



Promoting Credible Elections and Democratic Governance in Africa

# ELECTION UPDATE 2005

## ZIMBABWE

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### ELECTION ADMINISTRATION, CONSTITUTIONAL AND LEGAL FRAMEWORK

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## ZIMBAWE

### ELECTION ADMINISTRATION, CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE 2005 PARLIAMETARY ELECTIONS

#### Introduction

The stage is set for Zimbabwe's historic parliamentary elections to be held on 31 March 2005, the fifth since independence. Zimbabwe's elections have become landmark elections in the SADC region, as well as

worldwide. They are usually marked by anxiety and scepticism by some countries, as well as steering the spirit of brotherhood in other developing countries. The 2002 Presidential elections had a divisive effect in that while some countries openly condemned and criticised the manner in which the elections were conducted, other states stood steadfastly behind Zimbabwe, stressing the need for sovereignty and autonomy. Given this backdrop, the 2005 general elections are likely to stir even more debate and controversy.

#### THE ELECTORAL SYSTEM IN ZIMBABWE

Parliamentary elections in Zimbabwe must take place at least every five years and Presidential elections every six years. General elections must be held within a period not exceeding 90 days after a proclamation dissolving Parliament is made. Zimbabwe is currently divided into Parliamentary constituencies and, in each of these an election will be conducted if there is more than one candidate standing. A system of First-Past-the-Post is utilised to determine the outcome of the election.

A person wishing to be registered as a voter for a particular constituency must complete a prescribed form and lodge it with the constituency registrar for that particular constituency. The person concerned must be resident in that constituency at the date of his/her claim but this regulation is waived when it relates to uniformed forces and people on diplomatic missions. The Delimitation Commission determines the limits of the constituencies into which Zimbabwe is to be divided and the present number is 120. Each constituency should contain roughly the same number of registered voters. On the completion of the Delimitation Commission (D.C)'s task, a report is presented to the President. The President can refer back to the D.C on any matter arising from the report for further consideration and final decision. After receiving the report, the President proclaims and declares the names and boundaries of constituencies in the *Gazette*.

The Constitution defines Zimbabwe as a Constitutional democracy by giving supremacy to the Constitution that outlines among other issues, basic rights and freedoms. The Electoral Act Chapter 2:13 provides for bodies established to conduct free and fair elections. These are the Delimitation Commission (DC), the Zimbabwe Election Commission (ZEC), and the Electoral Supervisory Commission (ESC).

## **THE ADMINISTRATION OF ELECTIONS**

### **The Zimbabwe Electoral Commission**

Section 58(4) of the Constitution makes provision for an Electoral Act to be put in place in order to conduct elections in Zimbabwe. The Electoral Act Chapter 2:13 is one such act. The Electoral Act put in place the Zimbabwe Electoral Commission, an independent authority to administer elections and referendums in Zimbabwe. The Chairperson heading the Commission shall be a person qualified as a judge of the High Court or the Supreme Court appointed by the President after consultation with the Judicial Service Commission. Four other Commissioners, at least two of whom should be women, are appointed by the President from a list of seven nominees submitted by the Committee on Standing Rules and Orders, which is a Parliamentary Committee appointed under section 57(2) of the Constitution.

### **Functions of Commission**

The Zimbabwe Electoral Commission has the following functions:

- To prepare for and conduct Presidential, Parliamentary, elections governing bodies of local authorities as well as referendums.
- To ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law.
- To direct and control the registration of voters by the authority charged with that responsibility

- To compile voters' rolls and registers
- To ensure the proper custody and maintenance of voters' rolls and registers
- To design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres
- To conduct voter education and to safeguard all ballot boxes, ballot papers and other electoral documentation and materials entrusted to the custody of the Commission
- To give instructions to the Registrar-General Voters in regard to the exercise of his or her functions under the Electoral Act
- To ensure the efficient, proper, free and fair conduct of elections
- To keep the public informed about the delimitation of constituencies and other electoral boundaries and the location of polling stations as well as voters' rolls and the times and places at which they are open for inspection
- To keep the public informed about political parties and candidates contesting every election or supporting or opposing any question put to a referendum
- To exercise any other functions that may be conferred or imposed on the Commission by the Electoral Act or any other enactment.
- Subject to the Constitution and this Act, the Commission shall not be subject to the direction or control of any person or

authority in the exercise of its functions, procedures and processes.

The establishment of an Electoral Commission is a step forward in comparison to previous elections where no attempt was made for such a Commission. The establishment of the ZEC is in line with SADC Principles and Guidelines governing the conduct of democratic elections. In Zimbabwe, where elections are governed by three bodies, the ESC plays a supervisory and co-ordinating role thereby ensuring total control of electoral processes.

However concerns have been raised as to the full independence and impartiality of the electoral authority, as mandated in the SADC Principles. The method of appointing electoral commissioners does not provide for their sufficient independence. Although the appointment is in consultation with the Judicial Service Commission, the latter body is widely known to be partisan.

The body consists of the Chairperson of the Public Service Commission (PSC), the Registrar General and a Judge, all of whom are presidential appointees and sympathisers of the ruling party. There is a prudent attempt to include a Parliamentary Committee on Standing Rules and Orders. A Parliamentary Committee is a democratic attempt to include all political parties which sit in Parliament and hopes to ensure that political parties are adequately represented. This is not the case in Zimbabwe

where as the ruling party dominates major committees.

The Act does not adequately restrict high-ranking political party officeholders from being appointed as Commissioners. Although the current trend is that no high ranking politicians are involved in the Commission, there is a need to be explicit in order to safeguard the independence of the Commission. The other concern raised is that the Act provides numerous opportunities for ministerial intervention in the work of the Commission. This development compromises the independence of the Commission in that the Minister, being a political figure is likely to direct the Commission in a partisan manner. Lastly, the establishment of the Commission solely through an ordinary statute makes it vulnerable to repeal; it would be prudent to make it a Constitutional provision.

It is highly recommended that the government revisit the Electoral Act to ensure that the Electoral Commission is independent, impartial and operates in compliance with SADC trends. Individuals and groups outside the presidium and political parties should be more involved in the appointment process. The Commission should only be accountable to Parliament and not to organs or individuals who have a stake in the election.

#### ***Removal of Commissioners from Office***

A Commissioner may be removed from office due only for his/her inability to discharge

the functions of office, whether arising from physical or mental incapacity or conduct rendering him/her unsuitable as a Commissioner. Should the President consider that the removal from office of a Commissioner ought to be investigated the President is able to appoint a tribunal to inquire into the matter.

The provisions stipulated are similar to those pertaining to the removal of a judge from office. This is quite a plausible development given the stringent measures put in place to remove commissioners from office. This ensures that commissioners are not removed from office for no apparent reason and it also safeguards commissioners from playing in the hands of those who appointed them.

Concern remains with regard to the removal from office of the commissioners, especially the role of the President in appointing an investigative tribunal. History has taught Zimbabweans that presidential appointees tend to fail the impartiality test and this aspect has to be addressed to ensure their independence and impartiality.

#### ***Decentralisation of the Commission***

The Act stipulates that the Commission shall endeavour to establish such provincial and district offices as will enable it to exercise its functions more effectively throughout Zimbabwe. Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of the Commission are articulated as follows:

- Commissioners and the Commission's employees and agents should exercise their functions in a manner that promotes conditions conducive to free, fair and democratic elections and referendums and ensure that the secrecy and integrity of voting at both the elections and referendums are respected.
- The Commission and their agents also ensure independence by not interfering, directly or indirectly, with the exercise by a voter of his or her rights under the Electoral Act; and to maintain strict impartiality in the exercise of their functions; and to avoid doing anything in the exercise of their functions. This could be by way of action, speech, attitude or manner, that may give rise to a reasonable apprehension that they are exercising their functions with partiality or bias or place in jeopardy their independence or the perception of their independence or compromise the Commission's credibility, impartiality, independence or integrity.

The move to decentralise ZEC offices is prudent so as to have assistance in the management of elections.

Decentralisation also ensures that officers are in touch with the people and problems that occur during the election period will be dealt with timeously.

### ***Reports of Commission on Elections, Referendums and Other Matters***

As soon as possible after the result of any election or referendum has been announced, the Commission shall submit a report on the conduct of the election or referendum to the Speaker of Parliament, the President and the Minister. In the same way, at the end of the financial year the Commission should submit to the Speaker of Parliament, the President and the Minister a report on its activities during that financial year.

The Act is honourable in intent in the sense that it prohibits Commissioners from wearing political regalia or any such symbol and prohibits them from standing for political office. The only disquieting factor is that the Commissioners have to submit reports to those political figures who have an interest in the outcome of the election thereby eroding the gains the Electoral Act had gained in ensuring a level playing field for free and fair elections.

Of note is the incorporation of the Registrar General's Office into the ZEC. It has been renamed Registrar General Voters. Field work carried out by the researchers reveals that election officers who were working with the old R.G.'s office are still the same people who are working under the new name, ZEC. In the ZEC Constitution, there is a provision that the election body will appoint officers and yet they have only inherited them. Concern is raised as to whether there is going to be renewed impartiality among the same officers who have been accused

of lack of independence over the years. The Act provides that ZEC is responsible for the voters' roll as well as registration of voters yet the body was not even appointed at the time that voter registration was taking place. It was done by the old R.G 'S office. There is no evidence that the ZEC has registered any voters after their appointment. There is growing concern and confusion among political parties, civil society and academics alike as to the composition, the operation and the impartiality of the ZEC.

### **The Delimitation Commission (D.C)**

According to Section 60 of the Constitution, the D.C determines the limits of the constituencies into which Zimbabwe is to be divided. As mentioned previously, Zimbabwe is currently divided into 120 constituencies in which voting can take place.

The Delimitation Commission has completed its work but not without problems. The Delimitation Commission as an appointee of the President is perceived to be biased in favour of the ruling party. The opposition party has a stronghold in all urban areas while the ruling party has the majority of their supporters in the rural areas. The Delimitation Commission noted that the number of urban voters had decreased which resulted in the decreased number of constituencies. The recorded number of registered voters is 5.6 million of which the majority reside in the rural areas. Areas that lost constituencies were Bulawayo, Harare, and Manicaland, each of which lost one seat. These

areas are strongholds of the opposition party. Opposition parties noted that the work of the Delimitation Commission has made a mockery of the promise of electoral reform in the country.

### **The Registrar General**

The Act stipulates that there shall be an R.G's Office of Voters. It was designated as a public office and part of the Public Service. It may assume and exercise any function which, in terms of this Act is vested in a constituency registrar.

The government of Zimbabwe has restructured all four election bodies into two: namely the ESC and ZEC. The Election Directorate and the original R.G's Office fell out at the inception of ZEC. The R.G's Office has been incorporated into the ZEC structures as Registrar of Voters. The Election Directorate has completely disappeared from the electoral system. The move to reduce the number of organisations involved in election administration is highly commendable but the government of Zimbabwe could have done as suggested by the South African observer mission in 2000 by having a single organisation to run the elections. There is confusion over the functions of the two remaining organisations ZEC and ESC over the invitation and accreditation of foreign observers, administration of ballot papers, voter registration and the establishment of polling stations that reduces the transparency of the electoral process. According to a letter written by the opposition

MDC's Secretary General to the Delimitation Commission and copied to SADC dated 2 November 2004, the Registrar General's Office conducted its mobile voter registration exercise in May 2004. This means that the new office of Registrar of Voters is rendered useless since the job had already been done well before the inception of ZEC. The chairperson of the Registrar of Voters is also a longstanding acquaintance of the President and the ruling party and has been recycled from the ESC. This seems to confirm the fears by the main opposition The MDC and other stakeholders fear that the government is making cosmetic changes to the electoral processes in order to convince SADC that it is now in line with the Principles and Guidelines for Democratic Elections.

### **The Electoral Supervisory Commission (ESC)**

The Commission was established under the terms of the Electoral Act and is subject to the law governing the Public Service. At the request of the ESC, other persons may be seconded to assist in discharging its duties.

The main function of this Commission is to supervise the registration of voters and the conduct of the elections. It also prepares reports for the President concerning election supervision without being subject to the direction of any person or authority. The structure comprises 5 members, the Chairperson and two other people being appointed by the President. The appointments are made in consultation with the Judiciary Service Commission

and the Speaker of Parliament. The President has the discretion to accept or reject the advice of the Judiciary Service Commission. The Speaker of Parliament and members of the Judiciary Service Commission are all perceived to be partisan and biased against the opposition parties.

Conditions for democratic elections do not exist in Zimbabwe at the moment because of partisan organs such as the Registrar General's Office and the Electoral Supervisory Commission that govern the conduct of elections. Government should replace such organs in order to increase the democratic space in the country. Unless the political space is opened up, a legitimate ballot is simply impossible regardless of what reforms are introduced to improve the transparency of electoral procedures on the polling day. SADC Principles and Guidelines should therefore be based on the premise that an election is a process and not an event. The litmus test of Zimbabwe's elections lies in the adherence to SADC Principles and Guidelines in conducting democratic elections.

### ***Functions of the ESC regarding monitors***

- Monitoring the conduct of polling and counting of votes at polling stations and constituency centres for the purpose of detecting any irregularities in the conduct of the poll or in the counting of votes
- Bringing any irregularity or apparent irregularity in the conduct of the poll or counting or collating of

votes to the attention of the Presiding Officer or Constituency Elections Officer and request appropriate corrective action to redress irregularity

- Report any irregularity or apparent irregularity to ESC and the Commission
- The ESC shall deploy and appoint in each polling station members of the PSC to act as monitors. All persons acting as monitors must be accredited by the ESC

The ESC employs civil servants to monitor the elections. The R. G Voters Office also employs civil servants to conduct these elections. In most cases, monitors are teachers given their large numbers, and Presiding Officers are usually Heads of Schools. Given the power relations between the monitors and the Presiding Officers, monitors usually endorse the conduct of the Presiding Officer during the polls because Presiding Officers are normally the superiors of monitors in the education system, so how can they be expected to contradict their superiors? Monitors being civil servants are most likely to pay allegiance to the government they serve and their neutrality and objectivity is highly questionable.

#### ***Functions of the ESC Regarding Observers***

The ESC is designated to create an Observers Accreditation Committee consisting of a Chairperson and Vice, one person nominated by the Office of the President and Cabinet, three people appointed by Ministers of Legal and

Parliamentary Affairs, Foreign Affairs, Information and Publicity.

#### ***The Observers Accreditation Committee shall accredit observer in the following manner:***

- Individuals representing foreign countries, international or regional organisations invited by the Minister of Foreign Affairs to observe any election
- Individuals representing bodies in the region that exercise functions similar to those of the ESC
- Eminent persons from outside the country on the invitation of the Minister of Foreign Affairs
- Eminent persons from Zimbabwe invited by the Minister to observe any election
- Individuals representing organisations at the invitation of the Minister.

The accreditation committee is made up of political appointees from the government through the President's Office and Cabinet. Of concern is that all observers are accredited by invitation. Since the independence of the committee is questionable the possibility of inviting individuals and organisations which are sympathetic to their ideology is very high. The government of Zimbabwe has so far invited observers from Asia, the Caribbean, South America, African Union, and SADC and only Russia was invited from Europe. Most of these countries are headed by dictators and are likely to note that Zimbabwe's governance is more democratic than their own. The countries

pay allegiance to socialist/communist ideologies, an ideology officially discarded more than ten years ago. It is puzzling to imagine what Zimbabwe can learn from countries with different ideological orientation. The Anti Blair anti West campaign manifesto by the ruling party has resulted in Zimbabwe inviting these states.

It should be noted that there is a difference between monitoring and observer status. Observers have no say in the election process. Monitors are selected from the Zimbabwean public service only. It would have been more transparent if some monitors were selected from foreign invited organisations if the Zimbabwean government has nothing to hide in this election. Invited foreign organisations, unlike monitors cannot make any contributions regarding any irregularities observed which makes the process ineffective. They are accountable to their respective organisations and not to the people of Zimbabwe. All invited observers are also expected to cover their own expenses during the observation mission. This restricts local organisations which are keen to observe the elections but lack the required financial resources given that foreign funding of political parties and civil society organisations is prohibited by the Political Parties (Finance) Act and the proposed NGO Bill

#### ***Reports of the ESC Concerning Elections***

As soon as practicable, the ESC is mandated to present a report to the President unless however, it is a Presidential

election in which case, the report would be presented to the Minister. The report would be expected to cover the conduct of the election and the opinion of ESC on the freeness and fairness of the election.

### ***Duties of ZEC towards the ESC***

The ZEC is mandated to provide the ESC with reports on the registration of voters, conduct of elections as it requires. The ZEC is to keep it informed of all matters relating to the exercise of its functions in terms of this Act. The ZEC may also refer to ESC for advice on matters relating to registration of voters and the conduct of elections.

There appears to be much confusion regarding the two institutions. Although the ZEC reports to the ESC, prominence has been given to the ZEC and to such an extent that the Chairperson of the ESC was compelled to announce that his organisation is still in existence and in control of the elections. Duplication of functions is feared as both institutions will attempt to prove their superiority.

### **CONSTITUTIONAL, LEGAL AND INSTITUTIONAL FRAMEWORK**

Zimbabwe's Parliamentary elections are governed mainly by the Constitution and the Electoral Act. It should however be noted that other legislation has an impact on the conduct of elections. These include the Political Parties (Finance) Act, the Broadcasting Services Act, the Public Order and Security Act, the Access to

Information and Protection of Privacy Act and the Presidential Powers Temporary Measures Act. The following are the Statutory Instruments (S.I) that govern the 2005 elections in Zimbabwe.

### **Statutory Instruments that Govern the 2005 Parliamentary Elections in Zimbabwe**

- S.I 3A of 2005 declares constituencies prepared by the Delimitation Commission which apply in the 2005 General election. It proclaims names of constituencies and their boundaries
- S.I 15 of 2000 dissolved parliament on the 31<sup>st</sup> January and the voters roll was closed on 4 February 2005 in preparation for polling. Friday 18 February 2005 was set as the day for nomination courts to sit and accept nomination papers for aspiring candidates. Thursday 31 March was set as the polling date for the general election. The same S.I provided for the sitting of the Electoral College to elect 10 chiefs on 8 April 2005.
- S.I 16 of 2005 provides for ZEC as a Commission and as an Act to come into being on 1 February 2005
- S.I 17 of 2005 provided for the Electoral Act to come into force on 1 February 2005.

The government of Zimbabwe is credited for complying with the constitutional provisions governing democratic elections and SADC Principles and Guidelines as stipulated in

those above mentioned statutory instruments. However, of concern is the lateness with which the statutory instrument that provided for the creation and coming into being of the ZEC Act given the pivotal role that the ZEC is expected to play in the entire election process. The ZEC was put in place on 1 February, yet it was supposed to be instrumental in the compilation of the voters' roll. Its proclamation was announced on the 31 January 2005 and aspiring candidates should have been allowed to lodge their papers on 1 February. However the ZEC was not ready and did not accept nomination papers until 17 February. This gave political parties two days in which to lodge their nomination papers with the court. Although all candidates were able to file their nomination papers, political parties were forced to work under immense pressure yet ZEC had 16 days to accept the nomination papers. One political party requested the postponement of the nomination court day citing lack of preparedness but it was turned down.

### ***An Analysis of the Electoral Act in Relation to the Legal Framework***

The Act provides for the procedure and conditions of service of the ESC and its functions with respect to monitors and observers. It provides for the duties of the ZEC towards the ESC and makes provision for the Registrar General (R.G) Voters and Constituency Registrars. The Act also makes provision for the preparation, compilation and maintenance of voters' rolls. It prescribes the residency

qualifications of voters and the procedures for nomination and election of candidates both to, and the filling of vacancies in Parliament. In addition it also provides for the conduct of elections and the proceedings which may be taken against undue elections. It establishes the Electoral Court and provides for its functions.

### **General Principles of Democratic Elections**

Subject to the Constitution and this Act, every election should be conducted in a way that is consistent with certain principles. These embody the fact that the authority to govern should be derived from the will of the people and should be demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot. It therefore means that every citizen has the right to the following:

- Participate in government directly or through freely chosen representatives and without distinction on the grounds of race, ethnicity, gender, language, political, religious beliefs, education, physical inability or social economic standing to stand for office and cast a vote freely
- Join or participate in activities of a political party of his/her choice
- Participate in peaceful political activities intended to influence policies and composition of government
- Participate through civic organisations in peaceful

activities to influence and challenge the policies of government

- Every political party has a right to operate freely within the law, sponsor one or more candidates in every election to campaign freely within the law and have reasonable access to the media.

The Electoral Act makes provision for democratic elections as stipulated in the SADC Principles and Guidelines. However there are laws in place that render these principles ineffective. POSA violates people's right to participate in political activities by denying them freedom of assembly and association. The right of the people to influence government through peaceful means is curtailed. The Political Parties (Finance) Act does not allow political parties to access funding and donations from foreign sources. Given the high registration fees required for political office, this Act automatically discriminates against individuals and small political parties from standing for political office.

The Electoral Act acknowledges that every political party has the right to 'reasonable' access to media coverage. This provision is highly commendable but the state controlled media is still reporting negatively on the activities of the main opposition party. Senior government and ZANU PF officials continue to peddle hate messages against opposition parties. The ruling party went as far as composing a campaign album that is full of hate songs against the MDC.

The Access to Information and Protection of Privacy Act (AIPPA) is another example of legislation that still hinders possibilities of a democratic election process. The provisions of this piece of legislation are by and large contrary to the provisions and principles of democratic elections laid out in the Electoral Act. It muzzles the media as shown by the recent threats against *The Independent Newspaper* by the chairman of the Media and Information Commission and his comments about a new publication, *The Zimbabwean*. It is a newspaper owned by Zimbabweans in the United Kingdom. The chairperson of the Media and Information Commission vowed to stop the distribution of that paper in Zimbabwe. This shows the level of intolerance, lack of freedom of expression and the media as a marketplace of ideas and divergent views. Unless the media is not regularised to allow balanced reporting and coverage of all political players then it becomes difficult to conclude that the government is serious and committed to levelling the political playing field. It should be realised that it is of no use the government continuing promulgating new rules which it, does not itself, respect. For example if AIPPA remains effective legislation, it logically follows that the contrast between this law and the provision of free access to the media by all political players remains a fallacy. It is therefore necessary for the government to review this law if any meaningful changes are expected in the media access and coverage of all the political players.



The proposed NGO Bill, if passed in its current state, will also curtail the activities of civil society in the issues of governance and human rights. Civil society adds credibility to the electoral process and its absence will bring doubt on the legitimacy of the whole exercise.

### ***The Political Parties (Finance) Act***

In 1992, Parliament enacted the Political Parties (Finance) Act No. 14 of 1992 which provided for the funding of political parties. According to the provisions of the Act finance to party would be given to a party that had won at least 15 seats in Parliament. The United Parties in 1997 challenged the 15 seat threshold in the Supreme Court as un-constitutional and the Court diminished the threshold to 5%. This amendment was made through the Political Parties (Finance) Amendment Act No. 20 of 1997. The amount allocated through this Act is grossly inadequate given the fact that political parties are prohibited from receiving foreign funding.

### ***The Public Order and Security Act (POSA) 2002***

Various legislative instruments need to be revisited should the 2005 general elections adhere to the SADC Principles and Guidelines. The Public Order and Security Act (POSA) 2002, is one. It was derived from the Law and Order Maintenance Act (LOMA) introduced during the colonial era in order to suppress any form of civil unrest. POSA provides for the prosecution of journalists, the media houses and individuals for making statements that are

perceived to cause “fear, alarm or despondency” in the country. Where law enforcement agencies have been applying selective justice victimising the opposition and individuals with dissenting voices, the Act was used and is likely to continue being used as a tool of repression. Clearly, freedom of expression is hindered where the interpretation of the Act is so vague that it is subject to manipulation. The Act criminalises statements or acts that bring the President, government or the Constitution into disrepute, again the question of interpretation and selective justice are areas of concern.

Civil society, human rights activists and lawyers perceive POSA as a draconian piece of legislation meant to suppress the very society it seeks to regulate. The Act also restricts public demonstrations, public gatherings and gives the police wide ranging powers to regulate and control political gatherings. Opposition party supporters and activists have suffered the brunt of this legislation and an opposition Member of Parliament was arrested in January 2005 for addressing a peaceful political rally. Although the pre-election period in 2005 has been relatively quiet compared to the 2000 and 2002 elections, opposition party supporters continue to be harassed and arrested.

This is in clear conflict to SADC Principles and Guidelines that aim to ensure freedom of movement, assembly and speech.

### ***Access to Information and Protection of Privacy Act (AIPPA)***

The Access to Information and Protection of Privacy Act (AIPPA) Amendment Act 2005 enables the appointment of a Media and Information Commission of which three of members are nominated by an association of journalists appointed by the Minister of Information and Publicity after consulting the President. The Act criminalises journalists who practice with no accreditation. The Minister of Information and Publicity has the power to suspend a member of the Commission for specified reasons. The rationale of the Act was to protect the state from attacks by enemies of the country. Foreign journalists are barred from working permanently in Zimbabwe. The implementation of the Act has resulted in the shutdown of two independent newspapers and the arrest of scores of journalists from the independent media.

### ***The Broadcasting Services Act (2002)***

The Broadcasting Services Act (2002) is another piece of legislation that has caused concern. It was enacted to regulate the conduct of the public media during elections. The Act mandates responsible and equal opportunities for the broadcasting of election matter to all parties contesting the elections.

Capital Radio (Pvt Ltd) an independent broadcasting company challenged the constitutionality of the Broadcasting Act and the Supreme Court found the Act to be unconstitutional as it violated the freedom of expression. The government

promulgated this Act for six months and reintroduced it through the Presidential Powers (Temporary Measures) Act. The Act is perceived to be draconian as it does not define what constitutes "reasonable reporting". It has not offered opposition parties any access to the media and any coverage of activities of the opposition has always been in the negative. This has resulted in biased reporting and deliberate misrepresentation of political views.

The Act also sets out that the Minister decides who gets a license and the conditions attached to that license. Broadcasting licenses are only issued to Zimbabweans resident in the country and 75% local programming must be respected. Community broadcasting licensed stations are not allowed to carry political content in their programmes.

There appears to be gross violation of SADC Principles and Guidelines. The 2005 general elections in Zimbabwe cannot be considered fair and democratic if AIPPA and the Broadcasting Services Act are left intact as they both infringe on individuals' rights to free expression. The appointment of members to the Media and Information Commission and the Media Ethics Committee poses problems for democracy, impartiality and political tolerance. Where there is gross polarisation of civil society, as in the case with Zimbabwe, both committees are perceived to be partisan and pro- the ruling party. The long standing tradition of Presidential and Ministerial appointments has compromised the right to be

informed. At least eleven journalists from the independent media were arrested on police suspicion that they published falsehoods. Government journalists who clearly publish falsehoods have not been arrested or even questioned. This is an indication that those perceived to be in the opposition camp have been denied accreditation. The closing down of two independent newspapers and the denial of licenses to radio stations have resulted in the monopolisation of information by the state media.

Although the Act was found to be unconstitutional in the courts of law, as mentioned previously, the basic tenets of the legislation were re-introduced through the Presidential Powers (Temporary Measures) Act which is a defeat of justice. While the President has powers to enact laws, there is an obvious abuse of such power. Furthermore, the Zimbabwe Broadcasting Corporation (ZBC) has the right to drop or edit offensive material. The right is reserved for the ZBC to decide what is offensive and what is not. The Chief Executive of the Corporation is a ministerial appointee of the corporation and is grossly partisan; how can he be expected to make non partisan decisions?

Democratic elections cannot take place where the constitutional and legal context governing these elections is undemocratic. AIPPA, the Broadcasting Services Act and various committees and commissions governing election in Zimbabwe are clear violations of SADC Principles

and Guidelines. The Acts violate the right to free expression, the right to receive information and be informed, the right to equal access to the state media and therefore the right to participate in political decision making. There is need to repeal all these Acts and reformulate committees that are non partisan.

### ***Non-Governmental Organization (NGO) Bill***

The proposed Non-Governmental Organization (NGO) Bill was set out to bar NGOs from operating in areas of human rights and governance. It also seeks to prevent NGOs from receiving foreign funding, which will stifle voter education. In 1995, the government amended electoral regulations to include civic society as election monitors. The NGO Bill, if passed in its present form, means there will be no monitors from the civil society who added credibility to the electoral processes in the past. The Bill violates SADC Principles and Guidelines on the conduct of democratic elections in that voter education is hindered and therefore the right to impart and receive information in order to make an informed choice is violated. The Bill, if passed in its present form, violates article 25 of the International Convention on Civil and Political Rights (ICCPR) which Zimbabwe acceded to in 1991 which states that every citizen shall have the right and opportunity to take part in the conduct of political affairs of their country, directly or through representatives. It also sets out free participation of all citizens in elections. The Bill will violate the African

Charter on Human and People's Rights (ACHPR) signed in 1986 by Zimbabwe which recognises and gives effect to human rights and freedoms. Elections are political processes and it is improper for the proposed law to bar civil society from relying on foreign funding for their operations towards democracy, and to stop them from participating in electoral processes of their country.

### ***Presidential Powers (Temporary Measures) Act***

The Constitution of Zimbabwe confers exceptionally wide legislative powers upon the President in respect of electoral matters. The President may make such statutory instruments as he considers necessary or desirable to ensure that any election is properly and efficiently conducted. The President is empowered to deal with any matter or situation connected with, arising out of or resulting from the election. The statutory instruments provide for the following:

- Suspending or amending any provision of the said Act or any other law in so far as it applies to any election
- Altering any period specified in the Act which has anything to do with, arising out of or resulting from elections
- Validating anything done in connection with elections, arising out of or resulting from any election in contravention of any provision of this Act or any other law
- Empowering any person to make orders or give directions in relation to any

matter connected with, arising out of or resulting from any election.

Penalties for contraventions of such statutory instrument are not allowed to exceed the maximum penalty referred to in the section. Presidential powers give rise to concern because it gives the President exceptional powers which can be exercised arbitrarily. Concern is expressed where a single individual has the power to suspend, repeal, amend any provision of the Act or any law that applies to elections which is considered undesirable. It would thus mean that the President has the right to single-handedly run elections through Statutory Instruments, with total disregard of the Electoral Act. Although the President did not evoke such powers, the Act poses threats to election fairness. This law can be interpreted restrictively to mean that should the Statutory Instruments be enacted through such powers and if it contradicts the Electoral Act, the former will be *ultra vires*. The wording of the Presidential Powers (Temporary Measures) Act appears broad and gives the President sweeping powers to regulate elections. In a democratic state and in the spirit and letter of SADC Principles and Guidelines governing the conduct of democratic elections, such laws are a threat to individual and human freedoms.

### ***Judicial Independence In Zimbabwe***

Section 79A of the Zimbabwean Constitution provides for the Supreme Court and the High Court and other subordinate courts to form

judiciary authority which is made up of the Chief Justice, the Judge President and other judges. The Constitution stipulates that the judiciary shall not be subject to the direction or control of any person or authority. Further provisions seek to ensure and guarantee this independence by granting judges security of tenure and immunity from unjustified removal from office and by further requiring that those appointed to be judges should be experienced lawyers of at least seven years.

In respect of appointments of both the Supreme and High Courts, judges are appointed by the President after consultations with the Judicial Service Commission, a body comprised of the Chief Justice, Attorney General and the Chair-person of the Public Service Commission and two other members. As noted before, presidential appointments have posed problems for the democratisation process in Zimbabwe. The judiciary has not been perceived to be non partisan as the required by the Constitution. In other words, the independence of the judiciary is questionable.

There are allegations of delays in resolving electoral cases filed in year 2000. Delays in passing judgments in human rights and political issues have been visible. The case of Associated Newspapers who are publishers of the *Daily News* and the *Daily News on Sunday* (independent newspapers) closed down for publishing falsehoods, the case of Roy Bennett an opposition member of Parliament who was jailed for pushing ruling party parliamentarians after extreme provocation, the case of

Independent Journalists Association of Zimbabwe (IJAZ), results of the 2002 Presidential elections as well as numerous election petitions are still pending.

Independence of the judiciary forms the core of democracy, fairness and justice in any country. Judges should not only be impartial but they should be seen to be impartial by showing good practice, independence and competence. Election petitions are the very foundations of constitutional supremacy and courts ought to determine these petitions expeditiously as an independent arm of the state.

Judicial independence is of concern to the SADC Principles and Guidelines that regulate civil society in the conduct of democratic elections. The principles underline the importance of the independence of the judiciary. Where the judiciary is perceived to be partial, justice cannot be discharged. The case for a partial judiciary poses a threat for the establishment of an Electoral Court to resolve election disputes outlined in the SADC Principles and Guidelines. Given the partiality of the judiciary in Zimbabwe, establishing an independent Electoral Court would be almost impossible. Between the year 2000 and 2002, judges have been asked to resign, retire and there were appointments of politically "correct" judges who were appointed to "carry out government policies". These judges, although qualified, are perceived to have been appointed to carry out executive directives rather than government policy.

## **PRE-ELECTION POLITICAL SETTING**

### **A Review of Previous Elections in Zimbabwe**

The 1979 elections were held amid the accelerating disintegration of Rhodesia due to the black nationalists' war advancing on the capital city. Ian Smith's government embarked on a wide programme to educate and encourage people to vote by explaining the electoral process. The elections were boycotted by both ZANU PF and PF ZAPU, the two major black political parties. The UANC a black political party pro- white minority participated in the elections amid a climate of intimidation and death threats directed at anyone who urged people not to vote. 64.5% of eligible voters voted in the election but the regime did not receive legitimacy.

The independence election of 1980 took place after the United Nations Security Council condemned the 1979 elections as illegal and rigged and called for fresh elections. The 1980 election was held under the Lancaster House Constitution which provided for a bicameral system and nine political parties contested. ZANU PF won 57 seats, PF ZAPU 20, UANC 3 seats and others failed to secure seats. Voter turnout was 94%, the highest in Zimbabwe. 63% voted for ZANU PF, 24% PF ZAPU and the rest voted for minority parties. Minor threats and intimidation were recorded. There were two voters' rolls governing the 1985 general election: one for the blacks and the other for the whites called the Common and White roll

respectively. The election was held in a politically explosive environment. A state of emergency was renewed after the discovery of large caches of arms on Joshua Nkomo's property in Bulawayo. This was followed by government arresting and detaining leaders of the opposition PF ZAPU. Five UANC supporters were killed, opposition parties were required to obtain prior permission to hold rallies with most of the rallies foiled by the police and barred from using the government media. A total of six political parties contested. ZANU PF captured 63 seats, PF ZAPU 15 seats, and a decrease of 5 seats from the 1980 elections. UANC failed to capture a single seat.

The 1990 Presidential elections were held in a unique political atmosphere, where PF ZAPU had been co-opted into ZANU PF to become one political party, peace and tranquillity prevailed throughout the country with the dissenting menace eradicated. A new political party participated in the elections, Zimbabwe Unity Movement (ZUM) led by a ZANU PF fallout and liberation struggle hero. The united ZANU PF party won 116 seats of the 120 creating a clear hegemony. Corruption, unemployment, inflation and transport crisis marred the elections.

The 1995 Presidential elections were held during the period post the Economic Structural Adjustment Programme (ESAP) where economic hardships continued to haunt the country. Factionalism, misuse of government vehicles and land allocation to political heavy weights were common.

The government having realised their loss of grip on political and economic issues responded by intimidating voters during the elections, propaganda in the print and electronic media and allegations of vote rigging were noted. As a result voter turnout was only 47.9% with ZANU PF winning the elections.

The 1996 Presidential elections had three candidates, two later withdrew from the electoral race citing a grossly uneven political playing field in favour of ZANU PF. 31.8% voted for ZANU PF.

The 2000 Parliamentary elections were marked by blatant human rights abuses. Over 6000 people were displaced from their homes due to violence, 108 were reported dead, and 140 people reported that their homes had been destroyed. 4000 people were unable to vote because their names did not appear on the voters' roll, some opposition election monitors disappeared and cases of rape were reported. A new vibrant party was formed - The Movement for Democratic Change (MDC). The MDC scooped 57 seats and ZANU PF 63 seats. Vote rigging and gerrymandering in both urban and rural constituencies were alleged.

The opposition MDC unearthed massive evidence of election irregularities which led to the recounting of votes in some constituencies. The High Court nullified some results and MDC candidates were declared winners but never had the opportunity to take up the seats. This shows the level of discrepancies and irregularities

which dogged this watershed election.

It is interesting to note that voter education through NGOs took place from colonial times until the 2005 elections, where the proposed NGO bill seeks to dis-empower civil society from mounting and imparting voter education.

Intimidation and allegations of vote rigging are a cancer in Zimbabwe's elections. It is only the degree of violence, intimidation and vote rigging that may be a question. Over the years, lessons were learnt by ZANU PF that violence will bring them unquestionable victory hence especially the 1985, 2000 and 2002 elections were the zenith of violence in the history of Zimbabwe's elections.

In the three elections, the opposition was denied access to the media and their rallies were regulated by the police. The later two elections saw an unprecedented passing of legislation in order to stifle fundamental freedoms.

The question of legitimacy of government is a long standing issue reaching its peak in the 2002 elections, hence the need to adhere to the regional stipulations for conducting democratic elections. The 2005 pre-election period is conspicuous by the absence of rampant violence and intimidation which underlines the notion of the government's desire for legitimacy nationally, regionally and internationally.

#### **Primary Elections in the MDC**

#### ***The Confirmation Process***

The confirmation process took place without much media coverage since the party had not issued a formal statement confirming its intention to participate in this crucial election. Members of Parliament who were popular with local structures were confirmed while those who failed had to undergo primary elections. A sitting Member of Parliament has to be confirmed by two-thirds of the people in the local structures by secret ballot. If confirmation fails, then other interested parties will then send in their curriculum vitae (C.V). For one to submit a C.V contenders have to be active party -card -carrying members for at least two years.

Of the 120 MDC Members of Parliament, only 5 were not confirmed. The unconfirmed MPs were either unpopular with local structures or were inactive in their constituencies. The primary elections in the MDC were not without hitches. There were allegations of vote buying of local structures for one to be confirmed. There were also allegations that party activists would mobilise decision makers to thwart the confirmation process. There were also incidences of conflict of interest between provinces, districts and wards where a sitting MP was favoured by one structure and not the other. Manipulation and dissolving of other hindering structures would take place to enable or stop the confirmation process taking place.

The confirmation process in the MDC is open to abuse as only a few decision makers are involved which makes it easy to buy votes from them, a practice

openly contradicting democratic practice for a party that stands for democracy. However some aspiring candidates in the primary elections who had very good credentials were not confirmed for one reason or the other. One candidate who was President of his party and joined the MDC had the two year rule waived in order to enable him to stand.

### ***Factionalism in the MDC***

Reports of factionalism were heard in St Mary's in Chitungwiza where a prominent sitting MP was not confirmed because party structures were biased and wanted to field their own preferred candidate. There were skirmishes between the prominent Member of Parliament and his rival's supporters when the outspoken sitting MP romped to victory. The losing factional group was made up of the local Chairperson, the organising secretary, the treasurer and a councillor who vowed that if the results were not nullified they would quit the party and de-campaign the candidate during the Parliamentary elections in March 2005. The group accused the national Secretary General and his deputy of manipulating the polls in favour of the winning candidate. In Masvingo Central constituency, a losing sitting MP accused the party's President who presided over the elections of plotting his downfall. Violence, intimidation and vote rigging were also reported, the party President had to intervene and was accused of vote rigging by the losing candidate.

### ***Primary Election and Conflict Resolution***

The primary elections in the MDC were conducted and partly concluded. Of the 120 constituencies, 110 were successfully conducted, 8 were ordered for a re-run while 2 are pending endorsement. Petitions emanating from disgruntled parties were sent to the National Election Committee and eventually to the National Executive for resolution.

### ***MDC Manifesto***

The MDC party has five major concerns which can be condensed into three main categories; namely the economy, governance and social issues.

Pertaining to the economy, the MDC intends to bring stability to the economy by reducing inflation, curtailing public debt, revamping collapsed industries, and providing funding and bringing order to the chaos in the agricultural sector. On issues relating to governance, the objectives of the MDC are to restore the rule of law, protection of human rights, draft a new Constitution, combat corruption and institutionalise multipartism and democracy. The MDC stance on social issues is to address issues on HIV/AIDS, education, women and youth development.

### ***Primary Elections in ZANU PF***

Unlike in the MDC nomination process, primary elections in ZANU PF involve all supporters of the party to cast their votes for a candidate of their choice. The criteria for eligibility to vote includes the presentation of a fully subscribed ZANU PF membership card and national

identity cards before proceeding to the polling booth. For one to contest the primary elections, he/she has to be a card carrying member for at least 5 years. The primary elections were held on 15 January in most constituencies with a few postponed to 16 and 17 January 2005 due to logistical problems such as transport, floods, inadequate staff and ballot papers.

Problems were encountered during the primary elections. A last minute quota system for women was hastily put in place to enable the party to adhere to the SADC Principles and Guidelines on the conduct of democratic elections, also recommendations from the SADC declaration on gender and development which stipulated 30% seats for women by the year 2005. This development saw men who were informally campaigning in women designated constituencies thrown off balance while others vowed to stand as independent candidates.

Voter turnout in the rural constituencies was quite high where the party is dominant. In the urban constituencies, voter turnout was very low because urban areas are MDC strongholds. The party had experienced dissenting voices a few months before the primary elections and other observers even dubbed it a coup, where six provincial Chairpersons met to map out a new leadership structure without Politburo clearance and resulting in the infamous Tsholotsho Declaration. Most of the participants including Ministers were barred from contesting the primary elections. However

only two Deputy Ministers were allowed to stand despite their participation prompting observers to say there was selective application of justice. There was also imposition of candidates where a rule was put in place which stated that senior party members in the Politburo, Central Committee and Provinces should not stand for primary election but should automatically be declared winners. This was done to weed out perceived dissident elements in the party who, in most cases, were junior party members comprising mostly businessmen accused of using money to woo voters prior to the ZANU PF primary elections. This development resulted in skirmishes and dissension within the party; 3 ministers and 10 sitting Members of Parliament lost their seats.

#### ***Primary Elections & Conflict Resolution in ZANU PF***

Seventeen constituencies in the party had problems and a re-run was ordered. The ZANU PF Election Directorate threw out appeals against the outcome of the party primary elections lodged against winning candidates, except for Mutare central and Chimanimani where re-runs were ordered by the Directorate due to gross irregularities. Other appeals came from Mutasa South constituency where the losing candidate alleged that people voted more than twice and that undesignated points were used for voting. Sitting MPs in Murewa North and Makoni West also lodged complaints with the Election Directorate which threw out their cases as lacking substance. Their cases were alleged to have been

lodged through the media which the ZANU PF Election Directorate did not tolerate. It preferred to hear cases presented to it directly. Petitions from Bulawayo province, Mberengwa East, Gokwe central, Gokwe North, Makonde, Kariba, Chinhoyi, Binga, Gwanda, Tsholotsho, and Makoni East were also heard but their cases could not sway the Election Directorate to act otherwise. The Election Directorate communicated its decision to all the concerned aspiring candidates. A total of 1000 candidates submitted their CVs for consideration in primary elections and only 117 candidates were allowed to contest.

#### ***The ZANU PF Manifesto***

The party emphasises economic growth and social justice through the redistribution of wealth. Social justice and the elimination of poverty are central to the campaign process. The other issue emphasised is the maintenance of national autonomy in domestic foreign policy.

The Manifesto gave prominence to national sovereignty and dubbed the election “the anti-Blair election” referring to the Prime Minister of Britain. The Manifesto accuses Britain of failing to fund Zimbabwe’s land redistribution policy. Elimination of poverty and creating jobs is also a desired objective, combating HIV/AIDS in a country where about 5000 people die of the disease each week is a central campaign strategy.

#### ***Factionalism in ZANU PF***

Factionalism in ZANU PF reared its ugly face in Bulawayo Province where the Election Directorate had to dissolve the current structure from cell level to provincial level. The situation was so bad that the Vice President Msika had to intervene and announced the decision to dismantle the factional parties. The problems emanated from the infamous Tsholotsho Declaration which led to most Provincial Chairpersons being suspended for 5 years each. Bulawayo Province had the largest number of aspiring candidates suspended for attending the Tsholotsho meeting which the attendants were accused of planning to revolt against party directives. Supporters whose candidates were either barred from contesting or lost in the election vowed to decampaign the candidates or campaign for the opposition.

In Dzivarasekwa constituency, an aspiring candidate was alleged to have mobilised a group of about forty of his supporters to disrupt the proceedings of the primary elections after he failed to enter the race. The supporters vowed not to support the winning candidates during the parliamentary elections in March.

In Makonde constituency, traditional chiefs clearly expressed their displeasure against the imposition of a female candidate ahead of their favourite male candidate. The misunderstanding threatened to tear the party apart and a male candidate eventually won the seat

#### **Human Rights Issues in the Run Up to the 2005 Elections**

## election update 2005 Zimbabwe number 1

Calls by the President and the Commissioner of Police went a long way in reducing violence before the 2005 election. The violence witnessed in 2002 was unprecedented in the history of elections in Zimbabwe. The violence was both spontaneous and organised by political parties and the uniformed forces. Intimidation, threats, violence, murders, rape, torture and general human rights abuses were rampant.

The calls for peace and tranquillity were done in order to adhere to the SADC Principles and Guidelines in the conduct of democratic elections. The provision in the Guidelines to respect human rights and calls to states to provide a conducive atmosphere for elections was

partly adhered to in comparison with the previous election.

In 2004, during the period running up to the 2005 elections, a total of 60 MDC supporters and activists were arrested under the Public Order and Security Act for one reason or the other. Both inter-party and intra-party violence occurred a few months before the elections especially during primary elections. Fifty five women were arrested for staging a peaceful demonstration against the proposed NGO Bill. Members of the National Constitutional Assembly (NCA) were also arrested for demanding a new Constitution. Clashes at a farm owned by an MDC Member of Parliament and leased by government for land redistribution, resulted in the

death of one farm worker. In St. Mary's Township, intra-party conflict within the MDC resulted in people being injured. In Makoni North constituency, a senior government Minister instigated violence against a fellow competitor in the same party; the youths assaulted the candidate and other people in the area. The youths were later arrested and the Minister paid bail for the 31 of the 42 youths. It should however be noted that the government was serious in rebuking violence in that perpetrators were arrested irrespective of the political affiliation, a development that was not evident in the previous elections.

Below is a summary of human rights violations between January 2004 and August 2004.

Nature of violence	Jan	Feb	March	April	May	June	July	Aug	Sep
Assault	32	109	16	29	12	12	44	41	
Abduction & kidnapping	3	12	1	13	6	1	8	6	
Displacement	2	19	6	13	3	4	6	57	
Freedom of association	97	18	48	82	140	27	27	142	
Murder	11	0	0	0	0	0	0	0	
Political victimisation	100	141	68	35	21	29	31	50	
Destruction of property	12	35	5	11	4	3	33	29	
Torture	74	23	16	18	15	1	10	6	
Unlawful arrest	7	16	17	6	3	2	8	141	

**Source: Human Rights Forum Report 2004**



## **Financing of Political Parties**

### ***The Political Parties (Finance) Act, Donors and Civil Society***

The Political Parties (Finance) Act establishes public funding for political parties. The Act prescribes that a party has to win a minimum of 5% of votes to enable a political party to benefit from the fund. The Act does not cater for independent candidates and prohibits foreign funding and donations. Receiving foreign donations has been criminalised. Foreign citizens are also prohibited from soliciting donations from the public in Zimbabwe on behalf of a political party. Both ZANU PF and the MDC are widely believed to be flouting this prohibition. The NGO Bill if passed in its current form, will see all civil society organisations in voter education being banned thereby reducing the democratic space. Only the Election Commission is allowed to receive foreign funding and donations.

### **Proclamation and Nomination Court**

The Constitution, in Section 58(1), states that a general election shall be held within a period not exceeding four months after the issue of a proclamation dissolving Parliament. The Electoral Act published the proclamation on 31 January 2005. The nomination day was set for 18 February 2005 and the polling day set for 31 March 2005. In the proclamation, the President provides a place and days on which a Nomination Court shall sit as well as the day to close the voters' roll. However, the President has the power to alter any day, time and place of

election through a proclamation in the *Gazette*. The above scenario may not be consistent with democratic practice as the President is the referee in a match in which he is a player. The President is not mandated to consult the Electoral Commission.

There are an estimated 2.5 to 3 million Zimbabweans living in the Diaspora in South Africa and Britain among other countries. Zimbabwe's legislation does not allow voting for citizens residing outside the country except for those on diplomatic missions and the uniformed forces. The Justice, Legal and Parliamentary Affairs Minister reiterated this position thereby disenfranchising about 3 million Zimbabweans widely thought to subscribe to the policies of the opposition parties from participating in the governance of their country, a clear violation of the SADC Principles and Guidelines.

### **Voter Education**

The Electoral Act stipulates the parameters that govern voter education. The Act defines foreign contributions or donations as a contribution or donation made by a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe or any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe. A local contribution or donation means a

contribution or donation that is not a foreign contribution or donation. Voter education is defined as any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law, civics or other subject for students at an educational institution. Voter education materials refer to printed, aural, visual or audio-visual materials intended for use in voter education.

### ***Functions of Commission with respect to voter education***

- To provide adequate, accurate and unbiased voter education
- To ensure that voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party
- To produce voter education materials, course or programme of instruction for use in voter education
- The Commission may appoint any person to assist it in providing voter education.

### ***Voter education by Persons other than the Commission or Political Parties***

The Act stipulates that no person other than the Commission, or a person appointed in terms of section 14(3) of the Act, or a political party, shall provide voter education unless

- Such person is a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe, or an association of persons, whether incorporated or

unincorporated, consisting exclusively of citizens or permanent residents of Zimbabwe, domiciled in Zimbabwe where such a person is:

- An association of persons, whether incorporated or unincorporated
- A lawfully constituted trust, whether or not registered in terms of any law registered as a non-governmental organisation in terms of the Non-Governmental Organisations Act [*Chapter 17:09*], and the Constitution of such organisation or the deed of trust, as the case may be, specifically mandates it to provide voter education
- Such person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education
- Such person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission
- The proposed voter education activities of such person are, subject to section 16 of the Act which stipulates that funding has to be solely by local contributions or donations
- The voter education materials proposed to be used by the person and the course or programme of instruction in accordance with which the voter education will be conducted are adequate and not misleading or biased in favour of any political party
- No fee or charge is levied for the provision of voter education or voter education materials.

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

- Furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted to do the following:
- Furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education
- Disclose the manner and sources of funding of its proposed voter education activities
- Satisfy the Commission that it is not otherwise disqualified from providing voter education.

Any person who fails to comply with a requirement by the Commission shall be guilty of an offence and liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person that was appointed by them.

Several sections of the Act make for interesting analysis. The Act prohibits non permanent residents to either conduct voter education or to

fund the process. It is not surprising to note such provisions given that the ZANU PF Manifesto has been duped “the Anti Blair campaign” manifesto and has explicit sentiments to this effect. There is an increasing perception that the 2005 elections will zero in on the anti-Western stance that has been building up over the last four years.

The last two elections emphasised land redistribution and economic empowerment and it may not be prudent to continue using the same objective given the fact that the land reform exercise was officially completed in 2004.

The architects of the NGO Bill probably meant to severely restrict civil society activities in voter education given that the same architects were responsible for AIPPA, POSA, and the Broadcasting Services Act among other repressive legislation. The Bill was meant to curtail activities of local NGOs and restrict funding from the so-called hostile nations. Unfortunately the Bill was superseded by events and the SADC Principles and Guidelines governing the conduct of democratic elections was put in place with Zimbabwe as one of its signatories.

Now that the architects of the Bill are no longer part of the ruling party, the Bill even if signed into law, is unlikely to have detrimental impact as previously thought. However without even the signing of the Bill, the Electoral Act goes a long way in curtailing the activities of those willing to conduct voter education.

The censoring of voter education material is prudent; to ensure that voter education is being conducted in a professional manner but of concern is the submission of names, addresses and other personal details of those engaging in voter education to the Commission. The development brings nostalgic memories of the accreditation of journalists who ended up being victimised after submitting the same. Disclosing local donors could be tricky in Zimbabwe given the

polarisation of civil society and the partisan nature of some Commissioners. Any violation of these provisions has been criminalised. There is need to revisit the Act and make provisions that deepen democracy instead of eroding it.

The Act's provisions governing voter education infringe on SADC Principles and Guidelines. These provisions give the Commission far-reaching powers over voter education. They also violate the

Zimbabwean Constitution by infringing on its guarantees of freedom of information and association. The Act also bars all foreign support for voter education activities except through the Electoral Commission; such stipulations could seriously restrict freedom of information for both organisations and individuals.

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**Promoting Credible Elections and  
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