage stands at 57 percent, which is below the 80 percent target (Universal Access Report 2011).

50. The Zimbabwe National HIV and AIDS Strategic Plan (ZNASP) 2006-2010 had prioritised the needs of vulnerable populations, including women and girls, youth, mobile populations, people with disabilities, prisoners, sex workers, men who have sex with men (MSM), and survivors of rape and sexual abuse. ZNASP II will continue to address the needs of the most vulnerable populations, with further emphasis on their inclusion and empowerment.

51. According to the 2010 Joint Monitoring Report, the proportion of people with access to safe drinking water marginally increased from 78 percent in 1990 to 83 percent in 2010; and sanitation coverage stagnated at 66 percent to 65 percent over the same period. In rural areas, only 42 percent of people currently have safe sanitation facilities, in comparison to 47 percent in 1990. Also, open defecation stands at 42 percent. Inadequate supply of safe drinking water and inadequate sanitation systems contributed substantially to the 2008-09 cholera epidemic.

52. Access to basic mental health care and treatment remains poor throughout the country, particularly in peripheral facilities. There is emphasis on psychotropic medication with little being done around rehabilitation, counselling and education. Only few social workers are available to facilitate community reintegration of people recovering from mental disorders. Pupils or students experiencing mental illness usually drop out of school or university due intolerance, fear and stigma.<sup>31</sup>

#### **x. Land and land rights**

53. The rationalization of the land reform process, which the government embarked on in the 1980s and accelerated in 2000, is central to addressing agricultural production and food security in Zimbabwe. The GPA envisions a set of reforms on land, including conducting a comprehensive, transparent and non-partisan land audit to establish accountability and eliminating multiple farm ownerships. These reforms are to benefit all citizens, regardless of political affiliation, race, ethnicity and gender, also providing sustainable tenure and mobilising support for financing of compensation and agricultural activity.

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<sup>30</sup> National Nutrition Survey, 2010

<sup>31</sup> Ministry of Health and Child Welfare Annual Report, 2009



54. The Land Acquisition Act of 2004 and the Matrimonial Causes Act of 1985 provided the legislative framework for land reform. The latter includes gender as one of the grounds upon which discrimination on ownership of land is prohibited through Constitutional Amendment No. 14 of 1996.

55. The Land Policy of 1996 has been aiming to restrain community “self provisioning” of land and gradual redistribution of land equitably among the formerly disadvantaged population. Post 2000 the gradualist processes were accompanied by compulsory land acquisition and redistribution<sup>32</sup>.

56. The land reform programme models (A1 and A2) are heavily skewed in favour of men despite the fact that women have the highest number of participants in agriculture. Only 18 percent of beneficiaries under the A1 model (peasant farmers) are female-headed households while under the A2 model (commercial farmers) women constituted only 12 percent. Those women who applied for land together with their husbands often had the land registered in the husband’s name. Other constraints faced by women include limited access to credit due to lack of collateral security, lack of sustainable markets and limited security of tenure resulting from discriminatory customary laws.<sup>33</sup>

57. The government is in the process of establishing an independent National Land Commission to look into the land issues. It is also noted that there has been a growing willingness from some local authorities to allocate land to IDPs for resettlement/reintegration purposes where humanitarian support is provided.

#### **xi. Environment and natural resources**

58. Part of the framework for environmental management includes the Environmental Management Policy of 2009 as well as the Environmental Management Act which establishes the Environmental Management Agency. Over 70 percent of the population depends on biomass energy; and rural women in particular are at risk of indoor air pollution.<sup>34</sup>

59. According to the Zimbabwe 4th National Biodiversity report produced in December 2010, the proportion of land area covered by forest has been falling significantly, estimated at 330,000 hectares per year. The major changes to the country’s forestry biodiversity is a result of a decline in woodland cover from 53 percent in 1992 to 42.34 percent in 2008 and expansion of crop-cultivated land from 27.48 percent in 1992 to 41.24 percent in 2008.<sup>35</sup>

60. The issue of natural resource benefit sharing between indigenous populations and trans-national conglomerates, particularly for the extractive sector, is topical. Granite and diamond mining in Mutoko and Chiadzwa areas of Zimbabwe cause environmental degradation and displacement of local people, who benefit minimally from such economic operations.<sup>36</sup>

61. Zimbabwe has observed warming trends generally consistent with the global observations. A set of climatic extremes show that the monthly highest daily maximum temperatures for most of the country are on the increase, by about 2 degrees per century; and the percentage of days with low temperatures is decreasing at a rate of about 15 days/century. National average rainfall has declined by about 5 percent from 1900 to 2000, notwithstanding the episodes of wetter than average conditions, during the 1920s, 1950s and 1970s.<sup>37</sup> There is currently no comprehensive climate change policy, legal and institutional framework.

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<sup>32</sup> Report of the Presidential Land Review Committee, Vol. 1 & 2, 2003; Utete CBM

<sup>33</sup> Ibid

<sup>34</sup> Energy Resources Assessment Study, 2007

<sup>35</sup> Extractive Industries Policy and Legal Handbook, 2011

<sup>36</sup> Ibid

<sup>37</sup> Fact Sheet on Climate variability and Change in Zimbabwe- Environmental Management Agency Harare, (undated)

62. As a signatory to the 1997 Ottawa Mine Ban Treaty, Zimbabwe has taken the first important steps to address identification and clearance of mines largely laid by the former Rhodesian army. Both a National Mine Action Authority and a Mine Action Centre have been established; but the clearance efforts have suffered, as a result of the economic instability from 2000.

#### ***xii. Right to housing***

63. Zimbabwe has a housing backlog of approximately 1 million people on the city's waiting lists, with limited budgetary resources resulting in informal settlements in cities.<sup>38</sup> The National Housing Policy (2000) reviewed in 2010 and the Social Amenities Policy (2006) represents the core guiding policies of the Ministry of Housing and Social amenities. There are other laws and policies relevant to human settlements that are administered by other arms of government and other ministries. The regional Town and Country Planning Act (Chapter 29:12) has been a source of challenges in cities' interface with homeless people and home seekers. Home seekers have often resorted to putting up shelter on unplanned land whilst the local authorities have evicted them using the above legislation. The Government has over the past five years been reviewing policies and regulations to ensure there are pro-poor and lead to an increase in housing stock.

#### ***xiii. Migrants, refugees asylum seekers, stateless persons and IDPs***

- Migrants

69. In the last four years, Zimbabwe has received different types of immigrants, including, among other groups, trafficked and smuggled persons. Likewise, Zimbabwe has also produced large-scale migration flows, whereby many people have moved permanently and semi-permanently to neighbouring countries and even further afield in search of economic opportunities and/or asylum.<sup>39</sup> Non – Zimbabwean undocumented migrants in Zimbabwe, including asylum seekers and victims of smuggling or trafficking in persons, as well as undocumented Zimbabweans elsewhere, are rendered vulnerable by their lack of documentation and susceptible to exploitation and possible prosecution for immigration violations.

70. The government criminalizes human trafficking and smuggling by using different pieces of legislation within the Criminal Law (Codification and Reform) Act of July 2006. As of now, Zimbabwe has yet to sign and ratify the 2000 UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children.

- Refugees, asylum seekers and stateless persons

71. Zimbabwe hosts about 5000 refugees and asylum seekers<sup>40</sup>, primarily from the Democratic Republic of Congo (DRC), Rwanda and Burundi. Zimbabwe receives an average of 50-75 new asylum seekers each month, primarily from DRC but increasingly from Somalia and the Horn of Africa. There are regular monthly outflows due to irregular movements, primarily to neighbouring countries and also owing to UNHCR supported third-country resettlement.

72. Reservations to the 1951 Convention, as domesticated in the 1983 Refugees Act<sup>41</sup>, including on employment, education, public relief, social security and freedom of movement, negatively impact on the self sufficiency and overall socio - economic development of and support for refugees and

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<sup>38</sup> MDG Status Report, 2010

<sup>39</sup> See, e.g., Zimbabwe National Statistics Agency & IOM, Migration in Zimbabwe : A Country Profile 2009, pp. 35 – 37 ; SAMP, Zimbabwe's Exodus, Crisis, Migration, Survival, 2010

<sup>40</sup> See UNHCR Global Appeal 2011 (Update), p.122.

<sup>41</sup> See Refugees Act 13/1983, 22/2001(s. 4), Chapter 4:03.

asylum seekers. The right of independent judicial appeals is not provided for and is rather decided by the Minister of the Labour and Social Services (MLSS).

73. Reception facilities for refugees and asylum seekers at several border crossings are inadequate or non-existent; and asylum seekers are often kept in detention facilities that include criminals. The same is true for persons found to be in violation of the encampment policy. Likewise, challenges exist concerning limited local integration (permanent residence / naturalization) prospects for a durable solution.

74. As concerns statelessness, and owing to challenges arising in the context of independence as well as related to a long history of cross-border migration, citizenship issues in Zimbabwe, as elsewhere on the Continent, are complex. There are no official, comprehensive statistics on stateless persons. Zimbabwe has embarked on a structured process for assessing opportunities to address these issues including, inter alia, accession to the 1961 Stateless Convention and creation of applicable administrative mechanism to implement obligations under both the 1954 and 1961 Stateless Conventions.

- Internally displaced people

75. There are no official statistics on the number of IDPs in Zimbabwe.<sup>42</sup> A significant number of Zimbabweans have been uprooted from their homes or lost their livelihoods as a result of various factors and events including: former farm workers who lost their residences and livelihoods when the farms they worked on were acquired by new owners; Operation Murambatsvina (the urban operation in 2005 targeting illegal constructions);<sup>43</sup> politically-motivated violence, particularly in the period leading up to the second round of presidential elections in 2008; and natural disasters, typically localised floods, leading to temporary displacement.<sup>44</sup> The needs for assistance and protection vary greatly, depending on the time spent in displacement and the conditions in the host community. While a few IDP communities depend on emergency humanitarian assistance, others are in a state of early recovery or are beginning to integrate in their host communities. Basic needs include food security, as well as access to adequate health care, water and sanitation, shelter, sustainable livelihoods, land tenure, education and civil status documentation.

76. Recent assurances from the Government to undertake a joint nationwide quantitative IDP assessment as a follow-up to a more limited Joint Needs Assessment already conducted, coupled with steady progress on ratification and domestication of the Kampala Convention, are very welcome developments and should clarify the situation if performed in adherence to international agreements on IDPs.

### **III. KEY CHALLENGES, PRIORITIES AND COMMITMENTS**

77. Key challenges identified are:

- Economic decline experienced during the reporting period resulted in rising levels of poverty and in severe deterioration of all social services. Consequently, the country may not achieve the MDGs by 2015.
- Economic decline brought about the deterioration of infrastructure and unprecedented loss of qualified and experienced personnel to neighbouring countries and beyond led to the erosion of

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<sup>42</sup> See Zimbabwe 2010 Consolidated Appeal, p. 3 and pp. 55-57.

<sup>43</sup> See Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, 2005.

<sup>44</sup> IDMC Report. Official acknowledgment of displacement yet to be translated into strategies for durable solutions, May 2010

institutional and human capacity in all sectors. Competing development priorities in a limited fiscal space continue to hamper the recovery and growth of the key socio-economic sectors.

- Slow implementation of some outstanding issues in the Global Political Agreement.

#### 78. Key national priorities, initiatives and commitments

- Ensuring economic stabilization and recovery as well as sustainable and pro-poor growth development.
- Leading governance reforms with priority centred on the promulgation of a new Constitution, strengthening the administration of justice, enhancing institutional capacity of governance institutions and promoting national healing, reconciliation, integration, equality, cohesion and unity.
- Operationalising and strengthening the Zimbabwe Human Rights Commission.
- Promoting capacity development, resource mobilisation and implementation of the priority social protection policies and programmes, such as the National Action Plan for Orphans and Vulnerable Children; the Basic Education Assistance Module; the National Employment Policy; the National Health Strategy and National Health Investment Case; the National AIDS Strategy and others.
- Enhancing national legislation through incorporation in the national law of the provisions of the Kampala Convention; enactment of a national legal framework to address the issues of migration and trafficking of persons.
- Enhancing the implementation of the gender policy as well as capacity development of the Domestic Violence Council for monitoring implementation of the Domestic Violence Act.

## IV. RECOMMENDATIONS

79. In seeking to build national capacity to promote, protect, respect and fulfil human rights in Zimbabwe and to achieve better overall compliance with the international human rights standards, the UN in Zimbabwe recommend that Zimbabwe, *inter alia*:

### a. Ratification, acceding and domestication

- Ratify relevant international instruments and optional protocols, including the: Convention against torture and other cruel inhuman and degrading treatment; UN Convention on the rights of persons with disabilities; CRC optional protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict; UN protocol to prevent, suppress and punish trafficking in persons especially women and children; and Convention on the protection of the rights of all migrant workers and members of their families.
- Accede to the 1961 Stateless Convention.
- Domesticate by incorporating into national legislation all key human rights instruments.
- Withdraw reservations to the 1951 Refugee Convention, especially as relates to the rights to movement, work and education.
- Improve compliance with ILO Convention Nos. 87 and 98 in law and practice.

### b. Constitutional guarantees of human rights

- Ensure that the bill of rights in the new Constitution under development protects all generations of rights, including: rights of women, children, persons with disabilities, IDPs, asylum seekers, refugees and migrants.

### c. Legislative review

- Update national legislation to comply with international obligations and standards, including criminal laws on HIV-related issues, 1983 Refugees Act and associated legislation, the Immigration Act and applicable regulations, security and media legislation.

### d. Capacity development of NHRIs

- Operationalise and capacitate the Zimbabwe Human Rights Commission and other national human rights institutions to ensure the promotion and protection of human rights, including trade unionism.
- Support the Anti Corruption and Media Commissions.
- Strengthen the capacity of the Organ for National Healing, Reconciliation and Integration (ONHRI) to ensure successful transition and national cohesion.

#### **e. Policy formulation and implementation**

- Facilitate the formulation, review, update and implementation of relevant policies, including a comprehensive Human Rights Policy; the National Nutrition Policy; the Infant and Young Child Feeding Guidelines; the National Gender Policy; and the National HIV and AIDS Policy.
- Strengthen transparency and accountability of all constituencies involved in the implementation of such policies, strategies, programmes and plans.

#### **f. Judiciary reform**

- Take steps to strengthen the capacity and the functioning of courts in dispensing justice.
- Ensure that court personnel are adequately trained in human rights.

#### **g. Cooperation with UN mechanisms**

- Submit periodic reports to UN Treaty Bodies in a timely manner and facilitate invitations for UN Special Procedures mandate holders to carry out fact finding missions.

#### **h. Gender equality and equity**

- Enforce national policies and legislation to uphold human rights and prevent and address the marginalisation and exclusion of women, children and other vulnerable groups from the economic, social and political spheres of society.

#### **i. Birth certification and other civic status documentation**

- Remove barriers and ensure access to birth certification and other civic status documentation, with particular emphasis on the most vulnerable children and stateless persons.

#### **j. Socio-economic and political dialogue**

- Strengthen and support socio-economic and political dialogue as a tool to promote democracy.

#### **k. Basic social services**

- Prioritise provision of basic social services including adequate water and sanitation in both urban and rural areas.

#### **l. Human rights training for security services**

- Ensure human rights training and education of the police, security forces, prison officers, civil society, social partners and the media.

#### **m. Landmines**

- Enhance the implementation of de-mining programmes.

#### **n. Resource mobilisation**

- Prioritise adequate internal and external resource mobilisation, including effective management of these resources for the provision of basic social services.

### **V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE**

80. The United Nations is committed to providing technical support, advisory services and other support in accordance with mandates and available resources. UN agencies will also cooperate with the Government of Zimbabwe and partners for resource mobilisation and knowledge building.