



Zimbabwe
HUMAN RIGHTS
NGO Forum

***“Resolute action to immediately
revive the grassroots structures?”
Or Crimes Against Humanity?”***

**Report produced by the Zimbabwe Human Rights NGO
Forum and the Research & Advocacy Unit**

December 2008

¹ This quote is taken from the report issued by the Zimbabwe Republic Police. See ZRP (2008), *Opposition Forces in Zimbabwe. An Orgy of Destruction: The MDC(T) Campaign of Destruction. Village 1 & 2 Mayo Resettlement Area*. Police General Headquarters, 25 April 2008.

1. Background

The Zimbabwe Human Rights NGO Forum [the "Human Rights Forum"] issued a report in July 2008 analysing the reports received during April 2008.² In this report, the Human Rights Forum made the very strong allegation that the Government of Zimbabwe is complicit at the least in the commission of Crimes against Humanity. The Human Rights Forum had earlier issued a report on the post-election violence in which it raised this allegation. As the Human Rights Forum stated:

So the suggestion that crimes against humanity – the widespread, systematic and planned use of torture – are being perpetrated by a regime that may well no longer have a legitimate basis for continuing in government (and may well be avoiding handing over government) is a situation that deserves a more determined response from SADC and the AU than has been the case to date.³

This allegation was given deeper consideration in the July report, and, in this report, the Human Rights Forum concluded as follows:

Thus, the evidence before the Human Rights Forum corroborates all the recent reports, and indicates that state agents and supporters of ZANU PF are allegedly the preponderant perpetrators of these violations. The responsibility of the Zimbabwe government for protecting its citizens' stands seriously questioned, and even more so given the utterances of the most senior government and political figures that there is a situation akin to a war.⁴ There is an urgent need for the international community, and especially SADC, to bring the strongest possible pressure to bear on the Zimbabwe government to obey its constitutional responsibility, to ensure that all state agents act within the law, and that all proxy militia groups and party supporters are brought under civilian control, and, if this last is not possible, then there is the need for an international peace keeping force as some international leaders have suggested.

All evidence showed that the situation worsened in the aftermath of the highly disputed Presidential Run-off, and the rejection of the result by many countries, not least of all by a number of African countries – Botswana, Rwanda, Nigeria, Sierra Leone, and Senegal – with even a call by the Kenyan Prime Minister, Raila Odinga, for a peace keeping force to be deployed in Zimbabwe. Furthermore, three of the major election observer groups – from the AU, the Pan-African Parliament, and SADC – indicated unequivocally that the Presidential Run-off fell short of acceptable standards, citing the

² See Zimbabwe Human Rights NGO Forum (2008), *Damn Lies? Gross human rights violations during April 2008*. Report produced by the Zimbabwe Human Rights NGO Forum and the Research & Advocacy Unit. 10 July 2008. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

³ See again Human Rights Forum (2008), *Can the elections in Zimbabwe be Free and Fair?* Paper produced by the Research and Advocacy Unit [RAU] for the Human Rights Forum, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM [page 11].

⁴ These statements and utterances by the Zimbabwe government and ZANU PF are not new, however, and have been a consistent feature of the political landscape in Zimbabwe since 2000. See here Zimbabwe Human Rights NGO Forum (2007), *Their Words Condemn Them: The Language of Violence, Intolerance and Despotism in Zimbabwe*, May 2007, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

violence, amongst other things, in the reasons for their conclusions. The Botswana government stated unequivocally that it would recognise Robert Mugabe as President.

Two other reports also suggested that the violence continued after the Presidential Run-off, and certainly indicated that the scale of the violence up to the time of signing the MoU was considerable. Based on 3,320 interviews, the Solidarity Peace Trust reported that there was a steady increase in the number of cases from April through to June, with June showing the highest number of cases, and a total of 107 murders reported, mostly associated with abductions and torture.⁵ The report also showed clearly the focused nature of the violence, with members of the MDC the overwhelming victims [61%], and the perpetrators being massively ZANU PF Youth, ZANU PF supporters, and "war veterans". However, state agents – police and army – were mentioned in a distressingly large number of cases. The second report, from the Zimbabwe Peace Project [ZPP], indicated a total of 16,400 cases since January 2008, with 15,122 falling since March 2008.⁶ ZPP reported 157 murders since January 2008, with 124 of these occurring in the months of May [47] and June [77]. A subsequent report from the ZPP indicated that the overall figure for 2008 had risen to 20,143 by the end of August.⁷

Figure 1
Monthly totals, violation totals & Average monthly totals of human rights violations.
[Source: Human Rights Forum, Monthly Political Violence Reports,

	2001	2002	2003	2004	2005	2006	2007	2008	Totals
Abductions	116	223	52	62	18	11	19	117	618
arrest & detention	670	274	627	389	1286	2611	2766	430	9053
Assault	0	86	388	401	530	486	865	1723	4479
attempted murder	0	2	10	10	1	3	0	8	34
death threats	0	12	80	35	9	7	7	47	197
disappearance	0	28	4	0	0	0	0	0	32
displacement	0	11	208	189	609	55	0	627	1699
Freedoms	12	39	809	760	1036	1866	3500	2161	10183
Murder	34	61	10	3	4	2	3	107	224
Political discrimination	194	388	450	514	476	288	980	2379	5669
property violation	356	807	153	132	61	55	16	381	1961
Rape	0	7	6	3	4	1	0	6	27
school closure	0	45	1	0	0	0	0	26	72
Torture	903	1172	497	389	136	366	603	699	4765
Total	2285	3155	3295	2887	4170	5751	8759	8711	39013
Monthly average:	380.8	262.9	274.6	240.6	347.5	479.3	729.9	1088.9	

⁵ See Solidarity Peace Trust (2008), *Desperately Seeking Sanity: What Prospects for a New Beginning in Zimbabwe?* 29 July 2008. DURBAN: SOLIDARITY PEACE TRUST.

⁶ See ZPP (2008), *Run up to 27 June 2008 Presidential Run Off Election*. July 25, 2008. HARARE: ZIMBABWE PEACE PROJECT.

⁷ See ZPP (2008), *September Report on Politically-Motivated Human Rights and Food-Related Violations*. HARARE: ZIMBABWE PEACE PROJECT.

The magnitude of the violations in 2008, and the comparative magnitude against previous years, is also shown in Figure 1 above.⁸ Clearly, 2008 is comparatively the worst year since reporting by the Human Rights Forum began, with an average monthly rate far exceeding even 2007, which was itself nearly twice as bad as previous years.

Hence, against this background, the conclusions of the Human Rights Forum cannot be seen as provocative or frivolous, but they do draw conclusions that most African countries, and their observer groups, were, and still are, unwilling to do. For example, whilst all observer groups to the Presidential Run-off concluded that the poll was not free or fair, and cited the unacceptable levels of violence, none attributed blame or castigated the Zimbabwe government for failure to, at the very least, prevent the violence. This failure to determine accountability leaves the inappropriate conclusion that the violence is the consequence of partisan clashes, when the evidence suggests wholly to the contrary that the violence is committed in the vast majority of cases by the supporters of the ZANU PF party, often with the complicity of the Zimbabwe Republic Police [ZRP] and the Zimbabwe National Army [ZNA], with very senior members of Robert Mugabe's government, and including Robert Mugabe, publicly condoning or inciting this through hate speech against the MDC and other opposition groups.

However, there was some awareness that the Zimbabwe government was at the least responsible for controlling or preventing the violence, as evidenced by a statement by the then Deputy Foreign Minister of South Africa, Aziz Pahad, who called on the Zimbabwe government to take immediate steps to end the violence, or the South African government "*would take whatever action is possible to stop it*".⁹ There is some acknowledgement in the Global Political Agreement [GPA], signed on 18 September, that there has been violence, but, inevitably, the GPA stops well short of ascribing blame.

However, it is crucial to both the success of the Agreement, the accompanying mediation and the long-term security of Zimbabwe that there is a concerted effort by all parties to determine the nature and extent of the violence, as well as attribution of the responsibility for the violence. Here, it is important to make reference to the GPA, which has called for an end to the violence, and to the taking of steps to ensure that the law is applied fairly. As the GPA states in Article 18:

⁸ Whilst the overall total for 2008 is considerably less than that reported by the ZPP, this is due in the main to differences in the methods of collecting information. The Human Rights Forum depends upon direct reporting of victims to itself and its members, and to a smaller degree (since the closure of the media space, and in particular the closure of the Daily News) on reports in the public domain. The ZPP receives reports from a wide network of community informants, and hence has wider capture, but not necessarily more reliable information.

⁹ "ZANU PF must stop violence, MP arrests or else we 'act'-Pahad", Gerald Harper · zimbabwemetro.com · July 4, 2008. <http://zimbabwemetro.com>.

18.5 The Parties hereby agree:

- (a) to promote the values and practices of tolerance, respect, non-violence and dialogue as means of resolving political differences;*
- (b) to renounce and desist from the promotion and use of violence, under whatever name called, as a means of attaining political ends;*
- (c) that the Government shall apply the laws of the country fully and impartially in bringing all perpetrators of politically motivated violence to book;*
- (d) that all political parties, other organisations and their leaders shall commit themselves to do everything to stop and prevent all forms of political violence, including by non-State actors and shall consistently appeal to their members to desist from violence;*
- (e) to take all measures necessary to ensure that the structures and institutions they control are not engaged in the perpetration of violence.*
- (f) that all civil society organisations of whatever description whether affiliated to a political party or not shall not promote or advocate for or use violence or any other form of intimidation or coercion to canvass or mobilise for or oppose any political party or to achieve any political end;*
- (g) to work together to ensure the security of all persons and property;*
- (h) to work together to ensure the safety of any displaced persons, their safe return home and their enjoyment of the full protection of the law.*
- (i) to refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or unfairly undermine each other.*

The inclusion of this section clearly comes about out of the recognition that violence and the encouragement of violence have been problems, as is also recognised in the Preamble, where it is stated that the Parties are "*DETERMINED to build a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality*". This obviously requires that the Zimbabwean security agencies desist from their previous partisan position, and provide the confidence building measures that the GPA demands.

However, as was indicated by the quote at the beginning of this report, derived from the recent report issued by the ZRP, it is not evident that the state security agencies can yet be trusted to be independent – this report quite clearly demonstrates the common understanding within Zimbabwe that the ZRP regards itself as an organ of ZANU PF. This is reinforced by the recent violence meted out to WOZA, the NCA, students, the Women's Coalition, and the residents of Mutare to cite a few egregious examples of the continued use of force against the citizens of Zimbabwe. The Zimbabwe government has tried to offset this adverse publicity through the intemperate accusation that the MDC-T and the Botswana government are collaborating in the training of military personnel for the overthrow of the Zimbabwe regime.

Hence the need for an independent, neutral assessment of the violence, and a first step here would be the public release of the report of the South African military mission sent to Zimbabwe earlier this year by the SADC facilitator, President Thabo Mbeki. In the absence of such independent evidence, and against the lack of the kind of confidence building by ZANU PF, expected of the *de facto* power, the Human Rights Forum issues this second report.

2. Selective reporting on the violations in Zimbabwe

As the Human Rights Forum pointed out in its July report, it is obfuscation for all groups involved in the Zimbabwe crisis to continue to characterise the gross human rights violations taking place as merely political violence, and this error is continued in the agreement signed on 15th September 2008. It is exactly because this error persists that the Zimbabwe Republic Police [ZRP] can issue misleading reports that claim serious violence has been committed by the MDC. As indicated above, the ZRP issued two reports; one claiming treasonous activities by the MDC and a range of civil society organizations, and another describing the alleged violence by the MDC. The first report, alleging treason, is easily dismissed for the simple reason that most of the claims about treason would not fit any known crimes of treason, rather detailing the kinds of civic and political actions accepted in all functioning democracies.¹⁰ The second report provided case studies of three incidents of political violence only, but characterises these as a mass violent onslaught against ZANU PF supporters: the claim and the supporting evidence are so manifestly contradictory that this report too requires little comment.¹¹

These reports, and the recent absurd claims that the MDC-T is training militia, seek to create the impression that there has been significant involvement of the MDC in the violence since the March 2008 election, and build upon two earlier reports issued by the ZRP in which the ZRP alleged that the MDC and a number of civic organizations are involved in "regime change".¹² These earlier reports were comprehensively refuted by a report of the Human Rights Forum.¹³ These most recent reports, however, went way beyond the attempt to create even a quasi-neutral depiction of the violence in the earlier reports, and were bluntly partisan and politically in support of ZANU PF. The quote below quite clearly illustrates the partisan views of the ZRP:

*During the recent Harmonized Elections, the two ZANU (PF) Makoni North House of Assembly candidates contested and split the party's votes giving the MDC (T) candidate Elton **MANGOMA** an undeserved advantage. Elton **MANGOMA** garnered 5 055 votes against Vongai **NEMAIRE's** 3 657 and Rosy Chipso Shiel **MAHERE's** 3 482 votes. The combined votes for the two ZANU (PF) candidates is 7139 meaning this could have resulted in a ZANU (PF) victory. One wonders why such*

¹⁰ See ZRP (2008), *Opposition Forces in Zimbabwe. The MDC(T) Profile of Treachery*. Police General Headquarters, 16 April 2008.

¹¹ See ZRP (2008), *Opposition Forces in Zimbabwe. An Orgy of Destruction: The MDC(T) Campaign of Destruction. Village 1 & 2 Mayo Resettlement Area*. Police General Headquarters, 25 April 2008.

¹² It is significant that references to violence in the 15 September Agreement do not attribute any causality, make further reference to "regime change", and make generalised statements requiring all political parties, and even civics, to refrain from violence or advocating violence. Here it is worth noting that there is no evidence from the past 9 years that civil society organizations have been violent or advocated violence.

¹³ See Zimbabwe Human Rights NGO Forum (2007), *At Best a Falsehood, At Worst a Lie? Shooting Oneself in the Foot? Comments on the Zimbabwe Republic Police Report "Opposition Politics in Zimbabwe. A Trail of Violence*. June 2007. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

political indiscipline among leaders should be allowed to go unchecked and expose the party to such ridicule.

In the polarised political space that characterises Zimbabwe, it is insufficient for SADC or any other external group to take a neutral position with regard to examining the veracity of claims about violence, and rather it should be expected that there should be credible attempts to investigate any claims. To date, both SADC and the AU have steadfastly avoided such a course of action, and instead have blocked any other party from such investigations. The lack of investigation allows SADC and the AU to treat all allegations as equivalent, and hence to perpetuate the myth continually propagated by ZANU PF that what characterises Zimbabwe is party political violence. This myth requires careful examination.¹⁴

3. Crimes against Humanity

Thus, it is unnecessary to deal with the ZRP's allegations in any detail before the issue of crimes against humanity is raised. As was pointed out in the last report by the Human Rights Forum, the evidence available to all overwhelmingly confirms the following:

- *Violations are widespread across the country;*
- *the alleged victims are disproportionately drawn from one group, which suggests strongly a systematic campaign of violence;*
- *both state agents and ZANU PF supporters are mentioned with high frequency, and frequently acting in concert;*
- *serious gross human rights violations are very common, with torture being very common.*

These are not merely the conclusions of the Human Rights Forum, but are echoed by a number of different bodies and organizations. For example, a recent report, by ENOUGH [The project to end genocide and crimes against humanity] came to wholly similar conclusions:

The violence against civilians in Zimbabwe has been orchestrated by the Joint Operations Command, headed by senior ZANU-PF officials and includes the heads of the Zimbabwe Defense Forces, police, prison services, and the Central Intelligence Organization, thereby indicating a state policy for the attacks. Moreover, the attacks against the civilian population are widespread and systematic. They are widespread in the sense that they have been frequent and carried out on a large scale, particularly when preceding an election.¹⁵

As indicated above, these conclusions were not reflected in the Memorandum of Understanding signed by all parties to the mediation, where, unsurprisingly in the context of "talks about talks", there was rather a commitment to repudiate violence, to take steps to eliminate violence, to apply

¹⁴ This myth has been severely criticised in a recent article. See SITO (2008), *Defining violation: Political violence or crimes against humanity?* Piers Pigou, Director, Southern African Historical Archives. [Paper commissioned by the Research and Advocacy Unit]. IDASA:PRETORIA.

¹⁵ See ENOUGH & Impunity Watch (2008), *SEEKING JUSTICE FOR ZIMBABWE. A Case for Accountability Against Robert Mugabe and Others [1981–2008]*. PREPARED BY Professor David M. Crane, Sir Desmond De Silva, QC, Professor Tom Zwart, With the assistance of Anton Altman, Brianna McGonigle, Gentian Zyberi, and others. July 2008. WASHINGTON & NEW YORK.

the law fairly, and to desist from hate speech. Whilst laudable and undoubtedly designed to create the climate for negotiations, the sentiments in the MoU were ahistorical and did not deal with a serious issue of accountability. The ahistorical perspective of the MoU was largely continued in the GPA.

However, just as apartheid was deemed to be a crime against humanity, and had to be confronted head-on during the CODESA processes, so must the widespread and systematic attacks on the ordinary citizens of Zimbabwe and the members of the MDC. To remove this understanding from the negotiating table is to seriously undermine the credibility of the negotiations in the eyes of the Zimbabwean citizenry, who, after all, will have to give their assent to the outcomes, and a flawed outcome will go no way to solving the political crisis in Zimbabwe, especially where very serious crimes have been committed.

As was pointed out in the previous Human Rights Forum report, crimes against humanity are alleged when any of the following occur in peace time:

- *Murder;*
- *Extermination;*
- *Enslavement;*
- *Deportation or forcible transfer of population;*
- *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rule of international law;*
- *Torture;*
- *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law;*
- *Enforced disappearance of persons;*
- *The crime of apartheid;*
- *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

The Human Rights Forum alleged in its previous report that crimes against humanity had occurred in the period since the March 2008 elections. The Human Rights Forum alleged that, on the basis of the evidence derived from the reports made to the Forum and its partners, a prima facie case exists for considering that the Zimbabwe government was responsible for both widespread and systematic violations.¹⁶

¹⁶ The term 'widespread' requires that there is "massive, frequent, large scale action carried out collectively with considerable seriousness and directed against a multiplicity of victims." [ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, *Trial Judgment and Sentence*, 2 September 1998, para. 580; ICTY, *Prosecutor v. Blaškić*, IT-95-14, *Trial Judgment*, 3 March 2000, para. 206.] The term 'systematic' refers to the "organized nature of the acts of violence and the improbability of their random occurrence." [ICTY, *Prosecutor v. Kunarac*, IT-96-23-T, *Trial Judgment*, 22 February 2001, para. 429.]

The target of the violations should be a civilian population, which distinguishes crimes against humanity from war crimes. This was not well emphasised in the previous Human Rights Forum report. As the ENOUGH report makes plain, attacks against a civilian population are a crucial component of the determination as to whether crimes against humanity have taken place,¹⁷ and this was previously raised, but refuted in the report of the UN Special Envoy in the aftermath of *Operation Murambatsvina*.¹⁸ It is common cause that no state of war exists in Zimbabwe, and is vehemently denied by the Zimbabwe government itself. Furthermore, the period in question is concerned with the most civilian of all civilian enterprises, elections. Thus, it is not difficult to assert that all the attacks documented and reported upon concerned a civilian population, and, as shall be seen, it is also not difficult to assert that the attacks were widespread and systematic.

The present report extends the findings and conclusions of the previous report by the Human Rights Forum, as well as showing the similarity in pattern with the violations that occurred during the Presidential election in 2002. The rationale for the comparison is due to the fact that the Zimbabwean Presidency conveys exceptional power to the incumbent, and hence the loss of this power has been the significant motive for the resort by ZANU PF to exceptionally serious violations of human rights, so serious as to invoke the allegation that crimes against humanity have been committed.

The report deals only with the data for the months March to May 2008. Although over a 1,000 violations were recorded in June 2008, the verification process on this data was incomplete by the time of writing this report, and hence the June data was excluded. However, as shall be seen below, this makes little difference to the overall conclusions.

¹⁷ ENOUGH (2008), *SEEKING JUSTICE FOR ZIMBABWE. A Case for Accountability Against Robert Mugabe and Others. 1981–2008*. Prepared by Professor David M. Crane | Sir Desmond De Silva, QC | Professor Tom Zwart. With the assistance of Anton Altman, Brianna McGonigle, Gentian Zyberi, and others. ENOUGH: NEW YORK.

¹⁸ UN Special Envoy on Human Settlement Issues in Zimbabwe, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 18 July 2005.

4. Post Election violence: The evidence¹⁹

When the Human Right Forum issued its first post-election report, on 5 May 2008,²⁰ it provided evidence from the reports from only 64 persons seen to that time by the Forum's officers. The second report had access to considerably more evidence upon which to base its conclusions, but dealt only with cases that were reported in April 2008. This second report consisted of the analysis of 477 cases that were complete enough to consider. The current report will deal with all the complete cases seen or reported to the Human Rights Forum between March and May 2008, a total of 610 cases in all. Means, standard deviations, and percentages were calculated, and only statistically significant findings are reported.

As can be seen from *Table 1*, the trend is towards increasing violations since March, which corroborates the findings of the reports by the Solidarity Peace Trust and the Zimbabwe Peace Project, reported above.

Table 1
Distribution of cases, March to May 2008
[n=610]

March	April	May
33	251	326
5.4	41.1	53.4

The distribution of the cases similarly conforms to the findings of the reports mentioned above, as well as the previous Human Rights Forum report. The majority of the cases came from the three Mashonaland Provinces and Harare, but there were significant changes in the trends over the months [see Figure 1 over]. Significant increases occurred in Bulawayo, Mashonaland Central, Mashonaland East during May,²¹ but, equally, there were significant drops in reports of violations in Harare and Mashonaland West during the same month.²²

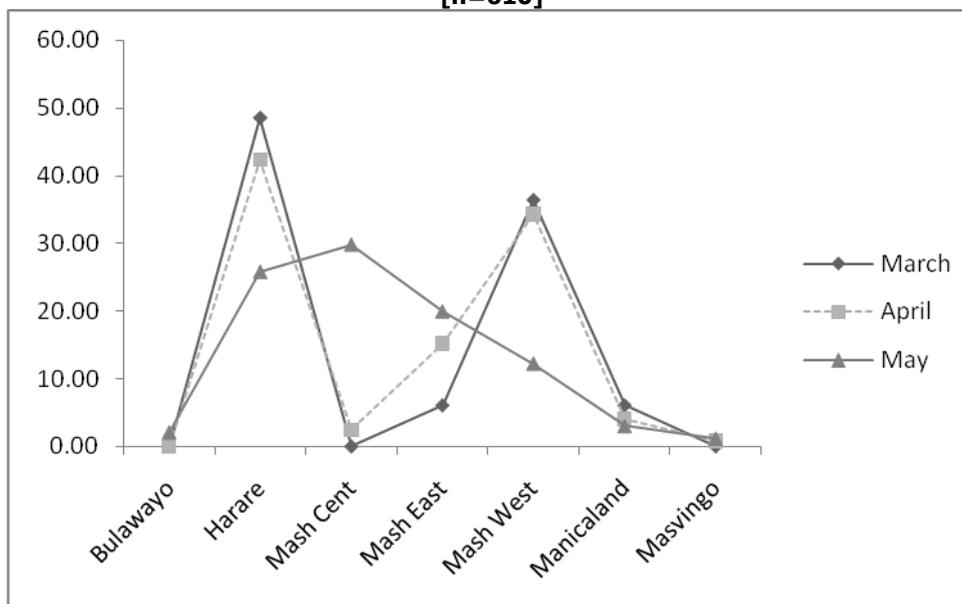
¹⁹ Again, this report does not deal with the deaths that have been reported, since few deaths are reported directly to the Forum, and, where deaths are alleged in the reports received by the Forum, it is not in a place to directly confirm or disconfirm them. According to the MDC, 120 of its supporters were killed from the first round of voting on 29 March up to 18 July 2008.³⁰

²⁰ See again Human Rights Forum (2008), *Can the elections in Zimbabwe be Free and Fair?* Paper produced by the Research and Advocacy Unit [RAU] for the Human Rights Forum, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

²¹ April v May: Bulawayo [$p=0.001$]; Mashonaland Central [$p=0.001$]; Mashonaland East [$p=0.05$].

²² April v May: Harare [$p=0.001$]; Mashonaland West [$p=0.001$].

Figure 1
Distribution of cases by Province, March to May 2008
[n=610]



Members of the MDC were the primary victims in all three months, but there was a significant increase in the number of ZESN observers attacked during May.²³

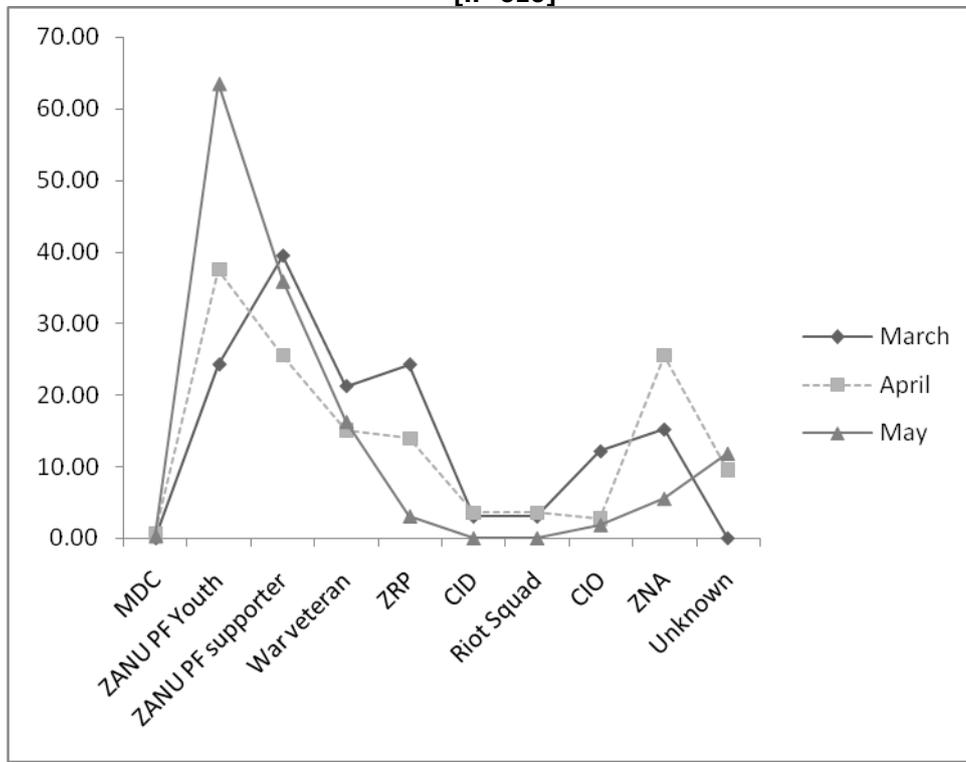
Table 2
Distribution of victims according to office
[n=398]

MDC official	MDC member	Polling agent/election official
47 [9%]	420 [81%]	51 [10%]

It is also worth noting, as shown in *Table 2*, that there were a significant number of officials and members alleging violations that were involved in the March election. The ordinary members were mostly attacked, according to their testimonies, for supporting or allegedly voting for the MDC during the March election.

²³ April v May: ZESN [p=0.001].

Figure 2
Distribution of perpetrators, March to May 2008
[n=610]



There was a significant drop in the total number of violators mentioned from March through to May, but a correspondingly significant increase in the number of non-state actors, with ZANU PF Youth and ZANU PF supporters the groups most frequently mentioned. This strongly corroborates the findings of the Solidarity Peace Trust report. The biggest changes are seen in the reports from April to May, where reports of ZANU PF Youth and ZANU PF supporters increased very significantly,²⁴ whilst reports alleging the involvement of the ZRP and the Zimbabwe National Army [ZNA] decreased significantly.²⁵ Here it should be borne in mind that there was a plethora of reports in the press and media generally alleging the involvement of the ZRP and the ZNA in orchestrating the violence, with one report indicating the names of nearly 200 soldiers and policemen as being involved in the campaign. It may not be too fanciful to suggest that the exposure produced a more cautious approach by these two groups, or it may also be suggested that the campaign was organized during April, allowing these two groups to then “retire” to a backward position.

²⁴ April v May: ZANU PF Youth [p=0.001]; ZANU PF supporters [p=0.01].

²⁵ April v May: ZRP [p=0.001]; ZNA [p=0.001].

There are interesting clusters of relationships when correlations between the alleged perpetrators are calculated. Non-state actors – ZANU PF Youth, ZANU PF supporters, and “war veterans” – are generally reported together, but, interestingly, there is a negative relationship between ZANU PF Youth and ZANU PF supporters, but not between each of these and “war veterans”.²⁶ There is a clear pattern seen in the testimonies where the victims report either ZANU PF Youth or ZANU PF supporters, and infrequently both together, but also that either of these two groups were acting in concert with “war veterans”. This suggests that “war veterans” were probably in charge of these groups, and, of course, it cannot be discounted that these “war veterans” were not uniformed forces in civilian guise, as was frequently alleged in the press reports. It is also possible, given the frequency with which ZANU PF Youth are mentioned, that these were groups of youth militia deployed into the communities, as was also alleged in many press reports.

There are no associations between the various branches of the ZRP and the ZNA with the non-state actor groups, and the ZNA is always reported as operating alone. Here it is worth noting that a very large percentage of the reports alleging violations by the ZNA came from Harare, and were indicated in the reports as being retaliatory attacks for alleged violence by the MDC.²⁷

As regards the alleged violations, the data corroborates generally the findings of the reports of the Solidarity Peace Trust and the ZPP. No murders are reported again in this report since the Human Rights Forum did not have any direct reports of murders, and hence could not confirm the reports in the press. As can be seen, there are a number of changes observed over the three months. Assaults and Assault [GBH] increase from March to April, and then drop very slightly during May. Abductions, thefts and property destruction all increase very significantly from April to May, whilst unlawful arrests and detentions drop from March to May.

The total number of all violations increased significantly from March onwards,²⁸ and increased further during May. The changes were more dramatic from April to May.

Theft and destruction of property significantly increased from March to April,²⁹ and there was a significant increase in the number of witnesses to the violations mentioned.³⁰ It is important to note that there were so many witnesses to the violence, for this adds considerable weight to the allegations, and would allow any independent investigation to seriously test the veracity of these allegations. Additionally, it is also evident that there was little attempt by the perpetrators to hide their activities, lending further credence to the frequent claims by human rights groups that a climate of impunity protects the perpetrators.

²⁶ ZANU PF Youth & war veterans [0.10; p=0.01]; ZANU PF supporters & war veterans [0.17; p=0.01]; ZANU PF Youth & ZANU PF supporters [-0.25; p=0.001].

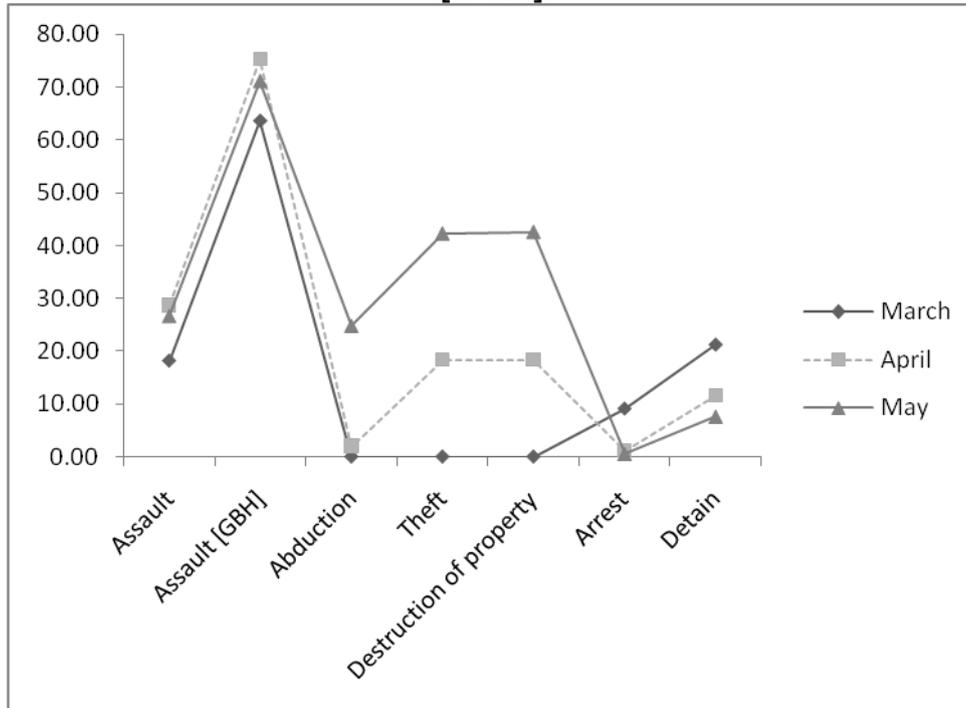
²⁷ There is the most recent report of the deployment of the army in Mutare, where it is alleged that the ZNA attacked civilians, resulting in injuries to 70 citizens.

²⁸ March v April: Total number of violations [p=0.05].

²⁹ March v April: Theft [p=0.001]; Destruction of property [p=0.001].

³⁰ March v April: Number of witnesses mentioned [p=0.01].

Figure 3
Distribution of alleged violations, March to May 2008
[n=610]



The violations involving property destruction deserve some further comment. Firstly, those persons that reported property destruction also reported significantly higher numbers of total violations; that is, property destruction was associated with more frequent reports of all other violations.³¹ Secondly, property destruction was significantly correlated with thefts and eventual displacement.³² Thirdly, property destruction was significantly correlated with the reports of ZANU PF Youth as the perpetrators.³³ The pattern was alarmingly similar all across the country, which strongly supports the notion of an organized campaign; in another historical period, it would be termed a “pogrom”. The following cases are typical:

Case 1 [Mashonaland Central]:

I had gone to the Zanu PF base as I had been called to come and surrender being MDC. When I got to the base I was told to surrender but then answered saying why now since they were the ones who told us to come open and vote for whom we wanted. I was then pushed to the ground and was started to be hit by sticks under my feet and also hit at my back. I was then told to eat sand, but I pretended as if I was eating it. We were then poured water onto our bodies. At the time I was unconscious. I then woke up and we were told to go back to our homes and I crawled to the road. Then somebody came to carry us using

³¹ Property destruction reported vs no property destruction: Total number of violations [p=0.0001]; total torture reported [p=0.02].

³² Property destruction & Theft [0.99; p=0.001]; Property destruction & displacement [0.44; p=0.001].

³³ Property destruction & ZANU PF Youth [0.11; p=0.01].

wheelbarrows. The time we got home we realised that our houses had been destroyed and all our properties burnt. - including everything that I had harvested. They damaged almost everything.

Case 2 [Mashonaland Central]:

Was coming out of his house in the evening when he met 3 people whom he identified as Mapfudzeni - youth leader, Mapiti and the village head, Admire, who was leading them. One of the attackers held him by his jacket and accused him of supporting the MDC. He slipped off his jacket and fled. He fell into a trench and his attacker could not find him. They went back to the house and burnt 4 of his son's houses to the ground, 6 of his own and his property which he had hidden in the bush was also collected and put on the fire. Took away one of his oxen, 3 goats and chickens to slaughter while celebrating.

The total number of violations mentioned significantly increased from April to May, but the total number of cases of torture reported declined.³⁴ Abductions, thefts, and destruction all increased significantly, as did the number of witnesses reported to the violations: the number of cases reporting witnesses was 12% in April, but grew to 22% in May.³⁵

Table 3
Place of violation, March to May 2008

	Violation at "Base"	Violation at "Pungwe"
March	6%	3%
April	8%	5%
May	19%*	11%

***p=0.01**

It was also evident that there was a steady growth in the reports of violations taking place at "bases" and public meetings, or "pungwes", and this was significantly higher in May than in the previous months. This is consonant with the general increase in violations over the three months.

Thus, the analysis of the data shows a steady increase in the number of alleged violations from March to April, with MDC members being the predominant victims, but also an increase in the number of election observers too. This latter finding fits with the outpouring of rhetoric against groups "rigging" the March elections, but also with a strategy to ensure that there would be few independent observers available for the June run-off. The data show an increase in the complaints against ZANU PF party members over the three months, with these groups being dominant during May. Interestingly, there was a rise in allegations against ZANU PF party members against a decrease in

³⁴ April v May: Total number of violations [p=0.001]; Total number of torture cases [p=0.001].

³⁵ April v May: Abductions [p=0.001]; Theft [p=0.001]; Destruction of property [p=0.001]; Number of witnesses mentioned [p=0.001].

allegations against the ZRP and the ZNA. The fact that there was such an enormous rise in the number of witnesses to the violations suggests, as indicted above, that the perpetrators were unconcerned about identification, especially as so many violations took place in the rural areas, and in the heartland of traditional ZANU PF support, the three Mashonaland Provinces. These are all patterns previously seen in the 2000 and 2002 elections, and particularly during the 2002 Presidential election.

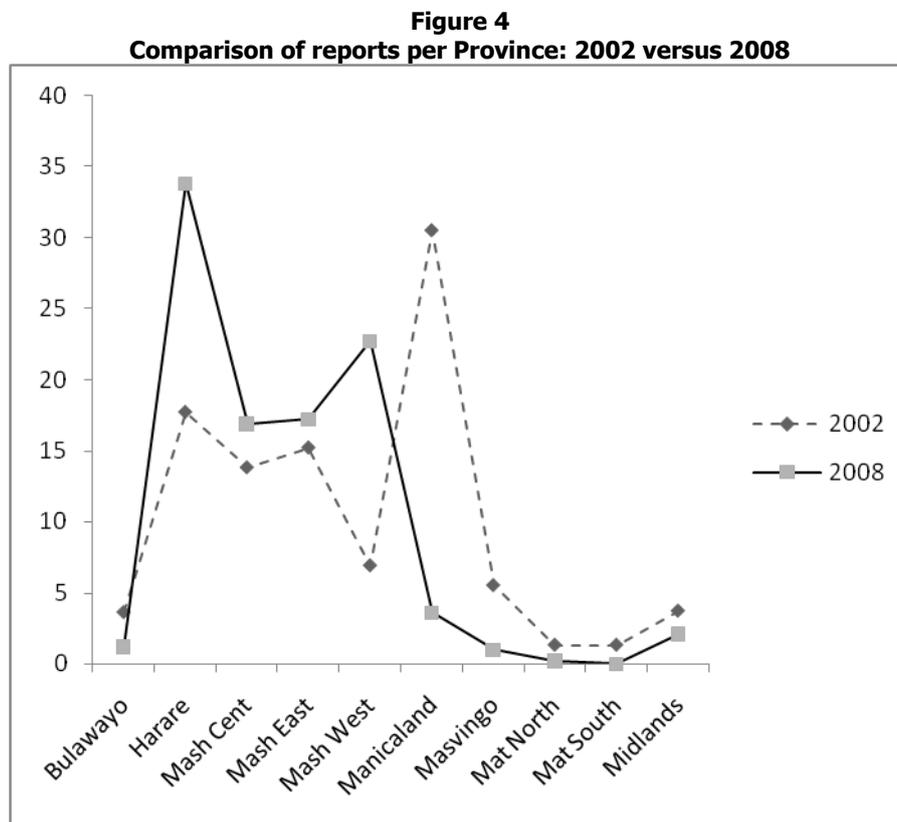
Since violations have been shown to increase so dramatically during elections, it was then felt useful to make a comparison between the two presidential elections. The rationale for concentrating on Presidential as opposed to Parliamentary elections is straight-forward: under the current Zimbabwe Constitution and ancillary legislation, the powers of the President are so extensive that the incumbent can significantly control the complete workings of government.³⁶ Hence, winning or losing the Presidential election can very significantly affect the balance of political power, and this can obviously lead to attempts to influence the election result.

³⁶ Here see Zimbabwe Human Rights NGO Forum (2001), *Enforcing the Rule of Law in Zimbabwe*. September 2001. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

5. Comparisons between Presidential Elections, 2002 and 2008

As indicated above, given the similarity between these findings and those previously reported for the 2002 Presidential election, it was decided to make a formal comparison to the two elections, 2008 with 2002. 671 complete cases were available on the Human Rights Forum's data base from the 2002 Presidential election, and these were then compared with the 610 cases from the 2008 elections, giving a total of 1,281 cases, which is a large sample for such comparison.

As can be seen from Figure 4, the general trends seen in the two elections are similar, but there are clear differences. The number of alleged violations is higher in 2008 for the three Mashonaland Provinces, but only significantly higher for Mashonaland West.³⁷ The increase for Harare is clearly very large between 2002 and 2008, and is significant.³⁸ Reports from Manicaland and Masvingo were more frequent in 2002.³⁹ However, the trend towards the worst areas of violence being in the Mashonaland Provinces maintains over both Presidential elections.



In 2000, the point was made by the Human Rights Forum that it was perplexing to have so much violence reported from the areas in which ZANU PF had always enjoyed strong support since 1980.⁴⁰

³⁷ 2008 v 2002: Mashonaland West [p=0.001].

³⁸ 2008 v 2002: Harare [p=0.001].

³⁹ 2002 v 2008: Manicaland [p=0.001]; Masvingo [p=0.01].

⁴⁰ See again Zimbabwe Human Rights NGO Forum (2001), *Human Rights and Zimbabwe's June 2000 election*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

The same point is reinforced by the present analysis, and compounded by the results of the 2005 election, where ZANU PF took back seats from the MDC lost to them in 2000, and even more perplexing when it is considered that ZANU PF did very well in many constituencies in the March 2008 poll. We will return to this point later.

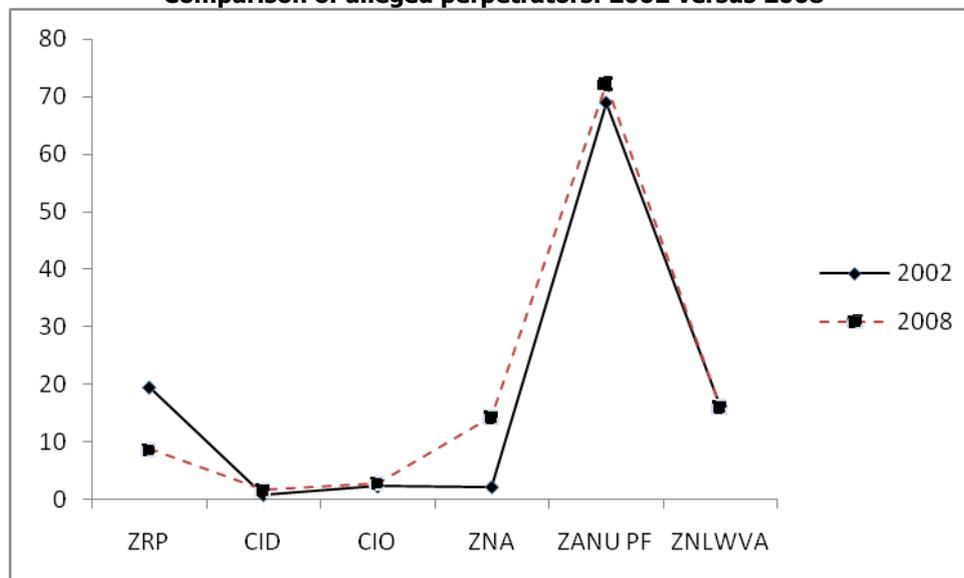
In both elections, and perhaps unsurprisingly, the MDC were the major victims of the organized violence and torture, and the violations against the MDC increased dramatically from April to May, as, inversely, the number of “unknown” persons, inflicting personal injury or material damage decreased equally dramatically.

Table 4
Comparison of alleged victims: 2002 versus 2008

	2002	2008
MDC	52.8%	85.4%
ZANU PF	1.4%	0.3%
Unknown	39.3%	2.1%

As can be seen from Figure 5, there are no differences between the two elections in the major perpetrators reported, with ZANU PF supporters and war veterans [ZNLWVA] the overwhelming majority of the alleged perpetrators.⁴¹ There was a significant difference however in the reporting of the frequencies of the ZRP and ZNA; there were a significantly greater number of ZNA members reported as alleged violators in 2008, and significantly fewer ZRP members reported in 2008.⁴²

Figure 5
Comparison of alleged perpetrators: 2002 versus 2008

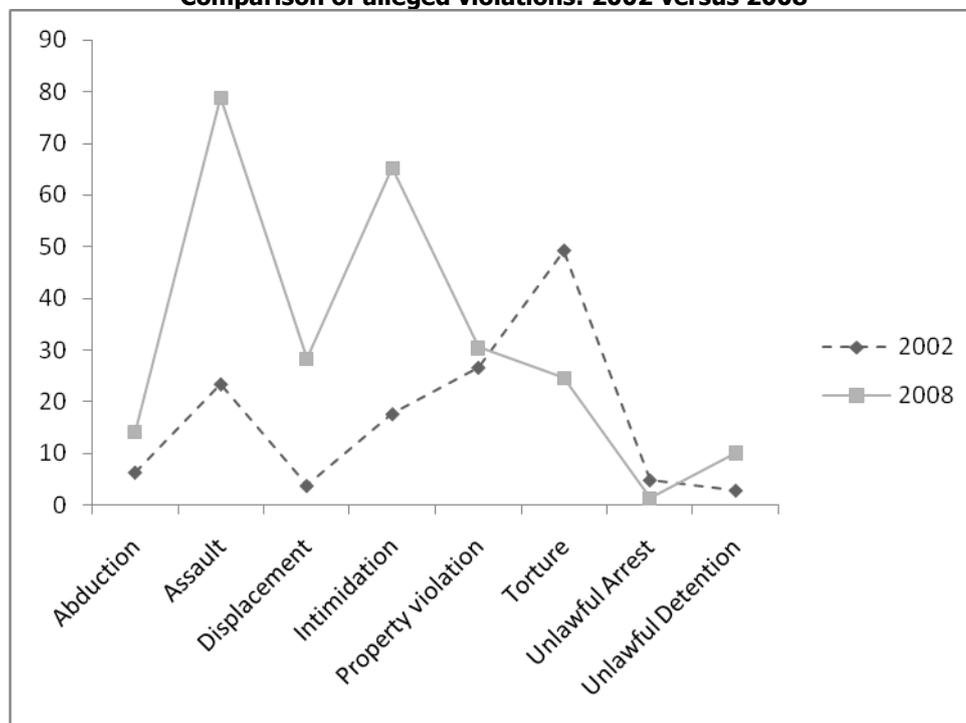


⁴¹ There were differences in the two data sources that did not allow the 2002 data to be disaggregated into ZANU PF Youth or ZANU PF supporters, so these two groups were combined for this analysis.

⁴² 2008 v 2002: ZNA [p=0.001]; ZRP [p=0.01].

There were many differences observed between the two periods in respect of the kinds of violations reported. However, there is one methodological comment to be made here, and this relates to the manner in which violations were classified in the two periods. In 2002, there was a much greater tendency to classify physical abuse as torture, whereas in 2008 many cases of physical violence that may well have been torture were classified as Assault with Intent to do Grievous Bodily Harm or Aggravated Assault. This is a common problem in human rights data bases, and a future task must be to re-code all violations into a common format such as HURIDOCS. However, despite this, and accepting that violations occurred irrespective of the classifications, it is possible to see the similarities and differences between the two election periods.

Figure 6
Comparison of alleged violations: 2002 versus 2008



As can be seen from Figure 6, there are very different patterns observed between the two periods. With the exception of torture, for reasons indicated above, virtually all violations were more significantly more frequent in 2008. There was a 25% drop in torture in 2008, but a 55% increase in the number of assaults, but, as seen earlier, Assault [GBH] was reported more frequently than Assault in 2008, which suggests that torture may well have been more common in 2008 than the data indicates.⁴³ Also it is evident that there were significant increases in abductions, intimidation,

⁴³ 73% of the cases in 2008 reported Assault [GBH], which suggests that torture went up rather than down in 2008 in line with the general trend for there to be more frequent violations in 2008 than 2002. 2008 versus 2002: Assault [$p=0.001$]. 2002 versus 2008: Torture [$p=0.001$].

displacements, and death threats,⁴⁴ which all indicate that the violence reported in 2008 was significantly worse than in 2002.

As mentioned above, many violations took place, in both periods, at bases, or at public meetings or at “pungwes”. In 2002, 11% of the cases mentioned that the violation had occurred at a base, whilst, in 2008, only 9% mentioned this.⁴⁵ As can be seen from *Table 5*, the associations with the bases was, in both periods, more commonly with non-state agents such as ZANU PF supporters or ZANU PF Youth, but a fair percentage also mentioned the presence of state agents at the bases, although this is interestingly constant over the two periods whilst the frequency of non-state agents increased in 2008.

Table 5
Presence of state and non-state agents at bases, 2002 versus 2008

	State agents	Non-state agents
2002	19 [26%]	51 [70%]
2008	15 [26%]	45 [79%]

Furthermore, in both periods the reports of bases come from all over the country; i.e., they are widespread. As can be seen from *Table 6*, there are changes over the two periods, but the reports of bases are more frequent in the three Mashonaland Provinces in both periods, with the additional change of a large increase in Harare, an urban setting.

Table 6
Comparison of presence of bases in the Provinces, 2002 versus 2008

	Byo	Har	Mash Cent	Mash East	Mash West	Man	Masv	Mat North	Mat South	Mid
2008	1	19	13	8	12	3	0	0	0	0
2002	3	8	17	20	8	11	2	1	0	3

As was noted in previous reports,⁴⁶ many of these bases were positioned at public or official places. In 2008, 21% were reported as being at schools, 23% at public buildings (such as business centres or ZANU PF offices), 7% at official buildings (such as clinics or training centres), and 5% at farms. This raises many questions about the attitudes of the authorities to the use of official places for it should be impossible for such abuses to take place without the knowledge of the authorities, and there is little evidence to show that the authorities attempted to prevent either the use of such premises or the abuses themselves.

⁴⁴ 2008 versus 2002: Abductions [p=0.001]; Intimidation [p=0.0001]; Displacements [p=0.001]; and Death threats [p=0.001].

⁴⁵ This difference may also be explained by the observation that there seemed to be far less of an attempt by the perpetrators in 2008 to cover up their tracks, and perhaps even a strategy to be more public in the violence in order to achieve much greater fear and intimidation.

⁴⁶ See Zimbabwe Human Rights NGO Forum (2001), *Who was responsible? A consolidated analysis of pre-election violence in Zimbabwe*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2002), *Are They Accountable?: Examining alleged violators and their violations pre and post the Presidential Election March 2002*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

Overall, and despite 2008 being worse in most respects than 2002, there are great similarities in the two election periods.

Firstly, the victims are overwhelmingly members of the MDC, with a much greater focus on actual members of the MDC in 2008. As was seen above, a large number of the victims in 2002 were reported as having "unknown" affiliations, insofar as they did not report an affiliation or were unwilling to disclose one if they did. In 2008, the victims were possibly more willing to disclose their affiliations, but it may also be that the violence was more specifically targeted in 2008, and certainly many of these victims' affiliations were known to their abusers since they had been openly campaigning for the MDC or had played a role in the polling process: with the Harmonised Elections, and four polls – Presidential, Senate, House of Assembly, and local government – the MDC had to make public many more members of its structures than in any previous election. More simply put, the MDC members were at much greater risk in 2008 than in 2002, as more of them had to be public as officials and not merely voters.

Secondly, the perpetrators in both elections were preponderantly supporters of the ZANU PF party, but, in 2008, two changes are noted. The ZRP are mentioned less frequently and the ZNA more frequently. ZANU PF Youth and ZANU PF supporters are frequently mentioned as operating in concert with "war veterans", but it should be borne in mind that many "war veterans" are reported as belonging to either the ZRP or the ZNA, so that it is plausible that the "war veterans" were members of the uniformed forces, ZRP or ZNA, and even CIO, operating out of uniform. This deserves much closer investigation than hitherto, as most reports to date are largely anecdotal or speculative.

Thirdly, the alleged violations are generally similar, but significantly more frequent in 2008, with the caveat that torture in 2008 may have been much higher than shown due to the tendency to classify serious beatings and physical abuse as assaults with intent to do grievous bodily harm. Closer inspection of the medical reports accompanying these reports may well show that torture was considerably higher in 2008 than in 2002.

6. Discussion

This report began where the previous Human Rights Forum report left off: raising the allegation that crimes against humanity were committed in the June Presidential run-off. Other recent reports have strongly implicated the state in the perpetration of gross human rights violations, but without raising this charge, but nonetheless their evidence and conclusions have considerable bearing on this allegation.

6.1 Crimes against Humanity

As was pointed out earlier, any allegation that crimes against humanity have been committed needs to fulfil a series of conditions. Firstly, as indicated earlier, but repeated here for ease of understanding, the acts complained of must fit a number of violation profiles, involving any, some, or all of the following:

- *Murder;*
- *Extermination;*
- *Enslavement;*
- *Deportation or forcible transfer of population;*
- *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rule of international law;*
- *Torture;*
- *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law;*
- *Enforced disappearance of persons;*
- *The crime of apartheid;*
- *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

On the reports given to the Human Rights Forum, *torture, persecution, and other inhumane acts* are described very frequently. *Persecution* is alleged on the basis that the victims are disproportionately members of the Movement for Democratic Change, the MDC. As can be seen, this is an allegation that not only applies to the period between March and June 2008, but is also evident in the 2002 Presidential election. Furthermore, as was shown in several previous reports of the Human Rights Forum, all violations increase significantly during elections since 2000, and hence it is possible to claim that the violations seen in 2008 are a well-trying strategy of persecution. It is also evident, both from 2008 and 2002, that *torture* has been practised on a very large scale and, in respect of 2008, allegations by the victims reporting to the Human Rights Forum are supported by other reports. More importantly, the allegations of torture are strongly supported by the reports of the Zimbabwe Association of Doctors for Human Rights [ZADHR], which issued three reports in the period March to June 2008, detailing very serious injuries that could only have been inflicted deliberately.

Inhumane acts are also widely reported, and amongst these are the frequent reports of assaults occurring at citizens' homes, followed by theft of their possessions and destruction of their homes, leaving people destitute, and subsequently displaced. This is acknowledged in the September 15 Agreement. Section 16.4(c), of Article XVI, notes that "*that all displaced persons shall be entitled to humanitarian and food assistance to enable them to return and settle in their original homes and that*

social welfare organisations shall be allowed to render such assistance as might be required'. Whilst laudable in the attempt to address the problem, this general statement says nothing about the scale of the problem, the deliberate suffering inflicted, and certainly nothing about restitution, or compensation.

6.2 Widespread violations

The second feature that must be present, if the allegation about crimes against humanity is to be sustained, is that the violations must be widespread, as the quote below illustrates:

*The term 'widespread' requires that there is "massive, frequent, large scale action carried out collectively with considerable seriousness and directed against a multiplicity of victims."*⁴⁷

As was seen from the data on 2008, the violence was clearly widespread in several ways: it was spread right across the country, with reports from all Provinces and many different Districts; it was clearly frequent, with violations reported in all three months (and also in June⁴⁸); and was large scale, with very large numbers of victims reported, although exact estimates are not possible.⁴⁹ As regards the last, the cases reports indicate very large numbers of people involved in the violations, so it is evident that there has been planning. As indicated above, violence was reported from many different Provinces, with some Provinces reporting much higher frequencies of violations, and, interestingly, the same Provinces implicated in 2002. Although it is not possible to give exact numbers of victims – only a nationwide investigation could do this – the numbers are very large, with the ZPP report estimating 16,400 cases since January, with over 90% coming from the period since March 2008.

Thus, there is considerable *prima facie* evidence to substantiate the claim that the violations since March 2008 have been widespread, and, furthermore, that the pattern observed has been evidenced in the recent past, as was shown in the comparison with the alleged violations in 2002. This on its own should be enough to warrant investigations of crimes against humanity, but the claim is strengthened further by the demonstration that the violations have been "systematic".

6.3 Systematic violations

As was pointed out earlier, "systematic" has a straightforward definition:

*The term 'systematic' refers to the "organized nature of the acts of violence and the improbability of their random occurrence."*⁵⁰

⁴⁷ See again *ICTR, Prosecutor v. Akayesu, ICTR-96-4-T, Trial Judgment and Sentence, 2 September 1998, para. 580; ICTY, Prosecutor v. Blaškić, IT-95-14, Trial Judgment, 3 March 2000, para. 206.*

⁴⁸ See again See Solidarity Peace Trust (2006), *Desperately Seeking Sanity: What Prospects for a New Beginning in Zimbabwe?* 29 July 2008. DURBAN: SOLIDARITY PEACE TRUST; ZPP (2008), *Run up to 27 June 2008 Presidential Run Off Election*. July 25, 2008. HARARE: ZIMBABWE PEACE PROJECT.

⁴⁹ The Zimbabwe Peace Project estimated 16,400 cases since January 2008, which is not a trivial number.

⁵⁰ See again *ICTY, Prosecutor v. Kunarac, IT-96-23-T, Trial Judgment, 22 February 2001, para. 429.*

Although it was evident that there was a multiplicity of victims, the overwhelming targets of the gross human rights violations documented were members of the Movement for Democratic Change [MDC]. This is true in 2008, as it was in 2002, but there is a marked difference in 2008: whereas in 2002 nearly 40% of the cases had unknown affiliations, 85% were self-admitted members of the MDC in 2008. This is simply explained. In 2002, many people were attacked for the possibility that they *might* support the MDC in advance of the election, whereas in 2008 the affiliations of the victims were clearly known by the perpetrators in the aftermath of the March poll. As was seen in *Table 2*, nearly 20% of the MDC members were either MDC officials or MDC members involved in the March poll, which strongly suggests a systematic campaign against the MDC – either of retribution or pre-emption to stop them participating in the next poll - but it is equally serious that 85% of the cases reported to the Human Rights Forum were MDC members that were known to their abusers, which also supports the notion of a systematic campaign against the MDC.

6.4 Property destruction & Displacements

Property destruction is given special mention because it bears all the hallmarks of a pogrom. It has been a feature of gross human rights violations committed in Zimbabwe since 2000, but has been both widespread, and, is possible, even more assiduously applied since March 2008. It has also resulted in the displacement of large numbers of people.⁵¹

As was seen earlier in respect of the property destruction reported, this too has all the hallmarks of organization. Groups of ZANU PF Youth, often in very large numbers, attacked MDC supporters in their homes, beat [often very seriously, and amounting to torture] the occupants, very frequently stole the victims' possessions, and then destroyed the house, usually by burning. All of this was witnessed even by those who fled and watched from places of hiding nearby.

This was all publicly announced by the perpetrators as being due to the victims' affiliations to the MDC. Many of these incidents were reported to the ZRP, but, apart from occasional incidents, there is no evidence of a credible attempt by the authorities to intervene in a situation where armed mobs are rampaging in the community, destroying property and injuring citizens. It can only be assumed, therefore, that the actions of the perpetrators were being condoned, at the least by the omission of the State to take responsible action.

The comparison with the violations reported in the 2002 Presidential election is also highly instructive, as it is evident that the patterns seen in the two periods are extremely similar. This

⁵¹ The various displacements of the past nine years has drawn highly negative comment in a recently released report. See IDMC (2008), *The Many Faces of Displacement: IDPs in Zimbabwe*. August 2008. INTERNAL DISPLACEMENT MONITORING CENTRE: GENEVA. See also Hammar, A. (2008), "Reflections on Displacement in Zimbabwe", Bulletin No.80, 28-35, CONCERNED AFRICA SCHOLARS; Reeler. A.P (2006), *A People on the run: Displacement and its effects on Zimbabweans over the decades*. Paper presented to: Britain-Zimbabwe Society Annual Research Day, St Antony's College, Oxford, 19 June 2006.

suggests that the violations conformed to well-used tactics, and certainly indicates patterns that were well-known to the authorities, which should have quickly alerted them of the need to take strong action to prevent any recurrence. No such action was forthcoming, which again suggests that the state was at the least condoning these violations.

6.5 Attacks against a civilian population

Finally, but not least, it is strongly evident that all these attacks have taken place in a time of "peace", and certainly not in a time of war. All the findings show clearly that all attacks have been against a non-combatant population, and mostly the members of the MDC, but not exclusively so. This has been accompanied by hate speech, incitement to violence, and racist rhetoric by the President, members of the government, party officials, "war veterans", and many others.⁵² In all, the can be little doubt that this criterion is easily fulfilled.

7. Conclusions

It is clear that the allegations made by the Human Rights Forum, that crimes against humanity have been committed in the period March to June 2008, are strongly supported by the evidence before the Human Rights Forum, as well as being corroborated by all other reports.⁵³ The violations conform to the kinds of acts outlawed in international law [and the Zimbabwe Constitution and criminal law], and were both widespread and systematic. There is little evidence of any credible response by the state authorities to intervene, and hence the violations were either condoned or represent a serious omission by the state; at the worst, these violations represent a planned campaign by the authorities.

This requires a more forthright response from the international community than has been the case. The evidence suggests that the African Union should be taking strong action in terms of the Constitutive Act of the AU, which demands action in the case of war crimes, genocide, and crimes against humanity, as the Human Rights Forum has stated previously. At the very least, it should be expected that the AU would undertake a fact-finding mission in the wake of such serious allegations. The African Union has accepted that the results of the June re-run were unacceptable, but has taken the weak approach of asking the political parties to form an inclusive government. This may be desirable, but scarcely suggests that a responsible and important body is acting according to its own constitution; rather it is a case of avoiding the problem completely.

⁵² See especially, Zimbabwe Human Rights NGO Forum (2007), *Their Words Condemn Them: The Language of Violence, Intolerance and Despotism in Zimbabwe*, May 2007, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

⁵³ Here see also SITO (2008), *Defining violation: Political violence or crimes against humanity?* Piers Pigou, Director, Southern African Historical Archives. [Paper commissioned by the Research and Advocacy Unit]. IDASA:PRETORIA.

SADC too would seem to have avoided the problem. As the SADC Treaty indicates, countries that act in a manner contrary to the treaty must be dealt with, and it seems obvious that allegations of crimes against humanity would be a reason for SADC to at least undertake some credible investigation of the allegations. However, SADC prefers, Botswana apart, to push for an all-inclusive government and ignore the problem completely. SADC has not even made public the report of the findings of the military mission sent by the "facilitator", President Thabo Mbeki, and an important opportunity to come to some judgement about the violence of the past few months has been missed.

In the absence of a credible response by the Zimbabwe government, SADC, and the AU, the Human Rights Forum thus makes the following call to the international community:

- *To immediately send an international investigatory team to Zimbabwe, headed by the UN Special Rapporteur on Torture and under the umbrella of the United Nations Commission for Human Rights;*
- *to compile a report based on existing evidence as well as undertaking basis investigations of its own;*
- *to make recommendations to the United Nations Security Council about the nature of the recent violence, and to indicate who has been responsible for this violence;*
- *if the allegations that crimes against humanity have been committed are substantiated, to make recommendations for legal and political action against the perpetrators and those responsible.*

There are also the issues now related to the Global Political Agreement [GPA] signed on 15 September, and here the Human Rights Forum has outlined a number of minimum demands on its position on transitional justice [see Appendices 1 and 2 over]. It is noteworthy that the Agreement does indicate that there should be prosecutions for political violence, and certainly no formal amnesty has been declared, but the scale of the violations committed in the past 9 years requires a more robust approach than this mere recommendation of the GPA. Crimes against humanity require the most robust response possible, as was suggested by the Human Rights Forum previously [see again Appendices 1 and 2], but, failing this, then it is the responsibility of the international community to act. This can be no better put than in the words of Lord Millet in the Pinochet case:

"Since the Second World War states have recognised that not all criminal conduct can be left to be dealt with as a domestic matter by the laws and the courts of the territories in which such conduct occurs. There are some categories of crime of such gravity that they shock the consciousness of mankind and cannot be tolerated by the international community. Any individual who commits such a crime offends against international law. The nature of these crimes is such that they are likely to involve the concerted conduct of many and liable to involve the complicity of the officials of the state in which they occur, if not of the state itself. In these circumstances it is desirable that jurisdiction should exist to prosecute individuals for such conduct outside the territory in which such conduct occurs." [Millet, ex parte Pinochet (3)(1999)]⁵⁴

⁵⁴ Cited in SITO (2008), *Defining violation: Political violence or crimes against humanity?* Piers Pigou, Director, Southern African Historical Archives. [*Paper commissioned by the Research and Advocacy Unit*]. IDASA:PRETORIA.

Appendix 1

MINIMUM DEMANDS ADOPTED BY PARTICIPANTS AT THE TRANSITIONAL JUSTICE WORKSHOP "OPTIONS FOR ZIMBABWE" HELD AT THE HOLIDAY INN, HARARE ON 9 – 10 SEPTEMBER 2008

1. No amnesty for:
 - a. crimes against humanity, torture and other international crimes;
 - b. rape and other sexual based crimes;
 - c. Corruption and other crimes of greed.
2. No extinguishing of civil claims against the perpetrators or the State.
3. No guarantee of job security for those found responsible for gross human rights violations and corruption.
4. Comprehensive reparations for victims of human rights violations.
5. A credible and independent truth seeking inquiry into the conflicts of the past which holds perpetrators to account and which provides victims the opportunity to tell their stories with a view to promoting national healing.
6. Independent monitoring and reform of the operations and structure of the police, army, paramilitary, security coordination, administration of justice, food distribution and other organs of state involved in the implementation of the transition.
7. Development of interim or transitional rules to guarantee the rule of law and upholding of all basic rights during the transition, including the right to engage in political activities. These rules must be enforceable. They must be encapsulated in amendments to the Constitution or an interim constitution. Such rules must remain in place until free and fair elections are held and until a final Constitution, endorsed by the people, is in place.
8. Achieve gender equity in official bodies and for transitional justice initiatives to pay particular attention to marginalized communities in Zimbabwe.

Harare, 10 September 2008

Appendix 2

TRANSITIONAL JUSTICE OPTIONS FOR ZIMBABWE

The Zimbabwe Human Rights NGO Forum held a workshop on 9 and 10 September 2008 which drew participations from a broad spectrum of civil society in Zimbabwe to discuss the transitional justice options for Zimbabwe. The participants of the workshop being fully committed to truth, justice, accountability and the need for sustainable peace in Zimbabwe resolved that there was need for transitional justice and set out the minimum demands for such a process.

Transitional justice generally refers to a range of approaches that states may use to address past human rights wrongs and includes both judicial and non-judicial approaches. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy. However such mechanisms can only be implemented in the event of a change, such as that which is likely to occur following the signing of the agreement by the political parties. Civic society organizations at the meeting agreed that given the history of human rights abuse in pre and post independent Zimbabwe, there was need for transitional justice mechanisms which would follow these fundamental principles;

- *Victim - centered;*
- *comprehensive, inclusive, consultative participation of all stakeholders, particularly the victims;*
- *the establishment of the truth;*
- *acknowledgment;*
- *justice, compensation and reparations;*
- *national healing and reconciliation;*
- *non-repetition (never again);*
- *gender sensitive;*
- *transparency and accountability, and nation building and reintegration.*

The organizations present at the workshop, having agreed on the principles also agreed of several non-negotiable minimum demands for a transitional justice process, which include;

- No amnesty for crimes against humanity, torture, rape and other sexual crimes, and economic crimes such as corruption;
- no extinguishing of civil claims against the perpetrators or the state; comprehensive reparations for victims of human rights violations;
- no-one should hold an official office who has been responsible for gross human rights violations and corruption;
- a credible and independent truth seeking inquiry into the conflicts of the past which holds perpetrators to account and which provides victims the opportunity to tell their story;
- independent monitoring and reform of the operations and structures of the police, army, paramilitary, security coordination, administration of justice, food distribution and other organs of state involved in the implementation of the transition.

The Zimbabwe Human Rights NGO Forum strongly urges the government to consider establishing a transitional justice mechanism that conforms to the principles set out by civics and also to take cognizance of the minimum demand of civil society in such a process.

11 April 2019