



CASE NUMBER: ZHRC/CI/221/2019

IN THE MATTER BETWEEN:

THE MOVEMENT FOR DEMOCRATIC CHANGE

COMPLAINANTS

And

ZANU PF PARTY

1ST RESPONDENT

And

ZIMBABWE REPUBLIC POLICE

2ND RESPONDENT

INVESTIGATIVE REPORT

Key Issues

- *Right to personal liberty Section 49 of the Constitution*
- *Right to human dignity Section 51 of the Constitution*
- *Right to personal security Section 52 of the Constitution*
- *Freedom from torture, cruel, inhuman and degrading treatment or punishment Section 53 of the Constitution*
- *Right to demonstrate and Petition Section 59 of the Constitution*
- *Freedom of movement and residence Section 66 of the Constitution*
- *Political rights Section 67 of the Constitution*

Relevant Case cited

Jestina Mukoko v Commissioner General of Police and 4 others SC 3/09

1. Introduction

1.1. This report contains findings of the Zimbabwe Human Rights Commission (ZHRC/Commission), pursuant to an investigation undertaken by the ZHRC into a complaint made by the Movement for Democratic Change Alliance (MDC-A)(hereinafter referred to as the Complainant), alleging acts of torture, abductions of their members by alleged Zimbabwe African National Union- Patriotic Front (ZANU PF) youths, (hereinafter referred to as the 1st Respondent), detention of their members by the Zimbabwe Republic Police (ZRP) and other State Security Officials (herein after referred to as the 2nd Respondent) who were subsequently released without any charges. They also alleged that the 2nd Respondent was violating their right to demonstrate and petition in terms of section 59 of the Constitution of Zimbabwe Amendment (No. 20). The investigation was conducted from the 1st to the 8th of September 2019.

2. Mandate of the Commission

- 2.1. The ZHRC is established in terms of Section 242 of the Constitution of Zimbabwe. The functions of the ZHRC are set out in terms of Section 243 (1)(a) – (k) which includes among others: to consider complaints from the public and to take such action in regard to the complaints as it considers appropriate; to investigate the conduct of any authority or person where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person; to secure appropriate redress including recommending the prosecution of offenders; to direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of any such investigation.

- 2.2. Section 9 of the Zimbabwe Human Rights Commission Act (Chapter 10:30) empowers the ZHRC to conduct investigations into allegations of human rights violations.

3. Methodology

- 3.1. In carrying out the investigation, the following methods and procedures were used in order to make an analysis and proffer recommendations: in depth interviews, general observation and the use of international and regional treaties as well as the national legal framework.

- 3.2. The ZHRC conducted in-depth interviews with the following: (a) different complainants mostly drawn from the MDC-A party structures; (b) complainants' witnesses (c) the Zimbabwe Republic Police from areas where the violations occurred and (d) the ZANU PF Provincial spokesperson for Midlands where the bulk of the human rights complaints received were recorded.

- 3.3. The ZHRC also conducted literature review into the following international, regional treaties and national legal frameworks: (a) Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR) 1976; (b) the African Charter on Human and Peoples Rights (ACHPR) 1986; and (c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); (d) Constitution of Zimbabwe (Amendment No.20) Act, 2013 (hereinafter referred to as the Constitution); (e) Criminal Law, Codification and Reform Act (Chapter 9: 23) and (f) the Public Order and Security Act (Chapter 11:17)

4. Detailed background of complaints and responses according to Province

4.1. Midlands Province: Kwekwe

4.1.1. **Complainant A**¹ alleged that on the 26th of August 2019 she made a phone call to one, Searchmore Muringani, a fellow MDC-A member, in order to arrange to go and give notice at Kwekwe Central Police Station, regarding demonstrations that they wanted to hold from the 29th to the 30th of August 2019. Thereafter Complainant A allegedly received a phone call from their Midlands head office, which is in Gweru, reminding her to ensure that she collected posters the following day, from the bus terminus opposite Sally Mugabe School in Kwekwe for further distribution to districts ahead of the demonstrations.

4.1.2. Complainant A allegedly received another phone call from the MDC-A Midlands offices reminding her to urgently go into town and wait to collect posters by the bus terminus. Whilst waiting for the posters at the bus terminus, some of the touts operating from the bus terminus

¹ The names of the complainants will not be used for the sake of confidentiality and their safety. The alphabet will be used instead.

who were wearing ZANU PF t-shirts and who knew Complainant A and had always related well with her allegedly offered her transport thinking she was headed to Harare. The touts were informed that she was waiting to collect some MDC-A material from one of the buses passing through Kwekwe. It is alleged that Complainant A called the MDC-A offices to find out how long it would take for the bus driver to arrive and was informed the bus was on its way.

4.1.3. A man wearing a ZANU PF t-shirt allegedly approached Complainant A and spoke loudly saying “*huyai muone mashura aya!*” meaning (it was taboo to be seen an MDC-A Nelson Chamisa t-shirt and cap). It is alleged the touts in ZANU PF regalia then distanced themselves from the scene as they did not want to be associated with this man. Complainant A alleged that the man asked why she was wearing MDC-A regalia and started to provoke and threaten her. She then explained that she was waiting for a bus driver in order to collect some MDC-A material. Furthermore, she stated that she was a Kwekwe resident. The man allegedly told her that she was lying.

4.1.4. Another man, also wearing a ZANU PF t-shirt, allegedly approached Complainant A and took out a slasher/machete from his trousers. Due to the history of slashers and illegal miners in Kwekwe, Complainant A suspected something bad was about take place. It is alleged that one of the two men made a phone call and told someone on the receiving end that “*zvakuda kuipa*” meaning things were about to get bad. He allegedly called for reinforcements from people who proceeded to tear down three branches and placed their slashers/machetes back in their trousers.

4.1.5. The men allegedly continued issuing threats, poking her with the branches and asking why Complainant A wore MDC-A regalia in their territory. It is alleged that one of the men made a phone call and told

the person on the receiving end that they were in the company of an MDC-A supporter who was wearing opposition party regalia within ZANU PF territory. Complainant A alleged that she then saw more men approaching her with about five sjamboks. The men with these sjamboks allegedly told Complainant A that: she was lying that she is a Kwekwe resident; that she would learn a lesson that day; and that she would go back home and tell others that she had passed through Kwekwe and had been punished for wearing opposition party regalia within ZANU PF territory.

4.1.6. Complainant A allegedly tried to explain that she is a resident of Kwekwe. Further to this, she also told them that she could ask Honourable Larry Mavhima and Tapuwa Muto to confirm her statement as she has engaged the above mentioned at various platforms. It is alleged that the men were offended by what she said and slapped her across her face. She removed the spectacles she was wearing as they had been damaged in the process.

4.1.7. The alleged ZANU PF youths continued to beat her with sticks and branches, telling her to walk towards their offices. Complainant A allegedly took out her phone whilst being assaulted, and dialled a number from her call history. When someone answered, she quickly stated her name and that ZANU PF youths were assaulting her and forcing her to walk towards their offices. Soon after, she was punched in the face and her phone fell onto the ground. One of the men suddenly shouted "Shefu varikuuya!" meaning their boss was coming and they all immediately stopped beating her. Complainant A alleged that she recognised the man being referred to as the boss. She stated that he is well known by the name Drogba and sells alcohol in one of the stores nearby. She further alleged that they made eye contact but never spoke. As soon as Drogba passed them, the men continued beating her and ripped her t-shirt and cap.

4.1.8. As Complainant A was walking towards the roundabout, she allegedly stopped near a car sale. It is alleged the men told her that if she really lived in Kwekwe she would have known that the MDC-A offices are further down the road. The men continued to beat her, and she then saw a member of the MDC-A whom she signalled not to come to assist her. This is because people normally watch and do not assist when those with slashers are assaulting someone in public. Secondly, those who try to assist in any manner face the full wrath from such men.

4.1.9. The men continued to beat her on her legs, back, neck and also kicked parts of her body. She then allegedly fell on the ground and decided not stand up. After she eventually stood up, she told them she knew where the MDC-A offices were and that they should finish what they had started instead of taking her to the ZANU PF offices. By that time, the Complainant alleged that she was now numb and could no longer feel any pain from all the assault she was receiving. At that moment, one of the men continued to rip her t-shirt until her back was exposed. It is alleged that the other men continued assaulting her and told her that she would eventually go towards the ZANU PF offices. The men then stopped beating her and began telling her they wanted to assist her to get to the nearest tap so that she could clean up and get proper clothing. By then, Complainant A's eyes were swollen, body was bruised and she was coughing out blood.

4.1.10. It is alleged that Complainant A covered her back with her satchel. One of the men approached her and ripped off the rest of her t-shirt from the front, bruising her neck in the process. The men then insisted that she should wear a ZANU PF t-shirt that was demanded from a woman who was passing by. Complainant A alleged that she

refused to wear the t-shirt which the men eventually forcefully put on her. She was very upset by this act and removed it and wore it back to front.

4.1.11. Complainant A allegedly overheard the men say that they were shocked that she had refused to wear ZANU PF regalia and only did so because her top half of the body had been exposed. They further stated that had it been any other MDC-A supporter/member, they would have immediately obeyed their instructions to wear ZANU PF regalia. As soon as she was released she asked for a lift from someone who was dropping off passengers and asked them to take her to Kwekwe Central Police Station. The driver complied after seeing the state that she was in.

4.1.12. It is alleged that there were about 7 police officers upon Complainant A's arrival at the police station. Before the Complainant could explain what had happened, they allegedly asked if she was the one who had been assaulted and were quick to tell her that they had heard about her ordeal. Complainant A responded that she was surprised that the officers had heard about the incident and had done nothing about it. She asked if they had known all along and they allegedly directed her to the law and order department.

4.1.13. As the Complainant entered the law and order department, all the four (4) officers that were in the office stood up and stated that they had heard that she was being assaulted. They allegedly recorded a statement in writing. They asked if she knew the men and she stated that she could only recognise their faces and did not know their names except for one man who was not involved in assaulting her, whose name is Drogba even though he did not directly assault her.

She further informed the police that she would eventually get the names of those who had assaulted her.

4.1.14. It is alleged that the Deputy Mayor (who is also an MDC-A member), Searchmore Muringani and Complainant A's brother also came to the police station after word had spread on social media about the Complainant being assaulted by ZANU PF youth. Complainant A alleged that she was asked to read a statement and requested that part of the statement be amended. She stated that a well-wisher did not offer her a ZANU PF t-shirt to wear but instead the ZANUPF youths commanded and forced the woman to remove her t-shirt and give her. Complainant A refused to sign the corrected statement as she alleged that she wanted the officer to give her a typed as opposed to a hand written statement. She was of the view that the handwritten statement would be prone to further amendments without her consent.

4.1.15. Complainant A allegedly asked her brother if he had brought some clothes for her to change into. She removed her t-shirt in order to show him her bruises and thereafter fainted. It is alleged that Complainant A fainted thereafter and one of the officers, who was recording the statement, broke her fall and he carried her outside to the lawn. The officers advised that she be ferried to Kwekwe General Hospital and she was placed in the Deputy Mayor's vehicle. It is alleged that Complainant A received medication and the doctors carried out a head and chest scan. They did not discover any abnormalities with her head. The ZHRC advised the MDC-A Social Welfare department to assist their member with transport and medical finances in order for a specialist in Harare to attend to her. This was done within the week of the investigation.

4.1.16. Complainant A alleged that she also needs to see her eye surgeon who is based at Council for the Blind in Gweru. To date, she had called to find out how much spectacles would cost and was informed they range from \$1,500 Zimbabwean dollars. It was alleged that the doctor in Kwekwe advised her to get a heart scan in Harare and this has not been done because she was unable to walk, her chest fills up most times and she sweats quite a lot. In addition Complainant A was uncertain of the financial implication as she is the breadwinner who makes and sells cobra as well as hairdressing. From the time she was assaulted she has not been able to fend for her mother, two children, nephew and brother who all live with her.

4.1.17. Complainant A alleged that she has not been provided with feedback from the police regarding her report neither has she received counselling. The ZHRC advised her to urgently seek medical attention and receive support from her party leadership through their Social Welfare department. This was because the ZHRC noted that the Complainant was in a poor condition, having memory lapses as she spoke and having explained some of the physical pain she had endured as noted in paragraph 3.17 above. The ZHRC also contacted the MDC-A's Social Welfare department who at the time of the compilation of this report had invited her to Harare to seek medical treatment.

4.1.18. The ZHRC engaged the Provincial ZANU PF Spokesperson for the Midlands Province. He stated that he was at their offices on the 27th of August 2019 and then left for Gweru. Upon arrival in Gweru he saw pictures of the Complainant circulating on social media and immediately called their Kwekwe offices to find out what was happening. He was informed that no such incident had occurred at their offices. The Spokesperson allegedly instructed his subordinates to carry out an investigation to verify what he had seen on social

media. He highlighted that he discovered the following: (a) the incident did not transpire at their Kwekwe offices but by the bus terminus/rank; (b) ZANU PF regalia is readily accessible and sold in the streets by vendors. There are some unscrupulous persons who wear ZANU PF regalia, commit offences and denigrate the party name; (c) Complainant A had an altercation with the men who assaulted her over a phone thus the incident had nothing to do with politics; and (d) a well-wisher gave Complainant A, a ZANU PF t-shirt and this is on record in statement made at the police station. He further highlighted that anyone can acquire ZANU PF regalia, but it does not necessarily follow that they are members of the party.

4.1.19. The Spokesperson further stated that it was actually Searchmore Muringani who escorted Complainant A to the police to make a report. Furthermore, he had been informed that Complainant A had run towards the small gate of the ZANU PF offices seeking refuge during the assault but unfortunately it was locked. He indicated that the intention of their investigations was to ascertain whether the perpetrators were members of their party or not. They discovered that these men were not members of the party. He highlighted that Complainant A is a Provincial Youth leader for MDC-A who knows a lot of residents involved in politics in Kwekwe by name. Furthermore, she has participated in politics since the 1990s. The Spokesperson also stated that for Complainant A to be unable to identify at least one of the perpetrators was impossible. The ZHRC was advised to engage those who were present at the scene, (vendors and touts). Prior to engaging the Respondent, the ZHRC had noted that in and around the CBD, it is very common and normal to find people generally wearing ZANU PF t-shirts. In addition, the ZHRC observed and noted that touts at the bus rank/terminus wore ZANU PF regalia.

4.1.20. When asked what steps were being taken to ensure the general public does not commit crimes while wearing ZANU PF regalia, the Spokesperson stated that the party does not condone such acts. He further stated that whenever he comes across such people, he commands them to desist from such behaviour. In addition, he has also engaged the ZRP and informed them to take action on such persons as this is also denigrating and smearing the name of their party.

4.1.21. The ZHRC also engaged the Zimbabwe Republic Police Officer Commanding, for the District for Kwekwe, (hereinafter referred to as the DISPOL), who stated that he heard about Complainant A's assault through social media. He later learnt that she made a report to the police whilst wearing ZANU PF regalia. The ZHRC was informed that Complainant A made a statement which is on record, was provided with a medical affidavit form and that she had not returned with a medical report after she went to the hospital. It is alleged that Complainant A came to report the matter by herself and did not faint at the station and left for the hospital.

4.1.22. When the Investigating Officer, for ZRP, contacted Complainant A to follow up on the medical report on the 2nd of September 2019 she informed the officer that she was not yet in possession of it. Further to this, she indicated that she had since gone to Harare to see an eye specialist. The DISPOL indicated that the Investigating Officer could not complete investigations without the medical report. He also highlighted that the ZANU PF party offices had since been engaged over the phone to enquire about the incident and had denied having had any of their members involved in assaulting Complainant A. The ZHRC was also informed that immediately after this incident, the DISPOL also heard of a similar incident of another person who was assaulted by a ZANU PF youth but had

unfortunately been unable to gather more information. He stated that one of the major challenges is when people fail to report to the police. In that instance, the victim had not reported to the police. With regards to the issue of incidences where people were using slashers to commit acts of violence against the general public in Kwekwe, the DISPOL stated that the magnitude of the issue had been exaggerated. However, he indicated that the police had since put in place a prohibition order for people not to move around with weapons such as slashers and Colombian knives².

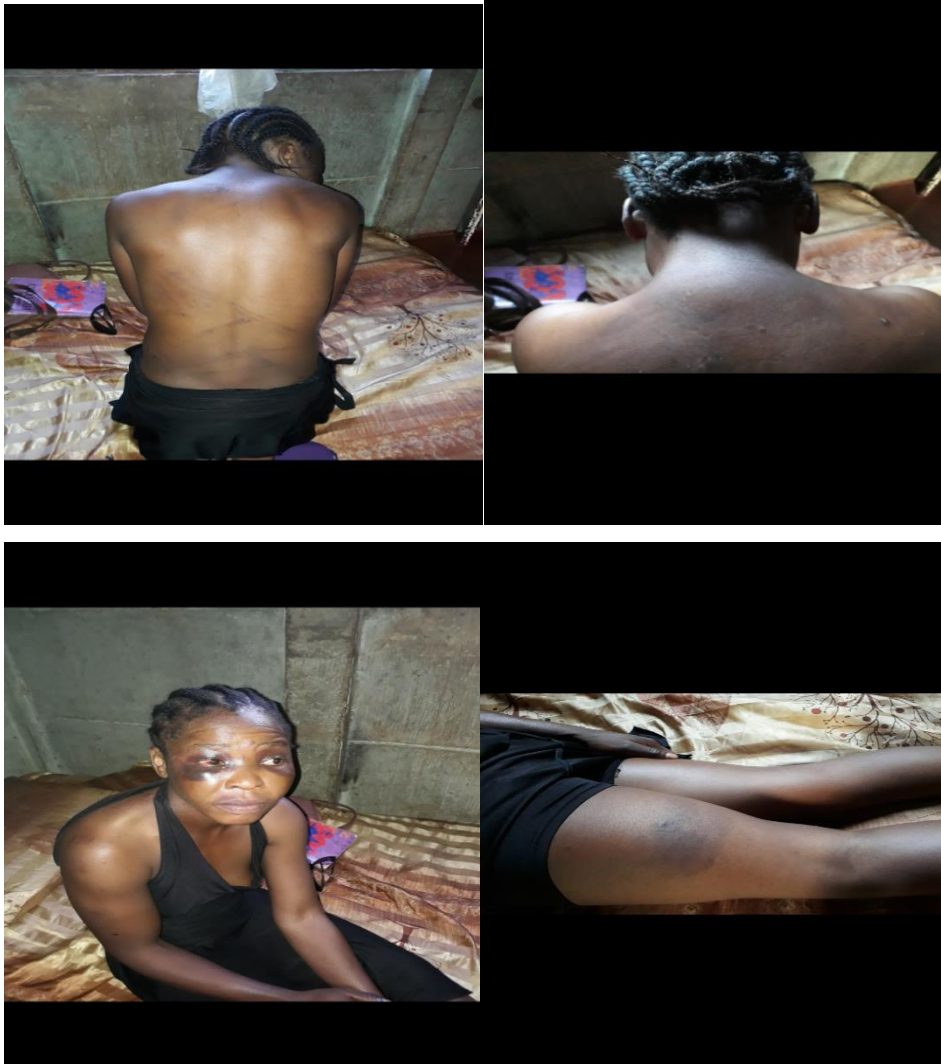
4.1.23. The ZHRC also interviewed the Deputy Mayor for Kwekwe. He stated that he was part of the MDC-A provincial leadership from 2008 to 2013. The Deputy Mayor alleged that on Sunday 25 August 2019 an MDC-A meeting was convened in Gweru in order to plan a demonstration. He further alleged that Searchmore Muringani and Complainant A were delegated to give notice to the ZRP. On Tuesday 27 August 2019, another meeting was allegedly convened in order to receive feedback regarding notification to the police of the demonstration. The Deputy Mayor alleged that he then received a message on his phone that Complainant A had been taken to the ZANU PF Kwekwe offices. Upon the Deputy Mayor's arrival at the said offices, together with Searchmore Muringani, they did not find her there. They allegedly then headed for the police station where they saw her narrating her ordeal. The information shared by the Deputy Mayor corroborates what Complainant A had earlier stated except for the following issue: that Complainant A was asked to read a recorded statement at the Law and Order section and before she could finish reading it, she fainted.

² A knife with both the power of a saw and a razor-edge in one blade. The knife features sawback serrations and mini teeth on the spine.

4.1.24. The Complainant was carried outside and the Deputy Mayor requested the police to call an ambulance. After the police stated that they could not get through to an ambulance, the Deputy Mayor took Complainant A to Kwekwe General Hospital in his car. Furthermore, the Deputy Mayor allegedly informed the police that the perpetrators were well known because they always move around the bus terminus/rank, harassing the general public from time to time. It is alleged that the police indicated that they would engage Complainant A after recovering and accompany her to go and find and identify the perpetrators. The Deputy Mayor then asked what would happen if she passed on before being engaged by the police. The police officer/s allegedly stated that they would still go ahead and carry out investigations.

4.1.25. At the hospital the nurses quickly attended to Complainant A. The Deputy Mayor was of the view that ZANU PF youth are targeting MDC-A youth members. He also indicated that the area at which Complainant A was assaulted is not a designated bus terminus. It is alleged that touts who are ZANU PF youth control the area and the City Council only receives reports of bus drivers in the event these drivers do not cooperate with the touts. It is alleged that these City Council officers are ZANU PF members and only clamp vehicles of those that the touts found to be uncooperative. He therefore believes those who assaulted Complainant A are members of ZANU PF.

4.1.26. At the time of the finalisation of this report complaint indicated that she had provided the police with the medical affidavit in November 2019 though she was no longer sure of the date. She stated that no arrest had yet been made even though she had provided a name and address of one of those who assaulted her to the police. When the officer investigating the case was contacted he confirmed receipt of the medical affidavit but indicated that they had not made any arrests.



Above: Some of the injuries sustained by Complainant A as a result of the assault³

4.2 Midlands Province: Gweru

4.2.1. Four (4) Complainants alleged that the police and other state security agents violated their rights when they intended to have a demonstration on 20 August 2019. They alleged that the prohibition of their demonstration by the police was an infringement of their right to demonstrate and petition and it was not tenable in a democratic society. They alleged that some of them narrowly escaped abduction and that they were still being followed and monitored by people whom they suspect to be state security agents. All the complainants have leadership positions in the MDC-A political party.

³ The Complainant is comfortable with her identity being revealed.

- 4.2.2. **Complainant B** alleged that he was arrested on 20 August 2019 the day when the MDC-A demonstration was scheduled. He alleged that the demonstration was notified by the party's Provincial Administrator around 8 August 2019. He alleged that on 19 August 2019, they went to the police to follow up on the notice but they were told that the response was not yet ready. They had notified the police that the demonstration would start at the Abattoir near the Railways at 0800 hours and end at 1700 hours and the police asked them to change the starting place and the starting and finishing time to be from 1000 hours to 1400 hours. The changes they were requested to make, made them to believe that they were going to be allowed to demonstrate.
- 4.2.3. He became aware that the demonstration had been prohibited around 1930 hours on 19 August 2019 since he was part of the team that was following up on the notice. People had come from Chiundura, Mberengwa and other far off areas so they could not contact them to advise that the demonstration had been prohibited. He was arrested on 20 August 2019 around 1000 hours at the rank where the people had gathered according to their plans in preparation for the demonstration. He was arrested by five police officers who were holding baton sticks and they asked him to get into a police truck. They took him to Law and Order where he was asked about his party's security, the movements of his Party President, whether Honorable Chibaya had other houses and where those houses were located and addresses. The officers demanded that he hands his cellphone to them, but he refused. He was later taken to Mutapa Police Station together with other arrested persons. Two members of the President's Office questioned him and demanded his cellphone but he refused with it. He identified them because he knows them but does not know their names.
- 4.2.4. Whilst in detention he and other arrested members of his party were asked to remove their belts, shoes, and clothes for those who were wearing two pairs. He was wearing a t-shirt inside his shirt and was asked to remove the shirt he was wearing on top so that he remained with just the T-shirt. When their lawyers came, they were released around 1900 hours without charge.

4.2.5. **Complainant C** alleges that on the 19th of August he arrived home around 1900 hours and he was told by his family members that there were people who were looking for him. They did not know who the people were and they had not left any message for him. On 20 August at 0400hours as he left home for work he saw about five people at the borehole near his house. They had a white vehicle and were wearing suits. They started chasing him and he outran them. He indicated that he did not report the matter to the police.

4.2.6. **Complainant D** alleges that on 20 August around 0400 hours he heard a knock on his door. He asked who it was, and a voice said come out so that we talk. He responded that he was not coming out. They continued to knock calling him to come out but he refused. There was silence for about ten minutes then they knocked again asking him to come out but he still refused. The people started pushing the door inside as if to break in. Complainant D started pushing from inside so that it would not open. They then threatened to shoot the door and he heard sounds like a gun being cocked outside his door and he was afraid and opened the door. The moment he opened the door they immediately held him by the shoulders at the same time hitting his head with a knobkerrie and instructed him to look down. They started beating him with weapons all over the body. They took him to a car that was parked in front of his residence and was told that he would not sit down. They instructed him to get in the car headfirst and to lie down where people put their feet in a double cabin vehicle and they drove off with him. He could not ascertain the make of the car but it was white in colour. They continued to beat him with the knobkerrie. They took his right hand and hung it on the front seat and started hitting his elbow with a knobkerrie. Complainant D alleges that it was very painful and that when he tried to raise his head, they would beat him on the head with the knobkerrie. All the time he was being told to keep facing down and was being kicked and assaulted in the ribs and all over the body with booted feet, the knobkerrie and other weapons he could not see but felt on his body.

4.2.7. They asked him where he had spent the day and he responded that he had been at Gweru General Hospital with his uncle. They said he was lying and continued hitting him on the elbow, the ribs and all over the body. They drove

for some time and asked him to get off the car head first so that he would not raise his head to see them. He noticed that they were at a Greenhouse. One of the men kicked him on the cheek and he collapsed. When he regained consciousness, he found himself at Mutapa Police Station. He does not know how he got there.

4.2.8. The police told him that he had been left there by people who would come to pick him up. Moments later lawyers came looking for him. He later learnt that his wife had advised other people and his party members that he was taken by unidentified people and they had engaged lawyers concerning him. Lawyers told him that they had been looking for him from Gweru Central Police Station and other police stations. The lawyers asked the police what he was being charged with and the police said there were people who had left him there who said they would come to collect him. Lawyers asked the police to release him since there was no charge preferred against him but the police refused. Around 1300 hours police officers from Law and Order came and picked him up and took him to their offices at Development House.

4.2.9. The police asked his name and profiled him. His hand, ribs and head were painful. He was taken to hospital by his lawyers and X-rays were taken of his hand and chest. The medical report stated a possibility of permanent injury to his right hand that it could be dysfunctional. The medical report is attached hereto as **Annexure 'A'**. Complainant suspects that he was being followed. There were always suspicious white cars in his neighborhood. They told his wife that they would take him again and next time they would kill him. He now cannot work because of the injuries.

4.2.9.1. Complainant D's lawyer stated that when they were engaged they went to look for complainant at Development House where political activists are usually taken when arrested. They did not find him. They went to look for him at Gweru Central Police Station, and then found him detained at Mutapa Police Station. Upon inquiry they realized that he had not been charged or booked. He was not in cells but under police custody and the police refused

to release him. They were given access to him and they first noticed that he was in pain and requested that he gets medical attention. The Officer-In-Charge highlighted that he was attending to it but no steps were being taken for him to get medical attention. The arrival of the lawyers was the motivation for the police to try and get someone from Law and Order to pick complainant because they were failing to respond to why complainant was in police custody.

4.2.9.2. When the lawyers continued to press hard, they were told there were people who were coming to get him and he would receive medical attention in their custody. Three police officers from Law and Order arrived and Complainant D was handed over to them. The Lawyers followed them to Development House where he was again detained but later released without charge. After his release the lawyers lodged a report about his assault with the Mutapa Police Station.

4.2.10. The Midlands Provincial Administrator for MDC-A said they gave the notice on 8 August 2019. The police asked them to adjust the time and areas to be covered by the demonstration. He is the one who always sends the notices to the police and who was following up on the notices and making the adjustments that were being requested by the police. When he was following up on the response the day before the demonstration the DISPOL said she wanted to talk to the convener. He explained that both conveners were tied up and she insisted that she can only give the response to a convener. That was around 1000 hours. One of the conveners was asked to come back from a funeral he was attending in Shurugwi and he arrived in Gweru around 1500hrs. At that time the DISPOL was not in office. They waited and looked around for her to no avail. Around 1800 hours the DISPOL called him and said she was failing to reach the conveners and insisted that he should collect the response. He refused stating that in morning she had refused to give him the response saying he was not the convener. He contacted other party members who said he could go to collect it. When he collected the response he noticed that it prohibited the demonstration and he called the Provincial Chairperson advising him of the response.

4.2.11. Soon after that around 1930 hours he was arrested by the police at gun point at a beer hall commonly known as Red Roof. He was taken to an open cell with no blankets. Nine people were arrested but only four who were MDC-A members were profiled and released without charge after spending the whole night and whole day in detention. They spent the day being interrogated sometimes by ten officers at the same time. They took very personal information which makes him fear for his life and his relatives' life. They took all his details and asked for his bank account number, the names, residential address, place of origin and identity numbers of his parents', asked whether he had a girlfriend, whether he had been arrested before and his position in the political party.

4.2.12. The ZHRC engaged Law and Order Gweru Officers in the section stated that complainant D was brought to Law and Order after he was arrested by the ZRP in the early hours of 20 August 2019. There were allegations that complainant and others who were arrested separately from him were mobilizing to proceed with the prohibited demonstration and were planning to use petrol bombs to bomb targeted areas. Complainant D was interviewed and also the other eleven who were facing the same charge. The police released them when they realized that there was not enough evidence to take them to court. The police were still investigating and if they find evidence linking him to the case they will contact him. In respect of the allegation that they had received notice of the Gweru demonstration on the 8th of August and only communicated its ban on the 19th of August they highlighted that they had no the alternative since they had received information that they would be use of petrol bombs on targeted areas.

4.3. Bulawayo Metropolitan Province

4.3.1. In an effort to understand the problem from a regional perspective, the ZHRC held a meeting with MDC-A Provincial Information Secretary for Bulawayo on the 3rd of August 2019. He hastened to say that he is a member of the Provincial Administrative Committee which was responsible for the running of the party in

the Province. He highlighted that the same body is endowed with the responsibility of the day to day administration of the Province⁴. Thus, he was going to be limited in terms of the information that he could initially share with the ZHRC in the absence of his colleagues. The ZHRC also assured him that the fact-finding mission was not its own initiative but rather a reaction to a complaint tendered by his superiors at the Commission Head Office.

4.3.2. He stated that indeed some of their members were victims as they were abducted and tortured. At the time of the ZHRC's initial visit to their Bulawayo Provincial Offices, he stated that most of the victims were in hiding but however, he agreed to arrange for the ZHRC to meet those who were at liberty to share their experiences. He said that all the victims had their mobile phones confiscated, thoroughly beaten and left in the bush. In all cases recorded at their offices, the victims were forcibly taken away at night by unidentified man wearing balaclavas⁵ and wielding either an AK-47 assault rifle, a folding butt AK-47 or a pistol.

4.3.3. He said that recent technique of abductions and torture were synonymous with the pattern and manner employed in the early 2000s and in the 2008 electoral violence. He maintained that such methods were employed by the C.I.O and the Military Intelligence as some of the armaments are prohibited weapons. To support his claim, he made reference to previous occurrences when MDC-A members were allegedly abducted and tortured in a similar fashion⁶.

4.3.4. **Complainant E** expressed concern over reports of unknown individuals wielding prohibited weapons which are known to be possessed only by the military intelligence such as the folding butt AK47. He was of the view that if reports of such a nature are made, the authorities must be seen taking measures to prevent similar subsequent actions. He alleged that on the 19th of

⁴ Section 6.9.1.9 of the Constitution of the Movement for Democratic Change Alliance

⁵ A close-fitting garment covering the whole head and neck except for parts of the face, typically made of Wool-Oxford Dictionary

⁶ He made reference to the case of Beta Chokururama, Godfrey Kauzani and Cain Nyevehe who were abducted in a similar manner with Beta Chokururama's body found ripped by AK-47 bullets.

August 2019 and at about 21:30 hrs when he was watching TV, there was an unusual and disturbing knock at his residence in Cowdray Park Township. Whilst he stood gazing at the door trying to comprehend what was taking place, unidentified armed men broke through the door gaining access to his house. He alleges that these unknown individuals, who were carrying AK-47 assault rifles immediately ordered him and his wife to lie-face down on the floor. He states that out of fear, they complied.

4.3.5. He contends that, whilst he and his wife were lying face down, his pockets were searched whilst others were blindfolding him and tying his hands from behind using a rope. From his pockets they retrieved his wallet which had 700Rtgs, R250 and 30USD which he intended to use to refuel his car. His mobile phone was also confiscated. He alleges that whilst all this was taking place he had an AK-47 pointed to his head.

4.3.6. He states that these unknown assailants asked for his name and he told them. He alleges to have heard one of them saying “...ndiye...” (meaning “its him) and then he was immediately marched at gun point out side into an unidentified vehicle and forced to lie face down with their feet stepping on his back and the vehicle took off. He mentioned that whilst in the vehicle and still laying down he recalls these unidentified assailants pouring a liquid on his back which he thought was odourless and could have been water.

4.3.7. He alleged that the vehicle drove for quite some time until it came to halt and he was dragged outside the vehicle to what felt like an isolated area. He states that he was made to lie face down whilst the unknown assailants began to interrogate him about his whereabouts on the 16th of August 2019. He alleges to have maintained that he was at his residence in Cowdry Park. He stated that he recalls that upon proffering that response he heard one of them saying “...arikunyepa...” (meaning he is lying) he was assaulted on his legs and on his arms until one of them put a gun to his head and threatened that if he does not tell them about the arrangement of the impending demonstration, he will shoot and kill him. He was allegedly accused of planning to shut down the nation.

- 4.3.8. He alleged that he was forced to remove all his other clothes until he remained with an underneath boxer short and forced to roll on the ground whilst he was being indiscriminately assaulted. At one point he was given three chances to say the truth otherwise they were going to shoot and kill him. He averred that he recalls being ordered to pray because he was going to be executed. However, he was hit with a gun handle on the left eye and his blind fold fell off. He states that he immediately noticed that there were 3 vehicles and they were in a bushy area. He indicated that at that point, one of the assailants forced him to open his mouth and a pistol was put in his mouth. He was ordered to announce his resignation from MDC-A and seek refuge in the neighbouring South Africa. He alleges that the unknown assailants vowed to return to kill him if he does not resign.
- 4.3.9. Complainant further alleged that he was left in the bush where he followed the direction of the cars for about 15km until he got to a sign post written “Bagcwele” which is 1km from Cresta Hotel. He alleged that he went to Hillside Police Station where he asked for assistance and filed a report. He was given a reference number. On the morning of 20 August 2019, he went to MDC-A Bulawayo Provincial offices and he was taken to the hospital. The medical report was still pending.
- 4.3.10. **Complainant F** alleged that on the 18th of August 2019, unknown assailants came to his residence looking for his son. He alleges that he did not open the door but however indicated to the individuals that his son did not reside with him and they left. He suspects that on the 20th of August 2019 at about 21 30hrs the same assailants visited his residence masquerading as police officers. They were in plain clothes but mentioned that they were police officers without producing organisational identification as confirmation. They gained entry into the house after his 16-year-old son unlocked the door and they demanded to see his other son. He alleged that the unknown assailants proceeded to the bedroom where he and his wife were and kicked the door open. He stated that his wife was half dressed but they ordered them to get out of the bedroom. They were force marched to the dining room. Further, he recognised that there were several masked men who were armed with either

an AK-47 rifle, folding butt AK- 47 rifle or a pistol. He alleged that their mobile phones were then confiscated. He alleged that he and his 16-year-old son were abducted.

4.3.11. They were taken into a Toyota Hiace vehicle which was parked outside his house and ordered to lie on their faces. He alleged that his 16-year-old son was taken into a different vehicle. They drove off until he felt that the vehicle was travelling in what felt like a dust road. When the vehicle stopped, he was forcibly removed from the vehicle and assaulted with a gun butt and he fell to the ground. He alleged that, whilst he was on the ground, the unknown assailants forcibly removed his clothes and began to assault him indiscriminately. He further alleged that the assailants accused him and his son of mobilising to remove the Government. He states that he vehemently denied this allegation, and they continued to assault him until they tied his arms and feet and blind folded him indicating that they wanted to set fire on him. He alleged that he was in such pain that he even asked his assailants to get it over and done with by killing him.

4.3.12. The assailants stopped assaulting him and he heard them driving off leaving him in the bush. He was then assisted by his 16 year old son, who untied him. He alleged that they walked until they realised that they were entering Entumbane Township. He stated that at that moment he was failing to walk so they slept in a bushy area that night. In the early hours of the morning at about 05:00 hrs, his son went to Entumbane Police Station and an ambulance was directed to where they had slept and he was taken to Mpilo Hospital. He alleged that he reported the abduction at Mpilo Police Post but he was referred to West Commonage Police Station where an official report was made.



Above: Some of the injuries sustained by Complainant F as a result of the assault

4.3.13. The ZHRC paid a courtesy visit to the Officer Commanding Bulawayo Province and explained the investigative mission that was being carried out. He explained that indeed the police had received reports of abductions and torture. He was aware of them as the cases were reported and brought to his attention through their normal reporting structures. He mentioned that as police they remained committed to curb crime and protect the citizenry in general.

4.4. **Masvingo Province**

4.4.1. In Masvingo Province, the ZHRC was referred to a female complainant from Chiredzi whose contact details were availed. Through a telephone conversation with her she indicated that there was a man who had knocked at her gate and asked her whether she had gone to Harare for the demonstration. She indicated that she had not done so and the man told her that they had seen her in Harare and left. He had not made any more contact after he left. She was not abducted and neither was she threatened, she was however shaken by the visit. She indicated that she had not reported the matter to the police.

4.4.2. The second complainant that the ZHRC was referred to was a male in Gutu South Constituency, **Complainant G** who is the District Organizing Secretary. He indicated that he had been arrested in 2011 and had lost his fingers due to police brutality. He indicated that nothing had been done to the perpetrators even though he had reported the matter to the Office of the Commissioner General of Police who had caused an investigation to be conducted. Perusal of the documents he had revealed that in August 2019, the Commissioner General had responded to his letter and had called for an investigation to be conducted in respect of the police brutality. In respect of the August 2019 demonstrations complainant was not affected. In this respect he was advised that the ZHRC was investigating abductions and violations that occurred in August 2019. Furthermore the police could also not be said to have violated his right to Administrative Justice because they called for an investigation of his case.

4.5. **Manicaland**

4.5.1. In Mutare Manicaland, the ZHRC met with six (6) Manicaland Provincial members of the MDC-A. Five (5) of them were males while one (1) was a female. They indicated that none of their members were abducted or detained but they had been subjected to harassment by the ZRP when they had given notice of a demonstration that they wanted to hold on the 20th of August 2019. They had notified the police who only served them with a prohibition order the day before the proposed demonstration. They had complied with the police order but noted that on the day of the proposed demonstration some of their members were followed around by different people in civilian clothing. None of them had however been detained or abducted. Their major concern was that they had been deterred from exercising their right to demonstrate and petition. The ZHRC could not obtain access to the notification letter and the prohibition order as they were said to be in Harare. It could also not verify these allegation as the Respondents could not be engaged. The Zimbabwe Republic Police Officer Commanding the Province for Manicaland indicated that he was too busy to see the ZHRC even after his clerk informed him of the reasons for the visit. The ZHRC then proceeded to visit the ZRP Officer Commanding the District of ZRP, Mutare who also referred the ZHRC to her subordinate

highlighting that the ZRP Officer Commanding the Province for Manicaland was better placed to address the issues being raised by the ZHRC.

5. Applicable Law

International Law

5.1.1. Universal Declaration of Human Rights (1948)

The right to liberty is a fundamental element of international human rights law. **Article 3** states that 'Everyone has the right to life, liberty and security of person'. **Article 5** provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' **Article 20 (1)** provides that everyone has the right to freedom of peaceful assembly and association. **Article 21 (1)** further provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

5.1.2. International Covenant on Civil and Political Rights

Article 7 of the Convention provides that, '*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...*' **Article 9 (1)** further provides that everyone has the right to liberty or security of person. **Article 19 (1) and (2)** provide for the right to hold opinions without interference and the right to freedom of expression. **Articles 21 and 22 (1)** provide for the right of peaceful assembly and the right to freedom of association with others respectively. **Article 25 (1) (2)** provides that every citizen shall have the right to take part in the conduct of public affairs directly or through chosen representatives and the right to vote and to be elected at elections.

5.1.3. African Charter on Human and People's Rights

Article 6 provides that, 'every individual shall have the right to liberty and to security of his person ...' Article 10 provides for the right to free association and Article 11 provides for the right to assemble freely with others.

5.2. National Legislation

5.2.1. The Criminal Law (Codification and Reform) Act [Chapter 9:23]

Section 89 (1) which provides that any person who:

(a) commits an assault upon another person intending to cause that other person bodily harm or realising that there is a real risk or possibility that bodily harm may result; or

(b) threatens, whether by words or gestures, to assault another person, intending to inspire, or realising that there is a real risk or possibility of inspiring, in the mind of the person threatened a reasonable fear or

belief that force will immediately be used against him or her; shall be guilty of assault

5.2.2 The Public Order and Security Act (POSA) [Chapter 11:17]

Section 25 (1) (a) states that *the convener shall provide notice of a public demonstration in writing seven days before the scheduled date. This notice must be signed by the convener and submitted to the regulating authority for the district in which the public demonstration is to be held.*”

5.3. Constitutional Rights

5.3.1. Freedom to demonstrate and petition Section 59

It states that *every person has the right to demonstrate and to present petitions, but these rights must be exercised peacefully.*

5.3.2. **Section 50** provides for Rights of arrested and detained persons. It provides as follows;

(1) Any person who is arrested –

(a) Must be informed at the time of arrest of the reason for the arrest;

(b) Must be permitted, without delay –

- (i) At the expense of the State, to contact their spouse or partner, or a relative or legal practitioner, or anyone else of their choice...

and must be informed of this right promptly;

- (c) Must be treated humanely and with respect for their inherent dignity;
- (d) Must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention...

5.3.3. **Section 49** provides for the right to personal liberty. It states that every person has the right to personal liberty, which includes the right not to be deprived of their liberty arbitrarily or without just cause.

5.3.4. **Section 51** provides that every person has inherent dignity in their private and public life and the right to have that dignity respected and protected.

5.3.5. **Section 52** provides for the right to personal security which is a right to bodily and psychological integrity, which includes the right to freedom from all forms of violence from public or private sources

5.3.6. **Section 57** provides for the right to privacy which includes the right not to have their person, home, premises or property searched; or the privacy of their communications infringed.

5.3.7. **Section 70 Rights of accused persons.** It provides that any person accused of an offence has a right to be presumed innocent until proved guilty and to be informed promptly of the charge, in sufficient detail to enable them to answer it.

5.3.8. **Section 68** guarantees the right to Administrative Justice. It provides that *every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.*

5.3.9. **Section 60 (1) (a) and (b)** provides that *every person has a right to freedom of conscience, which includes freedom of thought, opinion or belief and to practice and propagate their thought, opinion, or belief in public or in private and whether alone or together with others.*

5.3.10. **Section 53** provides that *no person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.*

6. Findings

Based on the investigations conducted by the Commission, the ZHRC found the following:-

- 6.1. That the MDC-A in Kwekwe contravened section 25 (1) (a) of POSA as they gave late notice of their proposed public demonstrations. The ZRP require at least 7 days' notice. In this instance, the MDC-A notified the police on the 26th of August about demonstrations that they were proposing to hold on the 29th and 30th of August 2019. It follows therefore that the prohibition was lawful and was not in violation of section 59 of the Constitution. However, in Gweru and Mutare where proper notices were given by the conveners then unreasonable prohibitions led to the violation of the basic right to demonstrate and petition.
- 6.2. That the violence perpetrated against Complainant A was unlawful, unconstitutional and in violation of the right to human dignity, personal security as well as inhumane and degrading treatment. Complainant must cooperate with the police to ensure that those who brutalised her are brought to book.
- 6.3. That the violence perpetrated against Complainant A does not amount to torture as this should be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In this regard Complainant A failed to prove that there was a public official behind her assault.
- 6.4. In Kwekwe, it was noted that the police exercised administrative justice in that they were prompt and impartial. Furthermore, equality before the law

was exercised in that they recorded Complainant A's statement and followed up with the Complainant regarding the medical report. More efforts should, however, have been made to rush to the scene to investigate.

- 6.5. In Masvingo it was also noted that Complainant's right to Administrative Justice was not violated since the Commissioner General of Police responded to the letter of complaint that he had referred to him. It therefore follows that in respect of Complainants A and G the right to administrative justice was not violated.
- 6.6. The MDC-A leadership received a response from the Police quite late, prohibiting the demonstration in Gweru, the MDC-A. The prohibition notice was communicated after 18.00 of the day before the scheduled demonstration. It was noted that the time was therefore not adequate for them to have notified other party members. This led to the arrest and unlawful detention of those who had gathered to conduct the demonstration. Complainant B and quite a number of other demonstrators were arrested and detained for more than seven hours and released without charge. Whilst being questioned at the police stations they were treated as arrested people as they were asked to remove shoes, belts and those with two shirts or a trouser and a short were asked to remain with one pair.
- 6.7. Complainant D was brutalised under police custody. He was assaulted and suffered severe injuries which left him with possibilities of permanent injuries.
- 6.8. In Bulawayo, even though complainants had not planned any demonstration some members of their party structures were either abducted or assaulted by unknown assailants. In Mutare, complainants had heeded the call that the demonstration had been prohibited. There were no complainants who had been assaulted or abducted but they were not happy with the violation of their right to demonstrate and petition.

7. Conclusion

7.1. From the above observations, ZHRC concludes that some complainants acted against the police prohibition order and refused to cooperate with the police. Some police officers arrested members of the MDC-A and tortured them whilst in police custody. While some cases of alleged abduction, for example in respect of complainant F of Bulawayo were verified and corroborated by witnesses, in Manicaland and Masvingo Provinces abduction allegations could not be sustained. This is because the leadership in the two Provinces indicated that none of their members had been abducted in respect of the August 2019 demonstrations. In Masvingo Province, the ZHRC was referred to a 2011 victim. He indicated that he had not suffered from any violence in August 2019.

8. Recommendations

Movement for Democratic Change Alliance

8.1 There is need for the MDC-A structures, within the Provinces, to ensure they are apprised on the laws surrounding public demonstrations. They should abide by lawful instructions and follow legal channels to challenge in cases where they feel their constitutional rights have been infringed.

8.2 The MDC-A leadership should communicate to members when their demonstrations will have been prohibited for the members to make informed decisions on whether to proceed to the demonstration venue(s) in light of the prohibition order.

Zimbabwe African National Union- Patriotic Front

8.4 There is need for the ZANU PF party to look into ways to curb individuals who they allege to be using their regalia to commit various criminal offences.

Zimbabwe Republic Police

8.5 There is need for the ZRP to be more proactive in instances where criminal offences are alleged to be taking place, via social media, within their vicinity.

8.6 The ZRP should investigate the issue of abduction and torture as alleged by the victims' and bring the perpetrators to book.

8.7 To issue responses to notices on time to enable conveners of demonstrations to communicate to their members on time.

8.8 Should respect and uphold human rights of arrested and accused persons by not assaulting and torturing them. They should also respect the freedom of persons to petition and demonstrate.

8.9 Should desist from arresting and detaining persons for purposes of investigations but rather investigate before arresting.

Ministry of Justice, Legal and Parliamentary Affairs

8.10 The Government through the Ministry consider ratification of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as per its commitment during the Universal Periodic Review process and at the presentation of its Periodic Report at the 65th Session of the African Commission of Human and Peoples Rights in Banjul, the Gambia.