



Zimbabwe Lawyers for Human Rights

The pre-election environment in Zimbabwe

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THE PRE-ELECTION ENVIRONMENT IN ZIMBABWE

MARCH 2005¹

Zimbabwe Lawyers for Human Rights (ZLHR) has as its main objective the fostering of a culture of human rights in Zimbabwe, as well as encouraging the growth and strengthening of respect for human dignity and rights at all levels of Zimbabwean society through observance of the rule of law. A strong indicator of whether these goals are being achieved is whether free and fair elections are possible and probable. Genuine elections serve to illustrate the free will of the people and allow them to express their opinions and participate freely in the government of their country. It is within ZLHR's constitutional mandate to scrutinise whether constitutional and international human rights standards are being upheld and will therefore allow for this objective of free and fair elections to be met to reflect the genuine will of the people.

In the run-up to the March 2005 parliamentary elections, much mention has been made by various stakeholders of the **SADC Principles and Guidelines Governing Democratic Elections** ("the SADC Principles") and how far compliance with these Principles has been achieved. The SADC Principles were adopted by the SADC Summit (including Zimbabwe) in Mauritius in August 2004.

Although the SADC Principles are merely aspirational the new Electoral Act [*Chapter 2:13*] in section 3 incorporates into domestic law "General principles of democratic elections" which, although not directly incorporating the SADC Principles, are reflective of their intent and aspiration.²

¹ Co-authored by Irene Petras, Arnold Tsunga and Otto Saki

² Section 3 of the Act reads:

The SADC Guidelines can therefore be used to judge how far Zimbabwe can be said to have complied and how probable it is that Principle I [**Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent national electoral authorities in accordance with the law of the land**] will ultimately be realised.

A. FULL PARTICIPATION OF THE CITIZENS IN THE POLITICAL PROCESS

ZLHR is of the view that the following conditions are vital to the achievement of this principle:

- An enabling constitution;
- Adequate, impartial and informative voter education;
- An enabling and transparent system of voter registration;
- Free and uninhibited participation in public meetings and debates;
- Access to relevant information
- Easy access to polling stations

Subject to the Constitution and this Act, every election shall be conducted in way that is consistent with the following principles-

- (a) the authority to govern derives from the will of the people demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot; and*
- (b) every citizen has the right –*
 - a. to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the grounds of race, ethnicity, gender, language, political or religious belief, education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;*
 - b. to join or participate in the activities of and to recruit members of a political party of his or her choice;*
 - c. to participate in peaceful political activity intended to influence the composition and policies of Government;*
 - d. to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government...”*
- (c) every political party has the right -*
 - a. to operate freely within the law;*
 - b. to put up or sponsor one or more candidates in every election;*
 - c. to campaign freely within the law;*
 - d. to have reasonable access to the media*

An enabling constitution

ZLHR is of the view that the current Constitution is not the home-grown document that is needed by Zimbabweans to protect their fundamental rights and freedoms and establish independent institutions that are subject to scrutiny and review. It does not allow for the adequate protection of fundamental rights, including the right to vote. Electoral bodies set up under the Constitution have unacceptable limitations in terms of their mandate and their functions conflict in part with electoral legislation and fundamentally recognised norms, such as the requirement for one independent body to bear responsibility for the smooth running of the electoral process. There is a multiplicity of electoral bodies involved in the entire process, which leads to a duplication of roles and confusion as to which body bears ultimate responsibility and can be called to account. Further the provision allowing the President, who is an interested party, to select 30 non-constituency Members of Parliament over and above the 120 who will vie for election is in direct contradiction to a democratic process of selection of candidates by the people. Executive powers granted under the Constitution are unnecessary, excessive and open to abuse.

In view of the shortcomings of the current Constitution ZLHR believes that it does not adequately ensure full participation by citizens and is likely to contribute to the subversion of the will of the people in the upcoming elections.

Adequate, impartial and informative voter education

Legislative provisions exist to ensure that voters receive “adequate, accurate and unbiased voter education” from the Zimbabwe Electoral Commission (ZEC)³. ZEC is also tasked with ensuring that “voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party”.⁴

ZEC has failed, under section 4(1)(h) of its enabling statute to carry out its mandate, in that, *inter alia*:

- (i) The public has not been adequately informed about the delimitation of constituencies. At a price of Z\$350,000 the report of the Delimitation

³ Section 14(1)(a) of the Zimbabwe Electoral Commission Act [Chapter 2:12]

Commission, including details of boundaries and changes from the 2000 parliamentary election constituencies, is beyond the reach of ordinary voters. It is not readily available, especially in areas directly affected by boundary changes. The map outlining the boundaries of constituencies is unobtainable, even in Harare, and voters are likely to be unaware of any changes in demarcation, which may affect where they are supposed to vote and thus their ability to exercise their franchise. In addition the Constitution and the Electoral Act remain silent on how long before an election the boundaries should be made known. This is too discretionary and subject to abuse by the authorities.

- (ii) The list of polling stations was published only on 18 March 2005 – 13 days before polling day. This is in conflict with section 51 of the Electoral Act [*Chapter 2:13*] which requires that information about polling stations should be provided at least 14 days prior to the polling date. The information should be published in newspapers circulating in the area. Due to lack of adequate finances to do so, ZEC has not adequately carried out such voter education, making it especially difficult for those outside cities and towns to access the information as to where they will be able to vote. Also details of the polling stations conflicted with the information announced by the chairman of the ZEC, as he gave details of a greater number of polling stations than those listed in publications.⁵ This has generated confusion. The late release of the information has also meant that observers who may have wished to visit the polling stations to ensure suitability some time prior to the date of polling have not been in a position to do so.
- (iii) Whilst the inspection of the voters' roll for the March election closed on 4 February 2005, the ZEC, which in terms of the Electoral Act is obliged to supervise the registration and inspection process, only came into being two days previously, and would not have been able to provide accurate information to voters about the time and places for inspection.

⁴ Section 14(1)(b) *ibid*

⁵ While the chairman of the ZEC, Justice George Chiweshe, announced at a briefing of local and international observers on 23 March 2005 that there were 8,235 polling stations, only 8,137 polling stations were identified in the published lists.

- (iv) Information about the candidates contesting the elections was, again, provided very late, but it has generally been difficult to establish whether any information additional to that published in the print media is available to voters, as none has been evident or readily available in areas observed by ZLHR members.⁶
- (v) ZEC allowed the Zimbabwe Election Support Network (ZESN) to carry out voter education programme hopelessly out of time to have any meaningful impact in view of the large numbers of voters to be reached. The reality is that the electorate is approaching elections without having benefited from voter education. This is undesirable given the one sided manner in which the public media (both electronic and print) were utilised to support the status quo and to vilify opposition or perceived opponents of the state. This is further worsened by the fact that the state-controlled Media and Information Commission used the Access to Information and Protection of Privacy Act to shut down independent newspapers in the build up to these elections, thus cutting out a further commendable means of voter enlightenment.
- (vi) Outside the aforesaid weaknesses of the ZEC it must be noted also that the ZEC Act militates against the realisation of adequate, impartial and informative voter education in so far as it outlaws foreign funding of NGOs or entities involved in voter education.

An enabling and transparent system of voter registration

Voter registration for the March 2005 parliamentary elections was carried out by the Office of the Registrar-General. In terms of the ZEC Act, read together with the Electoral Act, overall responsibility for direction and control of the registration process, as well as custody of the voters' roll, rests with the ZEC. ZLHR notes that voter registration occurred between 17 January 2005 and 4 February 2005. With the ZEC only in existence for the last two days of this process, there was no oversight of the process by a purportedly independent authority.

⁶ This is despite the fact that the chairman of the ZEC publicly stated at the briefing referred to above that educators had been deployed in all constituencies, information had been distributed by print and

ZLHR, from previous electoral experiences and legal proceedings, has no faith in the impartiality and transparency of the R-G's office, and is therefore unconvinced that voter registration was accessible, acceptable and transparent for all voters wishing to register or inspect the roll. The failure to have the voter registration exercise handled by a credible impartial organ in a transparent and accountable manner poses a significant and serious threat to the overall credibility of the electoral process for March 2005.

Free and uninhibited participation in public meetings and debates

Such participation is vital to allow voters to learn about candidate contesting the elections, as well as scrutinise the manifestoes of the contesting parties. Open debate also allows voters to challenge perceived shortcomings on the part of current parliamentary representatives and obtain answers and undertakings that these will be remedied so that they do not occur in the future.

In the view of ZLHR, such free participation has been severely and irreparably curtailed since the enactment of the Public Order and Security Act [*Chapter 11:17*] (POSA) in January 2002. In terms of section 24 of POSA organisers of public meetings are required to notify the regulating authorities (the police) of any intended meetings. Regulating authorities have misinterpreted their powers to ban meetings perceived as undesirable and have unlawfully and unreasonably abused provisions of POSA to violently disperse meetings, and to arrest, detain and charge participating individuals either with conduct likely to incite violence or insulting official state authorities.

The following statistics are pertinent:

In 2003, 274 human rights defenders (hrds) were arrested, detained and charged under POSA. In 2004, 132 hrds fell foul of this law. In 2005 (January to April) there have been approximately 38 recorded arrests. To date, however, there has not been a single successful prosecution.

Similar effects have been recorded through the use of other repressive legislation such as the Miscellaneous Offences Act and the Access to Information and Protection of Privacy Act.⁷

This misapplication of the law has not only served to unconstitutionally curtail the rights of individuals to freely assemble and associate and discuss openly, but has also generated an unwillingness of, and fear in, people with regards to participating in gatherings likely to attract such retaliation, as well as a negative effect insofar as speaking their mind and providing reasonable criticism of officials subject to public scrutiny. ZLHR is therefore of the opinion that citizens have not been able to participate freely and in an uninhibited manner and will not be able to do so until such time as these repressive pieces of legislation have been removed from the statute books. In particular ZLHR is concerned by the persistent arrests and detention of pro-democracy activists and leadership participating in non-violent protests to raise awareness of pertinent issues as well as voice their concerns about state policies. Groups that have particularly and unreasonably been targeted are the Zimbabwe Congress of Trade Unions (ZCTU), the National Constitutional Assembly (NCA) and Women of Zimbabwe Arise (WOZA).

POSA and AIPPA (see below) indeed pose a serious and significant threat to democracy in Zimbabwe especially in the context of a judiciary that has been seen by the African Union (through the African Commission on Human and Peoples' Rights) as susceptible to political manipulation.⁸

Access to relevant information

Voters are entitled in terms of the Constitution and internationally-recognised freedoms and norms to freely receive and impart information and express their opinions. Any restriction on such rights must be reasonably justifiable in a democratic society.

⁷ See in this regard the joint publication by MISA-Zimbabwe and Article 19 *The Access to Information and Protection of Privacy Act: Two Years On* (September 2004)

⁸ "The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure" African Commission Fact Finding Mission report on Zimbabwe adopted by the AU Assembly 30-31 January 2004 Abuja Nigeria

Apart from POSA, described above, the Access to Information and Protection of Privacy Act [*Chapter 10:27*] (AIPPA), which came into force in March 2003, and the Broadcasting Services Act [*Chapter 12:06*] (BSA), have severely, unlawfully and irreparably restricted such freedoms. Media houses and broadcasters from the private sector have been incessantly targeted and silenced in their quest to provide an alternative view to that provided through the state-run public media (print and broadcasting). The premises of the privately-owned Voice of the People radio station and *Daily News* have been bombed on three separate occasions and to date no perpetrators have been brought to justice. Several hundred media practitioners (editors, journalists, photographers and drivers) have been arrested, detained and charged under the draconian legislation although, again, no single successful prosecution has arisen.⁹ One radio station (Capital Radio) and four privately-owned newspapers (the *Daily News*, the *Daily News on Sunday*, the *Tribune*, and the *Weekly Times*) have been shut down since September 2003 by a biased, unrepresentative and non-independent Broadcasting Authority of Zimbabwe and Media and Information Commission using the provisions of the BSA and AIPPA respectively. Short-wave frequencies used by radio stations outside Zimbabwe broadcasting programmes dealing with relevant electoral and governance issues have been scrambled so that people within Zimbabwe are unable to receive the broadcasts.

Again some pro-democracy groups have been specifically targeted for retribution. Most recently the Chairperson of the National Constitutional Assembly (NCA) was personally identified and subjected to questioning and harassment by the law enforcement authorities on the basis of the contents of an organisational pre-election report. Individuals from other organisations have not been subjected to the same intimidation attempts.

On the other hand the public broadcaster and print media have continued unimpeded in their provision of biased information. Those who argue that the broadcasting restrictions have been loosened and that opposition parties have been allowed equal access to the state media miss the point that for the past three years there has been a

⁹ See the MISA-Zimbabwe and Article 19 publication, *op cit*.

blackout of alternative views, and this cannot be remedied by allowing one opposition party limited airtime to reverse such views immediately prior to elections.

It is ZLHR's view that citizens have not been able to obtain adequate, unbiased information and this will affect their participation in the upcoming election.

Easy access to polling stations

On the most basic level full participation envisages voters being able to access the polling stations easily in order to cast their vote. The announcement of more polling stations is welcome. However this is a cosmetic increase. While all constituencies purportedly have equal or similar numbers of voters, the number of polling stations varies greatly from constituency to constituency. If there was a genuine desire to facilitate the exercising of the voters' franchise – especially in light of the change to single-day voting – the numbers of polling stations would have been increased in all constituencies. ZLHR is particularly concerned about the low numbers of polling stations in areas that were considered to be opposition strongholds in the 2000 and 2002 elections. The rationale behind this was not satisfactorily explained by the chairman of the ZEC when he was questioned by members of observer teams, lending itself to the perception that bias exists. ZLHR believes that section 51 of the Electoral Act grants the Constituency Registrar unacceptably wide powers and discretion when identifying the location and number of polling stations, and that this has led to unequal access for voters. In addition there are a number of polling stations identified by ZESN as offering questionable neutrality. This list forms part of the annexures of this report.

ZLHR has previously been involved in legal challenges to extend the voting times when two days had been set aside for polling. Although one-day voting is in line with regional practices (but not specifically addressed by the SADC Principles) the electoral management bodies are required to put measures in place that will allow all voters the ability to easily vote in one day. Such measures have been overlooked and remain unaddressed, and this is therefore an area of particular concern.

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B. FREEDOM OF ASSOCIATION

Freedom of assembly and association is protected in terms of section 21 of the Constitution of Zimbabwe, as well as in international instruments ratified by Zimbabwe.¹⁰ However this constitutional and international protection has been severely eroded by the impact of repressive pieces of legislation that continue to be implemented selectively and with unswerving regularity by law enforcement authorities in Zimbabwe against those perceived to be opposition or pro-opposition supporters.

Reference has previously been made to POSA, AIPPA and BSA. Authorities have used the provisions of POSA selectively to clamp down on opposition rallies in the lead-up to elections, as well as public and private meetings by labour unions and civil society organisations. It should be noted that an adverse report of the Parliamentary Legal Committee was ignored and the Standing Rules of Parliament were suspended to allow the Bill to pass without amendment to comply with the Constitution. Similarly with AIPPA, an adverse report of the Parliamentary Legal Committee was ignored and the Standing Rules of Parliament were suspended to allow the Bill to be passed without constitutional compliance. Various provisions of these Acts have been challenged through the courts. Although some provisions of AIPPA and BSA were found to be unconstitutional and nullified, subsequent amendments have again proved contentious and subject to vociferous challenge.

In addition the following legislation and its implementation remain of concern to ZLHR:

➤ ***The Miscellaneous Offences Act (MOA)***

This piece of legislation was promulgated in 1964 and is therefore a relic used by a pre-Independence illegitimate minority regime in order to suppress opposition and retain political control. Any use of its provisions therefore remains highly questionable and subject to challenge. The provision relating to incitement of public violence has been utilised with increasing regularity since 2003 as a means of clamping down on civil society groups and human rights defenders (hrds) attempting to perform their duties or exercise their rights to freedom of association and freedom

of expression. The offence carries with it a penalty of a fine payable on admission of guilt, and ZLHR has noted that this is often used by affected persons to “buy their freedom” even where they have not committed an offence. The option of payment of the fine is considered better than spending the stipulated 48-hours in detention in police holding cells or remand prisons where the conditions are often highly unsanitary, overcrowded and a violation of the constitutional and international protection against cruel, inhuman and degrading treatment. ZLHR has recorded the following statistics during the course of its programming activities:

Year	No of hrds detained and fined under MOA	No of hrds released without charge
2003	332	132
2004	180	72
2005	158	30

Incidences have decreased in each reporting period, not because the use of the MOA has abated, but because lawyers have been deployed with increasing frequency and speed to situations of arrest of hrds. This has caused pressure to be brought to bear on law enforcement officials. They are more likely to scrutinise their actions and release people without charge rather than charge and fine them in the presence of a lawyer who will query the legitimacy of the charges they intend to prefer.

The use of the Act has not abated in the run-up to the polls. People have tended to restrict their public activities in the period prior to the March 2005 poll in order not to be subjected to the effects of this legislation, and this has had a negative impact on the freedom of association.

➤ ***The Criminal Procedure and Evidence Act***

This Act was amended¹¹ in 2004 to allow for the arrest of individuals without a warrant and their detention for a period of 21 days for crimes relating to the

¹⁰ These include the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, and the African Charter on Human and People’s Rights.

¹¹ Criminal Procedure and Evidence Amendment Act No.14 of 2004

“economy or other national interest of Zimbabwe”.¹² There is a possibility that people charged under POSA may be subjected to such inordinate periods of pre-trial detention, without recourse to the courts, in contravention of internationally-recognised norms and human rights standards. This, in the opinion of ZLHR, has served to unduly restrict the activities of law-abiding citizens, who fear being unreasonably and illegitimately targeted during the exercise of their right to free association.

➤ ***The Zimbabwe Electoral Commission Act***

This Act impacts negatively on freedom of association in that it severely restricts the types of individuals and organisations that are entitled to carry out voter registration. All organisations wishing to carry out voter education are required to consist solely of Zimbabwean citizens or permanent residents domiciled in Zimbabwe. In addition the organisation must be registered under the Non-Governmental Organisations Act, despite the fact that this Bill has not yet been signed into law by the President. This Bill has its own shortcomings, which are discussed below. Prior approval has to be granted by the ZEC before an organisation is permitted to conduct voter education. In light of ZLHR’s concerns as to the independence and impartiality of the Commission, this is an unreasonable restriction. As previously mentioned, ZESN has been granted permission to continue with its voter education programme. However the approval by ZEC was furnished very late, and was not in written form.

Further, all organisations carrying out voter education are open to financial scrutiny by the ZEC, as they are required to disclose details of their sources and manner of funding, as well as furnish personal details of all individuals who will be conducting the programmes. This is an unnecessary invasion on the privacy rights of individuals, and is likely to make organisations and competent individuals unwilling to open themselves up to such invasion, thus impacting negatively on the education programme. ZLHR finds these provisions an unreasonable and unjustifiable infringement of the constitutional right to freedom of association.

➤ ***The Non-Governmental Organisations Bill***

¹² These include amongst others corruption, money-laundering, sale of controlled products, drug

This is a controversial Bill, similar in its intent and likely effect on non-governmental organisations as AIPPA has become on privately-owned media houses. Again, organisations will be required to register with a Non-Governmental Organisations Council whose independence is highly questionable. All such organisations are required to be composed solely of Zimbabwean citizens and permanent residents domiciled in Zimbabwe. All foreign NGOs are prevented from carrying out activities in Zimbabwe. The funding capacity of NGOs dealing with the promotion and protection of human rights and governance issues is restricted to local funding only, and many are likely to close down as they will be unable to continue financing their programming activities. Many of these organisations have already closed or scaled down their activities, and this has had a detrimental effect on their ability to research and scrutinise the transparency of the upcoming elections and the general political process. The Bill passed through Parliament after an adverse report of the Parliamentary Legal Committee was ignored. With the President currently withholding his assent, the effect on NGOs has been to make office holders and staff wary of speaking openly and performing their function fearlessly, as they do not wish to provide a reason, no matter how flimsy, for the President to append his signature to the Bill. In the run-up to the elections certain NGO leaders have faced security threats (especially increased surveillance), which has culminated in the National Association of Non-Governmental Organisations (NANGO) having to flight an advocacy alert to warn leaders and provide information on how to deal with possible arrests, detention and general harassment. This threat factor has been especially high for those working in humanitarian NGOs involved in the distribution of food aid.

ZLHR believes that this Bill has severely restricted the freedom of individuals within the NGO sector to associate freely and continue their important work in the run-up to the elections.

The combined effect of all these pieces of legislation has been to erode the constitutional protection of freedom of association. The government has failed to address legitimate concerns about the statutes and their effect, and thus societal

behaviour has been adversely conditioned towards taking a non-confrontational approach which will allow many negative aspects of the electoral process to proceed unchallenged. Until such time as all these Acts have been revisited and either repealed or greatly reformed, it is the belief of ZLHR that the SADC principle of freedom of association is unachievable. It is the strong submission of ZLHR that the SADC principle of freedom of association cannot mutually coexist with such repressive pieces of legislation.

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C. POLITICAL TOLERANCE

In the understanding of ZLHR such a principle can only be realised where there is a conducive legislative environment and equal protection of all persons by the law. The pertinent statutes have already been examined and critiqued. The protection of the law is commented upon below under Principle G.

Political tolerance is also only possible where law enforcement agents carry out their duties in a manner which is non-partisan and ensures that **all** people are aware that their behaviour will be monitored and judged through the use of a single, high standard, which respects the fundamental rights and freedoms of all.

ZLHR has already furnished statistics relating to the implementation of the legislation relating to “political” activities. The organisation is of the conclusion in light of these statistics that there has been selective application of the law, and that one political party and its proponents has been unduly favoured and allowed to conduct themselves in a manner inimical with the rule of law and fair administrative of justice. Zimbabwe is therefore not currently in a legislative and legal operating environment that will allow for political tolerance.

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D. REGULAR INTERVALS FOR ELECTIONS AS PROVIDED FOR BY THE RESPECTIVE NATIONAL CONSTITUTIONS

The Zimbabwe government can be commended for carrying out elections as and when they are stipulated in terms of the Constitution. The parliamentary elections are held in terms of Section 63 as read with Section 58 of the Constitution after every 5 years.

However the conducting of elections at regular intervals does not necessarily entail the holding of elections in accordance with democratic principles and international acceptable standards.

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E. EQUAL OPPORTUNITY FOR ALL POLITICAL PARTIES TO ACCESS THE STATE MEDIA

The electronic media in Zimbabwe is governed by the provisions of the Broadcasting Services Act (BSA), as amended. The Supreme Court has previously ruled that the monopoly held by the public broadcaster under the BSA is unconstitutional,¹³ but no attempt has been made to open up the airwaves accordingly.

On 16 February 2005 the Broadcasting Services (Access to radio and television during an Election) Regulations 2005 were promulgated in terms of section 46 of the BSA. They relate to free to air radio and television service provided by the public broadcaster, Zimbabwe Broadcasting Holdings (Private) Limited (ZBH). On the face of it, this is a welcome set of regulations which aspires to fulfil the objective of equal access to the state media.

The following are of concern to ZLHR:

- (a) The regulations provide for equal **opportunity** rather than equal **access** for the broadcasting of election matter.
- (b) The regulations only apply to “an election period” and therefore have not been in place for a significant amount of time prior to the March 2005 election. Since the last parliamentary election in 2000, and until February 2005, one political party (the ruling ZANU-PF) has had sole access to put forward its policies. No other party has been able to rebut its submissions. The broadcaster has not provided information about any alternative views throughout all this time. It therefore cannot be said that all parties have even had equal opportunity.
- (c) The advertising rates have been set at such a high amount that it will be impossible or at the least improbable for smaller political parties and

independent candidates to buy air time to expound their policies and critique those of opposition parties and candidates.

- (d) Detailed studies have been carried out by reliable sources¹⁴ and indicate that the regulations are far from being implemented in accordance with their intent or the SADC Principles.

ZLHR concludes that in the pre-election period this principle has not been met by the Zimbabwean state broadcasting authorities.

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F. EQUAL OPPORTUNITY TO EXERCISE THE RIGHT TO VOTE AND BE VOTED FOR

ZLHR remains concerned, as outlined above under Principle A, that the time for voting (one day) is inadequate, especially in light of the fact that there are still too few polling stations in certain constituencies to ensure that all voters can cast their ballots within the stipulated time limit.

ZLHR also notes that it is extremely likely that the same groups who were disenfranchised in the 2000 and 2002 elections will again be denied their right to vote in March 2005.

Citizenship Laws

Following the 2000 parliamentary elections there have been various amendments to the citizenship laws of Zimbabwe. An extensive and significant number of Zimbabweans (farm workers whose genealogical roots stem from countries such as Zambia and Malawi; white Zimbabweans, and those who have entitlement to various SADC citizenry, even if never claimed) have summarily lost their Zimbabwean citizenship and been removed from the voters' roll on the basis of a misapplication of

¹³ *Capital Radio (Private) Limited v. The Minister of Information, Posts and Telecommunications* SC 99/2000, CC 130/2000

¹⁴ ZLHR associates itself with the studies carried out and published in the Media Monitoring Project of Zimbabwe (MMPZ) *Special Report on Quality of Access to national public broadcasting stations between ZANU PF and MDC*

the Citizenship Act, as amended, by officials from the Registrar-General's office. An amendment was made to the citizenship laws in 2003 in an attempt to remedy the situation.¹⁵ Nevertheless ZLHR continues to receive complaints from individuals who have attempted to assert their rights under the amended laws, only to face the same barriers at the R-G's office. ZLHR has records of incidents in 2002 where court orders allowing people who had incorrectly been removed from the roll to vote were ignored by polling officers. Having received official complaints again in 2005, and without amendments being present in the new Electoral Act to remedy this situation, ZLHR has no reason to believe that the same situation will not arise again at polling stations on 31 March 2005, thus disenfranchising Zimbabwean voters.

Zimbabweans in the Diaspora

Zimbabweans from the Diaspora lodged an application with the Constitutional Court of Zimbabwe, seeking its assistance in the protection and exercise of their franchise.¹⁶ Their argument was that the failure by the state to provide a mechanism by which they could exercise their right to vote from outside Zimbabwe contravened their constitutional rights to freedom of association, expression and movement, as well as their fundamental right to vote or be voted for. ZLHR monitored arguments in the matter before Chief Justice Chidyausiku and Justices Sandura, Ziyambi, Gwaunza and Malaba. Questions directed by some members of the Bench to Counsel for the Applicants, Advocate Happias Zhou, indicated resistance, hostility and even derision towards Zimbabweans living outside the country and trying to exercise their fundamental rights and freedoms. When judgment was handed down on 17 March 2005 the Chief Justice dismissed the application without providing any reasons apart from a statement that the Court had unanimously found that the application was "without merit". He further advised that "Full and detailed reasons will be given in due course". This matter was heard on an urgent basis and ZLHR notes that judgment was provided with relative speed. It is, however, unfortunate that the full reasons were not furnished immediately in order for those involved to be fully informed and take appropriate action. ZLHR sees this as one case among many where the Supreme Court has been seen to be taking sides with the Executive organ of the state rather

¹⁵ Citizenship of Zimbabwe Amendment Act No. 12 of 2003

¹⁶ *Jefta Madzingo & 6 Ors v. The Minister of Justice, Legal & Parliamentary Affairs & 3 Ors* SC 22/05

than being the guarantor and protector of universally guaranteed human rights and fundamental freedoms for all Zimbabwean people.

ZLHR is disappointed with the judgment, in light of procedures being ably put in place in so many other countries to allow their citizens in the Diaspora to vote. The right to vote is protected under many international human rights instruments to which Zimbabwe has appended its signature, as well as being incorporated under the right to freely express one's opinion under the Constitution of Zimbabwe. A failure to see such a right as an expression of one's opinion, that should be protected, is unfortunate and again illustrates the shortcomings of an undemocratic constitution.

Postal Voting

The ZEC has failed to provide adequate information about where and how such voting is to occur. In light of much pre-election publicity about the transparency of this postal voting process it would have been desirable for this information to be made readily available and processes put in place to ensure that proper scrutiny could occur. The process of voting is supposed to occur in the presence of a "competent witness"¹⁷ but to date the identities of such individuals has not been made public. Where the postal voting process took place has been unclear, as has been where the ballots have been kept. The chairman of the ZEC has announced that postal voting has already occurred, although there are allegations that some contesting parties were unaware of this and they were not present, as provided for in terms of the Electoral Act, when the ballot boxes were sealed and empty, and when the votes were placed in the boxes and they were re-sealed. It remains to be seen whether acceptable information of who has voted by post is made available at the relevant polling stations to ensure that these individuals do not attempt to vote again.

It is also unfortunate that only the candidates and one chief election agent are permitted to observe the counting procedure, and only on 24 hours' notice.

Information provided to ZLHR by members of the uniformed forces (police, prison guards and national parks) who have voted by post in March 2005 has lent credence

¹⁷ In terms of section 71(3) of the Electoral Act [*Chapter 2:13*]

to the allegations that the voting was not free. The individuals have preferred to remain anonymous for their own security reasons. The voting was done allegedly in a manner where the individuals felt threatened and compelled to vote for one party for fear of persecution and losing their jobs. There were allegations that the postal votes were placed in envelopes with serial numbers that were traceable to the specific voter, thereby exposing the voters to potential retribution. The process was done in the presence of other members of the forces and the atmosphere was pregnant with fear and anxiety.

ZLHR is of the view that the entire postal voting process has been non-transparent and is likely to be the subject of serious contest and disagreements. It might be beneficial to quarantine the postal vote owing to its serious lack of credibility and to avoid the contagious effect it will have on the rest of the normal vote.

The right to vote and/or be voted for

The case of Roy Bennett, the duly elected Member of Parliament for Chimanimani, presents a classic example of failure of the legal, political and electoral system to protect every Zimbabwean citizen's fundamental right without discrimination on the basis of, *inter alia*, political opinion and race. Bennett is a white member of the opposition MDC. He is also a white commercial farmer. In the 2000 parliamentary elections he exercised his right to be voted for, and was voted into office by a resounding majority of predominantly black voters. Since his victory he has been subjected to relentless continuous political persecution. His farm has been targeted under the pretext of the state's land reform programme. He himself, his family and his employees have been subjected to physical and mental torture. There have been recorded incidents of extra-judicial killings, rapes and property destruction on his farm and those of his employees. Five High Court and one Magistrates' Court orders allowing him and his employees to remain on the property and continue their daily activities have been flagrantly ignored and they have been unlawfully evicted from the land.

Bennett was sentenced to an extremely harsh 12 months' effective imprisonment with hard labour by a ZANU-PF-dominated Parliament after he assaulted two Members of Parliament following extreme provocation by the Minister of Justice. The usual

sentence for common assault is a fine of Z\$50,000 (US\$8). The decision of the Parliament was taken for review to the High Court, which then ruled that it could not interfere with Parliamentary proceedings since they are covered under the Privileges and Immunities of Parliament Act.

Whilst incarcerated he attempted to exercise his right to be voted for in the March 2005 elections by submitting his papers for nomination as an MDC candidate. His papers were unprocedurally rejected and although the Electoral Court initially nullified the nomination court proceedings, the presiding judge was thereafter subjected to unlawful executive pressure, with the President calling his judgment “madness” and of no effect. This inevitably led him to suspend his own judgment, thereby effectively barring Bennett from exercising his right to be voted into office. ZLHR’s press statement in this regard is attached as an annexure.

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G. INDEPENDENCE OF THE JUDICIARY AND IMPARTIALITY OF THE ELECTORAL INSTITUTIONS

Independence of the Judiciary

The Report of the Fact-Finding Mission of the African Commission for Human and People’s Rights was adopted by the African Union in Abuja on 30-31 January 2005. The recommendation of the fact-finding mission was that:

“The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates’ and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due

*to members of the judiciary by refraining from political attacks or the use of inciting language against judges and magistrates. A Code of Conduct for Judges could be adopted and administered by the judges themselves. We commend to the Government of the Republic of Zimbabwe for serious consideration and application the **Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa** adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003.”*

Regretfully, the Government has failed to implement this recommendation, and the independence of the judiciary continues to be compromised.

A further conclusion was drawn by a report adopted by the International Council of Advocates and Barristers, and approved by the Law Society and the Bar Council of Zimbabwe¹⁸:

... the Zimbabwean justice system has ceased to possess those features which enable a justice system to be characterised as independent and impartial. The legal culture has been subverted for political ends.”

ZLHR notes that there exist on the various benches today – although in the minority - magistrates and judges with courage to interpret and apply the law without fear or favour, and they are to be commended. ZLHR continues to be concerned at attacks on the Judiciary by other organs of state and notes that this will negatively interfere with the administration of justice. Criticism is neither outlawed nor unwelcome, but should not be intemperate and intended to interfere with the separation of powers. ZLHR continues to be concerned with delays in the hearing of cases and the handing down of judgments, as well as the constant failure to comply with court orders. All incidents of interference with the judiciary and legal officers have been recorded by ZLHR and lead to the conclusion that the courts are not able to be relied upon to

¹⁸ *The State of Justice in Zimbabwe* December 2004

provide all individuals with equal access to and equal protection by the law. This negatively affects the political process.

The Electoral Court

This is commented upon in a separate article within this report.

Impartiality of the Electoral Institutions

In a perfect system one body – independent and impartial, efficient and effective – should be charged with administering the electoral process. In this way the body will withstand scrutiny by all stakeholders of the Zimbabwean electoral process.

The Delimitation Commission

This commission derives its powers from section 59 of the Constitution of Zimbabwe. Members of the Commission are selected by the President and they report to him accordingly. As an interested party in the outcome of the election, the President should play no role in the delimitation of constituencies, and therefore ZLHR find that the delimitation process cannot be considered to have been transparent.

Further the head of the Delimitation Commission was Justice George Chiweshe, who is also the chairman of the Zimbabwe Electoral Commission. In the view of ZLHR this presents an inescapable conflict of interest and lends itself to criticism, as he may be forced to review a process that was headed by him.

The Electoral Supervisory Commission

This is a body set up in terms of section 61 of the Constitution of Zimbabwe. Again the members are selected by the President, and the same concerns may be raised as to the transparency of any process in which an interested party has ultimate control over its proceedings.

The Office of the Registrar-General

To date this office remains headed by Tobaiwa Mudede, who has publicly stated that he is a supporter of the ruling party. The impartiality of his office is therefore compromised. The state of the voters' roll is the subject of much debate and controversy and the Zimbabwe Electoral Commission, whose responsibility is to direct and control the registration of voters by the Registrar-General and to compile, keep in custody and maintain the voters' roll, has failed to satisfactorily address complaints by interested parties.

The Zimbabwe Electoral Commission

This derives its authority and existence from the Zimbabwe Electoral Commission Act. Although there is provision within the ZEC Act to provide for its independence¹⁹ this is subject to debate. Although candidates for the ZEC were submitted in terms of the Standing Rules and Orders and the opposition MDC participated in the process, the eventual approval comes from the President, and allows for the possibility of unnecessary interference in parliamentary proceedings. The President also fixes the commissioners' terms, conditions, remuneration and allowances. The Minister of Justice, Legal & Parliamentary Affairs also has considerable powers to call special meetings and scrutinise the proceedings of the Commission.

ZLHR concludes that in light of the fact that various institutions run different aspects of the electoral process, it is unclear who remains in overall control of the administration of the elections. None of the institutions are free from the possibility of executive and/or ministerial interference, and therefore their impartiality is contested.

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H. VOTER EDUCATION

ZHLR's concerns have previously been noted under Principle A above.

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**I. ACCEPTANCE AND RESPECT OF THE ELECTION RESULTS BY
POLITICAL PARTIES PROCLAIMED TO HAVE BEEN FREE AND
FAIR BY THE COMPETENT NATIONAL ELECTORAL
AUTHORITIES IN ACCORDANCE WITH THE LAW OF THE LAND**

It is the view of ZLHR that in light of the concerns raised throughout this report, there is a strong possibility that the election result will not be accepted and respected.

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**J. CHALLENGE OF THE ELECTION RESULTS AS PROVIDED FOR IN
THE LAW OF THE LAND**

In the 2000 parliamentary elections the results in 38 of the 120 constituencies were challenged in the High Court, on the basis that there was violence, voter intimidation, property destruction and electoral irregularities. In terms of the (now repealed) Electoral Act [*Chapter 2:01*] the election petitions were required to be dealt with as a matter of priority. The petitions were assigned to three judges, but were not disposed of expeditiously. Although a number of cases were adjudicated upon in the High Court, there were inordinate delays in setting the matters down for trial and delivering judgment. Most of the outcomes were then appealed and, to date, the Supreme Court has only finally determined three. Some cases in the High Court have yet to be completed. These delays have allowed a situation where candidates found to be illegitimate by the courts of Zimbabwe have remained in Parliament throughout its five-year term. Perpetrators of political violence and electoral offences have not been prosecuted or punished, and there is a real risk that they will commit further offences, while victims have failed to receive compensation. There is a real perception of impunity.

¹⁹ Section 4(2) states: “*Subject to the Constitution, the Commission shall not, in the exercise of its*

ZLHR, together with the Institute for Human Rights and Development in Africa, has taken up this failure by the Government to provide a speedy and effective remedy with the African Commission on Human and People's Rights (ACHPR) under Communication No. 293/03. The ACHPR has been seized with the matter and arguments on admissibility are set to be heard at its 37th Session from 27 April-11 May 2005 in Banjul, The Gambia.

Of particular concern is an issue which arose during the adjudication of the election petition relating to the 2000 parliamentary election in the Buhera South constituency.²⁰ High Court judge, Justice James Devittie, handed down a damning judgment relating to the criminal activities that arose prior to the June 2000 poll. Two opposition MDC activists, Blessing Chiminya and Talent Mabika, were extra-judicially executed by being burnt alive by named ZANU-PF activists. Justice Devittie used his powers under the Electoral Act [*Chapter 2:01*] to refer the matter to the authorities for investigation and prosecution of the accused persons. To date the law enforcement authorities, including the police and the Attorney General's office have failed to do so. This failure on the part of the authorities has been repeated on many occasions and has caused ZLHR to communicate with both institutions to enquire as to progress and request details of all investigations undertaken and efforts made to bring these various perpetrators to justice. This correspondence appears in the annexures to this report. To date the directions, as well as the ZLHR correspondence has been ignored. It is the strong belief of ZLHR that this has lent itself to a real perception of impunity for perpetrators of political violence. There is a belief that such criminal behaviour will be tolerated and ordinary citizens attempting to exercise their right to political participation will remain unprotected by law enforcement authorities. Effective civic and political participation therefore remains illusory.

After the 2002 presidential election the opposition Movement for Democratic Change (MDC) legally challenged the outcome on the basis of violence and electoral irregularities. Although an initial hearing has been held to determine legal technical

functions, be subject to the direction or control of any person or authority."

²⁰ *Tsvangirai v. Manyonda* 2001 (1) ZLR 295

issues the judge has failed to provide written reasons for his ruling and the matter is still unresolved after three years in the court system.

Cosmetic attempts have been made to improve the delivery of justice in this area. The new Electoral Act [*Chapter 2:13*] in section 161 establishes an Electoral Court to hear and determine election petitions and other electoral matters. Section 182 provides that every election petition shall be disposed of within six months from the date of its presentation. Two matters have already been brought before the Electoral Court and judgment handed down – one in Harare²¹ and one in Bulawayo.

However problems remain. These judges have been drawn from sitting judges in the High Courts of Bulawayo and Harare.²² Whilst considering the first matter heard in the Electoral Court²³ Justice Uchena conceded that he would not be in a position to deal with electoral cases effectively and within time constraints as his duties in the Electoral Court were additional to his usual duties. The Electoral Court has no separate administrative or substantive staff from the High Court, no extra resources, and therefore effectively the position remains the same as in 2000 and 2002, except that now there is only one judge, rather than three, dealing with election petitions in Harare, and two in Bulawayo.

ZLHR has monitored the progress of the *Bennett* matter in the Harare Electoral Court and considers the developments a worrying precedent for any future challenge in this forum. ZLHR's position in this regard is set out in the two Press Statements that have been publicly released and are attached in this report as annexures.

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ORGANISED VIOLENCE AND TORTURE

²¹ *Roy Leslie Bennett v. The Constituency Elections Officer, Chimanimani Constituency & 2 Ors* E.P. 1/05

²² The three Electoral Court judges are Justice Uchena (Harare), Justice Ndou (Bulawayo) and Justice Cheda (Bulawayo)

²³ *Bennett op cit*

The forced eviction of “new farmers”

ZLHR has been specifically involved in dealing with this new phenomenon where individuals encouraged by the government of Zimbabwe to invade and resettle on farms previously owned by white commercial farmers have been subjected to forced removal and destruction of their homesteads, food supplies and other personal property by the state. This was done in order to clear the way for occupation by individuals considered to be aligned to the executive. Such manipulation of the “new farmers” in the time leading up to elections can only be perceived as an effort to ensure support at the polls for ruling party candidates. The following statistics are pertinent:

FARM	NO.OF PEOPLE AFFECTED	CASE CITATION
Kingswood Farm (Mashonaland Central)	104 from 20 families	<i>James Hodzi & 103 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11201/04
Groenvlei Farm (Mashonaland West)	600 of which 239 were school-going children	<i>Shane Pausiri & 98 Ors v. Minister of Local Government and National Housing</i> HC 11026/04
Inkomo Farm (Mashonaland West)	1300 people	<i>Noah Munyoro & 327 Ors v. Minister of Home Affairs & 2 Ors</i> HC 11025/04
Rayton Farm (Mashonaland West)	1440 from 239 families	<i>Clement Chimhau & 238 Ors v. Minister of Home Affairs</i> HC 11459/04
Porta Farm (Mashonaland West / Harare)	1500 from 242 families	<i>Felistus Chinyuka & 1313 Ors v. Minister of Local Government and National Housing</i> HC 10671/04
Faulty Farm (Mashonaland East)	390 from 65 families	
Little England (Mashonaland West)	2137 from 430 families	<i>Percy Masendu & 429 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11215/04
Sodeury Farm	248 people	<i>Jonah Musonza & 86 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11202/04
Murrayfield Farm	200 people	<i>Mhlanga & 69 Ors v. Minister of Home Affairs & 3 Ors</i> HC 12712/04
Newlands Farm	173 people	<i>Leonard Claudius Haifoswo & 172 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11203/04
Komani Estate	150 people	<i>Tarirai & 42 Ors v. Governor of Harare</i>

		<i>Metropolitan & 3 Ors</i> HC 11805/04
Selby Farm	100 people	<i>Esnut Matari & 40 Ors v. Governor of Harare</i> <i>Metropolitan & 3 Ors</i> HC 11556/04

Torture Cases

For some time now there have been credible allegations of the use of torture, especially with reference to political cases. In particular, torture has been used as a tool to punish political opponents – both inter-party and intra-party. ZLHR notes that the practice of torture is considered to be a crime under international law. It is absolutely prohibited and cannot be justified under any circumstances. The use of torture in the apparent intra-party succession dispute within ZANU-PF, involving the likes of Phillip Chiyangwa and four others could not escape the attention of ZLHR. The state's failure to investigate the alleged perpetrators suggests complicity on the part of the state and lends itself to a strong perception of impunity for perpetrators of political and electoral-related matters.

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MISCELLANEOUS ISSUES

Invitation of local and international observers

According to information provided by the chairperson of the ESC²⁴ various organs are responsible for inviting individuals and organisations to observe the electoral process. The Ministry of Foreign Affairs invites representatives from various countries and foreign organisations, such as inter-governmental organisations and international non-governmental organisations. The ESC is responsible for inviting electoral bodies from the region. The Ministry of Justice, Legal & Parliamentary Affairs is responsible for inviting local observers (individuals and organisations). The ZEC, which is the body

²⁴ This was publicly provided at the briefing for local and international observers held on 23 March 2005.

purportedly in control of the entire electoral process, has had no role to play in such invitation.

ZLHR is concerned that to allow Ministries whose personnel have a direct interest in prolonging their political existence the choice as to which observers shall be invited immediately calls into question the transparency and legitimacy of the observation process. ZLHR is also disappointed that lawful but disliked entities such as the ZCTU, as well as respected regional bodies such as the SADC Parliamentary Forum and the Electoral Institute of Southern Africa have been excluded. This can only serve to call into question the entire invitation process and rationale behind the exclusions.

The accreditation process for local observers

ZLHR notes that the process, although improved when compared to previous elections, still has great shortcomings. The electoral legislation and regional practices envisage observers being free to carry out their duties as much as 90 days prior to polling date. Many local observers only received approval 15 days prior to the date of polling. There have been administrative challenges at the accreditation centres in Bulawayo and Harare. The process has been slow and, at times, chaotic. ZLHR has had to provide services to observers from ZESN who were detained by police under the Public Order and Security Act for conducting an illegal gathering when in reality they were waiting outside the Harare accreditation centre until they could be called for the processing of their accreditation. Many observers remain unaccredited two days before the polling date. This has had a negative impact on their ability to be deployed to areas of observation, especially those designated to observe in rural and outlying areas of Zimbabwe.

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CONCLUSION

Apart from the Principles outlined above, each SADC Member State holding elections has responsibilities that are listed in the SADC Principles. The submissions and conclusions drawn in this report present a picture that Zimbabwe has failed, on most

accounts, to ensure a free and fair electoral process in the run-up to the polling date on 31 March 2005. Although some efforts have been made to consider the SADC Principles, most are merely cosmetic. In view of the legislative and legal framework, there is still a long way to go and much work to be done before such aspirations are realised.

FACING THE ELECTORAL CHALLENGES THAT LIE AHEAD: LOOKING AT THE ROY BENNETT CASE²⁵

Introduction

After almost twenty five years of political independence, during which five parliamentary elections have been held, Zimbabwe finally boasts the creation of an Electoral Court charged with “hearing and determining election petitions and other matters in terms of [the Electoral Act]”.²⁶ This new creation of a court that will deal solely with any issues arising from elections in Zimbabwe coincides with the upcoming 6th parliamentary elections to be held on the 31st of March 2005. The Electoral Court is in fact a creature of the Electoral Act [*Chapter 2:13*] which is amongst new electoral laws recently enacted in Zimbabwe at the beginning of 2005. Their promulgation following much domestic, regional and international advocacy and pressure on the Government to instil a level electoral playing field where free, fair, transparent and credible election procedures and results would be standard.

The Southern African Development Community (SADC) adopted the SADC Principles and Guidelines Governing Democratic Elections in August 2004 at Mauritius. These Principles and Guidelines seek to bring about a culture of transparent and credible election processes within the member states of SADC. The many principles to be adhered to include the full participation of citizens in the political process; equal opportunity to exercise the right to vote and be voted for; independency and impartiality of the electoral institutions; the ability to challenge the election results as provided for in the law of the land. To fulfil these principles one of the responsibilities expected of SADC member states is that they should “establish ...competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections”²⁷

²⁵ Rangu Nyamurundira is a Public Interest Litigation Project Lawyer at Zimbabwe Lawyers for Human Rights.

²⁶ Section 161 of the Electoral Act

²⁷ Article 7 paragraph 3 of SADC Principles and Guidelines

The creation of an Electoral Court in Zimbabwe is thus an endeavour to provide a podium to which challenges and disputes arising from Zimbabwe's elections can be brought. This would allow those who may feel, in one way or another, that some undue process of elections or a contested election result has been imposed upon them such that their democratic right to vote and be voted and indeed form a government of their choice has been infringed upon and usurped.

The question that however stands to be answered is whether the new Electoral Court has the required competence, the capacity, efficiency and effectiveness to deal with any elections petitions and other issues arising from the electoral process in Zimbabwe. Already a precedent has been set in past elections, where our judiciary failed to efficiently and effectively attend to and deal with challenges to the elections results such as those raised following the 2000 Parliamentary elections and 2002 Presidential elections. Indeed some of these challenges are still to be resolved by our courts of law. One can only thus ponder on whether the new Electoral Court will be a catalyst for a new democratic culture of elections, which culture had pretty much been stranded in a dark tunnel of uncertainty and dispute in past elections in Zimbabwe.

Birth of the Electoral Court

Before the enactment and coming into force in 2005 of the Electoral Act [*Chapter 2:13*] ("the Act") election petitions and any other election disputes were determined by the High Court of Zimbabwe as the first court of instance. Section 161 of the Act established an Electoral Court, being a court of record, whose purpose is to hear and determine election petitions and other matters in terms of the Electoral Act. For the first time, on paper, a court was created with the sole prerogative of presiding over the hearing and determination of election matters brought before it. Such a development is indeed welcome and commendable when compared with the previous position of election matters being dealt with in the same boat as other matters before the High Court.

The Electoral Court consists of one or more judges appointed by the Chief Justice after consultation with the Judge President.²⁸ At present a Judge of the High Court is the presiding authority over the Electoral Court. When presiding over electoral matters the Judge can seek

²⁸ Section 162 (1) of the Electoral Act

the assistance of two assessors in making a determination. The Electoral Court is also bestowed with a Registrar who in fact is the Registrar of the High Court.²⁹

Section 182 of the Act requires that the Electoral Court must determine every election petition brought before it within six months from the date of its presentation. The Court has the power to make a final decision on a question of fact with appeals to the Supreme Court only being allowed on decisions made on questions of law.³⁰

The new Electoral Court has indeed been established and is functional. However to simply claim to have a court established for the purposes of dealing with elections matters without making an enquiry into its actual practical functioning on the ground would be to undermine the essential question of whether it will in the long run be able to function as a competent electoral court. The Electoral Court must not be seen only to exist but it must exist as a competent legal entity which is effective, efficient and independent in its hearing and determination of challenges to election results or other disputes arising from the whole process of elections.

Can the Electoral Court fulfil its obligations?

For the Electoral Court to fully function and fulfil its obligations as the adjudicator over electoral matters it must in all senses be a court in its own right, with its own independent officials, structures and procedures. It must be a court that is efficient and effective in determining election challenges and disputes brought before it, without which essentials it will remain but a newfound seashell without a defining pearl.

On 21 February 2005 the Electoral Court saw the first election petition being presented to it in the case of *Roy Leslie Bennett vs. The Constituency Electoral Officer, Chimanimani Constituency & Ors No. EP 1/2005*. This petition was a challenge by Mr Bennett (the incumbent Member of Parliament for Chimanimani constituency) of his disqualification in the nomination court as a contesting candidate for the Chimanimani parliamentary seat on the 31st March 2005. Mr Bennett presented his petition to the Electoral Court seeking to have his nomination upheld and his democratic right to be voted for in an election for a position in the Parliament of Zimbabwe protected.

²⁹ Section 164 (1) of the Electoral Act

³⁰ Section 172 of the Electoral Act

Mr Bennett's petition marked the advent of the Electoral Court's endeavour to safeguard the principle of free and fair elections in Zimbabwe. Yet this anchoring case in Zimbabwe's election history brought more questions than answers as to whether the court was in fact a competent court ready to take on any brewing electoral storms.

The underlying question that arose from the first sitting of the court was one as to its competency in handling election petitions brought before it. While presiding over the *Bennett* case the Electoral Court was under the authority of a judge appointed from the High Court bench, who quite honestly pointed out that he had not been excused of his "normal duties as a High Court Judge". The effect was that his duties were now split between the High Court and the Electoral Court. It was an addition of responsibilities to a judge and system that is already strained. Even the present Registrar exercising his functions in the Electoral Court is a 'borrowed' official of the High Court, whose duties are effectively split between the two courts. What this means is that, should the Judge and Registrar of the Electoral Court continue to be those 'borrowed' from the High Court, whose duties, time and energies have to be balanced between the two courts, then the Electoral Court will not be as efficient and effective as it ought to be. This would mean unnecessary delays in hearing and determining such urgent matters as election petitions, thus defeating the whole purpose behind creating a special distinct court of law to deal with issues of elections in Zimbabwe. If the Electoral Court is to be effective in dealing with electoral challenges it follows that the other normal cases in the High Court will suffer inordinate delays.

In the *Bennett* case, after closing arguments were submitted by parties to the petition on the 8th of March 2005, judgement was reserved until some time the following week - at the very least some three working days after closing arguments. The reason given by the Electoral Court for reserving of judgement was to allow its Judge (due to his double obligations in two separate courts) time to go through the submissions and come to a determination. While it is understandable that the Honourable Judge did require some time to go through the submissions made one can only wonder whether a newly created court with only one petition - its first - would need until the following week to pass judgement if that court had its own Judge and Registrar devoting all their time and energies solely to the functioning of that court. That such a new court as the Electoral Court should 'borrow' officials and the administrative mechanisms of the High Court, a High Court already flooded with its own pending cases, underplays the need for a competent Electoral Court. It thus borders on mere comforts to create an impression, which is false, to comply with the SADC Principles and Guidelines.

That Zimbabwe has in fact been able to establish special courts (such as the Labour Court) with their own Judges, Registrar and court officials independent from the duties and obligations of any other court – highlights this falsity and lack of commitment to creating a fully competent Electoral Court. The results of such a lack of commitment may not be evident at present, there having been only one petition presented so far, yet one can only imagine a situation where, after the 31st of March parliamentary elections, a flood of petitions were to come pouring into the Electoral Court. Would it, under its present circumstances, be able to deal with such petitions – which petitions would require some urgency in hearing and determining? Indeed any failure to efficiently and effectively attend to such election challenges - as was the case with challenges to the 2000 Parliamentary elections and 2002 Presidential election, some of which challenges remain pending to this day – would defeat the whole purpose of having such a special court to help safeguard an aspired culture of transparent and credible democratic elections by protecting the electoral rights of those citizens of Zimbabwe who want to participate in the country's political process.

Judgement - Roy Bennett v The Constituency Elections Officer Chimanimani

Constituency & Ors EP1/05

While questions as to the composition and functioning of the Electoral Court still leave a lot to be desired as far as it being able to sustain itself as a competent, effective and efficient electoral court it became clear after it had passed its judgement in the *Bennett* case that the Court not only faced challenges from within, but also faced a more threatening challenge to its independence, which hovered outside waiting to inflict as much harm as possible. This challenge and threat, to which all other courts in Zimbabwe have similarly been exposed, came from none other than the Executive arm of government. The Electoral Court was not about to be spared the fate of intimidation and the undermining of its very existence.

On the 15th of March 2005 the Electoral Court's appointed judge, Judge Uchena, passed his judgement and ruled that when the Parliament of Zimbabwe sentenced Mr Bennett to a year in prison for assaulting another member of Parliament it did not sit as a criminal court passing a criminal conviction but rather as a "court in a *sui generis* sense" convicting him of a contempt offence. The court went on to state that:

“The sentence imposed on the appellant [Mr Bennett] does not therefore disqualify the appellant from registration as a voter, nor standing as a candidate for the election to the office of Member of Parliament.”

The Honourable judge then proceeded to pass judgement to the effect that Mr Bennett be allowed to stand as a contesting candidate in the elections. The parliamentary elections for the Chimanimani Constituency were thus postponed to the 30th of April 2005.

Facing the Wrath of the Executive

Only two days after passing judgement in its very first case the Electoral Court fell victim to an attack and reprimand by the head of the Executive, the President of Zimbabwe. The apparent basis for this attack was that it passed judgement in favour of a Zimbabwean who was seeking to exercise his right to vote. In a show of clear contempt for the Court's judgement in favour of Mr Bennett the President of Zimbabwe was quoted in **The Herald** (Thursday 17 March 2005 edition) saying:

"I don't understand the court's decision. We can't be held to ransom by a man who is in prison. That is absolute nonsense. We will study the decision and appeal against it. He (Bennett) has a case to answer. Rambai muchienderera mberi. Proceed as if nothing has happened. Rwendo runo tinoda kutsvaira (This time around we are determined to sweep every seat) said President Mugabe"

Clearly the President and head of the Executive seemed to be urging his party's supporters, especially those in Chimanimani Constituency, and those authorities, such as the Zimbabwe Electoral Commission, mandated with the running of the elections, to disregard and ignore a decision made by the Electoral Court, a court of record with legal jurisdiction to preside over such matters and make decisions therein independently, without fear, favour or subject to undue influence.

The ripple effect of the President's statement clearly highlights and reaffirms the fear that the Electoral Court and other electoral bodies in Zimbabwe, in this case the Zimbabwe Electoral Commission, will not be able to exercise their duties over elections in Zimbabwe free from the constant interference and intimidation of the Executive, an interested party in such

elections as he is the leader of the ruling ZANU PF political party with candidates contesting in the parliamentary elections.

After the President's statement and in apparent reaction to the statement on the 22nd of March 2005 (a good seven days after the Electoral Court's judgement) the Chairman of the Zimbabwe Electoral Commission filed an urgent chamber application for review of the Electoral Court's judgement by the Supreme Court and another urgent application in the Electoral Court seeking that it suspend its judgement pending the determination of the review. The result of these applications was that the Electoral Court did suspend its judgement. In the end Mr Roy Bennett himself withdrew his action seeking to contest the elections thus making way for his wife to stand in his place as the MDC candidate. He cited concerns for his safety, as well as that of his family, in view of the President's statement. He also indicated that in light of the action taken by the Zimbabwe Electoral Commission and the Electoral Court he no longer had any faith in the administration of justice and the independence of the Judiciary.

The President's statement and its effects raise a grave concern about whether the Electoral Court and the Zimbabwe Electoral Commission will be able to function as independent electoral institutions ensuring that Zimbabwe's elections are conducted in a free and fair manner such that the results there-from are accepted by all stakeholders, the Zimbabwean people.

It is clear from the President's above cited statement that he publicly undermined a decision made by a Court that is required to operate independent from any outside interference, especially from the Executive arm of government. Again, Zimbabwe witnessed the Constitution's requirement that the judiciary should not be subject to any control or direction from outside its membership violated.³¹ By indirectly, but clearly, urging those charged with the running of elections to "Proceed as if nothing had happened" the President was advocating for disregard to the Electoral Court's judgement. His signifying an intention to "appeal" against a judgement towards which he expressed his utter contempt had the effect of putting pressure on whichever court he sought to consider such an "appeal". In this case an urgent application for a review was made to the Supreme Court, which Court, following the President's passionate statement against the judgement, was then put under pressure to rule in

³¹ Section 79B Constitution of Zimbabwe

favour of the President's demand that "We can't be held to ransom by a man who is in prison".

Another cause for concern is that a good seven days, a whole week, after the Electoral Court had passed its judgement the Chairman of the Zimbabwe Electoral Commission filed two "urgent" chamber applications in the Supreme Court and Electoral Court challenging the judgement and seeking to have it suspended. One cannot help but question whether the Chairman of the Zimbabwe Electoral Commission - who preferred to wait a whole week to file what he argues to be urgent applications – acted independently of any undue influence arising from the President's statement or whether he was in fact reacting to the imposed wishes of the President.

Conclusion

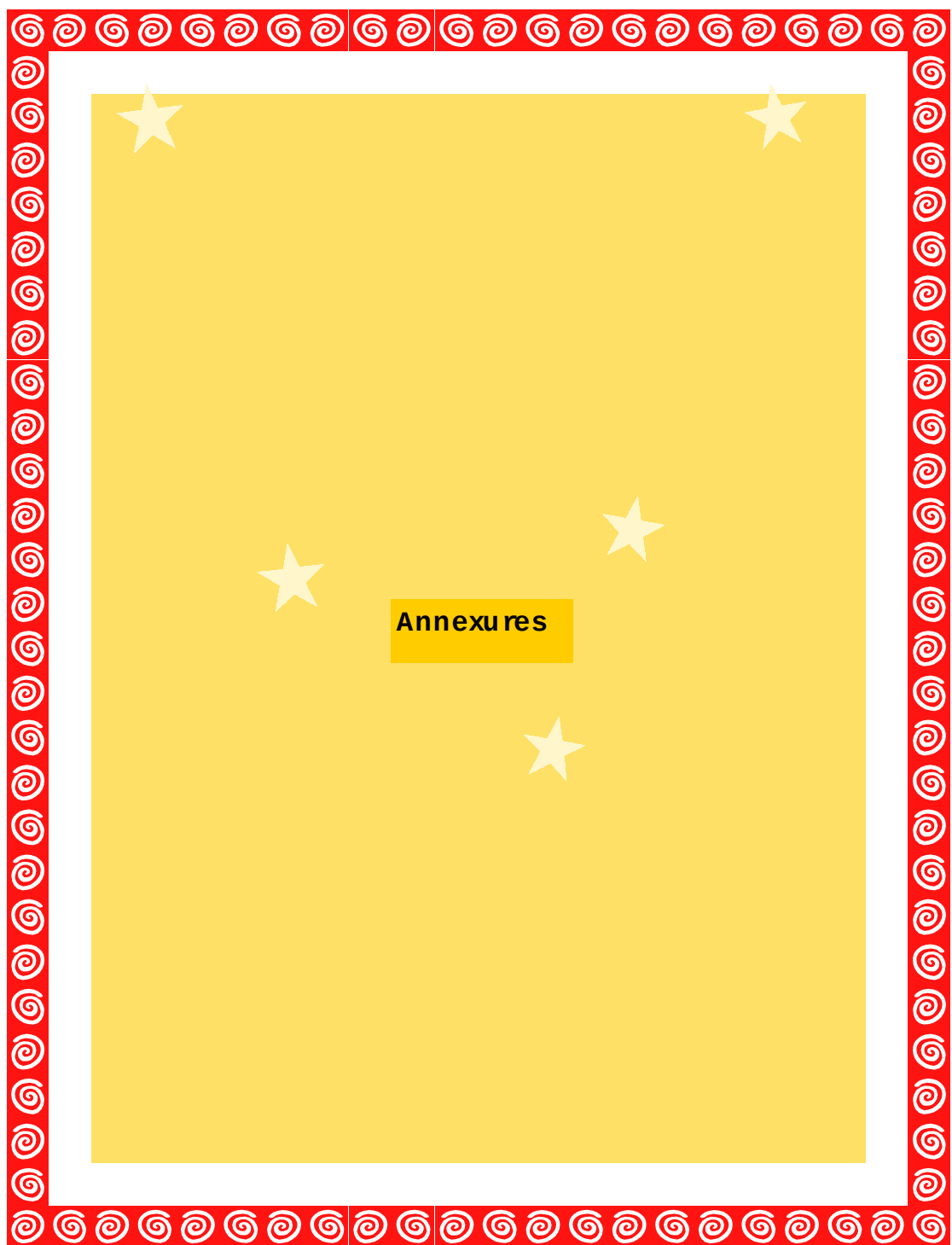
While the creation of the Electoral Court will be applauded as a positive development towards free and fair elections in Zimbabwe, one still has to doubt its ability to bring about the desired objectives which it is meant to fulfil, namely the hearing and determining of election petitions and other matters in terms of the Electoral Act.

Firstly, having a competent court to preside over and determine election disputes is a positive step. Yet the journey cannot end with building a refuge for those who may feel their electoral rights have been violated and usurped. Indeed such a place of refuge as the Electoral Court must then be furnished with the necessary personnel, tools and mechanisms to enable it to be a shell within which the desired pearl is at least at the disposal of those who seek it. The Electoral Court must thus become a court in its own right, with its own Judge, Registrar and administrative mechanisms so that it is effective and efficient and qualifies the description of a competent court able to fulfil the democratic aspirations of Zimbabwe's citizens to create a truly legitimate government of the people, by the people and for the people.

Secondly Zimbabwe has now come to witness that the Executive will not spare the Electoral Court from undue influence and intimidation. The Electoral Court has from its very birth simply inherited the plight of its parent, the Supreme and High Court Judiciary, a plight which has seen its courts and officials constantly undermined, discredited and hounded by the Executive. A gloomy picture of the transparency of the Zimbabwean election is thus painted.

The same lingering doubt as to the effectiveness, efficiency and independence of the electoral process arises when one considers the Zimbabwe Electoral Commission. This Commission, which is mandated with the duty of preparing for and conducting elections in Zimbabwe, has its independence questioned and credibility undermined where it is seen to bow down to Executive pressure. If the Commission, in the *Bennett* case, did indeed comply with the bidding of the President then it has already failed to be an independent electoral body able to bring about free, fair and transparent elections in Zimbabwe.

Both the Electoral Court and the Zimbabwe Electoral Commission need to be competent institutions in their own right, acting independent from any outside influences and remaining resistant to intimidation and undue influence so that Zimbabwe can truly have elections fitting of the aspirations of Zimbabweans as a whole and in adherence to the SADC Principles and Guidelines Governing Democratic Elections.



ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT 10:27

80 Abuse of journalistic privilege³²

A journalist who abuses his or her journalistic privilege by publishing—

(a) information which he or she intentionally or recklessly falsified in a manner which—

(i) threatens the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or

(ii) is injurious to the reputation, rights and freedoms of other persons;

or

(b) information which he or she maliciously or fraudulently fabricated; or

(c) any statement—

(i) threatening the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or

(ii) injurious to the reputation, rights and freedoms of other persons;

in the following circumstances—

A. knowing the statement to be false or without having reasonable grounds for believing it to be true; and

B. recklessly, or with malicious or fraudulent intent, representing the statement as a true statement;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years.

³²

Section substituted by s. 18 of Act 5/2003.

DISTRIBUTED BY VERITAS TRUST

Veritas makes every effort to ensure the provision of reliable information, but cannot take legal responsibility for information supplied.

Statutory Instrument 22 of 2005.

[CAP. 12:06

Broadcasting Services (Access to radio and television during an Election) Regulations, 2005

ARRANGEMENT OF SECTIONS

Section

1. Title
2. Interpretation.
3. Application.
4. Election programme to be broadcast.
5. Allocation of air time on television and radio.
6. Election broadcast.
7. Election advertisement.
8. Broadcasting news and current affairs programmes during an election period.
9. Records of political matter broadcast.
10. Appeals.
11. Offences and penalties.

FIRST SCHEDULE: Advertising rates.

SECOND SCHEDULE: Elections Complaint form.

IT is hereby notified that the Minister of State for Information and Publicity in the Office of the President and Cabinet has, in terms of section 46 of the Broadcasting Services Act [Chapter 12:06], made the following regulations—

Title

1. These regulations may be cited as the Broadcasting Services (Access to radio and television during an Election) Regulations, 2005.

Interpretation

- 2.(1) In these regulations—

“Act” means the Broadcasting Services Act [Chapter 12:06].

“election” means an election to Parliament;

“licensee” means the public broadcaster (Zimbabwe Broadcasting Holdings (Pvt) Ltd);

Application

3. These regulations shall apply to each free to air radio and television service provided by the licensee.

Election programmes to be broadcast

4.(1) Each of the stations of the public broadcaster specified in the First Schedule shall ensure that when broadcasting election programmes—

- (a) the station is guided by the provisions of the Act;
- (b) the election broadcast is clearly identified as an election broadcast and identified or announced in a similar manner both at its introduction and at its conclusion.

(2) The licensee shall ensure that election programmes to be broadcast during an election period shall include the following programmes—

- (a) programmes to which political parties or candidates are invited to present their election manifestos and policies to the electorate without being interviewed;
- (b) programmes to which there are discussions relating to the elections;
- (c) programmes to which there are interviews relating to the elections;
- (d) programmes to which there are parties' or candidates' advertisements.

Allocation of air time on television and radio

5.(1) The licensee shall ensure that contesting political parties or candidates are given equal opportunities for the broadcasting of election matter.

(2) The licensee shall allocate advertising air time on television and radio to a political party or candidate during an election period after each party or candidate contesting an election has paid the amounts stipulated in the First Schedule.

Election broadcasts

6.(1) The licensee shall transmit an election programme in such a manner that the programme does not follow immediately before or after another election programme.

(2) The licensee shall transmit an election programme during prime time.

(3) The licensee shall not broadcast any election programme that incites or perpetuates hatred against or vilifies any group or person on the basis of their political affiliation.

(4) The licensee shall give the Authority a broadcast schedule for election programmes and recording dates for all pre-recorded programmes for its station at least fifteen (15) days before an election period.

(5) The licensee shall not broadcast any election programme on a polling day.

(6) The licensee shall ensure that every election broadcast meets the quality standards set by the licensee.

Election advertisement

7.(1) Each of the stations of the public broadcaster shall allocate four hours of available purchasable time during an election period for election advertisement which shall be

distributed equally to interested contesting political parties and candidates and shall take into consideration the number of constituencies the party is contesting.

(2) The licensee shall transmit an election advertisement in such a manner that the election advertisement does not follow immediately before or after another election advertisement.

(3) The licensee shall not edit or alter any advertisement submitted for transmission.

(4) The licensee may reject an advertisement submitted for transmission and the licensee shall provide written reasons for the rejection of the advertisement within 24 hours to the concerned political party or candidate.

Broadcasting of news and current affairs programmes during the election period

8.(1) The licensee shall 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.

(2) The licensee's presenters or reporters associated with news and current affairs programmes shall not present their own personal views on such programmes.

Records of political matter broadcast

9. The licensee shall keep a record of election matter broadcast which shall contain the following information—

- (a) the name and address of the representative of the political party or candidate;
- (b) the transmission date and time;
- (c) the duration of the programme;
- (d) any other information which the licensee deems necessary.

Appeals

10.(1) Any political party or candidate contesting an election who is aggrieved by any decision of the licensee in terms of these regulations may appeal to the Authority giving the grounds for the appeal within twenty-four hours of being notified of the licensee's decision.

(2) An appeal in terms of subsection (1) shall be made in form EC1 provided by the Authority.

(3) The Authority may, before deciding an appeal lodged in terms of subsection (1), request the appellant and the licensee to appear before the Authority and make oral submissions in connection with the appeal as the Authority considers will be of assistance in determining the appeal.

(4) The period between the lodging of the appeal in terms of subsection (1) and its determination shall not exceed two days, and if the appeal has not been determined after that period it shall be deemed to have been determined in favour of the appellant.

Offences and penalty

11. Any person who contravenes these regulations shall be guilty of an offence and liable to a fine not exceeding level ten.

FIRST SCHEDULE (Section 5)

ADVERTISING RATES

The following advertising rates shall apply to all contesting parties and candidates during the election period. These rates are 70 % of the current advertisement rates.

<i>Station</i>	<i>Prime time rates</i>	<i>Non prime time rates</i>	<i>Late listening</i>	<i>Weekend prime time rates</i>	<i>Weekend non prime time rates</i>
	\$	\$	\$	\$	\$
Radio Zimbabwe					
60 seconds	1,400,000,00	1,260,000,00	774,962,00	1,400,000,00	1,260,000,00
30 seconds	700,000,00	630,000,00	387,481,00	700,000,00	630,000,00
Spot FM					
60 seconds	1,155,000,00	690,545,00	523,654,00	1,065,381,00	646,133,00
30 seconds	577,500,00	345,271,00	261,828,00	532,691,00	323,066,00
Power FM					
60 seconds	1,362,130,00	980,781,00	698,600,00	1,362,130,00	980,781,00
30 seconds	684,250,00	490,356,00	349,215,00	684,250,00	490,356,00
National FM					
60 seconds	871,710,00	531,699,00	425,992,00	871,710,00	531,699,00
30 seconds	435,855,00	265,850,00	213,003,00	435,855,00	265,850,00
ZTV					
60 seconds	3,780,000,00	2,956,134,00	1,241,615,00	3,780,000,00	2,956,134,00
30 seconds	1,890,000,00	1,478,065,00	620,808,00	1,890,000,00	1,478,065,00

SECOND SCHEDULE (Section 10)

PRESCRIBED FORM

FORM EC1

Election Complaints Form

Form EC1

BROADCASTING AUTHORITY OF ZIMBABWE

Thirteenth Floor, Social Security Centre, Cnr Sam Nujoma Street/Julius

Nyerere Way (P O Box CY 496, Causeway) Harare

Telephone: 263-4-797380/383 Fax: 263-4-797375 Email: baz@comone.co.zw

1. Complainant's Details

Political Party

Name of Political Party/Independent Candidate:

Address of Political Party/Independent Candidate

.....

Telephone: Fax:

E-mail:

Person Representing Party/Independent Candidate:

Office held in Party:

First Name/s:

Surname:

Date of Birth:..... **I.D. No:**

Residential Address:

.....

Business Address:

.....

Telephone:..... Fax:

E-Mail.....

2. Respondent's Details

Name of Broadcaster/Station:

Programme:

Date and Time of Transmission:

3. Nature of Complaint (*Provide Details*)

.....

.....

.....
.....
.....
.....

Date.....Signature

PUBLIC ORDER AND SECURITY ACT 11:17

15 Publishing or communicating false statements prejudicial to the State

(1) Any person who, whether inside or outside Zimbabwe, publishes or communicates to any other person a statement which is wholly or materially false with the intention or realising that there is a risk or possibility of—

- (a) inciting or promoting public disorder or public violence or endangering public safety; or
- (b) adversely affecting the defence or economic interests of Zimbabwe; or
- (c) undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- (d) interfering with, disrupting or interrupting any essential service;

shall, whether or not the publication or communication results in a consequence referred to in paragraph (a), (b), (c) or (d), be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who, whether inside or outside Zimbabwe and whether with or without the intention or realisation referred to in subsection (1), publishes or communicates to any other person a statement which is wholly or materially false and which—

- (a) he knows to be false; or
- (b) he does not have reasonable grounds for believing to be true;

shall, if the publication or communication of the statement—

- (i) promotes or incites public disorder or public violence or endangers public safety; or
- (ii) adversely affects the defence or economic interests of Zimbabwe; or
- (iii) undermines public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or
- (iv) interferes with, disrupts or interrupts any essential service;

be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

16 Undermining authority of or insulting President

(1) In this section—

“publicly”, in relation to making a statement, means—

- (a) making the statement in a public place or any place to which the public or any section of the public have access;
- (b) publishing it in any printed or electronic medium for reception by the public;

“statement” includes any act or gesture.

(2) Any person who publicly and intentionally—

- (a) makes any false statement about or concerning the President or an acting President knowing or realising that there is a risk or possibility of—

- (i) engendering feelings of hostility towards; or
 - (ii) causing hatred, contempt or ridicule of;

the President or an acting President, whether in person or in respect of his office; or

- (b) makes any abusive, indecent, obscene or false statement about or concerning the President or an acting President, whether in respect of his person or his office; or

shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

PART III

OFFENCES AGAINST PUBLIC ORDER

17 Public violence

(1) Any person who, acting in concert with one or more other persons, forcibly—

- (a) disturbs the peace, security or order of the public or any section of the public; or
- (b) invades the rights of other people;

intending such disturbance or invasion or realising that there is a risk or possibility that such disturbance or invasion may occur, shall be guilty of public violence and liable to a fine not exceeding one hundred thousand dollars or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) It shall be an aggravating circumstance if, in the course of or as a result of the offence of public violence—

- (a) there was an attack on the police or on other persons in lawful authority; or
- (b) bodily injury or damage to property occurred; or
- (c) the person who has been convicted of the offence instigated an attack on the police or other persons in lawful authority or instigated the infliction of bodily injury or the causing of damage to property.

(3) A person accused of any contravention of subsection (1) may be charged concurrently or alternatively with the common-law offence of public violence

19 Gatherings conducing to riot, disorder or intolerance

(1) Any person who, acting together with one or more other persons present with him in any place or at any meeting—

(a) forcibly—

(i) disturbs the peace, security or order of the public or any section of the public; or

(ii) invades the rights of other people;

intending to cause such disturbance or invasion or realising that there is a risk or possibility that such disturbance or invasion may occur; or

(b) performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked; or

(c) utters any words or distributes or displays any writing, sign or other visible representation—

(i) with the intention to engender, promote or expose to hatred, contempt or ridicule any group, section or class of persons in Zimbabwe solely on account of the race, tribe, nationality, place of origin, national or ethnic origin, colour, religion or gender of such group, section or class of persons; or

(ii) realising that there is a risk or possibility that such behaviour might have an effect referred to in subparagraph (i);

shall be guilty of an offence and be liable to a fine not exceeding fifty thousand dollars or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) An offence under subsection (1) is committed whether the action constituting it is spontaneous or concerted, and whether the place or meeting where it occurred is public or private.

20 Assaulting or resisting peace officer

Any person who assaults or by violent means resists a peace officer acting in the course of his duty and who—

(a) intends the assault or resistance to provoke or encourage public violence or public disorder or a breach of the peace; or

(b) realises that there is a risk or possibility that the assault or resistance will have the effect referred to in paragraph (a);

shall be guilty of an offence and liable to a fine not exceeding two hundred thousand dollars or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

21 Undermining of police authority

Any person who—

- (a) in a public place and in the presence of—
- (i) a police officer who is present on duty; or
 - (ii) a police officer who is off duty, knowing that he is a police officer or realising that there is a risk or possibility that he is a police officer;
- makes any statement that is false in a material particular or does any act or thing whatsoever;
- or
- (b) in a public place and whether or not in the presence of a police officer referred to in subparagraph (i) or (ii) of paragraph (a) makes any statement that is false in a material particular;

with the intention, or realising that there is a risk or possibility, of engendering feelings of hostility towards such officer or the Police Force or exposing such officer or the Police Force to contempt, ridicule or disesteem, shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

22 Intimidation

Any person who, with the intention of unlawfully furthering a political objective in Zimbabwe, and by means of an express or implied threat of unlawfully inflicted harm, compels or induces another person—

- (a) to do something which he is not legally obliged to do; or
- (b) to refrain from doing something which he is legally entitled to do;

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART IV

PUBLIC GATHERINGS

23 Interpretation in Part IV

In this Part—

“organiser”, in relation to a public gathering, means every person who or organisation or association which executes or assists in executing the arrangements for or promotes the holding of the public gathering.

24 Organiser to notify regulating authority of intention to hold public gathering

(1) Subject to subsection (5), the organiser of a public gathering shall give at least four clear days’ written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held:

Provided that the regulating authority may, in his discretion, permit shorter notice to be given.

(2) For the avoidance of doubt, it is declared that the purpose of the notice required by subsection (1) is—

- (a) to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; and
- (b) to facilitate co-operation between the Police Force and the organiser of the gathering concerned; and
- (c) to ensure that the gathering concerned does not unduly interfere with the rights of others or lead to an obstruction of traffic, a breach of the peace or public disorder.

(3) Any Saturday, Sunday or public holiday falling within the four-day period of notice referred to in subsection (1) shall be counted as part of the period.

(4) Where there are two or more organisers of a public gathering, the giving of notice by any one of them in terms of subsection (1) shall be a discharge of the duty imposed upon the other or others by that subsection.

(5) This section shall not apply to public gatherings of a class described in the Schedule.

(6) Any organiser of a public gathering who fails to notify the regulating authority for the area of the gathering in accordance with subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

25 Regulation of public gatherings

(1) If a regulating authority, having regard to all the circumstances in which a public gathering is taking or is likely to take place, has reasonable grounds for believing that the public gathering will occasion—

- (a) public disorder; or
- (b) a breach of the peace; or
- (c) an obstruction of any thoroughfare;

he may, subject to this section, give such directions as appear to him to be reasonably necessary for the preservation of public order and the public peace and preventing or minimising any obstruction of traffic along any thoroughfare.

(2) Without derogation from the generality of subsection (1), directions under that subsection may provide for any of the following matters—

- (a) prescribing the time at which the public gathering may commence and its maximum duration;
- (b) prohibiting persons taking part in the public gathering from entering any public place specified in the directions;
- (c) precautions to be taken to avoid the obstruction of traffic along any thoroughfare;
- (d) prescribing the route to be taken by any procession;
- (e) requiring the organiser to appoint marshals to assist in the maintenance of order at the public gathering.

(3) Whenever it is practicable to do so, before issuing a direction under subsection (1) a regulating authority shall give the organiser of the public gathering concerned a reasonable opportunity to make representations in the matter.

(4) A direction given under subsection (1) shall have effect immediately it is issued and may be published—

- (a) in a newspaper circulating in the area to which the direction applies; or
- (b) by notices distributed among the public or affixed upon public buildings in the area to which the direction applies; or
- (c) by announcement of a police officer broadcast or made orally.

Provided that, where practicable, the regulating authority shall ensure that the direction is reduced to writing and served on the organiser of the public gathering to which it relates.

(5) Any person who is aggrieved by a direction issued under subsection (1) may appeal against it to the Minister, and the Minister may confirm, vary or set aside the direction or give such order or direction in the matter as he thinks just.

(6) An appeal in terms of subsection (5) shall be dealt with as quickly as possible.

(7) The noting of an appeal in terms of this subsection shall not have the effect of suspending the direction appealed against.

(8) A police officer may order the persons taking part in any public gathering to disperse if—

- (a) any direction given under subsection (1) in relation to that gathering has been violated; or
- (b) the police officer has reasonable grounds for believing that public order is likely to be endangered if the gathering continues.

(9) Any person who fails to comply with an order given under subsection (8) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

26 Prohibition of public gatherings to avoid public disorder

(1) Without derogation from section *twenty-five*, if a regulating authority believes on reasonable grounds that a public gathering will occasion public disorder, he may by notice in terms of subsection (3) prohibit the public gathering.

(2) Whenever it is practicable to do so, before acting in terms of subsection (1), a regulating authority shall afford the organiser of the public gathering concerned a reasonable opportunity to make representations in the matter.

(3) A notice given under subsection (1) shall have effect immediately it is issued and shall be published—

- (a) in a newspaper circulating in the area to which the direction applies; or
- (b) by notices distributed among the public or affixed upon public buildings in the area to which the direction applies; or
- (c) by announcement of a police officer that is broadcast or made orally:

Provided that, where practicable, the regulating authority shall ensure that the notice is reduced to writing and served on the organiser of the public gathering to which it relates.

(4) Any person who is aggrieved by a notice given under subsection (1) may appeal against it to the Minister, and the Minister may confirm, vary or set aside the notice or give such other order in the matter as he thinks just:

Provided that the noting of an appeal in terms of this subsection shall not have the effect of suspending any notice appealed against.

(5) Any person who knowingly opposes or fails to comply with a notice given under subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

ZIMBABWE ELECTORAL COMMISSION ACT 2:12

PART IV

VOTER EDUCATION

13 Interpretation in Part IV

In this Part—

“foreign contribution or donation” means a contribution or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law, civics or other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

14 Functions of Commission with respect to voter education

(1) The Commission shall have the following functions with respect to voter education—

- (a) to provide adequate, accurate and unbiased voter education; and
- (b) to ensure that voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party; and

- (c) to ensure compliance otherwise by persons referred to in paragraph (b) with the provisions of section 15(1).
- (2) The Commission shall produce its own voter education materials or course or programme of instruction for use in voter education.
- (3) The Commission may appoint any person to assist it in providing voter education.

15 Voter education by persons other than the Commission or political parties

(1) No person, other than the Commission, or a person appointed in terms of section 14(3), or a political party, shall provide voter education unless—

- (a) such person is a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe, or an association of persons, whether incorporated or unincorporated, consisting exclusively of citizens or permanent residents of Zimbabwe, domiciled in Zimbabwe; and
- (b) such person is, in the case of—
 - (i) an association of persons, whether incorporated or unincorporated; or
 - (ii) a lawfully constituted trust, whether or not registered in terms of any law; registered as a non-governmental organisation in terms of the Non-Governmental Organisations Act [*Chapter 17:09*], and the constitution of such organisation or the deed of trust, as the case may be, specifically mandates it to provide voter education; and
- (c) such person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and
- (d) such person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and
- (e) the proposed voter education activities of such person are, subject to section 16, funded solely by local contributions or donations; and
- (f) the voter education materials proposed to be used by the person and the course or programme of instruction in accordance with which the voter education will be conducted are adequate and not misleading or biased in favour of any political party; and
- (g) no fee or charge is levied for the provision of voter education or voter education materials.

(2) The Commission may in writing require any person, other than a political party, providing or proposing to provide voter education, to—

- (a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
- (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
- (c) disclose the manner and sources of funding of its proposed voter education activities; and

(d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.

(3) Any person who contravenes subsection (1) or who fails to comply with a requirement by the Commission in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

16 Foreign contributions or donations for the purposes of voter education

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in section 14(3) or subsection 15(1).



PRESS STATEMENT

EXECUTIVE ATTACK OF JUDICIARY IN RULING ON BENNETT UNFORTUNATE

Zimbabwe Lawyers for Human Rights notes with grave concern that the Executive has once again attacked the judiciary using the government controlled public media both electronic and print for passing a judgment that they (Executive) dislike. This follows the nullification of the results by the nomination court for the Chimanimani Constituency by the Electoral Court in the case of **Roy Leslie Bennett vs. Zimbabwe Electoral Commission, Samuel Udenge and Heather Bennett**.

In particular, Zimbabwe Lawyers for Human Rights (ZLHR) are concerned at the reports in *The Herald* (Thursday 17 March 2005) wherein it was reported as follows:

“ Speaking at a briefing with provincial, Government and party leaders at Gaza High School in Chipinge Cde Mugabe DESCRIBED THE RULING AS MADNESS....I DON’T UNDERSTAND THE COURT’S DECISION. WE CAN’T BE HELD AT RANSOM BY A MAN WHO IS IN PRISON. THAT IS ABSOLUTE NONSENSE. We will study the decision and appeal against it... He has a case to answer Rambai muchienderera mberi. PROCEED AS IF NOTHING HAS HAPPENED”. (our emphasis)

ZLHR is concerned that this could be taken as an instruction by the President to the officials (Zimbabwe Election Commission officials) involved in the electoral processes to disregard a valid order of court. What is disturbing is that the President is not party to the proceedings and therefore outside the parties who have the legal standing to appeal. Opposing papers in the matter were only filed by the ZEC which in terms of the enabling statute and the SADC Principles and Guidelines governing democratic elections is an independent electoral commission.

In particular the provisions of Zimbabwe Electoral Commission Act stipulate that ZEC is an independent body and shall not be subject to the direction or control of any person or authority in the exercise of its function. Any attempts by the President or any other state official to impose or usurp the functions of ZEC will be unlawful and a serious undermining of the independence of ZEC. The president is an interested party in the running and outcome of the March 2005 elections and must not be seen to be forcing ZEC to appeal if they are not interested. It is the mandate of ZEC as the only party that filed opposing papers in the matter to consider whether or not an appeal would be justified.

The interference with the judiciary in Zimbabwe by the Executive and ruling party politicians has become endemic and an issue of grave concern to the lawyers in Zimbabwe and the international and regional community. In particular the African Union adopted the African Commission on Human and Peoples Rights report at its Fourth Ordinary Session on the 30th-31st of January in Abuja Nigeria, in terms of which it was observed and recommended that

“The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates’ and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due to members of the judiciary by refraining from political attacks or the use of inciting language against judges and magistrates...We commend to the Government of the Republic of Zimbabwe for serious consideration and application of the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003”

ZLHR therefore further reiterates the need to guarantee the independence of the judiciary and urges the Executive to refrain from interference with the judiciary in line with recommendations by the African Union. Regrettably, the President’s unfortunate unwarranted attack and outburst against the Electoral Court will undermine the effective operation of the courts and the independence of the judiciary. The Executive should be creating an environment for the courts to exercise their duties without fear or favour rather than being at the forefront of undermining the rule of law and the integrity of the courts.

Ends
17 March 2005

26th June 2004

**The Honourable Minister of Home Affairs
Harare**

Dear Honourable Minister Kembo Mohadi

Re: World Day in Support of Torture Victims 26 June 2004

You will recall that last year on 26 June, we wrote you in commemoration of the World day in Support of the Victims of Torture. It goes without saying that the world still views torture as an issue of serious concern to humanity. In fact torture has been classified as an international crime and this has very serious implications on torturers as they can be prosecuted anywhere in the world anytime. Further this classification also exposes authorities who have a duty to investigate and deal with torture to potential prosecution if they are seen to have failed to act against torturers. Such omission is usually interpreted as either confirmation that torturers are acting on instructions of authorities or at least with the acquiescence of the authorities. Torture is also banned absolutely in the world and a state of emergency or internal political conflict or public disorder cannot be used as justification for torture. In other words, it is a non-derogable offence. International human rights jurisprudence has also settled the point that the state cannot grant a valid or binding amnesty/clemency to torturers as the offence is against the whole world. We have no doubt that the government is also concerned at the continued reports of torture that are being attributed to the law enforcement agents or groups acting with the knowledge and/ or blessing of the state. It is in this respect that in our letter last year we suggested concrete processes and mechanisms that the State can and should take in order to combat torture in Zimbabwe. We still stand by those recommendations and strongly urge the government to show its commitment to combating torture by embarking on an incremental effort to implement the recommendations made. We also look forward to a substantive response to the very serious issues that we raised in the letter.

This year, we find that there is no better method of commemorating the day, than to pay tribute to those who have lost their lives as a result of torture or conduct linked thereto. We therefore provide a schedule below of people who have allegedly lost their lives in the last few years in circumstances that tended to suggest organised violence and/or torture. We request that the honourable Minister provides us with an update of the state of prosecution in these cases as indeed you will agree with us that, torture thrives on impunity or a perception thereof. It is also important for the restoration of public confidence in the police force and the criminal justice delivery process if the State is seen to be genuinely attempting to deal with the actual culprits of torture.

ALLEGED NAME OF VICTIM	ALLEGED DATE OF DEATH	ALLEGED AFFILIATION OF VICTIM	ALLEGED PLACE OF DEATH	ALLEGED SUSPECTED CULPRITS	SOURCE(S) OF REPORT	STATUS OF INVESTIGATI ONS
Afonso Plaxedes	12-06-03	MDC	Dzivarasekwa, Harare	Zanu PF and Militia	MDC	
Anderson Charles	2-06-02	Commercial Farmer	Mazoe	War veterans- Minister John Nkomo's gun was used in the murder.	Parade-7/02 MDC	
Banda Mr	24-04-00	MDC	Shamva	Zanu PF	MDC	
Bhebhe Newman	28-02-00	MDC	Nkayi	War veterans and former dissidents abducted and killed him.	* DN 1/03/02	
Botha William	23-07-00	Commercial Farmer	Seke	War veterans	Parade-7/02	
Bumburai Paul	12-06-01	MDC	Shamva	Zanu PF		
Chabvamudev e Nikonari	22-09-02	MDC	Magunje	Zanu PF	DN 28/9/02	
Chacha Augustus	8-12-01	MDC	Shurugwi	Zanu PF		
Chakwenya Tinashe	4-04-00	Zimbabwe Republic Police	Marondera	War veterans shot him dead at the invaded Chipesa Farm.	NGO Forum/MDC * DN 23/05/00	
Chaitama Nicholas	25-04-00	MDC	Kariba	Zanu PF		

Chambati Milton Mambaravana	20-10-01	MDC	Hurungwe	Zanu PF		
Chapurunga Lemani	19-11-00	MDC	Marondera	Zanu PF		
Chemvura Lameck	24-11-01	UZ student	Makoni	Soldiers		
Chigagura Zeke	2-06-00	MDC	Gokwe	War veterans	* DN 3/6/00	
Chihumbiri Eswat	23-03-01	MDC	Muzarabani	Zanu PF militia	MDC	
Chikwenya Richard Chokurasa	1-05-01	MDC	Buhera	Zanu PF	* DN 3/5/01	
Chiminya Tichaona	14-04-00	MDC-MDC President's assistant	Buhera	CIO and war veterans petrol-bombed the vehicle.	* FinGaz 18/10/01 * DN 20/04/00 * Herald 20/04/00 * Herald 19/04/00 * Herald 16/04/00 * DN 17/04/00 * DN 18/06/01 * DN 21/06/01 * DN 29/04/02 * DN 2/05/02 * DN 4/05/02 * DN 4/05/02 * DN 1/05/02 * Herald 12/06/02 * DN 23/05/02 * DN 13/06/0	
Chipunza Takundwa	16-05-00	MDC	Budiriro	War veterans severely tortured him at the surgery owned by the late war veterans leader Chenjerai Hunzvi.	MDC * DN 23/5/00 * Herald 18/5/00	
Chirima Robson Tinarwo	March 2001	MDC	Muzarabani- Dandakurima ward	Zanu PF youth militia/War veterans.	NGO Forum/MDC * Standard 1/04/01	
Chisasa Alex	13-05-00	ZRP	Chipinge South	War veterans		

Chitemerere Mhondiwa	30-10-01	MDC	Murehwa	War veterans		
Chiwara Laban	5-05-00	MDC	Harare	War veterans		
Chiwaura Moffat Soka	29-12-01 but body found on 14-01-02 on Hon Nicholas Goche's Atherstone farm.	MDC	Bindura	Zanu PF abducted and killed him.	* DN 22/1/02	
Cobbet Robert Fenwick	6-08-01	Commercial farmer	Kwekwe	War veterans		
Dube Nqobizita	1-03-02	MDC	Nkulumane. He died on arrival at Mpilo Hospital in Bulawayo.	Zanu PF supporters assaulted him and set his vehicle on fire.	*Herald 2/03/02	
Chinyemberere Binali	25-08-02	MDC	Karoi	Zanu PF		
Chinyere Mr	11-06-00	MDC	Muzarabani	Zanu PF- Pulled out of bus.		
Chiunya Philip Gumboreshumba	16-05-02	MDC	Sadza, but family was barred from burying him there. He was buried in Harare.	Zanu PF/war veterans severely assaulted him.	* DN 20/5/02	
Dhliwayo Willis	25-12-01	war veteran	Chipinge	MDC		
Dumukani Zondani	9-06-01	Farmworker	Mbare	Zanu PF		
Dunn Allan Stewart	7-05-00	Commercial Farmer	Seke	War Veterans and Zanu PF supporters beat him unconscious.	Parade 7/02, DN 9/5/00, Herald 9/5/00 * DN 23/5/00	
Dzokurasa Richard	30-04-01	MDC	Buhera	Zanu PF and CIO	MDC	
Elsworth Henry Swan	7-05-00	Commercial Farmer	Kwekwe	War veterans and CIO	Parade 7/02, DN 14/12/00, Herald 15/12/00	
Gara Bernard	31-12-00	Zanu PF	Masvingo-Bikita	MDC		
Gomo Edwin	26-03-00	MDC	Bindura	Zanu PF-		

				Youth militia		
Ford Samson Terrance	17-03-02	Commercial Farmer	Norton	War veterans. They tied him up and shot him at point blank.	* DN 19/3/02 * Parade 7/2002 *Herald 22/3/02, 19/3/02, 20/3/02 * DN 25/3/02, 23/3/02 * ZimInd. 28/3/02	
Guvi Obert	14-09-00	MDC	Hurungwe	War veterans		
Gatsi Ernest	19-03-02	MDC	Gurube	Zanu PF supporters beat him severely. He died at Gurube Hospital.	* DN 20/3/02 * ZimInd 28/3/02	
Gwase Nhamo	13-06-00	MDC	Murehwa	Zanu PF/war veteran leader identified as Obey Magaya.	* DN 10/8/00	
Gwenzi Gilson	27-07-01 assaulted in June.	MDC	Mwenezi	Zanu PF		
Jeke Leo	10-06-00	Zanu PF	Bikita	MDC		
Jefta Peter	3-03-02	MDC	Harare South	Zanu PF		
Jeka Petros	13-03-02 Easter Monday	MDC	Masvingo	Zanu PF supporters stabbed him to death.	NGO Forum/MDC * DN 21/09/02 * DN 10/04/02 * DN 24/4/02	
Jeranyama Donald	25-03-02	MDC	Mutasa	Soldiers severely assaulted him on the eve of the election. Died from his injuries at his Honde Valley home.	ZESN Observers/MD C	
Kamonera John	3-07-01	MDC	Hatfield-Epworth	Zanu PF	MDC * DN 11/7/01	
Kanyurira Luckson	25-04-00	MDC	Kariba	Zanu PF	NGO Forum/MDC	
Kareza/Howard	13-12-00 Assaulted on	MDC	Shamva	Zanu PF	NGO Forum/MDC	

	23-4-00					
Kariza Peter	23-04-00	MDC	Shamva	Zanu PF	NGO Forum/MDC * FinGaz 4/5/00	
Karimhete Isaac	21-10-02	MDC	Epworth	Zanu PF supporters allegedly incited by Muzarabani MP Nobbie Dzinzi tortured him for 11 days until he died at Gunduza Base.	MDC * DN 26/10/02	
Kufandaedza Musekiwa	27-05-00	Zanu PF	Seke	Zanu PF	NGO Forum	
Katema Thomas	2-08-01	MDC	Harare	Zanu PF	MDC	
Katsamudanga Tichaona	5-02-02	MDC	Died at the Avenues Clinic, Harare	Zanu PF beat him up and sustained serious head and body injuries.	MDC * DN 6/2/02	
Khumalo Khape	6-02-02	MDC	Mhondoro	Zanu PF	MDC * DN 12/2/02	
Lupahla Limukani	29-10-01	Zanu PF	Lupane	MDC	NGO Forum	
Mabika Talent	14-04-00	MDC	Murambinda	CIO/War veteran	NGO Forum/MDC and Buhera North election petition High Court judgement Daily News on Sunday 7/9/03	
Machiridza Tonderai	18-04-03	MDC	St Mary's	ZRP officers tortured him while in their custody and even chained him to his hospital bed despite severe injuries to his body and limbs.	MDC -DN 24/4/03	

Madzvimbo Fanuel	16-09-01	Resettled Farmer	Hwedza	War veterans	MDC	
Madhobha Tipason	Went missing on 10-04-02. Remains found on 2-05-02	MDC	Gokwe	War veterans	MDC * DN 10/05/02	
Mafemeruke Constantine	19-06-00	MDC	Kariba	War veterans/Zanu PF	MDC/NGO Forum	
Maguwu Itayi	27-07-00	MDC	Dzivarasekwa	Army and ZRP	NGO Forum/MDC	
Mahuni Funny	13-03-02	MDC	Kwekwe	Zanu PF youth militia and war veterans murdered him at a torture base in Mbizo after he denied his two daughters permission to attend a Zanu PF pre-election night rally.	MDC * ZimInd. 28/3/02	
Mamonera John	27-07-00	MDC	Hatfield	Zanu PF	MDC	
Mandeya Joseph Ketero	17-05-00	MDC	Mutare	Zanu PF	NGO Forum/MDC	
Mandindishe Peter	22-07-01	MDC	Bindura	Zanu PF	MDC	
Manhango Wonder	26-06-00	MDC	Gokwe	Zanu PF youths militia and war veterans.	MDC/NGO Forum * DN 11/12/01 * DN 7/11/01 * Gokwe North Election Petition	
Manyame Ropafadzo	16-01-01	MDC	Bikita	Zanu PF	NGO Forum/MDC	
Manyara Owen	15-03-02	MDC	Madziva	Zanu PF	MDC * ZimInd 28/3/02	
Mapenzauswa Phibion	14-07-01	Resettled Farmer	Mutare West	War veterans	NGO Forum	
Maposa Richard	19-01-02	MDC	Bikita West	Eight Zanu PF supporters assaulted him	MDC * FinGaz 13/3/02	

				all over his body with logs. He was taken to Chitutu Clinic where he died on arrival.	* DN 1/2/02 * Herald 22/1/02	
Mapingure Atnos	20-01-02	MDC	Jerera	Zanu PF	MDC * FinGaz 13/3/02 * Herald 22/1/02	
Marufu Doreen	2-04-00	MDC	Mazowe	War veterans	MDC/NGO Forum	
Mashinga Anthony	Date unreported	MDC	Goromonzi	War veterans	NGO Forum/MDC	
Masango Molly		MDC	Murehwa	Unknown	MDC	
Mataruse Peter	March 2001	MDC	Muzarabani's Hoya ward	Zanu PF youth militia	NGO Forum/MDC * Standard 1/04/01	
Matema Hilary	15-10-01	MDC	Guruve	Zanu PF	NGO Forum/MDC	
Matope Kenneth	13-01-02	MDC	Guruve	Zanu PF	MDC	
Matyatya MR	27-06-00	MDC	Gweru	Zanu PF	NGO Forum	
Mazava Felix	11-09-01	School headmaster at Mbowe Primary Chivhu- MDC	Chikomba, Chivhu	Zanu PF and CIO	NGO Forum * DN 19/09/01 * Herald 15/09/01 * Herald 14/09/01 * DN14/09/01 * DN 17/09/01	
Mbewe Samson	9-08-00	Farmworker	Goromonzi	War veterans	NGO Forum/MDC	
Mbudzi	Unreported	MDC	Mhangura	Zanu PF militia	MDC	
Midzi Trymore	23-12-01	MDC	Bindura	Zanu PF militia	NGO Forum/MDC. DNews 12/1/02, 22/3/02, 11/4/02, 24/4/02, 19/4/02, 22/6/02 * DN 1/1/02 and	

					ZimInd.5/4/02	
Mijoni Simwanja	15-01-01	MDC	Kwekwe	Zanu PF militia	MDC	
Moyo Henry	7-02-02	MDC	Masvingo	Zanu PF	MDC	
Mugodoki Michael	6-12-01	Farm security guard	Chikomba	Zanu PF/War veterans	NGO Forum	
Mpofu Muchenje	19-01-02	MDC	Mberengwa	War veterans	MDC	
Mukweli Vusimuzi	9-09-01	MDC	Gokwe	Zanu PF	NGO Forum	
Mubaiwa Godfrey	9-02-03	MDC	Highfield	Zanu PF	MDC	
Mudavanhu S.	Unreported Chesa Farm	MDC		War veterans	MDC	
Mudzi Onias	Unreported	MDC	Mudzi, Mutoko	War veterans	MDC	
Mudzimuirema Cosmas	16-07-02	MDC	Buhera	War veterans/ZRP riot police.	MDC	
Mukakarei Tabudamo	14-02-02	MDC	Masvingo	ZNA	MDC * DN 16/3/02	
Mukwasi Edison	2-02-03	MDC	Harare	ZRP/Zanu PF	MDC * DN 4/2/03	
Munandishe Peter	22-07-01	MDC	Bindura	Zanu PF militia/War veterans	NGO Forum/MDC	
Munikwa Isaac	20-01-02	MDC	Masvingo	War veterans/Zanu PF	MDC * Herald 22/1/02	
Munyaradzi Mr	14-02-02	Farmworker	Marondera	War veterans/Zanu PF	MDC	
Mupawaenda Takatukwe Mamhowa	16-02-02	MDC	Chitomborwizi, MashWest	Zanu PF	MDC	
Mupesa Ndonga	30-03-01	MDC	Muzarabani	War veterans	NGO Forum/MDC	
Mushaya Mationa	17-05-00	United Parties (UP) Headman	Mutoko UMP	War veterans/Zanu PF	NGO Forum/MDC * Herald 19/05/00	
Mushaya Onias	17-05-00	Son to above	Mutoko UMP	War veterans/Zanu PF	NGO Forum/MDC * Herald 19/05/00	

Musoni Robert	26-03-00	MDC	Mazowe	War veterans/Zanu PF	NGO Forum/MDC	
Mutemaringa Fungisai	27-01-02	MDC	Murehwa	War veterans/Zanu PF	MDC	
Mutyanda Mandishona	29-06-00	MDC	Kwekwe	War veterans/Zanu PF	NGO Forum/MDC * DN 11/12/01 * DN 3/6/00	
Mwanza Misheck	4-05-01	MDC	Zvimba	Zanu PF militia/War veterans	NGO Forum/MDC	
Nabanyama Patrick	Abducted on 19-6-00. Never seen again.	MDC election agent.	Bulawayo	War veterans/CIO abducted him from his house.	MDC - FinGaz 9/5/02 -DN 6/7/01, FinGaz 9/11/00, DN 10/10/00, 26/6/00, 26/7/00,	
Ngela Henson	22-06-00	Zanu PF	Insiza	Internal feuding	NGO Forum	
Ncube Mthokozisi	25-01-02	MDC	Bulawayo	Zanu PF	MDC * FinGaz 13/3/02 * DN 29/1/02	
Ncube Sambani	17-3-02	MDC	Victoria Falls	Two soldiers killed him while he returned from the shops. Spinal cord and ribs broken during the assault.	MDC	
Nheya Titus	20-12-01	MDC	Hurungwe East-Karoi	Zanu PF militia	NGO Forum	
Nkala Cain	5-11-01	War veteran	Bulawayo	Internal fighting	NGO Forum * Mirror 20/12/01	
Nemaire Solomon	23-01-02	MDC	Inyati Mine, Headlands	War veterans/Zanu PF militia	MDC * FinGaz 13/4/02	
Ngamira Jenus	5-05-02	MDC	Bindura	War veterans/Milia	MDC	
Ngulube Simon	Unreported	MDC	Shamva	War veterans/Zanu PF militia	MDC	

Ngundu Shepherd	5-02-02	ZIMTA-School teacher at Sohwe Primary.	Mount Darwin	War veterans/Zanu PF militia	MDC * DN 12/2/02	
Nyamadzawo Alexio	15-09-01	Resettled farmer	Hwedza	Zanu PF/War veterans	NGO Forum/MDC	
Nyambare Winnie	18-05-01	MDC	Guruve	War veterans	MDC/NGO Forum	
Nyika James	3-07-01	MDC	Epworth-Harare	War veterans/Militia	MDC	
Nyika Rambisai	24-12-01	MDC	Gokwe	War veterans/Militia	NGO Forum	
Nyathi Mbuso	27-09-01	War veteran	Nkayi	MDC	NGO Forum	
Oates Tony	31-05-00	Commercial farmer	Zvimba	War veterans/Zanu PF	NGO Forum/MDC Parade 7/02, DN 2/6/00,	
Olds Martin	18-04-01	Commercial farmer	Nyamandlovu --Bubi-Umguza	War veterans armed with AK47 rifles who had arrived on 12 vehicles.	MDC/NGO Forum -Parade 7/02 Herald 19/4/00 , FinGaz 20/4/00, DN 19/4/00 23/05/00	
Olds Gloria	4-03-01	Commercial farmer	Nyamandlovu-Bubi-Umguza	War veterans shot her at her Silver Streams Farm.	MDC/NGO Forum -Parade 7/02	
Pfebve Matthew	30-04-00	MDC	Mount Darwin North	War veterans/Militia	NGO Forum/MDC * DN 23/5/00	
Phiri Nkosana	12-10-02	MDC	Bulawayo	Zanu PF militia-severely beaten at stadium in Jan. 2002	MDC	
Pilosi Simon	26-03-02	MDC	Zvimba South	Zanu PF/ War veteran	MDC	
Romio Edwin	22-03-02	MDC	Mutoko	War veterans/Youth militia beat him and killed him at his home.	MDC * ZimInd 28/3/02	
Rukara Kufa	17-11-01	MDC	Silobela-Gokwe died at Gweru	War veterans/Youth Militia	MDC/NGO Forum * DN 21/11/01	

			Hospital	tortured him at Tenda Primary School base near Mutora Growth Point.	* DN11/12/01 * DN 1/12/01 * DN10/12/01	
Rukuni Thadeus	29-05-00	MDC	Masvingo-Bikita East	Youth militia/War veteran	NGO Forum/MDC, DN 2/6/00	
Rutsvera Peter	2-06-03	MDC	Kadoma Gen. Hospital	Zanu PF	MDC	
Sanyamahwe Kuziwa	18-01-02	MDC	Murehwa	Zanu PF/War veteran	MDC * FinGaz 13/3/02	
Sibanda Charles	2-03-02	MDC	Zhombe	war veterans/Militia	MDC	
Sibanda James	7-02-02	Village headman, MDC	Mathendele ward, Nkayi	Zanu PF youth militia, led by former dissident Rainfall Msimanga abducted the headman for his MDC links.	MDC * ZimInd. 22/3/02 * DN 27/3/02 * ZimInd 28/3/02	
Sibindi Halala	30-01-02	MDC	Tsholotsho	Zanu PF youth militia.	MDC * FinGaz 13/3/02	
Sibindi Joseph	Jan. 2002	MDC	Matebeleland North	Zanu PF	MDC	
Sicwe Jameson	30-01-02	MDC	Sizangobuhle Ward, Lupane, Matebeleland North	Zanu PF supporters and war veterans dragged him from his home and beat him up until he died.	MDC * FinGaz 13/3/02 * ZimInd 1/2/02 * DN 1/2/02	
Size Rimon	19-11-00	MDC	Marondera East	War veterans	MDC	
Sikele Johannes Felix	11-11-01	Resettled Farmer	Chiredzi	War veterans/Youth militia	NGO Forum/MDC	
Sikhucha Ravengai	10-11-01	MDC	Mberengwa East	Youth militia/war veterans	NGO Forum	
Stevens David	15-04-00	Commercial farmer	Murehwa South	War veterans pulled him out of police station and	NGO Forum/MDC -Parade 7/02, Herald 16/4/00, DN	

				shot him dead.	18/4/00, 26/4/00, 10/5/00, 26/9/00, 5/12/03, 23/05/00	
Takawira Marko	8-02-03	MDC	Mbare-Harare	ZRP torture in Bikita in Jan. 2001	MDC	
Tapera	6-05-00	MDC	Macheke	war veterans	MDC	
Tigere Shepherd	3-01-02	Bus conductor	Mashonaland East	War veterans/Militia	MDC	
Nhitsa Takesure	19-02-02	MDC, worked as a pump attendant with the Department of Water Development.	Rushinga,	War veterans and Zanu PF youth militia severely assaulted victim for allegedly cutting off water supplies and of supporting the MDC.	* DN 26/2/02	
Tonera Steven	19-03-03	MDC/Farmworker .	Ruwa	CIO/War veterans	MDC * ZimInd 6/6/03	
Tadyanemhan du Tichaona	20-06-00	MDC	Hurungwe East	War veterans	NGO Forum	
Vikaveka Darlington	15-03-02	MDC	Marondera	War veterans/Zanu PF	MDC * ZimInd. 28/3/02 * DN 18/3/02	
Weeks John	14-05-00	Commercial farmer	Seke	War veterans	NGO Forum/MDC -Parade 7/02, DN 5/00, 23/05/00	
Wayner Peter	26-02-01	Priest	Masvingo	War veterans	MDC	
White Fanuel	28-03-02	MDC	Mushumbi Pools	War veterans/Zanu PF militia	MDC	
Siziba Langton	16-03-00	MDC	Kwekwe	Zanu PF youths dragged him to the back of his shop and bludgeoned him with iron	MDC * DN 19/3/02	

				rods until he died.		
Zhou Fainos Kufazvinei	10-06-00	MDC	Mberengwa East	War veterans/Zanu PF militia	NGO Forum/MDC * Herald 18/06/00 * DN 8/08/00 * DN 3/10/00 * DN 30/06/00 * S/Mail 31/505/02 * DN 10/07/01 *DN 6/04/01 * DN 30/07/01 * DN 4/07/01 * DN 13/07/01	
Ziweni Osborn	18-9-01	MDC	Bikita West, Masvingo	Zanu PF militia/War veterans	NGO Forum/MDC	
Andoche Julius	20-04-00	Farm foreman	Murehwa South	War veterans/Zanu PF	NGO Forum	
Bailey Thomas (89)	04-02	Commercial farmer	Mount Hampden near Harare	War veterans and Zanu PF youth militia held him hostage at his Danbury Park farm for 37 days.	Parade 7/02	

Samhu Rumbidzai	5-07-03	MDC	Bindura	War veterans, ZRP and Zanu PF militia beat her during the Bindura by-election. Admitted for two days at Bindura hospital under police guard. She was facing charges of political violence.	Elder sister Lorana Dandajena.	
Stevensen Peter	20-01-04	Commercial Farmer	Kwekwe	War veterans beat him to death.	Justice for Agriculture's John Worsely-	

					Worswick, the organisation's vice chairman.	
Bizimark Madison	21-04-00 at John White Farm	Farmworker	Shamva	War veterans and Zanu PF militia assaulted him with iron bars and sticks all over body for being an MDC supporter.	MDC social welfare department.	
Kaguru Tichaona	3-06-03	MDC	Chikurubi HQ Camp Troop Unit Police Harare	ZRP and ZNA personnel tortured him with electric current and blunt objects over his body.	MDC * DN 6/6/03	
Rwafirinda Richard Chatunga-52	16-01-02	MDC	Bikita	Zanu PF and War veterans beat him up at Chikuku Business Centre. He sustained multiple injuries and died instantly.	MDC * FinGaz 13/3/02 * Herald 22/1/02	
Chinodzina Francis	28-03-04	MDC	Zengeza, Chitungwiza	Zanu PF supporters shot him dead during a by-election in Zengeza. Unconfirmed reports alleged that Elliot Manyika, the Zanu PF political commissar and Minister without portfolio was responsible. The police and government have exonerated the minister.	MDC	
Kombo Samson Showano	20/01/03	MDC Chairman for Makoni East	Died at Rusape General	Zanu PF/War veterans abducted him	NGO Forum * DN 27/01/03	

		constituency.	Hospital.	to their base where he was severely tortured. He died from the injuries he sustained during his torture.		
Chasara Steven	June 2002	MDC	Chitungwiza	Police and CIO	Daily Mirror 20/12/01 * DN 19/6/02	
Matinyarare David	May 2003	MDC	Mufakose, Harare	Zanu PF supporters	* DN 20/5/03	
Makotore Hlomayi	27/01/03	MDC candidate	Shurugwi	Zanu PF supporters threw him in a dam.	* DN 10/2/03	
Kuvheya Lawrence		MDC	Chikomba	Zanu Pf and War veterans	* DN 28/3/02	
Gwaze Tafirenyika	13/03/02	MDC polling agent.	Mutoko	Zanu PF youth militia.	* ZimInd 28/3/02	
Mupesa Ndega	30/03/01	MDC	Muzarabani	War veterans and Zanu PF youth militia beat him up for supporting the MDC	* DN 3/5/01 * 5/4/01	

We have written this letter in the spirit of cooperation and hope that the Honourable Minister will find time to deal with the matter, which we believe deserves the minister's serious attention. We are also at the disposal of the Ministry should the Minister feel that there is a level of cooperation that is needed in terms of combating the terrible phenomenon of torture in Zimbabwe.

Yours faithfully

Nokuthula Moyo
Chairperson
Zimbabwe Lawyers For Human Rights

Cc Commissioner of Police

Cc **Minister of State Security**
Cc **Minister of Justice Legal and Parliamentary Affairs**

ZESN Election update 07

Count down:

8 DAYS TO GO GO

List of Some of the Polling Stations not in Neutral Areas

ZESN through its contacts with the electorate has been concerned with some of the locations of the polling stations to be used in the upcoming elections. These seem to be located in non-neutral areas and ZESN hereby urges ZEC to look into this issue. This may likely compromise the secrecy of the vote and instill fear in the electorate. Below is a list of some of the polling stations in question.

Constituency	Name of Polling Station
1. Chimanimani	Saweronber Homestaed
2. Chipinge North	Chief Mapungwana Homestead
3. Chipinge North	Chief Gwenzi Homestead
4. Rushinga	Chief Makuni (Mukazika Village)
5. Seke	Muza Store
6. Mudzi West	Tizova Homestead
7. Chiredzi North	Favershah Lot 3 Homestead
8. Gwanda	Highway Homestead
9. Insiza	Mpalawani Homestaed
10. Insiza	Gwamanyanga Homestead
11. Insiza	Albany Homestead (Tent)
12. Chirumanzu	Mahamara Homestead
13. Zhombe	Bonstead Homestead
14. Harare South	Airport Compound Store

15. Guruve South	Gangarahwe Village
16. Mazowe West	Ballinety Farm
17. Mt Darwin South	Gwetera Village
18. Muzarabani	Kingston Deveril Resettlement
19. Rushinga	Wara Village
20. Rushinga	Chinaka Village
21. Zvimba South	Mhandu Village
22. Zvimba South	Mwanga Resettlement
23. Masvingo Central	4 Brigade Headquarters
24. Hwange East	Mwemba Chiefs Hall
25. Bubi-Unguza	Molo Forestry (Wejiwa Homestead)

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