



Not a Level Playing Field: Zimbabwe's Parliamentary Elections in 2005

A Human Rights Watch Briefing Paper

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Summary

Zimbabweans go to the polls on March 31, 2005. President Robert Mugabe and senior government officials of the government of Zimbabwe have emphasized the need for peaceful elections, and put in place electoral reforms that, they argue, meet the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections. These guidelines, approved in August 2004 by SADC heads of state, including President Mugabe, establish standards to assess the conduct of democratic elections, the responsibilities of SADC member states and the procedures for electoral observer missions. The principles include full participation of citizens in the political process; freedom of association; political tolerance; equal opportunity for all political parties to access the state media; independence of the judiciary; independence of the media; impartiality of the electoral institutions; and voter education.

The government of Zimbabwe has made some positive steps towards ensuring the elections will be peaceful. But, with only days remaining before voters go to the polls, it is clear that the government has not adequately met the benchmarks set by the SADC Principles and Guidelines Governing Democratic Elections. It is imperative that SADC electoral observers and others do not assess whether the March 31 elections are free and fair only on the basis of observations of the final weeks of the elections. They must also take into account the effects of the past five years of violence, recent reports of intimidation, continuing electoral irregularities and the use of restrictive legislation.

The government of Zimbabwe has greatly limited the space for the opposition to campaign. It has restricted the rights to freedom of expression, association and assembly in many parts of the country. Opposition party members and ordinary citizens have been intimidated by ruling party supporters and officials, war veterans, and youth militia. The government has, thus, substantially infringed the right of Zimbabweans to freely form and express their political opinions and electoral judgments. In short, due to this climate of intimidation and repression, the playing field for the 2005 election has not been level.

The ruling party's claims that new electoral acts meet the SADC Principles and Guidelines are not supported by the evidence. The Zimbabwe Electoral Commission (ZEC) Act, which provides for an electoral supervisory body, is not impartial, inclusive or independent. The same partisan electoral institutions that supervised flawed electoral processes in 2000 and 2002 are supervising crucial electoral processes for the 2005 elections. Major problems with the registration process, voter education and election monitoring that marred previous elections have not been remedied. It is especially

disturbing that many retrogressive electoral changes introduced between 2000 and 2002 have been incorporated in the “new” electoral laws.

Repressive laws, most notably the Public Order and Security Act (POSA), which were used arbitrarily by the government against the opposition in 2002, continue to be used. In addition the Access to Information and Protection of Privacy Act (AIPPA) introduced after the 2002 election has been selectively used by the government against independent journalists and media organizations perceived to be critical of the government. This has led to the closure of a number of independent newspapers. Through these and other actions, the government of Zimbabwe has demonstrated its lack of respect for the basic freedoms prescribed in the SADC Guidelines including the rights to freedom of expression, assembly and association. As a result the elections are highly unlikely to reflect the free expression of the electorate.

Human Rights Watch calls on SADC member states to urge the government of Zimbabwe to ensure that in the days remaining before the election, efforts are made to guarantee that all candidates are able to campaign freely and openly throughout Zimbabwe, that all candidates have access to the media, that journalists and observers are allowed to observe the election process in all areas of the country, and that voters are allowed to choose a candidate and vote in an environment free of intimidation. Human Rights Watch also calls on the SADC observer team to report thoroughly and objectively on whether the elections comply with the SADC Principles and Guidelines Governing Democratic Elections.

In December 2004 and February 2005, Human Rights Watch spent over three weeks in Zimbabwe and interviewed 135 Zimbabweans including representatives from the ruling party, the main opposition party and nongovernmental organizations (NGO); lawyers, church representatives, human rights activists and monitors, journalists and ordinary citizens. Human Rights Watch received first-hand reports on electoral conditions in the provinces of Masvingo, Midlands and Matabeleland. Human Rights Watch visited the provinces of Mashonaland and Manicaland and the cities of Harare and Bulawayo.

Recommendations

To the SADC Electoral Observer Team:

- Call on the government of Zimbabwe to ensure that in the days remaining until the vote on March 31, electoral observers have access to all election sites and are

free to move throughout the country and report on any election related intimidation and violence.

- Issue a public statement noting any concerns with electoral conditions and recommending corrective measures in advance of the March 31 vote.
- Prepare a comprehensive and public post election report on the electoral environment that takes into account all aspects of the election process including pre-election conditions that affect the ability of voters to freely determine and express their opinion about who they want to govern them.
- Remain in Zimbabwe for a reasonable period beyond the vote count to monitor possible election related human rights violations.

To SADC Member States:

SADC member states must encourage implementation of the SADC Principles and Guidelines by immediately calling on the government of Zimbabwe to:

- Make public statements to assure voters that the secrecy of the ballot will be protected and that anyone who carries out acts of violence during and after the elections will be prosecuted.
- Ensure that in the days that remain until the March 31 vote, the elections are held in an environment free of intimidation, harassment and violence.
- Allow all electoral observers to move freely throughout the country and access all legislation, regulations and institutions governing the electoral process and environment consistent with the SADC Principles and Guidelines.

After the elections, as a precedent for future elections in SADC member states, SADC should issue a public statement assessing the extent to which Zimbabwe's laws and electoral procedures have lived up to the standards established by the SADC Principles and Guidelines Governing Democratic Elections.

Background

It is impossible to assess the 2005 election without taking into account the bitter legacy of the last two national elections and the moves that President Mugabe's Zimbabwe African National Union - Patriotic Front (ZANU PF) government has taken over the past four years to tighten control over state institutions and the electoral process. Both the parliamentary election in 2000 and the presidential election in 2002 were

characterized by widespread state-sponsored violence, repression of political opposition, and electoral irregularities. Candidates and supporters of the opposition party, the Movement for Democratic Change (MDC) were intimidated, detained, and arrested. New proof of residency requirements and limits on who could use postal ballots prevented many likely opposition supporters from voting.

Since 2000, the judiciary, the police, and the civil service have been restructured to ensure that party loyalists are at the helm. Training centers for youth militias aligned with ZANU PF have expanded, and the government plans to open another ten new centers in 2005.¹ The election monitoring role of independent nongovernmental organizations has been eliminated and their voter education efforts curtailed. The independence of election observers, local and foreign, has been undermined by the government's partisan selection of observers. Control of the media has been moved into the Office of the President,² and Parliament enacted the Access to Information and Protection of Privacy Act (AIPPA), which created a government-appointed Media and Information Commission (MIC) with wide-ranging regulatory powers.³ The country's most popular newspaper was closed by the government after it failed to comply with this Act. In 2004, the government introduced an NGO Bill that prohibits foreign funding of NGOs working on human rights and political governance issues, denies foreign NGOs the right to operate, and makes registration for NGOs mandatory.

The impact of this legacy on the electorate has been profound. A 2004 survey by Afrobarometer, an independent organization, found that one half of all Zimbabweans prefer to remain unaligned with either ZANU PF or the MDC. Fewer than half of Zimbabweans say they trust Robert Mugabe and the ruling party (though these figures have risen since 1999). At the same time, fewer than half express support for democracy (down from two-thirds of citizens in 1999).⁴ This indicates a loss of faith in democracy among Zimbabweans.

As the next two sections document, there is substantial continuity between the electoral environments in 2000 and 2002 and the 2005 electoral environment. New election laws have failed to create the conditions necessary for free and fair elections. Limits on freedom of information and association remain in effect. There has been a substantially lower level of overt violence in the run-up to the March 31 election than in the previous

¹ The Herald, 13 November 2004; Zim Online, 15 December 2004.

² Annie Chikwana, Tulani Sithole, and Michael Bratton, "The Power of Propaganda: Public Opinion in Zimbabwe, 2004." Afrobarometer Working Papers. Working Paper No.42, August 2004, p.5.

³ The Access to Information and Protection of Privacy Act, March 15 2002.

⁴ Chikwana et al, pp.vi-vii.

two national elections. But the electoral process continues to be marred by serious irregularities; and the government's tactics of intimidation are still being used to silence political opponents.

The "New" Electoral System

On August 17, 2004, the heads of state of the Southern African Development Community, which includes Zimbabwe, signed the SADC Principles and Guidelines Governing Democratic Elections. These principles and guidelines constitute a benchmark against which to judge the March 31 election. Since SADC adopted these guidelines, the Mugabe government has enacted two new electoral laws—the Zimbabwe Electoral Commission (ZEC) Act and the Electoral Act. Unfortunately, neither law satisfies the SADC Guidelines. Instead, both laws reinforce retrogressive electoral measures that the government introduced in the 2000 and 2002 elections.⁵

The ZEC is not an impartial, independent, or inclusive supervisory body. Moreover, by the time it began to operate, many of its key functions—notably voters' registration and the compilation of the voters' roll—had already been exercised by the same discredited partisan electoral bodies that had performed those tasks in the prior elections. Consequently, the processes of registering voters, delimiting electoral districts, and providing for the inspection of voters' rolls were conducted in a non-transparent and discriminatory way. In addition, the ZEC Act restricts the right of NGOs to provide voter education and prohibits NGOs from receiving foreign funds for voter education. These provisions violate freedom of association and voters' right to information, as mandated in the Constitution of Zimbabwe and in the SADC Guidelines.⁶

The Electoral Act has some positive features, notably one-day polling, vote counting at polling stations, and the use of only fixed (and not also mobile) polling stations.⁷ However, it is a measure of the lack of trust in the electoral institutions that the opposition and the independent Zimbabwe Election Support Network (ZESN), both of which had supported these reforms, now fear that they will be used to favor the ruling party. The Electoral Act also removed the president's power to introduce electoral regulations by statutory instrument. However, the Act did not alter the retrogressive

⁵ Human Rights Watch. "The Zimbabwe Electoral Commission Bill: Will It Improve the Electoral Process?" Human Rights Watch Briefing Paper, November 2004.

⁶ Human Rights Watch. "The Zimbabwe Electoral Commission Bill: Will It Improve the Electoral Process?" Human Rights Watch Briefing Paper, November 2004, especially pp.15-16.

⁷ Mobile polling stations were difficult to monitor and gave rise to suspicions of vote rigging.

regulations that had been introduced in 2000 and 2002. Preexisting government controls over election observers and restrictions on postal ballots have also been incorporated in the Electoral Act. Proof of residency requirements that have the effect of disenfranchising particularly young urban voters are still in force. And, for the first time in Zimbabwe, the Electoral Act makes it legal for the ZEC and the Electoral Supervisory Commission (ESC)⁸ another ostensibly independent supervisory body to use members of the police, the defense forces, and the prison service to perform crucial electoral tasks. For instance, the ZEC may use these uniformed services as constituency elections officers and polling officers.

The ZEC: Still Partisan and Too Late

The Mugabe government claims that the ZEC Act—which was approved by Parliament on 10 December 2004—meets the SADC Guidelines for an independent, impartial, and inclusive electoral supervisory body.⁹ However, Human Rights Watch, after analyzing the Guidelines and the ZEC Bill, found that the proposed law gave the president and the ruling party excessive power to appoint commissioners and created too many opportunities and requirements for Ministerial intervention for the ZEC to be considered an independent, inclusive, and impartial body.¹⁰ The ESC is also supposed to supervise elections as an independent body free from the direction or control of any person or authority, but unlike the ZEC, the ESC enjoys a constitutional mandate.

The ZEC is empowered to prepare for and conduct general elections, to direct and control the registration of voters, to compile the voters' roll, and to keep the public informed about various issues, including the delimitation of constituencies.¹¹ However, the ZEC only became legally operational on February 1, 2005, just two months before election day. Even after mid-February 2005, the ZEC had established only temporary offices in Harare, had no office phones, and only two staff members—an administrator who is the legal/political advisor to the Justice Minister, and the chief electoral officer. At that time, the ZEC had still not placed an advertisement in the print media providing its telephone number and address.¹²

⁸ The ESC is also supposed to supervise elections as an independent body free from the direction or control of any person or authority, but unlike the ZEC, the ESC enjoys a constitutional mandate.

⁹ IOL, 9 December 2004, "Observers must wait for invitations – Mugabe."

¹⁰ Human Rights Watch. "The Zimbabwe Electoral Commission Bill: Will It Improve the Electoral Process?" Human Rights Watch Briefing Paper, November 2004, especially pp.13-14, 16.

¹¹ Zimbabwe Electoral Commission Act, No.22/2004, section 4.

¹² Human Rights Watch interview with Dr. Reginald Matchaba-Hove, ZESN chairman, Harare, 16 February 2005., On 8 February, the MDC's economic spokesman, noted that the MDC was hand delivering letters to the Electoral Commissioners' homes. See Cape Times (online), 8 February 2005, Eddie Cross, "Every aspect of election flawed, says mdc [sic]".

By the time the ZEC was formally operational, many key steps in the electoral process had already been completed under the supervision of the ESC and other electoral institutions. The ESC is a partisan body, composed solely of presidential appointees, and mandated in the Constitution to be an independent supervisory authority. The long-serving Registrar-General, Tobaiwa Mudede, a self-professed ZANU PF loyalist who has had a number of court judgments against his conduct of elections,¹³ and the Elections Directorate, presided over voters' registration between May and July 2004.¹⁴ The Delimitation Commission, which is made up of presidential appointees, delimited the district boundaries, and the Registrar-General organized the inspection of the voters' roll and the nomination courts where parliamentary candidates are nominated.

Even after the ZEC assumed its duties, questions remained about the relative authority of the ZEC and the ESC. In February, Joyce Kazembe, an ESC commissioner, reportedly said: "The ESC is the overall authority of supervision of elections by virtue of constitutional provisions. We have the final say on whether they had been run properly."¹⁵ The ZEC Act has not provided an impartial, independent, and inclusive electoral supervisory body. Rather, it has merely added another partisan supervisory body—and done so too late for it to play a role in key electoral processes.

Under the Electoral Act, the ZEC can require the chairpersons of the commissions in charge of the public service and the uniformed services—the prisons service, the defense services, and the police service—to second their employees to serve under the control and direction of the ZEC as constituency elections officers and polling officers.¹⁶ According to one lawyer, "The use of personnel from these services [composed of ruling party loyalists] is likely to create the impression that these persons will carry out their

¹³ On the court challenge by Margaret Dongo in 1995, see John Mw Makumbe and Daniel Compagnon, *Behind the smokescreen. The Politics of Zimbabwe's 1995 General Elections* (University of Zimbabwe Publications, 2000); Dorman, 2005, p.17 on the Supreme Court's judgment that the Registrar-General had not complied with regulations concerning the postal ballots of 6,000 military serving in DRC and that those ballots were therefore invalid. ZESN, *The Electoral Bill, 2004 (HB 19, 2004). A Commentary*, p. 21: "The performance of the present Registrar-General in past elections has been severely criticised. His competence and integrity have been called into question and he is widely perceived as being partisan in favour of the ruling party."

¹⁴ *The Herald*, 8 November 2005, "Voters' roll solid, second to none: Moyo".

¹⁵ Sokwanele, *Mauritius Watch*, Issue 18, 28 February 2005, citing the *Daily Mirror*, February 23 2005.

¹⁶ In terms of section 51 of the Electoral Act of 2005, the constituency elections officer shall determine the number and location of polling stations. Section 83 of the Electoral Act, 2005 empowers an electoral officer—which includes constituency elections officers and polling officers—to exclude an election agent, polling agent, monitor or observer from any polling station or constituency center if they breach the code of conduct set out in the First Schedule. Section 17, Electoral Act, 2005 empowers the ZEC to second employees from the service commissions and to direct and control them.

electoral duties in a completely partisan fashion.”¹⁷ The Electoral Act also authorizes the ESC to second the uniformed services to perform electoral functions.¹⁸

Voters’ Registration: Continuing Discrimination

The amended Electoral Act retains the proof of residency requirements from the 2002 election.¹⁹ As explained below, these requirements effectively disenfranchise many potential voters, especially urban youth. Since the opposition draws much support from urban youth, these requirements discriminate against it.

When the Registrar-General’s office, under ESC supervision, conducted the voters’ registration from May to July 2004, the chair of ZESN, a network of civic organizations promoting democratic elections, and the MDC Secretary General, Welshman Ncube, complained that the exercise was not publicized.²⁰ The MDC Secretary General also complained to the ESC chair about deliberate and systematic disenfranchisement through the neglect of urban voter registration and the concentration on rural voters’ registration.²¹ The then ESC chair, former military intelligence officer Sobusa Gula-Ndebele, conceded administrative and logistical problems and requested, without success, that the Registrar-General’s office extend the deadline for registration.²² These allegedly flawed voter registration figures became the basis for the delimitation of constituencies.

On September 20, 2004, the voters’ roll containing 5.6 million registered voters was presented to Judge Chiweshe, the chair of the Delimitation Commission.²³ ZESN’s chair said his organization had not seen a copy of the voters’ roll but “as far as we are concerned, a voter registration exercise is still to be done properly, and it is strange if the roll is completed already.”²⁴ The MDC president claimed that analysis of a hard copy of the voters’ roll indicated “it had been manipulated to secure even further reductions in urban seats.”²⁵ Pointing to inconsistencies in the roll which showed declines in the

¹⁷ Feltoe, 2005, pp.52-3.

¹⁸ Section 10, Electoral Act, 2005.

¹⁹ Section 23 of the Electoral Act; ZESN, *The S.A.D.C. Electoral Principles and Guidelines, and Zimbabwe’s New Electoral Legislation. An Evaluation*, p.17.

²⁰ *Zim Online*, 8 July 2004, “Exposed: How ZANU PF has already rigged next year’s poll”; *Zimbabwe Independent*, 16 July 2004, Dumisani Muleya, “Ex-army officers to run polls”.

²¹ *Zimbabwe Independent*, 16 July 2004, Dumisani Muleya, “Ex-army officers to run polls”.

²² *Zimbabwe Independent*, 16 July 2004, Dumisani Muleya, “Ex-army officers to run polls”.

²³ *Daily Mirror*, 21 September 2004, “Delimitation Commission to complete work in two months”.

²⁴ *Zimbabwe Independent*, 29 October 2004, “Zesn calls for delay of parliamentary poll”.

²⁵ *Zimbabwe Independent*, 29 October 2004, “Zesn calls for delay of parliamentary poll”.

urban areas and increases in the rural areas where the 2002 census did not support such population changes, Morgan Tsvangirai called for an independent audit of the voters' roll.²⁶ ZANU PF secretary for information, Nathan Shamuyarira rejected the MDC president's accusation and said: "We (the government) are setting up an independent commission to conduct the elections and they (the MDC) can complain there."²⁷ However, when President Mugabe announced the ZEC chair on January 20, 2005, it was none other than Judge Chiweshe the Delimitation Commission chair. The MDC and the ZESN pointed out that to lodge a complaint about the delimitation process to the ZEC was futile because the Delimitation Commission chairman was also the ZEC chairman.²⁸ When the MDC's Secretary General wrote to the Delimitation Commission chair to complain that "the voters' roll information submitted to your commission is incomplete and disenfranchises thousands of persons who should be entitled to vote,"²⁹ the then Minister of Information Jonathan Moyo replied that if the MDC case were genuine, it would have been raised four months earlier.³⁰ In fact, as noted above, the MDC had complained to the ESC about the discriminatory and secretive nature of the voter registration process.

The Delimitation Report was presented to President Mugabe on December 20, 2004. It merged two urban constituencies in Bulawayo and two in Harare, all four currently occupied by MDC representatives, and it merged a current MDC-held constituency in Matabeleland South with one held by ZANU PF. It also created three new rural constituencies.³¹ These boundary changes reduce the number of seats in the MDC's urban strongholds and increase the number of seats in ZANU PF's rural strongholds. Judge Chiweshe attributed the reversal in rural-urban migration to the land reform program.³² However, a ZANU PF central committee member admitted to Human

²⁶ Zimbabwe Independent, October 29, 2004, "Zesn calls for delay of parliamentary poll". An MDC spokesman said a study comparing the current voters' roll with the one used for the March 2002 presidential election showed a decline in registered voters in Harare from nearly 879,000 names to some 832,000. Yet the last census showed that Harare's population had increased by 500,000 voters or 30%. Mashonaland Central showed an increase of 187, 113 registered voters on the current voters' roll over the census figures.

²⁷ Zimbabwe Independent, October 29, 2004, "Zesn calls for delay of parliamentary poll".

²⁸ Human Rights Watch interviews with Dr. Matchaba-Hove, ZESN chairman, Harare, February 16, 2005 and with MDC MP and candidate for Glen Norah, Priscilla Misihairambwi-Mushonga and shadow foreign affairs minister and MDC candidate for Gwanda South, Paul Temba Nyathi, Harare, February 8, 2005, see also Sunday Mirror, Zimbabwe, February 13, 2005, Tawanda Majoni, "Row over constituency boundaries".

²⁹ New Zimbabwe, November 9, 2004, "Sparks fly over voters' roll tampering". Human Rights Watch interview with MDC Secretary General Welshman Ncube, December 17, 2004.

³⁰ The Herald, November 8, 2004, "Voters' roll solid, second to none: Moyo".

³¹ Human Rights Watch interview with Dr. Reginald Matchaba-Hove, ZESN Chairman, Harare, February 16 2005, The delimitation is available in Gazette Extraordinary January 13, 2005, Proclamation 1 2005, SI 3A of 2005.

³² Even before the Delimitation Report, Crisis Coalition had predicted that the re-drawing of boundaries would be done to give ZANU PF leverage, and the MDC's Secretary-General claimed he had documentation that the

Rights Watch on December 14, 2004 that there had been gerrymandering of constituencies to favor ZANU PF.³³

The opportunity for voters to inspect the roll was flawed by lack of government advertisement, inadequate numbers of inspection centers, and rumors that, even after the rolls should have closed, the ruling party allowed its supporters to continue to register. Media reports claim that ZANU PF was instructing its supporters to continue to register and that voters' registration was still occurring two weeks after the inspection period had ended in areas of Harare, Seke, and Lupane in Matabeleland North. This recalls voter registration abuses in the 2002 presidential election.³⁴

Many urban voters were turned away because they had not complied with the proof of residency requirements.³⁵ Lodgers must provide rates bill in their name and with their address, or a letter addressed in their name from a store with which they have a credit account, or a lodger's card, which is an agreement with the renter. Even those living with their parents must prove that they are a "natural child". In such cases, a parent must accompany them to obtain an affidavit from a lawyer, a commissioner of oaths, or the police. Rates bills are always in the landlord's name, and the lodger's card and the affidavit cost money and take time, thus straining resources. These demanding requirements lead to disenfranchisement, especially of urban youth.

Sample audits of the voters' roll indicate, as in previous elections, the need for a new transparent voters' registration. David Coltart, MDC MP, Bulawayo South, hired seven activists to do a door to door audit of the voters' roll. The police arrested the team on the grounds that Coltart needed permission for the exercise, and then released the group without charges. The MDC filed an application in the High Court in Bulawayo for permission to continue with the audit without police intervention. The judge granted the MDC request.³⁶ It emerged in court that there were hundreds of ghost voters, with

boundaries had already been redrawn by the Central Intelligence Organization. See IRIN (UN), September 16, 2004, "Opposition complain over composition of commission" and Afrol News (Norway), September 17, 2004, "Zimbabwe 2005 polls 'already manipulated'". In a Human Rights Watch interview with Dr. Matchaba-Hove, ZESN Chair, Harare, February 16, 2005, he said it seemed to him too that the delimitation was pre-arranged, as ZANU PF only needed two more seats at the time to ensure a 2/3 parliamentary majority and thus the ability to alter the constitution.

³³ HRW interview, Bulawayo, December 14, 2004.

³⁴ Sokwanele, Mauritius Watch, Issue 18, February 28, 2005, citing Zimbabwe Standard, February 20, 2005.

³⁵ Human Rights Watch interview with Sydney Chisi, Zimbabwe Integrated Youth Survival Alternative Program, National Advocacy Director, February 8, 2005.

³⁶ Zimbabwe Independent, February 18, 2005, Conrad Dube/Loughy Dube, "Ghost voters unearthed"; Zim Online, February 18, 2005, "Opposition MP wins restraining order against police". Zimbabwe Human Rights interview with Simon Spooner, MDC activist, Bulawayo, February 11, 2005.

some entered more than once, as well as other anomalies.³⁷ The MDC is carrying out audits in all urban areas and claims it has identified serious anomalies in Harare Central, Mbare, and Harare North.³⁸

The Right to Vote: Major Exclusions

The new Electoral Act preserves its predecessor's provision that permits only those who are outside their constituencies on some type of government-sponsored business, be it electoral, military, or diplomatic, to use the postal ballot. At the end of January 2005, seven Zimbabweans in exile and representing the UK-based Diaspora Vote Action Group brought an urgent application to the Supreme Court to request that it order the government to enable them to vote by postal ballot in the March election and any subsequent elections. They claimed that voting was their fundamental right, that the constitution provided for their right to vote, and that the SADC Guidelines endorsed that right. Judgment was reserved after the court hearing on 23 February.³⁹ The Supreme Court has still not made a ruling.

The case is significant because of the numbers effectively disenfranchised by the postal ballot restrictions and because of the Justice Minister's political rationale for excluding Zimbabweans in exile from using a postal ballot. It is estimated that 3.4 million mainly adults are living outside Zimbabwe.⁴⁰ According to the 2002 census, more than 50% of the total population of 12 million people is under fifteen years.⁴¹ Given that the voting age is eighteen years, the number of adults living outside the country roughly approximates the number of adults living inside Zimbabwe. By excluding exiled Zimbabweans from the right to use a postal ballot, the government is effectively disenfranchising a substantial voter population. As "factual background," the Justice Minister claimed that most Zimbabwean exiles lived in the "hostile" countries of the UK, the EU, the US, New Zealand and Canada where only the opposition would be able to campaign, thus providing it with an unfair advantage over the ruling party.⁴² As a lawyer for the exiled group remarked, most exiles are in South Africa with which the government has a friendly relationship.⁴³

³⁷ Zimbabwe Independent, February 18, 2005, Conrad Dube/Loughy Dube, "Ghost voters unearthed."

³⁸ Zimbabwe Independent, February 18, 2005, Conrad Dube/Loughy Dube, "Ghost voters unearthed."

³⁹ Press statement by the Diaspora Vote Action Group, n.d., Zimbabwe Supreme Court Reserves Judgment on Diaspora Vote; Zim Online, February 24, 2005, "Voting not a fundamental right: Supreme Court judges".

⁴⁰ Solidarity Peace Trust Report, September 2004.

⁴¹ Solidarity Peace Trust Report, September 2004.

⁴² Case No.SC.22/05. 1st respondent's opposing affidavit. February 8, 2005., p.5

⁴³ Human Rights Watch interview with Beatrice Mtetwa, lawyer, Harare, February 10, 2005.

Access to Voter Education: Minimal and Partisan

Under the ZEC Act, the ZEC has responsibility for providing voter education and controlling voter education by all individuals and local organizations, other than political parties. Only the ZEC may receive and distribute foreign funds for voter education, and approve the participation of local organizations registered under the NGO Act, which awaits the President's assent to become law.⁴⁴ Because the ZEC was formed so late, it and any organizations to which it may have subcontracted have provided minimal voter education for this election. According to a spokesperson for the South African Solidarity Network which recently completed a nine-day mission in Zimbabwe: "There is a very low level of voter education going on, estimated to be happening in only 11% of Zimbabwe."⁴⁵ The ZEC, as already noted, is a partisan body and ought not to exercise monopoly control over who provides voter education.

Independent Observers and Monitors: Only Government Invitees

The Electoral Act provides for the ESC to establish a committee to accredit observers, foreign and local.⁴⁶ The committee is composed of the ESC chair or vice-chair and four other government appointees.⁴⁷ Prior to accreditation, foreign observers must receive an invitation, either from the Foreign Affairs Minister or, in the case of other electoral supervisory organizations in the region, from the ESC.⁴⁸ Local observers must receive an invitation from the Justice Minister.⁴⁹ ESC accreditation, for which there is a prescribed fee, is necessary for observers to be allowed to enter a polling station or constituency center.⁵⁰ The fees are Z\$100,000 for each individual representing a local organization, US\$100 for an observer from an African country, and US\$300 for all other observers.⁵¹ For local NGOs, these fees are high, especially since there is no guarantee that an application will be approved.

The assignment of the important function of accrediting observers to the ESC rather than the ZEC points again to the confusion of having two supervisory bodies. It seems

⁴⁴ Zimbabwe Electoral Act, 2005, sections 14 and 15 cover voter education. section 15 refers to the NGO Act. However, this Act has not been assented to by the President.

⁴⁵ Sunday Argus (South Africa), March 6, 2005, Christelle Terreblanche, "Submission to the authorities has been internalized."

⁴⁶ Section 14(5), Electoral Act

⁴⁷ Section 14(2), Electoral Act

⁴⁸ Section 14(5), Electoral Act

⁴⁹ Section 14(5), Electoral Act

⁵⁰ Section 14(6), Electoral Act

⁵¹ The Daily Mirror, February 15, 2005, "Chinamasa invites local observers for accreditation"; Electoral Regulations, 2005, section 27.

the only apparent criterion for the selection and accreditation of election observers is firm support for the government.⁵² The government's control over accreditation of observers has been more partisan than in the 2002 elections. The SADC Parliamentary Forum, which was the only all-Africa observer team to issue a critical report on the 2002 election, has not been invited to observe the 2005 election. There will be no official observer teams from the EU, the U.S., or the Commonwealth, from which Zimbabwe withdrew in 2003. The Congress of South African Trade Unions (COSATU) which has been highly critical of the Zimbabwe government and the Electoral Institute of Southern Africa were also not invited. COSATU representatives were also barred from being part of other delegations. SADC received its invitation on February 25.⁵³ According to the SADC Guidelines, it should have received an invitation at least 90 days before the election date, that is, at the beginning of January.⁵⁴ On March 11, ZESN had still not been informed if its request for accreditation had been approved.⁵⁵

An Impartial Electoral Court: Compromised

The Electoral Act provides for the creation of an Electoral Court to hear and determine election petitions, among other matters.⁵⁶ The Chief Justice, after consultation with the Judge President, must appoint at least one High Court judge to preside over the Electoral Court.⁵⁷ Appeals must be determined within six months from the date of the lodging of the appeal⁵⁸—a welcome provision, given the opposition party's experience with the courts delaying decisions in its election petitions arising from the 2000 elections. However, the Electoral Court is unlikely to inspire voter and candidate confidence because the judiciary is no longer viewed as independent. The Chief Justice and the Judge President of the High Court are reportedly ZANU PF supporters, as are all but one Supreme Court judge and most of the High Court judges.⁵⁹

⁵² e.g. Foreign Minister Stan Mudenge said EU observers had not been invited because they had a "preconceived negative perception" of elections. "EU, US not invited to observe Zimbabwe polls", February 20, 2005. (Reuters).

⁵³ Sunday Argus (SA), February 27, 2005, "SA observer teams off to Zimbabwe".

⁵⁴ Jesse Duarte, director of multilateral affairs at the South African Department of Foreign Affairs protected the Zimbabwe government when asked about the invitation that had not yet arrived, said: "I have been part of observer missions which have arrived three weeks before the elections." IRIN, February 21, 2005, "SADC still awaiting invite from Zimbabwe." Having received the invitation, Dr. Prega Ramsamy, SADC's executive secretary, said: "It is not too late and we will work very fast to get the observers there." Business Day (SA), February 25, 2005, "SADC to deploy observers for Zimbabwe elections."

⁵⁵ Voice of America News, March 11, 2005.

⁵⁶ Electoral Act, 2005, section 161.

⁵⁷ Electoral Act, 2005, section 162.

⁵⁸ Electoral Act, 2005, section 172(3).

⁵⁹ Feltoe, 2005, p.28.

The Electoral Environment

Political Intimidation in Mashonaland, Manicaland and Harare

“In many of the rural areas they (ZANU PF supporters, youth militia and war veterans) don’t have to beat people up anymore, they simply have to maintain a presence without having to beat anyone up.”

– MDC Secretary General, Welshman Ncube, Human Rights Watch interview, Harare, December 2004.

Section 2.1.3 of the SADC Principles and Guidelines Governing Democratic Elections urges SADC member states to adhere to the principle of political tolerance.⁶⁰ In line with these principles, recent statements made by President Mugabe and senior government officials that the elections will be free of violence are welcome.⁶¹ However, Human Rights Watch documented numerous incidents that point to a marked lack of political tolerance in the provinces of Mashonaland and Manicaland, and in the high density areas of Harare.

Human Rights Watch interviewed Zimbabweans in parts of Mashonaland, Manicaland and Harare who described high levels of intimidation in parts of the country. Supporters of the opposition MDC and civil society activists in all three areas reported to Human Rights Watch that they were regularly harassed and threatened by ZANU PF supporters. They stated that police and Central Intelligence Organization (CIO) officers routinely followed members of the opposition MDC party and civil society organizations.⁶² Those individuals Human Rights Watch interviewed also consistently reported being forced to attend ZANU PF rallies and meetings by ZANU PF youth, and being labeled as opposition supporters if they refused to attend. Opposition activists informed Human Rights Watch that they were still unable to campaign in some parts of rural Mashonaland.⁶³

⁶⁰ SADC Guidelines and Principles Governing Democratic Elections, 2004

⁶¹ “ZANU PF to perform better,” Herald online, February 21, 2005

⁶² Human Rights Watch interviews with opposition and civil society leaders, Harare and Bulawayo, December 2004 and February 2005.

⁶³ Human Rights Watch interviews with civil society activists, opposition members, candidates and supporters, Harare and Bulawayo, December 2004 and February 2005.

ZANU PF continues to be the only party able to actively campaign throughout the rural areas of the provinces—where the majority of Zimbabwe’s population still lives.⁶⁴ The MDC was able to campaign in some parts of the Mashonaland provinces such as Chinhoyi, but many of the rural parts of the provinces remained ‘no-go’ areas. Persons living in these areas told Human Rights Watch that the opposition was unable to freely campaign and MDC supporters were not free to show their political affiliation.⁶⁵ In areas such as Murehwa and Mutoko in Mashonaland East, well known members of the opposition including MPs were allowed to operate, but supporters and lower ranking members faced constant threats, intimidation and at times assault from ZANU PF supporters particularly the party youth, war veterans, and members of the youth militia.⁶⁶

One local human rights monitor described the situation in her home area of Zvimba in Mashonaland Central province: “The opposition has no chance to campaign. Only the ruling party is campaigning. MDC supporters are there but they are not showing themselves.”⁶⁷ She described witnessing a group of war veterans assault a man wearing an MDC bandana (head tie) in October 2004: “The war veterans asked him why he is wearing an MDC bandana. “You are not allowed to put on those things.” When he tried to answer them they started hitting him and they burnt his bandana.”

In Murehwa, a local driver explained, “The MDC can’t openly show themselves here. They are afraid after the violence that happened here in 2000 and 2002. They have small secret meetings but that’s all... If they showed themselves they would definitely be attacked. Only senior MDC people can show themselves here. Not just supporters.”⁶⁸

In Mutoko, a ZANU PF supporter admitted that while there was peace in the area, the likelihood of violence would increase if the opposition campaigned openly. He said, “Things are very quiet here. There are two MDC candidates contesting the elections (in two of the constituencies in Mutoko) and they are doing so peacefully. Around the town centre the majority are MDC youth supporters but they can’t show themselves or hold public meetings. It is still very tense.”⁶⁹

⁶⁴ Human Rights Watch interviews with ZANU PF and MDC supporters, human rights activists, church representatives and lawyers, Harare and Bulawayo, December 2004 and February 2005.

⁶⁵ Human Rights Watch interviews provinces of Mashonaland Central, East and West, February 2005.

⁶⁶ Human Rights Watch interviews with ZANU PF members and supporters, MDC supporters, NGO representatives, human rights activists, Harare and Mashonaland, February 2005.

⁶⁷ Human Rights Watch interview, Chinhoyi, February 17, 2005.

⁶⁸ Human Rights Watch interview, Murehwa, February 14, 2005.

⁶⁹ Human Rights Watch interview, Mutoko, February 14, 2005.

When Human Rights Watch visited the town of Rusape in Manicaland province in December 2004, MDC supporters reported that they were unable to wear MDC regalia in the town centre of Rusape and surrounding rural areas, and that ZANU PF youth and supporters routinely forced them to attend ZANU PF rallies and public meetings. They stated that they held secret meetings and were afraid that ruling party supporters would infiltrate their meetings.⁷⁰

According to one MDC supporter from Mashonaland Central, “Every evening youths [from ZANU PF] walk around the township checking if the opposition is gathering to hold meetings. They do it under the pretext of security. If you are caught you are in trouble.”⁷¹

Human Rights Watch was told that visitors to the rural parts of the provinces, especially those from the cities of Harare and Bulawayo, were also treated with suspicion by ZANU PF members and supporters and accused of belonging to the MDC.⁷² A local human rights monitor from Zvimba commented, “If a stranger comes they ask who they are and they want to find out if the person is opposition. Some ruling party supporters go to the chief and will say that this family has received a visitor... So sometimes you have to go and explain.” She described how the chief summoned her family after they received a visitor from outside the area in late January 2005:

Last time they (ZANU PF supporters) came to our house where we had a visitor late at night, my uncle. They came around 12pm and we were asked why did he come? And at such a time? They wanted to know if he belonged to the ruling party. The following day they went to the chief to ask why we had such a visitor. And so we had to go to the chief to explain.⁷³

A local human rights activist described the situation in Kariba, Mashonaland West:

Youths from the bases (youth militia bases) are now trying to verify who the villagers in this village are. They are asking visitors who are you? Where are you coming from? Who do you support? They are saying

⁷⁰ Human Rights Watch interview, Rusape, December 18, 2004.

⁷¹ Human Rights Watch interview, Harare, February 16, 2005.

⁷² Human Rights Watch interviews with human rights activists, ordinary Zimbabweans, Harare and Bulawayo, December 2004 and February 2005.

⁷³ Human Rights Watch interview, Chinhoyi, February 17, 2005.

every household should come and register at the base if they receive a visitor. If you don't tell them they will come around to your house. If they see a vehicle around your place they need to know where you are coming from.⁷⁴

Human Rights Watch interviewed a number of local activists in Mashonaland, Manicaland, Chitungwiza and Harare who stated that people who lived in the areas were also subjected to questioning whenever they visited other parts of the country especially the cities. According to one human rights activist from Mt Darwin South:

Even ourselves, to come to this workshop (in Harare) and leave the area, you must go and explain to ZANU leaders that you are going, where you are going and for how long. Then you must report back. If a person comes who is new, you must go to the headman and report on where he is coming from and the number of days he'll spend in that area. You must explain that relationship between you and the people you have visiting.⁷⁵

ZANU PF supporters treated NGO employees in the areas Human Rights Watch visited with equal suspicion. One employee who claimed to be non-partisan spoke of his arrival in Chitungwiza and observed, "When I first came here, in the first place, I was approached by people and they wanted to know if I was ZANU PF and I gave them my party card (ZANU). I came here on 20th May 2004. The people who came were my neighbors, war veterans and ruling party supporters."⁷⁶

Visits and questions from ZANU PF supporters, war veterans and ZANU PF youth serve to intimidate both ordinary citizens and political activists. Moreover, the effects of such intense questioning should be seen in the context of Zimbabweans' past experiences, especially during the 2000 and 2002 elections. Incidents such as the one described below remind Zimbabweans of the potential consequences of supporting the opposition or being perceived to be an opposition member or supporter.

In February, Human Rights Watch documented the case of a nongovernmental organization whose offices were closed by war veterans in Mt. Darwin, Mashonaland Central, after it was discovered that one of the organization's employees was an MDC

⁷⁴ Human Rights Watch interview, Chinhoyi, February 17, 2005.

⁷⁵ Human Rights Watch interview, Harare, February 11, 2005.

⁷⁶ Human Rights Watch interview, Chitungwiza, February 15, 2005.

member. In March 2001, twenty war veterans stormed the offices of the organization looking for an employee whom they accused of being an MDC member. He was severely beaten, sustained severe injuries to his eyes and head, and was hospitalized for two weeks. The war veterans at first demanded that the office should be closed, but later allowed the office to re-open on condition that the employee did not return to work. The office was later permanently closed by the organization due to insecurity connected to the incident.⁷⁷

Local human rights activists informed Human Rights Watch that in parts of Manicaland and Mashonaland, those who were labeled as MDC were sometimes forced from their rural homes by ZANU PF supporters or ended up losing their jobs due to intimidation from ruling party supporters and members.⁷⁸ For example, in Chipinge South, Manicaland province, Human Rights Watch interviewed the headmaster of a local school. On August 2, 2004, several ZANU PF youth visited his school, accused him of being an MDC supporter and beat and threatened him in front of his fellow teachers and school children. On August 11 (Heroes Day in Zimbabwe) ZANU PF youth paraded him at a ZANU PF rally and forced him to apologize for being an MDC supporter. Although he reported his case to the police and the local education authorities, nothing was done. He was unable to go back to the school and ZANU PF youth continued to threaten him.⁷⁹

In all the places Human Rights Watch visited, local human rights activists, NGOs and opposition supporters informed Human Rights Watch that ZANU PF youth supporters routinely forced people to attend ZANU PF rallies or public meetings. Youths from the ruling party went door-to-door forcing people out of their houses and also came around once meetings had begun to ensure that no one stayed in. In a few instances, Human Rights Watch received reports from human rights activists and ZANU PF supporters that in some areas, ZANU PF youth no longer forced local people to go to ZANU PF rallies.⁸⁰

In Chitungwiza and the high density areas of Kuwadzana and Warren Park D in Harare, MDC supporters and local human rights activists claimed that many young MDC supporters were forced to go to ZANU PF meetings for fear of reprisals from ZANU

⁷⁷ Human Rights Watch interview, Harare, December 16, 2004.

⁷⁸ Human Rights Watch interviews with local human rights activists, Manicaland, Mashonaland West and Harare, December 2004 and February 2005.

⁷⁹ Human Rights Watch interview, Chipinge South, December 18, 2004.

⁸⁰ Human Rights Watch interviews, Harare and Bulawayo, December 2004 and February 2005.

PF youth if they did not do so.⁸¹ A local human rights activist from Mt. Darwin South observed, “It’s a must (to attend ZANU PF meetings). Its meetings, it’s a must. If you are found absent from the meeting, it’s subject to investigation.”⁸²

Human Rights Watch interviewed many people including NGO employees, human rights activists and MDC supporters who pointed out that they owned ZANU PF cards for their own protection. A ZANU PF card ensured that they could travel to rural parts of the provinces in relative safety. According to these reports, ZANU PF youth regularly demanded ZANU PF cards and threatened and assaulted those who did not own one. Those without ZANU PF cards were perceived to be opposition supporters even if this was not the case.⁸³ On several occasions, Zimbabweans who claimed to be MDC or non-partisan showed Human Rights Watch researchers their ZANU PF cards.

Human Rights Watch spoke to a number of ZANU PF supporters and members who denied that people were now being forced to attend political meetings or rallies or own ZANU PF cards. But they were willing to admit that in previous elections people were forced to own ZANU PF cards, attend political meetings and rallies and were frequently assaulted if they did not do so.⁸⁴

The lack of political tolerance demonstrated in the provinces Human Rights Watch visited and reports of political intimidation from other parts of the country do not inspire confidence that MDC candidates and their supporters will be able to operate freely in a number of provinces in the brief period that remains for campaigning. Many Zimbabweans will continue to be afraid to openly engage in political activities, attend MDC rallies or express their political viewpoints, out of fear for their personal safety.

Freedom of Assembly, Movement and Association

The barriers that a government or other actors place in the way of holding meetings, rallies, debates and other public events have a direct bearing on the openness of elections.⁸⁵ The Public Order and Security Act (POSA) severely restricts the rights to

⁸¹ Human Rights Watch interview, Harare, December 16, 2004.

⁸² Human Rights Watch interview, Harare, February 11, 2005.

⁸³ Human Rights Watch interviews with local activists, opposition members and residents of Harare, Chitungwiza, Bulawayo, and Manicaland and Mashonaland provinces, December 2004 and February 2005

⁸⁴ Human Rights Watch interviews with ZANU PF members and supporters in Murehwa and Mutoko, February 2005

⁸⁵ Article 21 (1) of the Zimbabwe constitution states: “Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to

freedom of assembly, movement and association and has been consistently used by the police to arbitrarily arrest those perceived to be critical of the government.⁸⁶

Since 2002, laws such as POSA and the Miscellaneous Offences Act (MOA) have been consistently used by the Mugabe government to deny access to the opposition and civil society activists to freely assemble, and associate, and express political opinions (or even apolitical statements and activities). For instance, Zimbabwe Lawyers for Human Rights reported that, in 2004, 950 human rights defenders were arrested under POSA and MOA.⁸⁷ In 2003, Human Rights Watch reported that the government of Zimbabwe was using restrictive laws such as POSA to close the space for public debate.⁸⁸

The government has inconsistently applied restrictions on public gatherings. In the areas Human Rights Watch visited, the ruling party was able to hold public meetings and rallies without police notification or permission. In marked contrast, MDC members were sometimes unable to hold public meetings and freely campaign due to POSA. MDC officials pointed out that although section 24 of POSA merely requires police notification to hold a public meeting, police authorities insisted on police permission to hold meetings, which was on arbitrary grounds frequently denied to them.⁸⁹ MDC candidates indicated to Human Rights Watch that when they were allowed to hold public rallies, severe restrictions were placed on the meetings under POSA.⁹⁰ In addition, CIO officers insisted on being present at the meetings.

The presence of government intelligence officers has an intimidating effect on opposition supporters, and therefore candidates are forced to use innovative means to hold meetings without police or CIO presence. This meant not notifying the police and risking arrest and charges under POSA.⁹¹ For instance, one MDC candidate in

assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of his interests.”

⁸⁶ For more on these restrictions, see Amnesty International report, “Rights under Siege,” May 2003 and Human Rights Watch report, “Under a Shadow: Civil and Political Rights in Zimbabwe,” June 2003

⁸⁷ Human Rights Watch interviews with Arnold Tsunga, Director Zimbabwe Lawyers for Human Rights (ZLHR) and Otto Saki Lawyer, ZLHR, February 8, 2005.

⁸⁸ See Human Rights Watch report, “Under a Shadow: Civil and Political Rights in Zimbabwe,” 2003.

⁸⁹ Section 24 of POSA requires the organizer of a public meeting or gathering to notify the regulating authority (in this case the police) of intention to hold a public gathering. The organizer of a public gathering is required to give at least four clear day’s written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held.

⁹⁰ Sections 23-31 of POSA provide the police with extensive powers to regulate and control any public gatherings, including banning or breaking up meetings if they are deemed to endanger public order.

⁹¹ Human Rights Watch interviews with MDC members and candidates, Harare, February 2005; See the Public Order and Security Act for more on sections 23 –31 of POSA.

Marondera described how on February 12, 2005 he tried to hold a meeting in the bush to avoid CIO presence. The meeting dispersed after the candidate was informed that CIO officers were on their way to the meeting. However, six of the MDC supporters attending the meeting were arrested and detained under POSA before being released without charge on February 14. The sixth person was arrested and charged under POSA for carrying an offensive weapon, fined and later released.⁹² Another MDC candidate observed, “In rallies the level of CIO presence is heavy. They are taking notes. Constituents know the CIO is there.”⁹³

NGO and civil society workshops do occur daily in Harare and Bulawayo. Civil society activists report that for the most part they are unable to conduct meetings and workshops without police permission. Nevertheless some do so, thus risking arrest or brief detention.⁹⁴ On the occasions civil society activists notified the police, they were allowed to hold meetings and workshops under some of the same specific restrictions placed on opposition meetings, including the enforced presence of CIO officers.

International law permits restrictions on the right of peaceful assembly in carefully defined circumstances.⁹⁵ Advance prohibitions of assemblies must always be in exceptional circumstances where there is a well-founded concern for security or public safety, and not on preventing legal opposition parties from engaging in legitimate political activity. The measures taken by the Zimbabwe authorities to restrict freedom of movement, assembly and association clearly exceed that which may be justified on the basis of legitimate concerns for security and public order.

MDC and civil society activists also claim that police are misapplying POSA and using it to disrupt private meetings held by members of the opposition and civil society activists.⁹⁶

For example, Human Rights Watch documented the case of MDC Member of Parliament for Makokoba constituency in Bulawayo, Thokozani Khupe, who was arrested and detained under section 24 of POSA on the charge of holding a public

⁹² Human Rights Watch interview, Harare, February 14, 2005.

⁹³ Human Rights Watch interview with MDC candidate for Gutu South, Masvingo, Harare, February 14, 2005.

⁹⁴ Human Rights Watch interviews with civil society activists and lawyers, Harare and Bulawayo, February 2005.

⁹⁵ Article 21 of the ICCPR states: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

⁹⁶ POSA specifically refers to public gatherings and not private meetings.

meeting. On January 23, 2005, the MP held a private strategic planning workshop with ward members from her constituency at her restaurant in Bulawayo. As the meeting progressed, plain-clothes policemen approached Khupe and enquired whether she had police permission to hold the meeting. She informed the policemen that she did not require permission to hold a private meeting. Half-way through the meeting, up to fifty riot police entered the restaurant and arrested sixty-two MDC members including Khupe. Khupe was detained overnight at Bulawayo Central police station, presented in court the following day and then released on bail.⁹⁷

On March 3, 2005, in an interview from Harare with the London-based SW Radio Africa, independent candidate for Harare Central constituency, Margaret Dongo complained that police had denied her permission to hold four meetings because meetings at shopping centers were prohibited. However, she pointed out that ZANU PF candidates were able to hold rallies at shopping centers. Dongo observed, “They (the police) are only doing it to the opposition. I don’t know why. It is not happening to ZANU.”⁹⁸

A ZANU PF member in Murehwa confirmed the contrast between the holding of ZANU PF rallies and those of MDC rallies: “ZANU is free to hold meetings when they choose, but that’s not the case for the MDC. They have to ask for permission from the police but we don’t. We just hold our meetings. I don’t know why it is different.”⁹⁹

POSA has also been used to intimidate and harass civil society activists perceived to be critical of the government. For example, on February 8, 2005, one NGO youth activist told Human Rights Watch:

Two weeks ago in Bulawayo after a workshop, I was in my hotel room when management informed me that there were guys from CID (Criminal Investigation Department) and CIO coming and I had to throw away all the materials on me. They came and asked me “Who are you? Why have you come to Bulawayo from Harare?” When I explained that I work for the churches they asked to search my bags and found a couple of books. They then took me to the police station outside Bulawayo where they questioned me further and told me that their primaries had been poorly attended by the youth and “we strongly

⁹⁷ Human Rights Watch interview, Thokozani Khupe, MDC MP for Makokoba, Harare, February 9, 2005

⁹⁸ SW Radio Africa interview with Margaret Dongo, March 2, 2005

⁹⁹ Human Rights Watch interview, Murehwa, February 14, 2005

believe that you are the guys from the MDC who are telling people not to participate.” They left me in a room for three hours. Then they put me in an open truck (it was raining) and drove me to Harare police station where I was interrogated again. I was accused of being MDC. They were saying “who are you to mobilize young people? Only political parties can mobilize young people.” I told them that I was a youth leader from a Catholic church. I was detained over night in Bulawayo at what looks like a police camp and then I was detained overnight in Harare Central Police Station. I was driven early to Harare, around 4am. They kept me without food until I managed to call my brother who brought me food. They wanted to charge me under POSA for holding a meeting likely to breach the peace and then they changed their minds.¹⁰⁰

In Harare, a local human rights activist described his arrest in late January after a workshop in Mutare:

Last week of January in Mutare, Manicaland, I was picked up and arrested. I was asked why I didn’t notify the police under POSA. I insisted that POSA doesn’t affect private meetings. But they said that this is around election time. So we have to know. They asked who is funding me. “Which government is funding you?” They were plain-clothes police—those who questioned me, but I was arrested by uniformed police. But they released me without charge.¹⁰¹

In February 2005, police disrupted a number of peaceful protests and meetings by opposition and civil society activists in Bulawayo and Harare. For example, on February 16, police reportedly arrested and beat members of the National Constitutional Assembly who were marching to demand free and fair elections in Harare.¹⁰² On the same day police also disrupted an MDC internal briefing for its 120 candidates in Harare, and briefly detained the MDC Director of Elections Ian Makoni.¹⁰³ In a statement written in the *Daily Mirror* newspaper, the MDC reported that three plain clothes policemen arrived and demanded to sit through the meeting. They later informed those

¹⁰⁰ Human Rights Watch interview, Harare, February 8, 2005.

¹⁰¹ Human Rights Watch interview, Harare, February 7, 2005.

¹⁰² “Police crush protest in Harare,” ZimOnline February 17, 2005; “Protestors in Zimbabwe beaten up by police,” Mail and Guardian online, February 18, 2005.

¹⁰³ “Police disrupt opposition party meeting in Harare,” The Daily Mirror, February 17, 2005.

gathered at the meeting that it was illegal to hold the meeting under POSA and that all those present should leave or immediately face arrest.¹⁰⁴

Not all the marches were connected to the elections. In a clear example of general restrictions on the right to peaceful assembly, police arrested fifty-three women including members of the women's organization, Women of Zimbabwe Arise (WOZA) in Bulawayo on February 12. The women were marching to commemorate Valentine's Day when police disrupted the march. The police proceeded to arrest any women wearing red (a color the WOZA women wear to symbolize love).¹⁰⁵ Eight of the women were released on the same day without charge, while the rest of the women were released on February 15 and made to pay admission of guilt fines under MOA.¹⁰⁶

As Human Rights Watch has previously reported, adoption of the pending NGO Bill would substantially add to existing restrictions on the rights to freedom of movement, association and assembly. The Bill denies local organizations involved in "issues of governance" and human rights work access to foreign funding and prohibits the registration of foreign NGOs engaged in "issues of governance" and human rights work.¹⁰⁷ Human rights organizations interviewed by Human Rights Watch, expressed concern that the new law would force them to curtail their activities. Although the bill is yet to be signed into law, NGO representatives believe its promulgation is already making it difficult for human rights organizations to engage in election related human rights activities, including voter education. As one NGO representative observed, "It is alarming that even though its not law, it's had the effect it would have had if it was law. Robert Mugabe doesn't need to sign the bill into law, its having its effect. Right now civil society can't do voter education."¹⁰⁸ A number of human rights organizations claimed that they had been forced to scale down their work in the run-up to the elections, while a couple of NGOs reported that they had received threats from the police that they would be shut down once the NGO bill became an Act.¹⁰⁹ The intimidation and harassment of NGOs has implications for the level of citizen participation in the elections.

¹⁰⁴ Ibid.

¹⁰⁵ Human Rights Watch interview with the women's lawyers, Bulawayo, February 13, 2005.

¹⁰⁶ Human Rights Watch telephone interview with Jenny Williams of Women of Zimbabwe Arise, London, March 3, 2005.

¹⁰⁷ See Human Rights Watch briefing paper, "Zimbabwe's Non-Governmental organizations bill: Out of synch with SADC standards and a threat to civil society groups," December, 2004.

¹⁰⁸ Human Rights Watch interview, Bulawayo, February 11, 2005.

¹⁰⁹ Human Rights Watch interviews with NGO representatives in Harare and Bulawayo, December 2004 and February 2005.

Freedom of Expression and Information

“The media of each country must be guided by the country’s ethos. If you don’t abide by the country’s ethos, you should not expect to be treated with justice.”

– Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, addressing parliament on access to the media for the MDC on Zimbabwe Broadcasting Corporation (ZBC) television, November 2004.

Freedom of expression and access to the media under section 7.4 of the SADC guidelines, are necessary for the conduct of free and fair elections.¹¹⁰ Restrictions on these rights affect the media coverage afforded to various parties and candidates and the flow of information that will influence Zimbabweans’ decisions about whom to elect. Despite some improvements, there continue to be serious limits to freedom of expression and information in Zimbabwe, particularly in the form of unequal access to the media, threats of closure of independent media organizations, and the intimidation and arbitrary arrest of journalists.¹¹¹

The Zimbabwe government’s actions seem primarily designed to inhibit criticism of government officials and institutions, and to muzzle independent reporting and commentary on the political situation in the country. Legislation such as the Access to Information and Protection of Privacy Act (AIPPA) that requires registration and accreditation of journalists continues to be selectively used to restrict independent media activity. As one journalist observed, “AIPPA criminalizes writing without accreditation. The law has been consistently applied to one section of the media.”¹¹² Government restrictions on expression in Zimbabwe violate Article 19 (2) of the International Covenant on Civil and Political Rights, which Zimbabwe has ratified and section 20 of Zimbabwe’s constitution.¹¹³

¹¹⁰ SADC Principles and Guidelines Governing Democratic Elections

¹¹¹ Human Rights Watch interviews with media organization representatives, editors and journalists, December 2004 and February 2005.

¹¹² Human Rights Watch interview, Harare, December 15, 2004.

¹¹³ Constitution of Zimbabwe Section 20 (1); Section 20(1) states: “Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.”

Intimidation and harassment of independent journalists and media organizations

The independent media in Zimbabwe is under severe strain. According to the Media and Monitoring Project of Zimbabwe (MMPZ), up to 400 journalists were reported to have been arrested under POSA in 2004 and more than one hundred journalists have reportedly been arrested under AIPPA in the past two years.¹¹⁴ Five journalists working for independent media organizations told Human Rights Watch they had been arrested on more than one occasion under POSA and AIPPA.¹¹⁵

AIPPA has also been used to restrict the flow and content of national and international media coverage.¹¹⁶ The law requires all journalists and media houses to register with the government. While this in itself is not a problem, local and international media and information organizations such as the Media Institute for Southern Africa (MISA) and Article 19 have extensively reported on how the government run Media and Information Commission (MIC) has used AIPPA to threaten newspapers with closure if they are deemed to be critical of the government.¹¹⁷

An amendment to AIPPA, which was put into force on January 7, 2005, tightens these restrictions and makes it an offence punishable, by up to two years imprisonment, if journalists do not register with the MIC.¹¹⁸ Sections 15 and 16 of POSA specifically place restrictions on the media's ability to report freely.¹¹⁹ Another proposed law that has the potential to further restrict freedom of expression is the Criminal Codification (Law and Reform) Bill, which makes it an offence, punishable by up to twenty years imprisonment, for anyone who publishes or communicates information deemed to be wholly false or prejudicial to the state.¹²⁰

¹¹⁴ Human Rights Watch interviews, Harare, December 2004. For the effects of AIPPA see also Article 19/ MISA report, "The Access to Information and Protection of Privacy Act: Two years on," September 2004.

¹¹⁵ Human Rights Watch interviews with journalists in Bulawayo and Harare, December 2004 and February 2005.

¹¹⁶ Human Rights Watch report, "Under a shadow: civil and political rights in Zimbabwe," June, 2003, Amnesty International report, "Rights under siege," May 2003.

¹¹⁷ Article 19/ MISA report, "The Access to Information and Protection of Privacy Act: Two years on," September 2004.

¹¹⁸ See AIPPA Amendment Act, 2004. In an amendment to section 83 of CAP10:27 of AIPPA, any journalist who is found guilty of operating without accreditation shall be liable to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

¹¹⁹ Section 15 of POSA makes it an offence to publish or communicate false statements which may be prejudicial to the state. Section 16 of POSA makes it a crime, punishable by imprisonment of up to a year to make statements construed as endangering feelings of hostility towards the president.

¹²⁰ Human Rights Watch interviews with representatives from MISA and MMPZ, December 2004 and February 2005.

While in Zimbabwe, Human Rights Watch received credible reports from lawyers and human rights activists that a new weekly independent newspaper was under threat of closure, accused of violating AIPPA.¹²¹ On February 25, the paper was closed by the MIC.¹²² In the state-run *Herald* newspaper of February 26, MIC chairman Tafataona Mahoso was quoted as saying that the newspaper's license was cancelled for a year for violating Section 71 (1) (a) of AIPPA by misleading the MIC about the nature of its publications.¹²³

Human Rights Watch also documented one case in which a media organization was under threat of closure after the MIC claimed it was failing to meet AIPPA requirements, and another case in which a prominent journalist's accreditation was threatened after the MIC accused him of working for the foreign press.¹²⁴ Yet the law does not prohibit journalists from working for foreign media houses. It is important to note that all these organizations and journalists were perceived to be critical of the government.

In the *Sunday Mirror* newspaper of February 20, 2005, the MIC reportedly warned the *Zimbabwe Independent* newspaper against allowing "its staffers to moonlight for foreign media houses or risk having the newspaper's license as well as the 'staffers' accreditation revoked."¹²⁵ On December 1, 2004 the state-owned ZBC TV, quoted then Information Minister Jonathan Moyo as defending AIPPA and stating that it was "meant to protect the sovereignty of the country from mischievous people intending to use local media as a tool for regime change."¹²⁶

One freelance journalist in Bulawayo described to Human Rights Watch the obstacles facing independent journalists in the country:

¹²¹ Human Rights Watch interviews, Bulawayo, February 2005. See also "MIC's axe hovers over Weekly Times," *The Financial Gazette*, February 17-23, 2005.

¹²² "Zimbabwe media law claims another independent newspaper," *Mail and Guardian* online, February 27, 2005; "Media bodies angry over paper's closure," *Zimbabwe Standard*, February 27, 2005; "Government bans new newspaper," *The Daily News* online, February 28, 2005.

¹²³ "The Weekly Times closed," *Herald* online, February 26, 2005; Section 71 (1) (a) of AIPPA states that the commission may suspend or cancel the registration certificate of any mass media service if it has reasonable grounds for believing that there has been non-disclosure or misrepresentation of a material fact by the mass media owner concerned.

¹²⁴ Human Rights Watch interview, Harare, February 2005.

¹²⁵ MMPZ "Media Weekly Update," February 20, 2005

¹²⁶ From MMPZ "Media Weekly Update," November 29 – December 5 2004.

Operating under AIPPA requires all journalists to register. I am supposed to apply in January (2005) for a 1-year license and pay about 1000 US dollars. There's no guarantee that I will get the license. Since I can't afford it I will not register and will go underground without accreditation. This means that I can no longer work freely. It's very difficult to get official government positions. Independent journalists have been accused of being pro-MDC. Those from ZANU who approach independent journalists are those who feel the party has wronged them. As an independent journalist I couldn't cover the ZANU PF congress (in December). They will probably do the same thing in the run-up to these elections and we will not be able to cover official voting procedures, electoral processes. The coverage isn't going to be as good as it should be. Police refuse to give journalists an official statement on issues.¹²⁷

Section 20 of Zimbabwe's constitution guarantees the rights of an individual to hold opinions and to receive and impart ideas and information without interference.¹²⁸ The legal obstacles placed on journalists infringe upon these rights. As one newspaper editor observed, "As media organizations we need to provide information to the electorate but empowerment of the electorate is being hampered by lack of information because of the legal obstacles."¹²⁹

A ZANU PF supporter in Mutoko confirmed some of the obstacles placed before journalists visiting the rural areas of Zimbabwe: "Journalists who come here have to first talk to the DA (District Administrator), the council, and then the person at the council responsible for information and then if they confirm you are from the state media, you are allowed. They can't just come and question people."¹³⁰

The government has also restricted reporting by the international media and expelled all foreign correspondents from the country. On February 14, 15 and 16, 2005 government intelligence officers raided the offices of three local journalists reporting for the Associated Press, the Times (London) and Bloomberg economic news. On February 14, the journalists were interrogated for two hours and accused of spying and practicing without proper accreditation under AIPPA. The three journalists eventually went into

¹²⁷ Human Rights Watch interview, Bulawayo, December 13, 2004.

¹²⁸ Constitution of Zimbabwe, section 20.

¹²⁹ Human Rights Watch interview with Vincent Kahiya, Editor, Zimbabwe Independent, February 16, 2005.

¹³⁰ Human Rights Watch interview, Mutoko, February 14, 2005.

hiding and then fled the country after they were tipped off that police were planning to arrest them on allegations of spying.¹³¹

Equal access to the public media

Most of those in rural Zimbabwe listen to the radio as their main source of political news. This reinforces the importance of the broadcast media in the run-up to elections. In Zimbabwe all radio and television stations are government controlled.

Section 2.1.5 of the SADC Principles and Guidelines Governing Democratic Elections calls on SADC member states to adhere to the principle of: “equal opportunity for all political parties to access the state media.”¹³² Although the Zimbabwe Broadcasting Holdings (ZBH) carried some brief footage of opposition members electioneering¹³³, organizations such as ZESN and MMPZ informed HRW that equal access to the public media was limited.¹³⁴ A former newspaper editor observed, “There is very little access for opposition candidates to the so-called public media which is partisan and doesn’t provide a platform to those who oppose government.... this prevents the public from making a choice.”¹³⁵

During Human Rights Watch’s mission in Zimbabwe, MDC members and media organizations reported that the opposition was not being accorded equal access to the state media.¹³⁶ The government defended through the media the lack of equal access and pointed out that media coverage would only be given to parties contesting the election during election time.¹³⁷ According to MDC candidates and media organizations interviewed by Human Rights Watch, state radio and television continued their biased coverage of the electoral environment even after the election date was set and the MDC announced it would participate in the elections.¹³⁸

¹³¹ Human Rights Watch researchers were informed of the raid by other independent journalists on 16 February. See also “Journalists forced to flee the country fearing for their safety,” IFEX, February 23, 2005; “Four journalists flee the country”, The Daily News Online, February 23, 2005; “Three journalists flee Zimbabwe,” New York Times online, February 21, 2005

¹³² SADC Principles and Guidelines Governing Democratic Elections.

¹³³ Human Rights Watch interview, Media Monitoring Project of Zimbabwe, February 4, 2005.

¹³⁴ See MMPZ briefing paper 1, “Media and the 2005 Parliamentary Election” February 16, 2005.

¹³⁵ Human Rights Watch interview, Harare, February 16, 2005.

¹³⁶ Human Rights Watch interviews Harare, February 2005.

¹³⁷ The Daily Mirror, January 5, 2005.

¹³⁸ Human Rights Watch interviews with Dumisani Ghandi and Andy Moyse, MMPZ, Harare, February 2005.

In a welcome move, on February 16 the government gazetted regulations to govern access to the broadcast media by political parties for campaigning purposes.¹³⁹ The state-run *Herald* newspaper reported that under the regulations, all political parties and candidates contesting the elections would be entitled to airtime on all ZBH radio and television stations.¹⁴⁰

Human Rights Watch received reports that after these regulations were put into place, the level of access to the media for the opposition increased on state radio and television.¹⁴¹ In a letter written to the MDC, ZBH informed the MDC that they would be given ninety-one minutes of advertising time on radio and ninety-one minutes of advertising time on television although the MDC would have to pay for these adverts. While this move was welcomed by the MDC, they reported that they were still unable to get equal access during news coverage. For example, when ZANU PF launched its campaign it was given four hours of airtime. In contrast the MDC's election launch got a four minute mention.¹⁴²

Biased coverage in the state-run print media

The new regulations governing access to the broadcast media are a positive step towards equal access to the media for all parties. However, these regulations do not take into account the state-owned print media. Under the SADC Principles and Guidelines, equal access to the media means that all public media including the print media should give equal access to all political parties.

Unequal access and biased coverage of the elections is a serious concern in the public print media. State-run newspapers such as the *Herald* and *The Chronicle* continue their biased coverage of the elections. The *Daily News*, which previously provided an alternative voice, remains closed, despite a decision by the Supreme Court on March 14, 2005, allowing the paper to re-apply for a license to publish.¹⁴³ Of the remaining independent newspapers, only the *Independent* and the *Standard* (both weekly newspapers) provide a truly alternative and unbiased voice to the *Herald* newspaper.

¹³⁹ "All parties granted TV, radio access," *The Herald*, February 17, 2005.

¹⁴⁰ *Ibid.*

¹⁴¹ Human Rights Watch telephone interview researcher MMPZ, London, March 1, 2005.

¹⁴² Human Rights Watch telephone interview with Dumisani Ghandi, MMPZ, and MDC Director of Information, London, March 1, 2005.

¹⁴³ Despite the ruling, the Supreme Court refused to declare key sections of AIPPA unconstitutional as requested by the paper's lawyers. See also "Zim Court scraps ban on paper," *News 24* online, March 14, 2005, "Zimbabwe paper refused permission to publish," *VOA news*, March 14, 2005.

Although independent newspapers are distributed in many parts of the country, it remains difficult for those who want to read them to do so. In some of the provinces Human Rights Watch visited, a number of people reported that they furtively read independent newspapers because of threats and harassment from ZANU PF youth and war veterans.¹⁴⁴ They described incidents from past elections in 2000 and 2002 that made them wary of openly reading independent newspapers. Even ruling party supporters felt intimidated. One ZANU PF supporter in Mutoko told Human Rights Watch that since fellow ZANU PF supporters had questioned him for carrying a copy of the *Daily News* in 2002 he had stopped reading independent newspapers.¹⁴⁵ MDC supporters in Rusape informed Human Rights Watch that they were forced to hide their copies of the *Independent* newspaper inside copies of the state-owned *Herald* newspaper.¹⁴⁶ Such intimidation makes it difficult for Zimbabweans to receive a balanced and informed view point on election conditions in the country.

Some of Zimbabwe's National Laws: Key Concerns

The Public Order and Security Act (POSA)

POSA was enacted in January 2002. It introduces a range of criminal offences, including criticism of the President, whether his person or his office; the publication of a false statement that prejudices or is intended to prejudice the country's defense or economic interests, or which undermines or is intended to undermine public confidence in a law enforcement agency, and the holding of a public gathering without giving the police four days' written notice.

Key sections

Section 15 makes it an offence punishable by up to five years imprisonment to publish or communicate false statements prejudicial to the state including undermining public confidence in a law enforcement agency, the prison services or the defense forces of Zimbabwe.

Section 16 makes it an offence punishable by up to one year imprisonment to undermine the authority of or insult the president including making any false statements about or

¹⁴⁴ Human Rights Watch interviews with residents in Murehwa, Mutoko and Rusape, December 2004 and February 2005.

¹⁴⁵ Human Rights Watch interview, Mutoko, February 14, 2005.

¹⁴⁶ Human Rights Watch interview, Rusape, December 18, 2004.

concerning the president that could endanger feelings of hostility or cause hatred, contempt or ridicule of the president.

Sections 23-31 on public gatherings provide the police with extensive powers to regulate and control any public gatherings, including banning or breaking up meetings if they are deemed to endanger public order.

Section 24 requires the organizer of a public gathering to give at least four clear days notice of the holding of the gathering to the regulating authority for the area for which the holding is being held.

The Access to Information and Protection of Privacy Act (AIPPA)

AIPPA introduced in 2002, creates a government-appointed Media and Information Commission (MIC) which has wide-ranging regulatory powers over the media, including the accreditation of journalists, the registration of media houses, and the enforcement of professional and ethical standards in the media. The MIC's governing Board is appointed by the Minister of Information.

The Act makes it mandatory for journalists and media houses to register with the MIC and prohibits non-Zimbabwean journalists or individuals without permanent residency to work as journalists, unless for restricted periods and with the permission of MIC. Journalists and media houses that operate without accreditation are liable to two years in prison. Journalists must renew their accreditation annually, for which there is an application fee, while media houses must re-register every two years. The MIC may cancel registration for a wide-ranging number of reasons. On January 7 2005, the government passed an amendment to AIPPA that provides for criminal penalties to journalists who operate without a license.

The Miscellaneous Offences Act (MOA)

MOA was enacted in 1964 under colonial rule. It provides for the punishment of a broad range of offences including penalties for riotous or indecent conduct or threats in a public place. The police have frequently used MOA to arbitrarily arrest opposition and civil society activists on spurious charges.

Section 7 (a) of MOA makes it an offence punishable by a fine or imprisonment of up to one year if a person is guilty of riotous or indecent conduct. Section 7 (b) makes it an offence punishable by a fine or imprisonment of up to one year if a person uses any

threatening, abusive or insulting words or behaves in a threatening, abusive or insulting manner with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned. Section 7 (c) makes it an offence punishable by a fine or imprisonment of up to one year if a person employs any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or which are likely adversely to affect the safety of the public or does any act which is likely to lead to a breach of the peace or to create a nuisance or obstruction.

The Zimbabwe Electoral Commission Act

The Zimbabwe Electoral Commission (ZEC) Act creates the Zimbabwe Electoral Commission as an ostensibly independent supervisory electoral body. The Act gives the president and the ruling party excessive power to appoint commissioners and creates too many opportunities and requirements for ministerial power to intervene in the Zimbabwe Electoral Commission.

The ZEC Act also makes voter education an effective monopoly of the partisan ZEC. Nongovernmental organizations may only provide voter education if they are registered under the Non-Governmental Organizations Act (still to be assented to by the president) and if the ZEC approves their participation and their voter education materials. Only the ZEC may receive foreign funding for voter education. This provision effectively prevents most NGOs, which have depended on foreign funding, from providing voter education.

The introduction of the ZEC has created confusion about whether it or the Electoral Supervisory Commission (ESC) has supreme authority. The ESC is also supposed to be an independent body that supervises elections. The ESC enjoys a constitutional mandate, which is consistent with the trend for electoral commissions in SADC countries, whereas the ZEC is governed by an act of parliament. Whether the ESC or the ZEC is deemed supreme, the role of the president in the appointment of ESC and ZEC commissioners guarantees that both bodies are partisan and not independent.

The ZEC Act and the Electoral Act prescribe different functions for the ZEC and the ESC, thereby fragmenting rather than concentrating electoral authority. For example, the ESC is involved in observer accreditation and election monitoring in which the ZEC has no role.

The ZEC only became operational in February 2005. By this time, the ESC had supervised the registration of voters and the inspection of the voters' roll. The

Registrar-General is responsible for these tasks. Also, the Delimitation Commission, another body composed of presidential appointees, had already delimited electoral constituencies. The registration of voters, the inspection of the voters' roll, and the delimitation of boundaries have all been tainted in the past because they have been conducted by government appointees in a non-transparent and discriminatory way.

The Electoral Act

The Electoral Act removes the president's power to make regulations by statutory instruments. This is a positive step. However, the Justice Minister still retains the power to make regulations by statutory instrument. Legislating through hastily introduced regulations that do not require the approval of parliament was a hallmark of the 2002 presidential election. A number of retrogressive electoral measures introduced by statutory instrument in the past two national elections have been incorporated in the new electoral acts. These include proof of residency requirements, provisions relating to the invitation and accreditation of observers and to the restrictive use of postal ballots to government members.

The amended Electoral Act retains the proof of residency requirements from the 2002 election. Proof of residency requirements effectively disenfranchise many potential voters, especially urban youth. Since the opposition draws much support from urban youth, these requirements discriminate against it. Lodgers must provide rates bill in their name and with their address, or a letter addressed in their name from a store with which they have a credit account, or a lodger's card, which is an agreement with the renter. Even those living with their parents must prove that they are a "natural child". In such cases, a parent must accompany them to obtain an affidavit from a lawyer, a commissioner of oaths, or the police. Since rates bills are almost always in the landlord's name, lodgers are unlikely to retain any bills in their name. The lodger's card and the affidavit cost money and take time, thus straining resources.

The Electoral Act provides for who invites and accredits observers, both foreign and local. Members of the government and the Electoral Supervisory Commission, which is made up of presidential appointees, are responsible for inviting and accrediting observers. This process of selecting observers does not favor the choice of independent observers. Moreover, the price of accreditation per observer is high and will inhibit the numbers of local observers that nongovernmental organizations can afford.

The Electoral Act limits the use of the postal ballot to government employees on government business. The 3.4 million Zimbabweans living in exile because of the political and economic crisis in the country are unable to vote.

The Electoral Act permits the ZEC and the ESC to second the uniformed services—the defense forces, the prisons service, and the police—to perform crucial tasks in the election. The police and the army have been actively or tacitly involved in state-sponsored violence in the previous two national elections. Their participation in the election processes is likely to intimidate voters.

The Electoral Act also provides for an Electoral Court to hear and determine election petitions, among other matters. The Chief Justice of the Supreme Court, after consultation with the Judge President of the High Court, must appoint at least one High Court judge to preside over the Electoral Court. Appeals must be determined within six months from the date of lodging the appeal. The latter provision is welcome, especially because the courts deliberately stalled the opposition party’s petitions arising from the 2000 election. However, the judiciary is no longer viewed as partisan. The Chief Justice and the Judge President are reportedly ruling party supporters, as are all but one Supreme Court judge and most of the High Court judges.

Glossary of Acronyms

AIPPA	Access to Information and Protection of Privacy Act
CID	Criminal Investigation Department
CIO	Central Intelligence Organization
COSATU	Congress of South African Trade Unions
ESC	Electoral Supervisory Commission
IRIN	UN OCHA Integrated Regional Information Network
MDC	Movement for Democratic Change
MIC	Media and Information Commission
MISA	Media Institute of Southern Africa
MMPZ	Media Monitoring Project of Zimbabwe
MOA	Miscellaneous Offences Act
POSA	Public Order and Security Act
SADC	Southern African Development Community
ZEC	Zimbabwe Electoral Commission
ZANU PF	Zimbabwe African National Union - Patriotic Front
ZBC	Zimbabwe Broadcasting Corporation
ZBH	Zimbabwe Broadcasting Holdings

ZDF
ZESN

Zimbabwe Defense Force
Zimbabwe Election Support Network