

**Zimbabwe Presidential Election
9 to 11 March 2002**

**REPORT OF THE
COMMONWEALTH OBSERVER
GROUP**



Commonwealth Secretariat

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CHAPTER ONE THE OBSERVER GROUP

INTRODUCTION

The March 2002 Presidential elections took place against the backdrop of widespread Commonwealth and international interest in and concern about the situation in Zimbabwe. The Commonwealth has had close and special ties with Zimbabwe over the years. The association was closely involved in the process leading to Zimbabwe's independence in 1980 and it was in Zimbabwe's capital, Harare, in 1991, that Commonwealth Heads of Government codified the fundamental political values of the association in a landmark document known as the Harare Commonwealth Declaration. Since then the Commonwealth has continued to assist in the strengthening of democracy and in the development of the country.

A Commonwealth Observer Group (COG) was present in Zimbabwe for the Parliamentary elections on 24-26 June 2000. The Commonwealth has also been working closely with other international partners, including the Southern African Development Community (SADC) and the United Nations Development Programme (UNDP), in addressing the land issue and related matters in Zimbabwe.

Our Group was constituted by the Commonwealth Secretary-General following an invitation from the Government of Zimbabwe. An advance staff team, which visited Zimbabwe from 5 to 10 February, found that the main political parties and civil society groups were agreeable to the presence of Commonwealth observers. The team were also assured by the election management authorities that Commonwealth observers would be able to travel freely to all parts of the country and to talk to whomever they wished, subject to a Code of Conduct for international and domestic observers.

THE OBSERVER GROUP AND ITS TERMS OF REFERENCE

This was the 37th observer Group constituted by the Commonwealth Secretary-General since Commonwealth Heads of Government agreed at a meeting in Kuala Lumpur, Malaysia, in October 1989 that member states could benefit from an election observer facility, as a means of strengthening democratic processes and institutions. The context for our presence at the Presidential elections in Zimbabwe was set by the principles enshrined in the 1991 Harare Commonwealth Declaration, which include "democracy, human rights, the rule of law and just and honest government".

The Terms of Reference for our Group were incorporated in the Secretary-General's letter inviting each of us to participate in the mission in our individual capacity. They are as follows:

"The Group is established by the Commonwealth Secretary-General at the invitation of the Government of Zimbabwe. It is to observe relevant aspects of the organisation and conduct of the Presidential

Election in accordance with the laws of Zimbabwe. It is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for a free expression of will by the electors and if the results of the election reflect the wishes of the people of Zimbabwe.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Zimbabwe, the leadership of the political parties taking part in the election and thereafter to all Commonwealth governments”.

Within the above terms of reference the Group would form an independent judgement, which would in no way represent either the views of any government, or the Office of the Secretary-General.

The Group was led by General Abdusalami Abubakar, former Head of State of Nigeria, and comprised 42 eminent nationals of Commonwealth member states. The Group was supported by a 19-member Commonwealth Secretariat team led by Mr Jon Sheppard, Director of the Secretariat's Political Affairs Division. For the first time the Group included representatives of Commonwealth youth organisations.

METHOD OF WORK

The Advance Group

Following a formal invitation on 4 February 2002 from the Government of Zimbabwe to the Commonwealth Secretary-General for the presence of Commonwealth observers, a five strong team of staff from the Commonwealth Secretariat arrived in Harare on 5-6 February to make arrangements for the arrival of the Observers. In the week up to Sunday 10 February the staff team, led by Jon Sheppard, met the Registrar-General, the Electoral Supervisory Commission, the main parties and a number of NGOs and diplomats. Four of the five staff were accredited as observers on Thursday 7 February and spent some time observing preparations for the elections and the campaign in Harare and rural areas.

Three 'Advance Observers' arrived in Zimbabwe on Friday 8 February and a further three arrived on Monday 11 February. Supported by Commonwealth Secretariat staff, they deployed in four of the country's nine provinces, including the capital, Harare, where they met with the political parties and civil society groups and also observed the election campaigns.

The Full Observer Group

Our full complement of observers arrived in Zimbabwe on 22-23 February and was briefed on the terms of our mission by the Chairperson and the Secretariat team leader. Our Chairperson had himself been briefed in London by the Commonwealth Secretary-General earlier in the month. We held a press conference in Harare on 24 February, at which we issued an Arrival Statement.

Over the next few days we were engaged in a series of meetings with the Registrar-General, the Chief Elections Officer, the Electoral Supervisory Commission, Commonwealth High Commissioners, senior representatives of political parties contesting the elections, representatives of the Zimbabwe Elections Support Network, civil society, media organisations, war veterans and commercial farmers.

On Wednesday 27 February we divided into 23 two-person teams and deployed to all 10 provinces of the country. 7 other teams were added in the week prior to the poll. The Chairperson, the Secretariat team leader and 4 other teams were based in Harare. On 2 March the Chairperson and some members of the Group were invited to pay a courtesy call on President Mugabe. The Chairperson also made visits to a number of provinces to assess first hand the state of electoral preparedness in those areas and the political climate in the run-up to the elections. On these visits he met officials, members of the public, representatives of political parties, civil society representatives and also victims of politically motivated violence.

A meeting was arranged with the Registrar-General to seek clarification on issues of voter registration, citizenship, postal voting and other related matters. The Chairman also wrote to the Chairman of the Electoral Supervisory Commission and the Registrar-General drawing attention to the need for action to deal with the large numbers of voters at polling stations on Saturday 9 March. On Tuesday 12 March the Chairman of our Group called on the Registrar-General in pursuit of these concerns and to discuss progress in the verification and counting of votes.

On deployment, our teams covered both urban and rural areas. We travelled extensively to familiarise ourselves with our deployment areas, to assess preparedness for the elections and to observe the last days of the campaign. We met local electoral officials, representatives of political parties and independent candidates, local community leaders and observers, representatives of the security forces and other international observers. We attended party rallies and meetings, and observed the training of presiding and polling officers as well as that of monitors. We also observed final preparations for the elections.

Each team submitted regular reports of their observation to the Chairperson. Between 9 and 11 March we observed voting at approximately 700 polling stations and on 12 March were present for the count at 15 constituency counting centres. During our deployment we were assisted by observation notes and checklists prepared by the

Secretariat. Our Group reassembled in Harare on 12/13 March for debriefing, having maintained a continuous presence in Zimbabwe for over a month.

On 14 March, we issued a Preliminary Report containing our initial assessment of the electoral process. This Report was forwarded to the Commonwealth Secretary-General and released to the public.

CHAPTER TWO POLITICAL FRAMEWORK

INTRODUCTION

As in the June 2000 Parliamentary elections, the main issue in terms of political background to the Presidential election in Zimbabwe was the strong challenge posed to the ruling Zimbabwe African National Union – Patriotic Front (ZANU-PF) by the Movement for Democratic Change (MDC) formed in September 1999. It will be recalled that in the Parliamentary elections of June 2000 the MDC had won 57 of the 120 elected seats.

Although Zimbabwe has never been a *de jure* one-party state, ZANU-PF has ruled the country since independence in 1980 and has completely dominated Zimbabwe politics from the time it merged with the rival Zimbabwe African People's Union (ZAPU) in 1988. This factor and other key political issues in the elections, including the land issue, have their roots in the country's liberation struggle and its efforts to forge a new, 'home-grown', democratic political dispensation.

THE LIBERATION STRUGGLE

Following the Unilateral Declaration of Independence (UDI) by Mr Ian Smith's minority regime in November 1965, opposition groups, representing the disenfranchised African majority went underground and started a low-intensity guerrilla war against the Smith regime from bases in Zambia and Mozambique. The two most prominent liberation groups were the Zimbabwe African People's Union (ZAPU), led by Joshua Nkomo and the Zimbabwe African National Union (ZANU), initially led by Rev. Ndabaningi Sithole and later by Robert Mugabe. The two organisations subsequently formed an alliance called the Patriotic Front (PF).

The increasingly effective guerrilla campaign, economic difficulties, and declining white morale led the Smith regime to fashion what it termed an 'internal settlement' by establishing a surrogate black government under Bishop Abel Muzorewa. The Muzorewa government failed to muster black support or end the war. Within a year of its formation, all the main parties in the conflict agreed to participate in the Lancaster House Constitutional Conference chaired by the then British Secretary of State for Foreign and Commonwealth Affairs, Lord Carrington.

THE LANCASTER HOUSE CONFERENCE

The Lancaster House Conference began on 10 September 1979 and lasted for 14 weeks. A peace agreement was signed on 21 December 1979. It provided for a ceasefire, an end to the UDI and for a transitional British administration to prepare the way for free and fair elections leading to the independence of the country. A parliamentary system of government was adopted in preference to a presidential system and 20 of the 100 seats in Parliament were initially reserved for the white minority.

A Commonwealth Monitoring Force drawn from four representative member countries (Britain, Uganda, Sierra Leone and India) helped to supervise the demobilisation of PF guerrillas. Elections were successfully held in February 1980. A Commonwealth Observer Group was present alongside other international observers at these elections and their reports added to the credibility of the process.

One issue, which almost led to a breakdown of the Lancaster House Constitutional Conference, was that of land. The Smith Government was anxious that independence did not bring about a wholesale expropriation of white-owned land. On the other hand, the black nationalist groups represented by the Patriotic Front (PF) regarded land redistribution in favour of the black majority as a sine qua non of independence.

No final settlement was reached on the issue but the PF did accept an assurance from the Chairman of the Conference that depending on a successful outcome of the discussions, Britain, the United States and other countries would 'participate in a multinational financial donor effort to assist in land, agricultural and economic development programmes'. The PF issued a statement indicating that the assurances they had received on the land issue went a long way towards 'allaying the great concern' they had over the whole land question. Further details about the land issue and its impact on the contemporary political environment are provided below.

INDEPENDENCE

Shortly after the Lancaster House Agreement, the PF split into its constituent ZANU and ZAPU wings. ZANU-PF (strongly supported by the country's Shona majority) under Robert Mugabe won 57 of the 80 African seats in the National Assembly, receiving 63% of the votes cast. ZAPU-PF (backed by the minority Ndebele) won 20 seats and Bishop Muzorewa's United African National Council (UANC) won three. The Rhodesian Front (RF) won all 20 of the seats reserved for whites.

On 18 April 1980 Zimbabwe became independent, with Robert Mugabe as Prime Minister and Rev Canaan Banana as President (with ceremonial duties only). Prime Minister Mugabe stressed the need for reconciliation and included ZAPU-PF members as well as two whites in his cabinet. The ZAPU-PF leader, Joshua Nkomo, was given the Home Affairs portfolio.

CONSOLIDATION OF POWER BY ZANU-PF

In January 1982 Joshua Nkomo and a number of his ZAPU-PF colleagues were dismissed from the government following the reported discovery of a large arms cache in Nkomo's stronghold of Matabeleland. During the following two years, the Government used the military (Fifth Brigade of the Army) to crush violence by pro-Nkomo dissident groups. Numerous atrocities were reported by domestic and international non-governmental organisations.

In the June 1985 elections, ZANU increased its majority from 57 to 64, while ZAPU-PF won only 15 seats, losing the 5 seats it held outside

Matabeleland. Ian Smith's RF, now known as the Conservative Alliance of Zimbabwe (CAZ), won 15 of the 20 white seats, the rest going to independents aligned with the Government. Bishop Muzorewa's UANC failed to win any seats.

In September 1987, the reservation of 20 seats for whites in the National Assembly was abolished and the following month further constitutional changes replaced the Westminster system of government with an executive presidency.

Following renewed negotiations towards national reconciliation, ZAPU-PF was absorbed into ZANU-PF and Joshua Nkomo brought back into the Government as a senior Minister. He was subsequently promoted to Vice-President. Despite the merger of the country's two most prominent political parties, Zimbabwe retained an active opposition and never became a de jure one-party state.

AN INEFFECTUAL OPPOSITION

In May 1989, a former Secretary-General of ZANU-PF, Edgar Tekere, founded a new party, the Zimbabwe Unity Movement (ZUM), accusing the government of corruption and of seeking to impose a one-party system on the country. However, in the general election of March 1990, ZANU-PF secured 117 of the 120 elective seats while ZUM won only two. President Mugabe also won an overwhelming majority in the concurrent presidential elections against Mr Tekere.

The last restrictions of the Lancaster House Agreement were removed in April 1990. Eight opposition parties, including ZUM, boycotted the next general elections in April 1995. ZANU-PF won 118 of the 120 elected seats, the remaining two going to a small opposition party, ZANU-Ndonga, led by Ndanbaningi Sithole. In the Presidential elections, in mid-March 1996, President Mugabe won 92.7% of the votes cast against Muzorewa's 4.7% and Sithole's 2.4%.

Meanwhile, the economy continued to slide as strikes for improved employment conditions became more frequent and allegations of corruption continued to eat away at the government's public standing. In October 1997, the President announced plans to accelerate the slow pace of land reform and a list of 1,471 privately owned farms to be acquired was published. In June 1998 many farms were occupied by displaced families and in August the second phase was begun of a resettlement plan for 150,000 families on 1 million hectares of land over the next 7 years. This was followed by an international donor conference in Harare in September 1998 aimed at mobilising funds towards supporting an acceptable land reform programme. The conference, however, failed to endorse the Government's land reform programme, which was not considered to be sufficiently transparent.

Meanwhile declining standards of living and Zimbabwe's involvement in the war in the Democratic Republic of Congo (DRC) increased opposition to the Government. In September 1999 a new political party, the

Movement for Democratic Change (MDC), led by Morgan Tsvangirai, the Secretary-General of the Zimbabwe Congress of Trade Unions, was formed.

THE FEBRUARY 2000 REFERENDUM AND ITS AFTERMATH

In February 2000 ZANU-PF faced its first political defeat and the MDC its first test of popular support when the people of Zimbabwe were asked in a referendum to approve a new draft Constitution. The draft was produced by a government-appointed Constitutional Commission which had consulted widely across the country but which was boycotted by most civil society organisations. It provided for the acquisition of land by the Government without compensation, unless this came from the former colonial power, Britain. It also provided for a Prime Minister responsible to Parliament and removed the President's power to appoint up to thirty members of Parliament. ZANU-PF supported the draft Constitution while the MDC joined a coalition of civil society organisations - the National Constitutional Assembly (NCA) – in campaigning for its rejection. The draft Constitution was rejected by 697,754 votes to 578,210 (54.7% against 45.3%), on a 20% turnout.

Although the Government accepted the results of the referendum, ZANU-PF, as a party, interpreted the rejection of the draft Constitution as the result of a conspiracy by the black urban middle-class elite (represented by the MDC), the country's white commercial farmers, and the Government's external enemies. The Government accused the MDC of unleashing a campaign of violence against ZANU-PF supporters prior to the referendum and the white commercial farmers of intimidating their workers into voting for a rejection of the draft Constitution.

Shortly after the referendum, veterans of the liberation war and their supporters moved to occupy over a thousand white-owned commercial farms. The farm occupations were accompanied by a campaign of violence and intimidation in which over thirty people (mostly supporters of the MDC) died and many more were injured. Although the courts ruled the occupations to be illegal and ordered the police to implement the judicial decision, the police failed to do so. On 6 April 2000, Parliament passed the Constitution of Zimbabwe Amendment (No. 16) Act, approving the Government's land reform programme as it had been in the rejected draft Constitution.

It was against this backdrop that on 11 April 2000, the President issued a Proclamation dissolving Parliament and thereby necessitating the holding of fresh elections within four months.

At a meeting in London on 2 May 2000, Ministers of the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG), through their Chairman, voiced concerns over the violence, loss of life, illegal occupations of property, failure to uphold the rule of law and political intimidation in Zimbabwe. They also expressed their support for an environment in which fair elections, free of intimidation could be held, and

requested the Commonwealth Secretary-General to convey their deep concerns to the Government of Zimbabwe.

The Secretary-General visited Zimbabwe from 15-16 May in the course of which he expressed CMAG's concerns to President Mugabe and senior members of his Government. President Mugabe confirmed that Commonwealth observers were welcome for the parliamentary elections and agreed that the level of violence should be reduced by all parties. The Secretary-General also met with representatives of the opposition parties and with several civil society and non-governmental organisations.

THE COMMONWEALTH OBSERVER GROUP TO THE JUNE 2000 PARLIAMENTARY ELECTIONS

Fifteen political parties and 90 independent candidates contested the June 2000 Parliamentary elections. The main contestants were ZANU-PF and the MDC.

A 33-member Commonwealth Observer Group (COG) led by General (Rtd) Abdulsalami A Abubakar, former Head of State of Nigeria, observed the elections, which took place on 25 and 26 June 2000. The Group was supported by 13 staff from the Commonwealth Secretariat.

The Group concluded, *inter alia*, that while the voting days themselves were generally calm, orderly and peaceful, the pre-election incidents of violence and intimidation had impaired the freedom of choice of the electorate. The key recommendations were as follows:

- *“...consideration might be given to the establishment of an independent electoral commission; in the meantime the Electoral Supervisory Commission should be given the resources necessary to perform its functions effectively and its role should be clearly defined and enshrined in the Electoral Act;*
- *there should be a code of conduct regarding the activities of political parties and candidates during the campaign and election period, and there should be a clear demarcation between the executive and the ruling party, especially in the use of government resources for political activities;*
- *there should be a code of conduct regarding media coverage and advertising during the campaign and election period, either under the supervision of a specially-created independent body or under an independent electoral commission, as referred to above;*
- *domestic monitors should be accredited in good time to allow them to travel to their assigned polling stations well before the commencement of the elections;*
- *consideration should be given to restricting polling to one day, especially if the count is conducted on the following day, to streamline procedures and reduce the burden on electoral officials and agencies; increasing the number of fixed polling stations, thus reducing the number of voters at each station, especially in high-density areas, would be a measure to assist this objective;*

THE LAND ISSUE

The land problem in Zimbabwe has its roots in the country's colonial past. When at the end of the nineteenth century the so called 'Pioneer Column' of white settlers led by Cecil Rhodes failed to find gold in the quantities they had anticipated, they decided to encourage white farming and an influx of white settlers through the acquisition of vast areas of fertile land for distribution to the settlers. Prior to this, the area that constitutes present day Zimbabwe had been settled for over a thousand years by the Shona and for nearly 200 years by the Ndebele.

In 1923 Britain took nominal responsibility for the colony under an arrangement which allowed the settlers full autonomy over internal affairs. They quickly developed the colony into a racially stratified and segregated society similar to that in South Africa.

A Land Apportionment Act passed in 1930 reserved 51% of (the best quality) agricultural land for 50,000 whites and a mere 30% of mostly arid and poor quality land for 1.1 million Africans. A Land Husbandry Act in 1951 legalised this disproportionate allocation by promoting the private ownership of land. In 1969 the government passed the Land Tenure Act which strictly classified agricultural land into white and African areas.

The Land Issue at the Lancaster House Conference

As indicated earlier, although no final settlement was reached on the land issue at the Lancaster House Conference, the nationalist Patriotic Front (PF) did accept an assurance from the Chairman of the conference, Lord Carrington, that depending on a successful outcome of the conference, Britain, the United States and other countries would 'participate in a multinational financial donor effort to assist in land, agricultural and economic development programmes'.

The Independence Government's Land Policies

At the time of independence, Zimbabwe's arable land was classified into five grades according to productivity, with the most productive cropland classified as Grade I and the least productive as Grade V. White farmers were allocated 78% of all Grade I and II land. 75% of the land allocated to black small holders was Grade IV and V land deemed fit mainly for the grazing of cattle.

Under the Lancaster House Constitution land could only be acquired for redistribution on a willing-buyer/willing-seller basis with market rate compensation paid up front. With about 30 million pounds of British aid funds and its own resources, the Government of Zimbabwe bought about 3.5 million hectares of land in which it settled about 71,000 households between 1980 and 1990. This was a far cry from the Government's target of 8.3 million hectares to settle 162,000 families. There were allegations that some of the farms acquired under this programme had gone to members of government and their supporters.

When the constraints imposed by the Lancaster House Constitution lapsed in 1990, the Government decided to speed-up the pace of land reform. Accordingly, Parliament passed the Land Acquisition Act of 1992 which provided for the compulsory acquisition of land for resettlement of the rural poor. However, this Act was dogged by legal challenges and by practical difficulties in identifying which land would be compulsorily acquired. The British Government decided not to provide any funds to assist with the compulsory acquisition of land. It was not until December 1997 that the Government designated 1471 farms for compulsory acquisition. Controversially, the Government announced that it would only pay compensation for 'improvements' on the farms, not for the land itself. Compensation for the land, according to the Government, was a matter for the former colonial power, Britain, which it claimed had expropriated the land without compensation from their original owners.

The Commercial Farmer's Union (CFU) strongly opposed the Government's programme, arguing that commercial production would be halved and thousands of farm jobs lost as a consequence. In June 1998 scores of farms were occupied by squatters demanding land. It was to resolve this impasse that a three-day international conference on land reform was convened in Harare at the impetus of the Government and the donor community.

The International Donors' Conference of Land Reform and Resettlement

This conference was attended by 24 countries and seven major international organisations. The Government of Zimbabwe, which sought approximately \$800 million U.S. dollars from the donors to support its land reform programme, presented its case, as did the CFU and other interested parties. Although the donors acknowledged in principle the need for land reform, they proposed several changes to the Government's programme designed in their view to make it more transparent, equitable and sustainable. They did, however, approve a 24-month inception phase to begin immediately.

In May 1999, the Government, with the support of the CFU approved an Inception Phase Framework Plan (IPFP) for the resettlement of 77,700 families on 1 million hectares by 2001. Although the World Bank pledged US\$5million towards this programme, the Government regarded this as too little too late.

The Land Issue in the 2000 Draft Constitution

To speed up the pace of land reform, the draft constitution put to the people of Zimbabwe in a referendum in February 2000 provided for the compulsory acquisition of land without compensation (unless this came from the former colonial power, Britain) and with the owners not being able to challenge such action in court. Following the rejection of the draft Constitution the Government's entire land reform programme was approved by Parliament on 6 April 2000.

The Constitution of Zimbabwe Amendment (No. 16) Act, 2000

This Act, in addition to endorsing the Government's land reform programme (involving the acquisition of between 5 and 11 million hectares of commercial land), asserts the right of the people of Zimbabwe to 'regain ownership of their land' which it states was unjustifiably taken away under colonial rule without compensation. It further states that Britain has an obligation as the former colonial power to pay compensation for agricultural land acquired for resettlement and that if it failed to do so, the Government of Zimbabwe would have no obligation to pay such compensation. This is the basis on which the Government is proceeding with its so-called 'Fast Track' land reform programme.

The UNDP Proposals

A United Nations Development Programme (UNDP) mission to Zimbabwe in December 2000 broadly accepted a 5 million hectares target for land redistribution but recommended that this be phased in, be accompanied by confidence-building measures and be transparent, sustainable and based on the rule of law. It proposed to establish a fund to assist with the implementation of such a programme.

Following the agreement on the land issue and related matters in Zimbabwe reached by a Committee of Commonwealth Foreign Ministers in Abuja in September 2001 (see below), a UNDP expert mission (including representatives from the Commonwealth Secretariat, the World Bank and the EU) visited Zimbabwe from 16 November – 5 December 2001. With extensive co-operation from the Government of Zimbabwe, the Mission met with members of Government, political parties, diplomatic missions and representatives of civil society groups, including farming organisations. It undertook field visits to seven of the eight provinces of the country.

The Mission maintained the December 2000 recommendation for a 5 million hectares target for land redistribution (the Government of Zimbabwe claims it has already acquired 11 million hectares). It emphasised that support from Zimbabwe's international partners would only be forthcoming if the commitments made by the Government of Zimbabwe at the Abuja meeting are carried through, including:

- the cessation of illegal occupations and the relocation of such settlers;
- delisting of inappropriately listed farms;
- restoration of the rule of law to the process of land reform; and
- focusing on a phased programme for redistributing 5 million hectares.

According to official figures, a total of 6481 farms have been listed for acquisition as of November 2001 – representing about two-thirds of commercial agricultural land. Also according to official figures, a total of 14,286 'informal settlers' continue to occupy a total of 157 farms which

are unlisted (125 cases), de-listed (26 cases), state farms (3 cases) or gazetted farms (3 cases). These figures of course exclude those occupying listed farms.

THE ECONOMY

The March 2002 Presidential elections took place against the backdrop of a deteriorating economic situation in Zimbabwe. Inflation is running at over 100 percent and the Zimbabwe Dollar is trading on the black market at over five times less than the official rate. Unemployment stands at over 60 percent of the working population.

The deteriorating law and order situation, especially in the rural areas, has damaged confidence, discouraged investment, destroyed capital and eroded institutions important for economic development. In July 2001 the Government introduced a requirement for exporters to hand in 40% of their export earnings to the Reserve Bank of Zimbabwe to contribute to government's foreign exchange requirement, but this has to some extent frustrated export growth. Reflecting the severe foreign exchange shortages and the exhaustion of usable reserves, Zimbabwe has consistently failed to meet its obligations on foreign loans since April 1999. Arrears on government's external debt stood at more than US\$769.4 million at the end of November 2001.

The situation regarding food security in Zimbabwe has been of great concern during the period from 2000 to date. The Government of Zimbabwe appealed to the United Nations for emergency food assistance in October 2001 as a result of these severe food shortages. The short fall in food production can be attributed to several factors including bad weather, disrupted agricultural production and the introduction of price controls on certain foodstuffs. The recent disruptions to farming have also had a big impact on the tobacco production, which represents about 25-30 percent of export revenues. One-third decline in production would translate into 10 percent decline in exports.

The tobacco sector, which contributes about 4% to national output and 23% to the country's export earnings, has also been affected by several factors. Employment levels in the mining sector declined from about 61,000 in 1998 to 44,000 people in 2001. Expansion in mineral production has been constrained by shortages of foreign exchange, high costs of production, lack of investment, unavailability of machinery and equipment, declining international mineral prices and the domestic political environment. The sector's contribution to Gross Domestic Product declined from 4.5% in 1996 to 3.9% in 2001.

The tourism sector has also recorded a reduction in receipts, with a dramatic fall on in the number of visitors to the country.

ZIMBABWE AND THE COMMONWEALTH

The Abuja Process

A Committee of Commonwealth Foreign Ministers and the Commonwealth Secretary-General met in Abuja, Nigeria, on 6 September 2001 at the invitation of President Obasanjo, and reached agreement on a way forward for resolving the land issue and related matters in Zimbabwe. Ministers from Australia, Canada, Jamaica, Kenya, South Africa, Zimbabwe and the United Kingdom, as well as the Commonwealth Secretary-General attended. The Nigerian Foreign Minister, Sule Lamido, chaired the meeting.

Under the Abuja Agreement, the Government of Zimbabwe undertook to enforce the rule of law in its land reform programme and generally to comply with the Commonwealth's fundamental political values. At the same time, financial assistance from the UK and other international partners for land reform in Zimbabwe, based on the December 2000 UNDP proposals and for poverty reduction programmes in Zimbabwe, was promised.

Ministers of the Abuja Committee and the Commonwealth Secretary-General subsequently visited Zimbabwe on 25-27 October 2001, in the course of which they met with President Mugabe and members of his Government, opposition leaders and representatives of all the major civil society groups in the country.

Actions by The Commonwealth Ministerial Action Group on the Harare Declaration (CMAG)

Since May 2000, CMAG has on several occasions publicly expressed its concern about the violence, loss of life, illegal occupation of property, political intimidation, and failure to uphold the rule of law in Zimbabwe.

At their Seventeenth Meeting in London on 20 December 2001, CMAG reiterated its deep concern about the ongoing situation in Zimbabwe, especially the continued violence, occupation of property, actions against the freedom and independence of the media and political intimidation. It agreed that the situation in Zimbabwe constituted a serious and persistent violation of the Commonwealth's fundamental political values, including the rule of law, as enshrined in the Harare Commonwealth Declaration. CMAG decided to include Zimbabwe on its formal agenda and to review the situation in that country at its next meeting on 30 January 2002.

At its 30 January meeting, CMAG decided to review the situation in Zimbabwe again on 1 March 2002, on the eve of the Commonwealth Heads of Government Meeting in Coolumberr, Australia, in light of a report from the Commonwealth Secretary-General. The Group referred to the measures it could recommend to Commonwealth Heads of Government under the Millbrook Commonwealth Action Programme on the Harare Declaration, ranging from the expression of concern to suspension from the Commonwealth.

Statement on Zimbabwe by Commonwealth Heads of Government

At their meeting in Coolum in March 2002, Commonwealth Heads of Government received and discussed a Report from CMAG concerning the situation in Zimbabwe. They expressed their deep concern about incidents of violence and intimidation surrounding the election campaign, called on all parties to refrain from such violence, and urged all concerned to work together to create an atmosphere in which there could be a free and fair election.

Heads of Government agreed to mandate the CHOGM Chairman-in-Office as well as the former and next Chairmen-in-Office, in close consultation with the Secretary-General and taking into account the Commonwealth Observer Group Report, to determine appropriate Commonwealth action on Zimbabwe in the event the COG Report was adverse, in accordance with the Harare Commonwealth Declaration and the range of options set out in the Millbrook Commonwealth Action Programme, which ranges from collective disapproval to suspension.

CHAPTER THREE THE CONSTITUTIONAL AND LEGAL FRAMEWORK

The broad legal framework for the 2002 Presidential Election was the Constitution of Zimbabwe (1979 as amended) and the Electoral Act (Acts 7/1990, 7/1992, 22/1992). Other relevant legislation which impacted on the election were the Public Order and Security Act, the Citizenship of Zimbabwe Amendment Act and "The General Laws Amendment Act No. 2 of 2002" (nullified by the Supreme Court of Zimbabwe) and various Statutory Instruments promulgated by the President and the Minister of Justice, Legal and Parliamentary Affairs, including the reinstatement of some provisions of the nullified General Laws Amendment Act.

THE CONSTITUTION

The Constitution (section 27) provides that there be a President who is the Head of State, Head of Government and Commander-in-Chief of the Defence Forces. To qualify as President of Zimbabwe (section 28), a person must be a citizen of Zimbabwe either by birth or descent, be at least forty years of age and be ordinarily resident in Zimbabwe. The President is elected by voters registered on the common roll.

The term of office of the President (section 29) is six years, and the President continues in office until the person elected as President at the next election assumes it.

The Constitution provides the criteria for citizenship by birth, descent or registration. Notwithstanding these provisions, an Act of Parliament may *inter alia* make provision for the deprivation of any person of his citizenship. However, no such law shall provide for the cessation by, or deprivation of, any person of his citizenship if it is by birth, except if he is or has become a citizen of some other country.

Chapter 3 of the Constitution makes provision for "fundamental rights and freedoms of the individual" including freedom of expression, association and assembly.

The relevant parts of the Constitution relating to election management and the timing of general elections are sections 58 to 61. There is also provision for election management institutions, namely the Delimitation Commission and the Electoral Supervisory Commission

THE ELECTORAL ACT

The Electoral Act provides *inter alia* the regulatory framework for the conduct of elections including for the office of President. These relate to the registration of voters, preparation of voters rolls, residence qualifications of voters and procedures for voting. It also sets out the electoral powers and duties of the Election Directorate, Electoral Supervisory Commission and the Registrar-General.

Whilst voter registration is voluntary, the Registrar-General has an overriding authority to put on a constituency voters roll any person who is qualified to be registered in respect of the National Registration Act.

The Minister of Justice, Legal and Parliamentary Affairs is empowered to make regulations in relation to the conduct of elections in terms of this Act.

Section 158 gives the President the authority to make a statutory instrument relating to elections to *inter alia* provide for:

- a) "suspending or amending any provision of this Act or any other law in so far as it applies to any election;
- b) altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;
- c) validating anything done in connection with, arising out of or resulting from any election ;
- d) empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election."

Further consideration of the qualifications and procedure for voter registration is presented in Chapter 4.

THE ELECTION DIRECTORATE

The Election Directorate is a facilitating body normally constituted closer to the elections. It is chaired by the Chairman of the Public Service Commission and includes the Registrar-General and 10 representatives (normally Permanent Secretaries) of the main government departments whose services are needed for the smooth conduct of the elections. This includes the Ministries of Home Affairs; Justice, Legal and Parliamentary Affairs; Local Government; and Transport. The principal function of the Election Directorate is to mobilize the resources of the various departments to ensure the smooth conduct of the elections.

THE ELECTORAL SUPERVISORY COMMISSION

The Constitution (section 61 (3)) makes provision for an Electoral Supervisory Commission (ESC) to 'supervise the registration of voters and the conduct of the election of members of Parliament'. The ESC is expected to exercise the same functions with respect to the Presidential election.

The ESC is composed of five persons, including a Chairperson, all of whom are appointed by the President. The ESC is not subject to the direction or control of any person or authority in the exercise of its functions.

For most of the period leading up to the June 2000 Parliamentary elections, the ESC comprised only three members, including the chairperson, and lacked the financial and logistical resources to carry out its functions. The Commission now has its full complement of the members and, according to its Chief Executive, the resources to adequately supervise the conduct of the forthcoming presidential elections. A number of its senior staff have military backgrounds.

The ESC fielded monitors at polling stations, drawn from the public services.

THE REGISTRAR-GENERAL

The Electoral Act provides that the office of the Registrar-General is the principal agency responsible for the conduct of all aspects of the electoral process, including the registration of voters, the appointment and training of polling staff, the manufacture and distribution of polling materials, the counting of the ballot and the announcement of the results.

The Registrar-General 'shall not be subject to the direction or control of any person or authority other than the Election Directorate, but shall have regard to any report or recommendation of the Election Supervisory Commission' (section 15(2)).

THE DELIMITATION COMMISSION

The Delimitation Commission determines the constituency boundaries for the 120 elected seats in Parliament. The same constituencies served as electoral districts for the Presidential Election.

The Registrar-General determined that registered voters would only be permitted to vote in the constituency in which they were registered. This was challenged successfully in the High Court, which ordered that there be a single voters roll for the whole country, thereby enabling voters to vote at any polling station. On appeal by the Registrar-General to the Supreme Court this decision was overruled, and constituency-based voters rolls and voting was reinstated.

The Commission is composed of a Chairman who is a Judge of the Supreme Court and three other members, all appointed by the President in consultation with the Chief Justice.

THE CITIZENSHIP OF ZIMBABWE ACT (ACTS 23/1984, 7/1990 (S. 152(5))

This Act, which makes provision for citizenship, was amended last year to require persons who held foreign citizenship to formally renounce their citizenship in accordance with the law of the foreign country and make a formal declaration that they had done so. The Registrar-General chose to interpret this section to mean that even persons who are Zimbabwean citizens, but were 'entitled' to foreign citizenship by virtue of the citizenship of their forbears had to formally renounce such 'entitlement'.

From a legal perspective, this is problematic for persons who are determined by the Registrar-General to be 'entitled' to foreign citizenship. For some citizens, the foreign country concerned may not have any formal mechanism for the renunciation of such an 'entitlement' to citizenship. This also affected voters who are descended from persons who originally were citizens of colonies or protectorates, and thus these 'foreign countries' no longer exist. This could result in some persons in Zimbabwe being rendered stateless.

THE PUBLIC ORDER AND SECURITY ACT (1/2002)

This Act, which came into force early this year, creates various criminal offences including that of "undermining the authority of or insulting the President". It makes it a criminal offence to publicly make a false statement about or concerning the President knowing or realizing there is a risk or possibility of *inter alia* engendering feelings of hostility towards; or causing hatred, or contempt or ridicule of; or makes any abusive, indecent, obscene or false statement about or concerning the President.

Organisers of public gatherings are also required to give four days written notice to the police in charge of the area where the gathering is to be held for it to be lawful. Permission granted may be conditional or prohibited if the police believe the public gathering will occasion public disorder. All unlawful gatherings may be dispersed - by force if justifiable.

The Act (section 32) also obliges all persons over the age of sixteen to carry their identity documents in public places.

'THE GENERAL LAWS AMENDMENT ACT'

In February 2002, the General Laws Amendment Act (No. 2 of 2002) was promulgated. This Act was intended to amend *inter alia* the Electoral Act relating to powers of the Registrar-General to amend the voters roll, the eligibility of observers and monitors, and the provision of voter education.

On 27 February 2002 the Supreme Court of Zimbabwe (by a four to one majority, in Judgement No. S.C. 10/02) ordered that the General Laws Amendment Act (No. 2 of 2002) was illegal and of no force or effect. Some elements of this 'Act' were thereafter promulgated by the Minister of Justice, Legal and Parliamentary Affairs in a statutory instrument on 1 March 2002 in terms of Section 157 of the Electoral Act, which is referred to below. Provisions retained included:

- Additional powers to the Registrar-General to change the original name or address of voters on the roll, even without an application by the voter concerned. Any changes made without application are required to be published in the Government *Gazette*.
- The ESC's exclusive powers to appoint, accredit and deploy members of the Public Service to act as monitors in polling stations

- The ESC's authority to establish a committee to accredit both international and domestic observers.

REGULATIONS AND STATUTORY INSTRUMENTS

In the period immediately preceding the election, a number of amendments to the electoral regulations were promulgated, which created uncertainty in view of their proximity to the elections. Some of these are:

Statutory Instrument 41B of 2002. Electoral (Amendment) Regulations, 2002 (No. 13)

This regulation dated 1 March 2002 amended the Electoral Regulations, 1992 and inserted a number of provisions that had been included in the nullified General Laws Amendment Act, discussed above.

Statutory Instrument 41D of 2002. Electoral Act (Modification) Notice 2002

This notice made by the President, dated 5 March 2002, sets out criteria for postal voting, provides for a supplementary voters roll to include persons not registered as voters between the first and second closure of the voters roll and makes provision for a list of persons who have become disqualified as voters on the basis of citizenship to be sent to all polling stations. It also has a 'validation' clause which reads:

"Anything which has been done before the date of commencement of this notice in the purported exercise of any of the provisions of the Act as amended by the General Laws Amendment Act, 2002 (No. 2 of 2002), and which would have been lawfully done if the General Laws Amendment Act, 2002, had been validly enacted on the 4th February, 2002, shall be deemed to have been lawfully done."

Statutory Instrument 42A of 2002. Electoral (Amendment) Regulations, 2002 (No. 15)

This regulation dated 8 March 2002 also amended the Electoral Regulations, 1992 and listed the maximum number of monitors, polling agents, observers and journalists that are allowed to be present in polling stations and counting centres.

Statutory Instrument 42B of 2002. Electoral Act (Modification) (No. 2) Notice, 2002

This notice, dated 8 March and issued by the President provides for the preparation of a list of persons disqualified as voters by reason of having renounced or lost their citizenship of Zimbabwe.

Statutory Instrument 42E of 2002. Electoral Act (Modification) (No. 3) Notice, 2002

This notice, dated 11 March and issued by the President, limited the extension of polling to Harare and Chitungwiza, notwithstanding a High

Court Order dated 10 March 2002 to extend voting to a third day across the entire country.

The effects of these statutory instruments in the conduct of the Presidential election are discussed in subsequent chapters.

COURT APPLICATIONS

The election was characterised by a number of Court applications relating to citizenship, removal of voters from the register, authority of the President to make Statutory Instruments in respect of the Electoral Act, access to Public media, a common voters roll as opposed to constituency based registration and the extension of the days of polling.

Of particular significance is the High Court decision on 10 March to extend voting for a further day across the country and to increase the number of staff at each polling station in each of the Harare constituencies including Chitungwiza so as to enable all registered voters the right to vote for President, Councillors and Mayors within the extended time period.

ELECTION PETITIONS

There is provision in the Electoral Act for a Presidential candidate to petition the High Court complaining of the undue election of the President within thirty days of the declaration of the result of the election.

CHAPTER FOUR THE ELECTORAL SYSTEM AND VOTER REGISTRATION AND EDUCATION

THE ELECTORAL SYSTEM

The presidential election was conducted under relevant provisions of the Constitution of Zimbabwe (1979 as amended), the Electoral Act (1990, as amended in 1992 and 2001) and the General Laws Amendment Act, 2002. The Electoral Act establishes a first-past-the-post system, whereby the candidate with a majority of the total valid votes cast, i.e. 50% plus one, is declared the duly elected President. Where no candidate received a majority of the total number of valid votes cast, a second round between the two top candidates is held within 21 days.

VOTER REGISTRATION

Zimbabwe operates a continuous, computerised voter registration system. To become a registered voter a person is required to apply for registration and to satisfy certain citizenship, residency and age requirements. It was reported that 5.6 million voters were registered for the presidential election.

Voter registration for the purposes of the presidential election first closed on 10 January 2002. This deadline was extended to 27 January 2002 and was again extended to 3 March 2002. There have been complaints that the extension to 3 March 2002 was not adequately publicised, and that some prospective voters might not have been aware that they could have registered up to 3 March 2002. Some observers, however, witnessed the registration of persons after this date.

In a system operating continuous voter registration amendments to the register are normally made on a daily basis, but there was no appropriate arrangement for the periodic public display of the register for inspection by applicants or any person who might wish to object to the registration of any person. The last public display of the voters roll was in late 2001 to early 2002. The law provides for inspection of the register at the office of a Constituency Registrar, but as it might be difficult to access these officials, many applicants were unable to determine whether they were, in fact, on the register. On voting days many persons were turned away from polling stations on the grounds that their names did not appear on the voters roll, even though they held documents showing that they had applied to register. Others, who had previously voted in the parliamentary elections in 2000, found that they were no longer on the voters roll for the same constituency.

The electoral law was amended to require voters to satisfy more stringent requirements in relation to proving residency in a particular constituency for a period of twelve continuous months. The General Laws Amendment Act amended Section 20 of the Electoral Act to empower the Registrar-General to demand proof of residence and define the specific documents

for that purpose. It was reported to some observers that these requirements were used to place unreasonable demands on certain applicants.

The amendments to the legislation have provided the Registrar-General with extensive and extraordinary powers regarding the registration of voters, including the addition of persons who have not applied for registration as well as their removal from the voters roll and other aspects of the management of elections.

ALLEGATIONS OF SYSTEMATIC DISENFRANCHISEMENT

Under the Citizenship Act dual citizenship is not recognised. Zimbabweans holding other citizenship, or even claims to other citizenship, and who did not renounce such citizenship in the prescribed manner, lost the right to vote, regardless of the period of actual permanent residence in Zimbabwe. The High Court granted a six-month extension of the period of renunciation of a foreign citizenship of dual citizens, but the Registrar-General ignored the Court's decision. As a consequence, a restricted voters list was printed and sent to a limited number of polling stations. This list identified those persons to whom the Registrar-General had sent letters indicating that they would be removed from the register unless they successfully appealed his objection. It was noted that several countries have no legal provision for renunciation of citizenship, or claims thereto, and therefore the impossibility of satisfying the requirements imposed by the Registrar-General.

In a briefing session with the Registrar-General, the Group was informed that under the Citizenship Act no person holding dual citizenship would be entitled to vote and that such persons were identified from the National Registration list. Moreover, this interpretation of the law was used to disenfranchise those voters to whom objection notices had been sent.

Some observers met several people who had appealed in the Courts against their removal from the voters register, and others whose notices of removal from the register were received on the date of the deadline for appeals or even later. Reports were received by observers that some successful appellants did not have their names restored to the register, nor were their names removed from the restricted list. As a consequence, they were turned away from certain polling stations.

It is our belief that the uncertainty of the law and the administration of the process resulted in the disenfranchisement of many voters.

Furthermore the lack of clarity regarding the register itself led to many would-be voters spending many hours in lines, only to discover that they were not on the register. The last minute introduction of the register of rejected persons significantly slowed down the whole voting process, and contributed to the long queues.

VOTER EDUCATION

Voter education activities in Zimbabwe were made subject to the provisions of the General Laws Amendment Act, 2002. Under this Act, no person other than the Electoral Supervisory Commission, or persons or organisations approved by it could engage in voter education. Such persons or organisations were obliged to use materials approved by the Electoral Supervisory Commission. In the past, civil society organisations conducted voter education without the need for clearance by the Electoral Supervisory Commission.

Furthermore, no foreign contribution or donation could be made for the purposes of voter education except to the Electoral Supervisory Commission, which could allocate such contributions or donations to any persons registered by it. Anyone who provides voter education in contravention of these provisions is liable to a fine of up to Zimbabwe \$10,000 and/or imprisonment of up to six months. This restricted the participation of civil society in voter education.

However, we noted that in the weeks prior to the election, there was a notable increase in the dissemination of voter education material both by the Electoral Supervisory Commission and others, such as the Zimbabwe Election Support Network. Voter education was imparted principally in the form of pamphlets in English and indigenous languages, press, radio and television advertisements. In addition, political parties took advantage of their respective political rallies to educate their respective supporters on their rights and duties as voters.

Our overall view, however, was that voter education was inadequate, as the main vehicles of imparting voter education, such as newspapers and the electronic media, did not reach those in greatest need, particularly in the rural areas. This inadequacy was evident in both urban and rural polls where most voters were instructed on how to vote and fold the ballot, thereby slowing the voting process.

CHAPTER FIVE OBSERVERS AND MONITORS

In January 2002, the Government of Zimbabwe indicated that it intended to invite a number of countries and international organisations, including the Commonwealth, to send observers for the presidential election to be held two months later. Owing to the ongoing political and diplomatic dispute between Zimbabwe and Britain, however, it was announced that British citizens would be excluded from the Commonwealth Observer Group and from any team sent by other international organisations such as the European Union. (Similar exclusions were later applied to citizens of several EU countries.)

The legal framework determining the role of election monitors as well as that of domestic and international observers was defined by the provisions of the General Laws Amendment Act passed by the Parliament of Zimbabwe in February 2002. One of the main aims of the Act was to redefine the nature and role of election monitors and observers.

Section 14B(2) of the Act gives wide-ranging powers to the Electoral Supervisory Commission (ESC) – whose members are appointed by the President – regarding the appointment and accreditation of election monitors and observers. The ESC is empowered to establish an Observers' Accreditation Committee, whose membership consists of the Chairman of the ESC and four persons nominated by Government Ministers.

The Electoral (Amendment) Regulations, 2002 (No.12) limits to two monitors and two polling agents per candidate the maximum number allowed within any polling station. The same limits apply to the area within 100 metres of the polling station. Similarly, the number of observers per group allowed within a polling station is limited to three. At any counting centre the number of observers allowed to be present from each group is limited to one, while the number of monitors from each constituency is limited to four and the number of polling agents to one per candidate.

INTERNATIONAL OBSERVERS

As well as the Commonwealth Observer Group, numerous international missions were present in Zimbabwe to observe the 2002 presidential election. A large election observation team was due to be sent by the European Union but, following a dispute between the Government of Zimbabwe and the EU over its exact composition, the EU decided to withdraw its advance team already in place in the country and to take no part in observing the election.

In the weeks preceding the poll, a large number of international observers arrived in the country and were deployed to all the provinces. The largest contingent of international observers was from South Africa, which was represented mainly by a government observer mission (consisting of government officials and representatives of civil society), a parliamentary mission and a mission from the African National Congress. Several other

countries sent observers as part of national missions, including Nigeria, Norway, and Japan. Staff from several diplomatic missions in Zimbabwe were accredited as election observers, while the US-based National Association for the Advancement of Coloured People also sent observers.

The Southern African Development Community (SADC) was well represented with one team from the SADC Parliamentary Forum and one team from the SADC Electoral Commissions Forum. The African Union also deployed a team of observers in the week preceding the poll.

Upon arrival in Zimbabwe, international observers were granted short-term tourist visas, covering a few days until they had been accredited by the Government's Observation Accreditation Committee. An accreditation fee of US\$100 was levied for each international observer.

A Code of Conduct for International and Domestic Observers was issued by the ESC in the run-up to the presidential election, setting particular standards regarding impartial and politically neutral behaviour of observers. In addition to restating the Electoral Regulations' restrictions on the number of observers (3) from a Group at any one polling station, the Code of Conduct specifies that an election observer must not obstruct or accost any voter at a polling station, on his/her way thereto or therefrom, or interview any voter out of a polling station.

The Code of Conduct further requires that observers should report their presence to the ESC monitors at any polling station entered, and should the observers note any irregularity, they should bring the matter to the attention of the ESC monitors. In practice we found that the requirement to register our presence was generally applied, though a more relaxed attitude existed in relation to speaking to monitors and others in and around polling stations.

DOMESTIC/LOCAL OBSERVERS

Under the General Laws Amendment Act 2002, new guidelines were set out for the selection and deployment of domestic election observers. One provision of the Act that drew criticism from civil society organisations in Zimbabwe was that which empowered the Minister of Justice alone to appoint representatives of local organisations and eminent citizens as election observers.

The Minister of Justice proceeded to publish a list of 70 local organisations from whose ranks observers would be chosen. It was specified that observation of the election would be at the organisations' cost and that an accreditation fee of Z\$1,000 would be levied per observer unlike for the 2000 parliamentary elections.

The various local organisations co-ordinated by the Zimbabwe Election Support Network (ZESN) stated their aim to deploy a large number of domestic observers. By the first polling day, however, ZESN claimed it had only received invitations from the Minister of Justice for only 420 observers out of the 12,000 names it had submitted. As a result, there

was much concern expressed by local organisations that there would be no presence by domestic observers inside most polling stations for the presidential election.

In visiting polling stations on polling days, we encountered domestic election observers in only a handful of cases in rural areas, although more were present in Harare. In some instances people who had not been accredited as observers had been allowed to position themselves 100 metres of polling stations (and in couple of cases at least right outside the polling stations).

ELECTION MONITORS

The General Laws Amendment Act 2002 also changed the legal framework for the deployment of election monitors. Under its provisions only members of the Public Service were qualified to be accredited as election monitors by the ESC. Previously the ESC had been able to recruit members of civil society and NGOs to act as monitors. Civil society organisations that had previously been able to nominate their members as monitors raised concerns over having only government employees as monitors.

During their deployment on polling days, we were able to confirm the presence of ESC monitors and supervisors at all polling stations. It was noted, however, that in most cases ESC monitors took a passive role in proceedings and were not seen to be closely involved in monitoring the process of voting. This did not apply to election supervisors. Very rarely did Commonwealth observers witness ESC monitors challenging or intervening in any part of the voting process, especially in cases when people were turned away for not being on the electoral register. Indeed in most cases, ESC monitors seemed to limit themselves to sitting in their designated places at polling stations and taking notes, interacting very little with presiding or polling officers. It was nevertheless apparent that the ESC monitors were carefully recording all aspects of the voting process.

CHAPTER SIX THE CAMPAIGN

The conduct of the election campaign represents a key element in the credibility of any electoral process. The free expression of the will of the people is contingent as much upon the ability of political parties to campaign freely without fear of retribution as it is on the integrity of the polling and counting processes. For this to happen, certain fundamental freedoms must prevail and be guaranteed by law. These include freedom of speech and of the press, freedom of movement and of association, and freedom from violence and intimidation. These freedoms are also enshrined in the Constitution of Zimbabwe and in a range of international instruments to which Zimbabwe has acceded. These are the benchmarks we have used in assessing the electoral campaign for the 2002 Presidential elections in Zimbabwe.

VIOLENCE, INTIMIDATION AND COERCION

Politically motivated violence and/or the threat of it fundamentally impedes the ability of electors to participate freely in the electoral process. People can either be deterred from voting or else influenced in their choice if violence is a factor in the electoral process.

Throughout our stay in Zimbabwe, there were widespread allegations of violence and intimidation by both major political parties but more involved incidents by supporters of the ruling ZANU-PF party and agents of the security services, against known or suspected supporters of the MDC. Members of our Group received numerous representations from the political parties and civil society organisations about specific cases of alleged violence and intimidation. However, our assessment of the level and scale of violence and intimidation during the election campaign is based largely on what members of our Group actually observed or were able to verify first hand.

On 18 February 2002, in full view of members of our Advance Team, a group of about one thousand ZANU-PF youths, armed with clubs, ran amok through the central business district of Harare attacking MDC offices and suspected MDC supporters.

It was reported and verified that on 22 February 2002, a group of about two hundred youths armed with stones and clubs attacked the MDC offices in Kwe Kwe in the Midlands, while members of the South African observer team were having a meeting with local MDC officials. The youths, suspected to be supporters of ZANU-PF, pelted the building (already destroyed in an arson attack) with rocks for fifteen minutes. They also attacked the clearly marked car of the South African observers. The youths ran away upon the arrival of the police who were alerted by the observers' driver. None of the observers was hurt but four MDC officials were injured and admitted to hospital.

On 24 February, supporters of the MDC dispersing after a rally in Chinhoyi were attacked by ZANU-PF youths in full view of international observers,

including members of the Commonwealth Observer Group (COG). One of the cars used by the COG was briefly attacked outside the stadium in which the rally was held. Following the incident, the Chairman of the COG issued a statement strongly condemning the violence and calling on the authorities to take the necessary steps to ensure that voters were able to freely express their will and that all observers were able to perform the duties for which they had been invited by the Government of Zimbabwe.

Members of our Group met numerous victims of politically motivated violence. Many had bruises, scars and axe-wounds all over their bodies. One victim we observed had the letters 'MDC' carved into his back with a sharp knife. Another victim was chained alive in a coffin and threatened with drowning, while being repeatedly interrogated about the identities of local MDC operatives. Members of our team in the Midlands met a woman who had been gang raped by ZANU-PF youths because she was the sister of an MDC member. We also received a report from another observer group and ZANU-PF that some ZANU-PF youths were detained in a toilet of an MDC office without food for three days.

In Mashonaland East, the local medical authorities confirmed to our observers that there had been at least seven significant bashings of MDC supporters over the two-week period in the lead-up to the poll. Some of the victims were kept in hospital for their own protection. One of our observers was also approached by a 19-year old boy who said he had been abducted by members of the ZANU-PF youth wing and taken to one of three designated youth camps in the area. He said that while there, he was beaten on the soles of his feet for 36 hours for consorting with the MDC. Other observers noted that this particular practice was widespread.

Also in Mashonaland East, three politically-related murders were recorded in recent months, two of which were related to the MDC. One of these involved a local school principal who was taken from his schoolroom, dragged into the bush land and clubbed to death because of his strong association with the MDC in what was a traditionally strong ZANU-PF area. He was found with a ZANU-PF t-shirt pulled over his upper torso. The other was a local white farmer who, having formally joined MDC, was dragged from his farm and killed by having a block of concrete dropped on his head. In Matabeleland North, John Sabinda, a local Chairman of the MDC organisation was axed to death, while in Midlands Province, an MDC operative was beheaded with a spade.

Observers were also shown scores of MDC offices and several residences of MDC officials across the country attacked and destroyed allegedly by supporters of ZANU-PF. These included MDC offices and other buildings in Harare, Bulawayo, Kwe Kwe, Marondera and Redcliffe. In Chinhoyi, Observers were shown houses of officials of MDC and ZANU-PF, which had been petrol-bombed.

Numerous complaints have been made to members of our Group about the activities of a paramilitary youth group trained by the Government under a "National Youth Training Programme". Members of this group appear to have replaced the "War Veterans" as leading perpetrators of

politically motivated violence, intimidation and abductions during this campaign, especially in the rural areas. Our observers met dozens of victims of this group and saw enough other direct evidence of their activities to be seriously concerned. Members of the youth group appeared to operate mostly at night and in uniform. Its members set up illegal roadblocks and intimidated opposition supporters, confiscated national identity cards (which were needed to be able to vote) of known or suspected MDC supporters and forced many from their homes and areas of residence.

There was also clear evidence of violence by MDC supporters against members of ZANU-PF, though these were much less in terms of numbers and scale. For example, the National Secretary-General of the War Veterans Association claimed to have been ambushed by over 70 MDC supporters and left for dead. He received a wound to his head and a knife wound to his shoulder. However the preponderance of political violence was perpetrated by ZANU-PF youths and supporters against known or suspected supporters of the MDC.

CAMPAIGN ISSUES/FREEDOM OF MOVEMENT AND OF ASSOCIATION

The main themes of ZANU-PF's campaign were land and the sovereignty of the country. The party promised that if elected, it would complete its 'fast-track' land reform programme designed to acquire 9.2 million hectares of white-owed land (more if necessary) for redistribution to blacks. It accused the British Government and Zimbabwean white farmers of trying to re-colonise the country, using the MDC as a front.

The MDC for its part focused on what it alleged was ZANU-PF's mismanagement of the economy and corruption. It promised a more orderly and equitable land reform programme and the withdrawal of Zimbabwean forces from the Democratic Republic of Congo. The party slogan was "change", and its appeal was for a change from the long period of ZANU-PF rule (over 20 years).

We found that the land issue dominated the campaign and believe that it was done in a manner that exacerbated racial tension in Zimbabwe.

Although there was some door-to-door campaigning, the main instrument of active campaigning remained the rally. Both ZANU-PF and the MDC held several animated and well-attended rallies across the country, culminating in 'Star Rallies' in the capital, Harare. However, ultimately, the MDC was able to hold far fewer rallies than ZANU-PF.

Our observers received numerous and widespread complaints from officials of the opposition MDC party about being refused permission by the police to hold rallies or other public meetings or having their rallies/public meetings broken up by the police on the basis of powers conferred by the Public Order and Security Act. Similar complaints were made to observers by several civil society organisations, including the Zimbabwe Council of Churches and the National Constitutional Assembly

(NCA). Although the police claim that they have also refused to authorise some ZANU-PF meetings where there was a perceived threat to public order, observers did not hear any complaints in this regard from ZANU-PF officials, nor personally encounter any such cases. Our observers themselves came across numerous cases where MDC meetings were declared illegal by the police and where supporters were stopped at police or youth militia roadblocks and denied access to party meetings or rallies.

Our observers met with MDC Members of Parliament, some of whom said they had been advised by the police to leave their constituencies for the period of the campaign for their own safety, thereby effectively negating their ability to campaign for the party in their constituencies.

MDC officials complained that the cumulative effect of the Public Order and Security Act and the General Laws Amendment Act, especially the wide and discretionary powers of arrest and detention given to the police, created a climate of fear among their supporters. Many, they allege, were reluctant to attend public meetings for fear of being arrested and detained under the various provisions of the Public Order and Security Act, including for not carrying an identity card in a public place. We did not receive any similar complaints from ZANU-PF supporters.

We also noted that both main political parties resorted to littering the streets with their campaign leaflets. Some of our Observers noted that in various constituencies, MDC used littering where their party was prohibited from distributing their party posters in normal public places or where the pro-MDC newspaper, the Daily News, was unavailable. Other Observers noticed that on the second day of voting, the MDC violated the Electoral Act by littering entrances of most polling stations, especially in Zvimba North, Chinhoyi and Mhangure.

It was evident that the ruling party exploited its access to state resources for the benefit of its electoral campaign. At several locations, our observers saw trucks, buses and cars belonging to various government agencies being used to ferry ZANU-PF supporters to rallies. We also came across a number of cases in which ZANU-PF campaign materials and rally signs were stored in government departments and police stations. Furthermore, we were told by commercial vehicle operators that they had been compelled to display a poster of the President's picture with the words "Vote ZANU-PF" on the windscreen of their vehicles under threat of having their licences withdrawn if they refused to comply.

THE RULE OF LAW

Deep concerns were expressed to many of our observers by opposition parties and civil society groups about political bias on the part of the police. In one particularly telling incident, two MDC Members of Parliament accused by the police of possessing offensive weapons (clubs and catapults) were paraded all day long in handcuffs and in full public view at the police station despite clearly needing medical attention following severe beating, allegedly by members of the local youth militia, outside the police station itself. Members of our observer team, who visited the

area the following day, were denied access to the MPs by the police. Over thirty MDC supporters were also detained in connection with this incident. The MDC claimed the weapons were planted by ZANU-PF youths who then proceeded to attack the MPs.

Our Observers also noted a reluctance of the police to intervene to stop attacks by members of the youth militia and supporters of the ruling party against opposition supporters. The failure of the police to disperse the ZANU-PF youths who attacked the MDC office building in Harare on 18 February (a fact verified by our own observation), is a case in point. One of our observer teams was privately told by a serving police officer that instructions had been given to junior officers by their superiors not to investigate cases involving ZANU-PF supporters.

We were left in no doubt that the MDC was deeply distrustful of the police and did not feel that it enjoyed the protection of the law during the campaign. On the contrary, the party and its supporters regarded the police as part of the machinery of violence and intimidation against them. Such a situation seriously calls into question the application of the rule of law in Zimbabwe.

THE NEWS MEDIA

The Broadcast Media

This is dominated by the state owned Zimbabwe Broadcasting Corporation, ZBC, which is the sole radio and television broadcaster in the country. Whereas its television broadcasts do not cover the whole country, the ZBC radio can be heard across the nation on shortwave and in the urban areas on FM. For many people across the country ZBC radio bulletins are their only source of news.

There is no independent broadcasting regulatory authority. Under the terms of the Broadcasting Act 1996 the Corporation is a corporate body controlled by a board appointed by the Minister of Information.

ZBC was restructured under the Broadcasting Services Act of 2001. According to the Corporation, the majority of its funding (75%) comes from advertising revenue with the balance from licence fees and sponsorships.

The news and current affairs programmes for ZBC's radio and television stations are produced by Newsnet, one of its divisions. The main nightly television news bulletin is at 8 pm.

In order to guide its producers in their election coverage ZBC produced a set of "10 Golden Rules". These rules were to fulfil its public obligation and mandate to provide regular programmes on which the parties and candidates contesting the Presidential elections, as well as members of the public, air views on policy matters. The rules stated that each party's Presidential candidate would be allocated airtime specified by the ZBC. Under the "Golden Rules", sponsored party broadcast programmes were

not to be accepted and neither would political advertisements. The schedule of party political programmes was to remain the sole preserve of the ZBC.

We found the ZBC news and current affairs programmes to be very biased in favour of the ruling ZANU-PF party. Its flagship nightly one hour Newshour television programme extensively covered the rallies of the presidential candidate of the ruling party. More than a quarter of the bulletin was regularly dedicated to these rallies. In addition, coverage of the ruling party was supplemented by stories featuring other senior members of ZANU-PF. In direct contravention of its "Golden Rules", ZBC featured advertisements during the Newshour bulletin which showed footage of the civil war accompanied by statements outlining the ruling party's land policy. Land was a central issue of the campaign and one advertisement that was regularly featured on ZBC was on the theme "land is the economy and the economy is land." The advertisement culminated with a logo which is also used by the ruling party.

We also found that ZBC did not adhere to basic standards of journalism. News stories were editorialised in favour of the government while the little coverage given to the opposition was negative. Indeed, the Chief Executive of ZBC told us that they were biased because so much was at stake in this election.

The Editor of *The Sunday Mail* told one observer that the government media cannot be independent from its owners since it has to reflect its ideologies and that must be paramount.

The Print Media

The print media is dominated by the newspapers of the Zimpapers group. The English language titles in the group printed in Harare are *The Herald*, published daily with the exception of Sunday when the group publishes the *Sunday Mail*. Likewise from Bulawayo the Group publishes *The Chronicle* daily and the *Sunday News* and from Mutare the weekly *Manica Post*. In addition the group publishes *Kwayedza*, a weekly title in Shona.

Zimpapers was formerly owned by the Argus group of South Africa. At independence in 1980 a grant from the Nigerian government enabled the new Government of Zimbabwe to purchase the titles through a new trust it set up called the Mass Media Trust. Zimpapers is now a public company listed on the Stock Exchange. The majority shareholding of 51% belongs to the government controlled Mass Media Trust.

The editorial policy of the Zimpapers newspapers is to promote national unity and reconciliation. The papers strongly support the government and during the campaign carried numerous reports of the rallies by the presidential candidate of the ruling party and other senior ZANU-PF officials. Closer to the polls the papers supplemented this with full page advertisements for ZANU-PF. We were told that the party paid for these advertisements which were placed using a local advertising company that also handles copy for government departments.

The main privately owned newspaper is the *Daily News*, which is published daily except on Sunday. Other privately owned papers include *The Financial Gazette*, *The Zimbabwe Independent*, the *Standard* and the *Mirror*.

We found the print media to be polarised with the papers owned by Zimpapers strongly supporting ZANU-PF while most of the independent titles strongly support the MDC. This was clearly illustrated by the reports of crowds attending the "Star" rallies by the presidential candidates. The estimates of the size of the crowds varied by a factor of four. When questioned about why this polarisation existed the journalists from the independent media said that they were unable to get interviews and clarifications from government officials, senior ZANU-PF members and the police and therefore they conceded that their reporting could be construed as being partisan.

In the run up to polling the *Daily News* carried numerous full page advertisements in support of the MDC, while *The Herald* did likewise for ZANU-PF. Some of the advertisements and cartoons were insulting of the respective political opponents and even of foreign statesmen. A few days before voting both papers carried public education notices.

Journalists working for the independent papers told us of the harassment they encountered when they tried to report from some upcountry locations. Those from the *Daily News* told us that it was not possible to sell their paper in many locations around the country. They told us that their vendors had been beaten up and in some cases members of the public who carried the *Daily News* in some rural areas were deemed to be MDC supporters and had been assaulted. We were able to see that there are many areas in the country where the *Daily News* was not allowed to be sold whereas *The Herald* is available in all parts of the country.

In addition to this we are aware that prior to our arrival the printing press for the *Daily News* had been bombed. After the attack the paper had been limited in the number of pages it was able to print and this had an adverse effect on its ability to sell pages for advertising revenue and in the amount of news it was able to carry. During the period we were in Zimbabwe, however, the paper was almost fully operational.

CHAPTER SEVEN THE POLL AND COUNT

THE POLL

For the majority of voters in Zimbabwe the lead-up to the polling days – Saturday 9 March and Sunday 10 March – was marked by tension, political intimidation, violence and apprehension.

The polling days were generally calm, however, and the process of voting went relatively smoothly. There were long queues, especially in Harare and other urban areas. The observers were welcome in most areas.

Procedures

On Saturday 9 March the polling stations were scheduled to open at 7 a.m and most opened on time. The Presiding Officer first showed the empty ballot box to the party agents, election monitors, police and observers in the polling station. The seals (masking tape, padlocks and hot red wax) were then applied. Party agents signed on the fixed seals to complete the process of sealing the ballot box. The voting procedure commenced with the voter presenting his/her identification. Voters had to show either a voter registration card (made of aluminium), or a valid drivers licence or passport that displayed their national identification number and a photograph. Voters also required an official document confirming their addresses in the constituency. Some voters had their registration receipts. (Observers encountered situations where voters with registration receipts dated after 3 March 2002 were allowed to cast their ballot, contrary to information that the list had closed on that date.) Once identity had been confirmed, voters then proceeded to place their hands under ultra violet lamps to ensure that they had not already voted. Voters finally had their names checked against the register following the ink detection process.

There were four different constituency registers plus ward registers in Harare and Chitungwiza for the Mayoral/Councillor elections where applicable: three alphabetical registers A-L, M, N-Z and the supplementary register. The supplementary register contained a list of voters who registered up to 7 March 2002, and voters who had been removed from the roll because of citizenship, residence, or other issues. Voters' names were checked against this list. In a number of polls only the names of white voters were checked against this supplementary register. Many people on this list had received no prior notification and had queued to vote. Once a voter's name was located and confirmed, a line was drawn through it to indicate the person had voted. The next step required voters to place both sides of their hands in the detection fluid to ensure that the hands were completely covered. It was drawn to our attention that the fluid transferred when voters shook hands. Voters were then given a ballot paper and instructed on how to mark and fold this paper.

Ballot papers were in books of one hundred, sequentially numbered on the ballot as well as the ballot stub. Each book of papers was shown to the party agents and ESC monitors to record the numbers. At the end of the

day the same people were told how many ballot papers had been used and shown the point in the book where the last used ballot paper had been taken. This was done to record the numbers and check them at the start of the next day. Some stations ran out of ballot papers, causing delays in voting until additional ballot papers were delivered from regional command centres.

The procedures in Harare and Chitungwiza were more complicated. In Harare voters were given three ballot papers, one for the Presidential election, one for the Mayoral election for Harare and one for the Councillor election. In Chitungwiza, voters received ballot papers for both Presidential and Mayoral elections.

The voter was directed to the polling booth to mark the ballot paper. Inside the booth were posters that replicated the ballot paper and indicated the voting procedure. After marking and folding the ballot, the voter showed the Presiding Officer the top of the paper bearing the official mark and deposited the paper in the ballot box. The secrecy of the ballot was assured, except for assisted voters. Some voters appeared to be unsure where to place the ballot paper and moved towards the table where the Presiding Officer was seated. In most such cases the Presiding Officer had to tell the voter to place their paper in the ballot box. Some voters also were unsure of the correct way to fold the ballot paper with the official seal at the top. In constituencies where two or three ballots and boxes were involved, voters were not certain of the correct box for each ballot. Once voters had cast their ballots, they were required to leave the 100-metre zone around the station. This was not well enforced.

The ballot boxes were approximately three feet high and made of wood, joined with aluminium and nails. They were sturdy and secure. They were properly locked with padlocks and keys to the padlocks were sealed in an envelope to the top of the box with wax and a sealing stamp. The bottom of the box was not sealed with any official marks.

On Saturday 9 March, Presiding Officers had been instructed to allow those still in the queue at 7 p.m. to vote. In some areas, notably Harare and Chitungwiza, some polling stations did not close but worked non-stop through or late into the night to clear the queue of voters. Where stations did close in the evening, most closed shortly after the scheduled time of 7 p.m. The Presiding Officer called the party agents, monitors, police and other observers to watch the sealing of the box. This involved closing the slot on the top of the ballot box with a lever, sealing the lever with string, masking tape, hot wax seals, sealing stamps and the signatures of party agents and ESC monitors. The voter register, used ballot books and unused ballot papers were tied with string, placed in a plastic bag and put in a cardboard box with other election materials. The box was sealed with string and wax. These were placed next to the ballot box and the ultra violet lamp in the centre of the floor of the polling station. ESC monitors, party agents and police stayed with the ballot boxes overnight. Prior to the commencement of voting on the second day the seals were inspected by party agents and ESC monitors to check for any interference and then

the boxes were unsealed for the second day of voting. The same procedure was used for closure on the second day of voting.

Polling Stations

There were 4548 polling stations across the country's ten provinces. There were two types of station. The regular stations were open on all polling days, and mobile stations covered up to two different locations each day. Some polling stations were without their supplementary voters rolls until mid morning on Saturday. Outside of Harare, some polling stations did not receive their supplementary lists until Sunday. Polling stations were usually well-equipped and organised, and in most cases well laid out and generally adequate for the purpose. It was evident that the static stations had been set-up in accordance with the polling station manual. In all polling stations there was a police presence of four officers per station, with two inside and two outside. Voters did not appear threatened by the police presence. Signs indicated the direction of the polling stations. Outside most stations, there were posters outlining the voting process.

The facilities of the mobile polling stations were generally of a lower standard than those of the static stations. They were often cramped with just one voting booth for large queues of voters.

For these elections, the distribution of polling stations was reconfigured from that of the June 2000 Parliamentary Elections, reducing the number of polling stations in the urban areas and increasing them in rural locations. This caused long queues of voters, especially in urban areas. The rationale provided by the Registrar General's office was that they did not want rural voters to have to travel more than ten kilometres to vote. The number of polling stations in Harare and Chitungwiza, where there was the highest concentration of voters was reduced by 30 – 40 percent.

Most of the locations used as polling stations were schools, business centres, mines and farms. These locations were generally accessible to voters. However, observers visited some polling stations at which ZANU PF youth had been encamped just prior to the election, and others where on the days of polling voters had to walk through ZANU-PF bases en route to the polling stations.

Information on the schedule and the locations of both static and mobile stations was not released until a few days before the election. Mobile stations were not always on time and did not always meet and/or follow their published schedules.

Polling Officials

We were impressed by the professionalism and conscientiousness of the majority of the polling staff, many of whom worked under difficult conditions for very long hours without rest. Most of the Presiding Officers and polling officials appeared impartial, efficient and effective and were generally well-trained. Most provided the information we required,

however in some instances we were redirected to the higher District officials to get polling statistics. There was a gender balance of polling station staff, including Presiding Officers. All of the polling station officials (Presiding Officer, ESC supervisors and monitors) were government employees drawn from the public service and teaching professions. Many Presiding Officers were head-teachers while the ESC monitors were often teachers or school clerical support staff.

Party Agents

Agents from the two main parties were present at almost all the stations visited. Where agents were not accredited, or present, it represented a flaw in the process. In general, the party agents had been well trained, understood their responsibilities and were very committed. The level of cooperation between agents inside polling stations, representing different parties was of a high level and should be commended for assisting the voting process. Party agents outside the polling stations tended to congregate in separate groups and were less close and cohesive.

The Situation in Harare

The reduction of the number of polling stations in Harare and other urban centres, compared to the June 2000 Parliamentary Election, led to extremely lengthy queues as voters lined up as early as 2 a.m on 9 March. Before the opening of the polling stations, queues of up to 5000 voters at a single polling station were already in place in some of the high-density suburbs. In Harare's high density western wards and in Chitungwiza, the reduction in polling stations caused frustration and anger and resulted in the disenfranchisement of a significant number of voters. By comparison, the rural area of Seke where there is strong ZANU PF support and with a population similar to one Harare ward had sixty polling stations. The equivalent in Harare, an area more aligned to MDC, had just eight polling stations. Many of the polling stations were unable to process more than 40 or 50 voters per hour.

The inadequate number of polling stations in Harare and Chitungwiza disenfranchised prospective voters. Some voters reported waiting for up to fifteen hours on each day and were still unable to cast their ballot. Factory and domestic workers who comprise a large percentage of urban voters who were expected to report for work at a certain time had to leave queues without having voted.

Some voters slept at the polling stations in order not to lose their places in the queue. While voters appeared determined to vote, after two days some gave up and returned home. It is impossible to determine the exact number of voters who were disenfranchised but it may reflect the lower than expected number of ballots cast in Harare. The inexplicable closing of the polls from 7:30 a.m - 11:30 a.m on the extended day of polling further aggravated the situation. We witnessed that some 500 voters were disenfranchised when a Harare polling station closed fifteen minutes before the scheduled 7 p.m closing time and riot police forcibly removed those waiting in the queue.

Extension of Polling

The MDC applied to the High Court on Sunday 10 March to extend the polling for an additional two days to accommodate the long queues of voters. The High Court ordered the extension of polling throughout the country on Monday 11 March. The Registrar-General responded that this decision would be appealed to the Supreme Court. The Registrar-General then announced that he would apply the Court order only to Harare and Chitungwiza. In some instances, Presiding Officers were not informed of what procedures they should follow.

The continuation of polling in these two areas was suspended as Presiding Officers awaited instructions from the Registrar-General. While some stations had reopened, others, promptly closed, and only re-opened again at 10:30 a.m or later. The MDC again applied for an extension of voting as polling had started late at many polling stations. The application was denied. Voters not in the queue at 7 p.m were physically turned away by the police. The extension of voting led to delays in the verification and counting process.

Voter Turnout

The Registrar-General announced that the turnout of eligible voters who actually cast their ballot was 55%. The turnout of voters appeared very high however on the first day, even in remote rural areas. Some voters said they had queued since the middle of the night to ensure they were able to cast their ballot. It was remarkable to see so many elderly people and women with babies on their backs patiently waiting their turn to vote. While some voters turned the occasion into a picnic atmosphere, for the vast majority of Zimbabweans the polling days meant long waits without food or water and exposure to the elements. Voter turnout on the second day was noticeably less in most locations outside of Harare and Chitungwiza and by Sunday afternoon there was only a trickle of voters in the other cities and rural areas. As indicated in the Commonwealth Observer Group Report for the Zimbabwe Parliamentary Election of June 2000, more work remains to be undertaken in the area of voter education to ensure that all voters fully understand the mechanics and the implications of the voting process.

A small percentage of voters in each polling station required assistance to cast their ballot. Most of these people were disabled, blind, elderly or stroke victims. The procedure usually involved the Presiding Officer, a polling officer, an ESC monitor and a Police Officer accompanying the individual into the booth to assist and observe them voting. The Presiding Officer kept a written and signed record of all persons who had required assistance to vote.

Records were also kept of those who came to vote but were unable to do so. The main reasons given were: lack of suitable or valid identification; person not registered; late registration or incorrect constituency; or, the withdrawal of a person's citizenship as a result of the recent changes in

the legislation. Some may have been able to vote in another constituency if they were able to travel there and were appropriately registered. The lack of adequate information for many voters about where they should vote meant that they had to visit more than one polling station to cast their vote.

Postal Ballots

Under the Electoral Act only some top government leaders and certain state employees living outside Zimbabwe are eligible to apply for postal ballots. However, postal ballot papers were also issued to members of the police and armed forces resident in Zimbabwe before a regulation was gazetted on 5 March 2002, which allowed them to apply for a postal vote. Observers witnessed police officers filling out ballot papers in a non-secret situation in the presence of their senior officers. The Registrar-General sent about 10,000 postal ballot applications to the military, 20,000 to the police and 700 to diplomats.

Election staff who were working outside their constituencies on election day were also entitled in terms of the 5 March regulation to a postal ballot. However, when we spoke to these groups they told us they were not sent applications for postal ballots. All approved applicants were sent postal ballots, which had to be returned to the Registrar-General's office in Harare by noon on Friday 8 March. Observers were in attendance and saw ballots, which had been sorted and placed in ballot boxes to be sent to the respective constituencies. The returned postal ballots numbers were estimated at about 7,000.

Transportation of Polling Material

The transportation went reasonably smoothly. There were some delays because of a lack of vehicles to transport the ballot boxes to the counting centres and some confusion about when boxes would be collected, especially in the rural areas. Importantly, party agents were permitted to accompany the polling materials to the counting centres.

THE COUNT

The counting process was originally scheduled to commence on Monday 11 March, but was delayed by the High Court ruling on the evening of Sunday 10 March to extend voting for an extra day across the country. Although in contravention of the High Court ruling, on the instruction of the Registrar-General of Elections, the extra day of voting was not extended outside Harare and Chitungwiza. There was, nonetheless, a substantial degree of confusion as to when counting should begin, which delayed the counting process across the country. For the most part the count was postponed by a day, and commenced on the morning of Tuesday 12 March. In some cases the count was further delayed by problems with transporting the ballot boxes from the polling stations to the counting centres.

Counting took place at 120 counting centres across the country at the constituency level. The Constituency Registrars directed the process, with Presiding Officers and Assistant Presiding Officers involved with the verification and counting. Security personnel, party Polling Agents and observers were also in attendance.

The Verification Process

Verification (or reconciliation) of the number of ballots that should be found in each ballot box was undertaken for each polling station in the constituency, one at a time, as well as one additional box containing postal ballots cast under Section 61 of the Electoral Act. In Harare, where there were three ballot boxes per polling station – President, Mayor and Councillor – and in Chitungwiza, where there were two ballot boxes per polling station – President and Mayor – two to three counts were required. At some centres verification of each ballot box (all Presidential first, followed by all Mayoral, and then all Councillor, where applicable) occurred before counting. However, at others, once verification of all Presidential ballot boxes had taken place, counting of Presidential ballots was undertaken. Only then, agents started with Mayoral verification and counting and then Councillor verification and counting.

Notwithstanding the above-mentioned differences in the order of verification and counting, the verification process was to be the same for each polling station. First, using the record book, the Presiding Officer was required to reconcile the total number of ballot papers with the number of ballot papers issued. The number of used ballots was counted taking into account unused ballot papers and returned spoilt ballot papers that had required a second issue.

After agreement on the number of ballots that should be found in the box, the seals were examined to ensure that they had not been tampered with and removed in the presence of all assembled. The ballot papers were then emptied out onto tables and counted face down. The actual number of ballots found in the box was compared with the number of ballots determined to have been cast. In cases where reconciliation failed the process was repeated. Once this verification process was complete, the ballots were returned to the ballot box, to await the count itself. The procedure was repeated with the box from the next polling station until all were completed.

The meticulous verification process was generally slow and complicated especially in Harare and Chitungwiza, where Mayoral and Councillor elections took place. A specific complicating factor was the incidences of voters placing ballot papers into the wrong box, which made final verification impossible until all boxes had been opened. This was particularly problematic in centres where a decision was taken to deal first with Presidential verification and counting before opening Mayoral and Councillor boxes, and substantially held up the process.

The Counting Process

The count itself began once verification was concluded. Ballot boxes were re-opened and the ballot papers were emptied out, mixed together face up, and then sorted into piles per candidate. Once the count had begun no one, including the observers, was supposed to leave until it had been completed. In some areas the Constituency Registrars used their discretion to allow observers to leave. Mobile phones were banned from the counting centres. For the most part at centres where we observed the count, it was conducted according to procedures.

Announcement of the Results

On completion of the count in most, but not all centres, the agents present verified the results. Results were transmitted to the Regional Command Centre, which transmitted them to the National Command Centre in Harare, where the Registrar-General announced the results in batches per constituency. The preliminary results were first announced in the early evening of Tuesday 12 March.

The last figures were announced at noon on Wednesday 13 March, and were published as follows:

Candidate	Party	No. of Votes	Percentage of Votes
Robert Gabriel Mugabe	ZANU-PF	1,685,212	56.19
Morgan Tsvangirai	MDC	1,258,401	41.96
Wilson Kambula	ZANU	31,358	0.001
Shakespeare Maya	NAGG	11,906	0.0003
Paul Siwela	Independent	11,871	0.0003

CONCLUSIONS AND RECOMMENDATIONS

1. This has been one of the most keenly contested elections in the history of Zimbabwe. Following on the 2000 parliamentary election which was described as “constituting a turning point in the post-independence history of Zimbabwe”, the 2002 Presidential election aroused considerable international and local interest because of the perceived consequences for Zimbabwe’s political and economic future. As in 2000, the Presidential election was contested by two parties each commanding widespread popular support, as well as by three other candidates. A major feature of the election campaign was the prospect of change.

2. We were enjoined by our Terms of Reference “to observe relevant aspects of the organisation and conduct of the 2002 Presidential election” and “to consider the various factors impinging on the credibility of the electoral process as a whole”. We have therefore set out in this Report to examine not only what took place on the election days (9-11 March) but the electoral system, the legal framework, the political background, and most importantly the campaign period leading up to the Presidential election.

Conclusions

3. We were deeply impressed by the determination of the people of Zimbabwe to exercise their democratic rights, very often under difficult conditions. At polling stations across the country, voters queued patiently and peacefully, and sometimes for very long hours. We were also impressed by the professionalism and conscientiousness of the majority of the polling staff, many of whom also had to work for very long hours under difficult conditions and without rest.

4. However, it was clear to us that while the actual polling and counting processes were peaceful and the secrecy of the ballot was assured, the Presidential election in Zimbabwe was marred by a high level of politically motivated violence and intimidation, which preceded the poll. While violent acts were carried out by supporters of both of the main political parties, it is our view that most of these were perpetrated by members/supporters of the ruling party against members/supporters of the opposition.

5. We were particularly concerned about the activities of paramilitary youth groups organised under a ‘National Youth Training Programme’. Members of these groups were responsible for a systematic campaign of intimidation against known or suspected supporters of the main opposition party, the Movement for Democratic Change, MDC. The violence and intimidation created a climate of fear and suspicion.

6. Members of our Group found that very often the Zimbabwe Republic Police (ZRP) and other security forces did not take action to investigate reported cases of violence and intimidation, especially against known or suspected supporters of the MDC. Indeed, the ZRP appeared to be heavy-

handed in dealing with the MDC and lenient towards supporters of the Zimbabwe African National Union – Patriotic Front, ZANU-PF. This failure to impartially enforce the law seriously calls into question the application of the rule of law in Zimbabwe.

7. We were concerned that the legislative framework within which the elections were conducted, particularly certain provisions of the Public Order and Security Act and the General Laws Amendment Act, was basically flawed, and prejudicially applied. Limitations on the freedom of speech, movement and of association prevented the opposition from campaigning freely.

8. We further regret the restrictions placed on civil society groups, which effectively barred this important sector from participation in the democratic process, and prevented them from carrying out much needed voter education activities. In particular we consider that unnecessary restrictions were placed on the accreditation of independent domestic observers.

9. We found that thousands of Zimbabwean citizens were disenfranchised as a result of the lack of transparency in the registration process and the wide discretionary powers of the Registrar-General in deciding who is included in or omitted from the electoral register.

10. It is our view that the ruling party used its incumbency to exploit state resources for the benefit of its electoral campaign. This was compounded by the Government's monopoly of the broadcast media – a factor which was not offset by the bias of most of the privately-owned print media in favour of the opposition MDC.

11. On polling day itself, many who wanted to cast their vote could not do so because of a significant reduction in the number of polling stations in urban areas. There was an inexplicable delay in complying with a High Court order to extend voting to 11 March. Voting in Harare and Chitungwiza was especially slow, leading to many voters being turned away even at the end of the third day. These problems were not evident in the rural areas.

12. Taking into account all of the foregoing, and recalling our mandate, we have concluded that the conditions in Zimbabwe did not adequately allow for a free expression of will by the electors in the 2002 Presidential election.

13. We call on all Zimbabweans to put aside their differences and to work together for the future of their country. We believe national reconciliation is a priority and that the Commonwealth should assist in this process.

Recommendations

14. The Group recommends as follows:

- (a) There is an urgent need for there to be a cessation to the systematic use of violence in political campaigns, especially against the opposition party. To address this need, the political parties and the security authorities should jointly establish mechanisms and structures at central and district levels to co-ordinate and implement peace initiatives.
- (b) There is a fundamental need for there to be a clear separation of party and state in Zimbabwe and for there to be a proscription on the use of state resources for party political activity.
- (c) The Government and law enforcement agencies should strictly enforce the law in respect to all acts of political violence.
- (d) the provisions of the General Laws Amendment Act, the Public Order and Security Act and the access to information and Privacy Act which impede the freedoms of association movement and speech should be repealed.
- (e) In accordance with its commitment to all the people of Zimbabwe to assist in the development of a democratic society, the Commonwealth should continue to offer assistance to strengthen the country's democratic institutions. The Commonwealth should also offer technical and economic assistance as appropriate.

15. The Commonwealth Observer Group which was present for the June 2000 Parliamentary elections in Zimbabwe made a series of recommendations intended to assist in resolving problems which the Group had identified during its observations. A number of us were members of that 2000 COG. We regret that in effect none of our recommendations has been accepted by the Government nor by the electoral authorities. In particular, we remain strongly of the view that had a more transparent electoral process been established under a truly impartial authority, the credibility of the current Presidential election could have been considerably enhanced. The lack of such an authority inevitably raises questions over the conduct of this election.

16. We note that steps have been taken to allocate greater resources, and a role in keeping with constitutional provisions, to the Electoral Supervisory Commission (ESC). This is a move in the right direction, but there is still a need to divorce this body from governmental control in order to ensure its independence.

17. We make the following recommendations, which we believe would assist in the conduct of future elections in Zimbabwe:

- a) There is a need to revisit the system of election administration. The responsibility is currently shared between the Elections Directorate, the Registrar-General and the Electoral Supervisory Commission. All

these bodies are appointed by either the President or the Executive. There is a need to establish an Independent Electoral Commission adequately staffed and equipped to be fully responsible for all aspects of electoral administration and management.

- b) Legislation should provide for publication of a preliminary and subsequently final voter's roll in sufficient time prior to an election. Both of these lists should be made available for easily accessible public inspection, rather than only in offices of constituency registrars.
- c) All parties should subscribe to a Code of Conduct regarding the activities of political parties and candidates during the campaign and election period.
- d) Regulations governing the use of public media by the political parties and a Code of Conduct on media coverage and advertising during the campaign and election period need to be devised.
- e) There is a need to review the Constituency delimitation exercise and the number of polling stations attached to constituencies.
- f) A well-organised and ongoing voter education programme should be initiated and carried out by election officials, political parties and civil society.

18. We are grateful to the Commonwealth Secretary-General for inviting us to participate in this Commonwealth Observer Group. We recognise the importance of our mission for the Commonwealth and for Zimbabwe. In this light, we also thank the Government of Zimbabwe for having invited Commonwealth Observers to this election. We have reported what we have seen in accordance with our mandate. We feel our highest obligation is to the people of Zimbabwe.



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Zimbabwe Presidential Election
9-10 March 2002

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COMMONWEALTH OBSERVER GROUP TO THE PRESIDENTIAL ELECTION IN ZIMBABWE 9 – 10 March 2002

Preliminary Report

Four decades ago, the Commonwealth dedicated itself to work collectively towards bringing about democracy to the countries of southern Africa. This commitment remains true today and applies to the crisis affecting Zimbabwe.

It was in this spirit that Commonwealth countries engaged with Zimbabwe at Abuja last year to help resolve the land issue. It was also in this spirit that the Commonwealth accepted the invitation of the Government of Zimbabwe to send observers to the 2002 Presidential election.

The Commonwealth Observer Group consists of 42 Observers and 19 staff from the Commonwealth Secretariat. Our terms of reference enjoin us to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in our judgement whether the conditions existed for a free expression of will by the electors and if the results of the elections reflect the wishes of the people of Zimbabwe.

Our teams returned to Harare yesterday, 13 March, from their deployment to the ten provinces of the country. We carried out a thorough de-briefing during which we discussed not only what took place on the election days (9 – 11 March) but the electoral system, the legal framework, the political background and most importantly the campaign period leading up to the elections.

We shall be submitting a full Report of our findings, conclusions and recommendations to the Commonwealth Secretary-General. This Report will be made public in due course. In the meantime, we would like to make a short preliminary statement on our observations.

We were deeply impressed by the determination of the people of Zimbabwe to exercise their democratic rights, very often under difficult conditions. At polling stations across the country, voters queued patiently and peacefully, and sometimes for very long hours. We were also impressed by the professionalism and conscientiousness of the majority of the polling staff, many of whom also had to work for very long hours without rest.

However, it was clear to us that while the actual polling and counting processes were peaceful and the secrecy of the ballot was assured, the Presidential election in Zimbabwe was marred by a high level of politically motivated violence and intimidation, which preceded the poll. While violent acts were carried out by supporters of both of the main political parties, it is our view that most of these were perpetrated by members / supporters of the ruling party against members / supporters of the opposition.

We were particularly concerned about the activities of paramilitary youth groups organised under a 'National Youth Training Programme'. Members of these groups were responsible for a systematic campaign of intimidation against known or suspected supporters of the main opposition party, the Movement for Democratic Change, MDC. The violence and intimidation created a climate of fear and suspicion.

Members of our Group found that very often the police did not take action to investigate reported cases of violence and intimidation, especially against known or suspected supporters of the MDC. Indeed, they appeared to be high-handed in dealing with the MDC and lenient towards supporters of the Zimbabwe African National Union – Patriotic Front, ZANU-PF. This failure to impartially enforce the law seriously calls into question the application of the rule of law in Zimbabwe.

We were concerned that the legislative framework within which the elections were conducted, particularly certain provisions of the Public Order and Security Act and the General Laws Amendment Act, was basically flawed. Limitations on the freedom of speech, movement and of association prevented the opposition from campaigning freely.

We further regret the restrictions placed on civil society groups, which effectively barred this important sector from participation in the democratic process. In particular we consider that unnecessary restrictions were placed on the deployment of independent domestic observers.

We also found that thousands of Zimbabwean citizens were disenfranchised as a result of the lack of transparency in the registration process and the wide discretionary powers of the Registrar-General in deciding who is included in or omitted from the electoral register.

It is our view that the ruling party used its incumbency to exploit state resources for the benefit of its electoral campaign. This was compounded by the Government's near monopoly of the broadcast media – a factor which was not offset by the bias of most of the privately-owned print media in favour of the opposition MDC.

On polling day itself, many who wanted to cast their vote could not do so because of a significant reduction in the number of polling stations in urban areas. There was an inexplicable delay in complying with a High Court order to extend voting to 11 March. Voting in Harare and Chitungwiza was especially slow, leading to many voters being turned away even at the end of the third day. These problems were not evident in the rural areas.

All the foregoing brings us to the conclusion that the conditions in Zimbabwe did not adequately allow for a free expression of will by the electors.

In these circumstances, we call on all Zimbabweans to put aside their differences and to work together for the future of their country. We believe the Commonwealth should assist in the process of national reconciliation.