

Zimbabwe Human Rights NGO Forum

RESEARCH UNIT

BRIEFING PAPER NO. 1

PRE-ELECTION DANGER SIGNALS OF LARGE-SCALE DISENFRANCHISEMENT

We issue this Briefing Paper to alert observers and monitors to major problems in the forthcoming presidential election.

One party (Zanu-PF) effectively controls the ‘public’ media. The Electoral Supervisory Commission (appointed by the incumbent State President who is an election candidate) has sole legal control of voter education. For two years the electorate has been subjected to widespread violence, mainly by Zanu-PF, including in its traditional heartland. (We can provide details of this violence if required.)

These factors obviously create an ‘uneven political playing field’. However, they are not our primary concern here. We are far more worried by less visible assaults on Zimbabweans’ capacity to exercise their right to vote guaranteed under the *Universal Declaration of Human Rights* and the Constitution of Zimbabwe and its electoral law. If particular categories of Zimbabweans are refused the vote, it will distort the outcome. If this happens, Zimbabweans are unlikely to accept a result they may regard as manipulated and illegitimate.

The Voters Roll

The Registrar-General’s Office has not treated the voters roll as the public document with open access it is declared to be by s18 of Zimbabwe’s Electoral Act.

On 4 February 2002, the registrar-General was given new powers under amendments to s34 of the Electoral Act to **alter** the voters roll at any time, **without directly informing the voters concerned of his intention and giving them the right of protest and/or appeal.**

- ‘34 (1) In addition to other powers of alteration conferred by this Part, **a voters roll may be altered**
- (a) **by the Registrar-General at any time** to correct any error or omission or **to change (whether on the oral or written application of a voter or not) the original name or address of the voter to an altered name or address;**
 - (2) In the case of an alteration in terms of paragraph (a) of sub-section (1) made otherwise than on the oral or written application of a voters ... a notice of the fact shall be published in the *Gazette* by the Registrar-general or constituency registrar, as the case may be.’

Opposition parties feared that this new provision might be used to remove from the roll or reallocate to other constituencies the names of voters known to support them. A number of MDC branch chairs, for example, had in 2001 been forced to hand over to Zanu-PF assailants their branch membership lists, often containing the national identity numbers as well as names of their members. The main search tool for individuals on the voters roll is the national ID number. Some years ago, too, a parliamentarian told the House of Assembly that rural Zanu-PF supporters were apparently told that they did not need to register as voters, only as party members, and Zanu-PF would ensure they appeared on the voters roll, presumably by transferring them from its own membership database to the voters roll.

These fears were fuelled by the fact that the same firm had computerised both Zanu-PF and Home Affairs records, and the reluctance of the Registrar-General to allow opposition parties access to the complete voters roll. The opposition Movement for Democratic Change had to go to the High Court in order to obtain a copy of the full common roll. On the order of the court, the MDC was provided with an electronic copy valid on 2 January 2002. They had to take further court action to obtain a copy of the final roll used for the election itself.

On 31 January 2002, Nomination Day for the Presidential election, the Electoral Supervisory Commission announced there were 5 479 100 names registered on the voters roll. However, various techniques were used to exclude from voting up to 3,6 million Zimbabweans (70% of the roll).

Techniques of disenfranchisement

(i) **dispossession of national identity cards (up to 550 000 newly-qualifying voters + stolen IDs)**

The problem of disenfranchisement began with national identity cards (IDs). For many years, people have waited up to three years after applying before such cards become available.

For the 2002 Presidential election, this problem affected particularly new, first-time voters. Of nearly 750 000 young people who had turned 18 since the last election in 2000, less than 181 000 had been registered by 31 January 2002. Perhaps most were still awaiting their IDs. Zimbabwean youth, who have borne the brunt of unemployment, are known disproportionately to support opposition parties.

But it was Zanu-PF MP Joram Gumbo (Mberengwa West) who asked in Parliament on 31 October 2001:

‘In view of the fact that the Presidential elections are just nearby and **our people** do not have proper registration identity cards, can the Minister explain what is the government’s policy to expedite the registration of those **members**¹ who do not have the required documents?’

The answer was that the stringent requirements for witnesses to births were being relaxed and chiefs and headmen (recently granted huge pay increases by the State) were to

‘identify the people to be registered as true Zimbabweans... In the event that they perform their duties fraudulently, action will be taken against those Chief and Headman [sic]’.²

In practice, little was done to expedite the registration process, but Zanu-PF reportedly exhorted its Magwegwe supporters to submit their children’s names to be registered as voters well after the voters roll had been closed.³

From January 2002, the national youth trainees, known variously as ‘green shirts’, ‘green bombers’, ‘bandits’ and ‘terrorists’, also set up numerous illegal roadblocks in rural areas to demand Zanu-PF membership cards and to remove their identity cards from travellers who lacked party cards. By early February 2002, in addition to the thousands stolen during the June 2000 election campaign by Zanu-PF youth and not yet replaced, well over 1 000 IDs had more recently been reported stolen, particularly in Mutoko (Mashonaland East) and Solusi (Matabeleland South).⁴

¹ Presumably of his own party. *Parliamentary Debates* 28,24:1881 (31 October 2001).

² *Parliamentary Debates* 28,24:1881-2 (31 October 2001).

³ *Daily News* 19 February 2002.

⁴ *Daily News* 12 February 2002.

(ii) internal displacement by ‘fast track land reform’ (up to 2 million)

It was announced in 2001 that the 2002 presidential election would be held on a constituency basis although in Zimbabwe’s presidential elections, the outcome is decided on a national vote count. The winner is s/he who gains most votes, irrespective of where they are cast. **On 25 January 2002, Justice Rita Makarau ordered in the High Court that the election be held on a non-constituency common roll. The State appealed. On 15 February 2002, the Supreme Court reserved its judgment on this appeal.** Its judgment is still pending.

A couple of million farm-workers, their dependents, and the farm-owners themselves were thrown off the land by ‘fast-track resettlement’. The destitute farm-workers in particular were unlikely to be able to afford to return to their constituencies of registration to vote. The Minister of Agriculture and Lands had emphasised – **before** the voter checking and registration exercise ended - that those allocated farmland must occupy it. This tactic underlay the State’s continued insistence on constituency-based voting.

Opposition parties rightly feared stacking of the Zanu-PF vote in its heartland, to prevent political embarrassment, even though in the national count it would matter only inasmuch as opposition supporters were not able to vote at all.

(iii) external displacement (estimated to number up to 1 million ‘economic refugees’)

With the exception of government employees serving abroad and their spouses, expatriate Zimbabweans were also deprived of a postal vote,⁵ on the grounds of cost. But justice minister Patrick Chinamasa told Parliament:

‘... postal voting ... has always been problematic... **It is more than a question of money but of logistics. We have never been able to get our act together.**’

It is democratically unacceptable that because the State cannot organise postal balloting, hundreds of thousands of voters are deprived of their political entitlements. Moreover, the responsibility for issuing postal ballots has recently been removed from constituency registrars and vested in the Registrar-General.

On 6 February 2002, the Registrar-General advertised **only** in the state-controlled press that the processing of applications for a postal ballot ‘in respect of qualified persons as specified in Section 34 of the General Laws Amendment Act’⁶ would commence ‘on or about 7th February, 2002 ... from 7am to 5 pm daily, until 10th March, 2002’.⁷

He declared in this notice that he **(illegally) intended to process qualifying applications right up to the time polls closed in the election itself.** As amended, s61(3)(c) of the Electoral Act requires **receipt** of any postal ballot by the Registrar-General ‘**not later than noon on the tenth day before the polling day or first polling day**’.

Given this statement, the issuance of postal votes needs to be monitored closely to ensure that it in fact conforms to what is legally permitted.

⁵ *General Laws Amendment Act* (no 2 of 2002), s3(k).

⁶ Actually s34 of the Electoral Act!

⁷ *The Herald* 6 February 2002.

(iv) class disenfranchisement (figures unknown, but 80% of Zimbabweans now live below the Poverty Datum Line)

The proof of residence demanded by the amendments to ss20 and 21 of the Electoral Act⁸ disenfranchised many impoverished, **homeless** Zimbabweans. Government has admitted that **one million Zimbabweans are on the various State and municipal waiting lists for housing**. (The figure is closer to two million according to other sources.) Many lodgers and even tenants in high-density urban suburbs have no lease agreements or other proof of tenancy and, therefore, of address. Urban residents are another social category known to support the MDC.

At the other end of the class scale, for those expatriate Zimbabweans who can afford to return home to vote, the stringent new proof of residence may cause some problems. On 1 December 2001, the Registrar-General introduced new forms to be completed by all residents returning to the country, designed to determine for how long they had been away. These forms, duly sworn as correct by immigration officers, could and almost certainly were intended to be used as evidence to remove names from the constituency rolls of those who have been away for a year or more, under s20(3) of the Electoral Act as amended on 4 February 2002 by the General Laws Amendment Act.

(v) closure of tertiary State institutions (approximately 60 000 students)

On the instructions of the Ministry of Higher Education and Technology, all tertiary education institutions were closed until 18 March 2002, a week after polling. Many, perhaps most students are registered to vote in their campus constituencies, where they have proof of residence as individuals.

(vi) remand detention and imprisonment (approximately 20 000)

The Minister of Justice, Legal and Parliamentary Affairs also denied all prisoners the right to vote. He was quoted as saying ‘They will not vote because once one is in jail, he automatically loses the right to vote’.⁹

There is no constitutional or legal bar to those remanded in custody or convicted prisoners serving less than six months – the majority – being allowed to vote. (See the Constitution of Zimbabwe, Schedule 3, s3(2)(c).)

(vii) Permanent residents (5 000 admitted by the State)

This category of disenfranchised voters is by far the best documented. See Briefing Paper No. 2.

So the overall arithmetic was simple.

Total voters	5,5 million
Attempted disenfranchisement	-3,6 million
Remaining voters	=1,7 million
Surplus ballot papers	-1,5 million
Maximum non-manipulated votes	0,2 million

⁸ *General Laws Amendment Act* (no 2 of 2002), s3(e) and s3(f).

⁹ *The Herald* 15 January 2002.

The Registrar-General's Office

The Registrar-General, Tobaiwa Mudede, has twice in the past two months been indicted for contempt for not executing court orders. In the past (on his own admission) a staunch Zanu-PF supporter, he came under increasing fire from his own party as it lost municipal elections and complained about the shambolic state of the voters roll. Justice Vernanda Ziyambi had voided the MDC June 2000 victory in the Seke seat, in part presumably because 3 000 potential voters had been turned away when their names did not appear on the voters roll.¹⁰

Parliament's Speaker, Emmerson Mnangagwa (a presidential appointee to the House after he lost the Kadoma Central seat in June 2000), reportedly informed the Zanu-PF party conference in Victoria Falls in December 2001 that he was setting up a party 'election command centre with the power to fire anybody in a parastatal or government department "if they are a hindrance to our victory"'.¹¹ Zanu-PF's Central Committee reportedly noted that 'The registrar-General's Office needs a deliberate move to restructure or disband the institution'.¹² Mudede also came under fire from the state-controlled media.

Mudede opened the voters roll for inspection and registration changes between 19 November and 23 December 2001.¹³ He closed it with effect from the 10th January 2002 'for the purpose of accepting the registration of voters who may vote at the election of a President'.¹⁴ On 29 January 2002, using his powers under s94(2) of the Electoral Act, he retrospectively gazetted a later date of closure – Sunday 27 January 2002.¹⁵

This date change responded to the MDC petition to the High Court to find the Registrar-General to be in contempt of the court orders issued by justices Hungwe and Makarau **not** to close the voter registration process until their application concerning the right of citizens to vote outside their constituencies had been determined – which application had been granted on 25 January 2002.¹⁶

After the roll was closed, in flagrant contravention of s25(1) and s34(1)(c) of the Electoral Act (as amended by the General Laws Amendment Act with effect from 4 February 2002), constituency registrars in the Registrar-General's Office struck off the roll 5 000 permanent residents who had ceased to be citizens but under the Constitution of Zimbabwe Schedule 3 s3(3)(b) retained their right to vote. 3 000 of these illegally-disenfranchised permanent residents have appealed against their being struck off the roll.

It is our opinion that the Registrar-General and his Office have been blatantly partisan in these illegal actions ahead of a watershed presidential election.

Ballot Papers

Government tendered for enough 'security white paper' to print 7 million ballot papers.

¹⁰ *Daily News* 24 January 2002.

¹¹ *Daily News* 8 January 2002.

¹² *Daily News* 5 January 2002.

¹³ Hundreds of registration officials were still awaiting their pay, apparently promised two days after they had started work, at the end of January 2002 (*Daily News* 8 January 2002).

¹⁴ *Statutory Instrument* 3A/2002, 10 January 2002.

¹⁵ SI 14B/2002.

¹⁶ *Daily News* 2 February 2002.

On 31 January 2002, only 5 479 100 voters were registered.

The MDC publicly feared the introduction and/or substitution of pre-filled ballot boxes, via Zanu-PF's Mashonaland Central strongholds.¹⁷ To guard against this possibility, 'as an objective position which protects everyone', the MDC demanded that polling agents be allowed 'to mark all the ballot papers so there is no possibility of any such electoral fraud'.¹⁸ Whether this will be allowed remains to be seen. **It must be monitored.**

The Electoral Supervisory Commission promised to investigate reports which the media were unable to confirm independently in late January 2002 that Zanu-PF was 'distributing unauthorised ballot papers' in rural areas of Mashonaland East, Manicaland, Midlands and Masvingo provinces¹⁹ and 'assaulting those who failed to appropriately mark President Mugabe's slot on the ballots'.²⁰ ESC chairman Sobusa Gula-Ndebele claimed the ESC had been unaware of such practices.

Ballot boxes

The government has refused to accept as donations or to use transparent ballot boxes.

New regulations restrict seals on wooden ballot boxes only to the apertures, leaving all the seams exposed.

New provisions inserted into the Electoral Act (s79B) allow boxes to be sealed or opened whether or not any or all election agents, polling agents, monitors and observers are present.

Election agents are, under the new regulations, no longer permitted to travel in or on vehicles transporting ballot boxes, only to follow behind in separate vehicles.

It is to be expected that at least some ballot boxes will, as usual, be transported by military helicopters, on which civilians are not permitted to fly. Presumably this is why monitors have been recruited *inter alia* from the Ministry of Defence. But **election and polling agents will clearly not be able to follow in their own transport boxes carried by military helicopters, or to get to counting centres quickly enough to witness their offloading.**

Under the new regulations which do not permit the counting process to be delayed by the absence of **any or all** monitors, election or polling agents, **the opening of such boxes will proceed without those whose affixed them being able to check the aperture seals.** And, of course, the box seams will be completely unprotected from possible tampering, since no seam seals are now allowed.

Polling venues

The Electoral Supervisory Commission announced a 'working figure', likely to be increased, of 5 400 of polling stations, up over 40% from the 3 850 used in June 2000.²¹ Many could well be mobile and thus specially open to the substitution of ballot boxes *en route* between voting venues.

¹⁷ *Daily News* 4 February 2002.

¹⁸ *Parliamentary Debates* 28,36:3341 (19 December 2001).

¹⁹ Particularly in Chikomba, Hwedza, Buhera North, Gokwe and Zaka districts.

²⁰ *Financial Gazette* 31 January 2002.

²¹ *Daily News* 12 February 2002.