

ZIMBABWE HUMAN RIGHTS NGO FORUM

IT'S THE COUNT THAT COUNTS: FOOD FOR THOUGHT

Reviewing the Pre-election Period in Zimbabwe.

A report by the
Zimbabwe Human Rights NGO Forum

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Introduction

There is a clear difference between the electoral climate preceding the current 2005 parliamentary elections on the one hand and the previous parliamentary elections of 2000 and presidential elections of 2002 on the other. The latter elections were characterised by an intense interest and excitement amongst Zimbabwean voters. The present atmosphere around the current elections appears muted in comparison. Furthermore, another unfortunate and salient feature of the previous elections was systemic and endemic violence perpetrated, in the main, by ZANU (PF) supporters¹. There is a general

¹ Who is Responsible? *Politically motivated violence in Zimbabwe 2000-2001* (August 2001) issued by the Zimbabwe Human Rights NGO forum.

consensus between contesting parties that there has been a dramatic and remarkable reduction in physical violence in the build up to the present elections. This is not to say that violence has abated completely. However, the contrast with the previous two national elections is so marked that there is a temptation to maintain that the current elections are “free and fair” *by comparison*. Nonetheless, as will be seen below, notwithstanding the reduction in violence, the current electoral conditions fall well short of the regional standards for elections introduced by the “SADC Principles and Guidelines Governing Democratic Elections” adopted in Mauritius in 2004.

The SADC Guidelines establish a general framework of minimum standards against which the impartiality, legitimacy and openness of an election can be measured. Section 2, entitled *Principles for Conducting Democratic Elections*, states:

2.1 SADC member states shall adhere to the following principles in the conduct of democratic elections:

2.1.1 Full participation of the citizens in the political process.

2.1.2 Freedom of association.

2.1.3 Political Tolerance.

2.1.4 Regular Intervals for elections as provided for by the respective National Constitutions.

2.1.5 Equal opportunity for all political parties to access the state media.

2.1.6 Equal opportunity to exercise the right to vote and be voted for.

2.1.7 Independence of Judiciary and impartiality of the electoral institutions; and

2.1.7 Voter education.

2.1.8 Acceptance and respect of 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.

2.1.9 Challenge of election results as provided for in law of the land.

Significantly, the Protocol recognizes that, in order for member states to undertake successfully the obligations outlined in Section 2, a set of human rights standards must also be observed. This point is succinctly captured in Section 7.4 of the Protocol. The provision states that SADC member states who are to hold elections must undertake to:

7.4 Safeguard the human and civil liberties of all citizens including freedom of movement, assembly, association, expression, and campaigning as well as access to media on the part of all stakeholders

In other words, for a “free and fair” election to take place, voters must have a “free and informed choice”. For the current election, this “free and informed choice” is further restricted by the absence of previously available and affordable

daily independent newspapers and strangled by the politicization of food handouts which cynically forces voters to choose between their own survival, and by extension their families, and the survival of the ruling party.

Pre-Election Violence

In a recent series of analyses of the data contained in the Monthly Political Violence Reports of the Human Rights Forum, the Redress Trust points out that, between July 2001 and December 2004, the Forum identified 11,456 cases of gross human-rights violations. Many of these violations involved murder, rape and torture, which was sometimes of a sexual nature. The violence was systemic, co-ordinated and occurred in all constituencies throughout the country, with the rural areas being the worst effected. The violence over the documented period was closely indexed to election periods² suggesting that it was as much a part of the then election strategy as is its present abatement. Ruling party politicians made numerous inflammatory statements that encouraged violence. Certainly nothing was done to curb its incidence. After investigating the claims made by the Human Rights Forum after the 2000 elections, the African Commission on Human and Peoples' Rights ruled:

....the Government cannot wash its hands from responsibility for all these happenings. It is evident that a highly charged atmosphere has been prevailing, many land activists undertook their illegal actions in the expectation that Government was understanding and that police would not act against them – many of them, the War Veterans, purported to act as party veterans and activists. Some of the political leaders denounced the opposition activists and expressed understanding for some of the actions of ZANU (PF) loyalists. Government did not act soon enough and firmly enough against those guilty of gross criminal acts. By its statements and political rhetoric, and by its failure at critical moments to uphold the rule of law, the Government failed to chart a path that signaled a commitment to the rule of law.³

Although the Zimbabwean Government was angered by this statement, the statement was quite restrained if one considers the following: after each election President Robert Mugabe has granted a blanket amnesty from criminal prosecution for all those involved in pre-election violence, the majority of whom have been his own supporters. The amnesties have not extended to murder, rape or crimes involving theft. This culture of impunity, however, has been extended to such crimes by the more politically expedient method of simply not prosecuting them when they have been committed by ZANU (PF) supporters. There are numerous instances of this tactic, the most notorious being the gruesome murders of two aides to opposition MDC leader Morgan Tsvangirai⁴.

² Of the 11,456 human rights violations reported in the period July 2001 to November 2004, 6,030 (53%) are in months in which there were elections; furthermore, this number of 6,030 is generated in only 14 months, whilst the balance is derived from nearly twice that number of months: non-election months generated 5,426 cases from 27 months. In short, over half the cases reported came from only a third of the months in the period reviewed – election months.

³ The African Commission report was accepted by the African Heads of State in Abuja in January 2005.

⁴ See <http://www.hrforumzim.com/evmp/evmpreports/polviolzim000515j.htm#buhera> for details of this incident.

The aides were burned to death in front of several witnesses. The assailant, a CIO⁵ operative, was named in a petition before the High Court challenging the election results for the constituency in which the murders occurred. The Judge directed the Attorney General to investigate a charge of murder against the CIO operative⁶. Four years on, nothing has been done. The operative has been transferred to Chimanimani where he has organised a violent campaign against MDC parliamentarian, Roy Bennett.⁷ In addition to this culture of impunity, those areas which had voted for the opposition during the elections, were visited with violent reprisals as pre-election pledges in this regard were dutifully kept⁸.

In contrast, the violence so far reported in the run up to the 2005 elections might seem insignificant. This is certainly not the case.

Below is a sample of instances of politically motivated violence recorded between 21/02/05 and 07/03/05:

21 February: *MDC activist Tendai Matsine and his wife were severely beaten up by Zanu PF youth in Hurungwe East. They were attacked after being caught putting up MDC posters. The incident was reported to the police but police informed the MDC officials that they had been given instructions by their superiors not to arrest Zanu (PF) activists engaged in acts of violence. (MDC SADC Protocol Watch Issue #8)*

5 March: *An opposition Movement for Democratic Change (MDC) party candidate and another party official were, on Thursday, tortured by ruling ZANU (PF) party militants and later detained by the police when they attempted to press charges against their torturers. Chibanda, who is standing for the MDC in Zvimba North constituency and [is] the opposition party's information officer for the area, Paidamoyo Muzulu, were by late yesterday afternoon still detained at Chinhoyi police station. (Zimbabwe Independent)*

5 March: *One soldier, sporting the party's distinctive red-and-white T-shirts, announced, "This is a no-go area for MDC." According to the activists, who later described the encounter, the soldier added brusquely, "We've been tolerating you for a long time. Get into your car as quickly as you can and leave this place." Then, as the activists started to pull away in their pickup truck, the soldiers began hurling stones. One candidate for Parliament, Gabriel Chiwara, 39, stumbled as he tried to climb into the front seat. Chiwara, an electrician, said the soldiers tackled him to the ground and kicked him for several minutes with their boots. As he begged for mercy, he said, the soldiers shouted: "You have to die! You are selling the country to the whites!" (Washington Post)*

6 March: *Last week, the MDC candidate for Mount Darwin South, Henry Chimbiri,*

⁵ Central Intelligence Organisation. State security agents continue to be referred to as part of the CIO although the body has been reconstituted as the Department of National Security.

⁶ See Tsvangirai v. Manyonda, HC 8139/2000

⁷ See D. Matyszak – *Political Persecution in Zimbabwe: The case of Roy Bennett* Zimbabwe Human rights Bulletin February 2005.

⁸ "Are they Accountable?" Examining alleged violators and their violations pre and post the Presidential Election March 2002 - A report compiled by the Zimbabwe Human Rights NGO Forum December 2002

his election agent, Petros Chiunye and Mashonaland Central MDC provincial chairperson, Tapera Macheka, were severely assaulted by a rowdy mob that included Zanu (PF) Bindura councillors. They were taken to Bindura police station, where they were detained while the Zanu (PF) councillors were released after making statements. Chimbiri said: "Although we were the ones who were assaulted by the Zanu (PF) councillors, the police were treating us as if we were the guilty ones. Police are actually participating in a process of torturing and intimidating MDC members ahead of the general elections." By late yesterday, MDC candidates who had been harassed by police or Zanu PF supporters include: Godrich Chimbaira (Zengeza), Godfrey Gumbo (Hurungwe West), Prince Chibanda, (Zvimba North), Henry Chimbiri (Mount Darwin South), Godfrey Chimombe (Shamva), Silas Matamisa (Chinhoyi), Brian Mufuka (Rushinga), Joel Mugariri (Bindura), Njabuliso Mguni (Lupane), and Edwin Maupe of Mutare South.

7 March: A Guruve man was tortured, hanged by the neck on a tree and left for dead by a group of unidentified people for allegedly supporting the MDC last Monday, police have said. The case (RRB 0548388) was reported at Mushumbi Pools Police station on February 26. Investigating officer, Sergeant Mukondo, told *The Daily Mirror* that Noah Chirembwe (24) was abducted from his village, Mazambara under Chief Chitsungo, by a group of people and tortured. Chirembwe's request for a medical report to Guruve Hospital read: "The victim had his hands tied with a twine made rope and hanged by his neck on a tree and later struck with a burnt wooden stick upon his back and right cheek and also struck with sticks and ropes upon his body several times after being implicated for being aligned to the opposition party." (*The Daily Mirror*)

Unlike the violence of the preceding years, these reports indicate sporadic, rather than endemic violence, and given the Government's clear desire to present an election that appears, at least on the surface, to be free and fair, probably does not have the ruling party's seal of approval. However, the significance of this violence should not be underestimated or dismissed as negligible given the extreme nature of the violence in the preceding years. Just as simply raising a hand is sufficient to halt an unruly child who has already been dealt a blow, so the current sporadic violence serves as a reminder to an already cowed electorate. In other words, the legacy of years of violence in Zimbabwe has bred a climate wherein just the potential threat of renewed violence is sufficient for maintaining fear in the populace. Furthermore, the continued reluctance of the police to investigate these crimes or to take action against the perpetrators indicates to the electorate the perpetrators' continued immunity from prosecution, both now and for any reprisals which may be meted out in the post election period. And while the violence is less than that in previous years, it is still unacceptable in a democratic society and in violation of the SADC Guidelines.

Violence served a variety of purposes in the previous elections.

- It prevented opposition supporters from campaigning, holding rallies and disseminating information;

- It lowered the visibility of opposition supporters and the party's popularity;
- It drained party finances through the need for security, destruction of property, and through medical and legal bills;
- It prevented candidates from standing, either through intimidation or, in extreme cases, through the murder of the candidate;
- It made some too scared to vote or to vote for the opposition;
- It prevented polling agents or election agents from reaching polling stations or observing voting.

As will be seen in what follows, many of these objectives have been achieved in the current elections without the need for violence and through more subtle mechanisms. All violate the SADC Guidelines. Before examining these mechanisms, it is worth first noting the other crucial factor behind ZANU (PF)'s 2000 and 2002 victories – electoral fraud. At present, notwithstanding some minor changes to electoral law, the same conditions are in place for the same fraudulent activities.

Electoral Fraud

a) Gerrymandering of Constituencies

The delimitation of electoral zones is an important pre-election activity. Monitoring of the process is also an essential aspect when considering the fairness of the pre-election period. In general elections, Zimbabwe is divided into 120 constituencies⁹. In September 2004, for the purposes of the present election, the President appointed the Delimitation Commission, in consultation with the Judicial Services Commission as constitutionally required. The latter Commission is itself dominated by direct and indirect appointees of the President¹⁰. The Delimitation Commission comprised three ZANU (PF) Members of Parliament and was headed by Justice George Chiweshe. Chiweshe was appointed as a judge in early 2001. He fought in the liberation war and was also a former Judge Advocate General in the Zimbabwe Defence Forces. He is regarded by the opposition as a ZANU (PF) supporter. There was no attempt to make the Commission representative of all political voices. Accordingly, the composition of the Delimitation Commission raised concerns amongst the opposition that electoral boundaries would be altered in the ruling party's favour.

These concerns proved well founded. In its report presented towards the end of December 2004, the Delimitation Commission increased constituencies in strongholds of the ruling ZANU (PF) party and reduced the number in areas where the opposition enjoys more support. The areas of Manicaland,

⁹ In line with section 60 (2) of the Constitution. There are 150 seats in parliament. The President directly and indirectly appoints the remaining 30. ZANU (PF) could thus lose the contested seats, but retain a majority in parliament. They need far less than two-thirds of the contested seats to gain the two-thirds majority required to alter the National Constitution.

¹⁰ Section 84(1) of the Constitution

Mashonaland East and Mashonaland West, where ZANU (PF) enjoys popular support, gained three constituencies. Harare and Matebeleland South provinces, opposition Movement for Democratic Change (MDC) strongholds, lost two constituencies.¹¹ The rationale provided by the Delimitation Commission was that that there has been urban-rural migration on account of the land reform programme since the last parliamentary election. This might have been the case if the practice of land reform matched the Government's stated intentions. However, the displacement of farm laborers is equally likely to have increased, rather than decreased, the urban population. The Delimitation Commission did not cite figures from the 2004 census to support its conclusions. Indeed, it could not have done so. The 2004 census indicated that the population of the city of Harare had increased by 500,000. The delimitation was done on the hypothesis that it had declined by 50,000¹².

b) Limiting Opposition Votes

During the build up to the 2000 election, the Government introduced new legislation, prohibiting dual citizenship. The Registrar-General, who has openly acknowledged his support for ZANU (PF), interpreted the legislation in an egregious manner. He determined that any person who might be entitled to citizenship of another country would be deemed to possess such citizenship until they proved otherwise. On this basis, the names of such persons were automatically removed from the voters role. The persons affected were predominantly farm labourers, many of Malawian decent, and Whites¹³. Both groups were perceived as supporting the opposition in the 2000 elections.

Further reduction of opposition votes has been achieved through legislation restricting postal votes. A considerable number of Zimbabwean citizens are living outside Zimbabwe. This fact is accepted by the Zimbabwean Government, which itself refers to the group as "Zimbabweans in the Diaspora". Some have left on account of political violence and others because of difficult economic conditions. The largest concentrations of expatriate Zimbabweans are in South Africa and England. Estimates of the number vary, but is generally thought to be about three million people. Most of these people would have been eligible as voters and a large proportion are urban-based, well-educated and likely MDC supporters. In any event, having been compelled to leave Zimbabwe for whatever reason, their sympathies are not likely to lie with the ruling party. The new electoral provisions deny the postal vote to all these people. Postal voting is restricted to those away or who may be away from their constituencies owing to military and diplomatic duties or because they are involved in the conduct of the elections. The army and diplomats (the latter are appointed by Mugabe) comprise predominantly ZANU

¹¹ *Reuters* 20 December 2004 and *The Herald* 21 December 2004.

¹² See "New constituencies clear evidence Mugabe already rigging election: MDC" Zimonline 22 December 2004.

¹³ "The 2002 Presidential Elections and Civic Organizations in Zimbabwe – A Report for the Netherlands Institute for Southern Africa" May 2002 (the Netherlands Report p.13)

(PF) supporters. The grant of the postal vote to the military provides additional room for electoral manipulation. The military is seen as being comprised of predominantly ZANU (PF) supporters. Their postal vote was apparently taken without any observation or independent monitoring of the process¹⁴. It is unclear how the votes will be allocated to constituencies, leaving room for the Registrar-General to allocate a large number of votes favourable to ZANU (PF) where he deems they are needed.

Zimbabwe is out of step with the region with respect to postal voting. In the recent elections in Mozambique, Mozambicans living outside Mozambique who were registered to vote were able to vote at polling stations at the Mozambique embassy in Harare and at a polling station in Mutare.¹⁵ It should also be noted that in the first election following the end of apartheid in South Africa, the many South Africans who had been forced into exile and had not yet been able to return home, were allowed to vote by post. One explanation given by the Government for the restriction on postal voting is that, owing to the travel ban imposed on senior ZANU (PF) officials by the EU, ZANU (PF) would not be able to campaign in Britain. It was not explained how this ratio applies to those in South Africa.

c)Registration of Voters

The Registrar-General has responsibility for registering voters and for setting practical criteria for the implementation of registration. The process of voter registration must be fairly carried out so that all eligible voters who wish to register are given a reasonable opportunity to do so. The SADC Protocol requires non-discrimination in voter registration.¹⁶

In each election, there have been numerous allegations of discrimination in the registration of voters. Registration for all elections in Zimbabwe has been conducted by the incumbent Registrar-General, Tobaiwa Mudede. While registration of voters in rural areas and ZANU (PF) strongholds has been facilitated and expedited, numerous obstacles have been placed in the path of urban voters seeking to register¹⁷. The impending election is no different in that, once again, allegations have been made that the registration of voters has continued in areas where ZANU (PF) has support well after the announced closing date for registration. In contrast, in urban areas registration requires the

¹⁴ See www.allafrica.com Zimbabwe

¹⁵ Agencia de Informacao de Mocambique (Maputo) 4 December 2004

¹⁶ Paragraph 4.1.3. Similarly the Principles of the Electoral Commission Forum of SADC Countries provide that “the voter registration process should promote broad participation and should not inhibit the participation of eligible voters.”

¹⁷ An Israeli Company was tasked with the computerization of the voters’ roll in 1999. It was simultaneously tasked with computerizing ZANU (PF) ‘s membership base. Suspicions arose that inclusion in the latter automatically entailed inclusion in the former – see Angela Cheater *Special Report 1 for the Human Rights NGO Forum Human rights Research Unit* January 2001 p.21.

production of the notoriously difficult-to-obtain national registration card¹⁸ together with documentary proof of residence. The latter requirement is extremely difficult for the youth, lodgers and students at tertiary institutions. Registration often entails a patient wait in lengthy queues.

d)The Voters' Roll

Inaccuracies in a voters' roll are probably the key mechanism by which electoral fraud may take place. It allows for the stuffing of ballot boxes, the inflation of votes and the reallocation of votes in marginal constituencies. The voters' roll in Zimbabwe has been unable to withstand constituency-based scrutiny¹⁹. The importance of the state of the voters' roll to ZANU (PF) is perhaps indicated by the measures that have been undertaken to ensure that a nation-wide audit of the roll does not take place. Responding to complaints about the state of the voters' roll, the Chair of the new Electoral Commission²⁰, Justice Chiweshe, stated that the opposition has not indicated how an audit of the roll could take place²¹. The best that could be said of this statement is that it is disingenuous. Since the voters' roll is computerized, the obvious method of conducting an audit is by computer analysis. Private-sector data consultants say they have the software in place to check for duplications to audit the roll electronically within 48 hours of receiving the two CD-Roms held by the Registrar-General containing the roll²². The Registrar-General has refused to supply the opposition with an electronic copy of the voters' roll, simply on the basis that he has no legal obligation to do so. A legal action brought by the MDC to obtain the roll in this form failed. As a result, the opposition has had to pursue slower and more painstaking methods of uncovering discrepancies in the roll. When an MDC

¹⁸ The issuance of which has been suspended on occasion by the Registrar-General – see The 2002 Presidential Elections and Civic Organizations in Zimbabwe – A Report for the Netherlands Institute for Southern Africa May 2002 (the Netherlands Report p.13)

¹⁹ Makumbe and Compagnon (Makumbe and Compagnon, "Behind the Smokescreen" 69-70) suggest that at least 41% of the names on the roll were inaccurate. Irregularities led to the entire election being condemned as 'free but unfair' by internal observers. Electoral rolls were particularly flawed in the contested municipal elections of 1996. Priscilla Misihairabwi, an NGO activist who sought to contest the urban council elections as an Independent Candidate, compiled such a convincing dossier of fraudulent voter registrations in Harare's Avenues district (including vacant lots with hundreds of registered voters) that ZANU (PF) sought to force her out — with the Registrar-General, Tobaiwa Mudede, declaring her candidacy invalid. (Rich's research notes, Supreme Court of Zimbabwe 21 July 1997; Interview by Rich with Priscilla Misihairabwi, 18 June 1997; "Court rules Misihairabwi had right to contest poll" *The Herald* 8 August 1997, 1, 17) Similarly, Fidelis Mhashu, the former ZANU (PF) municipal councillor, who contested the Chitungwiza mayoral election as an independent candidate after failing to get selected as the official ZANU (PF) candidate, convinced the High Court that the Chitungwiza electoral roll — comprised only of home-owners, although most residents were renting accommodation — "was so defective that it cannot be said that the electoral process was itself not flawed." *Fidelis George Mhashu v. Tichakunda Chiroodza & Chitungwiza Town Council & Andrew Jiri & ZANU (PF) & Minister of Local Government, Rural and Urban Development* High Court Judgement HH- 43- 97; Interview Fidelis Mhashu, 17 June 1997)

²⁰ See below for the details of this Commission

²¹ *The Herald* 24/03/05

²² See Kubatana.com Archive – "How will Zanu (PF) Cheat?"

Member of Parliament decided to undertake a physical check of registered voters against their physical addresses for purposes of the current elections, his team was repeatedly arrested by the police. However, the limited audit that was accomplished revealed numerous “ghost” voters and duplicate entries²³. A physical copy of the roll is only available at a prohibitive price, and candidates are required to inspect the roll in person, often having had to travel great distances to do so. On many occasions, the opposition has had to apply to the court to enforce their right to inspect the roll.

An organisation called FreeZim claims to have conducted extensive research into the voters’ roll intended for the current elections by scanning parts of it into a computer. They have identified "chronic errors" on the roll that could render an accurate and democratic election on 31st March impossible. The computerized survey also indicates “incomprehensible voter registration patterns which cannot be matched to the 2002 census. In addition to the 800,000 names of dead people, another 900,000 people listed on the roll as eligible voters are not known or do not live at the addresses under which their names appear. It suggests that over two million of the 5.6 million names registered as voters are suspect - it and the roll is overstated by unrealistic proportions that cannot be ignored²⁴. The group has submitted its report to the newly appointed Zimbabwe Electoral Commission.²⁵ These findings are consistent with the earlier limited audits of the 2002 electoral roll. Prior to the 2000 elections, the President is alleged to have rejected an offer of assistance from the UNPD to help regularize the roll.

e) Ballot Box Stuffing

A faulty roll provides a great deal of room for electoral fraud. An inflated roll that includes dead people and duplicates entries provides ample opportunity for the stuffing of ballot boxes. Recent electoral reforms have ostensibly made stuffing more difficult. Voting will now take place over one day, reducing the time in which one can determine which boxes need “extra” votes. Counting is to be conducted at the polling stations, reducing the possibility of stuffing in transit when the boxes are out of sight of polling-station agents. Ballot boxes are to be transparent. However, these reforms depend upon the presence of independent polling agents at the polling stations to look into the transparent ballot boxes. It seems unlikely that the MDC will be able to deploy its polling agents widely enough to cover the 8,300 polling stations - twice as many polling stations as for the 2000 election²⁶ and which are concentrated in the rural areas²⁷.

²³ *Independent Newspaper* (Zimbabwe) 24/02/05

²⁴ The MDC believes that the roll should contain as few as 3.2 million voters. See Kubatana.com Archive – How will Zanu (PF) Cheat?

²⁵ Zimonline 4 February 2005. The results were obtained after scanning the voters’ roll page by page into a computer and digitizing it. Numerous obstacles were placed in the way of obtaining a physical copy of the roll. It took two years to obtain it from the Registrar General. See Kubatana.com Archive Voters Roll Audit where the group’s methodology and results are spelt out.

²⁶ That election had 4,100 polling stations – see http://www.news24.com/News24/Africa/Zimbabwe/0,,2-11-1662_1675516,00.html

Furthermore, the recently published list of polling stations contains no addresses or directions which will enable observers to locate them with any ease. The possibility therefore exists that key polling stations may be without polling agents.

Throughout the voting process, as with previous elections, the Registrar-General ensures that each polling station maintains telephone contact with a Government-staffed command centre in Harare, now called the National Logistics Committee, which monitors the progress of the voting. These effective lines of communication allow the Registrar-General to take remedial action should any “problems” arise in voting. As a result he should not find the fact that voting is confined to one day too onerous. It is also worth noting in this regard that polling agents are being required to sign a document that they will not publish the results of the vote at any polling station until the result has been announced at constituency level. This is in direct contradiction of section 64(2) of the Electoral Act which specifically requires the results of the vote at each polling station to be posted at that station after the count.

From the above, it should be clear that despite recent electoral reforms, the conditions exist for an election that is not “fair”.

f) Impartial Supervision

In a democratic society, to ensure a free and fair election, all these processes, that is, delimitation, the registration of voters and the voters’ roll should be subject to scrutiny by an independent body. Indeed the SADC Guidelines provide as much. Unfortunately, this not the case in Zimbabwe. One is unable to agree with the South African President in his claims that such a body exists in the form of the new Electoral Commission²⁸. Firstly, the method of appointment of members of the Commission does not ensure that the Commission will be composed in a way that is in conformity with the SADC Guidelines.²⁹ President Mugabe appoints all five Commissioners. He appoints the chairperson after consultation with (not on the recommendation of) the Judicial Service Commission. This leaves the President with virtually unfettered power to appoint whomever he wants as chairperson of the Commission. The other four Commissioners are appointed by the President from a list of nominees submitted by a parliamentary standing committee that is dominated by members of the ruling party. Since Government appointees dominate the Judicial Service Commission and members of the ruling political party dominate the parliamentary standing Committee, it is not surprising that the resultant committee is comprised of ruling party supporters and, even more tellingly, is headed by Justice

²⁷ There are three times more stations in the rural areas than in the urban areas.

²⁸ “I don’t know what has happened in Zimbabwe that is in violation of the SADC protocol, because as I know things like the independent electoral commission, things like access to the public media, things like the absence of violence and intimidation, those matters have been addressed,” Mbeki quoted at <http://www.theindependent.co.zw/news/2005/March/Friday11/analysis.html>

²⁹ Paragraph 7.3.

Chiweshe. Hence the same person who headed the Delimitation Committee chairs the very body that should be tasked to examine the fairness of the delimitation of constituencies. There are two further difficulties in contending that the Electoral Commission will ensure fulfilment of the SADC Guidelines. The Act only came into force in mid January 2005, and the chairperson was appointed on the 25th January 2005, too late to perform any of its ostensible pre-electoral functions. Secondly, the functions of the constitutionally established Electoral Supervisory Commission overlap those of the Electoral Commission. The Electoral Supervisory Commission's five members have, in accordance with the National Constitution, all been appointed by the President and again consists of persons sympathetic to ZANU (PF). There has been no attempt to make this body representative of all parties. The Electoral Supervisory Commission has been tasked with identifying who may, and who may not receive accreditation to observe the 2005 elections. Accordingly, no organisation that gave a negative report after the 2000 and 2005 elections has been invited to observe the current elections.

Electoral fraud is a key mechanism by which the fairness of the election may be compromised. The second key element that has compromised the freeness of the election is the politics of food.

Electoral Blackmail

Zimbabwe is currently facing critical food shortages and the situation does not appear to be set to improve in the post election period. The explanations behind the food shortages are given different weightings depending upon one's political affiliation, but there is a general consensus that drought and decreased agricultural output caused by the land reform programme have resulted in Zimbabwe needing to import grain to prevent starvation. While food shortages would ordinarily cause a governing party to lose votes, this is not the case in a country where a large rural population is dependent upon food handouts. The Government of Zimbabwe has ensured that it retains sole control over the distribution of food. All grain has to be sold through the government-controlled Grain Marketing Board. Any NGO involved in food aid and famine relief is obliged to work through government structures. Accordingly, the distribution of any food aid, regardless of its source, is through government-controlled bodies. The extent of this control is indicated by the fact that rural farmers may not bring any sizeable quantity of maize meal into the cities for urban-based relatives, and large quantities of maize have been confiscated from rural farmers who have attempted to do so. Food shortages have thus rendered large sections of the rural population dependent upon government largesse. ZANU (PF) officials have not made any attempt to conceal this manipulation. For instance, in July 2004, a local newspaper reported that Deputy Minister of Foreign Affairs, Abednico Ncube, told villagers in Matebeleland that maize "will be available only to those who dump the opposition and work with ZANU (PF)". The party would "start

feeding its children before turning to those of the MDC”.³⁰ In another report in mid-January 2005, it was alleged that in parts of the Midlands and Manicaland, ZANU (PF) councillors and the police have taken over the vetting of hungry villagers requiring food under new distribution procedures that could see opposition supporters sidelined. It was alleged that under this new procedure, villagers must produce a ZANU (PF) membership card and get a letter from the ZANU (PF) councillor of their local ward stating that they should be allowed to buy cheaper-priced maize from the government’s Grain Marketing Board depots. When a buyer gets the letter he then takes it to the village head and to the local police who will verify and certify that they reside in the area and must, therefore, be allowed to purchase maize.

In early February, the MDC accused chiefs in a number of areas of Matebeleland of forcing their villagers to back the ruling ZANU (PF) party and that they threatened to deny government-supplied maize to those who refused to do so. To be allowed to buy cheaper-priced maize from the Government's Grain Marketing Board, villagers must be on a food assistance register kept by the chief. Chiefs also issue letters authorizing the GMB to sell maize to their subjects. According to opposition officials, the chiefs have told their subjects to attend ZANU (PF) campaign rallies only, with those who defy the order or attend MDC rallies being removed from the food register.³¹ ZANU (PF) has, in the past, kept its pre-election promise that areas that vote for the opposition will be denied food aid, with Binga being a prominent example in this regard³². In this context, Mugabe’s odd rejection of food aid from the international community”, begins to make sense. He stated that Zimbabwe was expecting a bumper harvest - when all indications and professional reports were to the contrary - and commented that Zimbabweans did not need food “foisted upon them”³³.

The Suppression of Basic Human and Civil Rights

The SADC Guidelines recognise that for an election to be free and fair, the electorate must be afforded basic civil and human rights. These rights include freedom of expression and assembly. While these rights were violently suppressed prior to previous elections, the same effect has been achieved for the current elections, without resort to endemic violence. In an attempt to be seen to be adhering to the SADC Guidelines, the repression of these basic freedoms has abated slightly. However, the small window that has been opened only partially, cannot be regarded as meeting the requirements of a democratic election.

a) Freedom of Assembly.

³⁰ *The Standard* 18 July 2004

³¹ Zimonline 8 February 2005

³² See http://www.sokwanele.com/articles/sokwanele/tenthdayofchristmas_4jan2005.html

³³ See http://www.mg.co.za/articlePage.aspx?articleid=199973&area=/zim_elections/zim_news/

In 2002, the Government enacted the Public Order and Security Act (POSA)³⁴. This Act has been interpreted by the police as giving them powers much wider than the already-draconian Act actually provides for. Claiming POSA as their authority, the police have prevented most opposition meetings and demonstrations from taking place, asserting that such meetings are a threat to public order. ZANU (PF) meetings have taken place without interruption, and without apparently meeting the formal requirements of POSA. Under the guise of this legislation, police have broken up opposition gatherings and meetings, prevented demonstrations and imprisoned participants. Contrary to the provisions of POSA, the police maintain that all meetings require their permission, and that anyone attending a meeting without their permission may be arrested.

The majority of arrests ostensibly carried out under POSA have not in fact accorded with the legislation³⁵. Up to September 2004, there had not been a single successful prosecution under POSA for arrests arising out of purported violations of the Act. A survey carried out by the Zimbabwe Solidarity Peace Trust showed that, from a given sample, 73% of cases remain unresolved. This means that the charges have not been pursued or that the accused have been repeatedly remanded without a trial date ever having been set. Of the remainder, 133 or 11% were released without charge, the courts acquitted 85 or 7%, and 50 had charges withdrawn. In 55 cases or 5%, those arrested paid admission-of-guilt fines. These fines are commonly paid by arrestees to avoid extended incarceration at the police station and should not be taken as a genuine admission of guilt. Research by Amani Trust indicated 1,213 documented reports of arrests, ostensibly in terms of POSA,³⁶ from its enactment to August 2004. Of these arrests, 639 people were released without charge. Only 8 of the arrests were of members of ZANU (PF)³⁷. Some 63 public gatherings were dispersed, all being those of the MDC or civic society.

On the other hand, there are no reported instances of the police stopping meetings, rallies and demonstrations by supporters of the ruling party. These statistics not only show the extent of the oppression of freedom of assembly, but also reveal highly partisan policing. This type of policing continued until shortly before the election observers arrived in the country, one of the last examples being the dispersal by police of people gathered to hear an MDC legislator, Ian Makone, address a conference of MDC candidates³⁸. MDC campaigners are at

³⁴ Chapter 11:17

³⁵ See generally in this regard D. Matyszak *Democratic Space and State Security: Zimbabwe's Public Order and Security Act* Zimbabwe Human Rights Bulletin, February 2005.

³⁶ This information was supplied by a researcher at Amani and gleaned from various Human Rights reports over the period, particularly those of the Human Rights NGO Forum.

³⁷ The Commissioner of Police has cynically used the fact that arrests are predominantly of MDC members to suggest that it is evidence of the lawlessness of the MDC – see *Justice In Zimbabwe* at p 43 and Amnesty International 2002 *Policing to Protect Human Rights*.

³⁸ http://www.legalbrief.co.za/publication/archives.php?mode=archive&publication=Legalbrief_Afri

present being allowed to hold rallies in areas that were previously declared as “no-go” areas for the opposition. Welcome as this development is, for a truly democratic election to take place, the opposition should be allowed to build its support base in the years preceding the election, not in a *few weeks* immediately prior to it.

b) Freedom of Expression

Considerable effort has been made to ensure that the opposition does not have a voice in the public print media. When *The Daily News* began publication as Zimbabwe’s only independent daily sympathetic to the opposition, all means, lawful and unlawful, were employed to prevent its publication, including the destruction of its printing presses with a well-placed bomb³⁹. No one has ever been charged for this offence. When such tactics failed to secure the desired result, the Government introduced the Access to Information and Privacy Act that sought to place all journalists and the printed media under stringent controls and regulations. The Daily News was closed in terms of these regulations and remains off the streets prior to the elections. There is thus no daily newspaper available to opposition supporters. Two independent weekly papers remain, but these do not reach the rural areas in any significant number and are largely unaffordable to the rural populace. Apart from *The Daily Mirror* and its sister paper *The Mirror on Sunday*, which lean in favour of the ruling party, the only daily newspapers are government-controlled newspapers such as *The Herald* and *The Chronicle*. The main Sunday newspaper, *The Sunday Mail*, is also government-controlled. Accordingly, an important medium through which a voice contrary to that of the government might be heard has been silenced.

The SADC guidelines require equal access for all political parties to the state media. The electronic media, particularly radio broadcasting, provides a very powerful medium of communication allowing penetration into remote rural areas and reaching a wide audience, including those who are illiterate. Once again, the Government has ensured that this avenue has been closed to the opposition. Although technically the Government’s erstwhile monopoly of the airwaves has been ruled unconstitutional, it is impossible and impractical to comply with the stringent regulations that were enacted in the wake of this ruling. The regulations require an exorbitant license fee payable in foreign currency and restrict the content of the broadcasts. The opposition is thus reliant on the state-owned electronic media to convey its message. Despite the SADC guidelines, the MDC was refused permission in December 2004 to flight its advertisements. The refusal was said to be on the basis that, since the MDC had adopted the position that it would boycott the elections, it was not entitled to air time. Subsequently, in January 2005, the Permanent Secretary in the Department of Information and Publicity in the Office of the President and Cabinet declared that it was “too early” for political parties to begin advertising.

ca&issueno=118&format=html

³⁹ See http://www.afrol.com/News2001/zim001_bomb_dailynews.htm

Finally, in February 2005, the Government enacted regulations that were supposed to allow political parties access to radio and television.⁴⁰ Under these regulations the licensee is supposed to ensure that contesting political parties or candidates are given equal opportunities for the broadcasting of election material. The licensee is also supposed to have an obligation to ensure that during the election period, news and current affairs programmes relating to an election are presented in a balanced, fair, complete and accurate manner. The licensee is also supposed to allocate four hours of available purchasable time during an election period for election advertisements that must be distributed equally to interested contesting political parties and candidates and must take into consideration the number of constituencies the party is contesting. However, the cost of such advertising is prohibitive⁴¹, even though it is slightly less than the normal charge. As the licensee must not broadcast any election programme that incites or perpetuates hatred against or vilifies any group or person on the basis of their political affiliation, it would be able to reject advertising material on this basis.

These regulations appear better on paper than they do in practice. Certainly, the MDC now has the rare opportunity to flight advertisements and party political broadcasts in the state media. However, this concession has been subject to the whim of government and has been made only a few weeks prior to the election, This is not conducive to a democratic election. A more serious criticism lies in the state's brazen and unabashed use of the state media for ZANU (PF) party political purposes. The coverage given to political parties is heavily biased and skewed in favour of the ruling party. Tuning into any ZTV news broadcast in the pre election week evidences this. Were it not for the ZTV icon announcing that the programme was intended to be the main news of the day, one could be excused for believing that one was watching a ZANU (PF) party political broadcast. For example, the 8.00pm "News" on 28/03/05 featured 30 minutes of local Zimbabwean news. This consisted of film clips of 5 ZANU (PF) candidates in different areas⁴² vilifying the MDC as sell-outs and stooges for a British-inspired neo-colonial project, 3 minutes footage of dubious quality of a rally addressed by the opposition leader, and 3 minutes of the vice president commissioning a rural electrification project, making a total of 27 minutes for ZANU (PF) campaigning under the guise of news, and 3 minutes for the opposition. The Media Monitoring Project of Zimbabwe (MMPZ), which monitors broadcasts in Zimbabwe 24 hours a day, indicated as follows in its weekly report of 18/03/05:

33 (83%) of the 40 stories that ZBH (ZTV, Radio Zimbabwe and Power FM) carried on

⁴⁰ Broadcasting Services (Access to radio and television during an Election) Statutory Instrument 22 of 2005.

⁴¹ The cost for television advertising will be \$3,78 million per minute and \$1, 89 million for half a minute. On the prime radio station it will be \$1,4 million per minute and 700 000 for half a minute.

⁴² Curiously, footage of a cheering dancing crowd was identical for two different candidates.

campaigns were positive portrayals of the ruling party. Four (10%) reports were on the MDC while the remaining three (7%) were on the independent candidate Silas Mangono's attack on the opposition. Other independent candidates and smaller parties were not covered. Notably, while the four reports on the MDC deviated from the usual vilification of the party as a stooge of the West, the opposition party was denigrated in most of the stories about the ruling party.⁴³

The Government is not content simply to rely on such partisan use of the state media. SW Radio, a station sympathetic to the opposition, has been broadcasting to Zimbabwe over shortwave frequencies. A few weeks before the election, it has been impossible to receive this station owing to a single 1kHz tone continuously broadcast over the same frequencies as SW Radio. According to the MMPZ, the signal emanates from the ZBC's broadcasting post in the Gweru area and is part of jamming equipment obtained from China⁴⁴. Such actions are contrary to the SADC Guidelines. In addition, the same comment made in regard to the printed media also applies here: to allow the MDC limited access to the state-owned electronic media for a few weeks prior to the election, when election observers are in the country, is not conducive to a democratic election.

Conclusion

It has not been possible in the limited space available to highlight the many other aspects of the impending election that fly in the face of accepted democratic norms - such as the fact that the Government has arrogated to itself the sole power to conduct voter education programmes and that legislation recently passed by parliament has severely curtailed the operations of civil society organisations. The intention here is simply to outline some key aspects. Much of the damage to the democratic process has already been done. The chief culprit, this time around, ahead of violence and the closure of democratic space, is the politicisation of food handouts. If this is not effective, there is a danger that the defective voters' roll, the voting process and vote counting will be manipulated to secure a ZANU (PF) victory.

⁴³ For a more detailed analysis of airtime see the MMPZ report at <http://www.kubatana.net/html/archive/media/050320mmpz.asp?sector=MEDIA>

⁴⁴ According to the MMPZ, although government has denied jamming SW Radio Africa's broadcasts, a report by the International Broadcasting Bureau (IBB) revealed that the jamming appears to emanate from Zimbabwe using Chinese equipment at Thornhill in Gweru. The IBB report states that three jammers are being used to jam the three short wave frequencies used by SW Radio Africa. "One kHz tone is used to jam the broadcasts; and is continued till the transmitters become too hot; then 'noise' is used to avoid over driving the jamming transmitters...", says the report. The BBC Monitoring Services also confirmed the jamming saying the "the interfering signals were present only for the period of the SW Radio Africa programming" see <http://www.kubatana.net/html/archive/media/050318mmpz.asp?sector=MEDIA>