

Zimbabwe Lawyers for Human Rights



**Report on the March 2005 Parliamentary Elections
(Zimbabwe)**

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FINAL REPORT ON THE MARCH 2005 PARLIAMENTARY ELECTIONS IN ZIMBABWE¹

Zimbabwe Lawyers for Human Rights (ZLHR) has as its main objective the fostering of a culture of human rights in Zimbabwe, as well as encouraging the growth and strengthening of respect for human dignity and rights at all levels of Zimbabwean society through observance of the rule of law. A strong indicator of whether these goals are being achieved is whether free and fair elections are possible and have indeed occurred. Genuine elections serve to illustrate the free will of the people and allow them to express their opinions and participate freely in the government of their country. The acceptability of the outcome has a direct bearing on democracy, prospects for peace, political and socio-economic development in the country, and therefore the rule of law. It is within ZLHR's constitutional mandate to scrutinise whether constitutional and international human rights standards have been upheld and have therefore allowed for this objective of free and fair elections to be met to reflect the genuine will of the people.

ZLHR applied for, and was granted accreditation to observe the March 2005 parliamentary elections. A total of 44 members were approved for accreditation as local observers by the Minister of Justice, Legal & Parliamentary Affairs. The ZLHR observers were drawn from Harare, Bulawayo, Gweru, Kadoma, Norton, Chinhoyi, Mutare and Chipinge.

¹ Co-authored by Arnold Tsunga and Irene Petras

The Parliamentary elections were held in Zimbabwe on 31 March 2005. The official results announced between 1 and 2 April 2005 by the Chief Elections Officer, Mr Lovemore Sekeramayi, were as follows:

<i>CONTESTING PARTY</i>	<i>NUMBER OF SEATS</i>
Independent	1
MDC	41
ZANU-PF	78

In addition to these seats the President is entitled in terms of the Constitution of Zimbabwe to appoint a further 30 non-constituency Members of Parliament, who will be drawn from the ruling ZANU-PF, giving the party a total of 108 seats, and thus a two-thirds majority in Parliament (which majority was not achieved at the polls through popular choice).

In the run-up to the elections, much mention was made by various stakeholders of the **SADC Principles and Guidelines Governing Democratic Elections** (“the SADC Principles”) and how far compliance with these Principles has been achieved. The SADC Principles were adopted by the SADC Summit (including Zimbabwe) in Mauritius in August 2004. Although the SADC Principles are merely aspirational the new Electoral Act [*Chapter 2:13*] in section 3 incorporates into domestic law “General principles of democratic elections” which, although not directly incorporating the SADC Principles, are reflective of their intent and aspiration.²

² Section 3 of the Act reads:

Subject to the Constitution and this Act, every election shall be conducted in way that is consistent with the following principles-

- (a) the authority to govern derives from the will of the people 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; and*
- (b) every citizen has the right –*
 - a. to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the grounds of race, ethnicity, gender, language, political or religious belief, education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;*
 - b. to join or participate in the activities of and to recruit members of a political party of his or her choice;*
 - c. to participate in peaceful political activity intended to influence the composition and policies of Government;*
 - d. to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government...”*

The SADC Guidelines can therefore be used to judge how far Zimbabwe can be said to have complied and whether Principle I [**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**] has been realised.

A. FULL PARTICIPATION OF THE CITIZENS IN THE POLITICAL PROCESS

ZLHR is of the view that the following conditions are vital to the achievement of this principle:

- An enabling constitution;
- Adequate, impartial and informative voter education;
- An enabling and transparent system of voter registration;
- Free and uninhibited participation in public meetings and debates;
- Access to relevant information
- Easy access to polling stations

An enabling constitution

ZLHR believes that the current Constitution of Zimbabwe is not the home-grown document that is needed by Zimbabweans to protect their fundamental rights and freedoms and establish independent institutions that are subject to scrutiny and review. It does not allow for the adequate protection of fundamental rights, including the right to vote. Electoral bodies set up under the Constitution have unacceptable limitations in terms of their mandate and their functions conflict in part with electoral legislation and fundamentally recognised norms, such as the requirement for one independent body to bear responsibility for the smooth running of the electoral process.

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- (c) *every political party has the right -*
- a. *to operate freely within the law;*
 - b. *to put up or sponsor one or more candidates in every election;*
 - c. *to campaign freely within the law;*
 - d. *to have reasonable access to the media*

There was a multiplicity of electoral bodies involved in the electoral process. This led to a duplication of roles and confusion as to which body bore ultimate responsibility and could be called to account. Further the provision allowing the President, who is an interested party, to select 30 non-constituency Members of Parliament over and above the 120 who will vie for election is in direct contradiction to a democratic process of selection of candidates by the people and gives an undue advantage to one party even before an election has been held. In this case it will give ZANU-PF a two-thirds majority which it otherwise would not have achieved. Executive powers granted under the Constitution remain unnecessary, excessive and open to abuse.

In view of the shortcomings of the current Constitution ZLHR believes that it has not adequately ensured full participation by citizens and has contributed to the subversion of the will of the people in the elections.

Adequate, impartial and informative voter education

Legislative provisions exist to ensure that voters receive “adequate, accurate and unbiased voter education” from the Zimbabwe Electoral Commission (ZEC)³. ZEC is also tasked with ensuring that “voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party”.⁴

ZEC has failed, under section 4(1)(h) of its enabling statute to carry out its mandate, in that, *inter alia*:

- (i) The public was not adequately informed about the delimitation of constituencies prior to polling day. Both the Constitution and the Electoral Act remain silent on how long prior to an election constituency boundaries should be made known. By the time the President promulgated the boundaries there was inadequate opportunity for voters to check the voters’ roll and make themselves aware of which constituency they fell within. It also left inadequate time to inform voters affected by boundary changes and so ensure that they would attend the correct polling stations.

³ Section 14(1)(a) of the Zimbabwe Electoral Commission Act [Chapter 2:12]

At a price of Z\$350,000 the report of the Delimitation Commission, including details of boundaries and changes from the 2000 parliamentary election constituencies, was beyond the reach of ordinary voters. It was not readily available, especially in areas directly affected by boundary changes and the map outlining the boundaries of constituencies was unobtainable, even in Harare. In areas directly affected by the boundary changes, such as Harare and Bulawayo constituencies, ZLHR accredited observers noted an unacceptably large number of voters being turned away by presiding officers on the basis that they were in the wrong constituency or that their names did not appear on the voters' roll. This is a direct indication of the failure of voter education programmes to achieve their objectives. The statistics appear in the table below.

- (ii) The list of polling stations was published only on 18 March 2005 – 13 days before polling day. This is in conflict with section 51 of the Electoral Act [*Chapter 2:13*] which requires that information about polling stations should be provided at least 14 days prior to the polling date. The information should be published in newspapers circulating in the area. ZEC did not adequately carry out such voter education, making it especially difficult for those outside cities and towns to access the information as to where they would be able to vote. Also details of the polling stations conflicted with the information announced by the chairman of the ZEC, as he gave details of a greater number of polling stations than those listed in publications.⁵ This generated confusion. The late release of the information also meant that observers who may have wished to visit the polling stations to ensure suitability some time prior to the date of polling were not in a position to do so.
- (iii) Whilst the inspection of the voters' roll for the March election closed on 4 February 2005, the ZEC, which in terms of the Electoral Act is obliged to supervise the registration and inspection process, only came into being two days previously, and would not have been able to provide accurate information to voters about the time and places for inspection.

⁴ Section 14(1)(b) *ibid*

- (iv) Information about the candidates contesting the elections was, again, provided very late, but it has generally been difficult to establish whether any information additional to that published in the print media is available to voters, as none has been evident or readily available in areas observed by ZLHR members.⁶
- (v) ZEC, if at all, carried out a voter education programme hopelessly out of time to have any meaningful impact in view of the large numbers of voters to be reached. The reality is that the electorate approached elections without having benefited from voter education. This is undesirable given the one sided manner in which the public media (both electronic and print) were utilised to support the status quo and to vilify opposition or perceived opponents of the state. This is further worsened by the fact that the state-controlled Media and Information Commission used the Access to Information and Protection of Privacy Act [*Chapter 10:27*] to shut down independent newspapers in the build up to these elections, thus cutting out a further commendable means of voter enlightenment. ZLHR accredited observers noted that polling agents were helpful in providing information on how to vote to those enquiring at the polling stations but this is insufficient, is not part of their mandate and arrives too late to make any meaningful impact on informed participation. One only needs to examine the unacceptably high numbers of spoilt papers to appreciate how this has affected participation in these elections. Again, the statistics appear in the table below.
- (vi) Outside the aforesaid weaknesses of the ZEC it must be noted also that the ZEC Act militates against the realisation of adequate, impartial and informative voter education in so far as it outlaws foreign funding of NGOs or entities involved in voter education.

The statistics provided by the ZEC appear below in Fig.1.

⁵ While the chairman of the ZEC, Justice George Chiweshe, announced at a briefing of local and international observers on 23 March 2005 that there were 8,235 polling stations, only 8,137 polling stations were identified in the published lists.

⁶ This is despite the fact that the chairman of the ZEC publicly stated at the briefing referred to above that educators had been deployed in all constituencies, information had been distributed by print and electronic media and that election leaflets in 3 languages (Shona, Ndebele and English) had been printed and distributed.

Figure 1.

Province	Total votes cast	Total voters turned away as at 19:35hrs	Percentage voters turned away as at 19:35hrs	Total number of spoilt votes
Harare	340,708	31,872	9,35	3,375
Bulawayo	107,259	11,352	10,58	828
Matabeleland North	Not yet provided by ZEC			4,612
Matabeleland South	138,978	10,892	7,84	4,519
Mashonaland Central	Not yet provided by ZEC			6,560
Mashonaland East	219,851	16,796	7,64	8,988
Mashonaland West	250,806	35,267	14,06	7,532
Midlands	Not yet provided by ZEC			8,036
Manicaland	282,471	26,976	9,55	6,644
Masvingo	Not yet provided by ZEC			9,333
TOTAL	1,340,073 (six provinces)	133,155 (six provinces)	9,94 (six provinces)	60,427 (ten provinces)

An enabling and transparent system of voter registration

Voter registration for the March 2005 parliamentary elections was carried out by the Office of the Registrar-General. In terms of the ZEC Act, read together with the Electoral Act, overall responsibility for direction and control of the registration process, as well as custody of the voters' roll, rests with the ZEC. ZLHR notes that voter registration occurred between 17 January 2005 and 4 February 2005. With the ZEC only in existence for the last two days of this process, there was no oversight of the process by a purportedly independent authority.

ZLHR, from previous electoral experiences and legal proceedings, has no faith in the impartiality and transparency of the R-G's office, and is therefore unconvinced that voter registration was accessible, acceptable and transparent for all voters wishing to register or inspect the roll. The failure to have the voter registration exercise handled by a credible impartial organ in a transparent and accountable manner posed a significant and serious threat to the overall credibility of the electoral process for March 2005. This view is supported by the unacceptably high number of voters who were turned away in each constituency on polling day on grounds that they were in the wrong constituency, or that their registration documents were not in order, or that their names did not appear on the roll, or that they were in the wrong constituency, or that their Zimbabwean citizenship was in issue. Such a high turn-away would not have been experienced if the voter registration and inspection process had been far-reaching and efficient.

ZLHR remains unpersuaded of the credibility of the voters' roll that was used in these elections. Officials from the Registrar-General's office advised that the system of registration had been computerised and that all the provinces were networked. Changes are purportedly made automatically to the roll upon changes in delimitation of constituencies. They further advised that deceased voters were automatically removed from the voters' roll upon registration of the death, yet such registration is carried out only with extreme difficulty in rural areas. Even in urban areas the process is ineffective as the process is laborious and there are often insurmountable procedural barriers, including the fact that the resources and manpower of the Registrar-

General's office are severely stretched. The voters' roll is required to detail every change with a full explanation, yet the roll utilised in the March 2005 elections did not do so.

No person is allowed to access an electronic copy of the voters' roll. All inspection thus has to be done using a hard copy of the roll. This is time-consuming, serves as a barrier to proper scrutiny and raises questions about the transparency of the process.

All in all, ZLHR maintains that the voters' roll remains in disarray and no adequate explanations have been provided by either the Registrar-General's office or the ZEC to challenge this belief. As such its use in the March 2005 polls is subject to challenge but also introduces real prospects of the election results being rejected by the losing political parties and thrusting the country into socio-political and economic stagnation if not turmoil.

Figure 2.

THE SPOILED PAPERS BY PROVINCE			
Province	Number of constituencies	Average number of spoilt papers per constituency	Total number of spoilt papers in province
Harare	18	187.5	3 375
Bulawayo	7	118.2	828
Midlands	16	502.2	8 036
Mashonaland West	13	579.3	7 532
Matabeleland South	7	645.5	4 519
Masvingo	14	666.6	9 333
Matabeleland North	7	658.8	4 612
Manicaland	15	442.9	6 644
Mashonaland East	13	691.3	8 988
Mashonaland Central	10	656	6 560
TOTALS: Provinces: 10	Constituencies = 120	Average spoiled per province = 514.8	Total Spoiled = 60 427

National Average of spoilt paper per constituency = 495.1

Free and uninhibited participation in public meetings and debates

Such participation is vital to allow voters to learn about candidate contesting the elections, as well as scrutinise the manifestoes of the contesting parties. Open debate also allows voters to challenge perceived shortcomings on the part of current parliamentary representatives and obtain answers and undertakings that these will be remedied so that they do not occur in the future.

In the view of ZLHR, such free participation has been severely and irreparably curtailed since the enactment of the Public Order and Security Act [*Chapter 11:17*] (POSA) in January 2002. In terms of section 24 of POSA organisers of public meetings are required to notify the regulating authorities (the police) of any intended meetings. Regulating authorities have misinterpreted their powers to ban meetings perceived as undesirable and have unlawfully and unreasonably abused provisions of POSA to violently disperse meetings, and to arrest, detain and charge participating individuals either with conduct likely to incite violence or insulting official state authorities.

The following statistics are pertinent:

In 2003, 274 human rights defenders (hrds) were arrested, detained and charged under POSA. In 2004, 132 hrds fell foul of this law. In 2005 (January to April) there have been approximately 38 recorded arrests. To date, however, there has not been a single successful prosecution.

Similar effects have been recorded through the use of other repressive legislation such as the Miscellaneous Offences Act and the Access to Information and Protection of Privacy Act.⁷

This misapplication of the law has not only served to unconstitutionally curtail the rights of individuals to freely assemble and associate and discuss openly, but has also generated an unwillingness of, and fear in, people with regards to participating in

⁷ See in this regard the joint publication by MISA-Zimbabwe and Article 19 *The Access to Information and Protection of Privacy Act: Two Years On* (September 2004)

gatherings likely to attract such retaliation, as well as a negative effect insofar as speaking their mind and providing reasonable criticism of officials subject to public scrutiny. ZLHR is therefore of the opinion that citizens have not been able to participate freely and in an uninhibited manner and will not be able to do so until such time as these repressive pieces of legislation have been removed from the statute books.

In particular ZLHR is concerned by the persistent arrests and detention of pro-democracy activists and leadership participating in non-violent protests to raise awareness of pertinent issues as well as voice their concerns about state policies. Groups that have particularly and unreasonably been targeted are the Zimbabwe Congress of Trade Unions (ZCTU), the National Constitutional Assembly (NCA) and Women of Zimbabwe Arise (WOZA).

POSA and AIPPA (see below) indeed pose a serious and significant threat to democracy in Zimbabwe especially in the context of a judiciary that has been seen by the African Union (through the African Commission on Human and Peoples' Rights) as susceptible to political manipulation.⁸

Access to relevant information

Voters are entitled in terms of the Constitution and internationally-recognised freedoms and norms to freely receive and impart information and express their opinions. Any restriction on such rights must be reasonably justifiable in a democratic society.

Apart from POSA, described above, the Access to Information and Protection of Privacy Act [*Chapter 10:27*] (AIPPA), which came into force in March 2003, and the Broadcasting Services Act [*Chapter 12:06*] (BSA), have severely, unlawfully and irreparably restricted such freedoms. Media houses and broadcasters from the private sector have been incessantly targeted in an attempt to silence them in their quest to

⁸ "The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure." African Commission Fact-Finding Mission Report on Zimbabwe adopted by the African Union Assembly 30-31 January 2004, Abuja, Nigeria

provide an alternative view to that provided through the state-run public media (print and broadcasting).

The premises of the privately-owned Voice of the People radio station and *Daily News* have been bombed on three separate occasions and to date no perpetrators have been brought to justice. Several hundred media practitioners (editors, journalists, photographers and drivers) have been arrested, detained and charged under the draconian legislation although, again, no single successful prosecution has arisen.⁹ One radio station (Capital Radio) has been forcibly dismantled and four privately-owned newspapers (the *Daily News*, the *Daily News on Sunday*, the *Tribune*, and the *Weekly Times*) have been shut down since September 2003 by a biased, unrepresentative and non-independent Media and Information Commission using the provisions of the BSA and AIPPA respectively. Short-wave frequencies used by radio stations outside Zimbabwe broadcasting programmes dealing with relevant electoral and governance issues have been scrambled so that people within Zimbabwe are unable to receive the broadcasts. All these have had a serious and irreparable impact on the public's access to information.

Again some pro-democracy groups have been specifically targeted for retribution. Most recently the Chairperson of the National Constitutional Assembly (NCA) was personally identified and subjected to questioning and harassment by the law enforcement authorities on the basis of the contents of an organisational pre-election report. Individuals from other organisations have not been subjected to the same intimidation attempts.

On the other hand the public broadcaster and print media have continued unimpeded in their provision of biased information.

Those who argue that the broadcasting restrictions have been loosened and that opposition parties have been allowed equal access to the state media miss the point that for the past three years there has been a blackout of alternative views, and this

⁹ See the MISA-Zimbabwe and Article 19 publication, *op cit*.

cannot be remedied by allowing one opposition party limited airtime to reverse such views immediately prior to elections.

It is ZLHR's view that citizens have not been able to obtain adequate, unbiased information and that this has adversely affected their participation and choices in the just ended election.

Easy access to polling stations

On the most basic level full participation envisages voters being able to access the polling stations easily in order to cast their vote. The announcement of more polling stations was welcome. However this was a cosmetic increase. While all constituencies purportedly have equal or similar numbers of voters, the number of polling stations varied greatly from constituency to constituency. If there was a genuine desire to facilitate the exercising of the voters' franchise – especially in light of the change to single-day voting – the numbers of polling stations would have been increased in all constituencies. ZLHR was particularly concerned about the low numbers of polling stations in areas that were considered to be opposition strongholds in the 2000 and 2002 elections. The rationale behind this was not satisfactorily explained by the chairman of the ZEC when he was questioned by members of observer teams, lending itself to the perception that bias exists.

ZLHR believes that section 51 of the Electoral Act grants the Constituency Registrar unacceptably wide powers and discretion when identifying the location and number of polling stations, and that this has led to unequal access for voters. In addition there were a number of polling stations identified by ZESN as offering questionable neutrality. This list forms part of the annexures of this report.

ZLHR accredited observers noted that access to individual polling stations was greatly improved when compared with the facilities offered in the 2000 and 2002 elections. The use of three separate queues for voters with initials A-L, M and N-Z made a significant impact on the speed with which voters were processed.

ZLHR was concerned, however, that there was no readily available information at each polling station advising voters of other polling stations for the particular

constituency. There were polling stations where the queues of voters were very long in the early morning, while other polling stations were almost completely empty. Election officials and supervisors and monitors from the Electoral Supervisory Commission failed to advise voters of alternative stations and this caused some voters to leave before casting their vote. In addition no information was readily available and accessible to voters who were turned away on the basis that they were in the wrong constituency. Election officials failed to assist such affected voters by directing them to the correct constituency polling stations and this would likely have had a negative impact on their ability and desire to leave, look for the information and then attend and queue all over again to cast their vote in the correct place.

ZLHR was concerned prior to the election that insufficient measures were put in place to ensure that all voters wishing to cast their vote would be able to do so within the stipulated one-day voting period. The fear was not realised due to the low voter turnout on 31 March. However ZLHR reiterates that preventive and protective measures should be addressed and implemented by the electoral authorities to ensure that there is easy access and ample time for all to vote in future elections.

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B. FREEDOM OF ASSOCIATION

Freedom of assembly and association is protected in terms of section 21 of the Constitution of Zimbabwe, as well as in international instruments ratified by Zimbabwe.¹⁰ However this constitutional and international protection has been severely eroded by the impact of repressive pieces of legislation that continue to be implemented selectively and with unswerving regularity by law enforcement authorities in Zimbabwe against those perceived to be opposition or pro-opposition supporters.

Reference has previously been made to POSA, AIPPA and BSA. Authorities have used the provisions of POSA selectively to clamp down on opposition rallies in the

lead-up to elections, as well as public and private meetings by labour unions and civil society organisations. It should be noted that an adverse report of the Parliamentary Legal Committee was ignored and the Standing Rules of Parliament were suspended to allow the Bill to pass without amendment to comply with the Constitution. Similarly with AIPPA, an adverse report of the Parliamentary Legal Committee was ignored and the Standing Rules of Parliament were suspended to allow the Bill to be passed without constitutional compliance. Various provisions of these Acts have been challenged through the courts. Although some provisions of AIPPA and BSA were found to be unconstitutional and nullified, subsequent amendments have again proved contentious and subject to vociferous challenge.

The concerns of ZLHR related to the selective and over-zealous application of these laws were once again realised during the course of this election. In the evening of 31 March 2005 pro-democracy activists led by WOZA gathered at Africa Unity Square in Harare's central business district to participate in an all-night prayer vigil whilst votes were being counted and results announced. This is in line with their entitlement to exercise their constitutional freedoms, especially at such a critical time in the political processes of Zimbabwe. At approximately 19:15hrs riot police descended on the crowd and proceeded to arrest and round up all those present. A total of 257 women, 14 of whom were carrying their babies, were assaulted before being loaded into police vehicles and taken to Harare Central police station.

Lawyers were immediately deployed to the police station where they were refused entry and denied access to their clients. All efforts to negotiate entry were thwarted by law enforcement agents from the Law and Order section. Those who had been injured were also denied medical attention, despite reports of broken and fractured bones amongst other injuries. The detainees were held overnight in the open parking area at the back of Harare Central police station. It rained for a significant period of time during the night. They were denied food.

The following morning lawyers were able to gain access to the Law and Order section to negotiate with detectives. They were advised that the women would be charged

¹⁰ These include the International Covenant on Civil and Political Rights, the International Covenant on

under the Road Traffic Act for obstruction of traffic (although the Square from which they were picked up has no vehicular access). They could be released if they signed admissions of guilt and paid fines of Z\$25,000 each. The alternative would be charges under the Public Order and Security Act for organising and participating in an illegal gathering and they would remain in custody until Monday 4 April 2005, at which time they would be taken to court. The detainees took the option of the fine rather than face a further a further three nights' detention without food for themselves or the babies, without medical attention, and possibly without legal representation and protection. The women were eventually released on this basis around 16:00hrs on 1 April 2005. The detention and charges are being legally challenged.

Concerns about media harassment and persecution were also realised. Several foreign media organisations were denied accreditation by the state-controlled Media and Information Commission to cover the elections in Zimbabwe. Details were released by the government's Secretary for Information and Publicity in the President's Office, George Charamba. Amongst the banned organisations were the British Broadcasting Corporation (BBC) and international journalists working for organisations with African bases. The BBC was said to "already perceive the coming elections as being not free and fair"¹¹ while the rationale for the exclusion of the other organisations was that the government "felt and observed that it was rather sinister that [they] tried to send in journalists from their London and American bases, when African-based journalists for their organisations were available".¹² Such selective accreditation indicates unwillingness by the ruling party to subject the electoral process to open scrutiny, which necessarily involves criticism as well as commendations.

Journalists covering the peaceful gathering referred to previously were also arrested, while other journalists were picked up from the Meikles Hotel, which is across the road from Africa Unity Square, but a considerable distance from where the vigil was taking place. Although they were released the same night, this bolsters claims of selective media persecution rather than pursuing legitimate contraventions of the law. Also on 31 March two foreign journalists from the *Sunday Telegraph* were arrested

Social, Economic and Cultural Rights, and the African Charter on Human and People's Rights.

¹¹ Charamba provided this reason, which was quoted in *The Sunday Mail* 27 March 2005 edition.

¹² *Ibid*

and detained in Norton. They were brought to court on 2 April on charges of contravening section 83 of AIPPA by practising journalism without accreditation as well as under the Immigration Act for overstaying their permits. They were granted bail but the state immediately invoked powers under the amended Criminal Procedure and Evidence Act to keep them in detention for a further seven days pending the state's appeal of the granting of bail.

Another Swedish journalist who had been duly accredited by the Media and Information Commission was questioned and released by police on 30 March and then was again picked up by immigration officials on 1 April 2005. His accreditation documentation was seized and he was denied access to his legal practitioner whilst he was held at immigration headquarters in Harare. Instead he was taken to the Harare International Airport where he was deported on the same day. He is currently challenging his deportation.

ZLHR can therefore only conclude that the desire of the state to allow the free flow of information relating to the electoral process and outcome is illusory where it involves media organisations that are not willing to rubber-stamp the *status quo*.

Apart from the Acts referred to previously the following legislation and its implementation remain of concern to ZLHR:

➤ ***The Miscellaneous Offences Act (MOA)***

This piece of legislation was promulgated in 1964 and is therefore a relic used by a pre-Independence illegitimate minority regime in order to suppress opposition and retain political control. Any use of its provisions therefore remains highly questionable and subject to challenge. The provision relating to incitement of public violence has been utilised with increasing regularity since 2003 as a means of clamping down on civil society groups and human rights defenders (hrds) attempting to perform their duties or exercise their rights to freedom of association and freedom of expression. The offence carries with it a penalty of a fine payable on admission of guilt, and ZLHR has noted that this is often used by affected persons to “buy their freedom” even where they have not committed an offence. The option of payment of

the fine is considered better than spending the stipulated 48-hours in detention in police holding cells or remand prisons where the conditions are often highly unsanitary, overcrowded and a violation of the constitutional and international protection against cruel, inhuman and degrading treatment. ZLHR has recorded the following statistics during the course of its programming activities:

Figure 3.

Year	No of hrds detained and fined under MOA	No of hrds released without charge
2003	332	132
2004	180	72
2005	158	30

Incidences have decreased in each reporting period, not because the use of the MOA has abated, but because lawyers have been deployed with increasing frequency and speed to situations of arrest of hrds. This has caused pressure to be brought to bear on law enforcement officials. They are more likely to scrutinise their actions and release people without charge rather than charge and fine them in the presence of a lawyer who will query the legitimacy of the charges they intend to prefer.

The use of the Act has not abated in the run-up to the polls. People have tended to restrict their public activities in the period prior to the March 2005 poll in order not to be subjected to the effects of this legislation, and this has had a negative impact on the freedom of association.

➤ ***The Criminal Procedure and Evidence Act***

This Act was amended¹³ in 2004 to allow for the arrest of individuals without a warrant and their detention for a period of 21 days for crimes relating to the “economy or other national interest of Zimbabwe”.¹⁴ There is a possibility that people charged under POSA may be subjected to such inordinate periods of pre-trial detention, without recourse to the courts, in contravention of internationally-

¹³ Criminal Procedure and Evidence Amendment Act No.14 of 2004

¹⁴ These include amongst others corruption, money-laundering, sale of controlled products, drug offences, exchange control contraventions and threats to national security.

recognised norms and human rights standards. This, in the opinion of ZLHR, has served to unduly restrict the activities of law-abiding citizens, who fear being unreasonably and illegitimately targeted during the exercise of their right to free association. Its use against the two foreign journalists reported above vindicates such fears.

➤ ***The Zimbabwe Electoral Commission Act***

This Act has impacted negatively on freedom of association in that it has severely restricted the types of individuals and organisations that are entitled to carry out voter registration. All organisations wishing to carry out voter education are required to consist solely of Zimbabwean citizens or permanent residents domiciled in Zimbabwe. In addition the organisation must be registered under the Non-Governmental Organisations Act, despite the fact that this Bill has not yet been signed into law by the President. This Bill has its own shortcomings, which are discussed below. Prior approval has to be granted by the ZEC before an organisation is permitted to conduct voter education. In light of ZLHR's concerns as to the independence and impartiality of the Commission, this is an unreasonable restriction. The Zimbabwe Election Support Network applied for and was granted permission to continue with its voter education programme. However the approval by ZEC was furnished very late, and was not in written form. Procedural delays such as this only serve to impact negatively on the success of such positive civic initiatives.

Further, all organisations carrying out voter education are open to financial scrutiny by the ZEC, as they are required to disclose details of their sources and manner of funding, as well as furnish personal details of all individuals who will be conducting the programmes. This is an unnecessary invasion on the privacy rights of individuals, and is likely to make organisations and competent individuals unwilling to open themselves up to such invasion, thus impacting negatively on education programmes. ZLHR finds these provisions an unreasonable and unjustifiable infringement of the constitutional right to freedom of association.

The statistics emerging from the concluded election indicate serious flaws and shortcomings in the voter education process. Voter apathy, as well as the unacceptably high number of voters turned away from polling stations and the number

of spoilt votes indicates that the ZEC has failed in its mandate to educate the public, and that the legislative attempts to impose unreasonable and unnecessary restrictions on qualified organisations in their attempts to carry out complementary educative programmes is misguided, dangerous and has a material impact on the legitimacy of the outcome of the polls.

➤ ***The Non-Governmental Organisations Bill***

This is a controversial Bill, similar in its intent and likely effect on non-governmental organisations as AIPPA has become on privately-owned media organisations. Again, organisations will be required to register with a Non-Governmental Organisations Council whose independence is highly questionable. All such organisations are required to be composed solely of Zimbabwean citizens and permanent residents domiciled in Zimbabwe. All foreign NGOs are prevented from carrying out activities in Zimbabwe. The funding capacity of NGOs dealing with the promotion and protection of human rights and governance issues is restricted to local funding only, and many are likely to close down as they will be unable to continue financing their programming activities. Many of these organisations have already closed or scaled down their activities, and this has had a detrimental effect on their ability to research and scrutinise the transparency of the upcoming elections and the general political process. The Bill passed through Parliament after an adverse report of the Parliamentary Legal Committee was ignored. With the President currently withholding his assent, the effect on NGOs has been to make office holders and staff wary of speaking openly and performing their function fearlessly, as they do not wish to provide a reason, no matter how flimsy, for the President to append his signature to the Bill. In the run-up to the elections certain NGO leaders have faced security threats (especially increased surveillance), which has culminated in the National Association of Non-Governmental Organisations (NANGO) having to flight an advocacy alert to warn leaders and provide information on how to deal with possible arrests, detention and general harassment. This threat factor has been especially high for those working in humanitarian NGOs involved in the distribution of food aid.

ZLHR believes that this Bill has severely restricted the freedom of individuals within the NGO sector to associate freely and continue their important work in the run-up to

the elections. ZLHR remains concerned that organisations scrutinising the electoral process and raising legitimate issues of concern will be targeted for persecution.

The combined effect of all these pieces of legislation has been to erode the constitutional protection of freedom of association. The government has failed to address legitimate concerns about the statutes and their effect, and thus societal behaviour has been adversely conditioned towards taking a non-confrontational approach which will hinder civic electoral participation and allow many negative aspects of the electoral process to proceed unchallenged.

Until such time as all these Acts have been revisited and either repealed or greatly reformed, it is the belief of ZLHR that the SADC principle of freedom of association is unachievable. It is the strong submission of ZLHR that the SADC principle of freedom of association cannot mutually coexist with such repressive pieces of legislation.

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C. POLITICAL TOLERANCE

In the understanding of ZLHR such a principle can only be realised where there is a conducive legislative environment and equal protection of all persons by the law. The pertinent statutes have already been examined and critiqued. The protection of the law is commented upon below under Principle G.

Political tolerance is also only possible where law enforcement agents carry out their duties in a manner which is non-partisan and ensures that **all** people are aware that their behaviour will be monitored and judged through the use of a single, high standard, which respects the fundamental rights and freedoms of all.

ZLHR has already furnished statistics relating to the implementation of the legislation relating to “political” activities. The organisation is of the conclusion in light of these statistics that there has been selective application of the law, and that one political

party and its proponents has been unduly favoured and allowed to conduct themselves in a manner inimical with the rule of law and fair administrative of justice. Zimbabwe is therefore not currently in a legislative and legal operating environment that has allowed for political tolerance.

ZLHR takes a particularly critical view of election commentators who believe that the ability of people to attend a polling station freely and cast their vote secretly on the day of polling makes the electoral process satisfactory and legitimate. This naïve assumption fails completely to take into account those people who have been so intimidated through the previous use of one or more of these pieces of legislation, or political violence or police brutality to clamp down on their participation that they have either given up or refuse or are fearful of even going to the polls as they may be targeted again. Failure to condemn such tactics and call for their redress is a failure to protect equally all members of Zimbabwean society and a failure to build a culture of tolerance for alternative views and an open democratic process within the country.

ZLHR noticed over the period preceding the elections that part of political intolerance manifested itself in the selective application of repressive legislation to arbitrarily arrest and detain people for portraying views or being perceived to be associating themselves with views that were anti the President of Zimbabwe in his personal capacity. In particular the elections were held whilst a young Zimbabwean was languishing in remand prison in Beitbridge for bringing into the country books that suggested that Mugabe was responsible for the severe socio-economic and political problems that Zimbabwe was going through. A number of other Zimbabweans were also reportedly charged and convicted under POSA of expressing views about President Mugabe that displeased the authorities.

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D. REGULAR INTERVALS FOR ELECTIONS AS PROVIDED FOR BY THE RESPECTIVE NATIONAL CONSTITUTIONS

The Zimbabwe government can be commended for carrying out elections as and when they are stipulated in terms of the Constitution. The parliamentary elections are held in terms of Section 63 as read with Section 58 of the Constitution after every 5 years.

However the conducting of elections at regular intervals does not necessarily entail the holding of elections in accordance with democratic principles and international acceptable standards.

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E. EQUAL OPPORTUNITY FOR ALL POLITICAL PARTIES TO ACCESS THE STATE MEDIA

The electronic media in Zimbabwe is governed by the provisions of the Broadcasting Services Act (BSA), as amended. The Supreme Court has previously ruled that the monopoly held by the public broadcaster under the BSA is unconstitutional,¹⁵ but no attempt has been made to open up the airwaves accordingly.

On 16 February 2005 the Broadcasting Services (Access to radio and television during an Election) Regulations 2005 were promulgated in terms of section 46 of the BSA. They relate to free to air radio and television service provided by the public broadcaster, Zimbabwe Broadcasting Holdings (Private) Limited (ZBH). On the face of it, this is a welcome set of regulations which aspires to fulfil the objective of equal access to the state media.

The following are of concern to ZLHR:

- (a) The regulations provide for equal **opportunity** rather than equal **access** for the broadcasting of election matter.
- (b) The regulations only apply to “an election period” and therefore have not been in place for a significant amount of time prior to the March 2005 election. Since the last parliamentary election in 2000, and until February 2005, one political party (the ruling ZANU-PF) has had sole access to put forward its policies. No other party has been able to rebut its submissions. The broadcaster has not provided information about any alternative views throughout all this time. It therefore cannot be said that all parties have even had equal opportunity.
- (c) The advertising rates have been set at such a high amount that it was impossible for smaller political parties and independent candidates to buy air

time to expound their policies and critique those of opposition parties and candidates.

- (d) Detailed studies have been carried out by reliable sources¹⁶ and indicate that the regulations are far from being implemented in accordance with their intent or the SADC Principles.

ZLHR concludes that the Zimbabwean state broadcasting authorities have failed to provide equal opportunity to all parties contesting the elections to access the state media. Opening up the airwaves for just over a month prior to the elections could never undo the harmful effects of pervasive state propaganda in favour of the ruling party over a sustained and unrelenting period of five years. The public broadcaster has completely failed the Zimbabwean people and has erected an imposing and inescapable barrier to the development of a culture of openness, freely available and accessible information, and stimulating non-partisan debate led by impartial facilitators which is essential to the production of an educated, enlightened, critical and responsible voting public. The damage done to the privately-owned media in Zimbabwe is irreparable in light of a judiciary that is unwilling to uphold constitutional rights and freedoms of Zimbabwean people and a public print media which remains heavily biased in favour of one party and subservient to the directions and desires of a repressive information department answerable to the Office of the President.

This unfortunate but real state of affairs in the public media offers a part explanation as to why the rural unsophisticated, impoverished, less literate and unsuspecting folk have voted differently to their urban counterparts who are less likely to be susceptible to manipulation from the overdoses of propaganda that the public media relentlessly churned out for a number of years. The media must be opened up to safeguard Zimbabwe's democracy.

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¹⁵ *Capital Radio (Private) Limited v. The Minister of Information, Posts and Telecommunications* SC 99/2000, CC 130/2000

¹⁶ ZLHR associates itself with the studies carried out and published in the Media Monitoring Project of Zimbabwe (MMPZ) *Special Report on Quality of Access to national public broadcasting stations between ZANU PF and MDC*

F. EQUAL OPPORTUNITY TO EXERCISE THE RIGHT TO VOTE AND BE VOTED FOR

ZLHR notes that the same groups who were disenfranchised in the 2000 and 2002 elections were again denied their right to vote in March 2005. This is in direct contradiction to the most essential principle of universal suffrage rather than a selective vote.

Citizenship Laws

Following the 2000 parliamentary elections there have been various amendments to the citizenship laws of Zimbabwe. An extensive and significant number of Zimbabweans (farm workers whose genealogical roots stem from countries such as Zambia and Malawi; white Zimbabweans, and those who have entitlement to various SADC citizenry, even if never claimed) have summarily lost their Zimbabwean citizenship and been removed from the voters' roll on the basis of a misapplication of the Citizenship Act, as amended, by officials from the Registrar-General's office. An amendment was made to the citizenship laws in 2003 in an attempt to remedy the situation.¹⁷ Nevertheless ZLHR continues to receive complaints from individuals who have attempted to assert their rights under the amended laws, only to face the same barriers at the R-G's office. ZLHR has records of incidents in 2002 where court orders allowing people who had incorrectly been removed from the roll to vote were ignored by polling officers. Having received official complaints again in 2005, and without amendments being present in the new Electoral Act to remedy this situation, ZLHR had no reason to believe that the same situation would not arise again at polling stations on 31 March 2005, thus disenfranchising Zimbabwean voters.

These fears were substantively realised on 31 March 2005. A significant number of voters were turned away at polling stations around the country on the basis that they were no longer Zimbabwean citizens, or because their registration documents were questionable. ZLHR accredited observers noted that many of the people so affected were told to remain outside the polling station whilst ESC monitors and supervisors

¹⁷ Citizenship of Zimbabwe Amendment Act No. 12 of 2003

liaised with headquarters to clarify their registration documents. Unfortunately these individuals were still waiting outside, ignored, at the close of polls. The only explanation for the delay was that the officials were having problems communicating with headquarters. This is an unacceptable excuse and an illegitimate denial of the rights of affected persons in the exercise of their right to vote.

Zimbabweans in the Diaspora

Zimbabweans from the Diaspora lodged an application with the Constitutional Court of Zimbabwe, seeking its assistance in the protection and exercise of their franchise.¹⁸ Their argument was that the failure by the state to provide a mechanism by which they could exercise their right to vote from outside Zimbabwe contravened their constitutional rights to freedom of association, expression and movement, as well as their fundamental right to vote or be voted for. ZLHR monitored arguments in the matter before Chief Justice Chidyausiku and Justices Sandura, Ziyambi, Gwaunza and Malaba. Questions directed by some members of the Bench to Counsel for the Applicants, Advocate Happias Zhou, indicated resistance, hostility and even derision towards Zimbabweans living outside the country and trying to exercise their fundamental rights and freedoms. When judgment was handed down on 17 March 2005 the Chief Justice dismissed the application without providing any reasons apart from a statement that the Court had unanimously found that the application was “without merit”. He further advised that “Full and detailed reasons will be given in due course”. This matter was heard on an urgent basis and ZLHR notes that judgment was provided with relative speed. It is, however, unfortunate that the full reasons were not furnished immediately in order for those involved to be fully informed and take appropriate action. ZLHR sees this as one case among many where the Supreme Court has been seen to be taking sides with the Executive organ of the state rather than being the guarantor and protector of universally guaranteed human rights and fundamental freedoms for all Zimbabwean people.

ZLHR is disappointed with the judgment, in light of procedures being ably put in place in so many other countries in the region to allow their citizens in the Diaspora to

¹⁸ *Jefta Madzingo & 6 Ors v. The Minister of Justice, Legal & Parliamentary Affairs & 3 Ors* SC 22/05

vote. The right to vote is protected under many international human rights instruments to which Zimbabwe has appended its signature, as well as being incorporated under the right to freely express one's opinion under the Constitution of Zimbabwe. A failure to see such a right as an expression of one's opinion, that should be protected, is unfortunate and again illustrates the shortcomings of an undemocratic constitution.

Although the challenge was lodged on behalf of seven individuals the outcome is applicable to all those within the Diaspora, which is estimated by the Reserve Bank of Zimbabwe at around 3,4 million people. Effectively, therefore, the decision has disenfranchised all these Zimbabwean citizens and has made a mockery of the essential principle of universal franchise – one of the strong principles that drove the liberation struggle against white domination. The government opposed the application on various grounds, one being that the Diaspora citizens were likely to be opposed to the Zimbabwean government and the ruling party's policies. It was an admission that the Diaspora vote could have had a significant impact on the outcome of the election. The argument raised by the government is a totally unacceptable method of opposing and denying a fundamental right and indicates political dishonesty at the expense of universally protected freedoms.

Postal Voting

The ZEC has failed to provide adequate information about where and how such voting occurred. In light of much pre-election publicity about the transparency of this postal voting process it would have been desirable for this information to be made readily available and processes put in place to ensure that proper scrutiny could occur. The process of voting is supposed to occur in the presence of a "competent witness"¹⁹ but to date the identities of such individuals has not been made public. Where the postal voting process took place has been unclear, as has been where the ballots have been kept. The chairman of the ZEC announced that postal voting had already occurred before 23 March 2005, although there are allegations that some contesting parties were unaware of this and they were not present to observe the process, as provided for in terms of the Electoral Act, when the ballot boxes were sealed and

¹⁹ In terms of section 71(3) of the Electoral Act [*Chapter 2:13*]

empty, and when the votes were placed in the boxes and they were re-sealed. This lends itself to the perception of a lack of transparency and provides possibility for the vote to be tampered with.

Information of who voted by post was not made available at the relevant polling stations to ensure that these individuals did not attempt to vote again. ZLHR recorded at least one incident of a police officer who had previously voted by post yet attempted to vote again on 31 March 2005. This is indicative of a belief that the postal voting process is able to be successfully manipulated and that people can therefore vote more than once. It also shows that the so-called postal voting is in fact an opportunity for the uniformed forces to merely pre-vote, as a number of them who had earlier on voted remained in their constituencies and therefore had an opportunity to vote twice.

It is also unfortunate that only the candidates and one chief election agent were permitted to observe the counting procedure, and only on 24 hours' notice.

Information provided to ZLHR by members of the uniformed forces (police, prison guards and national parks) who had voted by post in March 2005 has lent credence to the allegations that the voting was not free. The individuals have preferred to remain anonymous for their own security reasons. The voting was done allegedly in a manner where the individuals felt threatened and compelled to vote for one party for fear of persecution and losing their jobs. There were allegations that the postal votes were placed in envelopes with serial numbers that were traceable to the specific voter, thereby exposing the voters to potential retribution. The process was done in the presence of other members of the forces and the atmosphere was pregnant with fear and anxiety. The ballots in envelopes had to be submitted to the individuals' commanding officers, which would also have impacted on the freeness of the vote and compromised the secrecy aspect.

Information has also been provided that polling agents (from the civil service and mainly teachers drawn from public government schools) who were appointed to participate in the electoral process were deployed to polling stations outside their own constituencies. They were informed of this very late and were not provided with the

opportunity to apply for a postal ballot. They therefore form a significant number of voters who were unduly and unprocedurally disenfranchised during the March 2005 elections.

Following the polling the ZEC failed to timeously release statistical details of the total number of postal ballots, which constituencies they affected, how they were counted and so on. This lends itself to the perception of lack of transparency and misinformation for unclear reasons.

ZLHR is of the view that the entire postal voting process has been non-transparent and is subject to serious contest and disagreements. It might be beneficial to quarantine the postal vote owing to its serious lack of credibility and to avoid the contagious effect it will have on the rest of the normal vote.

The right to vote and/or be voted for

The case of Roy Bennett, the duly elected Member of Parliament for Chimanimani, presents a classic example of failure of the legal, political and electoral system to protect every Zimbabwean citizen's fundamental right without discrimination on the basis of, *inter alia*, political opinion and race. Bennett is a white member of the opposition MDC. He is also a white commercial farmer. In the 2000 parliamentary elections he exercised his right to be voted for, and was voted into office by a resounding majority of predominantly black voters. Since his victory he has been subjected to relentless continuous political persecution. His farm has been targeted under the pretext of the state's land reform programme. He himself, his family and his employees have been subjected to physical and mental torture. There have been recorded incidents of extra-judicial killings, rapes and property destruction on his farm and those of his employees. Six court orders - five High Court and one Magistrates' Court - allowing him and his employees to remain on the property and continue their daily activities have been flagrantly ignored and they have been unlawfully evicted from the land.

Bennett was sentenced to an extremely harsh 12 months' effective imprisonment with hard labour by a ZANU-PF-dominated Parliament after he assaulted two Members of

Parliament following extreme provocation by the Minister of Justice. The usual sentence for common assault is a fine of Z\$50,000 (US\$8). The decision of the Parliament was taken for review to the High Court, which then ruled that it could not interfere with Parliamentary proceedings since they are covered under the Privileges, Immunities and Powers of Parliament Act [*Chapter 2:08*].

Whilst incarcerated he attempted to exercise his right to be voted for in the March 2005 elections by submitting his papers for nomination as an MDC candidate. His papers were unprocedurally rejected and although the Electoral Court initially nullified the nomination court proceedings, the presiding judge was thereafter subjected to unlawful executive pressure, with the President calling his judgment “madness” and of no effect. This inevitably led him to suspend his own judgment, thereby effectively barring Bennett from exercising his right to be voted into office. ZLHR’s press statement in this regard is attached as an annexure.

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G. INDEPENDENCE OF THE JUDICIARY AND IMPARTIALITY OF THE ELECTORAL INSTITUTIONS

Independence of the Judiciary

The Report of the Fact-Finding Mission of the African Commission for Human and People’s Rights was adopted by the African Union in Abuja on 30-31 January 2005. The recommendation of the fact-finding mission was that:

“The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates’ and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due

*to members of the judiciary by refraining from political attacks or the use of inciting language against judges and magistrates. A Code of Conduct for Judges could be adopted and administered by the judges themselves. We commend to the Government of the Republic of Zimbabwe for serious consideration and application the **Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa** adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003.”*

Regretfully, the Government has failed to implement this recommendation, and the independence of the judiciary continues to be compromised.

A further conclusion was drawn by a report adopted by the International Council of Advocates and Barristers, and approved by the Law Society and the Bar Council of Zimbabwe²⁰:

... the Zimbabwean justice system has ceased to possess those features which enable a justice system to be characterised as independent and impartial. The legal culture has been subverted for political ends.”

ZLHR notes that there exist on the various benches today – although in the minority - magistrates and judges with courage to interpret and apply the law without fear or favour, and they are to be commended. ZLHR continues to be concerned at attacks on the Judiciary by other organs of state and notes that this will negatively interfere with the administration of justice. Criticism is neither outlawed nor unwelcome, but should not be intemperate and intended to interfere with the separation of powers. ZLHR continues to be concerned with delays in the hearing of cases and the handing down of judgments, as well as the constant failure to comply with court orders. All incidents of interference with the judiciary and legal officers have been recorded by ZLHR and lead to the conclusion that the courts are not able to be relied upon to

²⁰ *The State of Justice in Zimbabwe* December 2004

provide all individuals with equal access to and equal protection by the law. This negatively affects the political process.

The Electoral Court

This is commented upon under Principle J below.

Impartiality of the Electoral Institutions

In a perfect system one body – independent and impartial, efficient and effective – should be charged with administering the electoral process. In this way the body will withstand scrutiny by all stakeholders of the Zimbabwean electoral process. However in the Zimbabwean context there exists a range of institutions all involved in some part of the electoral process.

The Delimitation Commission

This commission derives its powers from section 59 of the Constitution of Zimbabwe. Members of the Commission were selected by the President and they report to him accordingly. As an interested party in the outcome of the election, the President should play no role in the delimitation of constituencies, and therefore ZLHR finds that the delimitation process cannot be considered to have been transparent.

Further the head of the Delimitation Commission was Justice George Chiweshe, who is also the chairman of the Zimbabwe Electoral Commission. In the view of ZLHR this presents an inescapable conflict of interest and lends itself to criticism, as he may be forced to review a process that was headed by him.

The redrawing of the boundaries is fraught with unanswered questions. A National Census in late 2002 indicated that the urban areas had shown major growth, while rural populations had declined. This is consistent with the trend for rural to urban migration where people go to look for job opportunities. This was directly contradicted by the results of the Delimitation Commission, which removed three opposition-held urban constituencies and created three new rural constituencies, all of which were won by ZANU-PF. Reasons for

the changes were not provided to the public and are therefore open to criticism and challenge.

The Electoral Supervisory Commission

This is a body set up in terms of section 61 of the Constitution of Zimbabwe. Again the members were selected by the President, and the same concerns may be raised as to the transparency of any process in which an interested party has ultimate control over its proceedings. The ESC is mandated in terms of the Electoral Act to appoint members of the public service as monitors.²¹ In addition the ESC seconds persons in the employment of the state to be constituency elections officers, their deputies and assistant officers and polling officers.²² This allowed for an unacceptable situation whereby members of the armed forces and the intelligence service, amongst others, were directly involved in the conduct of elections at polling stations and in counting processes at the polling station and the constituency level. These individuals cannot be said to be impartial and therefore their inclusion has tainted the electoral processes in which they were involved.

The Office of the Registrar-General

To date this office remains headed by Tobaiwa Mudede, who has publicly stated that he is a supporter of the ruling party. The impartiality of his office is therefore compromised. The state of the voters' roll is the subject of much debate and controversy and the Zimbabwe Electoral Commission, whose responsibility it is to direct and control the registration of voters by the Registrar-General and to compile, keep in custody and maintain the voters' roll, has failed to satisfactorily address complaints by interested parties. Issues relating to voter registration and inspection of the roll have been previously raised in this report.

The Zimbabwe Electoral Commission

This derives its authority and existence from the Zimbabwe Electoral Commission Act. Although there is provision within the ZEC Act to provide

²¹ Section 13(2)

for its independence²³ this is subject to debate. Although candidates for the ZEC were submitted in terms of the Standing Rules and Orders and the opposition MDC participated in the process, the eventual approval comes from the President, and allows for the possibility of unnecessary interference in parliamentary proceedings. The President also fixes the commissioners' terms, conditions, remuneration and allowances. The Minister of Justice, Legal & Parliamentary Affairs also has considerable powers to call special meetings and scrutinise the proceedings of the Commission. There is therefore the possibility for much state interference through these channels.

Although the ZEC purportedly bears overall responsibility for the electoral process there has been much confusion as to who to approach for information and assistance and this has had a negative impact on communication and the provision of crucial electoral information to interested participants.

ZLHR concludes that in light of the fact that various institutions run different aspects of the electoral process, it is unclear who remains in overall control of the administration of the elections. None of the institutions are free from the possibility of executive and/or ministerial interference, and therefore their impartiality is subject to contestation.

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H. VOTER EDUCATION

ZHLR's concerns have previously been noted under Principle A above.

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²² Section 17(1)

²³ Section 4(2) states: "*Subject to the Constitution, the Commission shall not, in the exercise of its functions, be subject to the direction or control of any person or authority.*"

I. 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

It was the view of ZLHR in its Pre-Election Report that in light of the concerns raised there was a strong possibility that the election result would not be accepted and respected. ZLHR notes that the opposition MDC has rejected the outcome of the March 2005 poll on the grounds of electoral fraud, and it has called for a new election under a new constitution.

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J. CHALLENGE OF THE ELECTION RESULTS AS PROVIDED FOR IN THE LAW OF THE LAND

In the 2000 parliamentary elections the results in 38 of the 120 constituencies were challenged in the High Court, on the basis that there was violence, voter intimidation, property destruction and electoral irregularities. In terms of the (now repealed) Electoral Act [*Chapter 2:01*] the election petitions were required to be dealt with as a matter of priority. The petitions were assigned to three judges, but were not disposed of expeditiously. Although a number of cases were adjudicated upon in the High Court, there were inordinate delays in setting the matters down for trial and delivering judgment. Most of the outcomes were then appealed and, to date, the Supreme Court has only finally determined three. Some cases in the High Court have yet to be completed. These delays have allowed a situation where candidates found to be illegitimate by the courts of Zimbabwe have remained in Parliament throughout its five-year term. Perpetrators of political violence and electoral offences have not been prosecuted or punished, and there is a real risk that they will commit further offences, while victims have failed to receive compensation. There is therefore a real and most unfortunate perception of impunity.

ZLHR, together with the Institute for Human Rights and Development in Africa, has taken up this failure by the Government to provide a speedy and effective remedy

with the African Commission on Human and People's Rights (ACHPR) under Communication No. 293/03. The ACHPR has been seized with the matter and arguments on admissibility are set to be heard at its 37th Session from 27 April-11 May 2005 in Banjul, The Gambia.

Of particular concern is an issue which arose during the adjudication of the election petition relating to the 2000 parliamentary election in the Buhera South constituency.²⁴ High Court judge, Justice James Devittie, handed down a damning judgment relating to the criminal activities that arose prior to the June 2000 poll. Two opposition MDC activists, Blessing Chiminya and Talent Mabika, were extra-judicially executed by being burnt alive by named ZANU-PF activists. Justice Devittie used his powers under the Electoral Act [*Chapter 2:01*] to refer the matter to the authorities for investigation and prosecution of the accused persons. To date the law enforcement authorities, including the police and the Attorney General's office have failed to do so. This failure on the part of the authorities has been repeated on many occasions and has caused ZLHR to communicate with both institutions to enquire as to progress and request details of all investigations undertaken and efforts made to bring these various perpetrators to justice. This correspondence appears in the annexures to this report. To date the directions, as well as the ZLHR correspondence has been ignored. It is the strong belief of ZLHR that this has lent itself to a real perception of impunity for perpetrators of political violence. There is a belief that such criminal behaviour will be tolerated and ordinary citizens attempting to exercise their right to political participation will remain unprotected by law enforcement authorities. Effective civic and political participation therefore remains illusory.

After the 2002 presidential election the opposition Movement for Democratic Change (MDC) legally challenged the outcome on the basis of violence and electoral irregularities. Although an initial hearing has been held to determine legal technical issues the judge has failed to provide written reasons for his ruling and the matter is still unresolved after three years in the court system.

²⁴ *Tsvangirai v. Manyonda* 2001 (1) ZLR 295

Cosmetic attempts have been made to improve the delivery of justice in this area. The new Electoral Act [*Chapter 2:13*] in section 161 establishes an Electoral Court to hear and determine election petitions and other electoral matters. Section 182 provides that every election petition shall be disposed of within six months from the date of its presentation. Two matters have already been brought before the Electoral Court and judgment handed down – one in Harare²⁵ and one in Bulawayo.

However problems remain. These judges have been drawn from sitting judges in the High Courts of Bulawayo and Harare.²⁶ Whilst considering the first matter heard in the Electoral Court²⁷ Justice Uchena conceded that he would not be in a position to deal with electoral cases effectively and within time constraints as his duties in the Electoral Court were additional to his usual duties. The Electoral Court has no separate administrative or substantive staff from the High Court, no extra resources, and therefore effectively the position remains the same as in 2000 and 2002, except that now there is only one judge, rather than three, dealing with election petitions in Harare, and two in Bulawayo. In the event that the results of the election are challenged in one or more of the 120 constituencies ZLHR believes that the Electoral Court may be unable to fulfil its statutory obligations to dispose of cases within the stipulated six month period.

ZLHR has monitored the progress of the *Bennett* matter in the Harare Electoral Court and considers the developments a worrying precedent for any future challenge in this forum. ZLHR's position in this regard is set out in the Press Statement that has been publicly released and is attached in this report as an annexure.

After Bennett challenged the rejection of his nomination papers by the Nomination Court in Chimanimani, Electoral Court judge, Justice Tendai Uchena found in a well-reasoned judgment that he was qualified to stand as a candidate and that the decision of the Nomination Court should be set aside. He set a new date for the election in Chimanimani constituency, namely 30 April 2005. On 17 March 2005 the President

²⁵ *Roy Leslie Bennett v. The Constituency Elections Officer, Chimanimani Constituency & 2 Ors* E.P. 1/05

²⁶ The three Electoral Court judges are Justice Uchena (Harare), Justice Ndou (Bulawayo) and Justice Cheda (Bulawayo)

²⁷ *Bennett op cit*

was publicly quoted²⁸ criticising the ruling as “madness”. He went on to state at a meeting of provincial, government and party leaders in Chipinge that, “I don’t understand the court’s decision. We can’t be held at ransom by a man who is in prison. That is absolute nonsense. We will study the decision and appeal against it... He has a case to answer. *Rambai muchienderera mberi* [vernacular]. Proceed as if nothing has happened”.

Shortly thereafter the Zimbabwe Electoral Commission filed an application for review of the judge’s ruling, raising new issues which were not addressed when they initially opposed the electoral petition. The Commission also lodged an urgent application that the ruling of the Electoral Court be suspended pending the hearing of the review. This caused an unprecedented situation where a judge was made to suspend his own judgment pending its review. The President – not a party to the proceedings – could only be seen as having influenced the ZEC to take action which they had not wished to take themselves [they had complied with the judge’s order to publish fresh notices for a new Nomination Court and new date for the Chimanimani constituency election, and had not noted an appeal against the decision until well after the President made his public declarations]. In light of the history of executive and legislative interference in the independence of the functions of the Judiciary, ZLHR believes that the executive unprocedurally and in contravention of the principle of separation of powers interfered in the administration of justice. ZLHR has no reason to believe that similar tactics may not be employed if future petitions are lodged with the Electoral Court. ZLHR further believes that the actions of the ZEC in the Bennett matter have irreparably compromised its impartiality.

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ORGANISED VIOLENCE AND TORTURE

The forced eviction of “new farmers”

ZLHR has been specifically involved in dealing with this new phenomenon where individuals encouraged by the government of Zimbabwe to invade and resettle on

²⁸ *The Herald* 17 March 2005

farms previously owned by white commercial farmers have been subjected to forced removal and destruction of their homesteads, food supplies and other personal property by the state. This was done in order to clear the way for occupation by individuals considered to be aligned to the executive. Such manipulation of the “new farmers” in the time leading up to elections can only be perceived as an effort to ensure support at the polls for ruling party candidates. In order to secure their occupation such vulnerable groups can easily be manipulated into voting for the ruling party in order to secure continued occupation of the farms or at least to stand a chance of being resettled elsewhere. ZLHR notes from the results announced that ZANU PF had a clean and convincing sweep of the elections in these areas.

The following statistics are pertinent:

Figure 4.

FARM	NO.OF PEOPLE AFFECTED	CASE CITATION
Kingswood Farm (Mashonaland Central)	104 from 20 families	<i>James Hodzi & 103 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11201/04
Groenvlei Farm (Mashonaland West)	600 of which 239 were school-going children	<i>Shane Pausiri & 98 Ors v. Minister of Local Government and National Housing</i> HC 11026/04
Inkomo Farm (Mashonaland West)	1300 people	<i>Noah Munyoro & 327 Ors v. Minister of Home Affairs & 2 Ors</i> HC 11025/04
Rayton Farm (Mashonaland West)	1440 from 239 families	<i>Clement Chimhau & 238 Ors v. Minister of Home Affairs</i> HC 11459/04
Porta Farm (Mashonaland West / Harare)	1500 from 242 families	<i>Felistus Chinyuka & 1313 Ors v. Minister of Local Government and National Housing</i> HC 10671/04
Faulty Farm (Mashonaland East)	390 from 65 families	
Little England (Mashonaland West)	2137 from 430 families	<i>Percy Masendu & 429 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11215/04
Sodeury Farm	248 people	<i>Jonah Musonza & 86 Ors v. Minister of Home Affairs & 3 Ors</i> HC 11202/04
Murrayfield Farm	200 people	<i>Mhlanga & 69 Ors v. Minister of Home Affairs & 3 Ors</i> HC 12712/04
Newlands Farm	173 people	<i>Leonard Claudius Haifoswo & 172 Ors v.</i>

		<i>Minister of Home Affairs & 3 Ors</i> HC 11203/04
Komani Estate	150 people	<i>Tarirai & 42 Ors v. Governor of Harare Metropolitan & 3 Ors</i> HC 11805/04
Selby Farm	100 people	<i>Esnut Matari & 40 Ors v. Governor of Harare Metropolitan & 3 Ors</i> HC 11556/04

Torture Cases

For some time now there have been credible allegations of the use of torture, especially with reference to political cases. In particular, torture has been used as a tool to punish political opponents – both inter-party and intra-party. ZLHR notes that the practice of torture is considered to be a crime under international law. It is absolutely prohibited and cannot be justified under any circumstances. The use of torture in the apparent intra-party succession dispute within ZANU-PF, involving the likes of Phillip Chiyangwa and four others could not escape the attention of ZLHR. The state’s failure to investigate the alleged perpetrators suggests complicity on the part of the state and lends itself to a strong perception of impunity for perpetrators of political and electoral-related matters.

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OTHER ELECTORAL ISSUES

Invitation of local and international observers

According to information provided by the chairperson of the ESC²⁹ various organs are responsible for inviting individuals and organisations to observe the electoral process. The Ministry of Foreign Affairs invites representatives from various countries and foreign organisations, such as inter-governmental organisations and international non-governmental organisations. The ESC is responsible for inviting electoral bodies from the region. The Ministry of Justice, Legal & Parliamentary Affairs is responsible for inviting local observers (individuals and organisations). The ZEC, which is the body

²⁹ This was publicly provided at the briefing for local and international observers held on 23 March 2005.

purportedly in control of the entire electoral process, has had no role to play in such invitation.

ZLHR is concerned that to allow Ministries whose personnel have a direct interest in prolonging their political existence the choice as to which observers shall be invited immediately calls into question the transparency and legitimacy of the observation process. ZLHR was also disappointed that lawful but disliked entities such as the ZCTU, as well as respected regional bodies such as the SADC Parliamentary Forum and the Electoral Institute of Southern Africa were excluded. This can only serve to call into question the entire invitation process and rationale behind the exclusions.

ZLHR welcomed the presence of foreign observer missions in Zimbabwe and was pleased to meet with them and be given the opportunity to offer insight into the electoral process and raise relevant concerns with them. ZLHR feels that given the importance of these elections in trying to genuinely resolve the governance crisis in Zimbabwe arising from less than credible elections in 2000 and 2002, the teams could have entered Zimbabwe significantly sooner and thus been exposed to some of the shortcomings which have been raised within this election report. This oversight has potentially negatively influenced the final conclusions made by the missions and the content of their reports.

The accreditation process for local observers

ZLHR notes that the process, although improved when compared to previous elections, still had great shortcomings. The electoral legislation and regional practices envisage observers being free to carry out their duties as much as 90 days prior to polling date. Many local observers only received approval 15 days prior to the date of polling. There have been administrative challenges at the accreditation centres in Bulawayo and Harare. The process has been slow and, at times, chaotic. ZLHR has had to provide services to observers from ZESN who were detained by police under the Public Order and Security Act for conducting an illegal gathering when in reality they were waiting outside the Harare accreditation centre until they could be called for the processing of their accreditation. Many observers remain unaccredited two days before the polling date. The ESC provided incorrect information as to where the

accreditation was to be carried out. Such delays and procedural irregularities had a negative impact on the ability of observers to be accredited and then deployed to areas of observation, especially those designated to observe in rural and outlying areas of Zimbabwe. In addition ZLHR notes that the accreditation cards provided bore the wrong reference to the repealed Electoral Act [*Chapter 2:01*] on the reverse side. This led to some observers being denied entry to observe at polling stations around the country and in fact one observer was arrested and detained on the basis that his card was fraudulent.

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ZLHR had a total of 44 local observers who were drawn from Harare, Bulawayo, Gweru, Kadoma, Norton, Chinhoyi, Mutare and Chipinge. As accreditation was centralised to Harare and Bulawayo these members had to travel to either of the two centres to accredit, which had a negative impact on their practices as professional legal practitioners.

The opening of polling stations and commencement of voting

ZLHR observers reported that generally this proceeded in an orderly and peaceful fashion. Some minor administrative delays and issues arose, but ZLHR observers were welcomed into the polling stations and allowed to observe without hindrance. Observers were present prior to the opening of polls at 07:00hrs and were able to observe the checking of the empty ballot boxes and their sealing, ensure that polling agents had all necessary equipment including indelible ink, voters' rolls, ballot papers and boxes, and ensure that the polling booths were set up in a manner that ensured the secrecy of each person's vote.

ZLHR received complaints from other observers accredited under the Zimbabwe Election Support Network (ZESN) to the effect that presiding officers or ESC officials had barred them from entering the polling stations to which they had been deployed. ZLHR deployed lawyers to several such incidents to facilitate entry, which was successful. Regrettably this unprocedural denial of entry caused some observers

to miss the setting up of the polling stations and they failed to confirm that the correct procedures outlined above had been adhered to.

ZLHR observers reported that queues at polling stations were very long in the first hours of voting, as people had been arriving at polling stations as early as 03:00hrs. The queues were orderly and the voters exercised patience in waiting to cast their votes. The use of three separate queues for voters with surname initials A-L, M, and N-Z greatly facilitated the voting process and ensured that queues moved quicker than has been the experience in previous elections in Zimbabwe.

ZLHR observers noted that some polling stations were very empty compared to others in the same constituency. Those observing at busy polling stations noticed that some voters were becoming disheartened by the long queues and were leaving before having exercised their franchise. They approached the presiding officers to enquire as to whether information could be provided to queuing voters of alternative polling stations. They were referred to the ESC monitors, who refused to take action.

This had the potential to deny voters their fundamental right and it is recommended that in future lists of polling stations in the constituency be posted at all polling stations and voters be advised of alternative places where they may be able to vote without such long delays.

The voting process

All ZLHR accredited observers noted concern at the high numbers of voters who were turned away by polling officials. The main reasons provided were as follows:

- Registration documents were illegible or passports had expired;
- Names did not appear on the voters' roll as the constituency boundaries had changed and they now fell under different constituencies;
- Zimbabwean citizenship was in question;
- Names simply did not appear on the voters' roll even though they were duly registered voters

ZLHR is concerned by reports that those affected in one way or another as listed above were told by ESC supervisors and monitors to wait outside the polling station so that they could liaise with their superiors for “further instructions”. Unfortunately these voters were still waiting outside unattended at the close of polling and the only excuse offered by the officials was that they had been unable to communicate by radio. This is unacceptable and it is recommended that these incidents be investigated further by the ZEC. Those who were in the wrong constituency were not given information of where they should go to vote, and again this is unacceptable. There should be measures in place to ensure that the information is at hand and can be given to affected voters as soon as is possible to allow them to proceed to the new polling station and cast their vote.

The counting of votes at the polling stations

ZLHR received considerable reports from observers accredited under ZESN that they were denied access into the polling station for the counting process by the presiding officer, especially in outlying areas. One official advised the accredited observer that he “had observed enough” and should now leave. This was a direct contravention of the Electoral Act. Another observer in Zvishavane was arrested and detained after trying to assert his rights under the Electoral Act³⁰ and a lawyer had to be deployed to secure his release.

ZLHR cannot stress strongly enough that the counting process in any election is one of the most critical aspects and periods of the electoral process. Any attempts to exclude those that are mandated in terms of the electoral laws of the country to be present is unacceptable and immediately lends itself to scrutiny and perceptions of non-transparency. ZLHR condemns these exclusions and is left with no option but to question the legitimacy of the count in such polling stations.

In terms of section 64(2) of the Electoral Act the presiding officer must affix a copy of the polling station return on the outside of the polling station after s/he has arranged for the polling station return to be transmitted to the constituency elections

³⁰ Section 62(1)(a) of the Electoral Act [*Chapter 2:13*] read with the Second Schedule of the Electoral Regulations, 2005, SI 21 of 2005 provides that one observer per observer group is entitled to be present at the count of the votes at the polling station.

officer. The notice must be visible to the public. ZLHR received reports from its accredited observers that this was not carried out at many polling stations. In fact, as late as 10:00hrs on 1 April 2005 there was no such information outside a substantial number of polling stations. ZLHR had received reports through the night that presiding officers were advising that they had received a directive from the National Command Centre of the Zimbabwe Electoral Commission **not** to display the results outside polling stations. ZLHR attended the ZEC Command Centre early on 1 April 2005 to clarify the issue. ZEC officer, Mr Silaigwana, indicated that the results would be posted as required in terms of the legislation, but this was definitely not the situation on the ground at all stations. Again this is a clear contravention of the Electoral Act and lends itself to the conclusion that results could have been manipulated between the polling stations and the constituency centres.

The verification and collation of polling station returns

Section 65 of the Electoral Act requires that the constituency elections officer must give reasonable notice in writing to each candidate or her/his election agent of the time and place for verification and collation of the polling station returns. The candidates, their chief election agents, monitors and observers are entitled to be present during this process. The immediate issue that arises is that observers do not have to be notified and therefore unless they remain in the company of the candidates or their election agents or the monitors, they will be unaware of when and where this process will take place. Unfortunately very few ZLHR accredited observers were able to participate in this process. Reports were also received that candidates were excluded in some constituencies.

The period between the transmission of the polling station returns and the verification and collation of these returns and the postal ballots is the most important stage in the process and, unfortunately, the most open to abuse due to the vagueness of the legislation in this regard. The ZEC Command Centre refused to provide ZLHR officials with contact information for the Constituency Centre so that observer complaints could be followed up and resolved, and therefore there was no guarantee that the observers would be able to find the locations. The fact that observers were not informed and some were actively prevented from entering the constituency centre has led to a reinforced perception of non-transparency, and the process is therefore subject

to challenge. At this stage ZLHR is forced to conclude that the failure to allow observers entry into and observation of this process lends itself to a finding that there was a manipulation of figures between the polling stations and the constituency centres and the following announcement of statistics by the Chief Elections Officer.

The notification of the result of polls by the Chief Elections Officer to the public

This stage has raised perhaps the most controversy. Between 00:00hrs 01:00hrs on 1 April 2005 the Chief Elections Officer appeared on ZTV to provide information about the total number of people who voted as at 19:30hrs and the total voters turned away. He provided information for all the constituencies in six provinces, as follows:

- Manicaland
- Harare
- Mashonaland West
- Bulawayo
- Matabeleland South
- Mashonaland East (excluding the statistics for Uzumba Maramba Pfungwe)

He then stopped and advised that the statistics for the remaining four provinces would be provided shortly. The information was never provided.

Once the results began to be announced publicly, it became clear that there were huge disparities in the figures. The information appears below:

Figure 5.

<u>Province</u>	<u>Total announced people who voted by 19:30hrs</u>	<u>Total announced results</u>	<u>Discrepancy (+ reflects votes added; - reflects votes missing)</u>	<u>Candidate elected</u>
<u>Manicaland</u>				
Buhera North	16595	27874	+11279	ZPF
Buhera South	25447	30518	+5071	ZPF
Chimanimani	23896	27642	+3746	ZPF
Chipinge North	23951	28176	+4225	ZPF
Chipinge South	29479	30704	+1225	ZPF
Makoni East	20464	17340	-3124	ZPF
Makoni North	14068	25878	+11810	ZPF
Makoni West	18365	22793	+4428	ZPF
Mutare Central	18619	18653	+34	MDC
Mutare North	18384	18896	+512	MDC
Mutare South	14054	19772	+5718	ZPF
Mutare West	18584	20896	+2312	ZPF
Mutasa North	10936	17204	+6268	ZPF
Mutasa South	15733	19573	+3840	ZPF
Nyanga	<u>13996</u>	<u>22729</u>	+8733	ZPF
	282471	348648	66177	
<u>Harare</u>				
Budiriro	21388	22085	+697	MDC
Chitungwiza	20378	20585	+207	MDC
Dzivaresekwa	16975	16897	-78	MDC
Glen Norah	18860	19602	+742	MDC
Glen View	17931	18461	+530	MDC
Harare Central	14722	15501	+779	MDC
Harare East	13132	13719	+587	MDC
Harare North	15633	16570	+937	MDC
Harare South	22 403	22261	-142	ZPF
Hatfield	21326	21459	+133	MDC
Highfield	15970	17130	+1160	MDC
Kambuzuma	22564	23227	+663	MDC
Kuwadzana	19153	19226	+73	MDC
Mbare	25545	25336	-209	MDC
Mufakose	16875	17079	+204	MDC
St Marys	21052	21281	+229	MDC
Tafara/Mabvuku	15784	20024	+4240	MDC
Zengeza	<u>21017</u>	<u>21136</u>	+119	MDC
	340708	351579	10871	
<u>Mash West</u>				
Chegututu	19763	25374	+5611	ZPF
Chinhoyi	16589	15558	-1031	ZPF

Hurungwe East	22533	26553	+4020	ZPF
Hurungwe West	24519	25861	+1342	ZPF
Kadoma	16983	19071	+2088	MDC
Kariba	16676	24142	+7466	ZPF
Makonde	20720	22250	+1530	ZPF
Manyame	14812	24303	+9491	ZPF
Mhondoro	15305	18434	+3129	ZPF
Ngezi	19731	19769	+38	ZPF
Sanyati	18480	22250	+3770	ZPF
Zvimba North	28905	21647	-7258	ZPF
Zvimba South	<u>15790</u>	<u>21032</u>	+5242	ZPF
	250806	286244	35438	
Bulawayo				
Byo East	12635	13489	+854	MDC
Byo South	15864	15981	+117	MDC
Lobengula/Magwegwe	15570	15630	+60	MDC
Makokoba	15344	15838	+494	MDC
Nkulumane	15174	15742	+568	MDC
Pelandaba/Mpopoma	15047	15113	+66	MDC
Pumula/Luveve	<u>17625</u>	<u>17723</u>	+98	MDC
	107259	109516	2257	
Mat South				
Beitbridge	36821	21968	-14853	ZPF
Bulilima	13581	17958	+4377	MDC
Gwanda	23288	24584	+1296	ZPF
Insiza	20220	22099	+1879	ZPF
Magwegwe	16709	16414	-295	MDC
Matobo	17882	20257	+2375	MDC
Umzingwane	<u>10477</u>	<u>22627</u>	+12150	MDC
	138978	145907	6929	
Mash East				
Chikomba	18401	26050	+7649	ZPF
Goromonzi	15611	26123	+10512	ZPF
Wedza	23698	26664	+2966	ZPF
Marondera East	25193	29929	+4736	ZPF
Marondera West	19417	21252	+1835	ZPF
Mudzi East	12499	22420	+9921	ZPF
Mudzi West	10998	22796	+11798	ZPF
Murehwa North	17606	22353	+4747	ZPF
Murehwa South	18519	24463	+5944	ZPF
Mutoko North	10721	20652	+9931	ZPF
Mutoko South	15863	23481	+7618	ZPF
Seke	11344	24873	+13529	ZPF
UMP	Not provided	35634		ZPF
Total (excl UMP)	291851	291056	-795	

The ZEC has been approached by ZLHR in terms of the Access to Information and Protection of Privacy Act to provide the figures for the remaining four provinces. It was also asked to confirm the figures given and explain the discrepancies which are listed above. It has failed as yet to provide the information, and this is of great concern, especially in light of the obvious discrepancies as well as the claims by the opposition MDC that there was “massive electoral fraud”.³¹ While these figures may exclude the postal votes, this has not been stated clearly by the ZEC. It also fails to provide a reason behind the fact that the figures in certain constituencies, such as Beitbridge, appear to have large numbers of votes missing rather than added. ZLHR finds this a matter of serious concern and, until adequate explanations are provided by the authorities, this puts the results of the elections in all constituencies in serious doubt. ZLHR is unable at this stage to accept the candidates in any of the 120 constituencies as duly elected.

ZLHR urges the ZEC to act on this as a matter of urgency to assuage Zimbabwean people of their transparency, impartiality and efficiency. Without concrete answers as to statistical discrepancies the outcome of this election remains in doubt and subject to claims of illegitimacy.

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FINDINGS

Apart from the Principles outlined above, each SADC Member State holding elections has responsibilities that are listed in the SADC Principles. The submissions and conclusions drawn in this report present a picture that Zimbabwean authorities have failed, on most accounts, to ensure a free and fair electoral process. Although some efforts have been made to consider the SADC Principles, most are merely cosmetic. In view of the legislative and legal framework and its obvious selective application to the detriment of legitimate opposition and the work of human rights defenders, there is still a long way to go and much work to be done before such aspirations are realised.

³¹ As alleged by the opposition leader, Morgan Tsvangirai, at a press conference held on 1 April 2005

ZLHR therefore has made the following findings:

- Zimbabweans participated in an election in which the result was already tilted in favour of the ruling party due to the 30 non-constituency seats which the President is entitled, in terms of the Constitution, to award to his supporters at his discretion without the need for an open, democratic process involving the affected electorate. This provided the ruling party with an unfair advantage before the elections had even commenced.
- The Constitution of Zimbabwe in its present form cannot ensure that Zimbabweans are able to assert their rights and fundamental freedoms and have them protected during the electoral process. This has adversely affected participation by the electorate in the political process.
- The Zimbabwe Electoral Commission failed in its mandate to provide adequate, impartial and informative voter education. This contributed to an unacceptably high number of voters being turned away from polling stations and also an unacceptably high number of spoilt ballot papers throughout the country but especially in rural constituencies. Change in constituency boundaries were not sufficiently made known to affected voters and this failure directly impacted on the number of voters turned away on polling day.
- The Registrar-General's Office, under the supervision of the Zimbabwe Electoral Commission, failed to carry out a transparent and efficient voter registration and voter inspection exercise. This is borne out by the high number of voters turned away from polling stations on grounds of invalid registration documentation, names not appearing on the roll, and voters attending in the wrong constituency following boundary changes. The voters' roll used in the March 2005 elections was in disarray and officials failed to address legitimate concerns by participants. As in previous elections the voters roll has been a tool used to disenfranchise the long-suffering victims of the Registrar-General's Office.

- Through the unrelenting and selective use of repressive legislation which impacts negatively on fundamental rights and freedoms, as well as unequal access to the state media, Zimbabweans were restricted in their right to receive and impart information and to freely assemble and discuss electoral issues, critique candidate and party policies and thus benefit from and contribute to a culture of informed voter choice at the polls.
- Political tolerance has been higher and reported organised violence lower in these elections than in the 2000 and 2002 polls. Nevertheless it is necessary to bear in mind the pervasive effect of several years of aggressive and organised state repression through legislative and other means, which has led to a situation of popular disengagement for fear of being targeted or victimised. Apathy and non-participation have the effect of decreasing negative effects on the surface and providing an incorrect picture that all is well and participation is free in Zimbabwe. This is not the case.
- Not all Zimbabweans have been able to freely exercise their right to vote or be voted for in the March 2005 elections. The elections have produced a situation of selective rather than universal suffrage, which is to be condemned. Particular disenfranchised groups include Zimbabweans in the Diaspora, those affected by improperly applied citizenship laws, victims of the Registrar-General's Office, and polling officials deployed to participate in the electoral process outside their constituencies.
- The impartiality of electoral institutions is questionable. They have failed during the electoral period (especially the counting of votes phase) to exhibit full transparency and assistance to those observing the process. In light of the serious questions raised in respect of the inconsistent statistics provided by the ZEC, it is to be hoped that answers are forthcoming sooner rather than later to deal exhaustively with all concerns. As long as the ZEC fails to deal publicly and decisively with the allegations made, it continues to be seen as an ineffective institution with something to hide.

- The law enforcement authorities have failed to act decisively with outstanding allegations of torture and organised violence. Although their presence has been more publicly felt during this electoral period the culture of impunity remains and negatively impacts on the light in which they are seen by various sectors of society.
- The Electoral Court has been found susceptible to executive manipulation and ZLHR is unable to express full confidence that it will be able to deal effectively, independently and timeously with any and all cases lodged with it.

RECOMMENDATIONS

- The Constitution of Zimbabwe is in urgent need of review. ZLHR believes that this is a process which must involve all sectors of society and address issues of serious civil and political, social, economic and cultural concern. Any attempts to make cosmetic changes through a Parliament which is currently perceived as illegitimate and which will only act to secure the interests of a privileged few must be resisted for the sake of peace and the development of our nation.
- Measures must be put in place to ensure that an efficient, adequate and impartial system of voter education is provided to the electorate, including youth who will be participating in future elections. The Zimbabwe Electoral Commission Act should be revisited and reviewed to ensure that well-equipped non-governmental organisations are provided with help, not hindrance, in carrying out such a mandate.
- The process of voter registration needs to be overhauled. ZLHR calls for a new voters' roll to be prepared, for the process to be effected transparently, in a manner which is facilitative to all sectors of the electorate, and for access to the roll to be drastically improved and made available in electronic as well as hard copy forms. Technological advances have made this a reality and a necessity and with a computerised system already allegedly in place at the

office of the Registrar-General, there is really no justification for the withholding of such public information in whatever format is most accessible.

- ZLHR calls for the immediate repeal of all repressive legislation in force in Zimbabwe today. Only in this way will we build a true culture of democracy, respect and openness so required in our society today.
- Authorities must provide avenues for the entire Zimbabwean electorate to participate in parliamentary and presidential elections. Arbitrary exclusions cannot be tolerated and are a direct affront on the overriding principle of universal suffrage which was one of the pillars driving the liberation struggle in our country.
- The electoral institutions need to be revisited. Only one body must exist in Zimbabwe dealing with all electoral issues. Anything else leads to confusion and the possibility for non-transparency and suspicion. Such a body should be composed of persons selected in a public process and should report directly to the Parliament of Zimbabwe, and no other state official. Only in this way will Zimbabweans rebuild their faith in the electoral process.
- The Zimbabwe Electoral Commission is urged to deal publicly and transparently with all queries that have arisen in respect of the statistical discrepancies that have emerged in these elections. Until such time as it is able to provide credible information as to the shortcomings of the counting and verification process, as well as the huge disparities that appear in many of the constituencies claims of electoral fraud will remain legitimate and the authenticity of the parliamentary election outcome will continue to remain in dispute.
- It is recommended that in future the process of accreditation be decentralised to allow for smoother processes which are less time-consuming.
- The Executive and Legislative arms of government should publicly state their commitment to the doctrine of the separation of powers and undertake to

refrain from any utterances and/or activity which could be perceived as an attempt to influence the proceedings and impinge on the independence of the Judiciary.

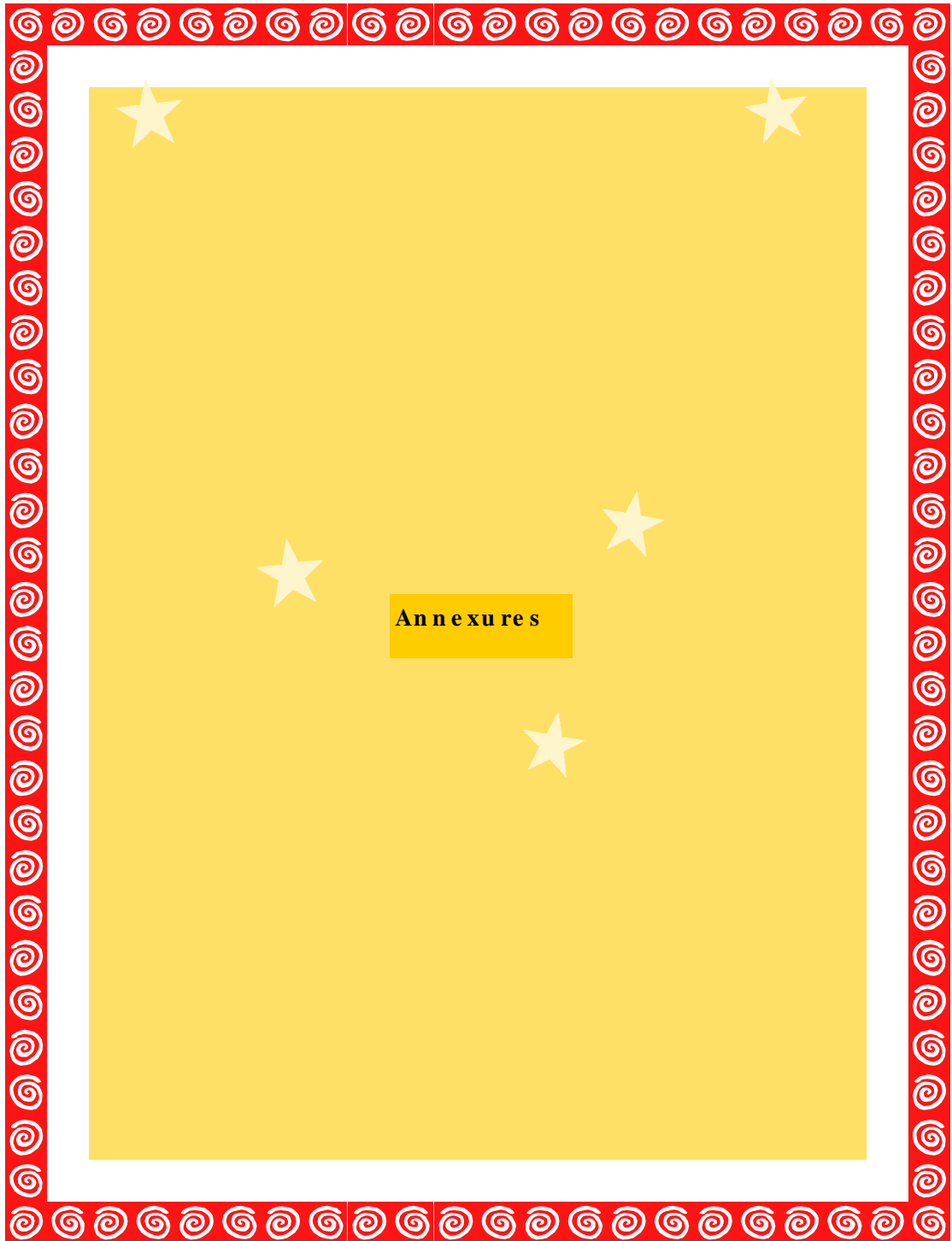
- The Electoral Court needs to be revisited and form a separate structure with its own administrative and substantive personnel. Without such resources it will never be able to satisfy its mandate in terms of the Electoral Act.
- The media environment has to be freed to allow for easy operation of independent electronic and print media. In particular, the newspapers that have been forcibly shut down by the state-controlled Media and Information Commission must be immediately reopened as it is impossible to build democracy without the full enjoyment of the right to freedom of expression by the people of Zimbabwe. Any restrictions on media freedom have to be reasonably necessary in a democratic society.
- The operating environment of human rights defenders has to be opened up to allow for full compliance with the requirements of the UN Declaration on Human Rights Defenders of 9 December 1998. To this end it is strongly recommended that the NGO Bill be abandoned as it an affront to all accepted international standards and norms governing the work and environment of human rights defenders.
- To show commitment towards rebuilding our ailing democracy and a mark of support for African regional initiatives, it is strongly recommended that the government scrupulously complies with the recommendations made by the fact-finding mission of the African Commission on Human and Peoples Rights and adopted by the AU Assembly of Heads of State in Abuja Nigeria on 30-31 January 2005.

CONCLUSION

“The authority to govern derives from the will of the people demonstrated through elections that are conducted freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot”

This lofty principle is drawn from no other source than Zimbabwe’s own Electoral Act. ZLHR believes that not enough was done and not enough political will was shown to reassure the people that their will remained central at all times in the electoral and political process. For the sake of the progress of Zimbabwe, for its peace and development, ZLHR has involved itself in an attempt to constructively point out the shortcomings and act in some small way as the protector of fundamental rights and freedoms.

6 APRIL 2005



Annexures



PRESS STATEMENT

EXECUTIVE ATTACK OF JUDICIARY IN RULING ON BENNETT UNFORTUNATE

Zimbabwe Lawyers for Human Rights notes with grave concern that the Executive has once again attacked the judiciary using the government controlled public media both electronic and print for passing a judgment that they (Executive) dislike. This follows the nullification of the results by the nomination court for the Chimanimani Constituency by the Electoral Court in the case of **Roy Leslie Bennett vs. Zimbabwe Electoral Commission, Samuel Udenge and Heather Bennett**.

In particular, Zimbabwe Lawyers for Human Rights (ZLHR) are concerned at the reports in *The Herald* (Thursday 17 March 2005) wherein it was reported as follows:

“ Speaking at a briefing with provincial, Government and party leaders at Gaza High School in Chipinge Cde Mugabe DESCRIBED THE RULING AS MADNESS...I DON’T UNDERSTAND THE COURT’S DECISION. WE CAN’T BE HELD AT RANSOM BY A MAN WHO IS IN PRISON. THAT IS ABSOLUTE NONSENSE. We will study the decision and appeal against it... He has a case to answer Rambai muchienderera mberi. PROCEED AS IF NOTHING HAS HAPPENED”. (our emphasis)

ZLHR is concerned that this could be taken as an instruction by the President to the officials (Zimbabwe Election Commission officials) involved in the electoral processes to disregard a valid order of court. What is disturbing is that the President is not party to the proceedings and therefore outside the parties who have the legal standing to appeal. Opposing papers in the matter were only filed by the ZEC which in terms of the enabling statute and the SADC Principles and Guidelines governing democratic elections is an independent electoral commission.

In particular the provisions of Zimbabwe Electoral Commission Act stipulate that ZEC is an independent body and shall not be subject to the direction or control of any person or authority in the exercise of its function. Any attempts by the President or any other state official to impose or usurp the functions of ZEC will be unlawful and a

serious undermining of the independence of ZEC. The president is an interested party in the running and outcome of the March 2005 elections and must not be seen to be forcing ZEC to appeal if they are not interested. It is the mandate of ZEC as the only party that filed opposing papers in the matter to consider whether or not an appeal would be justified.

The interference with the judiciary in Zimbabwe by the Executive and ruling party politicians has become endemic and an issue of grave concern to the lawyers in Zimbabwe and the international and regional community. In particular the African Union adopted the African Commission on Human and Peoples Rights report at its Fourth Ordinary Session on the 30th-31st of January in Abuja Nigeria, in terms of which it was observed and recommended that

“The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates’ and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due to members of the judiciary by refraining from political attacks or the use of inciting language against judges and magistrates... We commend to the Government of the Republic of Zimbabwe for serious consideration and application of the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003”

ZLHR therefore further reiterates the need to guarantee the independence of the judiciary and urges the Executive to refrain from interference with the judiciary in line with recommendations by the African Union. Regrettably, the President’s unfortunate unwarranted attack and outburst against the Electoral Court will undermine the effective operation of the courts and the independence of the judiciary. The Executive should be creating an environment for the courts to exercise their duties without fear or favour rather than being at the forefront of undermining the rule of law and the integrity of the courts.

Ends

17 March 2005

26th June 2004

The Honourable Minister of Home Affairs

Harare

Dear Honourable Minister Kembo Mohadi

Re: World Day in Support of Torture Victims 26 June 2004

You will recall that last year on 26 June, we wrote you in commemoration of the World day in Support of the Victims of Torture. It goes without saying that the world still views torture as an issue of serious concern to humanity. In fact torture has been classified as an international crime and this has very serious implications on torturers as they can be prosecuted anywhere in the world anytime. Further this classification also exposes authorities who have a duty to investigate and deal with torture to potential prosecution if they are seen to have failed to act against torturers. Such omission is usually interpreted as either confirmation that torturers are acting on instructions of authorities or at least with the acquiescence of the authorities. Torture is also banned absolutely in the world and a state of emergency or internal political conflict or public disorder cannot be used as justification for torture. In other words, it is a non-derogable offence. International human rights jurisprudence has also settled the point that the state cannot grant a valid or binding amnesty/clemency to torturers as the offence is against the whole world. We have no doubt that the government is also concerned at the continued reports of torture that are being attributed to the law enforcement agents or groups acting with the knowledge and/ or blessing of the state. It is in this respect that in our letter last year we suggested concrete processes and mechanisms that the State can and should take in order to combat torture in Zimbabwe. We still stand by those recommendations and strongly urge the government to show its commitment to combating torture by embarking on an incremental effort to implement the recommendations made. We also look forward to a substantive response to the very serious issues that we raised in the letter.

This year, we find that there is no better method of commemorating the day, than to pay tribute to those who have lost their lives as a result of torture or conduct linked thereto. We therefore provide a schedule below of people who have allegedly lost their lives in the last few years in circumstances that tended to suggest organised violence and/or torture. We request that the honourable Minister provides us with an update of the state of prosecution in these cases as indeed you will agree with us that, torture thrives on impunity or a perception thereof. It is also important for the restoration of public confidence in the police force and the criminal justice delivery process if the State is seen to be genuinely attempting to deal with the actual culprits of torture.

ALLEGED NAME OF VICTIM	ALLEGED DATE OF DEATH	ALLEGED AFFILIATION OF VICTIM	ALLEGED PLACE OF DEATH	ALLEGED SUSPECTED CULPRITS	SOURCE(S) OF REPORT	STATUS OF INVESTIGATIONS
Afonso Plaxedes	12-06-03	MDC	Dzivarasekwa, Harare	Zanu PF and Militia	MDC	
Anderson Charles	2-06-02	Commercial Farmer	Mazoe	War veterans- Minister John Nkomo's gun was used in the murder.	Parade-7/02 MDC	
Banda Mr	24-04-00	MDC	Shamva	Zanu PF	MDC	
Bhebhe Newman	28-02-00	MDC	Nkayi	War veterans and former dissidents abducted and killed him.	* DN 1/03/02	
Botha William	23-07-00	Commercial Farmer	Seke	War veterans	Parade-7/02	
Bumburai Paul	12-06-01	MDC	Shamva	Zanu PF		
Chabvamudev e Niconiari	22-09-02	MDC	Magunje	Zanu PF	DN 28/9/02	
Chacha Augustus	8-12-01	MDC	Shurugwi	Zanu PF		
Chakwenya Tinashe	4-04-00	Zimbabwe Republic Police	Marondera	War veterans shot him dead at the invaded Chipesa Farm.	NGO Forum/MDC * DN 23/05/00	
Chaitama Nicholas	25-04-00	MDC	Kariba	Zanu PF		
Chambati Milton Mambaravana	20-10-01	MDC	Hurungwe	Zanu PF		
Chapurunga Lemani	19-11-00	MDC	Marondera	Zanu PF		
Chemvura Lameck	24-11-01	UZ student	Makoni	Soldiers		
Chigagura Zeke	2-06-00	MDC	Gokwe	War veterans	* DN 3/6/00	
Chihumbiri Eswat	23-03-01	MDC	Muzarabani	Zanu PF militia	MDC	
Chikwenya Richard Chokurasa	1-05-01	MDC	Buhera	Zanu PF	* DN 3/5/01	

Chiminya Tichaona	14-04-00	MDC-MDC President's assistant	Buhera	CIO and war veterans petrol-bombed the vehicle.	* FinGaz 18/10/01 * DN 20/04/00 * Herald 20/04/00 * Herald 19/04/00 * Herald 16/04/00 * DN 17/04/00 * DN 18/06/01 * DN 21/06/01 * DN 29/04/02 * DN 2/05/02 * DN 4/05/02 * DN 4/05/02 * DN 1/05/02 * Herald 12/06/02 * DN 23/05/02 * DN 13/06/0	
Chipunza Takundwa	16-05-00	MDC	Budiriro	War veterans severely tortured him at the surgery owned by the late war veterans leader Chenjerai Hunzvi.	MDC * DN 23/5/00 * Herald 18/5/00	
Chirima Robson Tinarwo	March 2001	MDC	Muzarabani- Dandakurima ward	Zanu PF youth militia/War veterans.	NGO Forum/MDC * Standard 1/04/01	
Chisasa Alex	13-05-00	ZRP	Chipinge South	War veterans		
Chitemerere Mhondiwa	30-10-01	MDC	Murehwa	War veterans		
Chiwara Laban	5-05-00	MDC	Harare	War veterans		
Chiwaura Moffat Soka	29-12-01 but body found on 14-01-02 on Hon Nicholas Goche's Atherstone farm.	MDC	Bindura	Zanu PF abducted and killed him.	* DN 22/1/02	
Cobbet Robert Fenwick	6-08-01	Commercial farmer	Kwekwe	War veterans		
Dube Nqobizita	1-03-02	MDC	Nkulumane. He died on	Zanu PF supporters	*Herald 2/03/02	

			arrival at Mpilo Hospital in Bulawayo.	assaulted him and set his vehicle on fire.		
Chinyemberere Binali	25-08-02	MDC	Karoi	Zanu PF		
Chinyere Mr	11-06-00	MDC	Muzarabani	Zanu PF- Pulled out of bus.		
Chiunya Philip Gumboreshumba	16-05-02	MDC	Sadza, but family was barred from burying him there. He was buried in Harare.	Zanu PF/war veterans severely assaulted him.	* DN 20/5/02	
Dhliwayo Willis	25-12-01	war veteran	Chipinge	MDC		
Dumukani Zondani	9-06-01	Farmworker	Mbare	Zanu PF		
Dunn Allan Stewart	7-05-00	Commercial Farmer	Seke	War Veterans and Zanu PF supporters beat him unconscious.	Parade 7/02, DN 9/5/00, Herald 9/5/00 * DN 23/5/00	
Dzokurasa Richard	30-04-01	MDC	Buhera	Zanu PF and CIO	MDC	
Elsworth Henry Swan	7-05-00	Commercial Farmer	Kwekwe	War veterans and CIO	Parade 7/02, DN 14/12/00, Herald 15/12/00	
Gara Bernard	31-12-00	Zanu PF	Masvingo-Bikita	MDC		
Gomo Edwin	26-03-00	MDC	Bindura	Zanu PF- Youth militia		
Ford Samson Terrance	17-03-02	Commercial Farmer	Norton	War veterans. They tied him up and shot him at point blank.	* DN 19/3/02 * Parade 7/2002 *Herald 22/3/02, 19/3/02, 20/3/02 * DN 25/3/02, 23/3/02 * ZimInd. 28/3/02	
Guvi Obert	14-09-00	MDC	Hurungwe	War veterans		
Gatsi Ernest	19-03-02	MDC	Guruve	Zanu PF supporters beat him severely. He	* DN 20/3/02 * ZimInd 28/3/02	

				died at Guruve Hospital.		
Gwase Nhamo	13-06-00	MDC	Murehwa	Zanu PF/war veteran leader identified as Obey Magaya.	* DN 10/8/00	
Gwenzi Gilson	27-07-01 assaulted in June.	MDC	Mwenezi	Zanu PF		
Jeke Leo	10-06-00	Zanu PF	Bikita	MDC		
Jefta Peter	3-03-02	MDC	Harare South	Zanu PF		
Jeka Petros	13-03-02 Easter Monday	MDC	Masvingo	Zanu PF supporters stabbed him to death.	NGO Forum/MDC * DN 21/09/02 * DN 10/04/02 * DN 24/4/02	
Jeranyama Donald	25-03-02	MDC	Mutasa	Soldiers severely assaulted him on the eve of the election. Died from his injuries at his Honde Valley home.	ZESN Observers/MD C	
Kamonera John	3-07-01	MDC	Hatfield-Epworth	Zanu PF	MDC * DN 11/7/01	
Kanyurira Luckson	25-04-00	MDC	Kariba	Zanu PF	NGO Forum/MDC	
Kareza/Howard	13-12-00 Assaulted on 23-4-00	MDC	Shamva	Zanu PF	NGO Forum/MDC	
Kariza Peter	23-04-00	MDC	Shamva	Zanu PF	NGO Forum/MDC * FinGaz 4/5/00	
Karimhete Isaac	21-10-02	MDC	Epworth	Zanu PF supporters allegedly incited by Muzarabani MP Nobbie Dzinzi tortured him for 11 days until he died at Gunduza Base.	MDC * DN 26/10/02	
Kufandaedza	27-05-00	Zanu PF	Seke	Zanu PF	NGO Forum	

Musekiwa						
Katema Thomas	2-08-01	MDC	Harare	Zanu PF	MDC	
Katsamudanga Tichaona	5-02-02	MDC	Died at the Avenues Clinic, Harare	Zanu PF beat him up and sustained serious head and body injuries.	MDC * DN 6/2/02	
Khumalo Khape	6-02-02	MDC	Mhondoro	Zanu PF	MDC * DN 12/2/02	
Lupahla Limukani	29-10-01	Zanu PF	Lupane	MDC	NGO Forum	
Mabika Talent	14-04-00	MDC	Murambinda	CIO/War veteran	NGO Forum/MDC and Buhera North election petition High Court judgement Daily News on Sunday 7/9/03	
Machiridza Tonderai	18-04-03	MDC	St Mary's	ZRP officers tortured him while in their custody and even chained him to his hospital bed despite severe injuries to his body and limbs.	MDC -DN 24/4/03	
Madzvimbo Fanuel	16-09-01	Resettled Farmer	Hwedza	War veterans	MDC	
Madhobha Tipason	Went missing on 10-04-02. Remains found on 2-05-02	MDC	Gokwe	War veterans	MDC * DN 10/05/02	
Mafemeruke Constantine	19-06-00	MDC	Kariba	War veterans/Zanu PF	MDC/NGO Forum	
Maguwu Itayi	27-07-00	MDC	Dzivarasekwa	Army and ZRP	NGO Forum/MDC	
Mahuni Funny	13-03-02	MDC	Kwekwe	Zanu PF youth militia and war veterans murdered him at a torture	MDC * ZimInd. 28/3/02	

				base in Mbizo after he denied his two daughters permission to attend a Zanu PF pre-election night rally.		
Mamonera John	27-07-00	MDC	Hatfield	Zanu PF	MDC	
Mandeya Joseph Ketero	17-05-00	MDC	Mutare	Zanu PF	NGO Forum/MDC	
Mandindishe Peter	22-07-01	MDC	Bindura	Zanu PF	MDC	
Manhango Wonder	26-06-00	MDC	Gokwe	Zanu PF youths militia and war veterans.	MDC/NGO Forum * DN 11/12/01 * DN 7/11/01 * Gokwe North Election Petition	
Manyame Ropafadzo	16-01-01	MDC	Bikita	Zanu PF	NGO Forum/MDC	
Manyara Owen	15-03-02	MDC	Madziva	Zanu PF	MDC * ZimInd 28/3/02	
Mapenzauswa Phibion	14-07-01	Resettled Farmer	Mutare West	War veterans	NGO Forum	
Maposa Richard	19-01-02	MDC	Bikita West	Eight Zanu PF supporters assaulted him all over his body with logs. He was taken to Chitutu Clinic where he died on arrival.	MDC * FinGaz 13/3/02 * DN 1/2/02 * Herald 22/1/02	
Mappingure Atnos	20-01-02	MDC	Jerera	Zanu PF	MDC * FinGaz 13/3/02 * Herald 22/1/02	
Marufu Doreen	2-04-00	MDC	Mazowe	War veterans	MDC/NGO Forum	
Mashinga Anthony	Date unreported	MDC	Goromonzi	War veterans	NGO Forum/MDC	
Masango		MDC	Murehwa	Unknown	MDC	

Molly						
Mataruse Peter	March 2001	MDC	Muzarabani's Hoya ward	Zanu PF youth militia	NGO Forum/MDC * Standard 1/04/01	
Matema Hilary	15-10-01	MDC	Guruve	Zanu PF	NGO Forum/MDC	
Matope Kenneth	13-01-02	MDC	Guruve	Zanu PF	MDC	
Matyatya MR	27-06-00	MDC	Gweru	Zanu PF	NGO Forum	
Mazava Felix	11-09-01	School headmaster at Mbowe Primary Chivhu- MDC	Chikomba, Chivhu	Zanu PF and CIO	NGO Forum * DN 19/09/01 * Herald 15/09/01 * Herald 14/09/01 * DN14/09/01 * DN 17/09/01	
Mbewe Samson	9-08-00	Farmworker	Goromonzi	War veterans	NGO Forum/MDC	
Mbudzi	Unreported	MDC	Mhangura	Zanu PF militia	MDC	
Midzi Trymore	23-12-01	MDC	Bindura	Zanu PF militia	NGO Forum/MDC. DNews 12/1/02, 22/3/02, 11/4/02, 24/4/02, 19/4/02, 22/6/02 * DN 1/1/02 and ZimInd.5/4/02	
Mijoni Simwanja	15-01-01	MDC	Kwekwe	Zanu PF militia	MDC	
Moyo Henry	7-02-02	MDC	Masvingo	Zanu PF	MDC	
Mugodoki Michael	6-12-01	Farm security guard	Chikomba	Zanu PF/War veterans	NGO Forum	
Mpofu Muchenje	19-01-02	MDC	Mberengwa	War veterans	MDC	
Mukweli Vusimuzi	9-09-01	MDC	Gokwe	Zanu PF	NGO Forum	
Mubaiwa Godfrey	9-02-03	MDC	Highfield	Zanu PF	MDC	
Mudavanhu S.	Unreported Chesa Farm	MDC		War veterans	MDC	
Mudzi Onias	Unreported	MDC	Mudzi, Mutoko	War veterans	MDC	

Mudzimuirema Cosmas	16-07-02	MDC	Buhera	War veterans/ZRP riot police.	MDC	
Mukakarei Tabudamo	14-02-02	MDC	Masvingo	ZNA	MDC * DN 16/3/02	
Mukwasi Edison	2-02-03	MDC	Harare	ZRP/Zanu PF	MDC * DN 4/2/03	
Munandishe Peter	22-07-01	MDC	Bindura	Zanu PF militia/War veterans	NGO Forum/MDC	
Munikwa Isaac	20-01-02	MDC	Masvingo	War veterans/Zanu PF	MDC * Herald 22/1/02	
Munyaradzi Mr	14-02-02	Farmworker	Marondera	War veterans/Zanu PF	MDC	
Mupawaenda Takatukwe Mamhowa	16-02-02	MDC	Chitomborwizi, MashWest	Zanu PF	MDC	
Mupesa Ndonga	30-03-01	MDC	Muzarabani	War veterans	NGO Forum/MDC	
Mushaya Mationa	17-05-00	United Parties (UP) Headman	Mutoko UMP	War veterans/Zanu PF	NGO Forum/MDC * Herald 19/05/00	
Mushaya Onias	17-05-00	Son to above	Mutoko UMP	War veterans/Zanu PF	NGO Forum/MDC * Herald 19/05/00	
Musoni Robert	26-03-00	MDC	Mazowe	War veterans/Zanu PF	NGO Forum/MDC	
Mutemaringa Fungisai	27-01-02	MDC	Murehwa	War veterans/Zanu PF	MDC	
Mutyanda Mandishona	29-06-00	MDC	Kwekwe	War veterans/Zanu PF	NGO Forum/MDC * DN 11/12/01 * DN 3/6/00	
Mwanza Misheck	4-05-01	MDC	Zvimba	Zanu PF militia/War veterans	NGO Forum/MDC	
Nabanyama Patrick	Abducted on 19-6-00. Never seen again.	MDC election agent.	Bulawayo	War veterans/CIO abducted him from his	MDC - FinGaz 9/5/02 -DN 6/7/01, FinGaz	

				house.	9/11/00, DN 10/10/00, 26/6/00, 26/7/00,	
Ngela Henson	22-06-00	Zanu PF	Insiza	Internal feuding	NGO Forum	
Ncube Mthokozisi	25-01-02	MDC	Bulawayo	Zanu PF	MDC * FinGaz 13/3/02 * DN 29/1/02	
Ncube Sambani	17-3-02	MDC	Victoria Falls	Two soldiers killed him while he returned from the shops. Spinal cord and ribs broken during the assault.	MDC	
Nheya Titus	20-12-01	MDC	Hurungwe East-Karoi	Zanu PF militia	NGO Forum	
Nkala Cain	5-11-01	War veteran	Bulawayo	Internal fighting	NGO Forum * Mirror 20/12/01	
Nemaire Solomon	23-01-02	MDC	Inyati Mine, Headlands	War veterans/Zanu PF militia	MDC * FinGaz 13/4/02	
Ngamira Jenus	5-05-02	MDC	Bindura	War veterans/Milia	MDC	
Ngulube Simon	Unreported	MDC	Shamva	War veterans/Zanu PF militia	MDC	
Ngundu Shepherd	5-02-02	ZIMTA-School teacher at Sohwe Primary.	Mount Darwin	War veterans/Zanu PF militia	MDC * DN 12/2/02	
Nyamadzawo Alexio	15-09-01	Resettled farmer	Hwedza	Zanu PF/War veterans	NGO Forum/MDC	
Nyambare Winnie	18-05-01	MDC	Guruve	War veterans	MDC/NGO Forum	
Nyika James	3-07-01	MDC	Epworth- Harare	War veterans/Militia	MDC	
Nyika Rambisai	24-12-01	MDC	Gokwe	War veterans/Militia	NGO Forum	
Nyathi Mbuso	27-09-01	War veteran	Nkayi	MDC	NGO Forum	
Oates Tony	31-05-00	Commercial farmer	Zvimba	War veterans/Zanu PF	NGO Forum/MDC Parade 7/02,	

					DN 2/6/00,	
Olds Martin	18-04-01	Commercial farmer	Nyamandlovu --Bubi-Umguza	War veterans armed with AK47 rifles who had arrived on 12 vehicles.	MDC/NGO Forum -Parade 7/02 Herald 19/4/00 , FinGaz 20/4/00, DN 19/4/00 23/05/00	
Olds Gloria	4-03-01	Commercial farmer	Nyamandlovu- -Bubi-Umguza	War veterans shot her at her Silver Streams Farm.	MDC/NGO Forum -Parade 7/02	
Pfebve Matthew	30-04-00	MDC	Mount Darwin North	War veterans/Militia	NGO Forum/MDC * DN 23/5/00	
Phiri Nkosana	12-10-02	MDC	Bulawayo	Zanu PF militia-severely beaten at stadium in Jan. 2002	MDC	
Pilosi Simon	26-03-02	MDC	Zvimba South	Zanu PF/ War veteran	MDC	
Romio Edwin	22-03-02	MDC	Mutoko	War veterans/Youth militia beat him and killed him at his home.	MDC * ZimInd 28/3/02	
Rukara Kufa	17-11-01	MDC	Silobela-Gokwe died at Gweru Hospital	War veterans/Youth Militia tortured him at Tenda Primary School base near Mutora Growth Point.	MDC/NGO Forum * DN 21/11/01 * DN11/12/01 * DN 1/12/01 * DN10/12/01	
Rukuni Thadeus	29-05-00	MDC	Masvingo-Bikita East	Youth militia/War veteran	NGO Forum/MDC, DN 2/6/00	
Rutsvera Peter	2-06-03	MDC	Kadoma Gen. Hospital	Zanu PF	MDC	
Sanyamahwe Kuziwa	18-01-02	MDC	Murehwa	Zanu PF/War veteran	MDC * FinGaz 13/3/02	
Sibanda Charles	2-03-02	MDC	Zhombe	war veterans/Militia	MDC	
Sibanda James	7-02-02	Village headman,MD	Mathendele ward, Nkayi	Zanu PF youth militia, led by former	MDC * ZimInd. 22/3/02	

		C		dissident Rainfall Msimanga abducted the headman for his MDC links.	* DN 27/3/02 * ZimInd 28/3/02	
Sibindi Halala	30-01-02	MDC	Tsholotsho	Zanu PF youth militia.	MDC * FinGaz 13/3/02	
Sibindi Joseph	Jan. 2002	MDC	Matebeleland North	Zanu PF	MDC	
Sicwe Jameson	30-01-02	MDC	Sizangobuhle Ward, Lupane, Matebeleland North	Zanu PF supporters and war veterans dragged him from his home and beat him up until he died.	MDC * FinGaz 13/3/02 * ZimInd 1/2/02 * DN 1/2/02	
Size Rimon	19-11-00	MDC	Marondera East	War veterans	MDC	
Sikele Johannes Felix	11-11-01	Resettled Farmer	Chiredzi	War veterans/Yout h militia	NGO Forum/MDC	
Sikhucha Ravengai	10-11-01	MDC	Mberengwa East	Youth militia/war veterans	NGO Forum	
Stevens David	15-04-00	Commercial farmer	Murehwa South	War veterans pulled him out of police station and shot him dead.	NGO Forum/MDC -Parade 7/02, Herald 16/4/00, DN 18/4/00, 26/4/00, 10/5/00, 26/9/00, 5/12/03, 23/05/00	
Takawira Marko	8-02-03	MDC	Mbare-Harare	ZRP torture in Bikita in Jan. 2001	MDC	
Tapera	6-05-00	MDC	Macheke	war veterans	MDC	
Tigere Shepherd	3-01-02	Bus conductor	Mashonaland East	War veterans/Militia	MDC	
Nhitsa Takesure	19-02-02	MDC, worked as a pump attendant with the Department of Water	Rushinga,	War veterans and Zanu PF youth militia severely assaulted victim for	* DN 26/2/02	

		Development.		allegedly cutting off water supplies and of supporting the MDC.		
Tonera Steven	19-03-03	MDC/Farmworker .	Ruwa	CIO/War veterans	MDC * ZimInd 6/6/03	
Tadyanemhan du Tichaona	20-06-00	MDC	Hurungwe East	War veterans	NGO Forum	
Vikaveka Darlington	15-03-02	MDC	Marondera	War veterans/Zanu PF	MDC * ZimInd. 28/3/02 * DN 18/3/02	
Weeks John	14-05-00	Commercial farmer	Seke	War veterans	NGO Forum/MDC -Parade 7/02, DN 5/00, 23/05/00	
Wayner Peter	26-02-01	Priest	Masvingo	War veterans	MDC	
White Fanuel	28-03-02	MDC	Mushumbi Pools	War veterans/Zanu PF militia	MDC	
Siziba Langton	16-03-00	MDC	Kwekwe	Zanu PF youths dragged him to the back of his shop and bludgeoned him with iron rods until he died.	MDC * DN 19/3/02	
Zhou Fainos Kufazvinei	10-06-00	MDC	Mberengwa East	War veterans/Zanu PF militia	NGO Forum/MDC * Herald 18/06/00 * DN 8/08/00 * DN 3/10/00 * DN 30/06/00 * S/Mail 31/505/02 * DN 10/07/01 *DN 6/04/01 * DN 30/07/01 * DN 4/07/01 * DN 13/07/01	
Ziwani Osborn	18-9-01	MDC	Bikita West,	Zanu PF militia/War	NGO	

			Masvingo	veterans	Forum/MDC	
Andoche Julius	20-04-00	Farm foreman	Murehwa South	War veterans/Zanu PF	NGO Forum	
Bailey Thomas (89)	04-02	Commercial farmer	Mount Hampden near Harare	War veterans and Zanu PF youth militia held him hostage at his Danbury Park farm for 37 days.	Parade 7/02	

Samhu Rumbidzai	5-07-03	MDC	Bindura	War veterans, ZRP and Zanu PF militia beat her during the Bindura by-election. Admitted for two days at Bindura hospital under police guard. She was facing charges of political violence.	Elder sister Lorana Dandajena.	
Stevensen Peter	20-01-04	Commercial Farmer	Kwekwe	War veterans beat him to death.	Justice for Agriculture's John Worsely-Worswick, the organisation's vice chairman.	
Bizimark Madison	21-04-00 at John White Farm	Farmworker	Shamva	War veterans and Zanu PF militia assaulted him with iron bars and sticks all over body for being an MDC supporter.	MDC social welfare department.	
Kaguru Tichaona	3-06-03	MDC	Chikurubi HQ Camp Troop Unit Police Harare	ZRP and ZNA personnel tortured him with electric current and blunt objects over his body.	MDC * DN 6/6/03	
Rwafirinda	16-01-02	MDC	Bikita	Zanu PF and	MDC	

Richard Chatunga-52				War veterans beat him up at Chikuku Business Centre. He sustained multiple injuries and died instantly.	* FinGaz 13/3/02 * Herald 22/1/02	
Chinozvina Francis	28-03-04	MDC	Zengeza, Chitungwiza	Zanu PF supporters shot him dead during a by-election in Zengeza. Unconfirmed reports alleged that Elliot Manyika, the Zanu PF political commissar and Minister without portfolio was responsible. The police and government have exonerated the minister.	MDC	
Kombo Samson Showano	20/01/03	MDC Chairman for Makoni East constituency.	Died at Rusape General Hospital.	Zanu PF/War veterans abducted him to their base where he was severely tortured. He died from the injuries he sustained during his torture.	NGO Forum * DN 27/01/03	
Chasara Steven	June 2002	MDC	Chitungwiza	Police and CIO	Daily Mirror 20/12/01 * DN 19/6/02	
Matinyarare David	May 2003	MDC	Mufakose, Harare	Zanu PF supporters	* DN 20/5/03	
Makotore Hlomayi	27/01/03	MDC candidate	Shurugwi	Zanu PF supporters threw him in a dam.	* DN 10/2/03	
Kuvheya		MDC	Chikomba	Zanu Pf and	* DN 28/3/02	

Lawrence				War veterans		
Gwaze Tafirenyika	13/03/02	MDC polling agent.	Mutoko	Zanu PF youth militia.	* ZimInd 28/3/02	
Mupesa Ndega	30/03/01	MDC	Muzarabani	War veterans and Zanu PF youth militia beat him up for supporting the MDC	* DN 3/5/01 * 5/4/01	

We have written this letter in the spirit of cooperation and hope that the Honourable Minister will find time to deal with the matter, which we believe deserves the minister's serious attention. We are also at the disposal of the Ministry should the Minister feel that there is a level of cooperation that is needed in terms of combating the terrible phenomenon of torture in Zimbabwe.

Yours faithfully

Nokuthula Moyo
Chairperson
Zimbabwe Lawyers For Human Rights

Cc Commissioner of Police
Cc Minister of State Security
Cc Minister of Justice Legal and Parliamentary Affairs

ZESN Election update 07

Count down:

8 DAYS TO GO GO

List of Some of the Polling Stations not in Neutral Areas

ZESN through its contacts with the electorate has been concerned with some of the locations of the polling stations to be used in the upcoming elections. These seem to be located in non-neutral areas and ZESN hereby urges ZEC to look into this issue. This may likely compromise the secrecy of the vote and instill fear in the electorate. Below is a list of some of the polling stations in question.

Constituency	Name of Polling Station
1. Chimanimani	Saweronber Homestaed
2. Chipinge North	Chief Mapungwana Homestead
3. Chipinge North	Chief Gwenzi Homestead
4. Rushinga	Chief Makuni (Mukazika Village)
5. Seke	Muza Store
6. Mudzi West	Tizova Homestead
7. Chiredzi North	Favershah Lot 3 Homestead
8. Gwanda	Highway Homestead
9. Insiza	Mpalawani Homestaed
10. Insiza	Gwamanyanga Homestead
11. Insiza	Albany Homestead (Tent)
12. Chirumanzu	Mahamara Homestead
13. Zhombe	Bonstead Homestead
14. Harare South	Airport Compound Store
15. Guruve South	Gangarahwe Village
16. Mazowe West	Ballinety Farm
17. Mt Darwin South	Gwetera Village
18. Muzarabani	Kingston Deveril Resettlement
19. Rushinga	Wara Village
20. Rushinga	Chinaka Village
21. Zvimba South	Mhandu Village
22. Zvimba South	Mwanga Resettlement
23. Masvingo Central	4 Brigade Headquarters
24. Hwange East	Mwemba Chiefs Hall
25. Bubi-Umguza	Molo Forestry (Wejiwa Homestead)

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