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**Statement before the Senate Foreign Relations Committee,
Subcommittee on African Affairs**

**“Examining Prospects for Democratic Reform and Economic
Recovery in Zimbabwe”**

Testimony of

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June 18, 2013

Introduction

Thank you Chairman Coons, Ranking Member Flake, and other members of the committee for providing Human Rights Watch the opportunity to testify at this hearing on Zimbabwe. I would like to request that my statement in its entirety be submitted for the record.

My name is Dewa Mavhinga. I am a senior researcher with the Africa Division of Human Rights Watch where I lead our work on Zimbabwe. I frequently travel to Zimbabwe and last month met with leaders of the main political parties, private media, and key civil society groups to assess human rights conditions ahead of the coming elections. I maintain daily contact with local activists, civil society and church leaders, and business people from Zimbabwe who keep me up to date regarding the situation there.

Mr. Chairman, my testimony will first lay out the human rights situation in Zimbabwe and then highlight key recommendations to the US government for action to promote a rights-respecting environment leading to credible, transparent and peaceful elections and political stability thereafter. Many people in Zimbabwe have expectations that the elections will usher in a democratically elected government with interest in addressing the country’s longstanding and serious human rights issues. But as things stand currently, the chances of having free, fair and credible elections are slim, particularly given the shortcomings of security sector reforms and reforms in other sectors.

On June 13, President Robert Mugabe used a presidential decree to set July 31, 2013,

as the date for national “harmonized” elections, that is, parliamentary, presidential and local government elections. These are critically important elections that should be held under conditions in which Zimbabweans are able to freely vote for leadership of their choice. As you may know, on June 15, leaders of the Southern African Development Community (SADC) urged Mugabe to approach Zimbabwe’s Constitutional Court to seek a two-week delay to elections to allow for much-needed electoral reforms before elections. The government of Zimbabwe has said it does not have funds for elections.

Mr. Chairman, during my visit to Zimbabwe last month, people told me of their great fear that the coming elections might just be another cycle of political violence because little had changed on the ground to build their confidence that they can vote freely. They told me of their despair when they see the people responsible for the 2008 violence, whom the unity government failed to hold accountable, walking free. Instead of focusing on pulling themselves out of poverty and on rebuilding lives shattered by the 2008 political violence, they were bracing themselves for further violence and chaos.

I had opportunity to interview Zimbabwe’s home affairs minister, Theresa Makone of MDC, responsible for the voters roll, about the ongoing process of updating the voters roll. Despite having voted in 2008, when she checked on the voters roll she found her own name was missing. After complaining about it in the cabinet, she later checked again and found her name on the roll, but spelled incorrectly. The voter registration and voters roll updating process is marred with errors – to what extent deliberate is unclear.

A key benchmark for the US government here, as it reconsiders its policy towards Zimbabwe should be the assessment of whether the country has not only managed to have peaceful, transparent, free and fair elections, but also that the government-elect has been able to assume power. Simply basing the US policy on the March 16 constitutional referendum is insufficient all three main political parties campaigned for the adoption of the new constitution – and it is only one successful stop along a long road of change.

Instead, positive engagements with Mugabe and his Zimbabwe African National Union-Patriotic Front (ZANU-PF) party should be conditioned on tangible progress in improving respect for human rights and the rule of law in Zimbabwe. Mugabe’s recent calls for peace are not enough; there is need for matching action to demonstrate a commitment to non-violence and to peaceful elections.

I. The Human Rights Landscape

The human rights landscape in Zimbabwe is characterized by a mixture of modest reforms in the context of a number of necessary reforms that remain outstanding if genuine change is to occur.

A. “Unity Government” Reforms

In September 2008 President Mugabe's ZANU-PF and the two factions of the Movement for Democratic Change (MDC) party, led by Morgan Tsvangirai and Arthur Mutambara, agreed to a Global Political Agreement (GPA) to form a power-sharing government, formed officially in February 2009. The main purpose of the so-called unity government was to establish institutional and legal reforms to create a conducive environment for the holding of free and fair elections.

The unity government, however, left Mugabe and ZANU-PF—because of their control of key government ministries including defense, state security and justice—with significantly greater power than the MDC, which has been used to frustrate or stop crucial reforms. Over four years since the GPA was signed, the unity government has made some progress only in implementing those parts of the agreement that do not address political violence or create conditions for credible elections.

Establishment of a New Constitution

Perhaps the most significant reform is the establishment of the new constitution, signed into law by President Mugabe on May 22, 2013 following a March 16 referendum and approval by the Zimbabwe parliament. The new constitution, which replaces the 1979 Lancaster House Constitution, may prove beneficial to the electoral process as it prohibits any changes to the electoral law once elections have been called. It has a more expansive bill of rights, and it restores citizenship and voting rights to those born in Zimbabwe to a parent or parents with citizenship of another SADC country but resident in Zimbabwe.

While very important, the new constitution is only one of the reforms required for an environment conducive for credible elections. A number of laws, including the electoral laws, require amendment to be brought in line with the provisions of the new constitution. For the new constitution to benefit all Zimbabweans government leaders and state institutions must respect the constitution and fulfill its provisions. Failure to act in accordance with constitutional provisions has been a major challenge contributing to a poor human rights environment in the country.

Establishment of National Commissions

The unity government established four new national commissions—the Zimbabwe Electoral Commission (ZEC), the reconstituted Zimbabwe Media Commission, the Anti-Corruption Commission, and the Zimbabwe Human Rights Commission (ZHRC).

The Zimbabwe Electoral Commission's secretariat staff is dominated by partisan state intelligence and military officials. Electoral reforms are essential if the Zimbabwe Electoral Commission is to be independent and professional. Further, the voters roll needs to be updated and to be placed under ZEC's exclusive control.

The potential impact of the Zimbabwe Human Rights Commission on the human rights environment, particularly curtailing impunity for serious abuses, is undermined by the commission's limited mandate and jurisdiction—it is insufficiently retroactive

as it can only investigate and address human rights abuses committed since February 13, 2009 when the unity government was formed. Notably, it is not empowered to address the widespread electoral violence of 2008. Also problematic is that the ZHRC is not fully operational to address human rights complaints or carry out its core mandate because of lack of resources to recruit technical staff and procure essential office equipment.

The Zimbabwe Media Commission has licensed new newspapers, including the once banned *Daily News*, that are now operating in the country, but the media remain under the shadow of repressive legislation that severely restricts rights to freedom of expression and association. This includes broad sections of the Criminal Law (Codification and Reform) Act on criminal defamation or publicly making statements that may cause feelings of hostility towards or cause hatred, ridicule, or contempt of the president—whether in person or in respect of the office of president.

The ZANU-PF minister for media, information, and publicity unilaterally and controversially constituted the Broadcasting Authority of Zimbabwe (BAZ), which has since issued two private commercial radio licenses as part of the commitment to free up the airwaves. The first commercial radio station, Star FM, is owned by Zimpapers—a state-owned company that publishes all state-owned newspapers, including the ZANU-PF-aligned *Herald* daily newspaper. The only other private commercial radio license was awarded to AB Communications to run ZiFM Radio.

There is concern that the two radio stations will be highly partisan reflecting their close links to Mugabe and ZANU-PF. For instance, Supa Mandiwanzira, the founder and chief executive officer at ZiFM Radio, is the ZANU-PF treasurer for Manicaland province.

Despite the provision in the roadmap to elections that new, independent boards for the Mass Media Trust and the Zimbabwe Broadcasting Corporation should be appointed to make state-owned broadcasting and print media politically neutral, this has not happened. There have been limited media reforms to ensure that the highly partisan state-controlled print and electronic media become genuinely public, to guarantee equal and fair coverage to all political parties.

B. No Meaningful Security Sector, Legal & Institutional Reforms

The Zimbabwe unity government's failure to introduce and implement far-reaching reforms in the security sector and in other sectors has a huge bearing on the human rights situation in the country especially around elections.

Highly Partisan and Politicized Security Forces

Crucial for the elections – and the government that comes to power – will be the role played by Zimbabwe's state security forces, particularly the Defense Forces, the police, and the Central Intelligence Organization (CIO). The security forces have a long history of partisanship on behalf of President Mugabe and ZANU-PF. Since independence in 1980, the army, police and CIO have operated within a system that has allowed elements within their ranks to arbitrarily arrest, torture and kill perceived

opponents with impunity.

Zimbabwe's security forces, notably the military, have for several years interfered in the nation's political and electoral affairs in ways that have adversely affected the ability of citizens to vote freely. This was particularly evident during the 2008 elections, in which the army played a major role in the widespread and systematic abuses that led to the killing of at least 200 people, the beating and torture of 5,000 more, and the displacement of about 36,000 others. Since then the leadership of the military, police and CIO, all appointed by Mugabe, remain unchanged, as have their clear, public and vocal support for Mugabe and ZANU-PF.

The partisanship of the security forces' leadership has translated into abuses by these forces against MDC members and supporters, and civil society organizations. Beyond the open endorsement of ZANU-PF, the security forces have been deployed across the country where they have intimidated, beaten and committed other abuses against Zimbabweans perceived to be supporting the MDC or critical of the ZANU-PF officials in government.

Although Zimbabwe's various laws, as well as the new constitution, require neutrality and impartiality from the security forces, no effort has been made to enforce them. No members of the security forces are known to have been disciplined or prosecuted for acting in a partisan manner in support of ZANU-PF or committing criminal offenses against the MDC and its supporters. Concerns about the role of the security forces extend not only to situation prior to election day and the voting itself, but to the critical post-election period.

There is an urgent need, ahead of the elections, to ensure that the new constitutional provisions prohibiting members of the security services from acting in a partisan manner and from being active members or office-bearers of any political party or organization are enforced to ensure strict political neutrality. Should the security forces fail to adopt a professional, independent and non-partisan role during elections, other recent reforms may be insufficient to deliver the elections needed to put Zimbabwe on a democratic and rights-respecting track.

Restrictions on Rights to Freedom of Expression, Association, and Assembly

The unity government has failed to make any changes to repressive laws such as the Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA), and the Criminal Law (Codification and Reform) Act. These laws have been used to severely curtail basic rights through vague defamation clauses and draconian penalties. Provisions dealing with criminal defamation and undermining the authority of or insulting the president have been routinely used against journalists and political activists.

Partisan policing and prosecution has worsened the impact of the repressive provisions in POSA and AIPPA laws. Often the police have deliberately misinterpreted provisions of POSA to ban lawful public meetings and gatherings, including religious meetings that are exempt from police permission where the requirement is only for police to be notified. Failure to repeal or significantly revise these laws and to develop mechanisms to address the partisan conduct of the police

leaves little chance of a full enjoyment of the rights to freedom of association and assembly in the run-up to and during the coming elections.

The Criminal Procedure and Evidence Act in section 121 effectively permits prosecutors to overturn judicial rulings granting bail and extend detention time by seven days. It has frequently been used by prosecutors targeting political and civil society activists who work with local human rights organizations.

Police Crackdown on Civil Society

Since December 2012, the ZANU-PF-controlled police have carried out a campaign of politically motivated abuses against civil society activists and organizations, including the harassment and eight-day detention of human rights lawyer Beatrice Mtetwa despite a High Court order for her release. The judge who issued the court order for her release was later charged with misconduct by the Supreme Court's chief justice. At time of writing the judge's misconduct case was pending consideration by President Mugabe.

On March 8, 2013, in Harare, police charged Jestina Mukoko, director of the Zimbabwe Peace Project, with leading an unregistered organization under the Private Voluntary Organization (PVO) Act, and with smuggling radios and mobile phones into the country in violation of the Broadcasting Services Act and the Customs and Excise Act. The charges under the PVO Act violate the right to freedom of association, while the other charges appear to be a politically motivated attempt to curtail the group's human rights work.

On February 13 and 14, police in Harare and Bulawayo forcibly disrupted the annual Valentine's Day "love" protests by about 190 members of Women of Zimbabwe Arise (WOZA). The police arbitrarily arrested, detained and in some cases beat with batons protesters, including the WOZA national coordinator, Jenni Williams. The protesters were released without charge following the intervention of lawyers.

On February 11, in what appears to have been coordinated action, police raided the offices of the National Association of NGOs (NANGO) and Community Tolerance Reconciliation and Development (COTRAD) in Masvingo and the Zimbabwe Peace Project (ZPP) offices in Harare.

On March 8, the ZANU-PF-controlled Zimbabwe Electoral Commission announced that any civil society organization under police investigation would be barred from monitoring the constitutional referendum and elections. This directive directly affected the main civil society organizations operating in the country, including ZPP, Zimbabwe Human Rights Association (ZimRights), Zimbabwe Election Support Network, and Crisis in Zimbabwe Coalition.

The recent police actions against civil society groups appear to have had the approval of the highest levels of the police. At the Senior Police Officers' Conference in November 2012, attended by country's top police officers, an official statement was approved noting "with concern the negative influence and subversive activities" of nongovernmental and civil society organizations in the coming referendum and elections.

A similar resolution was approved at the December 2012 ZANU-PF annual conference, which was attended by all security chiefs. ZANU-PF resolved to “instruct the party to ensure that government enforces the de-registration of errant [organizations] deviating from their mandate.”

Soon after these statements were approved, the police began a sustained and systematic campaign of harassment and intimidation of civil society organizations. On December 13, police raided the offices of ZimRights and arrested four people, including one of the organization’s staff. A month later, on January 14, police arrested the ZimRights national director, Okay Machisa, ostensibly in his capacity as director of the organization, on charges relating to a voter registration campaign. Machisa spent over two weeks in detention before being released on bail.

On January 18, the ZANU-PF minister for youth and indigenization, Saviour Kasukuwere, formally approved regulations requiring all youth organizations to be registered with the Zimbabwe Youth Council or to be banned. Under these regulations, no youth organization may receive funding without authorization from the youth council and all members or affiliates of registered youth organizations are required to pay exorbitant annual levies to the youth council. These regulations may cripple the operations of youth organizations throughout the country.

The systematic police campaign against civil society organizations may be a deliberate attempt to disrupt the operations of civil society organizations and stop them from monitoring the human rights environment ahead of the elections.

II. Key Recommendations to the US Government

The US government has a strong interest in promoting respect for the rule of law, good governance, and human rights. In southern Africa, the United States can safeguard and promote these interests by supporting the people of Zimbabwe at this time by helping to minimize the risk of the country sliding back to political chaos and widespread rights violations.

As the United States considers the best way to assist the Zimbabwean people to resolve their human rights and governance crisis, we urge Congress to consider the following measures:

- 1) Ensure that any shift in US policy toward Zimbabwe, including a review of sanctions, is based on an assessment of whether the country has managed to have peaceful, transparent, free and fair elections and whether the government-elect can assume power.
- 2) Call on the Obama administration to work closely with the Southern African Development Community (SADC) to press Zimbabwe’s political leaders to urgently take steps to:
 - ensure the political neutrality of the security forces, namely by investigating and prosecuting alleged abuses by security force personnel, publicly directing the leadership of the security

forces to carry out their responsibilities in a professional and impartial manner, and appropriately punishing or prosecuting those who fail to do so;

- Press for urgent reforms to the highly partisan state-controlled print and electronic media to ensure that they become genuinely public, to guarantee equal and fair coverage to all political parties;
 - Provide for the immediate deployment, and in sufficient numbers, of both domestic and SADC-led international election observers to Zimbabwe and maintain such monitors for a sufficient period after elections to deter violence and intimidation and to promote credible, free and fair elections that comply with the SADC Principles and Guidelines Governing Democratic Elections;
 - Ensure implementation of all electoral reforms envisaged in the new constitution including the updating and cleaning up the country's outdated voters' roll, which has a significant number of "ghost" voters; and
 - Ensure that the Zimbabwe government repeals or amends all repressive legislation such as the repressive sections of the Criminal Law (Codification and Reform) Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act and section 121 of the Criminal Procedure and Evidence Act.
- 3) Provide financial and technical support for a government that comes to power through credible, free and fair elections in a manner that would strengthen democratic state institutions and promote the rule of law, democracy, good governance, and human rights.

Mr. Chairman, my sincere thanks once again for the opportunity to address this Committee. I am happy to respond to any questions you or your colleagues may have.