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# Zimbabwe Election Focus

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# Free and Fair?

\*We shall adhere to the following principles in the conduct of democratic elections:

- Full participation of the citizens in the political process;
- Freedom of association;
- Political tolerance;
- Regular intervals for elections as provided for by the respective National Constitutions;
- Equal opportunity for all political parties to access the state media;
- Equal opportunity to exercise the right to vote and be voted for;
- Independence of the judiciary and impartiality of the electoral institutions;
- Voter education;
- Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land;
- Challenge of the election results as provided for in the law of the land;
- We shall take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country;
- We shall safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes.



*Thabo Mbeki*

President Thabo Mbeki

*Robert Mugabe*

President Robert Mugabe

**Inside – Read what leading figures in South Africa and Zimbabwe say about the Zimbabwean election...**

## Free and Fair Elections on 31 March?

# 'I think it is impossible to do it'

George Bizos tells Gugulethu Moyo why



**C**elebrated lawyer **George Bizos** was recently interviewed by Zimbabwean lawyer **Gugulethu Moyo** about the situation in Zimbabwe and the forthcoming elections. This is an edited extract from that interview.

**MOYO:** Let's talk about an interview that you gave to South Africa's *Sunday Times* in March 2004. In response to a question about Zimbabwe you said, 'Generally speaking I think that democratic governments should give the cold shoulder to those who violate human rights. Democracy is the poorer if one turns a blind eye; it's no good saying they are only allegations, we had enough of that during apartheid.' Does this mean that you see parallels between the situation in Zimbabwe and apartheid?

**BIZOS:** In relation to violations to the rule of law, yes, there are parallels. And, the denials of wrongdoers should not be too readily accepted. When you have undeniable evidence that hundreds of thousands, if not a few million people leave their country, they do not leave their country, their homes, their families without good reason. There must be good reasons and the reasons which they state are credible – I do not think that excuses should be found for tyrants.

**MOYO:** When you say that you don't think that excuses should be found, what means do democratic governments actually have to intervene in situations outside of their own territory and to actually put a country on the path to democracy?

**BIZOS:** Speak in clear and unequivocal terms. Hold the tyrannical governments to what they have signed, like the constitutive document establishing the African Union; the adoption of the African Charter; the principles of free and fair elections agreed to by everyone for the SADC region, and, call a spade a spade.

**MOYO:** When you say hold these governments to what they have signed, how can this be done?

[Mugabe] is a party to the principles for free and fair elections. Did he cross his fingers when he signed all these things?

**BIZOS:** First of all by speaking out against it, and sometimes, shunning them. The question of sanctions is a difficult one, and one must have regard to the wishes of the local people. In relation to sanctions in South Africa, we had very good guidelines. When those who criticise the international community and the liberation movement were calling for sanctions, because the people that they represented would be the sufferers, the wise man of our liberation struggle, Walter Sisulu said, 'Yes, sanctions brought the black people to their knees, but the whites are standing tall. The enforcement of more stringent sanctions may bring us down to the ground on our belly, but if they bring the whites down to their knees that will be progress for us.'

My understanding of the position in Zimbabwe is that the vast majority of the people think that effective sanctions like closing the borders, or cutting off electricity, or not using the means of transportation that South Africa has, is not really advocated by the MDC or others in Zimbabwe. There are other ways in which a regime which has no respect for the rule of law and oppresses its people can be shunned and shamed in order that it may mend its ways.

**MOYO:** You've spoken a lot about what happened in South Africa in the past in relation to what is happening in Zimbabwe now; do you think that South Africa has a special role to play in the Zimbabwe crisis today?

**BIZOS:** Yes, I think so. I think first of all that a lot of South Africans are emotionally involved with the freedom struggle in Zimbabwe and they acknowledge that many Zimbabweans gave their blood for the benefit of the liberation movement in South Africa. They acknowledge

that Mr Mugabe played an important role in assisting South Africa in that struggle; but I think that indebtedness should not excuse everything that is happening in that country.

**MOYO:** Talking about excuses, one of the issues that comes up very frequently in the debate in Zimbabwe is that the demands for the respect of human rights in Zimbabwe are fuelled by an imperialist agenda. You have often said that democracy is not some form of 'Eurocentric idealism'. How is this relevant to the discussion about Zimbabwe?

**BIZOS:** Well you know that President Mugabe was the 53rd signatory of the constitutive document establishing the African Union which promises the rule of law, the implementation of the African Charter of Human Rights. He is a party to the principles for free and fair elections. Did he cross his fingers when he signed all these things?

These are very African documents, which he and the other 52 heads not so long ago put their signatures to. This demagogic suggestion that human rights and democracy is only for Western countries... I strongly believe that any adjective before the word 'democracy' actually diminishes it. There is democracy and that's it.

**MOYO:** So as Zimbabwe prepares for elections within a regional framework for democratic elections must it scrupulously apply all the principles and guidelines in the SADC declaration on democratic elections?

**BIZOS:** Mr Mugabe needs this election, he would like it to be certified as a free and fair election in the hope of getting some relief from the terrible situation which he has

led his country to.

I don't think that he should get such a certificate because in order to have a free and fair election you have to have the rule of law, and an impartial and independent judiciary and an impartial and independent prosecuting authority and an impartial and competent police force. None of these things exists, nor can they be put in place before the end of March, when the election takes place.

The newspapers which do not support Mr Mugabe's policies have been closed down; the journalists have been deprived of the right to ply their trade. Take the Department of Justice for instance, the MDC filed 18 petitions in relation to the election of almost four years ago, the Zanu-PF noted appeals, those who were found by a court of first instance, the High Court, to have been irregularly elected still occupy their seats, because of chicanery within the justice system. Those appeals have not been heard yet, and they are not likely to be heard, for what is the purpose of their being heard, if the period of office of the irregularly elected is about to expire?

Now, if you don't have an election commission which operates efficiently or you don't have a judiciary which would hear urgent applications and give speedy decisions for any violation of the electoral code, where there are complaints about the electoral roll of being incomplete and interfered with and the copies are not made available to the opposition, how can you possibly have a free election, if in the rural areas, the chiefs so dependent upon the government for their salaries and their motor cars and the powers they exercise over the rural people, how can you possibly have free and fair elections?

**MOYO:** Given that you say there is so much that must be reformed in Zimbabwe before it is ready for a free and fair election, given that this election is a few weeks away and most of those reforms that you suggest have not been undertaken, how do you think Zimbabwe can get to a point where it is ready for a free and fair election?

**BIZOS:** I think that it is impossible to do it. I think that if the international community is serious about expecting Zimbabwe to have free and fair elections, they should put pressure for a postponement of the elections and a reasonable period in order to level the playing field. By making the state media available to all the parties that want to take part; by allowing people to study the voter's roll; to organise, to allow people to have meetings without the permission or the control of the police; to have venues available to have meetings held, and above all, a change of attitude. The MDC is considered as an enemy and a traitor. Let me give you one example: when the Minister for Justice was asked why the MDC adverts on the national television were rejected, his answer was that CNN would not air an advert from bin Laden. When you have people in high places so bereft of logic or common sense, how can you expect those to orchestrate a free and fair election?

This article is edited excerpts from an interview given to Gugulethu Moyo on 16 February 2005 for 'In the Balance', a weekly programme broadcast on SW Radio Africa. To listen to the original interview or read the transcript go to [www.ibanet.org/humanrights/Radio\\_Programme\\_In\\_the\\_Balance.cfm](http://www.ibanet.org/humanrights/Radio_Programme_In_the_Balance.cfm)

# Why Should South Africa Care?

*Why is it important that Zimbabwe's 31 March parliamentary elections are free and fair?*

**Dr Greg Mills**, *outgoing Director of the South African Institute for International Affairs, Johannesburg*

For at least three reasons: first, to show that African leaders are serious about consolidating democracy on the continent. Secondly, that in so doing, African leaders' commitment to democratic values and process such as the SADC protocol on elections is more than just window-dressing. Finally, and most importantly, because democracy is, to paraphrase Kofi Annan, the best conflict resolution method we have. Zimbabwean people deserve nothing less.



**Norman Arendse**, *Chairperson of the General Council of the Bar, South Africa*

I think it's important that the election is free and fair because there have been widespread predictions that it won't be free and fair, for the reason that it has been alleged that the Mugabe government will rig the outcome, that certain laws will allegedly make it impossible for the elections to be free and fair, because of what has

been happening in the judiciary or because Cosatu was denied entry into Zimbabwe to engage with the trade unions. So it's important that the election is seen to be free and fair by those who have been permitted to observe the elections, although there has been criticism that some countries were not invited. Like any election in any country, it is important that the election be substantially free and fair, like the 1994 elections were in this country. It also relates to the legitimacy of the government that is established after the election. If it is seen as unfair and unfair, the government will be hamstrung by being called illegitimate and not being representative of the will of the people.

**Vincent Saldanha**, *President of the SADC Lawyers' Association*

Zimbabwe has been in a state of crisis for a number of years. The political democracy has been facing serious challenges and the economy is under siege to the extent that a large number of people do not have access to basic human needs, particularly food. These elections present an important opportunity for the people of Zimbabwe to address these political and economic challenges. It is therefore necessary that there is a proper climate conducive to the free expression of the political will of the people of Zimbabwe.

**Claude Kabemba**, *Programme Manager, Research and Policy Analyst, Electoral Institute of Southern Africa (EISA)*

Zimbabwe is embroiled in the worst political and economic crisis of its 25 years as a sovereign state. One of the causes of the political crisis, which is also impacting negatively on the economy, is the lack of consensus on the electoral regime. The results of the 2000 and 2002 elections were contested because the environment was not conducive to free and fair elections. These parliamentary elections are critical because they could help Zimbabwe to start emerging from its political crisis. If they are well organised and are seen to be free and fair these elections could create an atmosphere in which an honest dialogue between the political forces in the post-election period could be initiated.

**Kumi Naidoo**, *Secretary-General, CIVICUS: World Alliance for Citizen Participation*

The holding of free and fair elections is not a 'nice to do' but a 'critical to do' for any government wishing to claim legitimacy and wishing to govern with a proper mandate. It is critically important that citizens in Zimbabwe are able to exercise their democratic right to vote without fear and intimidation. How one judges whether an election is free and fair is not dependent solely on what happens on election day itself.

However, some of the conditions one needs to consider are: the democratic space available for political parties to freely organise, an equitable media environment that enables citizens to receive a broad spectrum of views and perspectives, and the availability of voter education opportunities for those that are not literate and who could benefit from such support. The discouragement of election observer missions does not augur well for the elections.

*What are the consequences for the Southern African Development Community and the continent if the Zimbabwean elections are not free and fair?*



**Vincent Saldanha**

The situation in Zimbabwe impacts directly on other countries in the Southern African region. In recent months we have seen successful elections in a number of Southern African countries (South Africa, Mozambique, Botswana) which has once again demonstrated an important standard of political expression by the people of the Southern African region. Zimbabwe is therefore required to maintain standards within the SADC. If it does not do so, it undermines the entire region and will remain a blot on the political landscape of the continent.

**Kumi Naidoo**

The economic consequences that flow from the political crisis are devastating for all SADC citizens. It is important to remind ourselves that Zimbabwe was considered the food basket of Southern Africa. Right now, several Zimbabwean citizens have had to escape either because of political repression or severe economic hardship. The plight of these citizens is difficult, to say the least, and many would of course like to return if the economic and political situation in Zimbabwe improves. On the political front, SADC has adopted various positive positions on governance, human rights and the importance of civil society. However, there does not appear to be the kind of boldness, courage and commitment that is needed to ensure that member states comply with these policy decisions. Clearly quiet diplomacy is not working, and SADC, if it is to secure its own credibility with the citizens of Southern Africa, will need to ensure that it acts with vision and courage.

**Norman Arendse**

SADC's credibility is going to be adversely affected as a result. All and sundry have predicted that it will be a rigged election. SADC as an organisation has said, 'No, we'll make sure that it's free and fair.' I am not sure that it will make much of a difference on the continent. The rest of the African continent, the countries outside SADC, have mostly indicated if they support Mugabe or not. I don't think the outcome of the election will influence their position. I think they are all hoping that the election will be substantially free and fair and that Mugabe, or Zanu, will still be in power. I don't think the outcome of these elections, or whether they are free and fair, will influence diplomatic relations between Zimbabwe and other African countries.

**Claude Kabemba**

It will create a bad precedent and create opportunities for other countries to attempt to do the same. The consequence for the continent is a reversal of the democratisation we have just embraced, with all its consequences on economic governance.

*What do you think is the biggest human rights issue in Zimbabwe?*

**Claude Kabemba**

The biggest human rights issue in Zimbabwe today is the infringement on the freedom of expression. The current media regulations seriously hinder media operation and free flow of information. It is possible that citizens, especially those in rural areas, have not been informed adequately on what is happening in the country politically to be able to make an informed choice.

**Vincent Saldanha**

There are a number of important human rights issues in Zimbabwe presently. Of greatest concern to many is the growing poverty and the lack of food in some parts of Zimbabwe. Not many years ago, Zimbabwe was able to feed other countries in Africa. It is therefore unacceptable and unthinkable that there could be people without food or who live in distress in Zimbabwe. The food security issue must be seen in the context of the undermining of other political rights, such as political freedom and the rights of political assembly, and importantly the right to freedom of speech.



**Kumi Naidoo**

The biggest human rights issue in Zimbabwe is the conscious reduction of civic rights and the rights of civil society organisations to function freely and effectively in Zimbabwe. Civil society organisations within Zimbabwe, elsewhere in Africa, and globally, understand the historical injustices that Zimbabwe has faced. We have supported the liberation struggle of Zimbabweans and have supported land reform when it was not taken as a priority by the Zimbabwean government. The view, as expressed previously by [former Minister of Information] Jonathan Moyo, that the conflict in Zimbabwe is not about governance but about land reform and historical injustice, is a false dichotomy. It is unacceptable that precisely at a time when it is most needed, the voice of civil society organisations – both for human rights but also for their energy in providing critically needed services for the poor – cannot be accessed because of the repression facing Zimbabwean NGOs.

The NGO Act that is being considered must be shelved and the SADC leadership, as well as the African Union, should support this appeal to secure the rights of NGOs, trade unions and other civil society organisations to participate in public life.

**Norman Arendse**

Land. I think that the problem experienced in the past couple of years in Zimbabwe stems directly from the Lancaster House agreement, which largely reserved white privilege and reserved ownership of land in white hands. The situation in Zimbabwe began unravelling when the Lancaster House agreement expired. As chairperson of the General Council of the Bar, you would expect me to say the biggest human rights issue is the judiciary, but if you examine it closely, all human rights issues are linked to the land issue – even the allegation that the judges were bribed to rule in favour of the ruling party and in return received large tracts of land. I think the biggest issue is the uneven distribution of land, entrenched for 20 years by the Lancaster House agreement.

# Why Mbeki is Wrong About Zimbabwe

Mordecai Mahlangu

emy and its members have suffered unspeakable cruelty at the hands of alleged members of Zanu-PF and sometimes State agencies without any protection from the law as provided in our Constitution.

## Uneven playing ground

Although television and radio services are funded by taxpayers they are the publicity facilities of the Government and Zanu-PF. Anybody else will have access to them only when they speak in favour of the Government and the party. Even the SADC Election Protocol has not made any real difference in this regard. Any coverage of the opposition or of its activities is designed to show them in a poor light.

## The spectre of a partisan Army and Police

Before the last presidential election the commanders of the Army and Airforce and the Commissioner of the Police issued a public statement to the effect that they would not salute any candidate who won the election unless he had been in the liberation struggle. While it was difficult to figure out what had prompted the statement other than the election, its purport was quite clear. No president other than Mr Mugabe would be accepted by these men regardless of the choice the electorate might have made. Interesting and intriguing stuff. The relevant question though is, in the event that Mr Tsvangirai had won the election, what would these men have done; deny him office? Why should it be different this time round particularly as the Army has a significant presence in the election machinery?

In the light of the above and numerous other hurdles to a truly free and fair election, there is little grounds for optimism. As a Zimbabwean, I desperately hope that all goes well and the people of this once proud nation are able to freely express their preference at the ballot box. We have been the laughing stock and objects of pity internationally for far too long. Over three million Zimbabweans have left this country in the last five or so years because of either fears for their lives or to seek a better life elsewhere. This is a sad indictment on our leadership.

One other point that is worth mentioning is this. It will not be sufficient that the voting on election day is free or appears to be free. What has happened in the last three to five years is significantly relevant. The campaign of violence and brutality towards the opposition and anybody else who is not Zanu-PF has, for many, had long term effects. It will affect the exercise, if at all, of their voting rights.

Mordecai Pilate Mahlangu is a Zimbabwean lawyer.

*‘I have no reason to think that anybody in Zimbabwe will act in a way that will militate against elections being free and fair.’*

President Thabo Mbeki

Sadly, Zimbabwe's reputation as a country in which the rule of law does not prevail is well earned. After the general election of 2000 and the Presidential election in 2002 very few people outside Zanu-PF believe that our Government is presently capable or willing to organise and conduct free and fair elections. I am one of them and this is why.

## A faulty legal framework

It is not possible to hold a free and fair election with oppressive laws like the Public Order and Security Act (POSA) or the Access to Information and Protection of Privacy Act (AIPPA) on our Statute Book. POSA among other things restricts the holding of political meetings and gives the Police undue power to interfere in political campaigns. As if this wasn't enough AIPPA on the other hand curtails to extraordinary lengths freedom of expression generally, particularly restricting the dissemination of news and other information. These two pieces of legislation more than any other on our Statute Book offend the fundamental rights of Zimbabweans and violate our Constitution.

## A broken electoral system

Zimbabwe does not have a truly independent electoral authority. The existing structures are set up by the President and those who head them are party loyalists and cadres. The current chairperson of the Electoral Supervisory Commission is a former ZANLA guerrilla. The Registrar-General of Voters is an avowed supporter of Zanu-PF. Thus the registration of voters, custody of the voters' rolls and the running of elections is the preserve of the Government and Zanu-PF.

## Culture of intolerance

The freedom and liberation struggles were about independence from colonial rule and the creation of a free society. While independence was ushered in and preserved, freedom tarried but for a moment. Anybody who opposes the party in power is regarded as an enemy of the State. For instance, the MDC with almost 50 per cent of the elected MPs has always been regarded as the en-

# Mugabe's Electoral Manipulation Will Not go Unchallenged

Mugabe could write the book on how to rig elections says prize-winning author **Elinor Sisulu**



If awards were given out for successfully rigged elections, Zimbabwe would rank among the leading nations in the world. Since the parliamentary elections in 2000, Robert Mugabe's government has become a past master at cynically manipulating elections to ensure victory for the ruling party, Zanu-PF, so much so that it could easily produce the definitive manual on election manipulation and rigging. Since 2000 Zimbabweans have endured nine by-elections and the presidential elections in 2002. All these polls have been characterised by intimidation of voters through widespread and systematic state-sponsored violence through groups such as so-called 'war veterans' and the dreaded youth militia, the police and the army, attacks on

tions. If anything the electoral environment has in many ways deteriorated since 2002 with the enactment of legislation such as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA) and the Broadcasting Services Act. These pieces of legislation combine to deny the Zimbabwean electorate of the basic freedoms of assembly, speech and association. The independence of the judiciary has been severely compromised as a result of state harassment. The voters' roll is fundamentally flawed and while levels of violence may be lower than they were in the run-up to previous elections, members of the opposition political party continue to suffer harassment and physical abuse. Under the prevailing conditions, it

## Neighbours support Mugabe

Much of the responsibility of Zimbabwe's non-compliance with the SADC principles must lie with the regional governments. Once again regional heads of state have formed a laager to support their colleague and little if any pressure was applied on the Zimbabwean government to effect genuine electoral reforms. Instead SADC heads of state relied on the good faith of the Zanu-PF government prompting the comment from civil society activists that 'Allowing Zanu-PF alone to dictate the fundamental political changes in Zimbabwe is like allowing the Devil to run away with the Bible.'

To add insult to injury, the Zimbabwean government has only invited friendly observer missions to observe the March 31 election. The Southern African Development Community (SADC) Parliamentary Forum and the Johannesburg-based Electoral Institute of Southern Africa (EISA), two of the most experienced election management bodies on the continent, have not been invited to observe the March 31 poll, no doubt because of their critical stance on the controversial 2002 presidential ballot. All indications are that the observer missions that have received invitations will go and express their deep solidarity with the Zimbabwean government by delivering a predictable free and fair announcement.

## Society's attitude changed

While the conduct of the Zimbabwe government and her regional allies has not changed, there has been a sea change, since 2002, of the attitude of civil society. There has been without a doubt a shift in the views of progressive organisations in South Africa on the Zimbabwe issue, most dramatically expressed by COSATU and the South African Communist Party. The South African Council of Churches (SACC) has taken a stronger position and South Africa's largest non-governmental coalition SANGOCO has also joined the fray and come out strongly in solidarity with the suffering people of Zimbabwe. Most encouraging is that South African youth organisations are mobilising together with the exiled Zimbabwean youth to raise their voices against this travesty of an election. A free and fair verdict will not be met with silence. Watch this space.

Elinor Sisulu is Director, Crisis in Zimbabwe Coalition, South Africa Office and award-winning author of 'Walter and Albertina Sisulu: A Biography'.

*‘Zimbabweans preparing for parliamentary elections on 31 March, 2005, do so with a terrible sense of déjà vu.’*

independent media, disenfranchisement of citizens through various means such as confiscation of identity documents, manipulation of the voters' roll and a ruthless propaganda campaign that legitimises violence against the members of the opposition Movement for Democratic Change (MDC) on the grounds that they are nothing more than puppets of the West.

## Nothing new

Zimbabweans preparing for parliamentary elections on 31 March, 2005, do so with a terrible sense of déjà vu. All indications are that this election will be as flawed and contentious as the 2000 and 2002 elec-

will be more difficult for the MDC to secure victory in the March 2005 than it is for the proverbial camel to go through the eye of a needle.

## Changes to laws 'cosmetic'

Apart from a few cosmetic changes, Zimbabwe has in no way complied with the SADC Principles and Guidelines Governing Democratic Elections. The Crisis in Zimbabwe Coalition has dismissed changes to the existing electoral laws and the appointment of an 'independent' electoral commission as 'applying lipstick on yet another frog'. Lipstick may perhaps improve the appearance of the frog but it will not change the nature of the creature.



# Hoodwinking SADC

Beatrice Mtetwa, an award-winning Zimbabwean human rights lawyer, assesses Zimbabwe's new electoral institutions



President Mbeki's statement during the first week of March that he did not know what it is that Zimbabwe had not complied with in the SADC Principles and Guidelines startled many in Zimbabwe, coming as it did before observers had issued their verdict. It has been seen as a clear attempt to try and influence the observer reports ahead of the elections. To state that Zimbabwe has complied even before implementation of the legislation, is to put the cart before the horse.

## Commission neither impartial nor all-inclusive

The constant reference to an 'independent' electoral commission in the legislation is extremely misleading as the appointment procedures of members of the Zimbabwe Electoral Commission (ZEC) do not meet the 'impartial all-inclusive, competent and accountable' requirement of the SADC Protocol. The chairperson of the ZEC is appointed by the President on the advice of the Judicial Services Commission, whose current composition has a majority of Presidential appointees. Whilst the Chairman's competence may not be in doubt, it is doubtful that he meets the impartiality and all-inclusive test because the criteria used to appoint him is not known and was only determined by persons closely associated with the ruling party with no

input from civil society, the opposition and other stakeholders. If there was to be a break with the past, it was absolutely crucial that appointees be transparently selected through an all-inclusive process that would result in independent experts running the election.

## Electorate's interests ignored

In my view, the provision in the Act

where prisoners in South Africa with criminal convictions have been declared entitled to vote.

A further argument made by the ZEC was that allowing the appeal by Roy Bennett would inconvenience the other candidates, by which was meant the Zanu-PF candidate. The interests of the electorate, whose rights ought to be of paramount concern to the ZEC, were not even referred to in its submissions.

available if democratic, free and fair elections are to be held. The ZEC does not itself determine its budget, and neither does it have any control over how much it will receive as the amount is determined by Parliament in its discretion. At a practical level, we have already seen the effect of the lack of financial independence in the operations of the Electoral Court. At the time of the hearing of the first electoral appeal

It is ... difficult to understand President Mbeki's endorsement of the legislation when it is clear that some of the processes ... fall short of the scrupulous implementation advocated in the SADC Principles and Guidelines.

for an 'impartial' and independent Commission becomes a mockery if the selection procedure is flawed. This has become evident in the new Commission's response to the first appeal against its decision, filed in the Electoral Court. The ZEC made startling submissions for a body that must exercise strict impartiality in the exercise of its functions. They include the incredible suggestion that the Applicant, Roy Bennett, who was sentenced to a prison term by Parliament for contempt of Parliament, ought to have had his name removed from the voters' roll upon being sentenced to a prison term! This is against a background

## Criteria for appointments not transparent

The SADC Protocol also recognises the right to challenge the electoral processes through competent, impartial and independent legal bodies. Whilst the new Electoral Act makes provision for the establishment of an Electoral Court, the appointment of judges to it remains in the hands of a Presidential appointee.

## Resources scarce for Electoral Court

The SADC Protocol also requires that adequate resources be made

before the Electoral Court in Harare, the court had no infrastructure of its own and the judge had to rely on the normal High Court infrastructure, which is itself severely strained. If the Electoral Court is to operate efficiently and with the urgency required in election disputes, it is absolutely crucial that the court be given the necessary resources.

## Too little, too late

Although new legislation has been promulgated, this does not, in my view, have any impact on the elections scheduled for 31 March,

2005. It is a question of too little too late, meant to hoodwink SADC into thinking that Zimbabwe has complied with the SADC Principles and Guidelines. It is therefore difficult to understand President Mbeki's endorsement of the legislation when it is clear that some of the processes provided for in the two Acts referred to fall short of the scrupulous implementation advocated in the SADC Principles and Guidelines and when the little implementation seen to date leaves a lot to be desired. These two pieces of legislation, even if they fully complied with the basic requirements of the SADC Principles, will not translate into a free and fair election in Zimbabwe as they have been brought into operation so late in the day they are not likely to have an impact on the voters' roll, which is in a shambles and was not prepared by the ZEC, or on voter education, logistical support and other important elements of this election.

## Who is running this election anyway?...

We asked lawyers in Zimbabwe which body is responsible for administering the March 31 poll.

In theory, the Zimbabwe Electoral Commission would be responsible, but it is still subject to supervision by the Electoral Supervisory Commission (ESC). It is given a semblance of independence, but this is eroded by it having to report to the ESC, which is set up entirely by the President. In practice, however, before the amended Electoral Act came into force, the Election Directorate was in charge of administrative structures, and this body is still in existence and is setting up structures to conduct the 2005 elections.

Advocate Eric Matinenga (human rights advocate)

The Zimbabwe Electoral Commission.

Albert Musarurwa (National Director, Legal Resources Foundation)

Although the Zimbabwe Electoral Commission has been set up, I think that more than anyone else, the Registrar-General is in charge of the electoral process. He controls voter registration and inspection. The administration is done by the Electoral Supervisory Commission. The Zimbabwe Electoral Commission just gets assistance from the old existing bodies, so the situation has not changed. The Zimbabwe Electoral Commission is mere window-dressing and an attempt by the State to be seen to be complying with the SADC Guidelines.

Alec Muchadehama (human rights lawyer)

Looking at administration, I would say the Zimbabwe Electoral Commission, but in practice it is principally the same institutions running the elections as were doing so in previous elections: namely the Electoral Supervisory Commission and the Registrar-General's Office.

Blessing Chimhini (Southern African Human Rights Institute)

The new electoral law says the Zimbabwe Electoral Commission is in overall charge, but it is presiding over an election in which it has neither set the rules nor the structures. The Electoral Supervisory Commission is still conducting voter education and hiring staff, the Registrar-General still controls the registration and administration of the voters' roll while the Election Directorate plays another part. However, in fact, the real people in control are the army, police and central intelligence.

Rashweat Mukundu (Director, MISA-Zimbabwe)

The registration and maintenance of the voters' roll is conducted by the Registrar-General's office, run by state functionaries. Delimitation of constituencies is conducted by the Delimitation Commission, whose independence is questionable since it is appointed by an interested party, Robert Mugabe. The Zimbabwe Electoral Commission is responsible for conducting the voting process. It is, interestingly, operating without an office and to some extent has already abdicated its functions to a National Logistics Committee which it has appointed. It is full of state functionaries who publicly support Zanu-PF. There is currently no single body responsible for the administration of the March 31 poll.

Lawrence Chibwe (media lawyer)

Nobody knows. Responsibility rests with the Zimbabwe Electoral Commission, the Electoral Supervisory Commission and the Registrar-General's Office.

Solomon Sacco (lecturer, University of Zimbabwe)

The army is certainly in charge of this election, just as it has been historically. High-profile army personnel continue to command every part of this electoral process. The Election Directorate is manned by serving and retired army officers. The new Zimbabwe Electoral Commission is headed by a former army officer who is now a judge. It is clear that all the old military players will resurface in the current election.

Andrew Makoni (human rights lawyer)

So many bodies have been created that it is unclear. The Zimbabwe Electoral Commission retains overall responsibility, but the Registrar-General's office deals with voters and the Election Directorate may have been delegated responsibility for the administration of the election. In all structures, members of the army have been seconded, so in reality even the army could be in overall control.

Mordecai Mahangu (lawyer and Law Society of Zimbabwe Councillor)

The Zimbabwe Electoral Commission is in overall charge, although it can second civil servants and officials from the Registrar-General's office. The Electoral Supervisory Commission also plays a part, as it is supervising the elections.

Rindai Chipfunde (National Coordinator, Zimbabwe Election Support Network)

Many bodies: the Zimbabwe Electoral Commission (ZEC), Delimitation Commission, Electoral Supervisory Commission (ESC), Registrar-General, Election Directorate, Electoral Court. It is total confusion.

Arnold Tsunga (Director, Zimbabwe Lawyers for Human Rights)

... the army?



## Hoodwinking SADC

*Do you think that the legal framework in place allows for full participation by citizens in the electoral process?*

Very definitely not. One independently appointed body with its own financial resources should run elections, and it should be in place as a permanent fixture for a fixed period. All Zimbabweans, regardless of where they might be, should also have the right to participate in the country's electoral processes.

*Beatrice Mtetwa*

Clearly, no, due to four main factors, namely: (a) current constitutional decisions; (b) the citizenship laws; (c) the marginalisation and disenfranchisement of Zimbabweans in the diaspora; and (d) the sense of insecurity caused by the repressive legislation in force in Zimbabwe today.

*Albert Musarurwa*

*Would you say that Zimbabweans have enjoyed freedom of association in the pre-election period?*

No, not at all. Freedom of association means meeting freely as a group and discussing anything relating to elections, which has not happened. In order for people to meet, they are required to notify the police. Even private meetings in homes have been disrupted and people arrested for illegal gatherings. Where meetings do occur, there is a heavy police presence, even in closed-door meetings, for example those of the ZCTU and the opposition MDC. There is also constant threat of arrest if anything is said at a meeting which could be construed as 'likely to incite violence'. Things are worse in rural areas, where people recall the violence they were subjected to after attending opposition meetings prior to the 2000 and 2002 elections and this has caused them not to want to attend meetings in 2005. Given this atmosphere, there has been no freedom of association and no trust amongst people.

*Alec Muchadehama*

No, not really, not with the Public Order and Security Act, the Access to Information and Protection of Privacy Act and other legislation still in place. There has been cosmetic tolerance for rallies, for the benefit, no doubt, of the SADC region, but I do not consider, with respect, that freedom of association is enjoyed as long as people still have to notify the police that they want to meet, and why.

*Advocate Perpetua Dube*

*Would you say that all parties have shown a high degree of political tolerance during this election period?*

No. Threats of denial of food and development have been used during the campaign. Inflammatory language, both in the form of advertisement and through oral statements has been used.

*Josephat Tshuma*

Superficially, yes. There have been changes since the last elections and improved tolerance, but the question remains whether this is sufficient change to have a material effect for the exercise of each voter's free volition in the electoral process?

*Blessing Chimhini*

*Would you say that all political parties have enjoyed equal access to the state media during the electoral period?*

Access to the state media has not been equal. Although attempts have been made to cover the opposition here and there, these isolated attempts do not come anywhere close to equality. The whole programming and editorial stance of the state media is skewed in favour of the ruling party. What the state media calls its programming and editorial content are in fact subtle and sometimes outright ruling party political messages. The opposition is covered only on issues set by the ruling party to further its propaganda. The ruling party is very comfortable with how the state media is operating and they feel they have achieved some form of hegemony and dominance over how national discourse is conducted in the run-up to the elections.

*Rashweat Mukundu*

In theory, yes, as the government has pretended to promulgate enabling regulations which are aimed at opening the airwaves for all political parties. In practice, no. Despite being funded by the taxpayer, the broadcasting media remains inaccessible. This is due to the cost of advertising, as well as the fact that the ruling party's Department of Information (which runs the state broadcaster) is run by active members of the ruling party and it determines what should be viewed on TV or what can be heard on radio. In this case, there will never be equal access and impartial coverage of the various political parties.

*Lawrence Chibwe*



*Will all citizens enjoy equal opportunity to exercise their right to vote and be voted for?*

No. The registration exercise was poorly publicised, there is a loss of confidence in the electoral system, and the rural areas remain fertile ground for ruling party manipulation of voters and voters' intentions.

*Takura Zhangazha*



*Does Zimbabwe have an independent judiciary which can be relied upon to safeguard constitutional freedoms and implement and/or interpret electoral laws without fear or favour?*

A report entitled 'The State of Justice in Zimbabwe' summarises the views of most persons in Zimbabwe regarding the judiciary, including myself. The integrity of the Supreme Court and High Court has been damaged, and the justice system can no longer be said to be independent and impartial. Unfortunately, the legal culture has been subverted for political ends. Most importantly, this report and its conclusions have been endorsed by the Law Society of Zimbabwe.

*Advocate Eric Matinenga*

No. The judiciary is weak and susceptible to political pressure. The new Electoral Court is not a new court per se. It has no institutional, separate existence or support structures. Current High Court judges, Registrar and other staff have been given added responsibilities when they are already strained and stressed, and this will impede the administration of justice and protection of citizens' rights.

*Arnold Tsunga*

There is a mixed bag of judges. Some will be willing to overturn elections where violation of the law has occurred. Others will delay judgments or give political judgments. The Supreme Court is the most pro-government, which makes constitutional litigation difficult. However, some magistrates and High Court judges remain independent and it is still to be seen whether the Electoral Court will function to expedite electoral matters and deal with them in a non-partisan manner.

*Solomon Sacco*

*Have all Zimbabwean voters had the opportunity to receive adequate, impartial voter education which allows them to make an informed choice at the polls on 31 March 2005?*

In the past, voter education was done by both government and NGOs, but in the run-up to this election NGOs have been told they have no part to play. We have not seen any visible or effective education process going on in the country. We have not seen people going into rural areas to provide information. Only a few adverts have appeared in the local newspapers telling people to go and vote, and assuring them of the secrecy of the ballot, but no practical education on how to vote and where has been seen. There has been no attempt to clear up misinformation and misconceptions about lack of secrecy due to a translucent ballot box, and so on, leaving people confused and fearful of voting. Those in charge of voter education do not have adequate personnel to cover the lengths and breadth of the country, so voters are still uninformed, intimidated and misconceived.

*Andrew Makoni*



*Can free and fair elections take place in Zimbabwe with a media law like the Access to Information and Protection of Privacy Act (AIPPA) in place?*

*Justine White, a director of the law firm Mukwevho Mkhabela Adekeye Inc, Johannesburg*

Absolutely not. The whole point about having an election is that it gives people the opportunity to make political decisions about their leadership. How they arrive at making political decisions is informed by the quality of information available to them. If a government refuses to allow people a fundamental right such as freely receiving and imparting information and ideas, then I don't see how that government begins to fulfil the basic requirement of democratic practice, the end point of which is putting an X on a ballot, not the beginning point. Ultimately, an election is not just about putting an X on a ballot. It's about the context of free public discussion and debate and this cannot happen in Zimbabwe with the kind of media laws that result not just in press restrictions on particular news items or articles but results in a wholesale banning of media publications that do not tow the Zanu-PF line. Ultimately, the issue is that the Zimbabwean Government treats its citizens with contempt by refusing to allow them access to a range of views. AIPPA is just an absolutely draconian and repressive piece of legislation that the Zimbabwean government hasn't hesitated to use despite promising SADC and others that draconian laws would be attended to. Not only has it not been repealed but it has been acted on recently, as with the closure of the *Weekly Times*.

*Do you think Zimbabwe's media has been free to meet the information needs of the public during this electoral process?*

*Professor Tawana Kupe, Head of the School of Language, Literature and Media Studies at the University of Witwatersrand*



No. There are media laws, which we all have heard about, which prevent journalists from reporting as freely as they would. Some publications have been closed down – like the *Daily News*, the *Tribune* papers and recently the *Weekly Times*. This means that getting information from different sources is not possible. You can choose only from government-linked publications or private weekly publications which are directed at the business elite. In broadcasting there is no choice at all – there is only the Zimbabwe Broadcasting Corporation which is under government control. There is a lot of information on Zimbabwe on the internet but few people in Zimbabwe have access to the internet. The result is that the public is not able to make an informed choice based on the widest selection of sources. An election is about making an informed choice and you need a variety of sources of information which you can weigh up against each other and make up your own mind. It is difficult to say what the effect of this will be on the outcome of the election. The granting of access to the ZBC for the opposition has come very late – only two weeks or so before the elections. Most of it is also paid access and parties' access to resources for advertising is limited.

# The Land where Independent Radio is Banned and Jammed

Gerry Jackson

When armed paramilitary tried to break down the door of Zimbabwe's first independent radio station, it indicated that perhaps Zanu-PF wasn't too keen on the idea.

It was early in 2000 that the *Capital Radio* case was submitted to the Supreme Court, challenging the government's monopoly of the airwaves. That was the year of the referendum vote against Mugabe, his anger, the farm invasions, murder and mayhem. The court challenge was finally heard in September 2000 and the full bench quickly ruled that there was a legal 'vacuum'. No laws were in place to prohibit independent radio and anyone could go forth and broadcast. Six days after Capital Radio's first signal went out, the guys with guns were battering down the door. One hour before, Mugabe had used presidential powers to make it ille-



port media projects. But the money is an absolute gift – no one has any say in what we produce. No one. None of us are ever going to work in such a free environment ever again in our lives. We answer to no government, no advertiser, no investor, no board. We are nine and

**It does not have to be like this**

A quarter of the population is in exile – half the eligible voters are no longer in the country, Zimbabwe has the fastest shrinking economy in the world. The Government has

**“We were banned from ever returning and were “welcome in the prisons.”**

gal to own a transmitter. The country was falling apart, everyone in the media was under huge attack – the only option was to set up offshore.

## SW Radio Africa is born ... and banned

And so SW Radio Africa was born – SW for shortwave and a studio just outside London. It would have made much more sense to set up regionally, but none of the surrounding countries were keen on hosting us. Of course broadcasting from the UK created a field day for absurd rhetoric, 'Illegal EU broadcasts, BBC creation, MDC funded, Jackson taking to England people to broadcast in Shona and Ndebele her message of ethnic hatred, division, violence and intolerance.' We were banned from ever returning and were 'welcome in the prisons'.

Very quickly an edict was issued banning all government and parastatal employees from giving us interviews. Government then criticised us for lack of balance. And the inflammatory rhetoric continues today. During the last UN General Assembly meeting, Zimbabwean government officials complained that one of the methods used in the 'imperialist West's' offensive on the country's sovereignty was hostile broadcasts into Zimbabwe.

## Country being destroyed

There is nothing about SWRA that is an initiative from the imperialist West. The management and staff are all Zimbabwean. Zimbabweans decided to do it, Zimbabweans set it up, Zimbabweans run it, and Zimbabweans make the editorial decisions. The funding comes from various NGOs/foundations who sup-

port media projects. But the money is an absolute gift – no one has any say in what we produce. No one. None of us are ever going to work in such a free environment ever again in our lives. We answer to no government, no advertiser, no investor, no board. We are nine and

## We would rather broadcast from home

Radio is still the primary source of information in Africa and it's an absolute cornerstone of democracy. Journalists are supposed to be a two-way street for information. They tell people what the government is up to. Likewise they let government know what people want. In Zimbabwe it's always been a one-way conversation. We've been trying to change that. We have an open forum for discussion on anything. Zimbabweans have become our informal correspondents, speaking with wisdom and clarity and appealing for the world to recognise their plight. It's been their first real taste of freedom of speech and everyone is using it so wisely.

With the opposition and civic society blocked from access to the state media it's also been vital to create a forum they can use, particularly during elections, and it often feels that Zimbabwe has more elections than any other country in the world. It's 2005, and here we are with another one and we've been asked 'What does this election mean to SWRA staff?' It means another chance for peaceful, democratic change for Zimbabwe. If that did happen we could go home and broadcast on FM, but there are no indications that a free and fair election is being allowed. As one SWRA wit said when asked what it meant to him: 'More misery.' And there's the challenge for any radio station, to broadcast hope and the possibility of change, when a nation has lost all confidence of any chance of free and fair elections.

expelled all foreign journalists, closed four newspapers, more than 70 Zimbabwean journalists have been arrested and charged with crimes. There truly is no rule of law. It's the Wild West. All we can do is continue to be a support to the fledgling democratic movement. As we've also recently begun broadcasting on medium wave, it helps us be an even greater support.

Recently, Lt-Gen Romeo Dallaire spoke at the Institute for Security Studies in Pretoria. He was the commander of a UN peacekeeping force during the 1994 genocide in Rwanda. He repeatedly warned the UN Security Council and the United States Government that there was an urgent need for intervention. He was ignored and watched nearly a million people being slaughtered. Speaking in Pretoria he warned of parallels in two countries, Sudan and Zimbabwe. Sadly he's correct, and, additionally, the chaos in Zimbabwe threatens the whole Southern African region. Mbeki's much discussed vision of NEPAD will come to nothing. The African continent will remain the poorest and the most miserable on the planet.

It doesn't have to be like that.

'Since the article on SW Radio Africa was written there has been deliberate jamming of the broadcast signal. It's been a cat and mouse game as we've switched frequencies and so has the jammer. The game is on.'

Gerry Jackson Station Manager

To find about SW Radio Africa go to:  
[www.swradioafrica.com](http://www.swradioafrica.com)

## Who will Dare Inform the People?

Bill Saidi on Zimbabwe's highly restrictive anti-media laws

Two weeks before Zimbabwe's parliamentary elections on 31 March, the Supreme Court threw more obstacles on the media playing field by endorsing most of the draconian provisions of the tough anti-media Access to Information and Protection of Privacy Act (AIPPA).

The court made its ruling in rejecting an application to declare AIPPA unconstitutional, made by the publishers of the now closed down, *The Daily News*, the largest-selling independent daily newspaper in the country, and *The Daily News on Sunday*.

### Blamed for opposition wins

In the 2000 parliamentary elections, *The Daily News*, then just a year old, covered the campaign extensively, paying particular attention to the nine-month-old opposition party, the Movement for Democratic Change (MDC), which won 57 of the 120 seats up for grabs. President Robert Mugabe's ruling Zanu-PF, in power since 1980, partly blamed the newspaper for enabling the MDC to win so many seats at its first outing. A year later, the printing press of the newspaper in Harare was destroyed in a limpet mine explosion. To this day, the culprits have not been arrested.

### Independent media gagged

Under AIPPA, the independent media is virtually gagged. There are heavy fines and long prison sentences for journalists convicted of publishing 'falsehoods', the definition of which by the prosecution can be arbitrary. Independent editors and reporters have been charged under AIPPA and what the journalists describe as its uglier sister, the Public Order and Security Act (POSA), but no government journalists. In its brief existence, AIPPA has consigned to the graveyard four independent newspapers: the two ANZ titles in 2003, in 2004 *The Tribune*, and early this year *The Weekly Times*, registered by the MIC ten weeks before its licence was cancelled.

Three independent weeklies with a circulation not exceeding 40,000 may still be on the streets by the time the elections are held: *The Zimbabwe Independent*, *The Standard* and *The Sunday Mirror*. Most independent newspapers are published in the cities and towns and rarely have a circulation which extends to the rural outback, where 70 per cent of the population lives.

### Rural population denied information

Most Zimbabweans, in general, obtain vital information on politics, the economy and the international situation from the radio, which is owned by the government and is pro ruling party. Even at its peak, *The Daily News*, which at one stage sold 120,000 copies, could hardly make inroads into the hinterland. The independent newspapers now in circulation have fared no better.

**“Coverage of these elections could be a hair-raising affair for newspapers and reporters.”**

What is worse, *The Zimbabwe Independent* and *The Financial Gazette*, are aimed primarily at a wealthy but small business readership. Although they have now been compelled to expand their political coverage, because of the absence of other titles, they still have only a marginal impact on the literate population in general and the rural readership in particular.

The government owns the only radio and television networks, having banned two independent TV stations a few years ago. The government stable has *The Herald*, *The Chronicle*, *The Sunday Mail*, *The Sunday News* and *The Manica Post*. In Shona and Sindebele it publishes two weeklies, *Kwayedza* and *Umthunywa*. The government also publishes small weekly provincial newspapers, originating from the provinces' capitals. More news of the opposition policies and political activities is being given coverage in the state media this time around, but it does not extend to these parochial papers.

### Foreign journalists deported

Before 2002 and AIPPA, foreign and local journalists applied for accreditation with the department of information, which invariably granted it with little fuss. When AIPPA was introduced, foreign journalists were deported. As Election Day approached, four Zimbabwean reporters working for the foreign press fled the country for fear of arrest on alleged espionage charges.

### Some might be jailed

The MDC is taking part in the elections after hesitating over what it called an uneven electoral playing field. In the election campaign this time, the MDC has been given more time on the state radio and television than before, to speak on its manifesto. Coverage of these elections could be a hair-raising affair for newspapers and reporters. The independent papers have to contend not only with AIPPA but also with POSA, which restricts public gatherings and makes it a crime to describe the president in derogatory language. With AIPPA and POSA operating in these elections, some journalists might end up in jail.

Bill Saidi is Editor of *The Daily News on Sunday*

# Can South Africa Hold a Free and Fair Election?

Daniel Molokela

A coalition of South African based civic society organisations that addresses issues related to Zimbabweans in the diaspora plans to hold a protest mock election in South Africa on 31 March. South Africa is home to at least two million Zimbabweans and for them a mock election in South Africa is their only opportunity to record their choice of leadership.

## Half the nation can't vote

Under the existing Zimbabwean law, it is not possible for most Zimbabweans living abroad to vote. The right is only available for citizens who are on government duty such as the staff at embassies and the security forces on international duty. As such, only those voters present at their respective constituencies in Zimbabwe will be able to vote on election day. It is estimated that more than half of the nation's potential voters are now living abroad. The absence of the diaspora vote will severely undermine the credibility of the elections.

The Zimbabwean government has repeatedly rebuffed calls for it to ensure the participation of all its citizens now living abroad. It argues that it does not have the requisite administrative capacity to hold elections abroad. It further insists that the imposition of travel bans against most senior government officials will make it difficult for Zanu-PF to campaign in Europe and the United States.

## Diaspora growing

In the last five years, the nation's exiled community has grown massively to a population of at least four million, largely due to the ever worsening political and socio-economic

situation in Zimbabwe. The proportion of those in South Africa represents the largest population group in the entire diaspora. Unfortunately, while the Harare authorities have been quick to appreciate the economic value of the exiled community as evinced by the Zimbabwe Reserve Bank's proliferating schemes to facilitate the remittance of foreign earnings, they have on the other hand, deliberately ignored its political role. This is largely because the ruling party fears that most of those outside the country are likely to vote for the opposition. The reasons for the exclusion of the diaspora vote are thus more political than legal or logistical in nature.

## Mock election in SA

Plans to hold a mock election in South Africa also come at a time when, just 13 days before the election, Zimbabwe's Supreme Court dismissed a constitutional case filed by the Zimbabwe Diaspora Vote Action Group. This group of Zimbabweans living in the United Kingdom had approached the court, arguing that voting is a fundamental right of every Zimbabwean, whether living in or outside the country. They also asked that the Harare authorities be ordered to ensure that all Zimbabweans living abroad are not denied the right. Surprisingly, the court, on whose independence and impartiality there is much doubt, ruled that their claim had no merit.

*The Coalition staging this election includes Crisis in Zimbabwe Coalition, Heal Zimbabwe Trust, Concerned Citizens Abroad and Zimbabwe Political Victims Association. Daniel Molokela is a human rights lawyer working with this Coalition.*

## What do you think is the most important thing that foreign observers should know in order to understand Zimbabwe's election environment?

They should come prepared to look at everything, and bear in mind that what one sees on the surface is often not what is actually happening on the ground. There is insidious intimidation, which is often difficult to identify. Particularly at rural polling stations, foreign observers should look closely at the percentage of illiterate voters and their method of voting. They should look closely at village structures and see the relationship between the chiefs, headmen and villagers, how the people have been educated and what they have been instructed to do vis-à-vis voting, to see whether objectively the system is fair at the time.

*Advocate Eric Matinenga (senior advocate)*

That there is non-compliance with the SADC Electoral Principles. Every single electoral institution is directly or indirectly appointed by the President and therefore subordinate to him.

*Josephat Tshuma (human rights lawyer and Law Society of Zimbabwe Councillor)*

That the campaigning field is uneven, and the subtleties can best be understood when one is living in Zimbabwe. One party has more access to the media, and is afforded more prime time; journalists rarely do say anything positive about the other main party's campaign; rural voter education has failed; the chiefs and other traditional leaders have been politicised, and are used to campaign for one party; the legislative framework does not really permit equal and fair campaign opportunities for all parties; there is likely to be a drought in some parts of Zimbabwe, so food and food aid is a strong election tool; and one party has monopolised the Liberation Struggle, and patented it, virtually, for the purposes of campaigning, while the main opposition party has been labelled a tool of the imperialists. What people need to understand, really, is that while they will see fewer blatant abuses, these other factors make the field uneven. Remember, such news as may find its way out through local radio and TV stations is carefully canned and labelled by carefully accredited persons, courtesy of AIPPA.

*Advocate Perpetua Dube (human rights lawyer)*

That Zanu-PF and Robert Mugabe want to remain in power by any means necessary so all the touted electoral reforms and the alleged compliance with the SADC Guidelines is just a smokescreen meant to hoodwink the international community and give Zanu-PF legitimacy after its obvious win. In that vein it is important that observers spend most of their time in the rural areas to enable them to see whether the electoral process really works in these no-go areas for opposition parties.

*Lawrence Chibwe (media lawyer)*

That the rules of the elections are far from being open and transparent, and they should be aware of the repressive political culture surrounding elections in Zimbabwe.

*Takura Zhangazha (Advocacy Officer, MISA-Zimbabwe)*

That there is an extremely uneven legislative framework, which is deliberately vague to confuse participants and attempt to disguise unlawful electoral conduct (such as political violence and unequal campaigning ability). The legal structures will have the ability to influence the vote in favour of the ruling party.

*Rashweat Mukundu (Director, MISA-Zimbabwe)*

That the voters' roll has an impact on every part of the electoral process, and should therefore be carefully scrutinised – how was registration done; how was inspection of the voters' roll carried out? What is the status of the roll, together with its accessibility and transparency of the entire process.

*Rindai Chipfunde (National Coordinator, Zimbabwe Election Support Network)*

The background of violence. The prior elections have been unfair particularly because of violence and intimidation, and this election should primarily be judged on whether this violence and intimidation has continued to affect the voters and the ability of political parties to hold rallies and campaigns.

*Solomon Sacco (lecturer, University of Zimbabwe)*

Carefully study the effects of about four years of sustained, systemic and systematic violence and intimidation of the electorate as well as the effect of paranoia and propaganda of the State on citizens.

*Arnold Tsunga (Director, Zimbabwe Lawyers for Human Rights)*

They should be aware of the history of the divisive 2000 and 2002 elections, and that the disputed results continue to haunt this country. They should know who is contesting the elections, where they are contesting them, how people are voting, whether they are doing so freely, and should also understand how each electoral institution relates to the others.

*Alec Muchadehama (human rights lawyer)*

That the playing field should be level long before the election date, with a minimum period being the 90 days provided for in the SADC Protocol.

*Beatrice Mtetwa (human rights lawyer)*

## Do you agree with the assessment that the foreign observers in Zimbabwe have a tough task ahead of them? Why?

Yes. I don't think you can make an assessment of the elections by being there shortly before the elections happen. It is material what happens at least 90 days before the elections [and] during the counting of votes and the verification of results. The observers of the 31 March elections are not in a position to make a proper assessment of free electioneering, of access to the media. If access to the state media is limited to any political party or a party is unable to comply with the terms and conditions of gaining access, that's not fair. Also, one has to consider the legal framework very carefully at least 90 days before. How are disputes to be dealt with? What kind of disputes would materially affect the outcome of the elections? What is the role of the judiciary? What is the role of the elections administrator? Are they in a position to deal with disputes fairly? These are the things which must be properly dealt with 90 days before. The observers are too late to make an assessment of those things. They will be faced with a fait accompli. That makes the task even more difficult.

*Judge Ismail Hussain, Judge of the High Court of South Africa and member of the Independent Electoral Commission of South Africa*



## Whose assessment of the Zimbabwean election really matters, that of the observers or that of the people of Zimbabwe?

I believe if the results of the elections are widely accepted by the people of Zimbabwe, I don't think it matters what the international observers say. They are the best people to do that. If the people of Zimbabwe say, 'We are not happy with the result. We want to challenge it in court', then the international observers play a role.

*Judge Ismail Hussain, Judge of the High Court of South Africa and member of the Independent Electoral Commission of South Africa*

## Is two weeks adequate to observe an election?

Totally inadequate, because two weeks before elections, you are just talking in terms of the final days of the elections. If the observers come into it just before the elections it means that they have missed most of the campaign period, they would also have missed the registration period, and they would also have missed the arrangements in terms of the administration, the actual putting-up of district officials and that sort of thing. Most of the electoral apparatus would have been in place two weeks before the elections.

*Prof Muna Ndulo, UN Legal Expert on elections in South Africa, East Timor and Afghanistan*





# So, What Happens After Another Flawed Election?

**Lovemore Madhuku**

*Chairperson, National Constitutional Assembly*

At the centre of the Zimbabwe crisis is the absence of democratic and accountable governance. This is manifested by, among other things, the systematic assault, by the Robert Mugabe Government, on all fundamental freedoms that are taken for granted in many parts of the world.

This election is being conducted under a constitutional framework whose *raison d'être* is to preserve the status quo. Until Zimbabweans overhaul the constitutional framework and introduce a new constitution anchored on democratic institutions, it is impossible to attain the level of 'free and fair elections'. An election that is neither free nor fair cannot produce a fair result.

## Election promises ludicrous

This election will not change the government, whatever the result. The president remains the head of government and is entitled to constitute the government until 2008, even if his ruling party loses the parliamentary election. As the election is not about the next government, this makes election promises by the opposition ludicrous. A prospective MP who promises jobs, better management of the economy and so on, when he knows that he will not be in the government whatever the result of the election, may be seen by some voters as taking them for a ride. This may contribute to apathy and lack of enthusiasm among voters.

## Pro-democracy forces must unify

In the circumstances, what is the way forward? In the National Constitutional Assembly (NCA) we have consistently asserted the following position: Zimbabweans must, as a starting point out of this crisis, advocate for and fight to establish a democratic dispensation within which to do genuine politics. This requires unity of all pro-democracy

The rules of the game must be overhauled first before dreaming of "victory" under a set of rules specifically designed to make victory by an opponent impossible.

forces around a common agenda of establishing a new constitution and thereafter elections under that new constitution. This approach requires the suspension of the ambitions of individuals and political parties to acquire political power and subjecting all our energies towards one priority: forcing the Mugabe regime to embrace genuine democratic reform. This pressure is not easy to achieve, nor will it be a one-day affair. It may take a long time to build and means serious risks to the life and freedom of everyone involved. But if clear parameters are set and participants made aware of the risks and the length of time involved, success is guaranteed.

## Flawed elections change nothing

This approach contrasts with that of the Movement for Democratic Change (MDC). The MDC believes in capturing power from the Mugabe regime and then using that power to push for democratic reforms. This approach has seen the MDC participating in the 2000 and 2002 elections under hostile conditions. Notwithstanding the hostile electoral environment, the mood in 2000 and 2002 was one of hope and enthusiasm. In both elections, it was felt that the overwhelming anger of the people was sufficient to overcome the constitutional and legal obstacles placed in the way of a free and fair election. In my view, the results of those elections proved beyond any shadow of doubt that this approach does not work in Zimbabwe.

## Rules must be changed

The rules of the game must be overhauled first before dreaming of 'victory' under a set of rules specifically designed to make victory by an opponent impossible. Many who disagree with this approach are pure power-seekers. This brings me to the March 2005 parliamentary election. The MDC agrees that there has been no significant change to the rules as they stood in 2000 and 2002 but still believes it may 'win' the elections. It will not win the election for one reason: the constitutional and electoral framework under which the election is being conducted will not allow victory for the opposition. A better approach would have been for Zimbabweans to have refused to legitimise the Mugabe regime's rule by not participating in a futile election and concentrating all their energies on demonstrating the illegitimacy of the regime and mobilising Zimbabweans to put pressure for genuine democratic reforms as a pre-condition to an election.

## Mass mobilisation and protest

Be that as it may, the election is taking place on 31 March 2005 and Zimbabweans who wish to vote must do so. What is important is to map out what to do after the elections. To me, the way forward is simple: the Mugabe regime will remain in power after 31 March. It will continue with the path of bad governance, human rights abuses and lack of respect for the rule of law. For the third time, Zimbabweans would have realised the futility of an electoral process outside a genuine democratic order. After 31 March, all pro-democracy forces must unite and face the Mugabe regime with far-reaching demands. The post-election struggle must be based on mass mobilisation and mass protests, regardless of the number of times we may fail. Zimbabweans must continue with the fight for a new democracy founded on a new constitution and not allow themselves to be distracted by another future election. The role of SADC and the rest of the international community is to understand this position and support it.



# Election will not Change Grip on Power

**Sternford Moyo**



As the country enters elections in 2005, it is confronted by the very rare phenomenon of an election devoid of legal authority to renew or transfer executive authority. The forthcoming election cannot, in terms of the Constitution, produce a new government. Although the resultant Parliament can function as a forum for debate and expression of grievances, a monitor and a scrutiniser of government expenditure, and as a legislature, it will not be fully representative of the electorate, neither will it have the power to create a new executive authority for the country or to make or break a government.

## President's all-encompassing authority

In terms of the current Constitution, the executive authority of Zimbabwe is vested in the President and is exercisable by him directly or through Vice Presidents, Ministers and Deputy Ministers appointed by him. He appoints all diplomatic representatives representing Zimbabwe. He receives and recognises all diplomatic representatives hosted by Zimbabwe. He enters into all international treaties and conventions. He has the power to make all constitutional appointments. He assents to all legislation before it can be gazetted into law. He appoints the eight provincial governors who are *ex-officio* members of Parliament and 12 members of parliament. He appoints ten chiefs who become eligible for election by his appointee chiefs to parliament. In summary, he appoints, directly and indirectly, 30 out of the 150 members of parliament.

The President's term of office expires in 2008. Executive Authority of Zimbabwe is vested in him until then, and he remains Head of State, Head of Government, and Commander in Chief of the Armed Forces of Zimbabwe. Constitutionally, whatever the outcome of the forthcoming general election, there will be no change in the status of the President as Head of State, Head of Government, and Commander in Chief of the Armed Forces vested with the executive authority of the country.

## Stranglehold on parliament

The President is part of the legislature. No Bill can become law unless he gives it assent. Should Parliament decide to pursue the enactment of any law he will have refused to assent to, it passes a special assent motion. Where the President is not happy with the assent motion, he has the power

to dissolve parliament. Accordingly, no parliament can force the enactment of any law which is not acceptable to the President.

There are only three mechanisms for a constitutional transfer of executive authority by a hostile majority in Parliament. These are a vote of no confidence, an impeachment motion, or a constitutional amendment. Each of the three requires the support of two-thirds of members of parliament to succeed. Armed with the 30 seats referred to above, the Government requires only 21 additional seats from the forthcoming general election to defeat any of the three motions.

Furthermore, despite the apparent absurdity of it all, in theory the President can constitutionally reverse the outcome of a general election by exercising his power to dissolve parliament.

## A note to election observers

In conclusion, before even advertent to other pertinent issues such as the absence of constitutional guarantees for full citizen participation in political processes, the negative impact on citizen participation and freedom of expression of repressive legislation such as the Public Order and Security Act and the Access to Information and Protection of Privacy Act, the impact of late access to State media by opposition political parties, the dominance of State Broadcasting as opposed to Public Broadcasting, obstacles to the exercise of universal adult suffrage, the negative impact of limitations on voter education, and the partiality or otherwise of electoral institutions, it would be interesting if election observers could answer a more fundamental question. Is it possible to have, as a democratic free and fair election, an election which cannot renew or terminate the executive authority of a government? Furthermore, it would be interesting if they could turn their attention to the non-general character of the election. In other words, is an election in which 20 per cent of the members of parliament become members of parliament without election a general election?

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# IBA Calls for Real Commitment to Democracy

On 31 March, 2005, Zimbabwe will, once again, have parliamentary elections.

Robert G Mugabe who, maintaining a 'democratic façade', has run Zimbabwe in an authoritarian manner for the last 25 years, is trying to obtain a new mandate. But his electorate record – full of past instances of fraud and manipulation – has been very poor so far.

Mugabe seems to have perfected the art of conducting elections without allowing any real competition. When necessary, he has even turned to open repression of the opposition.

Therefore, the international community is closely monitoring the ongoing electoral process in Zimbabwe. It is deeply concerned because, up to now, Mugabe has effectively prevented the transfer of power through elections even to those who appeared to have won the recent 2002 elections.

When elections are manipulated, like they were in Zimbabwe, results do not reflect the will of the people. We should remember that the Universal Declaration of Human Rights reminds that free and fair elections are of the essence when it states that 'the will of the people shall be the basis of the authority of government' and that this 'shall be expressed in periodic and genuine elections'.

It is time for Mugabe to behave in a democratic manner. Even his own region is now closely following the way to the forthcoming elections. A new democratic spirit that seems to float over Africa, as the events in Togo have just proved, should not be betrayed.

*Ambassador Emilio Cárdenas, Co-Chair of the IBA Human Rights Institute*



'It is accepted in all democracies today that free and fair elections are so crucial that the global community and internationally recognised NGOs are entitled and expected to monitor elections. For a democracy to work, the starting point is the free and fair election of the representatives of all the people.'

Having said that, it's the beginning. For democracies to work, the institutions that underpin democracy have to be respected. Democratic elections, as crucial as they are, are not sufficient to ensure democracy. It is important, in respect of the exercise and protection of fundamental human rights in a democracy, that there should be complete confidence in the manner in which leaders in all three branches of government have been chosen, namely in an open and free way.

The protection of other human rights comes after the election and depends on the institutions being allowed to work efficiently and transparently. Without free and fair elections, you will not have respect for other human rights but, because it is a point worth emphasising, I reiterate that free and fair elections alone do not ensure democracy.

*Justice Richard Goldstone, Co-Chair of the IBA Human Rights Institute*

The proposed election in Zimbabwe calls for world concern, as the result is already known – the return of a dictatorial system.

Free and Fair election connotes: freedom of the press, level playing field and absence of coercion, intimidation or fear of the consequences of voting against a sitting Dictator.

President Mugabe should open the environment for a genuinely free and fair election to take place. The days are gone when only one man in a Nation Knows it all and African Nations should not be run as Personal Estates.

The World Leaders owe Africa a duty to stop playing the proverbial Ostrich on the continued abuse of electoral processes in Zimbabwe. The time has come for the world to refuse recognition of leaders whose power is not clearly derived from the will of the people.

*Segun Onakoya, Chair, African Regional Forum, IIBA*

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## Repressive Legal Framework Denies Free Choice

**Joseph James** *President of the Law Society of Zimbabwe*

**The situation at the moment has not really changed compared to 2000 or 2002 in terms of fair and free elections being held**

Zimbabwe has not complied with the requirements of the SADC protocol. The essence of these is that there should be fairness to all the parties taking part in the elections, and that people should be able to exercise their democratic right to vote in an atmosphere which is free and fair. On the surface it appears as if the Government of Zimbabwe has complied, as legislation has been passed by Parliament and signed into effect by the President. These laws however infringe upon the basic human rights of the Zimbabwean people. Also the manner in which the laws are applied gives rise to concern.

### No right to associate

The most significant and most repressive piece of legislation is the Public Order and Security Act (POSA) passed in 2002, which repealed the notorious Law and Order (Maintenance) Act which had been passed by the Smith regime, and kept on the statute books for 22 years by our Government. It is

significant that POSA became law just before the Presidential elections in 2002. POSA effectively prevents freedom of assembly and association. Section 16 of POSA makes it an offence to criticise the President, who is the leader of one of the two main parties contesting the election, and should be subject to the normal criticism during the elections.

### Freedom of information denied

The Access to Information and Protection of Privacy Act prevents Zimbabweans from freely receiving and imparting ideas and information: this is reflected in the closure of four newspapers which are regarded as anti-Government in the recent past.

The Broadcasting Act effectively

keeps the air-waves in Zimbabwe under the control of the Government.

### NGOs threatened

The Non-Governmental Organisation Bill which only awaits the President's signature to become law is a threat hanging over those non-governmental organisations who may wish to be involved in voter education.

### Access to State broadcaster restricted

The Broadcasting Services (Access to radio and television during an Election) Regulations 2005 appear to grant contesting political parties equal time to the broadcasting of election matters; they also prescribe how the parties may advertise on the airwaves. Unfortunately the cost

of the advertisements is high, and in practice exactly how much access is given to a particular political party is dependent upon the discretion of the Zimbabwe Broadcasting Holdings, which the Ministry of Information controls.

Consequently, repressive pieces of legislation such as POSA, AIPPA and the Broadcasting Act need either to be repealed or amended drastically simply as a start to ensure free and fair elections.

### Voters' roll 'shambolic'

The most significant change in this election has been the enactment of the Zimbabwe Electoral Commission Act, but unfortunately the Registrar General's office continues to oversee the voters' roll, which is crucial: the Registrar General's office has been criticised for a shambolic

roll containing dead and ghost voters. The army continues to supply personnel to run the elections, and the leaders of the armed forces made it very clear where their allegiance lies.

### Rule of law crisis continues

The situation at the moment has not really changed compared to 2000 or 2002 in terms of fair and free elections being held: political violence continues, and the Police continue to arrest both MDC and Zanu-PF members who allegedly indulge in political violence. There continues to be a selective application of the law.

Foreign observers need to see how the laws of this country are applied by the Executive in order to appreciate the issues.

This election will not end the abuse of human rights and the rule of law crisis in Zimbabwe: this can be seen in the disruption of the MDC meetings, the harassment of journalists, and the recent amendment to AIPPA which basically criminalises journalism.

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