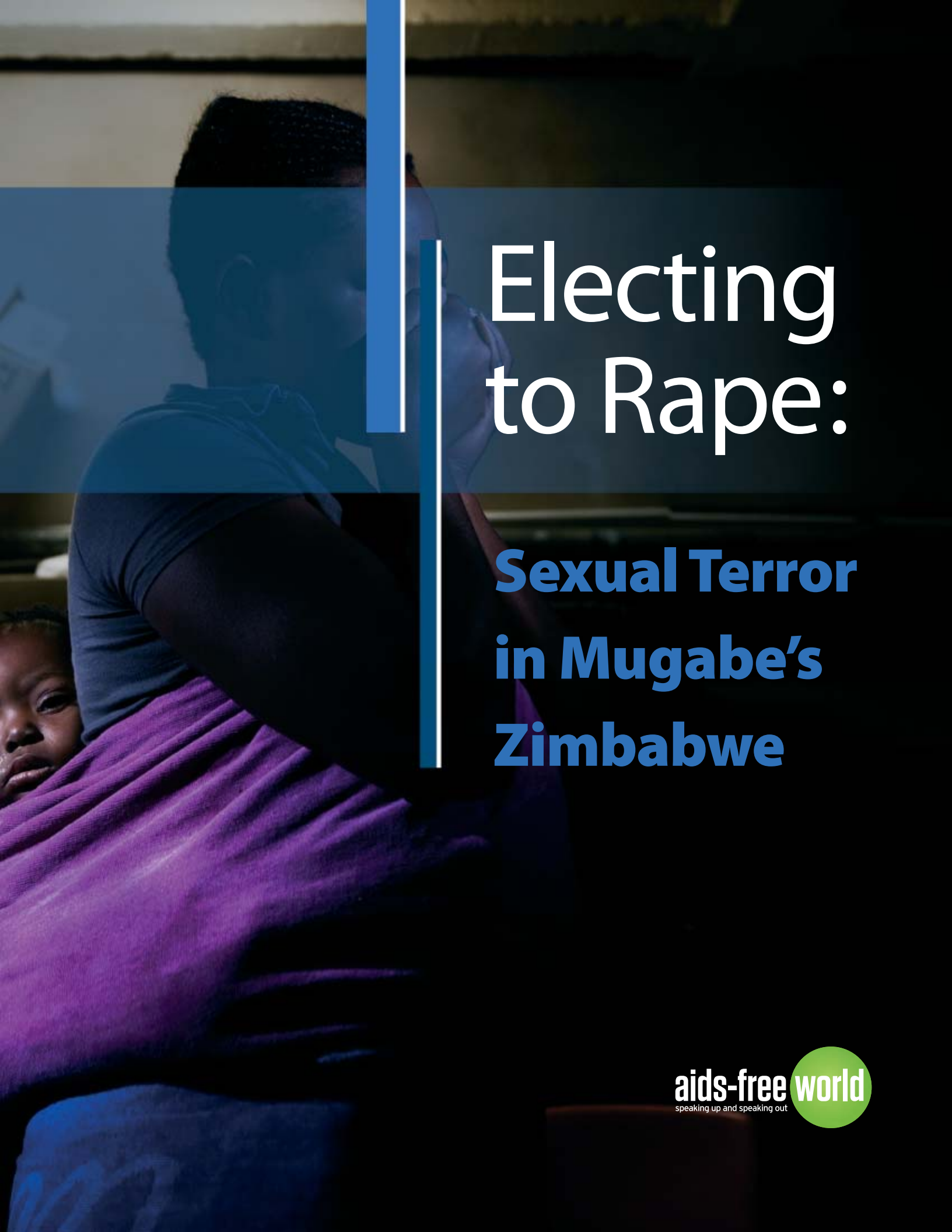
Electing to Rape:

Sexual Terror in Mugabe's Zimbabwe



aids-free world
speaking up and speaking out

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Sexual Terror in Mugabe's Zimbabwe

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The photographs contained in this report are not of the women whose testimony is included. However, because these are photographs of women survivors from Zimbabwe, AIDS-Free World has made every effort to protect their identities by concealing their faces. AIDS-Free World also has removed identifying information from the testimonial accounts contained in this report so as to protect the identities of the women we interviewed.

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For the brave women who told us their stories.

May their bodies heal and their spirits mend as the world ends the culture of impunity.

Special Thanks to DLA Piper Primary *Pro Bono* Counsel

DLA Piper is one of the largest legal services providers in the world, with 3,500 lawyers in more than sixty-five offices in Asia, Europe, the Middle East, and the United States.

DLA Piper houses a unique pro bono program through its nonprofit affiliate, New Perimeter, which enables DLA Piper lawyers to work on legal pro bono projects of vital importance around the world. DLA Piper serves as primary pro bono counsel to AIDS-Free World on the Zimbabwe project and has thus far provided nine attorneys to travel to southern Africa on four separate occasions to conduct interviews with rape survivors, draft affidavits, undertake legal research and analysis, and provide other legal advice. The value of DLA Piper attorney time contributed to this project to date approaches $1,000,000. DLA Piper lawyers whose commitment and time have benefited this project are: Kristen Leanderson Abrams, Sara Andrews, Richard Bull, Steve Churchwell, Lewis Conwell, Rachel Gupta, Amanda Jones, Brenda Meister, and Syma Mirza.

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For more information about DLA Piper's international *pro bono* work, go to www.newperimeter.com.

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On the Record: The words of Robert Mugabe

1962 It may be necessary to use methods other than constitutional ones.

1976 (in a radio broadcast from Mozambique) Our votes must go together with our guns. After all, any vote we shall have, shall have been the product of the gun . . . The people's votes and the people's guns are always inseparable twins.

1982 An eye for an eye and an ear for an ear may not be adequate in our circumstances. We might very well demand two ears for one ear and two eyes for one eye.

1983 We have to deal with this problem quite ruthlessly. Don't cry if your relatives get killed in the process . . . We eradicate them. We do not differentiate who we fight because we can't tell who is a dissident and who is not.

1985 We will kill those snakes among us, we will smash them completely.

1999 We are still exchanging blows with the British government . . . Each time I pass through London, the gangster regime of Blair "expresses its dismay."

1999 (in response to a letter written by four Supreme Court judges seeking clarification from the president on a torture charge) The judiciary has no right to give instructions to the President on any matter as the four judges have purported to do. In those circumstances, the one and only honourable course open to [the judges] is quitting the Bench.

2000 I do not want to be overthrown and I will try to overthrow those who want to overthrow me.

2000 Those who try to cause disunity among our people must watch out because death will befall them.

2002 You are soldiers of ZANU-PF for the people . . . When the time comes to fire the bullet, the ballot, the trajectory of the gun must be true.

2003 Let the MDC and its leadership be warned that those who play with fire will not only be burnt, but consumed by that fire.

2003 (describing the use of violence to crush opposition) If that is Hitler, then let me be a Hitler ten-fold. Ten times. That is what we stand for.

2006 Some are crying that they were beaten. Yes you will be thoroughly beaten. When the police say move you move. If you don't move, you invite the police to use force.

2007 (on the police beating of opposition party leader Morgan Tsvangirai) I told the police (to) beat him a lot. He asked for it.

2007 I will not allow Tsvangirai and his bosses to taste this seat. Never, ever!

2008 I will never, never, never, never surrender. Zimbabwe is mine.

Rape as Strategy

Tyrants with pathological cravings for power have organized campaigns of rape since ancient times, from Troy to Nanking and Sierra Leone to Cyprus, from East Pakistan to the Democratic Republic of the Congo and beyond. And yet, everyone ever convicted of orchestrating mass rape could be crowded into a single holding cell. Since 1998, the international community has agreed that rape when committed as part of a widespread or systematic attack against a civilian population can be prosecuted as a crime against humanity. But that charge has rarely been made.

Reasons abound. Most leaders and societies have not taken the time to understand rape, and so they erroneously place it along a continuum that begins with normal sexual arousal. Few recognize it as a separate, violent act of terror and control, as unrelated to consensual sex as force-feeding poison is to sharing a meal.

No country in the world has made it a priority to prevent or punish rape. Because rape has some characteristics of consensual sex, most courts require proof—difficult to produce without witnesses—that victims were unwilling. Few rapes get reported, and convictions are rare.

Fear, shame, and an overwhelming sense of futility keep women silent. Once, rape was considered theft of a man's property, and modern variations persist. In societies where a man can demand that his wife provide sex, bear children, house-keep, feed, and care for his extended family, victims of rape are often accused by their husbands of surrendering to another man's control. Banishment is common, robbing the victim of her livelihood and identity. But whatever a husband's reaction, fear of life-altering consequences such as HIV infection and pregnancy loom large for women, as do lingering physical and psychological trauma. Married or single, victims dread that family, community, life itself will never be the same.

When entire communities are targeted for rape, societal collapse ensues. Women cease to function, afraid to leave home, terrorized in equal measure by threats of rape and of its long-term, destructive aftermath.

Ironically, among the few men who have stopped to analyze the unique, destabilizing power of rape are those who use it as a strategy, especially during armed conflict and political upheaval, to control civilian populations and maintain power. They know it's easy to conscript impoverished men and boys raised in sexist societies to "take charge" of women in exchange for small pay. They know that deploying rape brigades is cheap and expeditious: no heavy weaponry, training, or maneuvers. They know that targeting women breaks the backbones, the will, and the cohesion of communities, leaving them vulnerable. Most crucial, they know that the world is blind to women—that diplomats, journalists, peacekeepers, and aid workers remain largely oblivious as campaigns of sexual terror unfold around them, and that even eyewitnesses to systematic gang rape will mistake it for spontaneous opportunistic sex.

Robert Mugabe is among the world's diabolical masterminds of sexual terror. He understands gender; he understands rape. He understands impunity. It is time he understood justice.

Executive Summary

In the weeks immediately after the June 2008 presidential elections in Zimbabwe, AIDS-Free World received an urgent call from a Harare-based organization. The human rights activists were overwhelmed with reports from women associated with the opposition party, Movement for Democratic Change (MDC), who had been raped by members of President Robert Mugabe's ruling party, ZANU-PF, in a vicious campaign to intimidate voters and emerge victorious in the presidential election. In response, AIDS-Free World undertook a series of investigative trips to the region with teams of lawyers to interview survivors of this violence.

What emerged from the testimony was a brutal, orchestrated campaign of rape and torture perpetrated by Mugabe's ZANU-PF youth militia, agents of Zimbabwe's Central Intelligence Organization (CIO), and people who identify themselves as veterans of the liberation war (known as war veterans) affiliated with ZANU-PF. The exceptionally violent rapes, as described by women from every province of Zimbabwe, were often nearly fatal. Survivors' terror was prolonged by fears that their attackers were among the 15% of adults infected with HIV in Zimbabwe.

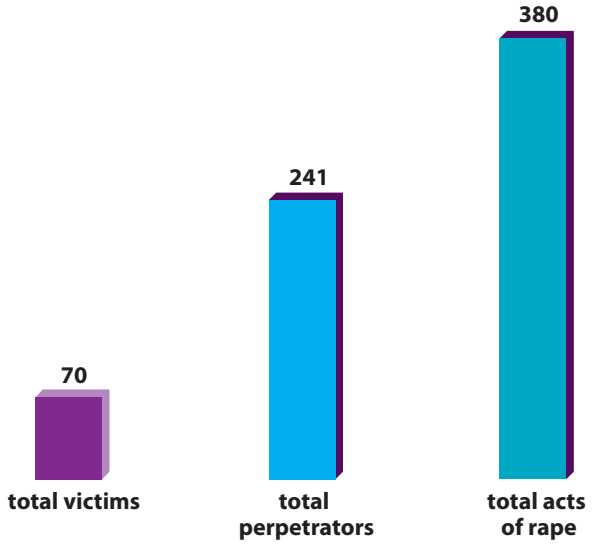
The women's disturbing accounts, told to the AIDS-Free World legal team over the course of more than 300 hours of interviews and detailed in this report, demonstrate that the rape campaign waged by ZANU-PF in Zimbabwe was both widespread and systematic. Every victim supported the MDC, and in every attack the perpetrators were clearly identifiable as ZANU-PF youth militia and war veterans. Striking patterns recurred throughout the testimonies of the seventy survivors and two witnesses and cannot be coincidental.

> The next elections in Zimbabwe are just around the corner, and ZANU-PF is already gearing up for its next campaign of sexual terror.

Accountability for these crimes is critical and serves several purposes: it punishes the perpetrators; it provides justice for the victims; it pierces the veil of impunity that protects Zimbabwe's highest officials and enables them to maintain their abusive regime at the cost of women's lives and health; and it deters future rapes.

DATA FROM 70 VICTIMS' SWORN AFFIDAVITS

Scale of the rapes reported to AIDS-Free World



Within Zimbabwe, both the police and the legal infrastructure are so seriously compromised as to make justice for systematic rape inside the country impossible at this time. Furthermore, existing Zimbabwe law does not allow for the prosecution of rape as an international crime, perpetrated in a systematic fashion.

Yet several possibilities do exist for legal accountability in the region, and are summarized in this report. The principles of command responsibility and universal jurisdiction, the powers of regional tribunals, and the attention of international courts and commissions are all potential avenues for justice that have yet to be pursued. Several bodies could and should also take action against Zimbabwe to restore justice and prevent future crimes against humanity.

Zimbabwe's regional neighbors, especially the southern African countries to which so many rape survivors have fled, must take responsibility for providing protection and assistance to the victims. If survivors cannot be assured of their security, they will not be able to recover and they will not be able to come forward and testify about the crimes they have endured.

The next elections in Zimbabwe are just around the corner, and ZANU-PF is already gearing up for its next campaign of sexual terror. This report asserts that Mugabe and his henchmen can and must be brought to justice. Continued impunity will be a green light for the next rape campaign, and the women of Zimbabwe—and the southern African region—will pay the price.

1 An Organized Rape Campaign

In the weeks immediately following the June 2008 presidential elections in Zimbabwe, AIDS-Free World received an urgent call from a Harare-based organization working on behalf of women and girls. They believed that hundreds and possibly thousands of women had been raped by members of President Robert Mugabe's ZANU-PF party as a strategy to influence the election, and sought help from AIDS-Free World in documenting these crimes.

A preliminary investigation revealed awareness among human rights groups that sexual violence had occurred, but turned up no other organization, local or international, that had moved beyond awareness of the crimes to address the politically motivated sexual violence through legal channels. Organizations within Zimbabwe were severely restricted by security concerns, few had contemplated or initiated advocacy campaigns, and there was little media coverage inside Zimbabwe of potentially widespread rape.

AIDS-Free World undertook a series of investigative trips to the region to interview survivors with teams of lawyers, once with three attorneys from Blake, Cassels and Graydon and on four occasions with a total of nine DLA Piper lawyers. What emerged was a concerted campaign of politically motivated rape against opposition supporters.

Over the course of six trips to the region, AIDS-Free World lawyers interviewed dozens of survivors of rape and two witnesses, resulting in seventy sworn affidavits from rape survivors describing brutal beatings, abduction, gang rape, and torture. Every one of these seventy women targeted for rape was either a member of the opposition party Movement for Democratic Change (MDC), or was closely related to a member of the MDC. Victims ranged in age from five-year-old girls to elderly grandmothers. Multiple ZANU-PF perpetrators, in many instances five or more men, committed the rapes together. Many women were forced to watch their husbands, children, and parents killed or tortured before they were raped. Nine of the women believe they were infected with HIV/AIDS as a result of the rapes, and an additional seventeen women also tested HIV-positive in the months following the rapes, raising the possibility that their rapists infected them.[1] Ten women reported that they became pregnant by their rapists. All have been severely traumatized. The victims described a violent campaign of rape and torture perpetrated by ZANU-PF youth militia, agents of Zimbabwe's Central Intelligence Organization (CIO), and people who identify themselves as veterans of the liberation war (known locally as war veterans, or "war vets") and are now affiliated with ZANU-PF.

Terror compounded: rape and HIV

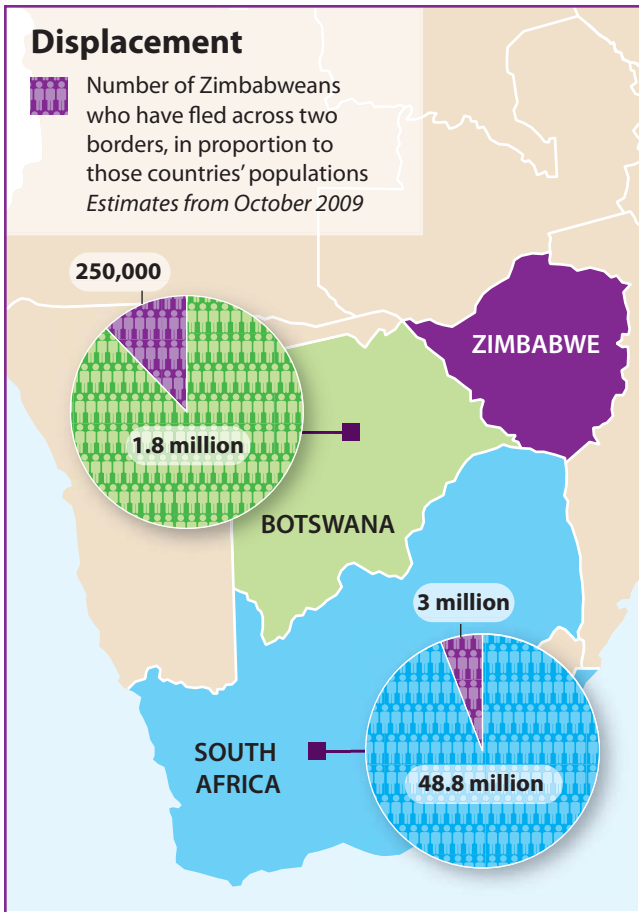
Unprotected sex carries a risk under any conditions in Zimbabwe, a country with one of the world's highest rates of HIV. One in six urban adults and over a quarter of Zimbabwean men and women living outside of cities carry the virus that causes AIDS, making any exchange of bodily fluids or blood a potentially dangerous one.

Even when intercourse is consensual, the vagina is naturally susceptible to infection. When sex is violently coerced or forced, the resulting cuts and abrasions compound the danger of infection and greatly increase the likelihood of HIV transmission if the aggressor is HIV-positive. Girls are at exceptionally high risk of contracting HIV through rape because their genital tracts are not yet fully developed, and are therefore even more vulnerable to tears and lesions that allow the virus to enter the body. Less well understood than the threat that rape poses for victims who are HIV-negative is the risk to women and girls who are HIV-positive. Re-infection strengthens the virus's grip and further compromises the health of people who are already living with HIV. Anyone raped by an HIV-positive attacker faces a heightened risk of infection if blood is exchanged.

For the women of Zimbabwe, then, the dread of rape and its long-term consequences is multiplied many times over by the specter of HIV.

The rapes documented by AIDS-Free World began in 2007 but increased dramatically in 2008, with a surge in frequency—64%—occurring between the March presidential election and the June runoff. The systematic rape accompanying the 2008 elections is generally understood to be a continuation of violence started during the 2000 Parliamentary elections,[2] when the MDC presented ZANU-PF with its first serious challenge, and continued in 2002 when Morgan Tsvangirai first ran for president. The stories told by female survivors of the 2008 campaign of rape are alarmingly similar to reports from earlier in the decade. The same language is used time and again: MDC supporters are "sell-outs," and they are "Tsvangirai's whores" accused of "giving the country back to the whites."[3] Documentation by human rights groups has shown that the majority of perpetrators of these abuses are part of the apparatus of President Robert Mugabe's government.[4] Why, then, has the world allowed it to happen again?

AIDS-Free World's investigation of the rape surrounding the 2008 elections in Zimbabwe reveals two stark facts: it was a widespread, systematic campaign against MDC female members and supporters calculated to intimidate, humiliate, and punish them—and by extension, their families—for their political affiliation; and the patterns and similarities that emerge from survivors' stories show that history in Zimbabwe is repeating itself. Once again, the impunity for systematic rape that has characterized Zimbabwe's history under Robert Mugabe's leadership[5] is making it possible for the police not to investigate, for the prosecutors not to prosecute, and for Zimbabwe's neighbors to pretend these crimes against humanity are the internal affairs of a sovereign state. It is also exacerbating an HIV/AIDS crisis in a country



where more than 15% of adults have HIV, since rape helps to spread that farther and faster.

The failure on the part of Zimbabwe's neighbors, and indeed the broader community of nations in Africa and around the world, to hold Mugabe and ZANU-PF accountable for the decades-long campaign of rape, torture, and other violations has not only had disastrous consequences for the women of Zimbabwe; it has also produced a threat to regional security and stability. An estimated three million Zimbabweans have fled to South Africa, a country with a total population of 48.8 million. This displacement has helped to tax that country's health and other infrastructures and possibly feed xenophobic violence, including the killings of at least twelve refugees.[6] An estimated 250,000 Zimbabweans have fled to Botswana, causing, in the words of the Foreign Minister, a "drain on [our] resources."[7] Additionally, forced migration has been shown to exacerbate the sub-continent's AIDS pandemic. Undocumented refugees from Zimbabwe may become infected by opportunistic rape or by engaging in survival sex at the borders.[8] Fear of deportation may cause them to shun medical services, to the extent those are available, and ignore treatable illnesses, such as sexually transmitted diseases, increasing their vulnerability to HIV.[9] Given Zimbabwe's high adult HIV prevalence rate—over 15%—neighboring countries that are themselves overwhelmed by their own HIV prevalence rates may have already gained hundreds of thousands of additional cases of HIV/AIDS.[10]

Crimes against humanity in the form of widespread, systematic rape were perpetrated during the 2008 elections and, if unaddressed, will serve to further embed the culture of impunity for rape and other human rights abuses in Zimbabwe. As violations of international human rights law, these crimes demand accountability, both to achieve justice for their victims and to prevent future violations.

The next elections in Zimbabwe are just around the corner, and ZANU-PF is already gearing up for its next violent campaign. It is time for Mugabe and his ZANU-PF henchmen to be brought to justice. Continued impunity will be a green light for the next rape campaign, and the women of Zimbabwe—and the southern African region—will pay the price.

Maintaining Power with Violence

Mugabe's brutal decades

The testimony that AIDS-Free World has gathered to support claims that ZANU-PF supporters committed sexual crimes against humanity is distressing but not completely surprising. The history of Zimbabwe is the story of conflict. It is also a story that is as notable for what it conceals as what it reveals. Veiled beneath the documentation of decades of mass torture, murder, and forced abduction is a continuous thread of rape and sexual brutality against the women of Zimbabwe. Since Zimbabwe's independence in 1980, widespread rape against women has been a key feature of the violence utilized by Robert Mugabe and his supporters to maintain power in that country.[11] Reports of human rights violations in Zimbabwe over the past three decades pay far less attention to rape than to other types of human rights abuses, but still hint at the hidden epidemic of systematic rape employed by Mugabe and ZANU-PF.[12] The long-term use of rape as a political tool in Zimbabwe has been enabled by the historical lack of accountability for it.[13]

In 1982, shortly after independence, then-Prime Minister Mugabe sent the North Korean-trained 5 Brigade[14] to quell an uprising by ethnic minority Ndebele supporters of Joshua Nkomo, the leader of Zimbabwe African People's Union (ZAPU), a group that had split off from Mugabe and ZANU.[15] Over the next several years, Mugabe's military operation killed an estimated 20,000 people in Matabeleland and Midlands, two of Zimbabwe's provinces.[16] The massacre of the Ndebele people and this violent period in Zimbabwe's history came to be known by the government operation's code-name, Gukurahundi, a Shona word that means "the early rain which washes away the chaff before the spring rains."[17]

References to widespread, systematic rape during the Gukurahundi are fleeting, but they do exist.[18] The stories from that time are remarkably similar to the testimony AIDS-Free World gathered twenty-five years later from the victims of politically motivated rape in 2008: women accused of being "sell-outs," and abducted and detained at ZANU base camps where youth militias forced them to sing ZANU songs and raped them.[19]

> These were not random acts of rape and violence; they were crimes against humanity.

In 1987, Robert Mugabe and Joseph Nkomo negotiated a unity accord effectively absorbing ZAPU into ZANU; the new consolidated party was named ZANU-PF. The story continues around the year 2000, when ZANU-PF youth militias and people who identify as veterans of the liberation war (known locally as "war vets"),

invaded white-owned commercial farms. The takeovers were an attempt to woo opposition supporters under the pretext that ZANU-PF alone was willing to redress historic racial discrimination in land ownership.[20] At the same time, ZANU-PF waged a campaign of terror against MDC supporters in an effort to influence the outcome of the 2000 Parliamentary elections. When the campaign ended, a Clemency Order dated October 6, 2000 was issued by the Mugabe government granting amnesty for all politically motivated crimes committed from January through July of that year. Rape, murder, and fraud were excluded, but because the police ignored those crimes as well, it was a de facto blanket amnesty.[21] During the 2002 presidential elections, reports of "youth camps" began to emerge where women were detained and raped, sometimes for days and weeks at a time.[22]

The present

The violence associated with the first and second rounds of Zimbabwe's 2008 presidential election continued the trend of violence that runs throughout Mugabe's regime. After MDC opposition candidate Morgan Tsvangirai garnered more votes than Mugabe in March, the government's election commission declared on May 2, over strong objections, that neither candidate had won an outright majority, and scheduled a runoff election for June 27, 2008. During May and June, as part of ZANU-PF's effort to win the runoff election and intimidate the opposition, Mugabe reportedly sent his supporters out to "do whatever [they] want" to MDC members.[23] Tsvangirai withdrew from the runoff five days before the election took place, citing concern for the safety of his supporters due to a "systematic and widespread campaign of terror to intimidate the electorate into voting for Robert Mugabe in the runoff election." [24]

While international media coverage at this time focused heavily on the country's hyperinflation, cholera outbreaks, and efforts of outside mediators to broker a peace, a number of non-governmental organizations (NGOs) did publish accounts of targeted beatings, murder, and destruction carried out against the MDC opposition.[25] The testimony taken by AIDS-Free World from seventy victims documents rape, but also adds to the growing evidence of other abuses committed by the ZANU-PF. Of the seventy rape survivors interviewed, four women reported that ZANU-PF men also burned their relatives alive,[26] sixteen women reported that ZANU-PF militia burned down their homes,[27] three women witnessed ZANU-PF use burning plastic on the skin of MDC members as a form of torture, and two women reported that ZANU-PF men amputated the hands or legs of their husbands and other MDC men held at the militia bases.[28] One woman who was able to recount her own ordeal could not relay the extent of what she witnessed, stating, "I saw things done to people at the base that I cannot talk about because it affects me too much."[29]

Yet despite the human rights reports emerging from Zimbabwe, little notice was paid to the widespread targeting and rape of female MDC supporters. The testimony gathered by AIDS-Free World reveals that women throughout Zimbabwe who are affiliated with the MDC were abducted, beaten, and gang raped by President Mugabe's ZANU-PF youth militia in similar ways, and they were told exactly why it was happening to them. These were not random acts of rape and violence; they were crimes against humanity.

Testimony of Survivors

Rape, sexual slavery, sexual violence,[30] gender-based persecution, and torture can constitute crimes against humanity[31] if "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[32] "Widespread" relates to the scale of the criminal act, whether it comprises numerous incidents or one powerful event.[33] "Systematic" acts, on the other hand, refer to the level of planning or preparation involved, and can be determined by "the improbability of their random occurrence."[34] Demonstrating a "regular pattern on the basis of a common policy involving substantial public or private resources" can prove the systematic nature of an act, even if the policy hasn't been "formally" adopted by a state.[35]

The testimony taken by AIDS-Free World demonstrates that the rape campaign waged by the ZANU-PF in Zimbabwe was both widespread and systematic. The patterns recurring throughout the testimonies of the seventy survivors and two witnesses, each interviewed separately, cannot be coincidental. The striking similarity of insults and threats made before and during the violence; the uniform physical and emotional brutality of the rapes; the specific types of weapons used and beatings on the same parts of the body; the standardized modes of detention and locations of the rapes; the sameness of the circumstances and concurrent crimes that made up the broader attacks; and the consistent refusal of police to investigate and refer these cases for prosecution, taken together, demonstrate a systematic, organized campaign.

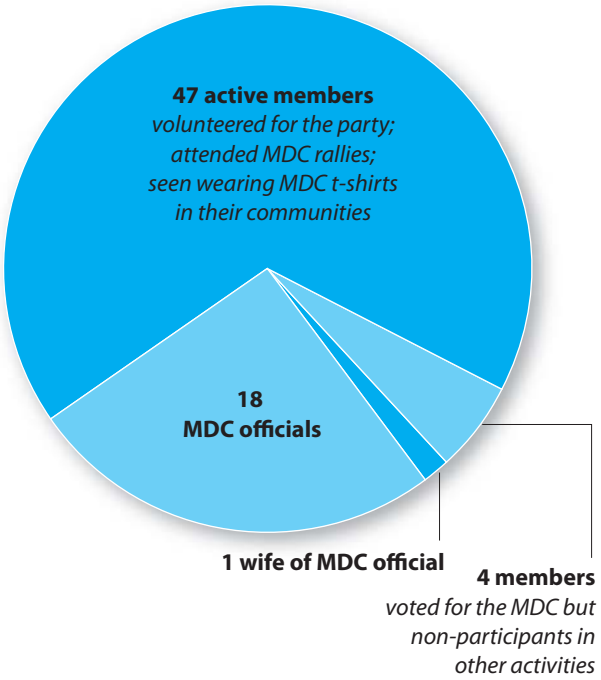
In order to qualify as a "widespread" act, sexual violence can have been perpetrated either in vast numbers or as a single act with massive impact. AIDS-Free World has documented in extensive detail six dozen cases that range across the entire country and span every province of Zimbabwe. The women interviewed were collectively raped at least 380 times by 241 different ZANU-PF youth militia and war veterans throughout the country. Each woman, on average, was raped five times, although these numbers may be underestimates because many women fell

> The testimony taken by AIDS-Free World demonstrates that the rape campaign waged by the ZANU-PF in Zimbabwe was both widespread and systematic.

unconscious during the violent rapes and therefore lost count of the number of rapists and rapes at some point. The women interviewed knew at least sixty-seven other women personally who were raped during this time because of their political affiliation. The majority of rapes occurred during a five-month period preceding, during, and immediately following the 2008 elections in Zimbabwe, during which time massive other abuses against civilian MDC supporters have been

DATA FROM 70 VICTIMS' SWORN AFFIDAVITS

Victims' affiliations with the MDC



documented, including beatings, murder, abduction, torture, and forced detention.

The 2008 campaign of rape in Zimbabwe rises to the level of crimes against humanity, and should be prosecuted as such. The detailed and extensive testimony taken by AIDS-Free World comes from seventy survivors and two witnesses of rape, but it is clear that the rapes were perpetrated on a much broader scale. These seventy women represent many thousands more whose stories, if told, would all share a common narrative: politically motivated attacks, the orchestrated use of rape as a tool of terror and intimidation, and the deliberate effort to harm, humiliate, and degrade women within their communities as a way to subjugate those communities.

Targeting of MDC women by ZANU-PF

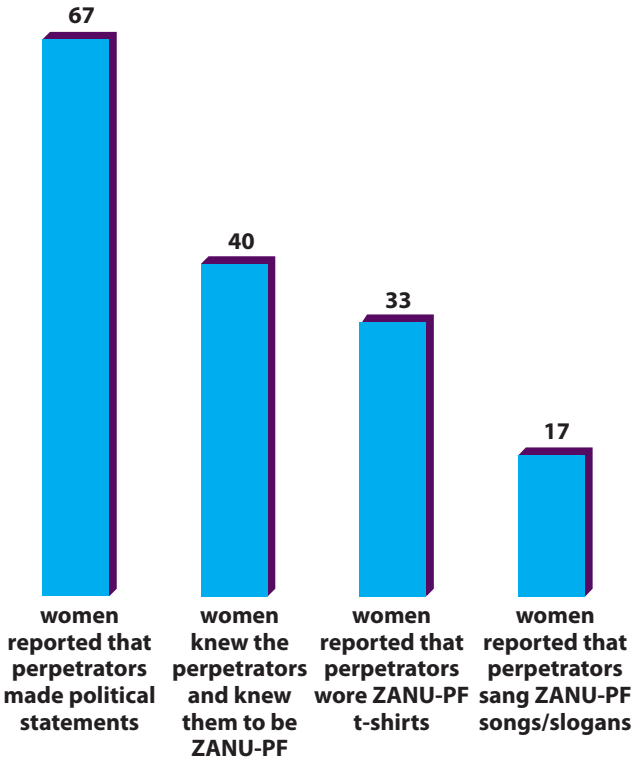
Every victim interviewed by AIDS-Free World was involved in organizing for or supporting the Movement for Democratic Change. Eighteen of the women held positions as officers within the MDC party; forty-seven of the women described themselves as "active" members because they volunteered for the party, attended rallies, distributed MDC pamphlets, or wore MDC t-shirts in their communities. In addition, thirty of the seventy women had relatives who held official positions in the party. Twelve women's husbands served as chairmen or secretaries for their districts or wards, and eight women's fathers were officials in the party. Others had nephews, siblings, mothers, and cousins who held positions in the MDC.

> Every victim interviewed by AIDS-Free World was involved in organizing for or supporting the Movement for Democratic Change.

In every incident the perpetrators were clearly identifiable as ZANU-PF youth militia or war veterans. Seventeen women from eight different provinces reported that the abductors arrived at their homes singing ZANU-PF songs and chanting ZANU-PF slogans; thirty-three women from six different provinces reported that their perpetrators were wearing ZANU-PF t-shirts at the time of the attacks. Forty of the women were able to name some or all of their ZANU-PF attackers and the ZANU-PF officials who were also giving orders because they recognized them from the community and knew them to be ZANU-PF members.

DATA FROM 70 VICTIMS' SWORN AFFIDAVITS

Evidence of ZANU-PF affiliation as noted by 70 victims



Furthermore, women raped in every province reported that their attackers articulated the political motivation for the rapes, telling the victims that they were being attacked because of their MDC affiliation. In Manicaland, ZANU-PF militia told one of the women, "Unless you love ZANU-PF, we are going to kill you because you don't listen. That is what we're raping you for."[36] In Harare, rapists told another woman, "You are the one involved with MDC, doing all the MDC duties, and we will rape you."[37] Another victim was informed that because she had refused to convert to ZANU-PF, the men were "left with no option but rape."[38]

Thirty women reported that they could identify a leader amongst the ZANU-PF men who attacked them, recognizable as a leader either because he led the rapes, gave orders to other perpetrators, or was addressed by others as a leader. At a base in Mashonaland East, a ZANU-PF commander told one woman that his orders came from the country's president himself. She reported, "The ZANU-PF commander was a short, stout, dark man wearing a ZANU-PF cap . . . The commander claimed he had been in Harare and had been instructed by President Mugabe, 'If you meet an MDC supporter, do whatever you want to them.' "[39] At a camp in Masvingo, ZANU-PF rapists told another woman that they were following orders. She testified, "I pleaded with them asking why they wanted to kill me. They said they did not care about my life. They were following the instructions of the base commander and if he told them to kill me, they would."[40]

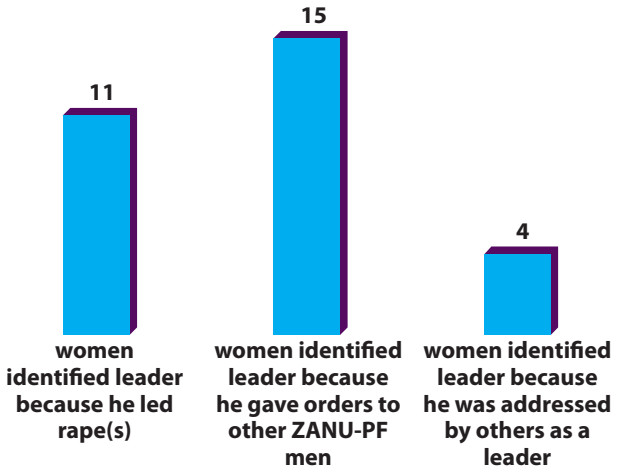
Sixty-seven of the women (96%) testified that the men made some kind of political statement indicating that they were ZANU-PF, or that they were targeting the women because of the women's MDC involvement, or both. The men who attacked her described themselves to one woman as "Mugabe's children,"[41] and other perpetrators told a different woman that they were going to "kill all children of the MDC."[42] One group of ZANU-PF rapists warned a victim not to ever say bad things about Mugabe because Mugabe was an "angel put into power by God."[43]

Attacks by ZANU-PF mobs

Sixty of the women, across each of the country's ten provinces, reported that they were surrounded in their homes by a mob of ZANU-PF militia members. The youth militia usually arrived at night, and the size of the mob ranged from four to over 200 men. A young woman from Mashonaland Central woke up one night to find her home overrun with armed ZANU-PF men:

DATA FROM 70 VICTIMS' SWORN AFFIDAVITS

How women identified leaders among perpetrators



> Later that night, around 10 p.m., I was at home with my family and everyone was sleeping . . . We heard some noise outside and it was ZANU-PF supporters singing their songs and chanting their slogans. I looked outside the window of the bedroom where I slept with my sisters. I saw light around the yard and realized they had set our thatched kitchen on fire. These people started banging on our doors saying, "Sell-outs, come out so we can talk." They were shouting, "Sell-outs, you will be killed and beaten." When I was outside I saw ZANU-PF people all over our yard . . . These people were carrying all kinds of weapons—knives, axes, metal rods, sticks, and planks.[44]

An elderly grandmother from Manicaland reported a similar experience: "Very early in the morning on June 24, around 3 a.m., members of the ZANU-PF youth militia in my area came to my yard and started knocking on the windows. I opened the curtain and saw my whole verandah was filled with youth militia boys."[45]

Upon arrival, the ZANU-PF attacked the women and their families, violently beating them with fists and weapons, stealing food, and destroying property. While twenty-nine women were raped immediately, either inside or directly outside of their homes, a majority of them—forty-one women—were abducted to militia bases or taken out into the bush to be tortured and raped.

Depravity and its aftermath

The rapes, as described by victims from every province of Zimbabwe, were often nearly fatal. Forty of the women interviewed by AIDS-Free World reported that they were beaten with fists, sticks, logs, electric cords, or metal rods either before or after they were raped. There were seven reports of specific beatings on the buttocks, so violent as to inflict deep-tissue wounds and make sitting and lying down painful or impossible. Two women were beaten severely both on their buttocks and the bottoms of their feet, and many were unable to stand or walk after their rapes. Six women reported that they had to be transported to the hospital in wheelbarrows or carts.

> All the men in that room were either raping or waiting to rape women. They said they wanted to show MDC supporters that we had no power against them.

That so many of the rapes were committed by multiple perpetrators demonstrates the concerted use of gang rape as a strategy to quell political opposition. Forty-two of the women were gang raped. Of those, fifteen women were raped by five or more men. In addition to their own rapes, eleven of the women witnessed or heard multiple ZANU-PF men raping other MDC women either

at bases or in other locations. A woman from Harare testified:

> I had been at the base for about two days when a group of three men instructed me to enter a room. The room was large, with many other women MDC members and ZANU-PF men inside. Then they said that we were going to sleep together. They forced me to lie on the ground and stripped off all of my clothes . . . All three of them were rough when they raped me. Around the room there were other men raping other girls. All the men in that room were either raping or waiting to rape women. They said they wanted to show MDC supporters that we had no power against them.[46]

A twenty-nine-year-old woman from Masvingo, who was forced to lie on top of her husband while multiple ZANU-PF men raped her, also saw other MDC women raped by multiple men at a ZANU-PF base:

> The ringleaders then directed the ZANU-PF to rape whichever woman they had been assigned to while her husband laid face down underneath her serving as a "pillow." The ringleaders instructed the women to take off all of their clothes. The six men assigned to me forced me to lie down where we stood. I did everything they said because I was very scared. I lay against my husband's back and all six of the men who had been assigned to me took off their pants. One man pushed his penis into my vagina, another put his penis in my mouth, another in my ear, and the rest on other parts of my body. I began to cry in pain. As they raped me, they said I must join the ZANU-PF and defect from the MDC party. As this was happening, I could see and hear other women being raped around me simultaneously.[47]

The women interviewed by AIDS-Free World continue to experience lasting physical injuries associated with the violence of the gang rapes. One twenty-four-year-old woman was raped so violently that her uterus is permanently damaged and she will not be able to bear children;[48] others had to have surgery to repair their vaginas.[49]

"As they raped me, they said I must join the ZANU-PF and defect from the MDC party. As this was happening, I could see and hear other women being raped around me simultaneously."

Another woman was anally raped so violently that her anus protruded outside her body.[50] Ten women were already pregnant when they were raped and two of these women miscarried as a result of their attacks.[51] Ten women reported that they became pregnant as a result of the rapes. Twenty-three women continue to suffer debilitating physical symptoms including back and body pain, severe headaches, wounds on their buttocks and the bottoms of their feet that will not heal, and difficulty walking. One was choked so severely by her rapist that she could not eat for a week afterwards; now she cannot speak above a whisper.

Humiliation and degradation

The perpetrators were explicit about their intent to humiliate the women. ZANU-PF men told one of the victims, who is nineteen years old, that she was going to be raped and that it would destroy her life and make her embarrassed to be around her family. She was then raped daily for five days by up to

eight men at a time.[52] Another woman reported that her rapists spat on her when they finished raping her.[53]

> ". . . We're not going to kill you. The punishment we're going to give you is that we're going to rape your wife."

ZANU-PF rapists in three different provinces called their victims "MDC dogs."[54] One woman was stripped naked and paraded around in public.[55] A twenty-five-year-old woman was taunted and forced to "dance" for the ZANU-PF men:

> The other six men were just standing in the same room. They said, "You and your husband are used to singing songs and having MDC meetings. We are ZANU and we don't want to see you MDC people." The men made me "dance" for them in bed and move my body while they were raping me. I had to do it because they said, "If you don't do it, we are going to kill you." They were all there as each one was raping me—I could hear them. I had the cloth on my face the whole time. All seven of them raped me. They said, "If you report this, we will come back and kill you." After they left, I thought that I was dying.

ZANU-PF youth militia further humiliated women by raping them in front of their small children, their husbands, their parents, and other family members. The men told one young woman explicitly, "We are going to rape you while your whole family is watching."[56] Perpetrators told another woman's husband, ". . . We're not going to kill you. The punishment we're going to give you is that we're going to rape your wife."[57]

Escalations of torture and murder of families

ZANU-PF men tortured several women first by raping them and then by raping their daughters and murdering their husbands, children, parents, and siblings in front of them. Two women were forced to watch while their daughters were raped by ZANU-PF youth militia.[58] A woman from Harare told AIDS-Free World:

> When the tenth man finished raping me they said they were going to rape my daughter. I cried out but I could not even stand up at this time. After they finished with me, they raped my daughter when I was there and I couldn't do anything to stop them. My daughter was five years old. They instructed [my son] to take off his little sister's clothes. When he refused they beat him and he eventually had to take off her clothes. During the rape my daughter was crying and trying to resist but they kept pushing her down. I was confused and in shock and I had no strength to say or do anything or even move.[59]

In Masvingo, another woman was forced to witness the rape of her eleven-year-old child: "[My] daughter was just standing there as the men raped me. When they finished with me, they took my daughter and four of the men raped her."[60] Two other women found out later that ZANU-PF men had raped their daughters separately while they were trying to defend themselves.[61]

ZANU-PF youth militia murdered family members of four of the women by burning them alive. A woman in Masvingo witnessed both of her parents and her infant son die when the ZANU-PF burned down her home.[62] In Mashonaland West, ZANU-PF youth militia raped one woman and then tied her husband to a chair, locked him inside

the house, and set the house on fire while she watched.[63]

Twenty-four women from eight different provinces reported that ZANU-PF men murdered one or more of their family members, often in front of them, either before, during, or immediately following their rapes. Ten women witnessed or heard the ZANU-PF beating their husbands, fathers, mothers, and siblings to death with metal rods or burning them alive.[64]

Four women found their husbands' or brothers' beaten bodies in fields, rivers, or outside of their homes, days after the ZANU-PF men came to rape them.[65] ZANU-PF youth militia threw one woman's young son into a wall so hard that he died of a subsequent blood clot in his brain.[66] Another woman came home one day to find her husband beaten to death, her toddler son decapitated, and four men waiting to rape her.[67]

Sexual slavery

Nine of the women were forcibly confined at bases for two days or longer, and one was held for two weeks.[68] During their captivity they were raped by multiple ZANU-PF men, or by ZANU-PF "husbands" that were assigned to them. At a base camp in Midlands, women were kept as slaves for the ZANU-PF men:

> There was a man who looked like he was in charge of the base. I don't know what his name was, but the others called him "chairman." I was told he was my "husband"—I was supposed to cook for him and sleep with him whenever he wanted. The other girls at the base had been given "husbands" too . . . I was hopeless, because I knew there was nothing I could do . . . The chairman raped me every evening before he went to bed and also several times during the middle of the night . . . As the chairman's "wife," I had to prepare his sadza [maize meal], kneel in front of him and give it to him. I also had to warm his water for bathing.[69]

At a base camp in Masvingo, MDC women were also forced to become the "wives" of ZANU-PF men. One woman testified:

> When [the men] returned, [one] announced that all MDC women whose husbands had failed to provide cattle to show their adoption of the ZANU-PF party would be assigned six new ZANU-PF "husbands." Following [his] instructions, the ringleaders divided up the men into groups and assigned each MDC woman at least six ZANU-PF men as husbands who were going to rape her. I was assigned six husbands.[70]

In Manicaland, one young girl was locked up and raped every day by different men. She was only released to mop up the blood of other MDC members who had been beaten.[71] Five women were forced to cook for their captors. A woman from Midlands testified:

> The ZANU-PF men began treating me as the maid at the base. They forced me to do whatever chores they wanted done at the base, and said that if I refused they would kill me like they killed my husband. I had to fetch water and firewood for them, cook, and wash their clothes.[72]

In Masvingo, another woman reported:

> When they finished raping me they took off my blindfold and told me to stand up and cook meals for them using my own food. I couldn't

> even stand but they forced me to. They made me cook all the chickens they had taken from my house to feed them. After I cooked, they made me taste the food in case I was trying to poison them.[73]

Pattern of political language used by rapists

The ZANU-PF perpetrators made explicit and very similar political statements during sixty-seven of the seventy attacks (96%). The specific political rhetoric employed by the perpetrators was consistent throughout the country. Women from eight different provinces[74] reported that their ZANU-PF attackers accused them of being "sell-outs" or of "selling out the country" by membership in the MDC. ZANU-PF perpetrators in three provinces made additional comments about "selling the country to whites," with varied references to the perfidy of George Bush and Tony Blair.[75]

One woman, abducted to a base camp and gang raped in Manicaland in June of 2008, reported the following incident:

> The whole night they were saying things about MDC—that MDC was a sell-out because we were selling the country, land and soil to Tony Blair . . . They made me put my head down to the ground with my waist in the air. They took soil and put it on my back and told me to say, "Tony Blair, our soil has come back. Leave us alone and stay in your own country." Then they started singing, "Tony Blair, we want to keep our land—we don't want our land or soil to be taken over by the white man."[76]

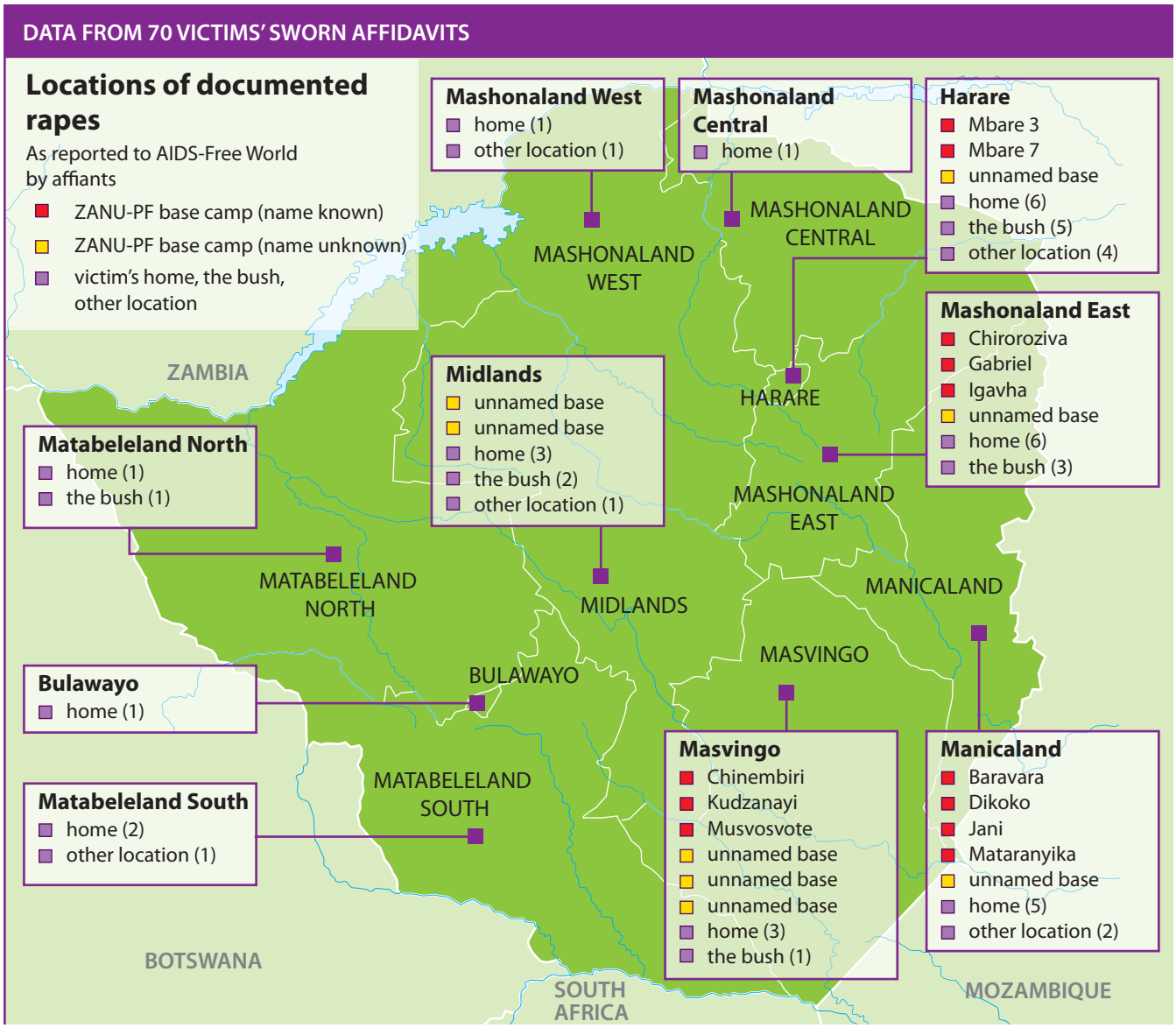
The testimony of a woman raped in the province of Masvingo in May of 2008 reveals identical language used by ZANU-PF perpetrators:

> The ZANU-PF youth militia members told me they heard I was an MDC agent and they were going to take my brother and me to their leaders. They insulted us by saying we were "selling the country." They said they were taking us to the base because we were "sell-outs" and that their leaders wanted to see us because, in order for us not to sell the country, we had to be killed . . . They said we should "go do farming in Britain because we were selling the country."[77]

Repeatedly, in locations throughout the country, ZANU-PF perpetrators also told their victims that they would be punished or "fixed" for refusing to attend ZANU-PF meetings and for joining the MDC. Victims in the provinces of Mashonaland East, Harare, Manicaland, and Bulawayo were all told they were being "fixed," often while they were being raped. The perpetrators also made derogatory statements about MDC leader Morgan Tsvangirai. Women in five different provinces[78] said the men insulted Tsvangirai during the course of the attacks or accused them of being "Tsvangirai's children"[79] or "puppets of Tsvangirai."[80]

Network of torture base camps

Victims described in detail an infrastructure of ZANU-PF militia bases set up throughout Zimbabwe for the purposes of beating, raping, torturing, and killing MDC activists. Forty-one women (59%) were abducted from their homes and forcibly marched, dragged, or driven by



ZANU-PF militia either to bases or to clearings in the bush where ZANU-PF had set up camp. In separate interviews with AIDS-Free World, victims independently provided the names of ZANU-PF base camps in five different provinces.[81]

At the bases, mobs of ZANU-PF men raped, beat, and tortured the women and other MDC activists. One woman who was abducted to the Baravara base in the province of Manicaland reported, "Each day I was left alone, from where I heard many people being beaten in the adjoining room."[82] A second woman taken to the same base was beaten for two hours with logs and electric cords and witnessed other MDC supporters beaten at the base.[83] In the province of Midlands, one woman was taken to a base in the mountains near Zhombe where she was repeatedly gang raped over the course of several days. Her husband was killed, and she witnessed the torture and murder of other MDC activists.[84]

During the election period, living in crowded urban areas provided no protection from abduction and rape at ZANU-PF bases. In Harare, two women, in separate interviews, reported being taken to the Mbare bases and one

gave the following testimony:

> I knew about the Mbare 3 base, in a building where the ZANU-PF conducted their meetings . . . When I arrived, I saw three of my friends from the MDC party . . . My friends had been forced to lie on a bench and were being beaten on their buttocks with black baton sticks. I do not know the names of the ZANU-PF youths who were beating them, but I recognized them . . .
>
> After the ZANU-PF youths finished beating me [they] took me a short distance by foot to another base called Mbare 7. Mbare 7 is an office building with big grounds outside that are fenced in. I had never heard of it before. When I got inside, I could hear crying coming from rooms with closed doors.[85]

Another woman who was gang raped at the Mbare base, and believes she was infected with HIV from her rapists, describes her initial captivity there:

> Over a two-week period, I was taken to the base in Mbare several times and forced to do chores for the ZANU-PF members. For a period lasting as many as four days, I would be forced to cook for them, wash for them, and fetch water for them. We could not leave—there were people who acted as our bodyguards and would monitor our movement.[86]

Police support for ZANU-PF crimes

International human rights organizations have long protested the failings of the Zimbabwe police force,[87] and a 2008 human rights organization's report on the election violence in the country stated, "The police have not done anything to intervene in such situations, as they are clearly aligned to ZANU-PF."[88] In July 2009, Amnesty International called for an impartial and independent police oversight body in the country, stating, "We do not trust that police are capable of investigating themselves . . . The ZRP [Zimbabwe Republic Police] has been instrumental in silencing government critics since 2000 and continues to do so with total impunity."[89]

> "We told the police we were raped by ZANU-PF men. The police said they were not going to interfere with political issues."

Testimony given to AIDS-Free World further supports claims that the Zimbabwe police force helped to ensure impunity for the rapes. In every instance, the Zimbabwe police failed to adequately respond to the crimes. Of the thirty-one women who attempted to report their rapes to the police, thirteen said that the police either did nothing at all or explicitly refused to write a report. Another five reported that the police took a report but did not investigate the crime in any way. The effect of this is severe for the victims: without a police report they are denied treatment at government hospitals; without a medical report from a government hospital as proof of rape, a criminal prosecution is impossible.[90] By refusing to document these crimes, the police eliminated any possibility of criminal accountability for the ZANU-PF perpetrators in Zimbabwe courts.

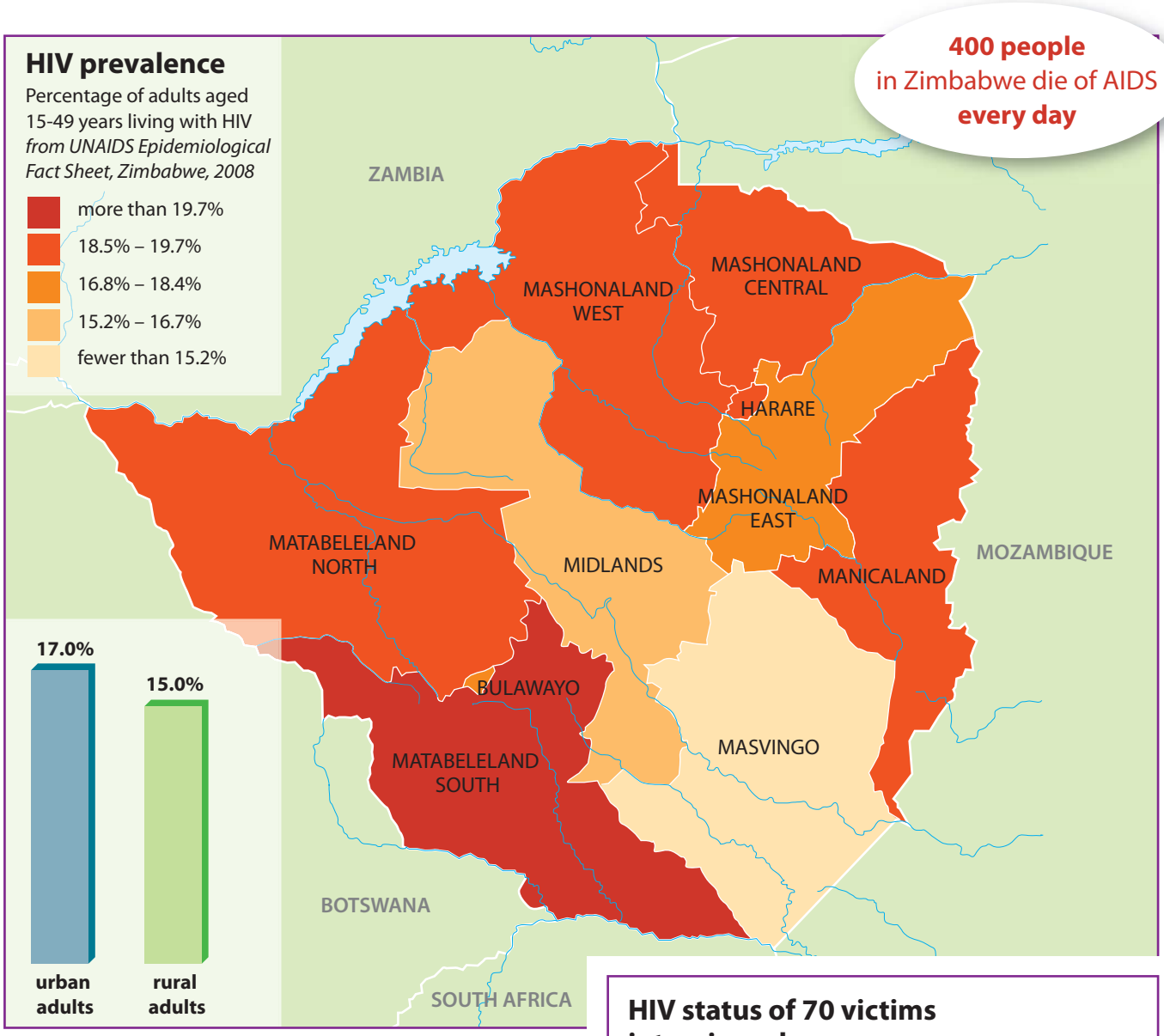
Authorities told two women that they could report their beatings but not their rapes. One woman explained, "In that office the Crime Officer threatened me never to talk about rape. The Crime Officer told me I was only allowed to report assault, and by reporting rape I would be going against the government."[91] In Manicaland, police arrested one woman after she was raped and held her for four nights on fabricated charges.[92] Other police officers simply claimed they could not get involved in "political matters." A woman from Harare told AIDS-Free World, "We told the police we were raped by ZANU-PF men. The police said they were not going to interfere with political issues,"[93] and in Matabeleland South another woman experienced the same problem: "When we tried to report these incidents, the police told us not to participate in politics."[94]

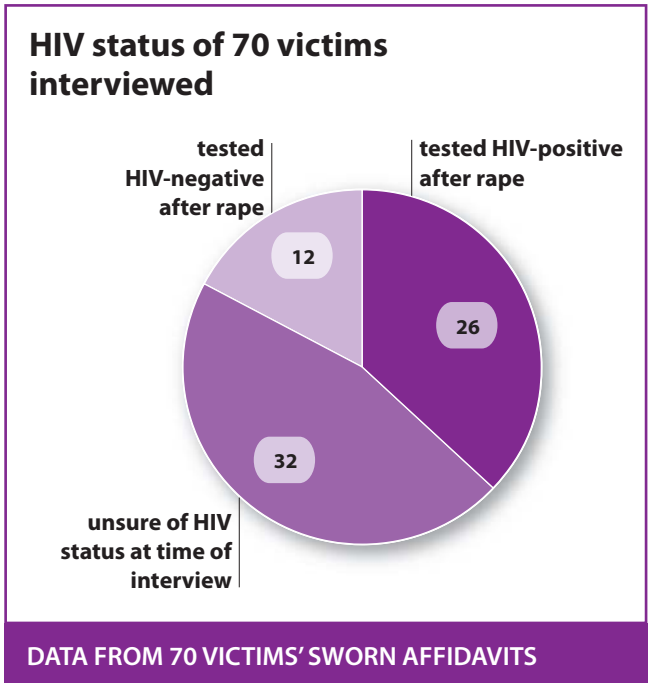
In other cases, police officers told the women that they were either unwilling or afraid to record incidents of ZANU-PF violence:

> I went with eight other camp survivors to the police to report that ZANU-PF youth had raped and beaten us at their base camp. When we told them about what had happened to us, the police laughed in our faces. They said that they had heard that we had been beaten and raped by the ZANU-PF youth, but that they were scared of the people in power and could not be expected to do anything at that moment. They did not draft a report.[95]

Not one of the 241 rapists has been prosecuted or punished for their crimes. Out of the seventy women interviewed by AIDS-Free World, there were only two cases where a perpetrator was arrested, and in neither case was anyone prosecuted. One was held for only one week. "He was charged with raping me, burning my house, and killing my cousin, but he denied all the charges. Nothing was really done to him. [The police] said they couldn't get involved because it was a political issue."[96] In the second case, only one of the victim's four rapists was captured; he was held for three months and released without being charged with or tried for an offense. Her other three rapists were never investigated or arrested.[97]

Thirty-two of the women (46%) did not even attempt to report their rapes to the police. These women, from nine different provinces, all testified that it would have been futile and possibly dangerous to report anything because ZANU-PF controlled the police. A woman from Midlands explained, "I did not report the crimes to the police. There was no point in reporting because the police were also involved in the violence and in fighting against the MDC."[98] A woman from Harare said, "I did not report my abduction or rapes to the police because the police in Zimbabwe do not do anything. Most of them are pro-ZANU-PF."[99] Another, from Mashonaland East, said, "I thought about reporting the rapes to the police but decided not to . . . I was scared. The police were either ZANU-PF members or would not do anything to them."[100] Victims in Matabeleland South echoed this: "I did not report this to the police because I know the police are controlled by ZANU-PF and would not do anything to catch or punish the men who came to my house."[101] In Masvingo, "the police had done nothing to help me in 2005 and I knew they would not do anything this time either."[102] Women repeatedly testified to their lack of access to justice. One woman said, "I felt hopeless; there was nothing I could do to those people who raped me."[103] Many of the women continued to see their rapists living freely in their communities.


HIV prevalence
Percentage of adults aged 15-49 years living with HIV
from UNAIDS Epidemiological Fact Sheet, Zimbabwe, 2008
more than 19.7%
18.5% – 19.7%
16.8% – 18.4%
15.2% – 16.7%
fewer than 15.2%
400 people in Zimbabwe die of AIDS every day
ZAMBIA
MOZAMBIQUE
BOTSWANA
SOUTH AFRICA
MASHONALAND WEST
MASHONALAND CENTRAL
HARARE
MASHONALAND EAST
MANICALAND
MIDLANDS
MASVINGO
MATABELELAND NORTH
BULAWAYO
MATABELELAND SOUTH
17.0%
15.0%
urban adults
rural adults


HIV status of 70 victims interviewed
tested HIV-negative after rape
12
tested HIV-positive after rape
26
32
unsure of HIV status at time of interview
DATA FROM 70 VICTIMS' SWORN AFFIDAVITS

Threats of intentional transmission of HIV

By gang raping and humiliating MDC women throughout the country, ZANU-PF succeeded in destroying women's wellbeing, reproductive abilities, families, lives, and happiness. To further ensure the lasting impact of their crimes, perpetrators in three different provinces announced that they were intentionally infecting the women with HIV. A twenty-five-year-old woman from Matabeleland South was gang raped and then told, "Now you have AIDS and will die."[104] A twenty-three-year-old woman in Masvingo reported that her

> "We have hurt you. So go get tested because we have given you the prize for what you were doing."

ZANU-PF rapists said to her, "You say Tsvangirai is good. We want you to know that Tsvangirai is not good. We want to give you diseases and see if Tsvangirai will take care of your children."[105] After they started raping her, they asked, "Where is Tsvangirai now?" A twenty-seven-year-old in Harare was told after her gang rape, "We have hurt you. So go get tested because we have given you the prize for what you were doing."[106] Another woman from Harare reported, "As he was raping me he said that he had a sexually transmitted infection so he wanted me to die from the STI. After they raped me, they said I was going to die from the HIV virus."[107]

This testimony indicates that at least the threat of intentional HIV transmission, if not actual transmission, may have been part of the rape campaign in some cases. Rape in Zimbabwe, with its high HIV prevalence rates and decimated medical infrastructure, is a death sentence for many women there. The adult HIV prevalence rate in Zimbabwe has been estimated at 15.3%, placing the women who were gang raped at high risk of becoming infected.[108] In January 2009, the toll from AIDS in Zimbabwe was estimated to be 400 deaths per day.[109]

Twenty-six of the women interviewed (37%) tested HIV-positive in the months after being gang raped. It is difficult to know precisely when they were infected, but it is possible that it happened at the time of the rapes; thirty-two of the others (46%) did not know their status at the time of their interviews.[110] Many of the women were either unable or unwilling to report their rapes, leaving them with no access to medical care or HIV testing after their rapes. Not one of the seventy women received post-exposure prophylaxis (PEP) to prevent HIV infection after being gang raped. The availability of antiretroviral treatment in Zimbabwe is severely threatened due to the economic and health crisis, which creates a double violation for those women infected by rape. Physicians for Human Rights reported in January 2009 that the unavailability of anti-retroviral drugs (ARVs) for the treatment of HIV disease was largely due to "breakdowns in drug delivery, distribution, provision, and theft of ARV drugs by ZANU-PF operatives."[111]

4 Rape's Corrosive Effects

Physical trauma

After surviving violent gang rapes, many of the women were denied access to medical care and left vulnerable to HIV, unwanted pregnancies and life-threatening injuries. The refusal by Zimbabwean police to draft reports was costly for the health of the victims. As noted earlier, without a police report, they could not gain admission to public hospitals to be examined, treated, to have physical evidence collected, or to receive post-exposure prophylaxis against HIV. One woman who attempted to go to the hospital after her rape reported: "When I got there I saw an orderly who told me that rape cases needed police reports, but I knew that if I went to the police they wouldn't help me, as the police didn't want to hear political cases."[112] Private clinics are available but expensive, prohibiting the women from seeking the help they needed.[113] One woman explained, "I did not manage to see a doctor or go to a clinic in Zimbabwe because it would have cost money and I had none."[114] Others who tried to obtain medical care reported that hospitals often had no medication, no ARVs, no doctors, or were closed entirely. One woman attempted to get medical care but could not because all of the doctors were on strike.[115] Another went to a local clinic and reported, "There was no doctor at the clinic so they gave me a painkiller only. I did not get any kind of exam and I was not tested for HIV."[116] None of the women can afford the ongoing medical care they need to recover from the rapes and related illnesses.

Psychological trauma

All of the women have experienced trauma from the rapes, including recurring nightmares and flashbacks. Six victims admitted to feeling "dead" or suicidal in the aftermath of their ordeals, and at least one woman tried to kill herself.[117] Another woman stated, "Immediately after I was raped, I started to question the relevance of life. I still have the same question."[118] Throughout the interviews the women relayed a litany of post-traumatic stress symptoms, including

> "I don't feel like my old self . . . in my heart I feel like a different person who has been raped."

ongoing headaches, stomachaches, depression, fatigue, weight loss, trouble concentrating and forgetfulness, nightmares, insomnia, loss of appetite, body pain, desire to be alone, dizziness, unhappiness, shame, and loss of self-worth.

One woman told AIDS-Free World:

> I just feel like my body no longer belongs to me. I have lost my self-worth and self-esteem. I don't feel like my old self, because in my heart I feel like a different person who has been raped. It's like losing a sibling, when someone in your family dies. It's like losing someone and you will never get them back.[119]

> "The happiness is completely gone from our house."

Another said that normal existence has become unbearable for her.[120] Many testified that they have had trouble functioning in daily life after their rapes:

> For months after the rape, I was deeply worried. I would just want to be on my own and not speak to people. I would have a lot of trouble understanding what people were saying in normal conversation, and I had trouble concentrating. Once I was almost hit by a car because I was not able to pay attention.[121]

Those still residing in Zimbabwe live in constant fear for their safety, and twenty-six of the women received threats from the ZANU-PF after their rapes. One woman is afraid to go outside of her house alone, and five women reported that neighbors and community members ridicule them because they were raped.[122]

Destruction of families

In the aftermath of these attacks, the women's lives are permanently changed and their families destroyed. The stigma around rape is severe; for example, five women were completely abandoned by their husbands. Sixteen reported that they are ashamed to talk to family members or others about the crimes because of the stigma surrounding rape. One woman told AIDS-Free World, "When my husband heard that I was raped, he said he didn't want me anymore."[123] Another said, "When I told my husband about the rape, I could see his unhappiness. Everything has changed since then. The happiness is completely gone from our house."[124] A young woman gang raped at a base in Manicaland is seeking counseling to help repair her marriage. She explained, "Because of what happened to me, my husband doesn't see me as a woman anymore. His behavior has changed—he will sleep in other rooms and does not see me as a complete person . . . We used to have a peaceful existence together but now everything has changed."[125]

One woman who was abandoned told AIDS-Free World:

> I contracted HIV from my rapists. My husband is still negative. This is difficult for me because my husband's parents do not want their son to be with a wife who is HIV-positive when he is HIV-negative. I don't know how much longer I am going to live because I am sick now. What the ZANU-PF people did to me destroyed my whole life.[126]

Some, including young women in their early twenties, are now completely alone because the combination of fear, grief, and shame has caused them to flee to neighboring countries. They have no family, no money, no medical care, and no counseling or support. Several women interviewed by AIDS-Free World do not have enough money to call Zimbabwe to find out if their families are alive.

One young woman, whose father was beaten to death while she was being gang raped, told AIDS-Free World:

> I do not know what happened to my older brother and sister on the day of the attack on my family, and I have not been able to find or talk to them since that day. I am alone here. I have bad dreams and sometimes I see my father during my sleep. In my dreams he will be crying and saying, "Come here, my child." If things are not stable in Zimbabwe, I do not want to go back. I would like to stay in a peaceful place where I don't worry so much.[127]

> "I would like to live without fear."

Sixty-two of the women interviewed have children, and thirty-one of these women were forced to leave their children behind when they fled Zimbabwe, often because they felt it was safer to leave them with extended family members in Zimbabwe. One woman, who tested HIV-positive three months after being gang raped by six ZANU-PF men, had to leave her daughter behind:

> My life is very hard. I have no peace of mind. I think about my daughter and miss her and cry every day. I fear that I am going to die and leave my daughter behind. I am afraid that she is going to starve to death in Zimbabwe. I dream about her all the time. Pain and bad thoughts continue to haunt me.[128]

Compounding their illnesses and trauma, these women are often living in abject poverty in foreign countries. One explained, "The rape has changed my life forever. I am no longer happy. I am separated from my children. I do not know where my husband is, and I am afraid to return to Zimbabwe."[129] For many, all they want at this point is to feel stable and safe. One woman said simply, "I would like to live without fear."[130]

Mugabe and his ZANU-PF henchmen were successful in retaining their brutal power: their strategic use of rape destroyed women's physical and mental well-being and is undermining the stability and unraveling the fabric of families and communities in Zimbabwe that dare to challenge ZANU-PF's hegemony.

Fertile Ground for Impunity

The primary responsibility for human rights protection within a country lies with that country's government. Therefore, a domestic legal system is the first place to look to address crimes committed in that nation, even if the crimes violate international law. Criminal law and the Zimbabwean Constitution theoretically provide some redress to survivors of 2008's systematic campaign of rape, and the government of Zimbabwe likely would assert the viability of its domestic legal system to address these crimes. However, it is clear that those avenues for redress are grossly inadequate at best, and at worst, completely unavailable.

Under principles of international law, one who complains of an alleged wrong is generally required to "exhaust domestic remedies" before seeking redress from regional or international forums.[131] Exceptions to this requirement exist, but the burden is on the victim to show that redress domestically is impossible.[132] In Zimbabwe, the pathway to legal accountability for perpetrators of politically motivated rape is unavailable, ineffective, and insufficient.

> Lodging a complaint up the chain of police command is likelier to expose a victim to retribution than spur efforts to achieve justice.

Zimbabwe's domestic remedies are unavailable and ineffective

Even if a survivor of rape decided to pursue domestic rape charges as a way to seek accountability, she would find such a route futile. In Zimbabwe, police first must investigate alleged crimes and then prosecutors are responsible for initiating criminal cases.[133] While survivors of politically motivated rape can try to pressure the police to investigate their cases and the Attorney General and Office of the Prosecutor to pursue these crimes, the victims cannot press charges themselves. Discretion lies with the public prosecutor, who decides whether or not to institute criminal proceedings.[134] Many survivors of the election-related rape campaign tried to lodge complaints with the police, only to be turned away because the police refused to file reports implicating the ZANU-PF in such crimes. Reports show that members of the Zimbabwe Republic Police routinely seek to intimidate public prosecutors when the prosecutors refuse to bring unwarranted charges that the police support, or when they press forward with a case that the police do not support.[135] Lodging a complaint up the chain of police command is likelier to expose a victim to retribution than spur efforts to achieve justice.[136]

A victim of rape should not and in fact does not have to risk her life in order to access the domestic

remedy of criminal prosecution. Where seeking a domestic remedy creates a fear for a complainant's life, that remedy is considered "unavailable." In Zimbabwe, the combination of inaction on the part of both the police and prosecuting authorities, and the widespread fear engendered by police reprisals, renders local criminal proceedings practically unavailable to survivors of political rape.[137]

Even if rape survivors were able to safely initiate investigations and prosecutions of their perpetrators, their claims likely would be unsuccessful due to the severely compromised nature of the judiciary in Zimbabwe, which has been well documented by human rights NGOs and international human rights bodies.[138] In recent years, many judges who have issued adverse decisions against the state have resigned under pressure and been replaced with judges who are politically aligned with Robert Mugabe.[139] Judges who fail to adhere to the ZANU-PF political agenda also have been physically assaulted.[140] Conversely, other judges have received gifts of land, farms, luxury cars, and expensive electronics from the government as rewards for their loyalty to ZANU-PF.[141]

If a court is directly tied to a partisan government and therefore lacks independence, it is "ineffective" because there is no prospect of success in achieving a favorable judgment.[142] The African Commission has held that, where a complainant has no reasonable chance to achieve a positive result utilizing a domestic remedy, that remedy is ineffective.[143] Such is the case in Zimbabwe, where the judges and magistrates have been compromised by a combination of threats, intimidation, inducements, and political interference.[144]

Domestic rape law in Zimbabwe only addresses random acts of violence committed by individual perpetrators, not the kind of organized and coordinated campaign of attacks undertaken in 2008.

Zimbabwe's domestic laws are insufficient

Zimbabwean law simply does not address the kinds of sexual crimes committed during the election period. Domestic rape law in Zimbabwe only addresses random acts of violence committed by individual perpetrators, not the kind of organized and coordinated campaign of attacks undertaken in 2008. Existing law does not reflect the scale and monumentality of rape when it is committed as part of a widespread or systematic attack against civilians. Furthermore, whereas a statute addressing crimes against humanity allows for prosecution of offenses regardless of the amount of time that has elapsed since the crimes were committed, domestic rape laws in Zimbabwe contain statutes of limitations.[145] Zimbabwe law also fails to incorporate the principle of command responsibility, which enables the prosecutions of commanders or leaders as well as direct perpetrators of rapes. These severe limitations render Zimbabwean law with respect to systematic rape legally "insufficient."

Prosecuting Crimes Against Humanity

The victims that AIDS-Free World interviewed have retained their hope to see justice served. When asked what they would like to have happen, the women repeatedly stated the desire to see their perpetrators arrested and punished. They also expressed concern for the future if action is not taken to stop the ZANU-PF. One woman said, "I would like to see the ones who wronged me and who wronged others tried and taken to jail. If the violence is condoned and no one does anything, then these ZANU-PF men will do the same thing again."[146]

Another woman stated:

> I want to make sure this intimidation, beatings, burnings, and rape of people who support MDC stops. I want to be sure that nothing like this happens again in the next generation. As for my rapist, I don't know if I could face him. If I could have my way, I would want to tell him, to show him, to make him feel what I felt. I would want to make sure he never does such a thing to a human being again. I want to make sure this doesn't happen to anyone else.[147]

Fifty-one of the women interviewed expressed a desire to see justice by having their captors and rapists punished. Even those who recognized that they could never be made whole still called for accountability.

One woman testified:

> When I think about judgment for [my rapists], I ask myself, even if they are judged, am I going to be the same woman? . . . Am I going to retain my dignity? But I do think Mugabe should reap what he sows. He has done too much, killing so many for so many years.[148]

In some ways, the 2008 campaign of systematic political rape was not so different from previous campaigns. However, there is one critical difference. Rape is now clearly recognized as a crime against humanity under certain circumstances. There are a variety of legal principles and mechanisms that can be used to prosecute the crimes against humanity that occurred in Zimbabwe.

It is unlikely that President Mugabe or members of his inner circle would submit to domestic investigation and prosecution for crimes against humanity, particularly in light of recent credible reports that they have utilized violence to attempt to obtain amnesty.[149] Furthermore, the inability of the Zimbabwean legal system to undertake fair and independent investigations and trials has been well documented.[150] Waiting until an independent judiciary and the rule of law is reestablished inside Zimbabwe is not an option, especially given the urgent need to combat the culture of impunity for rape before the next national election. Prosecuting the perpetrators of the 2008 rape campaign is an important preventative strategy, and therefore must occur outside the country until it becomes possible to do so inside Zimbabwe.

Command responsibility

The impossibility that these numerous rapes throughout all provinces of Zimbabwe were random acts of violence against women demonstrates the systematic nature of the campaign. One of the difficulties of addressing these systematic crimes is that the known, direct perpetrators are by and large low-level youth militia and war veterans, and this campaign was sanctioned at high levels of ZANU-PF. Who, then, should be held accountable? Under international law, the principle of command responsibility holds that a superior can be held responsible for crimes against humanity committed by his subordinates if

> If justice cannot be achieved in Zimbabwe, where the crimes occurred, it must be attempted elsewhere. There are several possibilities for justice in southern Africa, some more immediate than others.

he knew or should have known about them and failed to prevent or punish the crimes. The ultimate authority of ZANU-PF supporters in Zimbabwe is Robert Mugabe. His knowledge of the crimes as they were being committed, combined with his failure to punish the direct perpetrators, dictates that he should be held legally liable for these crimes. Robert Mugabe and members of the Joint Operating Command should be held accountable under principles of command responsibility.

While the principle of command responsibility under international law has more often been applied to military leaders who fail to control their troops, civilian superiors, including those with "policy command" such as heads of state or high-ranking government officials, also can be held liable under the doctrine of command responsibility.[151] This individual criminal responsibility can attach to a superior so long as he knew about or "consciously disregarded" the crimes, had the ability to control or stop them, and failed to take action to prevent or punish them.[152]

This report does not present specific evidence of the culpability of ZANU-PF leaders at the highest levels, although there is reason to believe that the government of Zimbabwe was well aware of the widespread sexual violence against women during the election period. The Women's Coalition of Zimbabwe, including more than thirty organizations inside the country and over thirty international or domestic non-governmental organizations from other countries, submitted a statement to the United Nations Human Rights Council on May 30, 2008 calling for an international response to the election-related violence against women.[153] Despite the relative lack of coverage of rape as compared to other forms of violence, some high-profile international media reported on the use of rape as a political tool in Zimbabwe including the BBC,[154] the *Sunday Times*,[155] and *The Guardian*.[156] Morgan Tsvangirai, the presidential opposition candidate, publicly decried the rape and cited it as a reason why free and fair elections were impossible.[157]

The rape campaign raged primarily from February through June 2008, a five-month period starting before the first round of elections on March 29 and reaching a crescendo leading up to the second round, on June 27. During this period, the Joint Operations Command (JOC), the supreme organ of Zimbabwe state security including the heads of the military, police, intelligence services, prisons, and reserve bank,[158] was responsible for

masterminding the election violence.[159] As the head of the government and the leader of the political party in power, Robert Mugabe had the ability to control both the JOC and his ZANU-PF supporters and failed to do so. Similarly, as the head of the government, President Mugabe could have insisted on addressing the rape campaign through prosecutions and the rule of the law. However, he did not; not one of the 241 perpetrators described to AIDS-Free World has been criminally prosecuted.

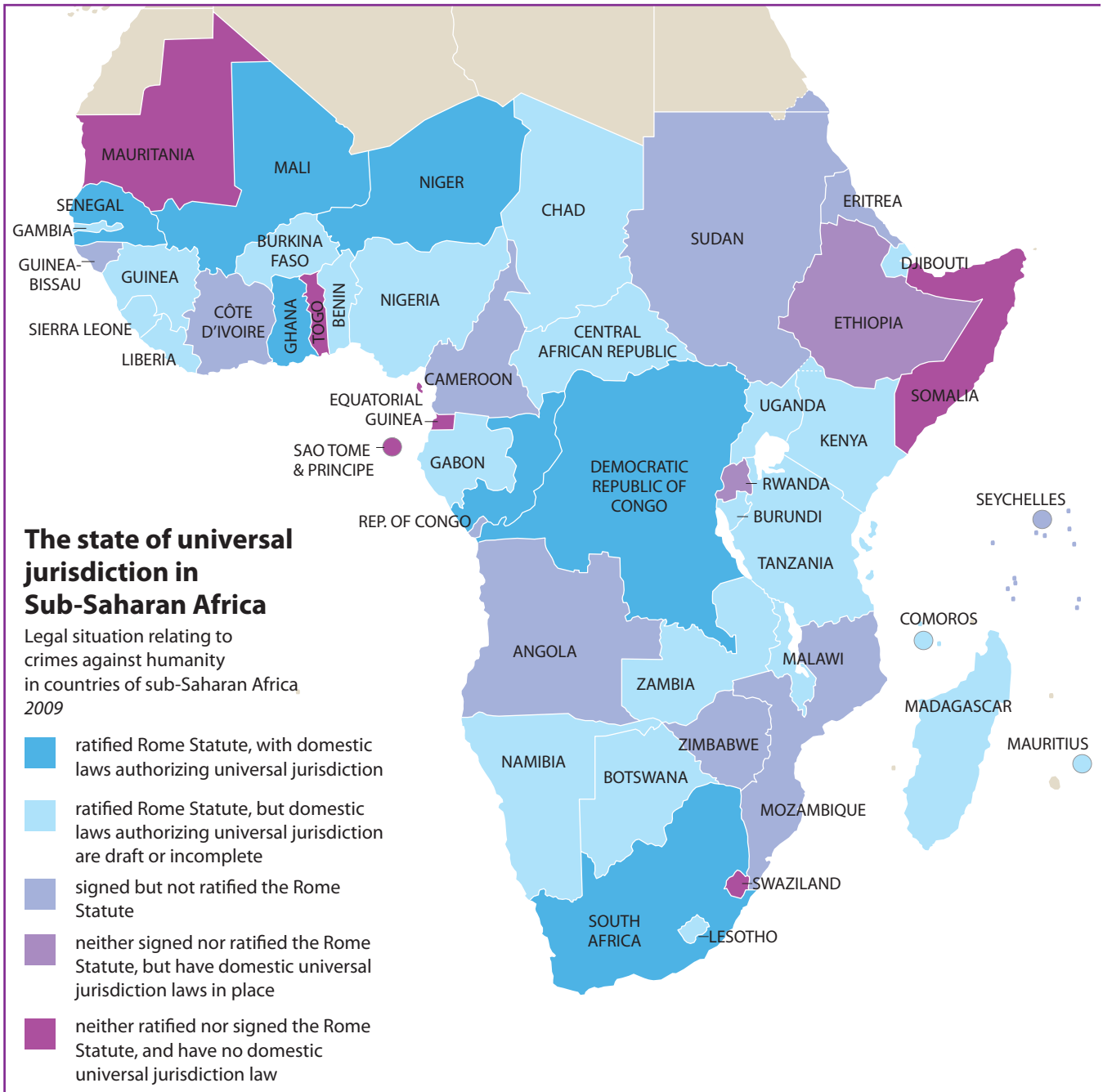
This combination of knowledge, the refusal to prevent, and the failure to punish the widespread political rape necessitates that Robert Mugabe and members of the JOC should be investigated and prosecuted for their individual criminal liability for the rapes. As the officials who sanctioned the nationwide violence, they must be held accountable for these crimes against humanity. The likelihood that every rape during this period can be investigated and prosecuted is remote, making it even more important to pursue those accountable at the highest levels for these crimes against humanity.

Prosecution in other African States

Some crimes—including crimes against humanity—so shock the conscience that states have a duty to prosecute their perpetrators, even if there is otherwise no connection between the prosecuting state and the crime.[160] When a government fails to exercise criminal jurisdiction to prosecute the worst crimes in its domestic courts, other states are obligated to fill the breach.

High-level perpetrators of the campaign of systematic rape in Zimbabwe, such as members of the JOC, could be tried in the courts of other African countries under the principle of universal jurisdiction.[161] Universal jurisdiction can ensure that perpetrators of the worst crimes do not escape prosecution even if their country does not have a functioning independent legal infrastructure. Such is the case in Zimbabwe, where a compromised legal system makes homegrown justice impossible for the survivors of political rape.[162] If justice cannot be achieved in Zimbabwe, where the crimes occurred, it must be attempted elsewhere. There are several possibilities for justice in southern Africa, some more immediate than others.

A state may bring a criminal prosecution based on universal jurisdiction if it has adopted a specific law prescribing the kinds of crimes and alleged perpetrators it may pursue, or under customary international law.[163] A number of members of the African Union provide for universal jurisdiction over genocide, war crimes, or crimes against humanity by statute.[164] Despite these laws, no African country has successfully prosecuted an accused for crimes against humanity.[165] Senegal initiated a potential case against former Chadian president Hissène Habré, but that proceeding has been mired in controversy for nearly a decade, rendering Senegalese courts unlikely to consider additional cases under universal jurisdiction at this time.[166] South Africa also has passed its own statute implementing the Rome Statute, the international treaty authorizing the creation of the International Criminal Court, into national law.[167] Under this act, South Africa can prosecute certain international crimes, including crimes against humanity, if the alleged perpetrator "is present in the territory" of South Africa.[168] The National Director of Public Prosecutions in South Africa must consent before proceedings can be initiated, and, conversely, must explain the reasons for declining to move forward.[169]



The state of universal jurisdiction in Sub-Saharan Africa

Legal situation relating to crimes against humanity in countries of sub-Saharan Africa
2009

- ratified Rome Statute, with domestic laws authorizing universal jurisdiction
- ratified Rome Statute, but domestic laws authorizing universal jurisdiction are draft or incomplete
- signed but not ratified the Rome Statute
- neither signed nor ratified the Rome Statute, but have domestic universal jurisdiction laws in place
- neither ratified nor signed the Rome Statute, and have no domestic universal jurisdiction law

Countries that have ratified the Rome Statute, the international treaty that governs the International Criminal Court, are obligated to pass domestic universal jurisdiction laws enabling them to prosecute genocide, crimes against humanity, and war crimes. Signing the treaty does not legally bind a state but is usually the first step toward ratification.

It is also possible for a country to pass domestic universal jurisdiction laws without having ratified the Rome Statute.
Technically, a country that has done neither—ratify the Rome Statute nor pass domestic universal jurisdiction laws—may still exercise universal jurisdiction under customary international law, but it is much more difficult.

South Africa, if presented with credible allegations against Zimbabwean perpetrators of rape who typically enter South African territory, should put aside political considerations and fulfill its legal duty to investigate.

South Africa is the only member of the Southern African Development Community, SADC,[170] with a universal jurisdiction statute that would enable the prosecution of Zimbabwean officials entering their territory for crimes against humanity at this time. That the national prosecuting authority has declined thus far to investigate allegations of torture in Zimbabwe—despite having been requested to do so—indicates a lack of political will rather than insufficient legal capacity.[171] South Africa, if presented with credible allegations against Zimbabwean perpetrators of rape who typically enter South African territory, should put aside political considerations and fulfill its legal duty to investigate.

Other African countries have ratified relevant international treaties that require states to enact domestic legislation authorizing legal action against perpetrators of serious abuses. There are thirty States parties in Africa to the Rome Statute; at some point, these thirty countries will have jurisdiction to prosecute the worst international crimes in their domestic courts. Three out of four of Zimbabwe's immediate neighbors are parties to the Rome Statute.[172] Botswana has ratified the Rome Statute but has not passed the necessary national legislation enabling its courts to prosecute foreign perpetrators of international crimes. Its failure to move forward with this legislation given the clear evidence of crimes demonstrated by the quarter-of-a-million Zimbabwean victims taking refuge within its borders is unfortunate and should be addressed immediately. Zambia, Zimbabwe's other neighbor and the host of a small number of refugees from Zimbabwe, and Tanzania, also a member of SADC, have also ratified the Rome Statute but have yet to domesticate it in their national laws.[173] More than half of the members of the African Union are States parties to the Convention Against Torture, which obligates them to domesticate their national laws to enable prosecution of torture in domestic courts. However, most have not enacted such universal jurisdiction legislation over torture, which means that prosecutions for rape as torture in Zimbabwe in other national courts is not likely.[174]

Universal jurisdiction has been controversial on the African continent, particularly when exercised by non-African states against African alleged perpetrators.[175] One of the benefits of universal jurisdiction in Africa is that, if taken seriously, it can serve to strengthen the capacity of national justice systems to address international crimes on the African continent. One of its limits is that nations cannot subject heads of state or certain high officials from other countries to the jurisdiction of their criminal courts.[176] Ordinarily, an official who is guilty of a crime cannot successfully hide behind his position to avoid his criminal responsibility.[177] However, where a state seeks to prosecute certain foreign officials, including accredited diplomats, current heads of state or heads of government and current foreign ministers, they may claim immunity.[178] This protection extends so long as the individual holds the position; once he gives up the post he or she loses the immunity. [179]

For this reason, the investigation and prosecution in domestic African courts of Zimbabwean perpetrators is limited to certain high officials, and cannot include Robert Mugabe so along as he remains president. To hold Mugabe accountable in Africa, civil suits at the regional SADC Tribunal, as well as claims at the African Commission on Human and Peoples' Rights, are the next best options.

Regional Tribunals

Accountability for serious crimes against humanity can be sought through civil cases as well as criminal prosecutions. The penalties are different (monetary damages vs. incarceration, for example), but in the absence of a ready and willing criminal justice system to take on the perpetrators of these crimes against humanity, a civil case in the Southern African Development Community (SADC) Tribunal can be useful. It will provide victims with a forum in which their perpetrators must answer to them; it will help build the jurisprudence of this fledgling and important regional tribunal; it will create a record of the crimes committed, which may be used for further prosecutions; and it will send a message throughout the region that impunity for rape will not be tolerated.

The SADC Tribunal hears cases between individuals and members of SADC, and by the terms of the SADC Charter and Protocol, each SADC member is subject to its jurisdiction.[180] Cases against Zimbabwe comprise the vast majority of filings in the SADC Tribunal, with ten of eighteen existing cases brought against the Republic of Zimbabwe itself and all four of the cases against SADC involving Zimbabwe and the 2008 elections.[181]

In 2008, the SADC Tribunal ruled in favor of seventy-eight farmers from Zimbabwe who alleged their land had been illegally expropriated.[182] The government of Zimbabwe refused to comply with the court's decision and subsequently "formally withdrew" from the Tribunal, declaring that it had no jurisdiction over Zimbabwe or any other SADC member.[183] It is now up to SADC, and in particular, the heads of SADC countries or the SADC summit, to make an unequivocal statement in support of the Tribunal's jurisdiction. Thus far, SADC has not addressed Zimbabwe's repudiation of the tribunal.

The SADC treaty was amended in 2001–2002 to make the Tribunal an integral part of SADC not requiring a separate ratification process.[184] Zimbabwe's claims that the SADC Tribunal has no jurisdiction over it—or over any SADC country, for that matter—are without merit.[185] SADC's failure to press Zimbabwe to recognize the Tribunal is problematic, as the legitimacy of the regional group depends in large part on the efficacy of its own institutions.

SADC's failure to press Zimbabwe to recognize the Tribunal is problematic, as the legitimacy of the regional group depends in large part on the efficacy of its own institutions.

The African Commission on Human and Peoples' Rights (ACHPR) has a triple mandate to promote and protect human rights, and to interpret the African Charter on Human and Peoples' Rights and its protocols.[186] The Charter, which has been ratified by all fifty-three Member States including Zimbabwe, insists on State party recognition of a broad array of rights. The Commission hears complaints deriving from violations of African Charters and Protocols.

The African Charter guarantees many rights that the perpetrators of politically motivated sexual violence in Zimbabwe violated, including equal protection of the law, the right to life and integrity, dignity and freedom from torture, liberty, the right to a hearing, freedom of expression, freedom of assembly, the right to participation in government, the right to property, freedom from gender-based discrimination, and the right to self determination.[187] Zimbabwean victims could also claim violations of several rights under the

Protocol to the Charter on the Rights of Women in Africa, which Zimbabwe ratified on April 15, 2008.[188] No decision has ever been issued on a complaint involving these rights.[189] Given the recent surge in highly publicized gender-based sexual violence in other parts of Africa, including the Democratic Republic of Congo and Sudan, this lack of decisions is both surprising and disturbing, and these rights are ripe for the ACHPR to address.

The International Criminal Court

As a legal matter, the International Criminal Court (ICC) could have authority to investigate and prosecute the widespread, systematic rape, which constitutes crimes against humanity, committed in Zimbabwe during 2008.[190] However, the government of Zimbabwe, which has not ratified the Rome Statute, would strenuously object and is unlikely to submit to the ICC's jurisdiction. Absent Zimbabwe's cooperation, for the ICC to exercise jurisdiction, either the UN Security Council would have to refer the "situation" to the ICC Prosecutor, or the Prosecutor himself would have to initiate an investigation.[191]

As a political matter, it is unlikely that the ICC will take on the perpetrators of the campaign of systematic rape in Zimbabwe at the behest of the UN Security Council. The broad perception among some African leaders that the ICC is "targeting" Africa, while not unanimously held on the continent, has taken hold and produced disquiet and controversy.[192] Additionally, as a permanent UN Security Council member and longtime ally of Zimbabwe, China is unlikely to vote to refer the situation to the ICC. China had to be legally prevented from delivering a shipment of arms to Zimbabwe last year during election time and is unlikely to strain its relationship with Mugabe by Security Council action.[193]

Notwithstanding the politics of the UN Security Council, the ICC Prosecutor is also empowered to try to investigate a situation on his own initiative, which is known as the exercise of the prosecutor's *proprio motu* powers.[194] Under the terms of the Rome Statute, in order for the prosecutor to do so, he must submit a request to open an investigation, along with any supporting documentation, to the Pre-Trial Chamber. That supporting documentation likely would come from a preliminary examination of potential crimes in a country, similar to the process the prosecutor is currently undertaking in Afghanistan.[195] There is some reason to believe the prosecutor's office has identified Zimbabwe as a country in which serious crimes have occurred.[196] Despite the challenges the prosecutor would encounter in investigating the situation in Zimbabwe, his office should undertake a preliminary examination of the crimes there as a first step.

If the UN Security Council and the ICC Prosecutor both refuse to pursue the situation in Zimbabwe through the International Criminal Court, Mugabe and the highest-ranking officials in ZANU-PF and the government could, in theory, be tried in a hybrid international tribunal.[197] However, this route is also fraught with difficulties, as it would require UN Security Council action and the cooperation of the government of Zimbabwe. A third option that seems even less likely is for the crimes to be investigated and prosecuted in Zimbabwe courts. Given the severely compromised nature of the judiciary, and the fact that ZANU-PF forces hold the overwhelming balance of power in the government, fair trials against the most serious perpetrators of systematic rape inside Zimbabwe are simply impossible at this time.

7 Toward Accountability

The inadequacies of the Zimbabwean legal system must be addressed before survivors of politically motivated rape in Zimbabwe can hope for real accountability in their own domestic courts. Nonetheless, Zimbabwe has current legal obligations it is failing to fulfill, and its neighbors, donors, and trading partners should insist on compliance. For Zimbabwe to return to the legal fold, it first must meet its existing legal obligations, and then work to strengthen those laws necessary to achieve full accountability in domestic courts. Developing the legal capacity for real accountability for crimes against humanity in Zimbabwe is a monumental task, but demanding that Zimbabwe comply with its existing legal obligations under both domestic and international law is a logical place to start.

Zimbabwe:
Meet existing obligations under domestic law

If faithfully applied, Zimbabwean laws criminalizing rape, assault and unlawful detention might provide a modicum of accountability for individual survivors.

Zimbabwe's Criminal Law Act, passed in 2005, outlines fairly progressive standards for the crime of rape, and obligates a man to obtain consent in order for a sexual act to be legal.[198] In the Code, rape is defined as non-consensual sexual or anal intercourse between a male and a female. Individuals may also be held criminally liable for their complicity in sexual offenses under certain circumstances, such as when they allow their property to be used for rape or when they kidnap or detain a person for the purpose of raping the detainee.[199]

If survivors of sexual violence are unwilling or unable to report incidents of rape, assault laws could theoretically be utilized as an alternative. Under Zimbabwean law, an individual is guilty of criminal assault when that person assaults or threatens to assault another, with intent to cause bodily harm, or with a risk that harm will result.[200] One who incites, conspires with, or holds authority over the perpetrator may also be held liable as an accomplice in the commission of an assault under this statute.[201]

Many victims were detained and raped at ZANU-PF base camps, giving rise to the possibility of prosecuting perpetrators for unlawful detention under the Zimbabwe criminal code. Under this provision, any person who "deprives an adult of his or her freedom of bodily movement, intending to cause such deprivation or realising that there is a real risk or possibility that such deprivation may result . . . shall be guilty of kidnapping or unlawful detention and liable."[202]

There are two circumstances in which a criminal claim for police misconduct would be appropriate on behalf of survivors of politically motivated rape: (1) The police officer refused to take a police report in compliance with procedure or (2) the officer participated in a beating or rape in contravention of his or her duty as a protector of peace and public order. In either event, the officer may be found guilty of criminal abuse of duty.[203] In many cases documented by AIDS-Free World, police officials refused to take reports of rapes, refusal which would certainly constitute an action "contrary to or inconsistent with his or her duty as a public officer . . .[which is an omission of] his or her duty as a public officer."[204]

The Constitution of Zimbabwe includes a Declaration of Rights granting victims the right to complain directly to the Supreme Court for a range of violations.[205] The benefit of bringing a Constitutional claim is that such an action does not require the approval of a prosecutor, as does a criminal action. Under current Zimbabwe law, rape victims could complain that they were subject to torture, or inhuman or degrading treatment[206] and those who were detained in police facilities might have plausible claims for violations of the right to personal liberty.[207]

Despite these Constitutional guarantees, such claims are only available against state actors, and this limitation reduces the likelihood of relief under the Constitution. The Zimbabwe government has taken the position in prior cases that it does not consider ZANU-PF supporters and war veterans—the perpetrators in the cases documented by AIDS-Free World—to be state actors.[208] The African Commission on Human and Peoples' Rights has agreed with the Zimbabwe government that there is a "thin line" between ZANU-PF and the government, noting that "the ZANU (PF) is a political party (the ruling party) in Zimbabwe and just like any other party in the country, distinct from the government . . . even though some of the members of the Zimbabwe government, cabinet ministers, also hold top ranking positions in the party," such as "President Robert Mugabe [who] is the President and First Secretary General of the party."[209] In the absence of Zimbabwe case law to the contrary, the Zimbabwe Constitutional Court likely would concur with the African Commission and find that ZANU-PF supporters, members and war veterans were not synonymous with the government, forestalling Constitutional claims by rape survivors.

Zimbabwe:
Fulfill obligations under regional and international treaties

Zimbabwe's domestic legal obligations to address politically motivated rape are augmented by its commitments at the regional and international level. Zimbabwe has promised to uphold a range of rights guaranteeing women's and girls' safety and security from sexual violence and rape. These commitments are not mere rhetoric; they are intended to provide protection against and accountability for the kind of systematic rape that occurred in 2008. The community of African and other nations—any country or regional entity that deals with Zimbabwe—should insist on Zimbabwe's fulfillment of these obligations.

By ratifying the **African Charter on Human and Peoples' Rights** (ACHPR) and the **African Charter on the Rights and Welfare of the Child**, Zimbabwe has committed itself to protect the life and survival of all people, including women and girls.[210] The **Solemn Declaration on Gender Equality in Africa**, adopted by African Union

Heads of State in July 2004, requires governments to launch campaigns against gender-based violence, strengthen laws to protect women, and end impunity for sexual crimes committed against women.[211] Even more pointedly, the **Protocol to the ACHPR on the Rights of Women** obligates State parties including Zimbabwe to "adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."[212] The Protocol specifically requires States to "punish the perpetrators of violence against women" as well as to establish programs to provide rehabilitation and reparations services to victims of such violence.[213] Zimbabwe ratified the Protocol on April 15, 2008, squarely in the midst of last year's election-related violence of which the systematic campaign of rape of MDC-affiliated women was an integral part.

As a member of the Southern African Development Community (SADC), Zimbabwe is subject to the **SADC Declaration and Treaty**. This instrument seeks to build a common vision and identity for its fifteen members, including a respect for human rights, democracy, and the rule of law, and proscribes discrimination on the basis of gender.[214] The members of SADC, including Zimbabwe, also signed the **SADC Protocol on Gender and Development**, in which they committed to "ensure that perpetrators of gender-based violence, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender-based violence are tried by a court of competent jurisdiction."[215] Zimbabwe's Parliament agreed to ratify the Protocol on October 21, 2009.[216]

As a party to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**,[217] Zimbabwe is obligated to prevent gender-based violence, which constitutes discrimination.[218] Given that women have been the targets of politically motivated rape, the sexual violence occurring in Zimbabwe constitutes discrimination against women, in violation of Zimbabwe's obligations under CEDAW.

Zimbabwe is also a party to the **International Covenant on Civil and Political Rights**, which guarantees the right to life, the right to move freely, freedom from arbitrary detention, the right to participate in the government, the right to equality and non-discrimination, and a prohibition on torture, among others.[219] The **Convention on the Rights of the Child** (CRC) protects children from discrimination on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians, or family members.[220] Zimbabwe has ratified the CRC. Its failure to protect female children and women from sexual violence, as well as its unwillingness to investigate and prosecute those who commit sexual crimes against children, contravene its obligations under both of these treaties.

Zimbabwe ratified the **International Covenant on Economic, Social and Cultural Rights** in 1991, which requires the government to take positive action to protect the right to health.[221] The UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health articulated this action as "measures to protect vulnerable or marginalized groups, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence."[222] Zimbabwe's failure to prevent and punish gender-based crimes of violence constitutes a violation of the right to health.

Regional Groups:
Press Zimbabwe to fulfill its legal obligations

Political pressure by other countries, particularly Zimbabwe's SADC neighbors, as well as by other African nations, donor countries, and members of UN bodies including the Security Council and Human Rights Council, will be critical to achieving accountability for these mass atrocities.

Article 33 of the Declaration and Treaty of SADC threatens sanctions on a member state that "persistently fails, without good reason, to fulfill obligations assumed under this Treaty" or "implements policies which undermine the principles and objectives of SADC." The government of Zimbabwe's targeting of female opposition supporters for sexual violence during last year's elections clearly undermines one key objective of SADC: to create a regional community respecting human rights, democracy and the rule of law, and proscribing discrimination on the basis of gender. [223]

The example of the Economic Community of West Africa (ECOWAS), a regional grouping of fifteen West African nations, is instructive with respect to the military junta in Guinea and the attendant killings and rapes there. In response to the crisis in Guinea, ECOWAS convened an emergency summit at which its members imposed an arms embargo against Guinea, authorized their head to lobby the European Union, the African Union, and others to do the same, and appointed a mediation team to seek a political solution in Guinea.[224]

There is precedent for SADC to take similar action. SADC suspended Madagascar in March 2009 after a coup in that country, gave Madagascar six months in which to hold general elections, and subsequently recommended sanctions.[225] The SADC Summit could go so far as to suspend Zimbabwe from the group, or could take other measures including sanctions, under the condition that Zimbabwe must recognize the jurisdiction of the SADC Tribunal, for example, or submit to other accountability measures from outside the country.

Under its Constitutive Act, the African Union (AU) Assembly can impose sanctions on any member state that fails to comply with the decisions and policies of the AU; it also has the power to suspend regimes that gained power through unconstitutional means. [226] On occasion, the AU has been aggressive in taking action against countries whose governments violate certain democratic principles.[227] Over the course of the past four years, the AU has suspended three countries for violation of election guidelines: Madagascar in 2009, Guinea in 2008, and Mauritania for a 2005 coup d'état.[228]

Notwithstanding these actions, the AU has been particularly unwilling to criticize Zimbabwe, and through its chairman has "paid tribute to all of Zimbabwe's leaders, especially President Mugabe" for their willingness to work together for the good of the nation.[229] Many important African leaders have long-time ties to Mugabe and do not want to be perceived as siding with Western countries (many of them former colonizers) against Zimbabwe. At the same time, the AU has stressed the need to bring perpetrators of crimes in Africa to justice on the continent.[230] The African Union's reluctance to address the human rights crisis in Zimbabwe has contributed to the ongoing impunity for serious abuses there.

Preventing the Next Attack:

Recommendations for Action

Accountability for the perpetrators of the politically motivated campaign of rape in Zimbabwe serves several purposes: it provides justice for the victims; it pierces the veil of impunity that protects Zimbabwe's highest officials and enables them to maintain their abusive regime at the cost of women's lives and health; and it deters future rapes.

ZANU-PF's use of youth militia and war veterans as terror squads to intimidate and prevent MDC supporters from voting for the opposition dates back to at least 2000.[231] As of October 2009, a leading Zimbabwean activist, Jenni Williams of WOZA, expressing concern for the reinvigoration of these irregular forces, stated, "They [ZANU-PF] are recruiting extra youths and the youth militia themselves are earning money. They are on the payroll and this is a rejuvenation of ZANU-PF."[232] Credible reports by international human rights organizations estimate that 29,000 members of the ZANU-PF youth militia remain on the government payroll for mobilization around the next election.[233]

With thousands of ZANU-PF militia still on the payroll and the next presidential election looming, immediate action is critical to stop ZANU-PF's next campaign of politically motivated rape. Efforts to achieve accountability for the last round's victims will not be quick or easy, but starting them signals the beginning of the end of impunity for politically motivated rape.

Accountability will not be possible, however, unless survivors of politically motivated rape are able to come forward, describe their experiences, identify their perpetrators and maintain their personal safety throughout the legal process. Many of the women who fled Zimbabwe to neighboring countries did so not only because they were traumatized by what they had experienced, but because they lived—and continue to live—in ongoing fear for their security. These women know that ZANU-PF supporters targeted them for rape because of their political affiliation, and know that they will be targeted again if they speak out without safeguards and protection. The ability to address the systematic impunity for politically motivated rape in Zimbabwe, therefore, is directly related to the provision of protection to survivors of that rape.

The political situation inside Zimbabwe is unstable, and there is ample reason to believe that survivors of rape in the country will not be able to receive the protection they need to come forward. It is incumbent upon Zimbabwe's neighbors and all of SADC to provide safety to survivors who have fled their homes as a necessary precondition to ending impunity.

Ending impunity for politically motivated rape in Zimbabwe is an imperative that must involve the entire region, at the least. Consequently, AIDS-Free World recommends the following targeted action:

Conduct official investigations into last year's rape campaign in order to prosecute commanders and perpetrators and prevent recurrences in the future.

To do so, the following steps should be taken immediately:

- The **Governments of Botswana and South Africa**, as hosts to refugees from Zimbabwe, should create and make available witness protection programs for survivors of politically motivated rape in their countries, to enable the collection of evidence and prosecution of perpetrators while maintaining the security of victims.
- The **SADC Summit** should press Zimbabwe to recognize the jurisdiction of the SADC tribunal, and failing that, should suspend Zimbabwe and impose sanctions in case of continued recalcitrance.
- The **Government of South Africa** should agree to investigate and prosecute crimes against humanity in Zimbabwe on the basis of its law implementing the Rome Statute.
- The **Office of the Prosecutor for the International Criminal Court** should conduct a preliminary examination of politically motivated rape in Zimbabwe in 2008.
- The **African Union** should convene a special summit on rape and sexual violence and consider instituting sanctions against Zimbabwe for its failure to address election-related rape in 2008.
- The **UN High Commissioner for Human Rights** should conduct an independent investigation into systematic politically motivated rape in Zimbabwe culminating in a public report made available to States and presented at the Human Rights Council.
- The **Governments of Botswana, Zambia and Tanzania** should accelerate the necessary legislative processes to domesticate the Rome Statute into national law aided, if necessary, by the **African Union**.
- The **Government of Zimbabwe** should not make amnesty available to alleged perpetrators of crimes against humanity in the national healing, reconciliation, and integration process; should ensure that restitution and compensation to survivors of systematic rape supplements and does not supplant criminal prosecutions; and should seek assistance from African experts in assembling a team of investigators, doctors, lawyers, and others to undertake an impartial, independent and comprehensive investigation into crimes against humanity committed during Zimbabwe's 2008 election period, including sexual crimes, with guarantees of protection for witnesses, survivors, and their families.

Systematic rape has long been used as a particularly effective tool to maintain political power, punish political opposition, and gain the upper hand in warfare. Zimbabwe is not the only country where such tactics are used, but it is an especially insidious example because the rape there disappears in the shadows of other abuses that receive more attention. The infrastructure necessary for executing another campaign of rape during the next election period already exists in Zimbabwe, and there are credible claims it is being reinvigorated now. Stopping it will require unequivocal action on the part of the countries that matter the most to Zimbabwe—members of the southern African community. These neighbors will not only need to press Zimbabwe to fulfill its legal obligations; they will need to fulfill their own, and they will need to make it possible for legal action to proceed against the direct perpetrators and their superiors.

AIDS-Free World has started the process of documenting the widespread politically motivated rape in Zimbabwe, and will continue to press for accountability by working with local lawyers and NGOs to initiate legal action in southern Africa.

If the promise of international justice is to be realized, however, AIDS-Free World and its partners cannot succeed without ensuring the protection of survivors and witnesses. Zimbabwe's neighbors must create the conditions that make accountability possible. Otherwise, history will repeat itself yet again in Zimbabwe.

Appendix 1:

Anatomy of the Project

A small international advocacy organization with the ambitious goal of ending impunity for perpetrators of sexual crimes against humanity in Zimbabwe faces significant challenges. This account seeks to describe the process undertaken by AIDS-Free World—aided by many important individuals and organizations—to initiate this work. Many aspects cannot be publicized because of security concerns for the women involved as well as the local lawyers and activists, but the broad outlines of the process are included here.

As the report details, AIDS-Free World learned about the politically motivated rapes from a Zimbabwean NGO. The first task was to identify and consult with as many knowledgeable individuals and groups inside Zimbabwe as possible in order to verify that the people most affected supported this work. The second step was to ascertain whether the accounts of political rape were credible. AIDS-Free World lawyers met with survivors, human rights groups, lawyers, activists, and academics in the region, and drew two conclusions: the problem was real, and other organizations both inside and outside of Zimbabwe were focused on the many human rights abuses perpetrated there, but not on the systematic rape.

Before travelling to southern Africa to both find and interview survivors, AIDS-Free World gathered resources in both the US and Canada. The Canadian law firm of Blake, Cassels, and Graydon agreed to send three lawyers to southern Africa for the first trip to interview survivors alongside AIDS-Free World lawyers. The University of Ottawa mobilized several law students, supervised by a law professor, to commence research on issues relating to universal jurisdiction in Africa. The Stanford University International Human Rights and Development Law Clinic agreed to consider the Zimbabwe work as a potential clinic project and sent a clinical fellow to assist with interviews.

Most significantly, DLA Piper, one of the world's largest law firms, agreed to work on the project through New Perimeter, a wholly integrated non-profit affiliate, established by the firm to provide *pro bono* legal support for projects of global concern. New Perimeter first sent its program manager (herself a lawyer) to help conduct interviews during an initial trip, and DLA Piper subsequently became AIDS-Free World's primary *pro bono* counsel on the project. New Perimeter next invited interested lawyers within the firm to apply to participate, and in two weeks received fifty applications from lawyers ranging from junior associates to senior partners. With New Perimeter vetting the applicants and AIDS-Free World consulting during the selection process, first consideration was given to lawyers with experience in international legal issues, women's human rights issues, and sexual violence. Also weighed were the applicants' cultural and psychological sensitivities, the time they could devote, and their willingness to travel. The rigorous internal interview process yielded nine lawyers from six offices to serve on the project team.

After the selection of participating lawyers, AIDS-Free World developed a training manual and conducted a training session, which Blakes' lawyers had also completed prior to their involvement. The training addressed each of the critical aspects of the project: international law relating to sexual violence and international crimes; information about the psycho-social dimensions of trauma (to better equip the attorneys to interact appropriately with survivors, as well as to recognize and manage the potential secondary trauma they might experience from hearing firsthand accounts of intense violence); interviewing techniques; and the history and political context of Zimbabwe.

The legal team conducted interviews in several different venues in southern Africa. (Specific details are omitted out of concern for the safety of the women.) To identify potential interviewees, AIDS-Free World recruited the assistance of several individuals and organizations living and working within the southern Africa region who are originally from Zimbabwe, and who have professional knowledge and familiarity with survivors who have been terrorized by sexual violence. The first priority was to ensure the protection of individuals throughout the complex process of vetting possible interviewees. It was important to identify women to interview who felt stable enough to talk about their experiences, who were not compromised by or affiliated with ZANU-PF, and who were able to testify credibly.

Over an eleven-month period, AIDS-Free World and its legal team conducted eighty interviews during six trips, resulting in seventy signed and sworn affidavits from survivors and two from witnesses. The interview process itself was multifaceted. AIDS-Free World coordinated with local individuals to identify women to interview, and planned travel accordingly. Secure locations within the specific region were required for each trip. Working with local partners, AIDS-Free World organized secure transportation for the women, which was complicated given their fragile situations. Many of the women are ill, wounded, without stable housing, living in extreme poverty, and the sole caretakers of babies or young children.

Trained Zimbabwean interpreters enabled the women to speak in their first languages, although some also understood and spoke English. Every interview subject signed a comprehensive consent form translated into their native tongue, either Shona or Ndebele. The lawyers conducting each interview undertook a lengthy explanation of the purpose of the project, the potential risks, and the ways in which their testimony might be utilized. It was important to emphasize that AIDS-Free World would not compensate the women for their stories or for their time.

AIDS-Free World recognized the importance of working with lawyers from the region, and identified a group of lawyers within Harare who were interested in conducting interviews and drafting affidavits. AIDS-Free World conducted a training session and undertook twenty interviews with the Zimbabwean lawyers.

All of the interviews were conducted as professional legal interviews, with two lawyers present as well as one or two female interpreters. When the interview subjects permitted it, the interviews were videotaped. They were conducted in private, secure settings, and each woman was in control of the length and scope of the interview. Almost none of the women abbreviated an interview or declined to answer the detailed questions posed. Each interview lasted between three and six hours. Two lawyers were present: one led the interview while the other took verbatim notes. A detailed affidavit was drafted from the interview notes. (All notes and affidavits remain on file with AIDS-Free World in secure locations.)

It is important to emphasize that each woman was interviewed separately, and lawyers never shared the contents of any one interview with another survivor. In some cases, the women showed their physical wounds and provided documentation, such as medical records, when they had them.

Evening debriefings among the lawyers were spent reviewing the details of the day's interviews, identifying gaps in testimony, and drafting affidavits. As a group, the legal team discussed the difficulty of hearing multiple stories of extreme violence. After the interviews were completed and the affidavits drafted, the women returned for a second time to a secure location, and, in the presence of an authorized legal professional of that country, reviewed their own statements with an interpreter, corrected them when necessary, and then signed the affidavits under oath.

The complex logistics of this undertaking are difficult to describe fully. Quite apart from the complications of assembling a team from several countries and negotiating the political minefields involved, AIDS-Free World and *pro bono* counsel were interviewing a fragile, traumatized, and in many cases frightened population whose safety and well-being had to be the primary concern.

AIDS-Free World alone could not have accomplished the work thus far without the extraordinary contributions of committed and competent lawyers, law students, interpreters, and other essential participants. Most important, however, is the courage of these many women from Zimbabwe to speak out in the pursuit of justice despite their devastating experiences.

Appendix 2:
Methodology

The AIDS-Free World legal team conducted interviews to collect narrative testimony from rape survivors from Zimbabwe. That testimony is preserved in the form of interview notes, videotapes (where possible), and signed and sworn affidavits. Working with Dr. Nathan Taback, AIDS-Free World then developed a database to convert the qualitative information gained from the interview/affidavit process into quantitative data, using the Taback-Coupland model of armed violence.

Database

The following procedure was used to develop the database and enter data:

1. A set of variables was developed.
2. A codebook was developed that defined each variable and how it would be coded.
3. The AIDS-Free World legal team used the codebook to enter 10% of the cases.
4. Discrepancies in the test cases were noted and resulted in several minor changes to the codebook.
5. The remaining affidavits were entered into the database by the AIDS-Free World legal team.

Statistical analysis

Summary statistics were generated for all variables in the database: mean, median, standard deviation, range, and percentiles for continuous variables. The number of cases and percentages were calculated for categorical variables. The statistical analysis was undertaken using SAS Version 9.1.

Appendix 3:
Notes

1 Of these seventeen women, eleven had never been tested prior to the rape, and the remaining six tested negative sometime between six months and six years before the rape. It is difficult to ascertain whether these women were infected with HIV as a result of the rapes. However, in a country with a high adult prevalence rate of HIV, as in Zimbabwe (15.3%), the possibility is strong that some women indeed became infected as a result of the rapes.

2 *See*, *e.g.*, Amnesty International Canada, "Human Rights Concerns for Zimbabwe 2000-2008," www.amnesty.ca/themes/zimbabwe_human_rights_concerns.php.

3 Andrew Meldrum, "Mugabe's Youth Militia's Raping Women Held Captive in Camps," *The Guardian*, Mar. 18, 2003, www.guardian.co.uk/world/2003/ mar/18/ zimbabwe.andrewmeldrum.

4 *See* REDRESS, "Zimbabwe: Tortuous Patterns Destined to Repeat Themselves in Upcoming Election Campaign," Nov. 2004, www.redress.org/publications/ZimbabweNov2004.PDF.

5 *See* Research and Advocacy Unit, "Putting it Right: Addressing Human Rights Violations Against Zimbabwean Women," Mar. 2009, www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID.

6 *See* Sky News, "Violence Against Immigrants Soars," May 19, 2008, http://news.sky.com/skynews/Home/Sky-News-Archive/Article/20080641316403.

7 Alex Bell, "Zim Refugees Draining Botswana," Zimbabwe Institute, July 28, 2008, www.zimbabweinstitute.org/News/articles_detail.asp?art_ID=194.

8 Mercy Corps, "The Effect of Migration on HIV Rates," Sept. 21, 2007, www.globalenvision.org/library/9/1758.

9 Mercy Corps, "The Effect of Migration on HIV Rates," Sept. 21, 2007, www.globalenvision.org/library/9/1758.

10 Physicians for Human Rights, "Health in Ruins: A Manmade Disaster in Zimbabwe," Jan. 2009, 35, http://physiciansforhumanrights.org/library/report-2009-01-13.html.

11 Tony Reeler, *Subliminal Terror: Human Rights Violations and Torture in Zimbabwe 2008*, Braamfontein: Center for the Study of Violence and Reconciliation (2008) 3–10.

12 *See*, *e.g.*, Mary Johnson Osirim "Crisis in the State and the Family: Violence Against Women in Zimbabwe," *African Studies Quarterly* 7, no.2&3 (2003), www.africa.ufl.edu/asq/v7/v7i2a8.htm.

13 *See* A.P. Reeler, "Epidemic Violence and the Community: A Zimbabwean Case Study," *Journal of Social Development in Africa* (1998) 41–51.

14 The 5 Brigade was outside the command structure of the army and answered directly to Robert Mugabe, much like the youth militias and war veterans of today. *See* Martin Meredith, *Mugabe: Power, Plunder, and the Struggle for Zimbabwe* Public Affairs (2002) 65–76.

15 Catholic Commission for Justice and Peace and Legal Resources Foundation, "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980–1988," Apr. 1999, www.sokwanele.com/pdfs/BTS.pdf.

16 Catholic Commission for Justice and Peace and Legal Resources Foundation, "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980–1988," Apr. 1999, www.sokwanele.com/pdfs/BTS.pdf.

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18 Zimbabwe Human Rights NGO Forum, "Their Words Condemn Them: The Language of Violence, Intolerance, and Despotism in Zimbabwe," May 2007, 3, www.hrforumzim.com/special_hrru/Condemned_by_their_own_words.pdf.

19 Bhekinkosi Moyo, "Zimbabwe Violence Reminiscent of Gukurahundi Massacres," *Mail & Guardian*, June 16, 2008, www.trustafrica.org/index.php?option=com_content&task=view&id=138&Itemid=70&lang=en.

20 Human Rights Watch, "'Our Hands are Tied': Erosion of the Rule of Law in Zimbabwe," Nov. 8, 2009, 9, www.hrw.org/en/reports/2008/11/08/our-hands-are-tied-0.

21 *See* Amnesty International, "Zimbabwe: The Toll of Impunity," June 2002, www.amnesty.org/en/library/asset/AFR46/034/2002/en/613ba739-d82d-11dd-9df8-936c90684588/afr460342002en.pdf; *see also* Amnesty International, "Zimbabwe: Assault and Sexual Violence by Militia," Apr. 2002, www.amnesty.org/en/library/info/AFR46/032/2002.

22 *See* "Zimbabwe-Rape: Hundreds of Women and Girls Gang-Raped by Mugabe Brigades," *Agence France Presse,* Aug. 25, 2002, www.aegis.com/news/afp/2002/AF020867.html; *see also* Brian Kaguro, "Can Apples Be Reaped from a Thorn Tree? A Case Analysis of the Zimbabwean Crisis and NEPAD's Peer Review Mechanism" paper presented at the Southern Africa Research Poverty Network (SARPN) and Center for Civil Society workshop on "Engaging NEPAD: government and civil society speak to one another" in Durban, South Africa, July 4, 2002, www.sarpn.org.za/documents/d0000068/index.php#toc.

23 AIDS-Free World Interview #14, Nov. 2008.

24 Human Rights Watch, "'Our Hands are Tied': Erosion of the Rule of Law in Zimbabwe," Nov. 8, 2009, 9, www.hrw.org/en/reports/2008/11/08/our-hands-are-tied-0.

25 *See, e.g.*, Amnesty International, "Zimbabwe—A Trail of Violence After the Ballot," June 5, 2008, www.amnesty.ca/resource_centre/reports/view.php?load=arcview&article=4335&c=Resource+Centre+Reports; Zimbabwe NGO Human Rights Forum and RAU, "If You Can't Join Them, Beat Them! Post-Election Violence in Zimbabwe," May 2008, www.hrforumzim.com/frames/inside_frame_special.htm; Human Rights Watch, "Bullets for Each of You: State-Sponsored Violence Since Zimbabwe's March 29 Elections," June 9, 2008, www.hrw.org/en/reports/2008/06/09/bullets-each-you.

26 AIDS-Free World Interview #37, Apr. 2009; AIDS-Free World Interview #56, July 2009; AIDS-Free World Interview #63, July 2009; AIDS-Free World Interview #17, Feb. 2009.

27 A woman from Matabeleland North explained, "The ZANU-PF burned many houses at this time. They went from section to section in town, going to the houses of the people whose names they got from the MDC offices and setting them on fire."

28 AIDS-Free World Interview #38, Apr. 2009; AIDS-Free World Interview #69, July 2009. Human rights activists inside Zimbabwe have documented additional amputations. AIDS-Free World interview with Zimbabwean human rights lawyer, July 20, 2009; AIDS-Free World interview with Zimbabwean human rights activist, July 21, 2009.

29 AIDS-Free World Interview #38, Apr. 2009.

30 Sexual violence denotes "[a]ny violence, physical or psychological, carried out through sexual means or by targeting sexuality," including rape, attempted rape, sexual assault, sexual enslavement and sexual humiliation. United Nations, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict: Final Report Submitted by Gay MacDougall," June 22, 1998, 7–8, www.unhchr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument. Rape has been defined under international law as "[t]he sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) [of] the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Prosecutor v. Kunarac, Kovac & Vukovic, Case Nos. IT-96-23 and IT-96-23/1, Appeals Chamber Judgment, ¶¶ 127–33 (June 12, 2002).

31 Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/Res/955 (1994), as amended, www.ictr.org/ENGLISH/ basicdocs/statute.html; Statute of the International Criminal Tribunal for the former Yugoslavia, S.C. Res. 827, U.N. Doc. S/Res/827 (1993), as amended, www.un.org/icty/legaldoc/index.htm.

32 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), art. 7(1). Under the Rome Statute, crimes against humanity need not be committed during armed conflict in order to be prosecuted as such.

33 Prosecutor v. Kordic & Cerkez, Case No. IT-95-14/2-T, Judgment, ¶ 179 (Feb. 26, 2001); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 580 (Sept. 2, 1998).

34 Prosecutor v. Naletilic & Martinovic, Case No. IT-98-34, Judgment, ¶ 236 (Mar. 31, 2000).

35 Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 580 (Sept. 2, 1998).

36 AIDS-Free World Interview #67, July 2009.

37 AIDS-Free World Interview #18, Feb. 2009.

38 AIDS-Free World Interview #6, Sept. 2008.

39 AIDS-Free World Interview #14, Nov. 2008.

40 AIDS-Free World Interview #10, Nov. 2008.

41 AIDS-Free World Interview #55, July 2009.

42 AIDS-Free World Interview #42, Apr. 2009.

43 AIDS-Free World Interview #12, Nov. 2008.

44 AIDS-Free World Interview #55, July 2009.

45 AIDS-Free World Interview #3, Sept. 2008.

46 AIDS-Free World Interview #49, Apr. 2009.

47 AIDS-Free World Interview #41, Apr. 2009.

48 AIDS-Free World Interview #25, Feb. 2009.

49 AIDS-Free World Interview #64, July 2009; AIDS-Free World Interview #50, Apr. 2009.

50 AIDS-Free World Interview #50, Apr. 2009.

51 AIDS-Free World Interview #7, Sept. 2008; AIDS-Free World Interview #40, Apr. 2009.

52 AIDS-Free World Interview #1, Sept. 2008.

53 AIDS-Free World Interview #33, Feb. 2009.

54 AIDS-Free World Interview #9, Nov. 2008; AIDS-Free World Interview #33, Mar. 2009; Interview #55, July 2009.

55 AIDS-Free World Interview #2, Sept. 2008.

56 AIDS-Free World Interview #55, July 2009.

57 AIDS-Free World Interview #47, Apr. 2009.

58 AIDS-Free World Interview #47, July 2009; AIDS-Free World Interview #58, July 2009.

59 AIDS-Free World Interview #68, July 2009.

60 AIDS-Free World Interview #58, July 2009.

61 AIDS-Free World Interview #3, Sept. 2009; AIDS-Free World Interview #67, July 2009.

62 AIDS-Free World Interview #56, July 2009.

63 AIDS-Free World Interview #63, July 2009.

64 AIDS-Free World Interview #'s 25, 37, 40, 41, 42, 55, 56, 61, 63, and 68.

65 AIDS-Free World Interview #64, July 2009; AIDS-Free World Interview #19, Feb. 2009; AIDS-Free World Interview #45, Apr. 2009; AIDS-Free World Interview #58, July 2009.

66 AIDS-Free World Interview #32, Mar. 2009.

67 AIDS-Free World Interview #39, Apr. 2009.

68 AIDS-Free World Interview #38, Apr. 2009.

69 AIDS-Free World Interview #51, Apr. 2009.

70 AIDS-Free World Interview #41, Apr. 2009.

71 AIDS-Free World Interview #1, Sept. 2008.

72 AIDS-Free World Interview #38, Apr. 2009.

73 AIDS-Free World Interview #13, Nov. 2008.

74 Mashonaland East, Mashonaland Central, Mashonaland West, Manicaland, Midlands, Masvingo, Harare and Matabeleland South.

75 Although Gordon Brown replaced Tony Blair as the Prime Minister of the United Kingdom in June 2007 and all of these attacks occurred in 2008, the perpetrators consistently referred to Tony Blair.

76 AIDS-Free World Interview #6, Sept. 2008.

77 AIDS-Free World Interview #13, Nov. 2008.

78 Mashonaland East, Harare, Mashonaland Central, Masvingo, and Midlands.

79 AIDS-Free World Interview #22, Feb 2009; AIDS-Free World Interview #55, July 2009; AIDS-Free World Interview #61, July 2009; AIDS-Free World Interview #70, July 2009.

80 AIDS-Free World Interview #44, Apr. 2009.

81 Manicaland, Masvingo, Midlands, Mashonaland East, and Harare.

82 AIDS-Free World Interview #1, Sept. 2008.

83 AIDS-Free World Interview #4, Sept. 2008.

84 AIDS-Free World Interview #38, Apr. 2009.

85 AIDS-Free World Interview #24, Feb. 2009.

86 AIDS-Free World Interview #49, Apr. 2009.

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89 Amnesty International, "Zimbabwe needs an impartial and independent police oversight body," July 9, 2009, www.amnesty.org/en/news-and-updates/news/zimbabwe-needs-impartial-and-independent-police-oversight-body-20090709.

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92 AIDS-Free World Interview #2, Sept. 2008.

93 AIDS-Free World Interview #19, Feb. 2009.

94 AIDS-Free World Interview #29, Mar. 2009.

95 AIDS-Free World Interview #41, Apr. 2009.

96 AIDS-Free World Interview #17, Feb. 2009.

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100 AIDS-Free World Interview #31, Mar. 2009.

101 AIDS-Free World Interview #33, Mar. 2009.

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104 AIDS-Free World Interview #33, Mar. 2009.

105 AIDS-Free World Interview #56, July 2009.

106 AIDS-Free World Interview #34, Mar. 2009.

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118 AIDS-Free World Interview #26, Feb. 2009.

119 AIDS-Free World Interview #16, Feb. 2009.

120 AIDS-Free World Interview #24, Feb. 2009.

121 AIDS-Free World Interview #39, Apr. 2009.

122 AIDS-Free World Interview #'s 2, 4, 1, Sept. 2008; AIDS-Free World Interview 17, Feb. 2009; AIDS-Free World Interview #68, July 2009.

123 AIDS-Free World Interview #66, July 2009.

124 AIDS-Free World Interview #12, Nov. 2008.

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126 AIDS-Free World Interview #69, July 2009.

127 AIDS-Free World Interview #25, Feb. 2009.

128 AIDS-Free World Interview #17, Feb. 2009.

129 AIDS-Free World Interview #29, Mar. 2009.

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131 *See* Roberto Ago, "Sixth Report on State Responsibility," 2 *Yearbook of International Law Commission Part II*, 1977, 20. The African Charter on Peoples' and Human Rights (African Charter), an international human rights instrument intended to promote and protect human rights on the African Continent, also has an exhaustion of remedies requirement. African [Banjul] Charter on Peoples' and Human Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1982) art. 56(5).

132 *See* Roberto Ago, "Sixth Report on State Responsibility," 2 *Yearbook of International Law Commission Part II*, 1977, 20.

133 *See* Chavanduka v. Comm'r of Police (2000) 1 Z.L.R. 418 (Zimb.).

134 Redress Trust and Amani Trust, "Torture in Zimbabwe, Past and Present: Prevention, Punishment, Reparation? A Survey of Law and Practice," June 2005, 20, www.redress.org/publications/Amani2005.pdf.

135 Redress Trust and Amani Trust, "Torture in Zimbabwe, Past and Present: Prevention, Punishment, Reparation? A Survey of Law and Practice," June 2005, 30–33, www.redress.org/ publications/Amani2005.pdf.

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137 The African Commission for Human and Peoples' Rights, the body charged with promoting and protecting peoples' rights and interpreting the African Charter, has held that "where an applicant cannot turn to the judiciary because of a generalised fear for his life (or even the lives of his relatives), local remedies would be considered to be unavailable to him" because, as a practical matter, he cannot avail himself of them. Jawara v. The Gambia, Comm. Nos. 147/95 and 147/96 (2000) ¶ 35, African Commission on Human and Peoples' Rights, www1.umn.edu/humanrts/Africa/ comcases/147-95.html.

138 *See* Human Rights Watch, "Zimbabwe: Rights Reform Vital to Lasting Stability: Power-Sharing Deal Should End Abuses, Bring Justice," Sept. 15, 2008, www.hrw.org/en/news/2008/09/15/ zimbabwe-rights-reform-vital-lasting-stability (noting, "Starting in 2000, the government of Zimbabwe began an onslaught on the judiciary that included physical and verbal attacks against judges, and bribes to compromise the impartiality, and undermine the work of, the judiciary."); Zimbabwe Human Rights NGO Forum, "Exploring Transitional Justice Options in Contemporary Zimbabwe," Jan. 2006, 15, www.hrforumzim.com/special_hrru/transitional_justice.pdf (stating, "Partisan policing, selective prosecution, the non- enforcement of court orders and so on, have all contributed to the declining legitimacy of the country's criminal justice system…Although pockets of honesty evidently remain, it is increasingly apparent that Zimbabwe's judicial system has been deeply compromised, especially over the last four years."); Zimbabwe Human Rights NGO Forum, "Zimbabwe Facts and Fictions: An Audit of the Recommendations of the Fact-Finding Mission of the African Commission on Human and People's Rights," Nov. 2005, www.hrforumzim.com/special_hrru/audit_achpr_fact-finding_mission.pdf. *See also* United Nations Press Release, "Expert Expresses Grave Concern Over Arrest of Another Judge in Zimbabwe," Feb. 19, 2003, www.unhchr.ch/huricane/huricane.nsf/view01/A0926E953F2FE3E0C1256CD200530547; and United Nations Press Release, "Developments in Zimbabwe a Threat to Peace, Democracy and Rule of Law in Africa, Says UN Rights Expert," Sept. 24, 2002, www.unhchr.ch/huricane/huricane.nsf/view01/C969FD9D48F28DA4C1256C3E004526FC (expressing "outrage over the further deterioration of the rule of law in Zimbabwe").

139 Human Rights Watch, "'Our Hands are Tied': Erosion of the Rule of Law in Zimbabwe," Nov. 2008, 13–16, www.hrw.org/sites/default/files/reports/zimbabwe1108.pdf.

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143 Constitutional Rights Project v. Nigeria, Comm. No. 60/91 (1995) ¶ 10, African Commission on Human and Peoples' Rights, www1.umn.edu/ humanrts/africa/comcases/60-91.html.

144 Human Rights Watch, " 'Our Hands are Tied': Erosion of the Rule of Law in Zimbabwe," Nov. 2008, 15–17, www.hrw.org/sites/default/files/ reports/ zimbabwe1108.pdf.

145 Zimbabwe provides for a twenty-year statute of limitations for rape. Criminal Procedure and Evidence Act, ch. 9:07 (2004) (Zimb.).

146 AIDS-Free World Interview #67, July 2009.

147 AIDS-Free World Interview #43, Apr. 2009.

148 AIDS-Free World Interview #50, Apr. 2009.

149 AIDS-Free World interview with MDC official, July 20, 2009; *see also* Celia W. Dugger, "Mugabe Aides Said to Use Violence to Get Amnesty," *New York Times*, Apr. 9, 2009, www.nytimes.com/ 2009/04/10/world/africa/10zimbabwe.html.

150 *See, e.g.*, Amnesty International et al., "Zimbabwe: Human Rights in Crisis," May 2007, www.ibanet.org/Document/Default.aspx?DocumentUid=f8929fc0-ed6c-40c7-a99a-bb7ed16237d3.

151 Iavor Rangelov and Jovan Nicic, "Command Responsibility: The Contemporary Law," Feb. 2004, www.hlc-rdc.org/uploads/editor/Command%20Responsibility.pdf.

152 Under article 28 (b) of the Rome Statute:

"(b) With respect to superior and subordinate relationships not described in paragraph (a) [military commander and subordinate forces] a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution." Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9 (1998), art. 28 (b).

153 Women's Statement on Zimbabwe (presented to the Human Rights Council, Geneva, Switzerland, May 30, 2008), http://74.125.93.132/search?q=cache:w_kcEwXk778J:www.ifor.org/articles/Reports/Zimbabwe%2520Statement%2520HRC%2520June%25202008.doc+2008+elections+rape+in+zimbabwe&cd=42&hl=en&ct=clnk&gl=us&client=firefox-a.

154 Potera Bakwa, "Eyewitness: Raped for Opposing Mugabe," *BBC News,* June 20, 2008, http://news.bbc.co.uk/2/hi/africa/7465101.stm.

155 Douglas Marle, "Teenaged Girls Raped in Mugabe's Torture Camps," *Sunday Times*, July 8, 2008, www.timesonline.co.uk/tol/news/world/africa/article4276294.ece.

156 Sophie Shaw, "They Looted My Body Like I was Dead," *The Guardian*, June 17, 2008, www.guardian.co.uk/world/2008/jun/17/zimbabwe1.

157 Morgan Tsvangirai, MDC Press Statement on the Presidential Run-off, June 23, 2008, www.zimonline.co.za/Article.aspx?ArticleId=3338.

158 *See* Basildon Peta, "Mugabe's Hatchet Men," *Independent Online*, June 29, 2008, www.iol.co.za/index.php?set_id=1&click_id=84&art_id=vn20080629145757585C592084.

159 *See* Human Rights Watch, "Bullets for Each of You: State-Sponsored Violence Since Zimbabwe's March 29 Elections," June 9, 2008, 18-19, www.hrw.org/en/reports/2008/06/09/bullets-each-you.

160 It is generally agreed that universal jurisdiction applies to violations of peremptory, or *jus cogens*, norms, from which states are not permitted to derogate (deviate) under any circumstances. States are bound by *jus cogens* norms regardless of whether they have bound themselves to protect and fulfill these rights through treaty ratification or accession.

161 The principle of universal jurisdiction is enshrined in the Convention Against Torture (CAT), which requires states to prosecute torturers or extradite them to a country that will, and the Geneva Conventions of 1949,

which requires states to look for and bring before their courts those who commit grave breaches. UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, 85, www.unhcr.org/refworld/docid/3ae6b3a94.html; Articles 49 of Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, adopted 12 August 1949; Art. 50 of Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, adopted 12 August 1949; Art. 129 of Geneva Convention (III) Relative to the Treatment of Prisoners of War of August 12, 1949, adopted 12 August 1949; and Article 146 of Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, adopted12 August 1949, entered into force 21 October 1950, Art. 146.

162 *See* Amnesty International et al., "Zimbabwe: Human Rights in Crisis," May 2007, www.ibanet.org/Document/Default.aspx?DocumentUid=f8929fc0-ed6c-40c7-a99a-bb7ed16237d3.

163 Practically speaking, criminal prosecutions for international crimes under customary international law are more challenging than those undertaken pursuant to a statute granting universal jurisdiction.

164 These countries are: the Democratic Republic of the Congo (Penal Code, Book 1, Section VI, art. 3-6); Republic of Congo (Law N° 8-98 of 31 October 1998); Ethiopia (Penal Code, art. 17 and 18); Ghana (Courts Act 1993, art. 56(4)); Mali (Law N° 01-079 of 20 August 2001, art. 29-31); Niger (Law N° 2003-025 of 13 June 2003, art. 208.8); Rwanda (Organic Law N° 09/96 of 30 August 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990); Senegal (Code of Criminal Procedure, art. 669); and South Africa (Implementation of the Rome Statute of the International Criminal Court Act 2002, §4).

165 Coalition for the International Criminal Court, "Rome Statute Ratification Chart by Region," http://iccnow.org/?mod=download&doc=4352. In Kenya, the National Assembly approved an ICC implementing statute, The International Crimes Act, on 11 December 2008, assented to by the President on 24 December 2008 and subsequently published in the Official Gazette of Laws on 30 December 2008. However, in order for the Act to enter into force, the relevant Government Minister must make a commencement order indicating the date of entry into force, and that had not happened as of the publication of this report.

166 *See, e.g.,* Marlise Simons, "Belgium Sues to Compel Prosecution of a Chadian", *New York Times*, February 22, 2009, http://query.nytimes.com/gst/ fullpage.html?res= 9805E2DF1E3AF931A15751C0A96F9C8B63.

167 Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, §4.

168 Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, §4(3)iii.

169 Max du Plessis, "South Africa's Implementation of the ICC Statute: An African Example", *J Int Crim Justice* 5 no 2, (May 2007): 465–66.

170 SADC's members are Angola, Botswana, Democratic Republic of the Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

171 AIDS-Free World is in possession of the submission made by the Southern African Litigation Centre (SALC) to the National Prosecuting Authority (NPA) seeking to initiate investigations with a view to prosecutions of senior Zimbabwean police officials responsible

for torture. *See* Karen MacGregor and Scott Johnson, "Politics and the Generals," *Newsweek,* April 16, 2008, www.newsweek.com/id/132355. SALC has also asked the NPA to investigate charges of crimes against humanity and war crimes against South African citizens who participated in Israel's offensive in Gaza between December 27, 2008 and January 17, 2009. See Southern African Litigation Centre Newsroom, "South Africa: War Crime Warning to SA," Southern African Litigation Centre, www.southernafricalawcenter.org/news/item/South_Africa_War_crime_warning_to_SA.

172 Botswana, South Africa and Zambia are states parties; Mozambique has not ratified.

173 *See* Coalition for an International Criminal Court, "World Signatures and Ratifications," www.iccnow.org/?mod=romesignatures.

174 Burundi (Penal Code, Decree-Law N° 1/6 of 1981, art. 3), the DRC (Penal Code, Book 1, §1, art. 3), and Cameroon (Extradition Act 1964, art.28, read with Act N° 97/010 of 10 January 1997) all provide some degree of universal jurisdiction over torture by statute.

175 The Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, expressed concern about indictments against African leaders by non-African courts, stating that the "abuse and misuse" of such indictments would have a "destabilizing effect that will negatively impact on political, social and economic development of Member States and their ability to conduct international relations." DOC. EX. CL/411, para 3. (XIII) (July 1, 2008).

176 *Case Concerning the Arrest Warrant Case of 11 April 2000*, ICJ Reps, ¶¶ 53-55 (Feb. 14, 2002).

177 *Case Concerning the Arrest Warrant Case of 11 April 2000*, ICJ Reps, ¶¶ 60-61 (Feb. 14, 2002).

178 *Case Concerning the Arrest Warrant Case of 11 April 2000*, ICJ Reps, ¶¶ 60-61 (Feb. 14, 2002).

179 *Case Concerning the Arrest Warrant Case of 11 April 2000*, ICJ Reps, ¶¶ 60-61 (Feb. 14, 2002).

180 *See* Legal Opinion on response to Minister of Justice of Zimbabwe, Ex Parte: Commercial Farmers Union In Re: Response by the Minister of Justice, Zimbabwe, to Opinions on the Status of Rulings by the South African Development Community (SADC) Tribunal vis-à-vis the Government of Zimbabwe (September 18, 2009), www.thezimbabwean.co.uk/2009092524919/opinion-analysis/opinion-sadc-tribunal-ruling-is-binding-on-zim-govt-jeremy-gauntlett.html.

181 *See generally* Southern African Development Community, Case Report for Matters Filed in the SADC Tribunal (listing all cases brought before the Tribunal from inception to April 3, 2009) (hereinafter "Case Report").

182 Matter of Mike Campbell (Pvt) Ltd. And 78 Others v The Republic of Zimbabwe (Case No. SADC (t) 02/07).

183 Raymond Maingire, "Zimbabwe Withdraws from SADC Tribunal," *The Zimbabwe Times*, September 2, 2009, www.thezimbabwetimes.com/?p=22107.

184 However, the SADC treaty was amended in 2001/02 to eliminate the usual requirement that the Protocol (the document prescribing how the Tribunal works) must be ratified by two-thirds of SADC member states before it enters into force. The SADC treaty was changed to repeal the ratification provisions of the Protocol and to make the Tribunal an integral part of SADC not requiring a separate ratification process. This meant that the Tribunal doesn't owe its existence to a separate ratification process by its members, but is as binding as the treaty itself. See Legal Opinion on response to Minister of Justice of Zimbabwe, Ex Parte: Commercial Farmers Union In Re: Response by the Minister of Justice, Zimbabwe, to Opinions on the Status of Rulings by the South African Development Community (SADC) Tribunal vis-à-vis the Government of Zimbabwe (September 18, 2009), www.thezimbabwean.co.uk/2009092524919/opinion-analysis/opinion-sadc-tribunal-ruling-is-binding-on-zim-govt-jeremy-gauntlett.html.

185 *See* "SALC Legal Position in SADC Tribunal," (publishing Opinion In Re: Submissions made by the Minister of Justice, Zimbabwe, as to the Legal Competence of the SADC Tribunal, the Enforceability of its Decisions, and the Legal Obligations of the Zimbabwean Government as They Relate to the Tribunal), *Nehanda Radio*, October 7, 2009, http://nehandaradio.com/2009/10/07/salc-legal-position-on-sadc-tribunal/.

186 African [Banjul] Charter on Peoples' and Human Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1982), art. 45(1–3).

187 The African Charter, by its terms, should be interpreted in a manner consistent with various international human rights instruments. As a result, the African Commission on Human and Peoples' Rights often cites cases from the Inter-American Court, the European Court of Justice, and other international courts. African [Banjul] Charter on Peoples' and Human Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1982), art. 3–7, 9, 11, 14, 15, 18, 20. 60 and 61.

188 African Union, "List of Countries that have signed/ratified/acceded to the Protocol to the Charter on the Rights of Women in Africa," http://www.africa-union.org/root/AU/Documents/Treaties/treaties.htm.

189 Karen Stefiszyn, "The African Regional Response to Gender-based Violence," 17–30, *in* University of Pretoria Human Rights Centre, *Gender-Based Violence in Africa*, 24 ("Gender-based violence could also be addressed through the individual communications procedure although to date this has proven to be another lost opportunity. This can be partly explained by the silence of the African Charter on gender-based violence and therefore, it is hoped the adoption of the Protocol on Women will be followed by the submission of communications related to gender-based violence.") (date of publication unlisted but later than 2006); Fareda Banda, "Protocol to the African Charter on the Rights of Women in Africa," in *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2006*, 441, 442, 474 (2008) ("The Commission did not receive any complaints of violation of the rights of women [in its first decade]…the African Commission appeared to blame the African Charter for these failings… the Protocol shows, at the very least, a recognition on the part of States that women's rights are important. It is now up to women to hold States, as well as the African Commission and, eventually, the court, to account.").

190 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), art. 5.

191 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), art. 13.

192 *See* Richard Goldstone, "Is the ICC Targeting Africa?", *Equality of Arms Review* (March 2009), www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/EQ_Magazine.aspx.

193 *See* "China Defends Zimbabwe Arms Shipment Headed for Angola," *Agence France-Presse*, April 21, 2008, http://afp.google.com/article/ALeqM5gUenbs5dM9lRh7Y4M4U9Oo_4Q5gw.

194 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), art. 15.

195 Joe Lauria, "Court Orders Probe of Afghan Attacks," *Wall Street Journal*, Sept. 10, 2009, http://online.wsj.com/article/SB125253962307797635.html.

196 *See* Matthew Lee, "At UN, ICC's Map of Crimes Includes Sri Lanka, Myanmar and Zimbabwe, Unacted On by Victors' Justice," *Inner City Press*, Sept. 9, 2009, www.innercitypress.com/iccsri1myanzim090909.html.

197 *See, e.g.*, Parinaz Kermani Mendez, *The New Wave Of Hybrid Tribunals: A Sophisticated Approach to Enforcing International Humanitarian Law or an Idealistic Solution with Empty Promises?*, 20 CRIM. LAW FORUM, 53–95 (2009).

198 Criminal Law (Codification and Reform) Act, Act 23/2004, § 65 (Zimb.).

199 Criminal Law (Codification and Reform) Act, Act 23/2004, § 76 (Zimb.).

200 Criminal Law (Codification and Reform) Act, Act 23/2004, § 89 (Zimb.).

201 Criminal Law (Codification and Reform) Act, Act 23/2004, § 195 (Zimb.).

202 Criminal Law (Codification and Reform) Act, Act 23/2004, § 93 (Zimb.).

203 Criminal Law (Codification and Reform) Act, Act 23/2004, § 174 (Zimb.).

204 Criminal Law (Codification and Reform) Act, Act 23/2004, § 174 (Zimb.).

205 ZIMB. CONST. art. 24 (Enforcement of Protective Provisions); art. 13 (Protection of Right to Personal Liberty); art. 15 (Protection from Inhuman Treatment); art. 20 (Freedom of Expression); art 21 (Freedom of Assembly).

206 ZIMB. CONST. art. 15.

207 ZIMB. CONST. art. 13.

208 Zimbabwean Human Rights NGO Forum v. Zimbabwe (2006) AHRLR 128 (ACHPR 2006), at ¶127.

209 Zimbabwean Human Rights NGO Forum v. Zimbabwe (2006) AHRLR 128 (ACHPR 2006), at ¶¶137–141.

210 Zimbabwe ratified the African Charter on Peoples' and Human Rights ("ACHPR") in 1986, and the African Charter on the Rights and Welfare of the Child in 1995. Zimbabwe also ratified the Protocol to the ACHPR on the Rights of Women in 2008.

211 Solemn Declaration on Gender Equality in Africa, Assembly/AU/Decl. 12 (III) Rev. 1 (2004).

212 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 3(4), OAU DOC CAB/LEG/66.6 (Sept. 13, 2000), entered into force Nov. 25, 2005.

213 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 4 (2) (e)-(f), OAU DOC CAB/LEG/66.6 (Sept. 13, 2000), entered into force Nov. 25, 2005.

214 Declaration and Treaty of the Southern African Development Community ("SADC Treaty"), arts. 4 (c), 6 (a), entered into force Sept. 30, 1993, www.sadc.int/index/browse/page/119.

215 SADC Protocol on Gender and Development, signed Aug. 17, 2008, www.sadc.int/index/browse/page/465.

216 *See* Notes from Parliament of Zimbabwe session, October 21, 2009, http://docs.google.com/ gview?a=v&q=cache:KonXOCM4kqMJ:www.parlzim.gov.zw/cms%255CSenate_ Hansards/ 21_October_2009_19-3.pdf+zimbabwe+ parliament+gender+ protocol+ratify&hl=en&gl=us&sig=AFQjCNEcZLRaJU50QLHQxBOiCF3WxFzj0w.

217 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), GA res. 34/180, UN Doc. A/34/4 (Dec. 18, 1979), art. 18, www2.ohchr.org/english/law/cedaw.htm.

218 General Recommendations Made by the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, Violence against women (llth session, 1992), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.

219 International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966).

220 Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. Doc. A/44/49 (Nov. 20, 1989).

221 The right to health is also enshrined in CEDAW, the CRC, and, at the regional level, the ACHPR.

222 UN Special Rapporteur, *UN Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Health, Report to the UN Commission on Human Rights*, UN Doc. E/CN.4/2004/49, Feb. 16, 2004, para. 85.

223 Declaration and Treaty of the Southern African Development Community ("SADC Treaty"), arts. 4 (c), 6 (a), entered into force Sept. 30, 1993, www.sadc.int/index/browse/page/119.

224 *See* "Guinea Embargo over 'Atrocities'," *BBC News*, Oct. 17, 2009, http://news.bbc.co.uk/2/hi/africa/8312360.stm.

225 *See* 'SADC Suspends Madagascar," *South Africa Info*, Mar. 31, 2009, www.southafrica.info/africa/sadc-310309.htm.

226 Constitutive Act of the African Union arts. 23(2), 30. Sanctions under Article 23(2) include "the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly."

227 Constitutive Act of the African Union art. 3; African Charter on Democracy, Elections, and Governance, Jan. 30, 2007, www.africa-union.org/ root/au/ Documents/Treaties/text/Charter% 20on%20 Democracy.pdf.

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About AIDS-Free World

AIDS-Free World is an international AIDS advocacy organization. We speak up in concert with those who are living with HIV/AIDS; we also speak up on their behalf. We speak out against the appalling lack of urgency that has characterized so much of the response to the pandemic. We believe that the pandemic can be subdued, but only if the existing political leadership is pressed into action.

Our work is informed by a strong feminist sensibility. Addressing the rights and needs of women lies at the heart of our advocacy. From the struggle to create a new, viable international UN agency for women, to the documentation of sexual violence in Zimbabwe, DRC and Kenya, our work is driven by the recognition that gender inequality underpins the pandemic. The disproportionate vulnerability of women in the face of HIV/AIDS will never be overcome until gender equality is achieved.

AIDS-Free World will address any worthy issue that touches on the AIDS pandemic. We will address treatment, prevention and care; the vexing question of resources; the tangled thicket of transmission from mother to child; secondary school for orphans; male circumcision; sexual minorities and other high risk groups (men who have sex with men, sex workers, injecting drug users); sexual violence; and HIV/AIDS and its intersection with disabilities. We utilize a combination of speeches, publications, networking, legal work, and high-level advocacy to further the cause. Given that we represent a cumulative half-century of international and United Nations experience, we have swift access to the powers-that-be. It is a tremendous advantage, and we employ it.

Above all, AIDS-Free World is determined to be principled and uncompromising. This report on politically motivated sexual violence in Zimbabwe is evidence of those aspirations.

aids-free world
speaking up and speaking out

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