

**The Electoral Environment for the
March 2005 Parliamentary Elections in
Zimbabwe**

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Executive Summary

This report describes the electoral environment in Zimbabwe ahead of the parliamentary elections that are scheduled for March 2005.

Obviously elections are not just about what takes place on the day, or two days, on which polling takes place. An election is a process that occurs within a political context.

For elections to be free there must be a democratic political environment. All political parties must be allowed to campaign freely, hold rallies and meetings, and have reasonable access to the mass media to inform the electorate about their policies. Those standing for political office must be protected against violence and intimidation. All voters wishing to participate in the electoral process must be entitled to do so freely. They must be able to attend whichever political rallies they wish and freely make their own choices as to how they will vote. They must not be subject to threats and intimidation to force them to vote for a political party they don't support or to prevent them from voting.

For an election to be fair all the administrative processes leading up to the election must be conducted in a fair and impartial manner, and not in a manner that gives one political party an unfair advantage over the others. This process includes such things as delimitation of constituencies, registration of voters, compilation of voters' rolls and counting of ballots.

This paper demonstrates how, particularly since 2000, the democratic and electoral environment that has been so undermined that it is now impossible to hold free and fair elections without radical changes being effected. It describes the intolerance of the ruling party to opposition parties and its strongly held belief that it is the only political party that has the right to govern. It examines how the ruling party has been prepared to resort to ruthless measures to cling to power. It gives details of the ruling party's widespread and continuing campaign of brutal suppression of its political opponents and critics. It examines the cumulative negative effects on voters of political violence over several years. It describes how the ruling party has used violent

groups, such as the war veterans and indoctrinated youth militia. It shows how the ruling party has deliberately transformed the police force into a politically partisan force that constantly harasses and intimidates opposition party office bearers and supporters, whilst turning a blind eye to violations of the law by ruling party supporters. It describes how the ruling party has packed the courts with judicial officers likely to rule in its favour and how these judicial officers have mishandled challenges to election results in the 2000 and 2002 elections. It describes how the highly repressive legislation passed over the last few years has closed most of the remaining democratic space, taken away basic democratic rights such as freedom of expression and assembly and freedom of the press. It also describes the measures that the ruling party is now taking to suppress non-governmental organisations dealing with human rights and issues of governance. It shows how those in charge of previous elections have displayed blatant bias in favour of the ruling party and have allegedly fraudulently manipulated the election process to ensure that the ruling party wins. It describes how this has created widespread scepticism among voters about the whole electoral process.

The main thrust of this paper is to establish that for free and fair elections to be held in March 2005 in Zimbabwe it was necessary to have dismantled all the barriers to the holding of free and fair elections. It was not just a matter of revamping the electoral laws.

First and foremost the ruling party had to discard its intolerance of any opposition or dissent and accept the basic democratic tenet that all political parties are entitled to aspire to political leadership of the country and to campaign freely to try to persuade the electorate to vote them into power. It, and all the other political contestants, had to renounce the use of violence and intimidation. Repressive legislation standing in the way of free democratic activity had to be repealed or completely overhauled. Once the right sorts of laws were put in place, the law enforcement agencies had to be required to enforce these laws fairly and impartially. No matter what their political affiliation, violators must be held to account at law and all persons, regardless of their political affiliation, were entitled to expect law enforcement agencies to provide protection against violation of their democratic rights.

The Electoral Commission was appointed only a couple of months ahead of the election. Even if (which he did not) the President had appointed entirely impartial Electoral Commissioners who were determined to do their best to ensure that free and fair elections are held, these Commissioners could not have waved a magic wand and transformed the entire electoral climate in Zimbabwe. The Commissioners have had to work through a Registrar-General of Voters who has displayed conspicuous bias in favour of the ruling party, although they will have the power to give instructions to the Registrar-General in regard to the exercise of his or her functions. They will have not been able to repeal repressive laws that disallow ordinary democratic activity. They have not been able to repair the damage caused by violence and intimidation prior to the time they were appointed. They have not had authority to put a stop to ongoing violence and intimidation as they will have no power to order the police to clamp down on political violence. They have not had the power to ensure that the police stop acting in a politically partisan fashion. They have not had the power to order Chiefs to desist from using their powers to intimidate voters into voting for the ruling party. They have not had the power to order those involved in the distribution of food aid not to use food aid to pressurise people into voting for the ruling party.

In order to have free and fair elections in Zimbabwe more was needed than just reform of electoral laws. What was needed is the complete restoration of democratic rights and the rule of law. This required the repealing or complete overhaul of all repressive laws and the reining in of all anti-democratic forces.

Zimbabwe will instead proceed with an election with many very hostile conditions still prevailing. This will make the holding of a free and fair election impossible. Additionally there are credible allegations that the voters roll is in shambles and that military and intelligence personnel are occupying key positions in the whole electoral process leading to a fear that upcoming election will be rigged.

SADC should first have sent a team to assess whether conditions presently exist in Zimbabwe that will allow free and fair elections to take place. In making its assessment this team should have not only considered the changes to the electoral laws but also all the other conditions prevailing. The team should have been mandated to work with the Government and the opposition parties to bring about satisfactory conditions that would have allowed for the holding of free and fair elections.

Unfortunately this did not happen as the Zimbabwean government did not allow in the planned SADC technical team.

SADC must deploy a sufficient number of credible observers well in advance of polling to monitor the elections. These observers must judge the elections not just on the basis of the laws governing the electoral process but also on the basis of the general environment that existed leading up to the election.

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INTRODUCTION

The next parliamentary elections in Zimbabwe will be held in March 2005. The question in everyone's mind is whether these elections will be free and fair.

In a democracy, the government consists of persons elected by the people in periodic free and fair elections. The objective of democratic elections is to ensure that the outcome of the election is a fair reflection of the will of the electorate.

Elections are a process, not just an event that takes place on a single day of voting. For elections to be free and fair, it is necessary that the entire process leading up to and including the actual voting be free and fair. Delimitation of constituencies must be carried out in a manner that is free of political bias and manipulation. The body administering the election must do so impartially and must not favour one political party over another. Where voters' rolls are used, the registration of voters must be conducted in a fair and transparent manner to ensure that all those eligible to vote can register. The voters' rolls must be accurate and up to date and must be accessible to political parties and members of the public. Most importantly, political parties must be able to campaign peacefully without hindrance and fear of reprisals. No members of political parties should be permitted to use violence or intimidation against members of other political parties. Bribery and corruption, as well as other impermissible electoral practices, must be prevented or appropriately punished. Political parties contesting elections must have reasonable access to the public media to disseminate information about their policies, and State-owned media must not favour one party above another. Polling stations must be accessible to voters and must be adequate in number to allow voters to cast their votes with reasonable expedition. The counting of votes must be done accurately and without any manipulation. There must be politically neutral courts to adjudicate with reasonable expedition upon disputes relating to elections.

For there to be free and fair elections in any country it is not enough to have electoral laws in place that are supposed to create an environment in which elections can take place under free and fair conditions. The actual conditions on the ground must be such

that all political parties competing in an election can campaign freely and voters can express their electoral will free of intimidation and fear of reprisals.

The 2004 SADC Principles and Guidelines Governing Democratic Elections, which SADC countries, including Zimbabwe, have agreed to abide by provide a valuable yardstick for judging whether elections are held under conditions that are free and fair. The Principles identify certain essential components of a democratic election. These include:

- full participation of the citizens in the political process;
- freedom of association;
- political tolerance;
- equal opportunity for all political parties to access the state media;
- impartial electoral institutions;
- an independent judiciary;
- voter education;
- acceptance of and respect for the election results proclaimed by the national electoral authorities to have been free and fair; and
- challenge of the election results as provided for in the law of the land.

The SADC Principles also set out the responsibilities of SADC member states holding elections, which are to

- take measures to ensure the “scrupulous implementation” of these democratic election principles;
- establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel;

- safeguard human and civil liberties of all citizens, including the freedom of movement, assembly, association, expression, campaigning and access to the media on the part of all stakeholders, during electoral processes;
- provide adequate resources for carrying out democratic elections;
- ensure that adequate security is provided to all parties participating in elections; and
- ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors.

When observing elections in member states, SADC observers are enjoined by the Principles to take into account these criteria:

- whether there are constitutional and legal guarantees of the freedom and rights of citizens;
- whether there is a conducive environment for free, fair and peaceful elections;
- non-discrimination in voter registration;
- the existence of an updated and accessible voters' roll;
- the timeous announcement of the election date;
- transparent funding of political parties based on an agreed legal threshold;
- the need for polling stations to be situated in neutral places;
- vote counting at polling stations;
- the existence of a mechanism to help plan and deploy electoral observation missions.

And SADC observer missions must be deployed at least two weeks before the voting day.

Using the criteria set out above, this paper explores whether conditions are likely to exist in Zimbabwe that will allow the holding of free and fair elections in 2005. It will first explore whether the political conditions on the ground allow for free and fair elections to take place in March 2005 and will then examine the likely impact on the electoral environment of recent changes to the electoral laws in Zimbabwe.

THE PRESIDENCY AND PARLIAMENT IN ZIMBABWE

In Zimbabwe the head of State is an Executive President who is elected every six years. The term of office of the current President expires in 2008. Members of Parliament are elected every five years. In March 2005 Zimbabwe will hold its fifth general election since Independence in 1980 to elect Members of Parliament.

Parliament in Zimbabwe has a total membership of 150. The voters elect 120 MPs and the remaining 30 are non-constituency MPs appointed, directly or indirectly, by the President.¹ The country is divided into 120 constituencies and voters in each constituency elect a Member of Parliament on a first-past-the-post basis, the winner being the person who receives the highest number of votes. (There is no system of proportional representation.) The provision allowing the President to appoint 30 MPs means that the President's party has an unfair advantage in the parliamentary elections. An opposition party could win a clear majority of the 120 elected parliamentary seats, but by appointing 30 MPs the President can wipe out that majority. For example, the opposition party could win 74 seats and the President's party only 46 seats, but the President could boost his own party into a slight majority

¹ The President directly appoints twelve; eight are provincial governors who are also appointed by the President. Ten are chiefs elected by the chiefs. Chiefs are appointed by the President, taking account of customary principles of succession: see s 3 of the Traditional Leaders Act [*Chapter 29:17*]. Governors are appointed by the President. See s 38 of the Constitution of Zimbabwe.

by appointing 30 MPs.² It should be pointed out that ever since chiefs were allowed representation in Parliament, even during the colonial era, they have consistently voted for the party in power.

The Executive Presidency, which was introduced in 1988, has led to the accumulation of enormous powers in the hands of President Mugabe. As regards Presidential and Parliamentary elections, the President has the power to amend the Electoral Act without reference to Parliament, a power that he abused in order to change the electoral laws to give the ruling party an unfair advantage in elections.³

POLITICAL IDEOLOGY OF ZANU (PF)

From 1980 until 1990 ZANU (PF) was moving in the direction of establishing a legislated one-party state with itself as the sole legal political party in Zimbabwe. By 1990 the international political climate was increasingly hostile towards one-party states and ZANU (PF) was forced to drop from its agenda the idea of creating a one-party state through legislation. It did not, however, become more tolerant of political opposition, and seems determined to ensure that there is a *de facto* one-party state.

ZANU (PF) continues to hold the strong belief that because it fought and won the liberation struggle it alone has the right to rule Zimbabwe. Army commanders, the

² According to Jonathan Moyo in *Voting for Democracy Electoral Politics in Zimbabwe* at p 157 the 30 appointed seats are “potentially sinister” as “a President, whose party may lose the general elections by a small margin, can tip the balance in his favour by appointing Members of Parliament to get a Parliamentary majority against the will of the people as expressed at the polls.”

In the aftermath of the 2000 Parliamentary elections MDC has won six of its challenges to constituency results. If there had been re-runs of the elections in these constituencies and MDC had won in these re-runs it would have had 63 seats to 56 seats for ZANU (PF). However, the 30 presidential appointees would still have given ZANU (PF) an overall majority of the seats in Parliament.

³ This power is contained in s 158 of the Electoral Act [*Chapter 2:01*], and was egregiously misused in the presidential election of 2002. The Justice Minister also has powers to make regulations on a wide range of matters (s 157). Again this is unacceptable as the power can be used and has been used to create regulations that favour the ruling party.

Police Commissioner and its war veterans subscribe to this view and have publicly expressed this sentiment.

ZANU (PF) propaganda constantly depicts the opposition MDC as a subversive and disloyal party created and sponsored by Western powers⁴. Speaking before the presidential election in 2002, a ZANU (PF) Minister told the SABC that the election of the MDC leader as President of Zimbabwe would be anathema as Tsvangirai was a British puppet and installing him as President would be like bringing back Ian Smith. He went on to say that if Tsvangirai is elected and there was to be a military coup ZANU (PF) would support this coup.⁵

This repeated characterisation of the MDC as an enemy of the State encourages ZANU (PF) supporters to engage in violence against MDC members and gives a pretext to the police force to arrest MDC leaders and supporters on spurious charges.

In the past ZANU (PF) has treated elections as battles to be won at all costs. This frame of mind is illustrated by President Mugabe's utterance about the MDC ahead of the presidential elections in 2002

“We will make them run. If they haven't run before we will make them run now.... We will not pander to them any longer. That's gone. It's finished. We are now entering a new chapter, and there will be firm government, very firm government....”

All the instruments and agencies of state have been employed to frustrate the political opposition and protect the ruling party's grasp on power. Violence has been used to intimidate voters into voting for the ruling party, to prevent opposition supporters from voting and to force the withdrawal of opposition candidates or to stop them presenting their nomination papers. This situation has been well-documented.

⁴ At the recently ended ZANU (PF) Congress there was much rhetoric along these lines. The Conference room had many posters carrying such messages as MDC: Enemies of the People, MDC: Blair's Running Dogs. The spokesman for the MDC complained that the congress had been used “as an occasion to whip up emotions and incite their supporters to engage in violent acts against MDC members.” *Zimbabwe Standard* 5 December 2004.

⁵ *Financial Gazette* 7 March 2002.

The war veterans and pseudo war veterans who support ZANU (PF) do so fanatically and these persons have perpetrated many of the acts of violence and torture against members of the opposition.⁶

There is little hope that there can be a free and fair election in 2005, if ZANU (PF) continues to believe that

- only it has the legitimate right to rule Zimbabwe;
- elections are an extension of the liberation struggle and must be won at any cost;
- ordinary political activity by opposition parties poses a threat to its rule and must be suppressed; and
- opposition parties must be smashed as they oppose land redistribution and are sponsored by Western governments to bring about the unlawful overthrow of the ZANU (PF) government.

The political intolerance of the ruling party was vividly illustrated in February 2005 when its information department issued a propaganda booklet entitled *Traitors Do Much Damage to National Goals*. This booklet contained a list of names of so-called “traitors” and sell-outs to Western governments who wanted their country “returned to their colonial masters.” The list included opposition party leaders, members of civil society organisations, clerics and journalists from the independent press. Commenting upon this booklet one of the journalists named as a traitor, Trevor Ncube, said “ZANU (PF) sees traitors everywhere.”⁷

This mindset completely contradicts the requirement in the SADC Electoral Principles that there must be political tolerance during elections.

⁶ See the reports of the Zimbabwe NGO Human Rights Forum.

⁷ *Independent* (Zimbabwe) 18 February 2005

POLITICAL VIOLENCE

In order to understand the current position it is necessary to briefly trace what has happened in Zimbabwe since 1980.

For the first two decades after 1980 ZANU (PF) was the overwhelmingly dominant political party. ZANU (PF) convincingly won the first elections after Independence.

The 1985 elections took place in the aftermath of brutal military action in Matabeleland. As Moyo points out: “No intimidation could have been greater than the conditions which prevailed in Matabeleland” during these elections. Despite this, the Ndebele based party, PF-ZAPU, retained its strong electoral hold in Matabeleland. In urban areas there was considerable post-election violence, with ZANU (PF) supporters beating up and evicting members of opposition parties.⁸

After intense pressure upon it, including violence and intimidation, PF-ZAPU was absorbed into ZANU (PF) as a result of the Unity Agreement in December 1987.

In the post-1990 period ZANU (PF) became even more intolerant of political opposition. Violence marred the 1990 presidential and parliamentary elections. This violence was mostly perpetrated by ZANU (PF) supporters against members of opposition parties, and the police failed to stop it.⁹ The 1995 elections were also characterised by widespread intimidation and violence directed by ruling party supporters against the opposition.¹⁰

Up to 1999 no opposition political party posed any serious threat to ZANU (PF)’s hold on power. However, in 1999 the Movement for Democratic Change party (MDC) was formed, its President being a former labour leader, and the party

⁸ See Sithole *The general elections 1979-1985* p 90.

⁹ See Moyo *Voting for Democracy Electoral Politics in Zimbabwe* at pp 77-78. Makumbe and Compagnon *Behind the Smokescreen The Politics of Zimbabwe’s 1995 General Election* pp 16-17.

¹⁰ See Makumbe and Compagnon *Behind the Smokescreen The Politics of Zimbabwe’s 1995 General Election* pp 146-154.

contested the parliamentary general election in 2000. There is a large body of credible evidence that MDC candidates and their supporters were subjected to widespread violence in the period leading up to the election. There were killings, torture and beatings, threats and intimidation and property damage.¹¹ Health workers in the rural areas were warned by the war veterans not to provide any treatment to MDC supporters who had been injured as a result of violent attacks upon them.¹²

Despite this violence and other alleged election irregularities, the MDC came close to winning a majority of the elected seats: they won 57 of the 120 seats. When the MDC brought court challenges against the results in many of the constituencies, the witnesses for the MDC were often violently attacked to discourage them from testifying or to punish them for having testified.¹³

¹¹ See the following reports of the Zimbabwe Human Rights Forum (available on their website www.hrforumzim.com):

Report on pre-election political violence in Mberengwa (17 November 2000)

Torture by State Agents in Zimbabwe: January 2001 to August 2002

Report on political violence in Bulawayo, Harare, Manicaland, Mashonaland West, Masvingo, Matabeleland North, Matabeleland South the Midlands (29 July 2000)

Who is responsible (20 June 2000)

Politically motivated violence in Zimbabwe 2000-2001 (August 2001)

Who was responsible (July (2001)

Offences committed by those who have used violence and intimidation in connection with the elections in Zimbabwe (14 June 2000)

Update on rape, health workers, teachers (14 June 2000)

Unleashing of Violence- a report on political violence in Zimbabwe (1 May 2000)

Human Rights and Zimbabwe's June 2000 Election (January 2001)

¹² *Update on rape, health workers, teachers* (14 June 2000) report by Zimbabwe Human Rights Forum.

¹³ See *Politically motivated violence in Zimbabwe 2000-2001* para 4.2 and *A Report on Post Election Violence* (7 August 2000). The Zimbabwe Human Rights Forum issued both these reports.

Since 2000, there has been a sustained campaign against the MDC, now the official opposition, including their members of Parliament and grassroots supporters, and even those suspected of being sympathetic to the opposition. Many rural teachers were attacked and driven out of their areas because of suspicion that they were sympathetic to the MDC.¹⁴

In a recent survey of MDC MPs more than 90 per cent of them reported violations that had directly affected their own person, such as attempted murder, torture, assault, arrest, or illegal detention.¹⁵ Ruling party supporters, pro-ZANU (PF) war veterans and youth brigade members have been given almost free rein to intimidate and physically harm persons perceived as critical of the government. War veterans and politically indoctrinated youth brigade members have played a leading role in the perpetration of this violence and intimidation. In 1997, the government made an large payout to the war veterans. This was unbudgeted and this caused very adverse economic effects. In February 2005 the Minister of Public Service, Labour and Social Welfare, announced last week that thousands of people who were detained, restricted or imprisoned by the colonial government would receive a hike of more than 1000 percent in their state pensions as a once-off payment. An economist commented that this was a blatant act of vote buying ahead of elections in March, and that it would have a negative impact on the government's budget deficit.¹⁶

Many MDC Members of Parliament have been arrested and some have been subjected to ill treatment whilst in custody. These arrests appear to have been aimed at

¹⁴ *Teaching them a lesson: A report on the attack on Zimbabwean teachers* published by the Zimbabwe Human Rights Forum (Sept 2002)

¹⁵ See a report entitled *Violence and intimidation: Personal accounts of human rights abuses experienced by 50 opposition Members of Parliament in Zimbabwe, and 28 opposition election candidates* by the Zimbabwe Institute (March 2004) This documents the many attacks that have taken place upon MDC MPs and MDC election candidates. Many have been beaten or tortured or threatened with death. Many have had their property destroyed. Many have been threatened. Some have even died. See also the report by the State University of New York documenting violence against MDC Members of Parliament.

¹⁶ IRIN 25 February 2005.

harassment as almost none of them have resulted in convictions for criminal offences.¹⁷ Although there have been some instances of political violence directed at ZANU (PF) by members of the opposition, these pale into insignificance when compared with the widespread violence employed by ZANU (PF) supporters against members of the opposition, particularly at election time. ZANU (PF)'s complete intolerance of political opposition has encouraged its supporters to attack members of the opposition and to drive them out of areas where the ruling party is dominant. For instance, at his party's congress in December 2001, President Mugabe urged his supporters to crush the opposition. He said of the forthcoming presidential election:

This is total war . . . This is war, it is not a game. You are all 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.¹⁸

Impunity has been officially endorsed. Following the 2000 elections, the President granted a general amnesty¹⁹ for politically motivated crimes committed in connection with the election. As acts of political violence were committed overwhelmingly by ZANU (PF) supporters, these supporters were the major beneficiaries of this amnesty. This amnesty, combined with the *de facto* immunity that they already had as a result of the abject failure by the police to investigate and bring to book the culprits, created the dangerous impression that ZANU (PF) were free to commit violent acts against members of the opposition without facing criminal charges. This impression was reinforced by a series of previous amnesties and pardons granted to perpetrators of political violence since 1980. Although the crime of murder was not covered by the

¹⁷ See report by the State University of New York which documents all the arrests of MDC MPs.

¹⁸ *Observer* (UK) 16 December 2001.

¹⁹ Clemency Order No. 1 of 2000 (General Notice 457A of 2000).

2000 amnesty, the conspicuous failure by the police to bring them to book effectively gave those who had committed murder immunity.²⁰

There was a high level of violence before, during and after the 2002 Presidential elections, most of which was perpetrated by ZANU (PF) supporters upon members of the MDC.²¹ Again the law enforcement agencies did little to prevent this violence and few perpetrators were ever brought before the criminal courts. The MDC has documented on its website the violence that it alleges has occurred against its officials and supporters.

A recent analysis of the violence, taken from the public reports available, shows very clearly the association between organised violence and torture and elections²². The published data therefore show that elections are times in which political violence is likely, but the new twist is that the evidence shows very strongly that it is the State and ZANU (PF) that are the most probable offenders.

²⁰ For a detailed report on the adverse effects of amnesties and pardons of political offenders see *Zimbabwe The toll of impunity* a report by Amnesty International issued in 2002 (AFR 46/034/2002 25/06/2002)

²¹ See these Zimbabwe Human Rights Forum reports:

Human Rights and Zimbabwe's Presidential Election: March 2002 (May 2002)

Are they accountable? Examining alleged violators and their violations pre-and post-the Presidential Elections March 2002 (Dec 2002) and

Zimbabwe: Post Presidential Election March to May 2002 compiled by Physicians for Human Rights Denmark.

We'll Make Them Run Physicians For Human Rights, Denmark May 2002

²² See *Redress (2004), Zimbabwe: Tortuous Patterns Destined To Repeat Themselves in Upcoming Election Campaign. Preliminary Study of Trends and Associations in the Pattern of Torture and Organised Violence in Zimbabwe, July 2001 – December 2003*, (London Redress Trust.).

In early February 2005 the executive council of the African Commission on Human and People's Rights adopted a report by a fact-finding mission that is critical of Mugabe government's human rights record.²³

There is a well-founded fear that violence will again escalate in the months leading up to the poll in March 2005. In its Political Violence Report for 2004 the MDC documents the violent attacks that it says have occurred from January to early December 2004. It alleges that during 2004 7 of its Members of Parliament, 53 MDC officials and hundreds of activists were subject to arbitrary arrest, abductions, intimidation, assault, rape and destruction of property. In its annual report for 2004 the Zimbabwe Human Rights Forum, a coalition of 17 human rights and advocacy groups, documented 7,591 cases in which they say government opponents were tortured last year. At least 12 people died in political violence, and thousands more were threatened or assaulted. In its violence report for September 2004 the Zimbabwe Human Rights Forum²⁴ notes that tension and political violence continue rising in Zimbabwe. It says that victimisation of mostly supporters of the MDC peaked up in the middle of September during the party's fifth anniversary celebrations and this "continues to reflect lack of political tolerance." It recorded six cases of torture of opposition supporters, six cases of kidnappings of mostly MDC supporters by alleged ZANU (PF) militants and 141 cases of unlawful arrests of citizens by the police. In its October report Zimbabwe Human Rights Forum reported that State security agents and ruling ZANU (PF) party militias stepped up terror and violence displacing 69 opposition supporters from their homes in October alone. It said at least four people were tortured in October either by state agents or militant supporters of President Mugabe and his ZANU (PF) party to bring to 169 cases of torture recorded since January. Four people suspected to be MDC supporters were kidnapped in October and their whereabouts were still unknown. The October abductions bring to 61 the number

²³ Cape Times (SA) 8 February-2005

²⁴ ZHRF is a coalition of seventeen human rights and pro-democracy non-governmental organisations in Zimbabwe. It regularly monitors human rights violations and politically motivated violence in the country.

of politically motivated kidnappings since January. Since the beginning of the year, a total of 184 people most of them opposition supporters fled their homes fearing beatings and torture by the police, army or ZANU (PF) militants, according to the report.²⁵ A newspaper has also reported an increase in political violence in Manicaland in the east of Zimbabwe. It reported that army personnel had beaten up ten MDC supporters, seriously injuring one who had to be hospitalised.²⁶ Another newspaper reported that in early January 2005 fifteen ZANU (PF) supporters allegedly abducted an MDC youth over the weekend at Chambara Business Centre in Chikomba constituency, Mashonaland East province.²⁷

Other newspapers have also reported increased levels of violence ahead of the election. These include the following:

‘A government crackdown against dissent was deepening Zimbabwe’s climate of fear ahead of parliamentary elections due in March. Security forces shut bars and businesses perceived as hotbeds of opposition. Police punish a careless remark about the nation’s autocratic leader with a stint in jail. Undercover cops eavesdrop on conversations in cafes and buses. What we are seeing is undeclared martial law,’ said Alouis Chaumba, director of the Roman Catholic Commission for Justice and Peace. ‘It is tearing whole communities apart.’ President Robert Mugabe has tolerated little dissent since he took power in 1980. But with the looming

²⁵ See also *Tortuous patterns destined to repeat themselves in upcoming election campaign Preliminary Study of Trends and Associations in the Pattern of Torture and Organised Violence in Zimbabwe, July 2001 - December 2003* published in July 2004 by the Redress Trust.

²⁶ See “Soldiers attack MDC supporters” *Standard* 21 December 2004. In this report it was alleged that one of the persons beaten had been taken to his home where MDC t-shirts were found. This person was forced to put on all of these t-shirts. He was then taken to a pond where he was forced to swim in dirty water while chanting ZANU(PF) slogans. The soldiers then kicked him until he could not defend himself and left him for dead. This incident was reported to the police. In this report it was also reported that four people believed to be MDC activists were assaulted by war veterans in Marange, Mutare West, while two families were forced out of their homes in Gaza, Chipinge North recently.

²⁷ Daily Mirror 10 January 2005

elections, the government has been tightening its control apparatus, and opposition politicians said they are being hounded out of existence.²⁸

New evidence of alleged attacks on opposition supporters in Zimbabwe has been passed to the Guardian by activists who say they are being subjected to systematic violence, intimidation and sexual abuse in the run-up to elections in March. In one case, a woman who chaired a constituency group said she was covered in paraffin and set alight. She is now in hiding, but has agreed to have her photograph published to highlight the situation. Supporters of the MDC say they have been targeted by youth militia groups sympathetic to ZANU (PF). Photographs given to the Guardian, MDC officials say, show evidence of intimidation and violence against local party activists, including systematic arrests and beatings of women. The Guardian has passed the pictures to Amnesty International. A Zimbabwe government spokesman hung up the phone when asked to comment on allegations of torture by youth militia, police and other state agents. The government has previously denied torturing its critics.²⁹

Activists from Zimbabwe's main opposition party, the Movement for Democratic Change, were returning from a campaign rally recently when they stopped at a shopping center in search of some cold drinks. What they found instead, they said, were about 20 government soldiers in no mood for the niceties of democracy. One soldier, spotting the party's distinctive red-and-white T-shirts, announced, 'This is a no-go area for MDC.' According to the activists, who later described the encounter, the soldier added brusquely, 'We've been tolerating you for a long time. Get into your car as quickly as you can and leave this place.' Then, as the activists started to pull away in their pickup truck, the soldiers began hurling stones. One candidate for parliament, Gabriel Chiwara, 39, stumbled as he tried to climb into the front seat. Chiwara, an electrician, said the soldiers tackled him to the ground and kicked him for several minutes with their boots. As he begged for mercy, he said, the

²⁸ Associated Press 19 January 2005.

²⁹ *Guardian* 18 January 2005.

soldiers shouted: ‘You have to die! You are selling the country to the whites!’³⁰ (It should be noted that the army subsequently denied that any of their personnel had been involved in this incident, but the MDC then reiterated that army personnel had carried out the attack.)

ZANU PF militants in Norton town confiscated and burnt campaign material and posters belonging to the opposition party’s candidate for Manyame constituency, Hilda Mafudze.³¹

The spokesman for the MDC alleged that Prince Chibanda, the MDC candidate for Zvimba North and his team were campaigning in Raffingora, when a group of ZANU (PF) supporters, headed by a war veteran known only as Kangachepi, abducted him and his team. He said that Chibanda and his team were assaulted and taken to a torture camp at a nearby farm. Eight of his team members escaped and reported the matter to the police. The spokesman said that although the police arrested the war veteran, the two MDC officials were surprised when they were told that they would have to spend the night in the police cells.³²

An MDC activist in Guruve was allegedly tortured, hanged by the neck on a tree and left for dead by a group of unidentified people for allegedly supporting the MDC. The matter was reported to the police who are investigating the matter.³³

³⁰ Washington Post 5 March 2005 and News24 23 February 2005

³¹ Zimonline 26 February 2005

³² *Standard* 6 March 2005

³³ Daily Mirror 7 March 2005

In a rural constituency close to Harare it was alleged that a ZANU (PF) councillor and a ZANU (PF) local youth chairperson had publicly told a party meeting that they would beat up people and burn houses and property belonging to all suspected MDC supporters in the area if the ruling party loses the parliamentary polls. These two officials had allegedly told four headmen who were present at the meeting that they should compile a list of all suspected MDC supporters, so that the two officials would make sure they were not allowed to vote on polling day.³⁴

A truck ferrying MDC campaign material for Chimanimani Constituency was allegedly hijacked just outside Marondera on Wednesday night. Police in Marondera confirmed yesterday that the truck, which was carrying campaign material worth over \$50 million for the party's candidate.³⁵

Jonathan Moyo, the expelled ZANU (PF) Minister who is standing as an independent candidate in the Matabeleland constituency of Tsholotsho said ZANU (PF) officials were intimidating people in his rural constituency of Tsholotsho by suggesting that failing to vote for the party could evoke a reprisal similar to a 1980s government crackdown that rights groups say left 20 000 civilians dead. That crackdown in the minority Ndebele-speaking Matabeleland region, which includes Tsholotsho, fuelled ethnic tensions with Mugabe's majority Shona group.³⁶

It is against this backdrop that the statements of President Mugabe, the Justice Minister and the Police Commissioner concerning the forthcoming election must be considered.

During his 2004 State of the Nation address the President said that he didn't see any reason why "we should not have the elections in a peaceful environment." His

³⁴ *Daily News Online Edition* 11 March 2005

³⁵ *Daily Mirror* 11 March 2005

³⁶ SABC News 12 March 2005

government, he said, was determined to ensure that the elections would not be marred by violence from whatever quarter. He went on to say that: “We have to instil into the minds of our youths especially, that an election is an exercise that can only succeed if there is peace.”³⁷ Justice, Legal and Parliamentary Affairs Minister, Mr Patrick Chinamasa, has stated that Government is committed to stamping out all forms of violence in the run up to the elections and he expressed confidence that measures being taken by the police would allow for violence free elections.³⁸ The Commissioner of Police has also publicly said that he has instructed his officers to practise zero tolerance to violence and to arrest all perpetrators of violence whatever their political affiliation.³⁹

If all these assurances were to be put into practice they would indeed be reassuring and would go a long way to improving the electoral environment. However, there is good reason to treat these assurances with considerable scepticism. This is not the first time that the President has given such assurances ahead of elections and yet the elections concerned were beset by widespread violence. In an editorial entitled “Action, not words, will end poll violence” the *Standard* newspaper said that although Zimbabweans would welcome a violence free elections, it was very doubtful that the President’s words would be translated into action. It said:

For many Zimbabweans there is a huge credibility gap . . . in what the President says and what then later transpires. . . . It is doubtful that President Mugabe means this

³⁷ *Herald* 9 December 2004 and AFP 9 December 2004.

³⁸ *Herald* 20 November 2004.

³⁹ He said that there was consensus in Government that there must be zero tolerance to political violence in the lead up to the election. He said: “His Excellency the President feels very strongly about the issue and does not brook any form of violence from whomever. The President stated in no uncertain terms in July this year, that elections will be conducted in a peaceful and tranquil atmosphere with the view to shame detractors who have made it their God-sent assignment to lecture Third World countries on democracy and human rights . . .” *Herald* 21 October 2004.

ruling party desires peaceful elections because violence has always worked to the advantage of Zanu PF as it coerces people to vote for it or threatens them with the consequence of a return to war.⁴⁰

The Standard newspaper also observes that there can be little hope that the President actually meant what he said about instilling in the youth the need for peaceful elections when the youth brigade scheme is being expanded and more and more youths are being trained to hate and attack members of the opposition. On the contrary, there have been reports of brutal attacks by youth militia on opposition party supporters in some areas.⁴¹

The Police Commissioner made similar statements ahead of the 2002 election, but the police singularly failed to take action to stop ruling party supporters from engaging in widespread violence. The Commissioner of Police is an ardent supporter of the ruling party and the police force has been heavily politicised in favour of the ruling party. It is very improbable that a police force that has a record of selective enforcement of the law will suddenly start to apply the law against all perpetrators of violence whatever their political affiliation.

In an editorial comment the *Financial Gazette*⁴² expressed strong doubts about the Commissioner's. These are some excerpts from this editorial:

Can the Zimbabwe Republic Police convince anyone who has watched their shameless dereliction of duty over the past few years that they can go from 100 percent approval to zero tolerance of violence in one fell double-speaking swoop?

⁴⁰ *The Standard* (Zimbabwe) 12 December 2004.

⁴¹ For example in an article entitled "Green Bombers' Terrorise Manicaland" a newspaper reported that that ZANU (PF) youth militia and war veterans had imposed a "curfew" in parts of Manicaland as politically motivated violence rocks the province ahead of next year's parliamentary elections. Political violence was rampant in these areas. Several opposition party supporters had been brutally assaulted by the youth militia because they had refused to attend a ruling party meeting. *The Standard* (Zimbabwe) 3 October 2004.

⁴² "You're Selling Us a Dummy, Cde Chihuri" *Financial Gazette* 30 September 2004

Some reports published over the past two weeks in the official media gave the startling impression that the country's partisan law enforcers had suddenly decided to abandon their unprofessional *modus operandi*.

Is Chihuri serious about finally tackling violence on which his officers have turned a blind eye and sometimes even allegedly abetted over the years? Based on the performance of the police force since 2000, cynics would be forgiven for questioning the sincerity of Chihuri's utterances.

His statements are more likely to be regarded as part of the ongoing posturing the government has embarked upon since announcing proposed new legislation on electoral reforms. Chihuri seems to have jumped on the bandwagon to prop up the smokescreen set up to hoodwink the Southern African Development Community and the rest of the world that Zimbabwe has genuinely turned over a new leaf.

Chihuri should know that without demonstrable proof on the ground that the police force is reverting to the professional ethics it abandoned long ago by capitulating to political pressure and manipulation, merely mouthing empty promises will not work.

In the past, numerous cases have been documented when police officers have actually abetted or perpetrated violence themselves against people they should have been protecting and have arrested supporters of opposition parties on the flimsiest of excuses.

They have also been known to stoop as low as turning victims of brutal attacks into suspects and arresting them if it turned out that the real perpetrators of the atrocities in question were ruling party supporters.

The public will be keen to see whether Chihuri's trigger-happy and arrest-before-investigating police force will abandon all these unprofessional practices and execute their duties without fear or favour.

There is no point in making high-sounding declarations of principle that do not result in any perceptible change in the situation on the ground. In fact, this has happened so many times in the past that I have sometimes wondered whether some government officials' statements slamming certain practices and incidents were not in reality encoded messages advocating the opposite. Only time will tell whether things are different this time, as weary Zimbabweans desperately hope.

As the political infighting within the ruling party intensified, there have been several incidents of violent clashes between competing factions of ZANU (PF). The police have intervened in these cases and arrested some of the people who have perpetrated acts of violence. This clampdown by the police on intra-ZANU (PF) violence does not indicate that the police will now show equal vigour in intervening in situations where ruling party supporters attack supporters of the opposition.⁴³

There has been one case in which the police have moved against ZANU (PF) youths. A group of ZANU (PF) youths had attacked MDC members and passers-by. One of the culprits was arrested by the police and taken to a police base. This incensed the other youths who then mounted an attack on police officers manning the base, stabbing one officer. The police then arrested 31 of the youths and these youths were later denied bail. These arrests thus had more to do with a violent attack on the police than it did to the original violent attack on MDC supporters.⁴⁴

It should be pointed out that the Commissioner of Police has said that charges by opposition parties of the resurgence of political violence and selective application of the law three weeks before parliamentary polls are false. He claimed police had arrested more ZANU (PF) supporters than those of the MDC since January this year. He said the police arrested 67 ZANU (PF) supporters compared to 42 supporters of the MDC on charges of politically motivated violence. He said ZANU (PF) had 23 cases while the MDC had 17 cases. He said it was also a falsehood by the MDC to claim that the Public Order and Security Act were drafted with the MDC in mind. “The accusations that this piece of legislation was designed for any one political party are false.” The Commissioner said police were empowered by the Electoral Act to arrest anyone putting up posters on premises without the consent of owners of buildings.

⁴³ This intra-ZANU(PF) violence has continued to occur. See “Poll peace appeal falls on deaf ears” *Daily Mirror* (Zimbabwe) 5 January 2005.

YOUTH BRIGADE

The Zimbabwe government has established a youth training scheme that it claims is aimed at making youths good citizens and giving them vocational skills. The scheme is run along the lines of a quasi-military national service scheme, but is not regulated under the National Service Act [*Chapter 11:08*] or any other statute. Army officers run the youth brigade training camps.

The Zimbabwe Government maintains that the training that youth brigade members undergo is aimed at making them good citizens and giving them vocational skills. However, there is a large body of convincing evidence that youth brigade members are given para-military training and political indoctrination and are taught to hate members of the opposition and to harass and attack them.⁴⁵ There are numerous reports of youth brigade members violently attacking MDC members and suspected MDC members. In August 2004 President Mugabe exhorted the youth brigade to electioneer on behalf of the ruling party, saying that the youth brigade “would be answerable” if ZANU (PF) lost the election. He said the youth brigade should “deal

⁴⁴ *The Herald* 11 February 2005.

⁴⁵ See the case of *S v Nhongo & Ors* High Court case number 52 of 2003. In this case two youth brigade members had brutally beaten to death two persons because they suspected them of being MDC members. In convicting them of culpable homicide the court found that during their training they had been indoctrinated to believe that they were engaged in a war in which MDC members were the enemy as the MDC opposed the “Third Chimurenga” to take back land from the whites. They believed that they were carrying out their national duty when they severely assaulted the suspected MDC members. See also *The role of militia groups in maintaining Zanu PF’s political power* by A P Reeler (March 2003) and “*Shaping youths in a truly Zimbabwean manner*” *An overview of youth militia training and activities in Zimbabwe, October 2000 – August 2003* by The Solidarity Peace Trust (Sept 2003) and *Panorama: Secrets of the Camps* was broadcast on BBC One on Sunday, 29 February 2004.

⁴⁵ The MDC said the state-run Zimbabwe Broadcasting Authority continued to maintain a blackout on the party’ activities despite provisions under the SADC protocol that all political parties must have equal access to the public media. “*Shaping youths in a truly Zimbabwean manner*” *An overview of youth militia training and activities in Zimbabwe, October 2000 – August 2003* by The Solidarity Peace Trust (Sept 2003).”

with these midgets”, meaning the MDC. “We must teach them a lesson across the whole country that Zimbabwe will never be a colony again.”

In November 2004 it was announced that the youth training scheme was to be expanded further. Two new training centres had been established and ten new provincial training centres were to be opened in 2005. The National Youth Service Unit had become a full Government department with its own budget. The Director of this scheme, a retired army officer, said that the training of 5 000 graduates in the current intake would bring the total number of graduates to 26 500 as 21 500 had already graduated.⁴⁶

Commenting on this an MDC Member of Parliament commented:

These new camps are simply meant to ensure the further militarisation of elections in Zimbabwe. They are meant to ensure that the opposition, the MDC, does not have access to those provinces where the new bases will be set up.

The widespread deployment of youth militia all around Zimbabwe also has an intimidatory effect on voters. Even if the youth militia do not actually carry out acts of violence, their mere presence in the vicinity may deter voters from voting for the opposition because those voters will fear that the youth militia will carry out reprisals against voters whom they believe have voted for the opposition.

ENFORCEMENT AND ADMINISTRATION OF THE LAW

THE POLICE FORCE

In January 2001 the Commissioner of Police, Mr Chihuri, publicly declared in that he is a ZANU (PF) supporter. In an interview with a government-controlled newspaper he proclaimed:

⁴⁶ *Herald* 13 November 2004 and Zimonline 15 December 2004.

Today I would like to make it public that I support Zanu (PF) because it is the ruling party. If any other party comes to power, I will resign and let those who support it take over.

In July 2001 he told a Government-controlled newspaper that police officers thought to support opposition political parties would be sacked; an undisclosed number of officers had already been dismissed on these grounds. Professional police officers have been systematically driven out of the force to be replaced by ruling party supporters, including many war veterans and members of the youth militia. “War veterans” in the police force received rapid promotion; more have been recruited into the force and some have been placed in charge of rural police stations. These officers have not only refused to assist MDC supporters under attack from ZANU (PF) supporters, but also in some instances have allegedly participated in these attacks⁴⁷. Police officers seen reading independent newspapers were regarded as disloyal; those who tried to enforce the law on a non-partisan basis were transferred or demoted; and some senior officers left in disgust over the political abuse of the police force. Police trainees are subjected to political indoctrination and there is a recent report that officers in post have been forced to undergo programmes of political re-orientation, part of which is allegedly to train police officers who will be on duty during the election to be hostile towards the MDC⁴⁸.

⁴⁷ See the monthly reports of the Zimbabwe Human Rights Forum.

⁴⁸ In a report by Zimonline entitled “Police officers forced to attend ideological re-orientation course” on 28 September 2004 it was alleged that the police were running re-orientation courses at police Provincial Updating Centres across the country. These courses were meant to prepare the law enforcement agency for the 2005 general election. All officers from the rank of inspector down to constable have to attend these courses and if they do not they will not be deployed on election duties. The senior police officers who are running the courses were emphasising the need for “all police personnel to have nothing to do with enemies of Zimbabwe who include among them all members of the MDC and former white commercial farmers.” Other topics include the colonisation of Zimbabwe, the seizure of black-owned land by the colonists, the killing of blacks by the white colonists, the killing of Cain Nkala and Limukani Lumphahla in 2002 and the “economic sabotage by Britain and her Western allies opposed to the government’s land redistribution programme.”

The politicisation of the police has resulted in the police enforcing the law in a highly selective manner. The police are prepared to arrest anyone connected with the MDC for offences such as inciting or committing public violence, but ignore similar offences committed by ZANU (PF) supporters. Very few ruling party supporters who have engaged in acts of political violence have ever been arrested, tried and made to undergo their punishments. Many of them have been the beneficiaries of successive Presidential amnesties, and this has served to fortify their belief that they are above the law. The government has shown that it does not want impartial law enforcement but only wants the law to be invoked against “the enemies of the ruling party” only. By carrying out their duties selectively, the police force has removed the protection of the law from those considered to be hostile to ZANU (PF). It has become an instrument for violence rather than a force to protect people irrespective of their party affiliation.⁴⁹ It has become a para-military militia to be used on behalf of the ruling party. This permeates across the civil service.

The police have frequently misused a provision of the Public Order and Security Act [*Chapter 11:17*]⁵⁰ to ban meetings and rallies organised by the opposition MDC and by organisations perceived to be critical of the government.⁵¹ They often break up such meetings with excessive force and cause injury to unarmed and unresisting civilians. Those they arrest are frequently assaulted in custody. On the other hand, the police hardly ever interfere with meetings and demonstrations by ruling party

⁴⁹ Here see *Zimbabwe Human Rights NGO Forum (2003), Torture by State Agents in Zimbabwe: January 2001 to August 2002*(Harare, Zimbabwe Human Rights NGO Forum).

⁵⁰ Section 24 of the Act.

⁵¹ The police have refused to allow many MDC meetings in the past and this practice is continuing. In mid December 2004 the police banned two meetings by the MDC, one to pave way for a ruling party meeting and the other because the police did not want the MDC meeting at night. *Zimonline* 16 December 2004. One newspaper report quoted human rights organisations as saying that the police banned at least 45 opposition party rallies and civic group meetings in 2004. Associated Press 19 January 2005.

supporters, but instead often provide escorts for their marches and demonstrations.⁵² So far as is known no meetings organised by the ruling ZANU (PF) party have been banned.

In this regard the ANC itself has expressed concern about the main opposition being denied access to voters by the police refusing it permission to hold public meetings. It has said that the opposition must be allowed unfettered access to voters and should be allowed to hold public meetings. The ANC said it was continuously engaging the ruling ZANU (PF) on the issue. The Secretary-General of the ANC said

Over the years we have been saying to them that you cannot have a properly registered party restricted in this way. Indeed, the playing field should be levelled and the police should act in an impartial manner.

However, the police are continuing to use the Public Order and Security Act to prevent the MDC from holding campaign meetings and rallies. For example, on the 23 January 2005 it was reported that the police had arrested the MDC Member of Parliament for Makokoba constituency, Thokozani Khupe, and 60 opposition party supporters were yesterday arrested in Bulawayo during a strategic meeting they held without seeking police clearance. Khupe and 20 others were held in police custody at Bulawayo Central Police Station overnight, while 40 others were reportedly released without charges being levelled against them. Khupe appeared in court the next day after spending the night in a cell littered with human waste.⁵³ The MDC spokesperson Paul Themba Nyathi said at the time of their arrest, Khupe was in a strategic meeting with members of her ward structures and councillors at her restaurant. He said three police details arrived at the planning meeting and demanded to attend the private meeting. Khupe allowed them. The meeting proceeded, but after about 30 minutes riot police in full gear arrived at the meeting and told everyone at the meeting that they were under arrest. They were all loaded in police vehicles and taken to Bulawayo Central police station. Nyathi added that the political playing field in the country

⁵² See *"Disturbing the Peace". An Overview of civilian arrests in Zimbabwe: February 2002 – January 2004*, Solidarity Peace Trust (2004),.

⁵³ Zimonline 25 January 2005

remained heavily tilted in favour of the status quo as long as there was selective application of the law. The MDC said that the arrest was proof that Zimbabwe was not serious about its commitment to hold free and fair elections. “The political playing field remains very flawed,” a statement said, adding that the situation is “actually deteriorating”. “The police continue to interfere with the MDC’s political meetings and thus prevent fair campaigning. They continue to act in complicity with (ruling party) officials.”

Asked to comment on these arrests the Police national chief spokesperson, Wayne Bvudzijena, said: “All political parties, be it ZANU PF or the MDC, have to notify the police if they wish to hold any meetings. The main reason is to allow the police to mobilise resources so that they would deal with any eventualities that might occur.” He added that the police would continue arresting those who hold political meetings or rallies without their clearance.⁵⁴ The police spokesman’s statement illustrates the hypocrisy of the police and the misapplication of the law by them. Under the law police clearance is not required. The organisers simply have to give the police the requisite notice. It is correct that the purpose of the notice is supposed to be to allow the police to provide necessary police security for meetings and rallies. However, when the MDC notifies the police, the police simply refuse to allow many of the meetings and rallies to go ahead rather than facilitating the holding of these gatherings by providing police security.

In mid-February the police raided a training session of the MDC’s 120 candidates which was being held at an Hotel in Harare. They arrested MDC Director of Elections Ian Makone, and took him into custody.⁵⁵ He was later released.

In February and March it was reported that several MDC workers had been arrested for contravening a new electoral law of putting up political posters on property without permission from the owner. The MDC complained that ZANU (PF) were

⁵⁴ *The Daily Mirror* 24 January 2005.

⁵⁵ MDC press release 16 February 2005

posting campaign materials on private property walls without the police taking any action against them. For example, MDC candidate for Bindura constituency Joel Mugariri and the opposition party's chairman for Mashonaland Central province, Tapera Macheka, were arrested while putting up campaign posters on buildings owned by the Bindura city council without permission from the local authority.⁵⁶

As repression has spread in Zimbabwe, the police force has also been greatly expanded. In the 2005 budget it was announced in November, 2004 the budget for the police has been hugely increased.⁵⁷ This very substantial increase could be sinister, coming ahead of the pivotal 2005 elections.

In early January, a report quoting unnamed police sources suggested that it was the government planned to incorporate more than 20 000 of its youth militias into the police force ahead of the March parliamentary election. The report said that this would almost double the number of police officers which at the moment is about 21 000 officers. This recruitment exercise would be completed by the end of February 2005. Home Affairs Minister Kembo Mohadi, in charge of the police, defended the recruitment of the youths saying the exercise would go ahead despite objections that the youths victimised opposition supporters. Minister Mohadi said: "All government departments have a duty to give priority to national youth service products when recruiting and the Zimbabwe Republic Police is no exception. We will not abandon this policy simply because Press people think those guys (youth militias) are violent."

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⁵⁶ Zimonline 26 February 2005

⁵⁷ In 2004 the total budget for the Ministry of Home Affairs was Z\$339 billion; in the 2005 budget Z\$1.7 trillion has been allocated specifically to the police.)

⁵⁸ Zimonline 8 January 2005.

DEPARTMENT OF NATIONAL SECURITY

This unit, formerly known as the Central Intelligence Organisation or CIO, falls within President Mugabe's office and is under Mugabe's direct control. It receives a budget under the special services allocation that is not subjected to parliamentary scrutiny and audit by the Auditor-General. The budget for 2005 is six times more than the budget that was approved for 2004, although in 2004 it drastically exceeded its budget without any parliamentary approval.⁵⁹ The drastic increase in the funding of this unit comes just a few months before the March 2005 general election.

The unit has conducted itself in a manner that is blatantly biased in favour of the ruling party. It has played an important role in suppressing political opposition and other perceived anti-government activities and in creating a climate of fear in which frank political discussion is discouraged. Its Director and Deputy Director are both war veterans and loyal supporters of the ruling party.

THE ARMY

The army has become a politically partisan force. Officers believed to be sympathetic to the opposition have been purged and war veterans loyal to ZANU (PF) have received rapid promotion. On 9 January 2002 the commanders of the army and the air force, together with the police commissioner and the head of the prison service, held a press conference. In essence, what they announced was that if the people elected the MDC leader in the forthcoming Presidential election they would not recognise him as President.⁶⁰

In 2000 army personnel participated in a campaign of vicious reprisals in the towns carried out to punish people for voting for the MDC in the general election. Army personnel are often deployed with the police to brutally suppress any anti-government

⁵⁹ See Zimonline report 1 December 2004

⁶⁰ *Herald* 10 September 2002.

protest action. Army personnel have also been implicated as perpetrators of acts of violence against members of the MDC.

It was reported that the army commander, Constantine Chiwenga, had toured army barracks urging soldiers to rally behind ZANU (PF) to thwart a possible MDC victory in the Presidential election.

CHIEFS

The President appoints chiefs, who are the traditional leaders of tribal communities in Zimbabwe.⁶¹ The chiefs, who have recently received greatly increased benefits⁶², have been politically co-opted by the ruling party. In 2004 the Government hugely increased the civil jurisdiction of the chiefs. It has been argued that this was a political strategy to enhance the power of the chiefs so that this power can be used as a weapon against members of the opposition, particularly in cases involving land occupation and tenure.⁶³

In 2004 the government gave motor vehicles to chiefs. With effect from January 2005 the government massively increased allowances and salaries of chiefs and headmen by 150 per cent.⁶⁴

⁶¹ s 3 of the Traditional Leaders Act [*Chapter 29:17*].

⁶² See for instance the Traditional Leaders (Allowances of Headmen, Acting Headmen, Village Heads and Messengers) Regulations SI 131 of 2004. There is also a new vehicle purchase scheme for chiefs, which allows them to “buy” pick-up trucks for less than a tenth of their value and a number of Ministers have recently donated the money to allow some Chiefs to purchase vehicles under this scheme. See Media Monitoring Project of Zimbabwe weekly update for 25 October – 31 October 2004.

⁶³ Chiefs now have jurisdiction to deal with cases involving monetary values up to Z\$ 100 million. See “Chiefs empowered to prop up Zanu PF” *Independent* (Zimbabwe) 7 January 2005.

⁶⁴ *The Standard* (Zimbabwe) 5 February 2005.

Not only do chiefs they vigorously campaign on behalf of the ruling party but they use their power to expel MDC villagers and to intimidate people by threatening to expel them from their villages if they vote for the MDC.⁶⁵ At the time of elections the chiefs have mobilised and pressurised villagers into voting for the ruling party.

⁶⁵ For example this report appeared on Zimonline on 9 October 2004:

Chief pledges to weed out MDC supporters from area

Matabeleland South - A local chief here has ordered his subjects to join the ruling ZANU (PF) party or face expulsion from his area. Chief Malaki Musuku of Matobo district, about 60 kilometres south-west of Bulawayo, told his subjects at a meeting this week that he and other traditional leaders in the province had been empowered by ZANU (PF) to remove all opposition MDC party supporters from their areas. Speaking at a rally at Natisa rural business centre in the area, which this reporter attended, Masuku also claimed that he was recording the names of all villagers who boycott meetings of the ruling party so they could be punished. Masuku said: "We have been empowered by the government as traditional leaders to chase those who do not want to support it because they are not our good friends. You will follow those whitemen who used to own the farms that you now occupy if you continue acting defiantly."

This report was carried in the Daily Mirror on 29 December 2004:

Family pays dearly for supporting MDC

A family in Uzumba-Maramba-Pfungwe (UMP) District in Mashonaland East paid dearly for allegedly supporting the opposition MDC, when it was banished from the area by Chief Tedi Matambanashwe and war veterans a fortnight ago. Assistant Inspector Dickson Muza of UMP Police confirmed to The Daily Mirror yesterday that they had received a report that a family of eight, under the guardianship of Reginald Marongedza, was evicted from its homestead and banished from the area. Relatives had told Chief Matambanashwe and war veterans that they were die-hard supporters of the MDC. Muza also said the family was alleged to have been in possession of MDC membership cards and party T-shirts.

PROVINCIAL GOVERNORS AND PROVINCIAL AND DISTRICT ADMINISTRATORS

Provincial Governors are appointed by the President and play an active political role on behalf of the ruling party in their provinces.⁶⁶ Provincial and District Administrators, though they are civil servants, exert a heavy political influence on behalf of the ruling party. These officials have discriminated against MDC supporters and have applied intimidatory pressures to these supporters.

THE JUDICIARY

According to the SADC Principles one of the components of a democratic election is an independent judiciary. This is so because a judiciary that is packed with ruling party supporters will obviously not deal fairly and impartially with electoral challenges brought by the opposition.

In Zimbabwe the judiciary is no longer independent. From 2000 onwards, the government engaged in a systematic campaign to reconstitute the Supreme Court and High Court Benches so that they conform to its ideology. The government has now driven out almost all the independent-minded judges and replaced them with judges considered to be sympathetic to the ruling party. Judges who continue to give rulings contrary to the perceived interests of the government or the ruling party have been threatened or severely criticised. Apart from one remaining independent judge, the Supreme Court has been completely reconstituted with judges who lean very heavily in favour of the executive.

The Judge President of the High Court, who is a supporter of the ruling party, made sure that the MDC election petitions brought after the 2000 elections were dealt with extremely slowly, and most of these petitions have not yet been finalised nearly five years after they were brought. The Judge President also allocated to one of the most

⁶⁶ They are appointed under s 4 of the Provincial Councils and Administration Act [*Chapter 29:11*], and under s 8(2) of the Act the President can dismiss them at will. They are in effect resident Ministers, though they do not have a seat in the Cabinet.

overtly pro-government judges the petition brought by the MDC to challenge the result of the 2002 presidential election.⁶⁷

Given the political contamination of the judiciary, opposition parties can therefore have little confidence that their challenges to election results will be dealt with fairly and impartially. Although the new electoral law will establish a special electoral court, current judges will be assigned to deal with cases in this court. If politicised judges are given this function, the impartiality of their decisions will again be in doubt.

ELECTION CHALLENGES

In the aftermath of the 2000 parliamentary elections, the MDC brought legal challenges to the results in 38 constituencies, claiming that the election results should be set aside on the basis of violence and other electoral offences.⁶⁸ President Mugabe tried to block these legal challenges by promulgating a statutory instrument which stated that no election could be declared void on the ground that corrupt or illegal practices, including bribery and intimidation, had been committed.⁶⁹ The instrument baldly asserted that the elections had been peaceful and represented a genuine and free expression of the will of the people, that the legal challenges were frivolous and vexatious, and that they were being sponsored by external interests intent on causing instability in Zimbabwe. It was a remarkable instrument: the President, the executive

⁶⁷ See report entitled the *State of Justice in Zimbabwe*. (This is A Report to the International Council of Advocates and Barristers by five Common Law Bars.)

⁶⁸ Strong *prima facie* evidence exists that parliamentary candidates were involved in the political violence. See, *The Perpetrators of Gross Human Rights Violations in Zimbabwe from February 2000 to March 2003*, Reeler A.P. (2003) Paper presented to *Civil Society and Justice in Zimbabwe: A Symposium*, organised by the Zimbabwe Human Rights NGO Forum, Themba Le Sizwe and the International Bar Association, Holiday Inn, Johannesburg, 11-13 August 2003.

⁶⁹ The Election Act (Modification)(No 3) Notice SI 318 of 2000.

head of the ruling party, purported to judge the freeness and fairness of elections in which his own party had taken part. The Supreme Court ruled that this instrument was unconstitutional.⁷⁰ It decided that contestants were entitled to expect that elections in each constituency will be free and fair and had a right to bring civil proceedings in the High Court if they contended that an election result was tainted by illegal electoral practices. The statutory instrument violated their constitutional right to have electoral disputes adjudicated upon by an independent court.

After protracted delays, the High Court heard some of these challenges.⁷¹ The Judge President, the judge in charge of the High Court, moved very slowly to assign these cases to judges in the High Court and assigned them to a small number of judges. The cases were not treated as matters that had to be given priority and dealt with expeditiously. In six cases, the High Court set aside the election of ZANU (PF) candidates, primarily on the basis of violence. A number of witnesses who were to testify for the MDC were subjected to violence and intimidation.⁷² Although some cases were withdrawn, after almost five years several of these cases have not yet been finalised in the High Court. Of those that have, the Supreme Court has finally determined only three. As a result, candidates whose elections have been set aside by the High Court (or whose elections might have been set aside had these petitions been finalised) have continued to sit and vote in Parliament, and will be able to do so until the next general election. What this means is that perpetrators of political violence, electoral fraud and other serious election-related offences have remained in Parliament throughout their five-year terms. These violators will thus be free to commit similar acts in the forthcoming election as their previous misconduct has received no sanction and will again be likely to attract no sanction again.

⁷⁰ *Movement for Democratic Change & Anor v Chinamasa & Anor* NNO 2001 (1) ZLR 69 (S)

⁷¹ See *Organised Violence and Torture in the June 2000 General Election in Zimbabwe*, (Amani Trust Harare 2002), *Neither Free nor Fair: High Court decisions on the petitions on the June 2000 General Election*, Amani Trust.

⁷² See *Heroism in the Dock: Does testifying help victims of organised violence and torture? A pilot study from Zimbabwe*, (Amani Trust Harare, 2002)

The MDC brought a legal challenge to the result of the 2002 presidential election, claiming that the result could be allowed to stand because of violence and massive vote rigging. The Judge President assigned this case to a judge who is well known to be a staunch supporter of the ruling party. He ruled against the MDC at the first stage of the case that dealt only with legal issues, but has yet to produce a written judgment giving his reasons for the decision.

CURRENT ELECTORAL ENVIRONMENT

REPRESSIVE LAWS

The government has enacted Draconian criminal laws to prevent protest, dissent and criticism. The main such laws are the Public Order and Security Act [*Chapter 11:17*] and the Access to Information and Protection of Privacy Act [*Chapter 10:27*], both of which were passed in 2002 ahead of the Presidential election held in that year. While these Acts ostensibly apply to everyone, in practice they are used almost exclusively against government opponents.

The Public Order and Security Act creates a wide range of criminal offences ranging from subverting constitutional government (in effect, treason) to behaving in an insulting manner at a public meeting and making abusive or false statements about the President.⁷³ The crime of insulting the President drastically interferes with freedom of expression by curtailing the right to criticise the conduct of the Executive President, who is the head of his political party and directly and actively involved in party politics. Over the last few months, three people have been arrested for making “insulting” statements about the President. One person has been jailed for describing President Mugabe “a dictator who rules by the sword”. Another person received a suspended prison sentence for telling his workers who were asking for a bonus that President Mugabe had “printed useless money”, was disrupting business and chasing

⁷³ Section 16 of the Act, under which anyone who makes an “abusive, indecent, obscene or false statement about or concerning the President ... whether in respect of his person or his office” is liable to be imprisoned for up to one year.

away tourists. He told the workers that President Mugabe had got money for himself and that the one person who was leading them is capitalising on everything. He asked them why “we can’t we remove him from power?” Another person was arrested by CIO operatives for likening his younger brother’s stubbornness to that of President Mugabe.⁷⁴ In terms of s 15 of the Act it is an offence to publish a false statement that prejudices or is intended to prejudice the country’s defence or economic interests, or which undermines or is intended to undermine public confidence in a law enforcement agency. Anyone contravening s 15 is liable to imprisonment for up to five years. This offence has now been incorporated into the recently passed Criminal Law Code and the maximum punishment has been increased to twenty years imprisonment.⁷⁵

The Public Order and Security Act also gives the police wide powers to control public meetings and demonstrations. Under s 24 organisers of public gatherings, other than social gatherings, must give the police four days’ notice that they are going to hold them; failure to give such notice is a criminal offence punishable by up to six months’ imprisonment. Although the section does not give the police power to ban a gathering (that power is given by other sections of the Act) the police have taken the section to mean that when they are notified of a gathering they are entitled to grant or refuse permission for it to be held.⁷⁶ As indicated above, the police have not used their purported powers under the section even-handedly: they have banned numerous MDC meetings but, so far as is known, no ZANU (PF) ones.

Since the Act was passed, it has been used as an instrument for state repression in order to silence democratic voices. Hundreds of people have been arrested under

⁷⁴ See AFP 29 December, *Standard* (Zimbabwe) 24 December 2004 and *Herald* 3 January 2004.

⁷⁵ Section 31.

⁷⁶ Regrettably, some judges have abetted the police in this erroneous view. See for example *MDC v Muzeze & Anor* HB-25-03. The judge ignored an earlier decision of the Supreme Court, *Biti & Anor v Minister of Home Affairs & Anor* S-9-02, in which the correct legal position was stated.

various sections of the Act, including many MDC Members of Parliament. This legislation has enabled the police to intimidate and harass real or perceived supporters of the opposition and critics of the government.

Under the Access to Information and Protection of Privacy Act it is a serious criminal offence for a newspaper to operate, and for a journalist to practise, without being registered or accredited by a Commission consisting entirely of Ministerial appointees. The chairman of the Commission is a staunch ZANU (PF) supporter and, so far as can be ascertained, so are all the other commissioners. They have failed to take action against abuses on the part of the State press. However, this Act has, however, This Act has been used as a weapon against the independent press. Numerous journalists have been arrested for committing offences under this legislation, particularly the offence of publishing false information.⁷⁷ The journalists arrested have been almost exclusively journalists from the independent press. The Act has also been used to stop most foreign journalists from operating inside Zimbabwe, since only citizens or permanent residents of Zimbabwe are entitled to be accredited for longer than 30 days.⁷⁸ Three prominent Zimbabwean journalists who wrote for the international press left in February 2005 after several days of police questioning (to start off with about espionage) and threats of prosecution for breaching stringent media laws. Their lawyer, Mrs Beatrice Mtetwa, described the police action as harassment. After their departure only one correspondent for a British newspaper remains in Zimbabwe.⁷⁹

There is thus a whole raft of repressive legislative provisions in place ahead of the impending 2005 general election which were not in place at the time of the 2000 elections. These provisions drastically curtail basic democratic rights and create a highly unfavourable environment for the holding of elections.

⁷⁷ Section 64 of the Act makes it an offence, punishable by up to three years' imprisonment, for anyone knowingly to publish a false statement which threatens the interests of defence, public safety, public order or the State's economic interests, or which is injurious to the reputations of other persons. Before it was amended in October 2003, the section was much broader.

⁷⁸ Section 79 of the Act.

⁷⁹ *Mail and Guardian* 23 February 2005

USE OF FOOD AID AS A POLITICAL WEAPON

When there are food shortages, people in desperate need of food aid are highly susceptible to political intimidation on the part of those with power to distribute food aid. As the looming food shortages become more acute, this political weapon continued to be used with even greater effect.

Over the last few years there have been numerous reports of food aid being used by the ruling party as a political weapon against the opposition. These reports tell of ZANU (PF) withholding food aid from MDC supporters, handing out food aid before by-elections as an incentive to vote for the ruling party and threatening to withhold food aid from any areas where voters have voted for the opposition.⁸⁰ For instance in July 2004 a local newspaper reported that Deputy Minister of Foreign Affairs, Abednico Ncube, told villagers in Matabeleland that maize “will be available only to those who dump the opposition and work with ZANU-PF”. The party would “start feeding its children before turning to those of the MDC”.⁸¹

In the months before the March 2005 elections there are likely to be serious food shortages. Government maintained that there would be a bumper maize harvest from the 2003-2004 season.⁸² It said that there would no longer be a need for international

⁸⁰ See for instance Physicians for Human Rights, Denmark, *Vote ZANU-PF or starve*, October 2002; Human Rights Watch, *Not Eligible: The politicization of Food in Zimbabwe*, October 2003; Human Rights Watch, *The Politics of Food Assistance in Zimbabwe*, August 2004; *Zimbabweans' access to food in 2004-05 could be threatened on multiple fronts* Human Rights Watch 12 August 2004, *Zimbabwe: Power and Hunger - Violations of the right to food*, Amnesty International 15 October 2004. Johnson Mnkandla, a magistrate from Bulawayo in Matabeleland, told a meeting held in June 2004, “Food has been politicised. Chiefs have been politicised. The distribution structure that exists does not benefit the Zimbabwe people, only supporters of the government.”

⁸¹ *The Standard* 18 July 2004

⁸² A parliamentary portfolio committee, headed by a ZANU (PF) MP reported on 10 November 2004 that Zimbabwe will have about 500 000 tonnes of maize by year-end and most of it imported and still much less than the 2.4 million metric tonnes of the staple grain the government claims was harvested last season. The committee urged the government to admit that the country did not have enough to feed itself and to start preparing relief operations in some areas already short of food.

agencies to continue to provide food aid and they were instructed to end their operations in Zimbabwe. It has now emerged that Government's predictions about the harvest were completely inaccurate and, far from having a surplus, there is now likely to be a considerable shortfall of food. As the international agencies have withdrawn, this means that the Government will have complete control over food aid and this provides enormous scope for its political misuse.

In a report at the beginning of January 2005 it was alleged youth militias helping the state's Grain Marketing Board (GMB) distribute food at Kariba, in the north of the country were demanding people to produce ruling ZANU (PF) party membership cards before they can get food aid. The youths were seconded to the GMB to help it distribute cheaper priced maize to people. Residents said the youths vet people wishing to get food with known ZANU (PF) supporters allowed easy access to the state-provided maize. Anyone else must produce a membership card of the ruling party before they can get food. One person who confessed to being a member of the MDC said that he had "queued for mealie meal for the last four days without success as each day the youths insist that only ZANU (PF) members get mealie-meal and they also dictate who else should get the commodity." But a senior GMB official denied the youths were insisting on people producing ZANU PF membership cards before they receive maize. He said the GMB's policy was to give food to all hungry people regardless of political affiliation.⁸³

In another report in mid-January 2005 it was alleged that in parts of the Midlands and Manicaland ZANU (PF) councillors and the police have taken over the vetting of hungry villagers requiring food under new distribution procedures that could see opposition supporters sidelined. It was alleged that under this new procedure, villagers must produce a ZANU (PF) membership card and get a letter from the ZANU (PF) councillor of their local ward stating that they should be allowed to buy cheaper priced maize from the government's Grain Marketing Board depots. When a buyer gets the letter he then takes it to the village head and to the local police who will verify and certify that they reside in the area and must therefore be allowed to

⁸³ *Zimonline* 1 January 2005.

purchase maize. However, the GMB's chief executive officer denied that ZANU (PF) councillors and the police had taken over vetting of people requiring food.⁸⁴

In early February the MDC accused chiefs in a number of areas of Matabeleland of forcing their villagers to back the ruling ZANU (PF) party threatening to deny government-supplied maize to those who refuse. To be allowed to buy cheaper-priced maize from the government's Grain Marketing Board, villagers must be on a food assistance register kept by the chief. Chiefs also issue letters authorising the GMB to sell maize to their subjects. The GMB is the only company permitted to trade in maize and is the only institution supplying subsidized maize to the majority of hungry Zimbabweans after the government barred international food agencies from doing so. According to opposition officials, the chiefs have told their subjects to attend ZANU (PF) campaign rallies only, with those who defy the order or attend MDC rallies being removed from the food register.⁸⁵

In mid-March Jonathan Moyo, who is standing as an independent candidate in the Matabeleland constituency of Tsholotsho and has been expelled from ZANU (PF) said that ZANU (PF) was threatening to withhold desperately needed food relief to villagers if they voted for ZANU (PF). On the other hand, the ZANU (PF) national chairperson, Mr John Nkomo, was going around promising to bring lorries loaded with maize into the area.⁸⁶

In March several reports were made of the use of food as a political weapon. Here are some excerpts from some of these reports:

A hungry future for poor voters who oppose Mugabe

Binga

⁸⁴ *Zimonline* 13 January 2005.

⁸⁵ *Zimonline* 8 February 2005

⁸⁶ *The Standard* (Zimbabwe) 13 March 2005

[In the Binga drought hit Binga district] Sekelela Kubeya,] like thousands of Zimbabweans stricken by drought, has to rely on the largesse of her president, Robert Mugabe, who has promised emergency supplies of grain in exchange for money.

The problem is that she and the rest of the villagers support the MDC. . . . The consequence is simple: emergency grain is there if you support Zanu-PF. For those of suspect loyalty (Binga is a MDC stronghold), there is hunger.

Last week Sekelela, not her real name, went with 24 other villagers to a grain distribution centre. They took six million Zimbabwean dollars (about £300) earned by the women over the previous month from sales of curios Villages requiring hand-outs must submit lists of residents compiled by their headmen to be delivered first to the district administrator and then to the police. Finally, the list is handed to the Grain Marketing Board, a supposedly neutral government agency. But when the headman of Sekelela's village reached the front of the long queue at the GMB office in Binga, he was turned away. "They gave him the money back and told him to try again after the election," Sekelela said. There was no need to ask why. Unlike Zanu-PF supporters, backers of the MDC did not qualify for aid. Now the people of the village, a collection of mud huts surrounded by parched red soil, scrub and dead crops, must rely on food from relatives, or drought-resistant pumpkin and berries.

Mr Mugabe has used the food weapon in previous elections, in addition to a portfolio of devices designed to ensure the desired outcome: violence, intimidation, vote-rigging and gerrymandering. This year the violence is gone, at least for now. . . .

Shari Eppel has witnessed the food weapon before. "Zanu-PF won't let the poor starve to death," she said. "They want people hungry and afraid but not dead because that would be bad publicity. The violence has been put away for the time being but people have been told to watch out. The important time is not the run-up to the vote but the aftermath when scores might be settled."⁸⁷

Vote for us or starve, Mugabe's party tells villagers

Report from Matabeleland

⁸⁷ *Telegraph* 26 March 2005

With an embarrassed smile Million Ndlovu admits that he has begun eating okra. Zimbabwean men say it is a “weak” vegetable, because of the slimy liquid it exudes when cooked, and think that by eating it they, too, will become weak.

But now men like Mr Ndlovu have no choice. He eats okra and picks weeds from the fields to boil into a sauce, and drinks tea to fill his stomach when there is nothing solid to eat. The rains have not fallen and his village's maize crops have shrivelled in the fields. But that is not why he is hungry.

As Thursday's parliamentary election approaches, the government has taken sole control of food distribution in rural areas.

These elections, observers say, will bring less of the outright brutality that scarred previous polls. Instead, according to accounts given to the *Guardian*, the government party, Zanu-PF, is offering villagers a simple choice - vote for us or starve. In Mr Ndlovu's village, east of Bulawayo, people pooled money to buy maize flour from the state-owned grain marketing board. Last Saturday the food arrived. Mr Ndlovu, 62, said: “Sitting on top of the heap of maize [sacks] was the district chairman of Zanu-PF. He said that maize would be distributed to supporters of Zanu-PF only - not to supporters of the MDC” “Each villager who reached the head of the queue was given a 50kg (110lb) sack of maize, said Mr Ndlovu. But anyone believed to support the opposition was ordered to leave. “It was announced that MDC supporters should go out of the queue so as not to be embarrassed,” he said. “But I stayed in the queue because I was hungry.” Instead of a sack of maize Mr Ndlovu, an MDC voter, was given back the 37,000 Zimbabwean dollars he had put down as an advance payment three months ago. Now he survives on one proper meal a day. “In the mornings we take tea. In the afternoons, when the children come home from school, we take tea. In the evenings we have some sadza [maize porridge].” “We have it with okra. Men used not to eat this okra, because it was said that it makes them weak. We eat a plant called uludi, which we pick in the fields. It grows in ruined buildings.”⁸⁸

Starve the voters: the human cost of Mugabe's election

Bulawayo, Matabeleland

⁸⁸ *The Guardian* 26 March 2005

Mr Ndlovu is a “rainmaker”, a community elder who performs the ceremonies meant to bring rain. “We ask for rain for the whole country,” he said. “But the maize that comes from this rain is being divided on party lines.”

Mr Ndlovu’s ceremonies have not been successful of late. Rain should be falling now, but Zimbabwe's skies are clear blue with puffs of white cloud rather than black with full-bellied stormclouds.

In Matabeleland, the province around Bulawayo, the rivers are dry beds of yellow dust and stone. The maize planted last autumn is brown and wilted.

Aid agencies say about four million people - a third of the population - will need food aid this year because of the drought. The poor harvest may be nature’s fault, but it is being turned to political advantage.

Last year President Robert Mugabe boasted of a bumper harvest and stopped aid agencies distributing food to rural areas. In an interview with Sky News, he said: “We are not hungry. Why foist this food on us? We don’t want to be choked.”

The move gave Zanu-PF complete control of food supplies in the countryside, through the grain marketing board. Shari Eppel, who belongs to a human rights group in Bulawayo called the Solidarity Peace Trust, said: “What we have heard is that the grain marketing board only sells food at Zanu-PF rallies. People who go to buy food are turned away and told, ‘You are MDC - you were seen at an MDC rally last week.’”

Mr Mugabe admitted for the first time last week that the country was seriously short of food. “The main problem we are facing is one of drought and the shortage of food,” he told a Zanu-PF rally. “We are going to work out a hunger alleviation programme ... I promise you that no one will starve.”

On Thursday state television service reported that the government was importing enough grain from South Africa to feed the country for 18 months - the latest evidence of the collapse of agriculture in Zimbabwe.

Mr Mugabe’s critics say the grain shortages highlight the country’s economic crisis. Policies such as the seizure of white-owned land - much of which is now idle - have proved disastrous.

According to the Commercial Farmers' Union, Zimbabwe grew only 850,000 tonnes of maize last year: not enough to feed its own people. In 1999, before the land seizures began, it grew 1.5m tonnes.

“The whole ‘food-as-a-weapon’ thing is backfiring,” Ms Eppel said. “Things are even getting to the point of the government not being able to feed its own supporters. Even Mugabe himself is finally admitting that we're short of food and saying [to his supporters], ‘Don't worry - we won't let you starve.’”

Opposition to Zanu-PF is deeply entrenched in Matabeleland. The province was the target of a brutal campaign of massacres and beatings between 1982 and 1984 aimed at wiping out support for a rival party, Zapu. Families that once supported Zapu have now transferred their allegiance to the MDC. Even faced with starvation, many villagers are refusing to back the government party.

“We have never knelt to Zanu here,” said a villager, Jesilea Sibanda, 69. “I for one have never done so. I would rather die.”

Another woman from the village, Asa Sibanda, 82, told the *Guardian* that she had been offered food in return for switching to Zanu-PF.

As she spoke her neighbour raised her hand with her palm open, to make the sign of the MDC. Then she clenched it into a fist, mimicking the salute of President Mugabe.

“They said there is no way they are going to give me food that belongs to Zanu-PF unless I repent by coming to join Zanu-PF and denouncing the MDC,” she said. “I was told that I should denounce the party with the symbol of the open hand and join the party with the symbol of the fist.”⁸⁹

Starve the voters: the human cost of Mugabe's election

Matabeleland

⁸⁹ *The Independent* 26 March 2005

Four million people are starving in Zimbabwe, a quarter of the population, and thousands of Robert Mugabe's political opponents are being turned away empty-handed from emergency food stations, *The Independent* can reveal.

Only five days before a crucial general election, the embattled president is deliberately starving opposition supporters in a desperate bid to prop up his discredited Zanu-PF Party. What little food is available is being ruthlessly used in a cynical food-for-votes policy to force people to vote for the pariah president.

One of Mr Mugabe's starving citizens, Million Ndlovu, had spent weeks longing for the arrival of a food shipment. His family had nothing but tea for breakfast and lunch and a meagre dish of boiled maize in the evenings. The 50kg of maize that he was due to receive from the government for which he had paid in advance would feed them for a few more months. But when he arrived at the distribution point he found Simon Maluma, the district chairman of Zanu-PF, sitting on top of the pile of grain. "Maluma told us the food would only go to Zanu supporters," recalled Mr Ndlovu, 62.

"Opposition supporters were told to move out of the queue instead of embarrassing themselves. I was hungry so I stayed, but they called my name and gave me my money back. I got given no food."

Mr Ndlovu's two sons were also denied food. All three of them got back the Z\$37,000 . . . they had paid, but in a country where inflation stands at 300 per cent the money will very soon be worthless.

This year, the rains failed and the rivers around Mr Ndlovu's home in Insiza, Matabeleland are dry; the grain stores empty. Last year, the UN's World Food Programme was told to stop feeding people in the area. Now, the only grain comes from the government-controlled Grain Marketing Board (GMB).

The Ndlovu family is already close to starvation. When vegetables fail to grow, they eat wild okra, a plant that is traditionally believed to sap men's strength. "I am accused of absenting myself from Zanu-PF rallies, but I have never attended any party rally," said Mr Ndlovu, dressed in a neatly pressed grey suit. "I am one of this community's elders, one of the rain-makers, but I don't ask for rains along political lines."

Shari Eppel, the director of the Zimbabwean human rights group Solidarity Peace Trust, said the Mugabe regime had a monopoly on food. “There is no maize in shops in rural areas so the GMB is the only source of food.” Ms Eppel said “In many places, the GMB only sell their grain at Zanu-PF rallies.”

Last year, Mr Mugabe stopped international food donations because he said the country had plenty of food. He told Sky News: “We are not hungry, why foist this food on us? We don’t want to be choked.” Mr Mugabe is determined to destroy the support base for the main opposition party, the MDC . . . and is using food as a weapon. Matabeleland, the heartland of MDC support, has felt the full weight of the policy.

“I am crippled, I am hungry, I have nothing,” said Jesilia Sibanda, 69, who used to be a traditional healer until her weak knees stopped her performing the necessary dances.

“All the food is in the hands of Zanu-PF, and I am an MDC supporter. The food is never given to MDC supporters.”

Mrs Sibanda has extra reason to be bitter. The local chief, Thomas Mpofo, who has so enthusiastically linked food distribution to party politics, is her own son-in-law. “Thomas stopped his own nephew and told him that his grandmother would die of hunger if she is determined to support the opposition,” Mrs Sibanda said.

Food has always been a crucial issue for the Mugabe regime. His controversial policy of seizing white-owned farms and handing them to his black supporters, is blamed for destroying the agricultural sector. His critics say the government failed to distribute seed and fertilisers to farmers in time for them to plant crops.

For the first time last week, Mr Mugabe was forced to admit there were food shortages. He responded with an empty promise that he would not let anyone starve. State television later announced the government had bought grain from South Africa to feed people for the next one-and-half years. . . .

Until now, Mr Mugabe’s food-for-votes policy has been accompanied by intimidation that stopped people speaking out. Asa Sibanda (no relation to Jesilia), aged 82, is well known locally for supporting the MDC, and has been routinely omitted from grain handouts. She had not eaten for days until neighbours gave her maize.

She is fed up. “Yes, you can use my name. And you can take my picture,” she says. “I have nothing left: what can they do to me now? It is better to die of hunger now than join Zanu-PF.”⁹⁰

Opposition supporters denied food in Insiza

Villagers in this rural constituency have denounced the government and the ruling Zanu PF for denying them food in order to force them to vote for the ruling party in next Thursday’s parliamentary election. The reports come in the wake of President Robert Mugabe’s assurances to Zimbabweans that no-one would starve. Government had all along claimed it had registered a bumper harvest last year but now admits that there is a serious food shortage. According to villagers interviewed during a visit by the Daily News Online to the constituency this week, Zanu PF district structures operating under the party’s candidate for the area, Andrew Langa, have given them two choices for their survival. They must either vote for Zanu PF and get food relief or support the opposition MDC and go without aid. Asked for a comment, Langa shouted at this reporter saying: “What has that got to do with news? If there is no food that’s our problem and not yours. Leave us alone!” He then switched off his cellphone.

Most of the villagers spoken to said they would rather die of hunger than back Zanu PF, a party they have never supported in their lives. Assa Sibanda (83) of Dzhulube Village in Insiza told *The Daily News Online* that her life was now in danger after Zanu PF officials in the constituency made it a condition that villagers would only buy maize meal brought by the Grain Marketing Board (GMB) if they supported Zanu PF. “I challenged our village head to explain to me if it was government policy to sideline people who supported other parties besides Zanu PF,” she said. “It was unfortunate for me because the same village head, Thomas Mpofu, is the Zanu PF district chairman for Insiza whose committee is making the rules for grain selling.” Mpofu, who is also Sibanda’s son-in-law after he married her eldest daughter, could not be reached for comment. This reporter visited his homestead and only found his

⁹⁰ *Independent* (UK) 26 March 2005

children who said he was out campaigning. A 50 kg bag of GMB maize grain was being sold for \$37 000. Villagers usually pay the money in advance to the village head, who in turn controls the selling when the maize grain is finally delivered. Known and suspected MDC supporters who join in the queues to receive their grain have been turned away after the Zanu PF officials accused them of not supporting the ruling party.

Jeslia Sibanda (69), a disabled villager from Simwango area, castigated the government for shutting out ORAP, a non-governmental organisation helping to feed rural communities. She said ORAP used to give elderly villagers free food but the organisation was stopped from doing so after the government accused the NGO community of undermining its authority and working together with the MDC to effect regime change. Other villagers said they have never supported Zanu PF in their entire life as they supported PF Zapu, then led by the late national hero Joshua Nkomo, during the liberation struggle. “After the emergence of the MDC, it was the only option because we have not benefited from any government programmes here,” Sibanda said. “What has become clear is that the government has deliberately starved Zimbabweans in order to gain votes.” Million Ndlovu (63) of Masiyepambili Ward in the constituency said Langa’s brother Vakatsha had been instrumental in the discrimination of MDC supporters in the selling of GMB maize. Ndlovu said last Saturday, at a business centre in Simwango village, Zanu PF officials with among them Langa’s brother, refunded several villagers accused of being MDC supporters their \$37 000 paid for the purchase of the grain.⁹¹

SUPPRESSION OF CIVIL SOCIETY

Since 2000 there has also been a systematic and determined campaign to intimidate trade unionists, journalists, civil and human rights activists and organisations, academics and the clergy. There are numerous well-documented cases of violent breaking up by the police of peaceful meetings and protests by civic organisations.

⁹¹ *The Daily News* Online Edition, 24 March 2005

Brutal suppression of civic protest action is continuing. For instance, on 18 February 2005 the police dispersed a protest by the Women of Zimbabwe Arise organisation. The women were protesting against plummeting standards of education, skyrocketing school fees and prices of school uniforms. Eleven protestors and a journalist covering the event were arrested. It was alleged that two of those arrested were severely beaten by the police.

As the human rights situation in Zimbabwe has worsened, local human rights organisations have played an ever more important role in the struggle to protect human rights. They have provided legal and medical assistance to victims, monitored the human rights situation, documented abuses and disseminated information about the widespread human rights violations that have been occurring. Of necessity, these organisations have been heavily dependent upon foreign finance to carry out their activities because the amount of financial support that they are able to raise locally is insufficient to cover their escalating costs. The Zimbabwean government portrays these human rights organisations as enemies of the State which are used by Western powers to bring about illegal regime change. The Non-Governmental Organisations Act, which is designed to suppress human rights organisations, has been steam-rolled through Parliament and awaits presidential assent before coming into force as an Act. Under the Act human rights organisations will be obliged to seek registration from a Council dominated by staunch ruling party supporters⁹², and will be prohibited from receiving any foreign funding. Human rights organisations that have been critical of government are likely to be refused registration and will be unable to continue to operate. In any event, as foreign funding of such organisations is banned, they will no longer have the financial means to carry out their work. The legislation also bars foreign NGOs from engaging in human rights work.

It is significant that the new NGO legislation was rushed through Parliament ahead of the March 2005 general election. The closing down of key human rights organisations

⁹² The Non-Governmental Organisations Council will consist of 11 public servants and six representatives of non-governmental organisations, all of whom will be appointed by the responsible Minister. See clause 3 of the Bill.

before this election would mean that violence perpetrated against members of the opposition is less likely to be reported, and persons injured by such violence are less likely to receive medical attention and legal assistance. . It also means that there will be fewer independent observers of the election processes.

SUPPRESSION OF THE NEWS MEDIA

The SADC Principles require that equal opportunity for all political parties to access the state media. The reason for this is that fair electoral competition requires that political parties should be able to communicate with the electorate in order to inform voters what their policies are and to persuade the voters to voter for them.

The electronic media, particularly radio broadcasting, provides a very powerful medium of communication because it allows penetration into remote rural areas and reaches large numbers of people, including those who are illiterate.

In Zimbabwe, despite the fact that the Supreme Court decided that the Zimbabwe Broadcasting Corporation's monopoly over electronic broadcasting was unconstitutional⁹³, the government still controls all radio and television broadcasting in Zimbabwe.⁹⁴

BIAS OF MEDIA AND LACK OF ACCESS TO IT BY OPPOSITION

The Zimbabwe Broadcasting Corporation (now Zimbabwe Broadcasting Holdings, a government-owned company) broadcasts an incessant stream of pro-ZANU and virulent anti-MDC propaganda. Leaders and officials from the ruling party are given

⁹³ *Capital Radio (Pvt) Ltd v Minister of Information* (1) 2000 (2) ZLR 243 (S)

⁹⁴ The Broadcasting Services Act [*Chapter 12:06*] was supposed to open up the open up broadcasting to broadcasters other than the government-controlled corporation, but since this Act was passed no licences have been granted to any other broadcasters.

huge amounts of airtime, but the MDC is denied access to put across its views and reply to attacks upon it. Not infrequently stories are deliberately fabricated to cast MDC in a bad light.

In September 2004 the Justice Minister announced that government had ordered the government-controlled broadcaster to allocate airtime to opposition political parties ahead of the election. However, almost immediately there was backtracking on this. The Information Minister said that government would not allow a disloyal political party, by which he meant the MDC, access to the government broadcaster. The Justice Minister then echoed these sentiments in Parliament. The Information Minister also added that if the MDC was not contesting the election it did not require such access, and that political parties contesting the elections would only need such access in the period immediately before the election. The government broadcaster claimed it was not covering the MDC because the party had pulled out of the 2005 election, and the MDC has said that the government broadcaster has continued to maintain a blackout on the party's activities. In late December 2004 it was reported that the Zimbabwe Broadcasting Holdings had recently refused to air advertisements of the MDC saying the party had not yet made a decision on its participation in next year's election. An MDC spokesperson said the adverts included campaign material and statements of policy. He said that management at ZBH told them their adverts were confrontational". He said the MDC would complain about this to the leaders of SADC as this action had violated the SADC Electoral Guidelines.⁹⁵ At the beginning of January 2005 the ZBC carried some brief footage in which two opposition politicians put forward some views on the forthcoming election. The main opposition party issued a statement saying that this once off coverage was not indicative of any general opening up of the airwaves to the opposition. Commenting upon this development the Permanent Secretary in the Department of Information and Publicity in the Office of the President and Cabinet, said that these politicians had been given this space only because they had made news on that day. He went on to say that it was premature for

⁹⁵ Independent (Zimbabwe) 23 December 2004.

political parties to start selling their policies on the airwaves. “We are still far away from that period,” he said.⁹⁶

A newspaper alleged on 23 January 2005 that Bulawayo that the Zimbabwe Broadcasting Holdings’ NewsNet had directed its reporters to give coverage radio and television coverage to all opposition political parties, except the MDC, because it has “not confirmed participation” in the March general elections.⁹⁷

The Media Monitoring Project reported that when ZANU (PF) launched its election campaign, it was broadcast for four hours and it was the main news for two days afterwards. When the MDC launched its election campaign, they got exactly one minute, 25 seconds airtime.⁹⁸

Finally in February 2005 passed regulations that were supposed to allow political parties access to radio and television.⁹⁹ Under these regulations the licensee is supposed to ensure that contesting political parties or candidates are given equal opportunities for the broadcasting of election matter. The licensee is also supposed to have an obligation to ensure that during the election period, news and current affairs programmes relating to an election are presented in a balanced, fair, complete and accurate manner. The licensee’s presenters or reporters associated with news and current affairs programmes must not present their own personal views on such programmes. ZBC has a shocking history of partisanship and it remains to be seen whether it will properly comply with these obligations.

The licensee is also supposed to allocate four hours of available purchasable time during an election period for election advertisement which must be distributed equally to interested contesting political parties and candidates and must take into

⁹⁶ *Daily Mirror* 5 January 2005.

⁹⁷ *The Standard* 23 January 2005.

⁹⁸ News24 (SA) 1 March 2005

⁹⁹ Broadcasting Services (Access to radio and television during an Election) Statutory Instrument 22 of 2005.

consideration the number of constituencies the party is contesting. However, the cost of such advertising is prohibitive¹⁰⁰, even though it is a slight reduction on normal charges. As the licensee must not broadcast any election programme that incites or perpetuates hatred against or vilifies any group or person on the basis of their political affiliation, it would be able to reject advertising material on this basis. There is also another artificial barrier as the licensee must give the Broadcasting Authority a broadcast schedule for election programmes and recording dates for all pre-recorded programmes for its station at least fifteen days before an election period. This would be impossible to fulfil as fifteen days before the election period would have been at the beginning of February.

It was reported in March that ZBC had allocated 91 minutes of airtime to the MDC, the same as ZANU (PF). The MDC could have used the airtime as from February 26 through adverts of not more than 60 seconds.¹⁰¹

The print press in Zimbabwe is mostly controlled by the government. The *Daily News* previously provided an outlet for information from the MDC, and was prepared to cover events organised by the MDC. However, in 2002 the government closed down this paper under the Access to Information and Protection of Privacy Act [*Chapter 10:27*]. Now, apart from the *Mirror*, which leans in favour of the ruling party, the only daily newspapers are government-controlled newspapers such as the *Herald* and the *Chronicle*. The main Sunday newspaper, the *Sunday Mail*, is also government controlled. Like the ZBC, these newspapers are propaganda mouthpieces for the ruling party. They too publish a constant stream of invective against the MDC.

¹⁰⁰ The cost for television advertising will be \$3,78 million per minute and \$1, 89 million for half a minute. On the prime radio station it will be \$1,4 million per minute and 700 000 for half a minute.

¹⁰¹ *The Herald* 8 March 2005

It has been reported that a serving army major, Major Anyway Mutambudzi, has been tasked to vet foreign journalists wishing to cover the election. Mutambudzi confirmed that he was handling accreditation of foreign journalists wanting to report on the parliamentary election.¹⁰²

OVERALL EFFECTS OF THESE FACTORS

To sum up: opposition parties in Zimbabwe, unlike the ruling party, face huge obstacles on the ground in mounting an election campaign.

The problems encountered by the main opposition party, the MDC, include the following:

- the ruling party rejects it totally as a legitimate opposition party and depicts it as a front for Western government plots to bring about the illegal downfall of the current government;
- an ongoing widespread campaign of violence and intimidation against MDC leaders, party officials and members by ZANU (PF) supporters, with war veterans, youth brigade members, members of the police, the army and the intelligence services and the chiefs all participating in this campaign;
- barring by the police of the MDC from holding many of its planned rallies and meetings of many rallies and meetings and violent disruption of meetings that are held by ZANU (PF) supporters;
- use of violence by ZANU (PF) to prevent the opposition from travelling around to electioneer in many of the rural areas;
- denial of access by the MDC to the public media and incessant anti-MDC propaganda in the public media and the only remaining daily newspaper.

¹⁰² Zimonline 11 March 2005

If there is to be a credible election in the upcoming elections and for the results to be accepted as a fair reflection of the wishes of the electorate, there will have to be a radical alteration of the mindset of the ruling party and of the conditions on the ground before, during and after the election. All political parties must be able to campaign freely throughout the country and the public media must be required to cover the election campaign fairly and impartially. Voters must be able to make free choices and must not be subjected to intimidation. Repressive laws that have been used to curtail basic democratic political freedoms must be repealed or amended. Above all there should be political tolerance, both by the ruling party and by opposition parties.

Key to a free and fair election in 2005 will be the taking of concerted steps to rein in the violence that has occurred in previous elections. For this to happen, those responsible for violence in the past must be warned that violence before, during and after the 2005 election will not be tolerated. The police must once again become a professional, non-partisan law enforcement agency that will enforce the law against anyone who uses violence and intimidation to influence the outcome of elections. It must be publicly announced in advance of the election that no one who has perpetrated acts of violence will receive amnesty for such acts. The youth brigade must be disbanded and their members warned against engaging in violent intimidation of opposition party supporters. The intelligence service must be prevented from taking illegal measures to undermine opposition parties. The army must remain a politically neutral force and must be expected to accept the result of the election, whether or not the ruling party is returned to power. The ruling party in particular must refrain from inflammatory statements that will incite their supporters to engage in violence against members of the opposition.¹⁰³

It must be pointed out that in a statement on 11 January 2005 the leader of the MDC observed that there had been some reduction in the levels of open violence against

¹⁰³ See the International Crisis Group's recommendations to the Zimbabwe Government contained in its report *Zimbabwe: Another Election Chance* International Crisis Group Africa Report No 86 30 November 2004.

MDC supporters, although some rogue elements continued to perpetrate acts of violence against the opposition. This reduction had resulted from statements from the ruling party exhorting their supporters not to engage in violence. He also observed that there appeared to be some positive change within the police force, particularly in “the force’s public stance towards public violence. However, he went on to point out that, on the other hand, a large number of youth brigade “hooligans” had been deployed around the country and continued to operate.¹⁰⁴ Subsequently the MDC Secretary-General, Professor Ncube, pointed out that:

At the moment, the violence against MDC activists is sporadic but when the election date is fixed, we expect it to become systematic - as it always does during the election period. Zanu-PF is holding primaries at the moment and so they are fighting each other but afterwards, they will turn on us.¹⁰⁵

Implicit in this is the view that although violence had decreased somewhat, there was no guarantee that violence would not increase again when the election was closer.

There are a few recent reports that indicate some attempt to rein in political violence directed at the opposition.¹⁰⁶

However, even if the violence that has beset past elections is eliminated or at least drastically curtailed ahead of the election, it will still not be easy to reassure opposition party supporters and voters that they will be safe to campaign freely and vote freely. They have been subjected to such intense persecution over a long period of time that it will take a lot to persuade them that peaceful conditions will continue to prevail. Voters are still likely to fear that if they vote for the opposition they will be

¹⁰⁴ Contained in the weekly statement from Mr Tsvangirai published on 11 January 2005.

¹⁰⁵ BBC 23 January 2005

¹⁰⁶ For instance, an acting Chief has been found guilty of public violence for of inciting some ZANU (PF) youths to commit public violence. He had incited them to evict a businessman from his shop because of his “undesirable” political affiliation. The youths went to shop and, failing to find the businessmen, beat up shop attendants and some customers. The youths have also been found guilty of the same crime. *Herald* 3 January 2005.

subjected to brutal reprisals after the elections or other reprisals such as the withholding of food aid. Unless they can be assured that this will not be the case, they will not vote freely.

The incessant harassment of the MDC since its formation has taken its toll. The violence against it, particularly in the rural areas, has undermined its organisational structures. Its party coffers have been drained as a result of having to pay hospital bills for the many of its members who have been injured by violence. Its finances have also been severely depleted as a result of having to pay expensive legal fees to secure the release of members who have been arrested by the police and to defend leaders and supporters prosecuted on what usually are spurious charges. The defence in the protracted treason trial of its President cost a huge amount of money. There are some in the ruling party who believe that it will not be necessary to use widespread violence ahead of the election campaign because the past persecution has irreparably weakened the MDC.

NEW ELECTORAL LAWS

In the past the electoral system in Zimbabwe has been operated in a way that greatly disadvantages the opposition and opens the way to rigging of elections. Elections have been conducted by the Registrar-General of Elections, who has been responsible for registering voters and maintaining voters' rolls, and the Election Directorate, a committee of public employees. There is also the Electoral Supervisory Commission, a body which is appointed under the Constitution to supervise the registration of voters and the conduct of elections.¹⁰⁷ Opposition political parties have complained over and over again that the Registrar-General's office and the Election Directorate have been blatantly biased in favour of the ruling party. For the 2002 presidential election a retired army brigadier headed the Directorate and it was reported that the Directorate also had on it two other military officers and an intelligence officer.¹⁰⁸ The Electoral Supervisory Commission, which is supposed to supervise elections and

¹⁰⁷ Section 61 of the Constitution.

¹⁰⁸ *The Guardian* 4 March 2002

the conduct of the Election Directorate, is composed of persons who are sympathetic to the ruling party and it has frequently been attacked for being biased in favour of the ruling party. It has also been seen as ineffectual in stopping violence and electoral malpractices because it is understaffed and under-funded. It has already complained that the amount allocated to it in the budget is far too little for it to be able to perform its duties properly.¹⁰⁹

Towards the end of 2004 the government introduced into Parliament two Bills which, when enacted, will make substantial changes to the electoral law, at least on paper. The first was the Zimbabwe Electoral Commission Bill¹¹⁰, which will establish a Commission to conduct elections, register voters and prepare voters' rolls; the Commission will also be responsible for voter education and accrediting election observers. The second Bill was the Electoral Bill¹¹¹, which will replace the existing Electoral Act and reform the procedures under which elections are conducted. Neither Bill will abolish the Electoral Supervisory Commission; indeed, the Commission's functions will be extended to cover the accrediting of election monitors and observers.¹¹²

At the time of writing both Bills had passed through Parliament and were awaiting presidential assent. Neither had come into force as an Act.

The key question is whether the changes that are being effected to the electoral laws by these Bills will ensure that the upcoming elections will be free and fair. The answer to this question depends on whether the changes to the law will result in improvement of the actual conditions on the ground before, during and after the election process.

¹⁰⁹ The ESC deputy chief elections officer (administration and finance) told Members of Parliament that although the Commission had made a bid for \$227 billion, it was only allocated \$59 billion. Herald 8 December 2004.

¹¹⁰ HB 18, 2004.

¹¹¹ HB 19, 2004.

A number of studies have been done on the two Bills.¹¹³ These studies identify considerable shortcomings in the Bills, although they also point out some positive features in them such as the abolition of mobile polling stations. During the passage of the Bills through Parliament some further positive changes were agreed to. For instance, an amendment to the Zimbabwe Electoral Commission Bill will provide that commissioners cannot be dismissed for misconduct except on the recommendation of a tribunal composed of legally qualified persons. This procedure is similar to that used for the removal of judges. Another positive amendment was that there be an multi-party liaison committee for resolving conflicts between political parties and thereby avoid political violence.

This paper will confine itself to identifying the most significant strengths and weaknesses of the new laws.

LACK OF CONSULTATION OVER NEW LAWS

One would have expected that if the government intended to introduce new electoral laws that would be generally accepted as conducive to free and fair elections, it would have engaged in broad consultation with all political parties and civic society and would have taken their views into account. Instead, the government produced the two Bills without consulting the MDC or any other of the opposition political parties.¹¹⁴ If there had been such consultation and if meaningful changes to the electoral laws had

¹¹² There is a conflict here between the Zimbabwe Electoral Commission Bill, which gives this function to the new Electoral Commission, and the Electoral Bill, which assigns the function to the Electoral Supervisory Commission.

¹¹³ See the commentaries on these two Bills produced by the Zimbabwe Electoral Support Network and the report of Human Rights Watch entitled *The Zimbabwe Electoral Commission Bill: Will it Improve the Electoral Process?* (November 2004)

¹¹⁴ The Parliamentary Portfolio Committee that scrutinised the proposed new laws did have public hearings on both the Electoral Commission Bill and the Electoral Bill to allow the public to give their views on the proposed legislation. But this was after the Bills had been introduced in Parliament. The Portfolio Committee's report on the Electoral Commission Bill was tabled and read out in Parliament but most of its recommendations were ignored. The Portfolio Committee's report on the Electoral Bill was not even tabled in Parliament.

been agreed upon, the opposition parties would probably have supported the reforms and agreed to necessary constitutional amendments. When the Bills came before Parliament, however, the MDC opposed various aspects of them, not because it had not been consulted, but because it strongly felt that the changes did not constitute real reforms that would facilitate free and fair elections.¹¹⁵

MANAGEMENT BODIES

Political parties contesting an election, and voters casting their votes in an election, must be assured that there will be professional and impartial management of the election process. The SADC Principles provide that there must be “impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel”.

Electoral Commission

A key body for ensuring that elections are free and fair is an independent electoral commission. The main tasks of such a commission are to ensure that elections are conducted efficiently and that the elections are free and fair. It must direct, supervise and control the conduct of elections and try to prevent electoral malpractices. It is expected to carry out these tasks efficiently and without political bias, treating all political parties equally and avoiding any appearance of favouring one political party over another. It is of crucial importance that the Commission should be composed of persons who are, and are perceived to be, fair and impartial, persons who will carry out their tasks in a professional, politically neutral fashion.

Confidence in the entire electoral system has been badly undermined over the last few years. An independent and effective electoral commission could help to restore some of the lost confidence. One organisation has observed that in the “heated and

¹¹⁵ The Parliamentary Legal Committee, which has a majority of MDC members, produced an adverse report on this legislation, finding that aspects of the proposed legislation violated the Bill of Rights. ZANU (PF) used its parliamentary majority to override this adverse report and the legislation was passed in the face of serious objections to it raised by the opposition.

politically polarised environment [in Zimbabwe], “an independent and impartial electoral commission could have great potential for building voter confidence in the conduct of the upcoming election.”¹¹⁶

The Electoral Commission established under the Electoral Commission Act is unlikely to meet satisfy these requirements. In any event, by the time the Commission starts operating there will be far too little time left before the March 2005 to allow the Commission to create the necessary conditions for free and fair elections to take place.

Firstly, the method of appointment of members of the Commission does not ensure that the Commission will be composed in a way that is in conformity with the SADC Principle that such a body must be impartial, inclusive, competent and accountable.¹¹⁷ The President appoints all five Commissioners. He appoints the chairperson after consultation with (not on the recommendation of) the Judicial Service Commission, a body which consists mainly of government appointees. During the Bill’s passage through Parliament an amendment was agreed which will require the President to report to Parliament expeditiously if he does not adopt the recommendation of the Judicial Service Commission as to the appointment of a chairperson. Although this amendment will provide some transparency, it leaves the President with virtually unfettered power to appoint whoever he wants as chairperson of the Commission. The other four Commissioners are appointed by the President from a list of nominees submitted by a parliamentary standing committee which is dominated by members of the ruling party. Since government appointees dominate the Judicial Service Commission and members of the ruling political party dominate the parliamentary standing committee, the President could pack the Commission with his supporters, as he did when he recently appointed members of the Delimitation Commission.¹¹⁸ However, when this Bill passed through Parliament a positive amendment was made

¹¹⁶ Human Rights Watch Briefing Paper *The Zimbabwe Electoral Commission Bill Will it improve the electoral process?* p 3.

¹¹⁷ Paragraph 7.3.

¹¹⁸ The President appointed as Chairperson of the Delimitation Commission a staunchly pro-ruling party judge. The other members appointed by the President are all known supporters of the ruling party.

to the provisions relating to composition to the effect that at least two of the four Commissioners appointed on the basis of nominations by the Parliamentary Committee must be women.

It would have been far better if the appointment process had provided for the involvement of the various sectors of society in the process. The Zimbabwe Electoral Support Network strongly argued that the method of appointing Commissioners should be altered in a manner that allows civic society to be involved and for there to be bipartisan political party approval of all the Commissioners.

In the original Bill there was no provision excluding officer bearers in political parties from becoming Commissioners (only Members of Parliament are ineligible.). In other countries, office bearers in political parties are excluded on the basis that they will be perceived as being politically biased. However, when the Zimbabwe Electoral Commission Bill was being debated in Parliament an amendment was adopted to the effect that no Commissioner may hold or seek appointment, election or nomination to any elective or political office.¹¹⁹ Elective office is defined as the office of the President, a Minister or Deputy Minister, a Member of Parliament or a member of the governing body of a local authority. Political office means any executive appointment or elected office, whether remunerated or not or any paid office in the service of a political party or of an organisation or movement which publicly supports or opposes the policies, candidates or cause of any political party. A Commissioner may also not perform any work for a political party or candidate in connection with an election, except in the exercise of his or her functions as a Commissioner.¹²⁰

Another problem is the confusion that is likely to arise by the retention of the Electoral Supervisory Commission alongside the new Electoral Commission. The two

¹¹⁹ Section 8(3) This provision also lays down that no full-time employee of the Commission may hold or seek such elective or political office.

¹²⁰ Section 8(1).

bodies have overlapping functions. For instance both bodies are supposed to supervise and control the registration of voters.¹²¹

As indicated above, the Electoral Supervisory Commission has been seen as consisting of persons sympathetic to the ruling party and as being ineffectual in ensuring that elections are conducted freely and fairly. It would be far better if the Electoral Supervisory Commission were to be disbanded and a new credible Electoral Commission be given the responsibility for managing and supervising the entire electoral process.

The Zimbabwe Electoral Commission Bill and the Electoral Bill only came into operation as Acts in mid-January 2005. The President only appointed the members of the Commission on 20 January 2005. The Chairperson is Justice Geoge Chiweshe. Chiweshe was appointed as a judge in early 2001. He fought in the liberation war and was also a former Judge Advocate General in the Zimbabwe Defence Forces. Justice Chiweshe recently headed the Delimitation Commission, which redrew some constituency boundaries in a manner that favoured the ruling party.

¹²¹ The Electoral Supervisory Commission's mandate in this regard is set out in s 61(3) of the Constitution and the mandate of the Electoral Commission is set out in s 4(1)(b) of the Zimbabwe Electoral Commission Act. The confusion caused by having two Commissions has been described in a recent newspaper article as follows:

“South Africa’s Independent Electoral Commission would be perplexed and perhaps even infuriated trying to discover who is supposed to run Zimbabwe’s next general election, expected in March. ... So what will the new Zimbabwe Election Commission do? Well, it is supposed to supervise the voters’ roll but that has already been done by the registrar-general. It has powers to design ballot papers and boxes, and conduct voter education. It only has 32 days left before nomination courts if elections are going to be held before the end of March, as expected, and it has neither offices nor staff. It can ‘supervise’ elections, but that role is already assigned to the Electoral Supervisory Commission. The new commission will have no powers over observers or monitors as they will be selected by the Electoral Supervisory Commission, and invitations to foreign observers will be made by a committee appointed by Mugabe and a small cabinet committee. Which of the commissions - if either - will prevail? In theory the original one - the Electoral Supervisory Commission - as it is protected by the constitution, but the constitution is regularly ignored. However, the Justice Minister Mr Chinamasa said on Thursday the old commission will ‘monitor’ the new one.” This was in the *Sunday Independent* (SA) 23 January 2005.

Judge Chiweshe is a firm supporter of the ruling party and since becoming a judge has handed down a number of judgments that leaned heavily in favour of the executive and failed to protect fundamental rights. The MDC secretary for information and publicity Paul Nyathi said his organisation “has serious reservations in respect of the impartiality and independence of the person appointed as the chairperson”. He said Justice Chiweshe, was “not known for the impartiality in the manner in which he has handled cases relating to MDC and its members”. He alleged that MDC members had been “falsely implicated” in an abduction and murder case by Chiweshe, adding that it hoped he would now “return to the ideals ... of fairness, impartiality and integrity”.¹²²

A number of the other four Commissioners have in the past been closely aligned to the ruling party.¹²³

¹²² *Mail and Guardian* (SA) 22 January 2005.

¹²³ The deputy chairperson is Mrs Kachingwe is the current chairperson of the Zimbabwe Charter of the Forum for African Women Educationalists and a member of the African Women Committee on Peace and Development. She was a member of the Constitutional Commission and a commissioner in the Presidential Commission of Inquiry into Education and Training in Zimbabwe. Mrs Kachingwe is a former Secretary of the then Ministry of Information, Posts and Telecommunications and held other posts in Government.

The three other members are Rev Siyachitema, Professor George Kahari and Mrs Vivian Ncube. Rev Siyachitema is a former Bishop of the Anglican Church, Harare Diocese, and was vice-chairperson of the Constitutional Commission. He is a former president of the Zimbabwe Council of Churches, which he represented at the Lancaster House talks in 1979, which brought about Zimbabwe’s independence. He is a former member of the UZ Executive Council and at present a board member of Zimbabwe Newspapers.

Mrs Ncube is a former chairperson of the National Association of Non-Governmental Organisations Western Region Women’s Forum, former chairperson of the National Section Committee Africa 2000, former director of the Agricultural Finance Corporation (now Agribank) and former vice secretary of the Zimbabwe Women’s Bureau.

Professor Kahari, is an academic and is a former Dean of the Faculty of Arts at the University of Zimbabwe and was also Head of the Department of African Languages and Literature at the UZ.

The Electoral Commission will have less than three months to perform its many duties. It will need to access funds, recruit and train staff, make preparations for polling, organise the necessary polling materials and ensure that they are distributed to the polling stations in time for polling, and try to ensure that unhindered and peaceful campaigning takes place.

Additionally a number of vitally important matters that the Commission was supposed to deal with will have already been completed. For instance, it is the duty of the Commission to ensure that the voter registration process is properly carried out. However, voter registration has already been completed and the new legislation does not empower the Commission to check that this process has been done fairly and that all eligible persons wishing to register have been given a reasonable opportunity to do so. The legislation should give the Commission this power. If, however, it decides that further time should be given for people to register then it might be necessary to postpone for a few months the holding of the March 2005 election.

Because of the short period of time that the Electoral Commission will have to do its job if the election goes ahead in March 2005, it is imperative that the Commission immediately be given adequate funds to operate effectively and that the Commission quickly move to recruit appropriate staff. The necessary funds to make the body effective were not forthcoming. It has thus been unable to conduct any sort of meaningful voter education programme.

Despite all of the constraints facing the Electoral Commission its Chairperson publicly stated in mid-March that ‘The commission shall do everything in its power to ensure that the forthcoming elections are conducted freely, fairly and efficiently and in a transparent manner.’ He said this after announcing that the electoral commission planned to set up over 8,200 polling stations - about double the number used in the last parliamentary elections. ‘We have created the capacity for voting in one day. We have doubled the number of polling stations,’ he said.¹²⁴

¹²⁴ Reuters, 11 March 2005

Overall it must be said that even if the Electoral Commission consisted of impartial Commissioners who were determined to do their best to ensure that free and fair elections are held, these Commissioners cannot wave a magic wand and transform the entire electoral environment in Zimbabwe. They will have to work through a Registrar-General of Voters who has displayed conspicuous bias in favour of the ruling party, although they will have the power to give instructions to the Registrar-General in regard to the exercise of his or her functions. They will not be able to repeal repressive laws that disallow ordinary democratic activity. They will not be able to repair the damage caused by violence and intimidation prior to the time they were appointed and will be little they will be able to do to put a stop to ongoing violence and intimidation. They will not be able to ensure that the police stop acting in a politically partisan fashion. They will not have the power to order Chiefs to desist from using their powers to intimidate voters into voting for the ruling party. They will not have the power to order those involved in the distribution of food aid not to use food aid to pressurise people into voting for the ruling party. They will not have the power to direct the public media to provide reasonable and fair access to political parties.

Staff of Commission

In terms of the Electoral Act the Commission can request the Commissions for the army, the police, the prisons and the public service to second personnel from these services to be constituency election officers and polling officers. The persons seconded are under the direction and control of the Electoral Commission.¹²⁵ The Electoral Commission could thus recruit army, police and prisons personnel or civil servants to run key electoral processes, such as organising polling stations and ballot verification.

As has been pointed out already, the ruling party has taken concerted steps to ensure that the army, police and prison services are composed of ruling party loyalists. The use of personnel from these services is likely to create the impression that these persons will carry out their electoral duties in a completely partisan fashion.

In an article in a weekly newspaper alleged that the military personnel were supervising the electoral process on behalf of ZANU (PF). This article reads as follows:

Three years after the widely-condemned presidential poll, military and intelligence officers, who as election agents helped President Mugabe to retain power, remain in charge. . .

Official sources said army and intelligence officers seconded by Mugabe to the Electoral Supervisory Commission (ESC) ahead of the presidential poll in 2002 were still supervising the electoral process on behalf of ZANU (PF)

Government recently appointed retired Brigadier Kennedy Zimondi chief elections officer, replacing Brigadier Douglas Nyikararamb, who was a key agent during the presidential poll.

. . . several military and intelligence officers are still in charge of [the ESC, a body] that civil society has criticised as a tool of the the president.

ESC commissioner Joyce Kazembe confirmed that there were military officers servicing in the election supervisory body but denied that Mugabe had appointed them. . .

Sources said seconded military officers were presently preoccupied with the conduct of the forthcoming legislative poll.

‘They are busy working on the forthcoming election from Hardwicke House’ (the Central Intelligence Organisation offices), the source said.

‘They have already finished scutinising the voters’ roll and are now doing intelligence appreciation of the situation before the election. . . .

The *Independent* heard that some of the military officers involved in the supervising of the electoral process were Major Sigidi from KG VI army headquarters and Major Kampira from the Presidential Guard.

¹²⁵ Section 17 read with s 4 of the Electoral Act.

‘These guys have been working on elections since before the presidential poll in 2002. They were part of a large military network assigned to the presidential election,’ the source said.¹²⁶

In mid March the MDC raised concern with the SADC that the military, known for its strong loyalty to President Robert Mugabe, will run the country’s upcoming election. The MDC complained that most of the returning officers had been recruited from the army and the police.¹²⁷

Registration of voters

The process of voter registration must be fairly carried out so that all eligible voters who wish to register are given a reasonable opportunity to do so. The SADC Protocol requires non-discrimination in voter registration.¹²⁸

Under the new laws the present Registrar-General, who is a staunch supporter of the ruling party, will continue to be in charge of the registration of voters, although the Electoral Commission is supposed to supervise the process. In the past the Registrar-General has been accused of grossly manipulating the registration process to maximise the number of ruling party supporters and minimise the number of opposition party supporters who are registered. He has also been accused of rigging election results in favour of the ruling party.

Sara Rich Dorman¹²⁹ describes how between 1985 and 2000 the election registration process became increasingly biased against the opposition. She says:

¹²⁶ *The Independent* (Zimbabwe) 4 March 2005

¹²⁷ Zimonline 18 March 2005.

¹²⁸ Paragraph 4.1.3. Similarly the Principles of the Electoral Commission Forum of SADC Countries provide that “the voter registration process should promote broad participation and should not inhibit the participation of eligible voters.”

¹²⁹ ‘*Make Sure They Count Nicely This Time*’ *The Politics of Election Observing in Zimbabwe 2005* available on the web. See also Jonathan Moyo, *Voting for Democracy: Electoral Politics in Zimbabwe*

Although a new, accurate registration was supposed to take place before the 1995 election, in practice, the electoral roll appears to have been equally defective. In urban areas, prospective voters queued for several days in attempts to register, and many reports emerged of deceased voters being registered, names misspelled, and other inaccuracies. There was also deliberate tampering with the roll. Margaret Dongo's court case challenging the results in Harare South revealed serious defects in the electoral roll, including the registration of many non-resident voters. Makumbe and Compagnon suggest that at least 41% of the names on the roll were inaccurate.¹³⁰ Irregularities led to the entire election being condemned as 'free but unfair' by internal monitors.¹³¹ Electoral rolls were particularly flawed in the contested municipal elections of 1996. Priscilla Misihairabwi, an NGO activist who sought to contest the urban council elections as an Independent Candidate, compiled such a convincing dossier of fraudulent voter registrations in Harare's Avenues district (including vacant lots with hundreds of registered voters) that ZANU (PF) sought to force her out — with the Registrar-General, Tobaiwa Mudede, declaring her candidacy invalid.¹³² Similarly, Fidelis Mhashu, the former ZANU (PF) municipal councilor who contested the Chitungwiza mayoral election as an independent candidate after failing to get selected as the official ZANU(PF) candidate, convinced the High Court that the Chitungwiza electoral roll — comprised only of home-owners, although most residents were renting accommodation — “was so defective that it cannot be said that the electoral process was itself not flawed.”¹³³

(Harare: University of Zimbabwe, 1992), 77-78, 149 and Laakso, “When elections are just a formality” 333, 334.

¹³⁰ Makumbe and Compagnon, “Behind the smokescreen” 69-70.

¹³¹ Maxie Matavaire, “Elections free, not fair” *Sunday Gazette*, 23 April 1995, Ramson Muzondo, “1995 elections unfair” *Sunday Gazette*, 13 August 1995, “Election was unfair: ZCC” *Herald*, 21 August 1995, and “State Press snaps at watchdog’s ‘unfair poll’ verdict.” *Horizon*, July 1995, 9.

¹³² Rich's research notes, Supreme Court of Zimbabwe 21 July 1997; Interview by Rich with Priscilla Misihairabwi, 18 June 1997; “Court rules Misihairabwi had right to contest poll” *Herald* 8 August 1997, 1, 17.

¹³³ *Fidelis George Mhashu v. Tichakunda Chiroodza & Chitungwiza Town Council & Andrew Jiri & ZANU (PF) & Minister of Local Government, Rural and Urban Development* High Court Judgement HH- 43- 97; Interview Fidelis Mhashu, 17 June 1997.

With both the 2000 and 2002 elections the MDC complained of blatant bias in the voter registration process and serious inaccuracies in the voters' roll.

By the time the Electoral Commission was appointed the voter registration process was already complete.¹³⁴

Already there have been numerous complaints about the registration process ahead of the 2005 elections. The MDC has pointed out that there has been a significant drop in the numbers of urban voters that will lead to a reduction in the number of urban constituencies.¹³⁵ The MDC alleges that the figures have been falsified to justify the reduction of urban constituencies. It also claims that the Registrar-General has excluded voters in urban centres that are strongholds of the opposition and inflated numbers of voters in rural areas where ZANU (PF) attracts its main support. It further maintains that there are still a large number of "ghost" voters still listed on the roll¹³⁶,

¹³⁴ Although previously the Registrar-General announced that the voter registration process had been completed and the voters' roll had been compiled, he later said that the process can only be finalised when the Delimitation Commission has set the new constituency boundaries. *Zimonline* 8 November 2004.

¹³⁵ The Central Statistical Office puts Zimbabwe's population officially at 11 631 657, broken down as 3,55 million and 2,39 million people of voting age in rural and urban areas respectively. The rural population comprises 65% of the total, according to the 2002 national census.

¹³⁶ In October 2004 the MDC accused the Registrar-General of engaging in scandalous manipulation of the electoral roll, saying almost 70,000 names had vanished from voting lists in Harare and Bulawayo. The MDC accused the Registrar General of excluding hundreds of thousands from opposition strongholds and massively boosting numbers in rural areas, traditional support base for ZANU (PF). Despite the Africa-wide trend of urbanisation, displayed in Zimbabwe's last census in 2002, the new roll shows that all constituencies in large cities and towns lost voters and rural ones gained.

Opposition party officials also said an analysis of the voters' roll has shown up to a million bogus voters. This, they allege, is an overstatement of up to 25% above the census of 2002. It was also alleged that many voters were registered in wrong constituencies or had wrong addresses. See *Daily Telegraph* 22 October 2004 and *Cape Argus* 22 October 2004.

although the Registrar-General has claimed that his office is taking steps to strike such voters off the roll.¹³⁷

An organisation called FreeZim claims to have conducted extensive research into the voters' roll and to have identified "chronic errors" on the roll that could render an accurate and democratic election in March impossible. In addition to the 800 000 names of dead people, another 900 000 people listed on the roll as eligible voters are not known or do not live at the addresses under which their names appear. It says that over two million of the 5.6 million names registered as voters are suspect - it and the roll is overstated by unrealistic proportions that cannot be ignored. The group has submitted its report to the newly appointed Zimbabwe Electoral Commission.¹³⁸

The MDC carried out an audit of the voters' roll in a number of constituencies in Bulawayo. (The police had arrested members of the audit team and the MDC had to obtain a court order to prevent the police from interfering with this process.) The audit unearthed hundreds of ghost voters, with some entered more than once. It also contained other inaccuracies such as incomplete addresses.¹³⁹

The Commission has not been given any explicit power to check to see that the process has been properly carried out and order the rectification of anomalies and, if necessary, the re-opening of registration. In order for the Commission to be able to carry out its mandate to supervise the registration of voters it must be given the powers to carry out an audit of the register of voters to satisfy itself that the register is reasonably accurate and that voters who were eligible to register have not been unfairly prevented from registering.

In late March a newspaper claimed that registration of voters was still taking place. The article reads as follows:

The Registrar-General's office is still registering voters more than a month after the closure of the current registration exercise, the *Zimbabwe*

¹³⁷ *Herald* 21 September 2004.

¹³⁸ Zimonline 4 February 2005

¹³⁹ *Independent (Zimbabwe)* 24 February 2005

Independent can reveal. The registration exercise is in full swing in some areas, especially in Norton where people are being bussed in from informal settlements such as Tongogara, just outside Harare along the Bulawayo Road. Contacted for comment yesterday, Registrar-General Tobaiwa Mudede said voter registration was a continuous exercise. He said the people being registered would not vote next week since registration closed on February 4. “Those who registered after that date will not be entitled to vote as their names will not appear on the voters roll for the March 31 parliamentary general election,” he said. There are claims that Zanu PF supporters are being given confirmation letters by either party candidate Patrick Zhuwawo or by Local Government minister Ignatius Chombo which they take to the Chegutu district office, or sub-office in Norton, for registration. Neither Zhuwawo nor Chombo could be reached for comment. A copy of a Certificate of Registration as a voter in the possession of the Zimbabwe Independent shows that a person (name provided) registered on March 17 has a certificate written “Closing date was 4/2/05”. Harare Central independent candidate Margaret Dongo claims the people being registered will be included on the supplementary voters roll which is yet to be made public. Dongo alleges the Registrar-General deliberately delayed issuing the supplementary roll to accommodate these new voters. “The idea of delaying the supplementary roll is to accommodate these new entrants. They will use the supplementary voters roll for rigging. It’s disappointing,” said Dongo.¹⁴⁰

Access to voters roll

The SADC Protocol requires that the electoral roll must be accessible.¹⁴¹ The Principles of the Electoral Commissions Forum provides that political parties should have access to the voters’ roll, without charge.

¹⁴⁰ [The Zimbabwe Independent, 24 March 2005](#)

¹⁴¹ Paragraph 4.1.4.

The reason why political parties and interested individuals and organisations should have access to the voters' roll is so that the accuracy of the roll can be checked before the election and corrections can be made, including names of voters wrongly omitted and excising names of non-existent or deceased persons.

In the past opposition parties have complained that the Registrar-General has often refused to allow them proper access to voters' rolls ahead of election, forcing them to bring litigation to try to obtain such access. In a much-criticised judgment the Supreme Court has ruled that political parties are not entitled under the current law to copies of the roll in electronic form and yet the process of checking of the accuracy of the roll is very much enhanced and expedited by having the roll in this format.¹⁴² For those with access to computers, making the voters' roll available in electronic form is also probably the most cost effective method of distribution.

Since the voters' roll was laid open for inspection ahead of the 2005 elections there have been numerous complaints from the MDC about the enormous difficulties they have encountered in obtaining access to the voters' rolls. One Harare based MDC Member of Parliament complained that it had taken her eight days to get a copy of the roll for her constituency. Two Bulawayo based Members of Parliament asked an Harare based MDC Member of Parliament to collect the rolls for their constituencies, but the Registrar-General's office said that the Bulawayo MPs had to come personally to Harare to collect their rolls. The rolls are only available in print out form and they cost 12 000 rand each. The voters' roll exists on two CDs but the Registrar-General e won't let opposition parties have copies of the roll in electronic format.

In order to comply with the SADC Forum the voters' roll must be made available to political parties and interested parties in sufficient time in advance of the elections for reasonable checking to take place and for necessary corrections to take place.

¹⁴² *Tsvangirai & Ors v The Registrar-General of Elections* S-93-02 (Not yet reported.) See the trenchant criticism of this judgment by Judge Friedmann in his report as an Independent Observer to the Forum of Barristers and Advocates of the International Bar Association, 15 January 2003.

The price to secure a copy of the voters' roll has been increased to \$5 million from the previous \$200 000, a 2 500 percent increase. while acquiring the national voters' roll would cost \$600.¹⁴³

Cost of standing for Parliament

The fee for registration of candidates for election has gone up by about 2 000 per cent. Opposition candidates have accused the ruling party of bringing in exorbitant fees to financially cripple opponents operating on shoestring budgets.

The registration fee for parliamentary nominees has gone up from \$ 100 000 to \$ 2 million per candidate. Parties intending to contest all the 120 parliamentary seats would have to fork out \$240 million for their candidates.¹⁴⁴

ELECTION MONITORING AND OBSERVATION

Independent assessment of the freeness and fairness of an election helps to enhance the legitimacy of the process. Where an independent and professional assessment by observers decides that the elections are free and fair, disputes over the results are far less likely to occur. Where elections are not properly observed and monitored, it is very much more likely that the results will be disputed and this can result in violence and instability.

It is necessary, however, that observers be present for more than just for a few days before the election and on the polling day(s). To make any meaningful judgment about the freeness and fairness of elections observers should be present to observe the various processes leading up to the election and should also observe what happens in the aftermath of the election. SADC observer missions must be deployed at least two weeks before the voting day. Given the problems that have beset the electoral process in Zimbabwe in the past, it is submitted that independent observers should be deployed at least two months in advance of the March 2005 elections so that they can

¹⁴³ *Financial Gazette* 10 February 2005

¹⁴⁴ *Financial Gazette* 10 February 2005

observe the preparations for the election and assess whether the political contestants have been able to campaign freely.

The way to ensure that government will not be able to appoint as observers only persons that it believes will be biased in its favour is to compose the selection and accreditation bodies with a reasonable mixture of government representatives and representatives of civic society.

Regrettably the new electoral laws in Zimbabwe will not ensure that there will be independent observation and monitoring of the upcoming election but will instead allow for the appointment of persons who are likely to be biased in favour of the ruling party. This impression is fortified by President Mugabe's insistence that only invited observers will be allowed to observe the elections.

The new laws give the ruling party complete control over who is appointed as observers. The Electoral Act provides that observers have to be accredited by a committee dominated by nominees of various government Ministers, including the President's Office, and only persons invited by a Minister or by the Electoral Supervisory Commission (not the Electoral Commission) will be eligible for accreditation. This will mean that the ruling party will be able to control who is invited to observe the elections and it will probably try to invite only persons who are likely to rubber stamp the March 2005 election as being free and fair.

The President and other ruling party Ministers have repeatedly publicly stated that they will not permit Western countries to observe the elections. This means that European Union and American observer groups will not be allowed in. Also as Zimbabwe has pulled out of the Commonwealth after it was suspended because it had failed to hold free and fair elections, it will obviously not permit observation by Commonwealth observers. The Government also said it will prohibit African observers from monitoring national parliamentary elections next year if they have close links with Western countries.¹⁴⁵

¹⁴⁵ On 22 October 2004 in an article entitled "Pro-Western African observers to be barred" an Associated Press journalist reported that the Zimbabwe's government will prohibit African observers from monitoring national parliamentary elections next year if they have close links with Western

In mid-February the Zimbabwean Foreign Ministry announced the countries, political parties and organizations that would be invited to observe the elections. The list includes the countries and organizations that are likely to be predisposed to give the elections a clean bill of health and excludes countries and organizations likely to find fault with elections. Of the 32 invited countries, 23 are from Africa, five from Asia, three from the Americas and Russia. Those invited include such friendly states as , Tanzania, Namibia, China, Iran, Venezuela and Russia The African Union (AU), the SADC, the Common Market for Eastern and Southern Africa (COMESA), the Non-Aligned Movement and the United Nations are among the regional and international organisations to which invitations have been extended. South Africa's African National Congress (ANC), Tanzania's Chama Chama Pinduzi and Mozambique's Frelimo are some of the liberation movements coming to witness the closely watched polls. The Ministry did say that foreign diplomats based in Harare wishing to observe the polls will "be accredited upon request" by the foreign ministry. No invitations have been extended to European Union countries or to the United States to electoral organizations based in these countries. The formal invitation to SADC to observe the election was only extended at the end of February 2005. The Zimbabwean government has refused to invite the SADC Parliamentary Forum to observe the election.¹⁴⁶ This Parliamentary Forum has observed other elections in the SADC region. It observed the Zimbabwean presidential elections in 2002 and reported that this election was not free and fair. The Zimbabwean government denies that it has

countries. Foreign Minister Stan Mudenge told state radio on Friday that Zimbabwe has collected evidence of "manoeuvres" by some countries and foreign organizations to include their Western allies in African monitoring groups. He said African diplomats or monitors found cooperating with foreign governments will be barred from election observer groups.

Zimbabwe's ambassador to South Africa also told journalists that the government would allow in only "invited observers" to oversee the elections. He said he expected electoral authorities to invite observers from neighbouring South Africa, the regional Southern African Development Community, the African Union, the Non-Aligned Movement, and "certain individual countries". (Report by Zimonline 4 November 2004)

¹⁴⁶ The Parliamentary Forum wrote a letter to President Mugabe expressing outrage over its exclusion. It pointed out that it had always monitored elections in SADC Countries. Business Day 2 March 2005.

refused to invite the Forum because of its negative report on the 2002 election. However, it has alleged that this body is biased because receives funding from Western governments. South Africa's trade union movement, the Congress of South African Trade Unions, Cosatu, has been refused permission to send a mission.

The Zimbabwe Lawyers for Human Rights, ZLHR, said the cherry-picking process will have a serious impact on the credibility of the ballot result. ZLHR executive director Arnold Tsunga said, "There is no diversity in the kind of observer teams invited by the government. The election will consequently lose all credibility because the observer missions are not truly representative of the international community as a whole." He also said, "There are serious legitimacy and credibility issues surrounding the upcoming elections. If the government really believed free and fair elections were about to be held, then it would have freely welcomed anyone interested to observe them. By barring so many observer teams, the government has shown that it has something to hide. The world will have no confidence in the observers that have been selected."¹⁴⁷

"They [Mugabe and ZANU PF] have left out everybody who gave them a negative report," said John Makumbe, lecturer in political science at the University of Zimbabwe. "In essence it says the regime has something to hide, that it can't stand close scrutiny." Thus no observer teams have been allowed from the SADC Parliamentary Forum, United States, the Commonwealth, Australia, Japan, the European Union, Britain and other European countries who were critical of Zimbabwe's last parliamentary election in 2000 and the subsequent 2002 presidential election. The Atlanta-based Carter Centre, one of the world's leading election monitoring organisations, which has observed elections on every continent, was told it was unwelcome when its monitors began arriving in Harare. "Zimbabwe is a disgrace," said former United States President Jimmy Carter, chairman of the centre. "Mugabe declared that the Carter Centre is a terrorist organisation and asked us to leave."¹⁴⁸

¹⁴⁷ "The Right Sort of Observers" Institute of Peace and War 25 March 2005

¹⁴⁸ "The Right Sort of Observers" Institute of Peace and War 25 March 2005

Invitations to SADC to observe the election were only extended at the end of February 2005. The SADC observer mission was supposed to be deployed in Zimbabwe from 15 March 2005. South Africa has also send a 20-member parliamentary observer mission, a national delegation led by the labour minister, and a group of African National Congress observers.

In early March 2005 the South African President virtually endorsed in advance Zimbabwe's poll as free and fair, Mbeki told reporters that he could see no reason to think that "anybody in Zimbabwe will act in a way that will militate against elections being free and fair." Previously Mbeki's deputy Jacob Zuma had told the South African Parliament that he could not understand why some opposition parties were predicting that there would be problems when Zimbabweans go to the polls on March 31. "I really don't know why we think there are going to be such problems in Zimbabwe," said Zuma.¹⁴⁹

Thirty minutes after arriving in Zimbabwe Mr Membathisi Mdladlana, who is the South African Labour Minister and who is leading the official South African observer mission, said that everything was "calm and smooth" and that the ballot would be conducted properly. Mdladlana said also that many people had drawn the conclusion that elections in Zimbabwe would not be free and fair. "Those people are a problem and a nuisance," he said. "But nobody attacks them. Some of us are fed up with their lies."

Welshman Ncube, secretary general of the MDC, accused Mbeki and Mdladlana of adopting a partisan stance that is "an affront to the ideals that guided liberation struggles across Africa". Ncube continued, "The South Africans have let us down. History will judge them very harshly indeed. They are trying to sanitise the illegitimate regime of Robert Mugabe and ZANU PF. The South African government continues to go out of its way to act as the servant of ZANU PF repression against the people of Zimbabwe's struggle for democracy and freedom." As a result of Mdladlana's remarks on his arrival in Zimbabwe, the MDC declined to talk to or cooperate with the South African observer team.

¹⁴⁹ Zimonline 3 March 2005

The Electoral Act provides that election monitors will be public servants appointed and deployed by the Electoral Supervisory Commission. Monitors will be deployed to at every polling station and have greater powers than observers. ZANU (PF) has tried hard to politicise the public service by forcing out people thought to be MDC supporters and saying that civil servants should support the ruling party.¹⁵⁰ Many people have the perception that public servants will carry out their duties in a politically biased manner. It would be far better if monitors were to be suitable persons drawn from civil society groups. These monitors would be trained in their duties and a code of conduct would be drawn up to govern their behaviour.

CURTAILMENT OF POSTAL VOTING

Very large numbers of Zimbabwean citizens are living outside Zimbabwe presently. Some estimates put the total figure as over three million. Some have fled political violence and others have left because of the extremely harsh economic conditions. The largest concentrations of Zimbabweans outside their country are in South Africa and England. There are a significant number of persons in countries like South Africa who are illegal refugees. Faced with serious foreign exchange shortages, the Reserve Bank has enticed Zimbabweans working abroad to send foreign currency back to Zimbabwe to be exchanged at the official rate.

The new electoral provisions restrict postal voting to those away from their constituencies because they are away on military and diplomatic duties or because they are involved in the conduct of the elections.

The Zimbabwean Government has justified disallowing postal votes to persons outside the country by saying that a number of countries such as England and the USA don't allow postal voting. There are, however, other countries that do allow postal voting. For instance in the recent Mozambique elections Mozambicans living

¹⁵⁰ In 2001 speaking at a teachers college Minister Mudenge said that that teachers would lose their jobs if they supported opposition parties. He went on to say: "As civil servants, you have to be loyal to the government of the day. You can even be killed for supporting the opposition and no one would guarantee your safety."

who were registered to vote were able to vote at polling stations at the Mocambique embassy in Harare and at a polling station in Mutare.¹⁵¹ It should also be noted that in the first election following the end of apartheid in South Africa, the many South Africans who had been forced into exile and had not yet been able to return home were allowed to vote by post.

There are extremely strong reasons why externally based Zimbabweans should be entitled to vote by post in the March 2005 election. The object of this election should be to have an inclusive election in which all Zimbabweans, including those forced to leave temporarily, should express their electoral views. Many externally based Zimbabweans would return home if political stability is restored and they should have a right to help chart the political future of Zimbabwe by casting their votes in the crucial upcoming election.

The organisation of postal voting for such a large number of externally based will not be easy, however and if a system of postal voting is established, there must be stringent safeguards against fraudulent manipulation of this system. International organisations such as the United Nations could be enlisted to help with the setting up and management of such a postal voting system. Voters in countries such as South Africa and England could be allowed to register and cast their votes at Zimbabwean embassies in those countries, but monitors and observers should be deployed to ensure that this system is not abused.

It must be noted, however, that Zimbabweans who are illegal immigrants in other countries are unlikely to come forward to exercise this right, as they will fear that the authorities in those countries will then be able to apprehend them and deport them.

In March 2004 a case was brought in the Supreme Court challenging the constitutionality of the exclusion from voting of Zimbabweans living abroad. The Supreme Court handed down its judgment orally, saying that full written reasons

¹⁵¹ Agencia de Informacao de Mocambique (Maputo) 4 December 2004

would follow later. It decided that the denial of postal voting to Zimbabweans in the diaspora was not unconstitutional.¹⁵²

There has been controversy over the way in which soldiers have been voting. This is what was reported by one newspaper:

The crucial March 31 general election has plunged into fresh controversy that could undermine its credibility as it emerged this week that uniformed forces, seen as sympathetic to the ruling Zanu PF, have already cast their ballots. Although the Electoral Act allows members of the disciplined forces and electoral officers to vote ahead of time due to their likely absence from their constituencies on election day, opposition groups are unsettled by what they consider a surreptitious exercise that could affect their chances in the election. Revelations that the uniformed forces had cast their votes ahead of the month-end elections have created a political storm among opposition parties, particularly the main Movement for Democratic Change (MDC), which yesterday said it was oblivious of the fact that members of the uniformed forces had already voted.

As provided by the governing Act under Section 75(1c), those voting by post only do so in the presence of a “competent witness”. “No other person except the competent witness shall be present and the voter shall not allow the competent witness to see how he or she has voted,” reads part of the Act. However, the constituency election officers are obliged to seal and open the postal ballot boxes in the presence of candidates or their designated agents. Zimbabwe’s uniformed forces comprise the Zimbabwe National Army, the Zimbabwe Prison Services and the Zimbabwe Republic Police, bodies which also constitute the bulk of the civil service. Justice George Chiweshe, chairman of the Zimbabwe Electoral Commission (ZEC), confirmed yesterday that the ballots were sealed on March 18, exactly 13 days before the crunch polls that would be fiercely fought between Zanu PF and the MDC. “The postal ballot has already been concluded and the votes are being sent to their various constituencies and this is being done in the presence of representatives from all parties,” said the ZEC boss without disclosing the number of people who voted.

¹⁵² This judgment was handed down quickly unlike in the case brought in 2002. Just before the Presidential election in 2002 the MDC brought a case challenging the constitutionality of a series of drastic amendments made by the President to the electoral laws. The Supreme Court only handed down judgment in this case one month after the election.

Justice Chiweshe said the printing of the postal ballots was done well before the printing of the rest of the ballot papers, which was scheduled to end yesterday.

MDC spokesman Paul Themba Nyathi yesterday claimed the five-year-old opposition party had not been invited to monitor the postal ballot voting procedures. He said: “We were told that they are voting by postal ballot but there are certain procedures which they have to follow. Each ballot paper has to be accompanied by an application from each individual voter. How did they conduct the vote when the ballots had not even been printed? There is a high possibility that the secrecy of the vote has been compromised and we are closely following that. If there are any anomalies, then we want that vote discounted. The electoral process should be done in a transparent manner. It is a naked lie that we are involved in the processing of the postal ballot,” the MDC national spokesman charged. During the disputed 2002 presidential elections won by President Robert Mugabe, complaints were raised that the postal ballot had been conducted in the presence of senior officers. It was alleged uniformed officers were ordered to vote at their stations under the supervision of their seniors, charges which have since been denied by the government.

Analysts were concerned yesterday that the postal vote had been concluded ahead of the training of presiding officers slated for March 26. Training for polling officers would be done a day after, while electoral officers would go through the process on March 28. The opposition has also raised an outcry over the neutrality of the uniformed forces, whose senior officials have openly stated they would never “recognise an MDC-led government”. Vava Chipfunde, the national director of the Zimbabwe Election Support Network told *The Financial Gazette* yesterday that it was in the interest of contesting parties to know the number of people who voted in the exercise and in which constituencies. “This is very important for integrity and confidence. If the whole system is open, then there is no room for suspicion,” said Chipfunde. Otto Saki, a human rights lawyer, said voting by the uniformed forces is supposed to be conducted in the presence of election observers, monitors, civic organisations and contesting political parties. In theory ballots are supposed to be sent to their constituencies but it is difficult to ascertain whether the ballots would be allocated to the respective constituencies if the situation is not closely monitored by observers and all interested parties, Saki said. “The problem is that since the 2000 general elections and the 2002 presidential elections, voting by uniformed forces has

always been done clandestinely — there has never been an attempt to make it known which is why there is always a lingering suspicion,” Saki said.¹⁵³

ELECTORAL COURT

Under the Electoral Act judges have been appointed to head the new Electoral Court. These judges, however, have not been given any additional facilities to carry out this work and they have to perform the work in the Electoral Court in addition to their normal High Court work.

The first decision of the Electoral Court was in favour of the MDC. The Nomination Court had ruled that the jailed MDC parliamentarian Mr Roy Bennet was ineligible to stand as a parliamentary candidate in the 31 March election. An Electoral Court judge, Mr Justice Uchena set aside this ruling and instead ruled that Bennett was eligible to stand as a candidate. President Mugabe lambasted this ruling, calling it madness and ordered his ZANU (PF) party to ignore the court ruling.¹⁵⁴ Various lawyers groups condemned Mugabe’s statement as an attempt to undermine the independence of this newly established court.¹⁵⁵

The Electoral Commission is appealing against this decision. It is highly inappropriate for the Electoral Commission to be bringing this appeal. It is supposed to be a politically impartial body and by aligning itself with an appeal that the ruling party wished to be brought it is creating the impression that it is the ruling party’s agent.

¹⁵³ *The Financial Gazette* 24 March 2005

¹⁵⁴ *Daily Mirror* 23 March 2005

¹⁵⁵ “Mugabe undermining Electoral Court”, say lawyers *Zimonline* 18 March 2005

DELIMITATION OF CONSTITUENCIES

A separate Delimitation Commission sets constituency boundaries. The President appoints members of this Commission. Such a Commission was appointed to set the constituency boundaries for the 2005 elections. The President appointed as Chairperson of the Delimitation Commission a staunchly pro-ruling party judge. All the other members of the Delimitation Commission are known supporters of the ruling party.

The MDC, which has its strongest support in urban centres, believed that this politically biased Commission was likely to set electoral boundaries in a way that will favour the ruling party. It believed that the urban constituencies abutting rural constituencies would be merged with rural constituencies and that ZANU (PF) supporters will be moved into these areas under the guise of the resettlement programme.

The fears of the MDC turned out to be well founded. In its report presented towards the end of December 2004, the Delimitation Commission increased constituencies in strongholds of the ruling ZANU (PF) party and reduced the number in areas where the opposition enjoys more support. The areas of Manicaland, Mashonaland East and Mashonaland West, where ZANU (PF) enjoys popular support, gained three constituencies. Harare and Matabeleland South provinces, opposition Movement for Democratic Change (MDC) strongholds, lost two constituencies.¹⁵⁶ The MDC has alleged that these changes to constituencies is evidence of ongoing rigging of the elections. In its report the Commission justifies these changes on the basis of a movement of population from urban to rural areas as a result of the land resettlement programme. However, the MDC spokesperson, Mr Nyathi has responded to this as follows: “It beats all logic that Harare, a city whose population has increased by 500

¹⁵⁶ *Reuters* 20 December 2004 and *Herald* 21 December 2004.

000 people according to census figures that were released this year, is supposed to have lost 50 000 voters,” Nyathi observed in his statement.¹⁵⁷

The MDC has accused the Registrar General of voters of manipulating the voters’ roll to influence the Delimitation Commission to reduce constituencies in provinces where ZANU (PF) has less support. It cited the inclusion of more than 13 000 voters in Uzumba-Maramba-Pfungwe constituency and understating those in Bulawayo South notwithstanding the phenomenal growth in population sizes in the working-class suburbs of Umganwini and Nketa. A constituency each was cleaved from Bulawayo, Harare and Matabeleland South provinces where the opposition MDC drew most of its support in the last election, while rural Mashonaland East, Mashonaland West and Manicaland which form the bulwark of the ruling party support, save for Chipinge South, gained a constituency each. Figures released by the Zimbabwe Election Support Network this week reveal that although Harare registered 33 000 more voters for this year's election than in 2000, the number of constituencies decreased from 19 to 18 while Mashonaland Central whose figures shot up by more than 71 000 voters did not gain an additional constituency. “It defies logic and runs contrary to government documented statistics that a third of the population would drift from urban to rural areas when it is evident the opposite is true,” the party said Manicaland on the other hand registered a marginal increase of 10 366 registered voters but the province gained one more constituency in sharp contrast to Mashonaland East which gained 93 898 more voters -- a twofold increase compared to the average constituency average - gained a single constituency too. The average for each of the 120 constituencies is 48 000 voters for this year while in 2000 the average per constituency was 42 000. Mashonaland Central also has the highest average voter per constituency at 49 000 in comparison to Masvingo’s average of 32 000. However, there are more than 79 000 additional voters registered for this month’s poll in Masvingo than did five years ago. An analysis of the registered voter figures reveals that additional constituencies were created in provinces where the rural vote tipped the 2000 election in favour of ZANU (PF). Provinces such as Mashonaland Central

¹⁵⁷ See “New constituencies clear evidence Mugabe already rigging election: MDC” Zimonline 22 December 2004.

where ZANU (PF) is assured of emphatic victories have been left untouched despite recording steep increases in the number of registered voters.¹⁵⁸

Zimbabwean opposition parties and civic groups have called for an independent review of the voters' roll and have warned that unless this is done the credibility of the March general elections could be called into question.¹⁵⁹

¹⁵⁸ *The Independent* (Zimbabwe) 11 March 2005

¹⁵⁹ IRIN 17 January 2005. In this article the following was also said: - The voters' roll was opened for inspection on Monday until 30 January. Zimbabwe has 5,658,637 eligible voters, according to the registrar-general's office. In an interview with IRIN, Lovemore Madhuku, chairman of the pro-democracy NGO, National Constitutional Assembly, contended that the roll would be no different from the one used in the 2002 presidential elections, which were condemned as flawed by most western observers. "The roll is in shambles: over the years the registrar-general's office has added more names but not totally reformed the roll ... We have had cases of deceased people appearing on the roll; people being registered in the wrong constituencies; or others simply failing to find their names" said Madhuku.

Registrar-General Tobaiwa Mudede announced that his department would prepare the roll according to the new constituency boundaries drawn up by the Delimitation Commission.

However, Madhuku alleged that it was impossible for the authorities to compile an accurate roll in time because of the lack of resources and in the absence of an independent electoral body, the authorities could manipulate the voting process.

"We could have hoped for a credible roll if the proposed Zimbabwe Electoral Commission (ZEC) had been appointed ... Even if the ZEC were to be appointed, I don't think there would be any changes, since its head will be a presidential, and therefore partial, appointee," said Madhuku.

Mudede has defended his department, saying: "Those questioning the accuracy of the roll are free to go and inspect it, with the rest of the country, during the inspection period." He added that, "The [registrar-general's] office has a mandate to conduct elections, and will do so until such a time that the new electoral commission is appointed. I cannot comment on statements alleging irregularities, because we have not gone through the inspection process as yet."

GENERAL OBSERVATIONS ON CHANGES TO ELECTORAL LAWS

The Zimbabwean government assertion that these new electoral laws represent full implementation of the SADC principles is not borne out by a critical appraisal of these laws. The changes that have been made to the electoral laws are unsatisfactory and do not meet the SADC standards and these new laws will not prevent the continued manipulation of the electoral processes in favour of the ruling party.

Part of the problem about these laws stems from the lack of consultation with opposition political parties when these laws were being produced and from the ignoring of views expressed by civil society about key reform areas of reform. This has led to a perception that the ruling party had no intention of producing genuine reforms that would be broadly acceptable but only wanted to make token changes to give the appearance that it was complying with the SADC principles. It is not true, as the government media have been reporting, that ZANU (PF) and the MDC reached consensus on these new laws. The MDC has publicly stated that there remains an extremely wide gulf between it and ZANU (PF) electoral reforms and that the new laws have effected merely cosmetic changes and have failed to address some of the most fundamental issues. It says that most of the amendments proposed by the MDC to these laws had not been accepted and that there were still irreconcilable differences on matters on the method of appointment of commissioners to the Electoral Commission, the role of the Registrar-General's Office and the voters' roll, and the issue of repressive legislation.

One of the recommendations made by the International Crisis Group in its report was that the Zimbabwe Government revisit the electoral law to work with the main opposition party to try to reach consensus on electoral law reform.¹⁶⁰ When revisiting these laws it could also draw upon technical expertise available from SADC and the African Union.

¹⁶⁰ *Zimbabwe: Another Election Chance* International Crisis Group Africa Report No 86 30 November 2004.

In terms of the new laws the key body, the Electoral Commission, is unlikely to be an independent body that will carry out its duties in a politically neutral, professional manner. But even if, contrary to expectation, reasonably independent Commissioners are appointed, the Commission will be commencing its duties at a very late stage and it will not be possible for the Commission to undo the damage that has already been done by violence and intimidation that has already been applied. It will be very difficult for the Commission to monitor and try to stop ongoing violence and intimidation, especially in remote rural areas of Zimbabwe, especially if the police continue to adopt a partisan approach and turns a blind eye to violent attacks upon opposition party members.

PRE-ELECTION MEASURES

It was imperative that before the election process began the conditions on the ground were such as to permit the holding of a free and fair election.

The Zimbabwe Electoral Network recommended that the Electoral Commission be given power to postpone elections for few months where conditions on the ground do not allow for a free and fair election to take place. It would have this power to order the postponement of an election in a constituency or throughout the country for a few months — up to a maximum period. It could do this where, despite warnings to the parties to stop engaging in violence and intimidation, violence and intimidation is continuing on such a scale there cannot be a free and fair election at that point in time in that constituency or in all constituencies. It would only exercise this power after full investigation as to the conditions on the ground. Although this may be seen as a fairly drastic power, what has happened over the last few years makes it necessary to arm the Electoral Commission with this power. This recommended power has not been given to the Commission.

The ICG made a series of useful recommendations to SADC, the African Union and South Africa. These recommendations aimed firstly at ensuring that conditions on the ground would allow a free and fair election to take place and, after this has been done, bringing in credible monitoring teams to assess where the election process itself has been free and fair. The ICG recommended that SADC

- send a monitoring team by 1 January 2005 to work with the ruling party and the opposition in Zimbabwe to fully implement the SADC principles, prior to the team monitoring the election itself;
- publicly announce that SADC would call for the postponement of the election until at least June 2005 if the team found that the necessary preliminary steps, including a genuinely independent electoral commission, were not in place at least two months before the election;
- publicly announce that SADC would not endorse the results of the election unless its monitoring team was satisfied that the entire electoral process, not just the polling itself, was free and fair.

The ICG further recommended that the African Union send a team of experts to Zimbabwe by 1 January 2005 to monitor the human rights situation and the electoral environment and support the implementation of the SADC principles.

As regard the monitoring of the election process itself, the ICG recommended that monitoring teams must be in place by 1 January 2005 and there should be credible teams from SADC, the AU and the UN.¹⁶¹

These were very sensible and well targeted recommendations, which African nations have an obligation to assist Zimbabweans to have a free and fair election in which political parties to contest the elections without illegal interference and that the people of Zimbabwe will be able to exercise to exercise their vote and choose their government without illegal pressures being applied to them.

Unfortunately, none of these recommended measures have been applied. The Zimbabwean Government refused to allow a SADC technical team consisting of lawyers to come to Zimbabwe to carry out a pre-election survey of whether Zimbabwe had complied with the SADC Electoral Guidelines. A number of

¹⁶¹ *Zimbabwe: Another Election Chance* International Crisis Group Africa Report No 86 30 November 2004.

delegations from organisations wanting to examine the pre-election situation in Zimbabwe were expelled or refused entry into the country. These include delegations from the South African trade union organisation, COSATU, and a South African political party, the Democratic Alliance.

CONCLUSION

There is an urgent need to restore peace and stability in Zimbabwe and to normalise its relations with the international community. A free and fair election in March 2005 would go a long way to achieving this objective. On the other hand, a deeply flawed election will lead to a continuing crisis in Zimbabwe.

Although ruling party in Zimbabwe would like SADC, the African Union and the international community as a whole to endorse the 2005 election as being reasonably free and fair, it is also determined to ensure that it will win a landslide victory, so as to obtain a two-thirds majority in parliament thereby enabling it to amend the constitution. The ruling party's fervent resolve to win an overwhelming victory means that there will not be "a conducive environment for free, fair and peaceful elections" as required under the SADC Principles.

The changes to the electoral laws occurred only a few months before the election. These laws made mostly token changes. The key body under these new laws, the Electoral Commission, is not independent and has been given neither the powers nor capacity to ensure that the electoral playing field will be level during the lead up period to the election and during the election themselves.

As the election has approached there have been increasing level of violence and intimidation directed mainly at the opposition by ruling party supporters and security agencies. Additionally intra-ZANU (PF) violence arising out of rifts and infighting within the party have intensified instability within the country and apprehension amongst the electorate. Food has already been used both to bribe and intimidate voters.

The repressive laws that have severely curtailed freedom of expression and of assembly remain on the statute books and the police continue to apply these laws in a

discriminatory way against the opposition. The youth militia remain at large as a highly intimidatory force. The passing of the Non-governmental Organisations Act is yet another indicator that the government intends to distort the electoral environment in its favour, since this legislation, together with the Electoral Act's provisions on election monitoring, will severely restrict, if not prevent, NGOs from monitoring and observing elections.¹⁶² The Report of the Mission of the African Commission on Human and Peoples' Rights makes strong recommendations about the need not only for a transparently independent Electoral Commission, but also for a significant role for civil society in the political life of the country. The NGO Act severely undermines the capacity of NGOs to play this role.

Under these conditions what will happen is that there will be an election in Zimbabwe "in which ZANU (PF) achieves an unfair victory by staging an election that "look free and transparent on the polling day but has already been massively rigged by what happened on the way to that day."¹⁶³

Having set the benchmarks for free and fair elections, it would be completely unacceptable if SADC or the African Union were to decide that the election in Zimbabwe has been free and fair when the election was in fact held under conditions that conspicuously failed to meet the standards set in the SADC principles.

¹⁶² The Report of the Mission of the African Commission on Human and Peoples' Rights makes strong recommendations about the need not only for a transparently independent Electoral Commission, but also for a significant role for civil society in the political life of the country.

¹⁶³ Taken from *Zimbabwe: Another Election Chance* International Crisis Group Africa Report No 86 30 November 2004.