

HUMAN RIGHTS MONTHLY

Numbers 23-24

January-March 2002

“THE PRESIDENTIAL ELECTION”

We have decided to print a special double-sized issue for February and March to cover the presidential election. During this election, there were particularly vicious assaults on human rights, especially on political and civil entitlements. Opposition activists and polling agents were threatened, abducted, arrested and detained.

By 31 March, after the Presidential election results were announced, five MDC polling agents had been reportedly killed in their quest to participate actively in the political destiny of their country. It is regrettable that none of the alleged murderers have been arrested. The current wave of violence and impunity raises serious doubts about the efficacy and integrity of the police system and generally, access to justice by the citizens of Zimbabwe.

We extend our sincere condolences to the families and friends of all 33 Zimbabweans who died. We have presented their names below so as to show, visually, which organisations were most victimised.

MDC polling agents

Ernest Gatsi
Tafireyinyika Gwaze
Donald Jeranyama
Edwin Romio
Fanuel White

MDC members

Newman Bhebhe
Nqobizita Dube
Tichaona Katsamudanga
Khape Kumalo
Lawrence Kuvehya
Owen Manyara
Henry Moyo
Tabudamo Mukakarei
Sambani Ncube
Shepherd Ngundu
Charles Sibanda
James Sibanda (ward headman)
Darlington Vikaveka (farm guard)
Unnamed (4)

Zanu PF polling agents

Zanu PF / ZNLWVA members

Shelton Lloyd Machaka
Stephen Maphosa
Amos Misheck Maseva
Tariro Nyanzira

Political affiliation unspecified

Terry Ford (farm owner)
Peter Jefftha
Funny Mahuni
Mamhova Takatukwa Mupawaenda
Takesure Nhitsa
Simon Pilosi (farm guard)
Unnamed (1)

Of the 22 MDC members killed, 15 were reported to have died at the hands of Zanu PF supporters and/or ‘war veterans’. Amos Maseva, the one war veteran who died, was also reportedly killed by members of his own organisation and those belonging to Zanu PF. Three members of Zanu PF were reported to have been killed by MDC supporters.

Zanu PF and/or members of the Zimbabwe National Liberation War Veterans Association

(including farm occupiers) were reported to have been responsible for twenty-three of the thirty-three deaths. The MDC was reported to be responsible for the three deaths of Zanu PF supporters.

There were reports that some South African election observers were not alarmed by the levels of electoral violence and the recorded political deaths in Zimbabwe. It appears that they compared Zimbabwe in 2002 to South Africa's Presidential Election of 1994 in which thousands were killed. But the circumstances between the two countries are and were different.

Pius Wakatama aptly drew attention to the cultural differences between the two countries: 'Zimbabweans are not prepared for even one fellow countryman to die as a sacrifice to the political god of depraved, power-hungry politicians. The sanctity of life is their highest value.' We have far too many disturbed people (especially war veterans) who are thought to be suffering retribution from *ngozi* to ignore our own cultural prohibitions against killing.

Political Rights

In September 2001, the *Human Rights Monitor* suggested we might do some self-assessment on our political rights. Because so many of our political and other human rights were violated during the presidential election, now seems a good time to remind Zimbabweans of our political rights guaranteed in the **Universal Declaration of Human Rights Articles 17-21:**

(Zimbabwe is a member of the United Nations and ratified the Universal Declaration of Human Rights. Therefore the Zimbabwe government has the obligation to respect, observe and enforce all the rights enshrined in the UDHR.)

17. Everyone has the right to own property... No-one shall be arbitrarily deprived of his property.

18. Everyone has the right to freedom of thought...

19. Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

20. Everyone has the right of freedom of peaceful assembly and association. No-one may be compelled to belong to an association.

21. Everyone has the right to take part in the government of his country, directly or through freely-chosen representatives... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Unfortunately, not all of these internationally-recognised political rights are safeguarded in our defective Constitution. Our freedoms of thought, opinion, expression, assembly and association are entrenched. But our rights to participate in government, to choose our elected representatives, even to vote, are not protected in our Constitution. We have no constitutional guarantee that we will be registered as voters if we qualify to be registered, no constitutional guarantee that we will vote if our names appear on the voters roll. Hundreds of thousands of urban voters, especially in Harare and Chitungwiza, found out the hard way in March 2002 how insecure our political rights as voters are.

Violence by groups, trained or abetted by the government, such as the war veterans and other youth militia was used to influence the outcome of the presidential poll. Areas objectively known to be opposition strongholds deliberately had the number of polling booths reduced resulting in long queues and very few people actually voting. The president, notwithstanding that he was one of the contestants, promulgated unconstitutional laws, without reference to parliament, which barred Zimbabweans abroad and others who, for a variety of reasons, were not in their constituencies on polling days, from voting. It seems that the government has mastered the art of turning elections in favour of the status quo.

This situation explains why the National Constitutional Assembly is so determined to ensure that Zimbabwe obtains a new and better Constitution. The Zanu PF government and others seem to ignore the fact that it was through the ballot box that they ascended to power, and that their 1980 victory was for freedom of expression and the right of self-determination.

In 1991 a Constitutional amendment replaced the 'white roll' and the 'general roll' with the 'common roll'. In the High Court Justice Rita Makarau rejected the MDC's argument that the 'common roll' allows 'universal suffrage' without proof of address. She held that our franchise is 'qualified' by the need to prove a residential address.

So the homeless, or those who could not prove where they lived, were not allowed to register to vote. It is ironic and a massive betrayal of the anti-colonial struggle that independent Zimbabwe should go back to the Rhodesian 'qualified' franchise and prevent the poor and uneducated from registering as voters.

The law and the presidential election

Five candidates contested the election for Zimbabwe's State Presidency. Robert Mugabe (Zanu PF) stood for re-election against Morgan Tsvangirai (Movement for Democratic Change), Shakespeare Maya (National Alliance for Good Governance), and two independents, Wilson Kumbula and Paul Siwela. (Their respective parties (ZANU and ZAPU) rejected them and instead endorsed MDC's Morgan Tsvangirai to prevent splitting the opposition to Zanu PF.) Polling was initially set for 9-10 March, but was extended for a third half-day.

The legal aspects of this election were very interesting. As usual, many changes were made to our electoral law and regulations, in a total of 18 Statutory Instruments. These exclude the amendments to the Electoral Act in the General Laws Amendment Act, which was only in force from 4-27 February.

Abusing its parliamentary majority, which is ensured only by presidential powers to appoint 30 members, Zanu PF forced through the General Laws Amendment Act two days after it had been defeated on its third reading in the House of Assembly. So the Supreme Court struck down this Act. Amendments to the Electoral Act had been added to the General Laws Amendment Act at its second reading. They were also chucked out. The many changes to the law, apparently in an effort to influence the outcome of the election, must have discouraged some people from voting.

They made three changes on the day before polling started. This was far too late for all the presiding officers to be told. So there was much confusion, especially about who was to be refused the vote. The rule laid down by Robert Mugabe reversed the proof normally required in a law court. If voters could not prove they had not been disenfranchised, they could not vote. Thousands were refused their votes. After the election, some received letters of apology from their constituency registrars. The letters were dated before the election, but posted afterwards.

The MDC applied for a copy of the voters roll actually used in the election. This is public information which Registrar-General Tobaiwa Mudede refused to give to the opposition. The MDC wanted to check on what changes had resulted from the illegal voter registration which only finished on 3 March 2002. This extended registration had not been advertised and was known only to Zanu PF. The Supreme Court reserved its judgment until after the election, so the MDC did not get a copy.

The Public Order and Security Act came into effect on 22 January 2002. It was used many times to prevent and disrupt the opposition and civil society meetings. It was also used to delay and sometimes prevent MDC electoral and polling agents from getting to their posts. Many hundreds of MDC agents were arrested under POSA and did not reach their polling stations until long after the boxes had been checked and voting had started. Many polling booths were left, for at least some of the time, in the hands of officials and Zanu PF by themselves. It is very bad political practice to leave one set of contestants alone at polling stations. Even if they behave themselves perfectly while alone, people will be suspicious.

The election was not transparent and therefore cannot be categorized as being free and fair.

Possibilities of electoral manipulation ('rigging')

'Rigging' elections means that not all votes are equal in determining election results. Regrettably, our constitution and the Electoral Act permit the President to 'rig' elections and control parliament (through his appointment of 30 members of his party to parliament). The President appoints the Electoral Supervisory Commission, the body that supervises and monitors the electoral process as is the case with the Registrar General.

'Rigging' is tampering with the votes themselves – by failing to register voters, leaving deceased people on the voters roll (and allowing others to vote in their names), preventing some from voting, allowing others to vote more than once, stuffing the ballot boxes, removing votes already cast from the boxes, etc. In June 2000 the voters roll was a shambles. It is still a shambles now. This state of confusion seems to be a result of gross incompetence or dereliction of duty or deliberate in order to facilitate rigging the poll. Like wooden ballot boxes, a shambles certainly helps rigging.

In June 2000, pre-election violence, intimidation, death threats, coercion, kidnapping, torture, arson, victimisation (both before and after the elections) were all used against known members of opposition parties. The same techniques were used in March 2002. They are always intended to distort the vote – to 'persuade' voters' not to vote for the candidate they prefer, or to vote for one they don't want, or not to vote at all.

The worst interference with our political rights in the recent presidential election was legal and administrative and therefore not easily seen, as shown below.

Whole categories of voters were disenfranchised, including those abroad, those not born in Zimbabwe, and the homeless.

- Our electoral laws and regulations were changed, to ensure that Zimbabweans outside the country did not get postal votes. The homeless had to prove an address in order to register to vote.
- Thousands of former farm workers were chased off their farms and out of their constituencies, but government insisted that people must vote in their constituencies. Schools and universities were closed until after the election, but many students were registered to vote where they study, not where they live. All prisoners were, once again, denied the right to vote by justice minister Patrick Chinamasa.
- At illegal roadblocks, metal IDs were confiscated from thousands of travellers who needed identification to vote. 'Door to door' campaigning also saw IDs being taken from their owners.

Government planning was suspect

- Enough paper was ordered to print 7 million ballots – for only 5,5 million registered voters. Tobaiwa Mudede refused to say how many ballot papers were actually printed.
- Government refused to accept gifts of transparent ballot boxes. It changed the rules so that only the gap at the top (where the papers go in) was sealed with the different parties' seals.
- It also ruled that monitors and polling agents could not travel on vehicles with the polling boxes, but later agreed that some could. If agents had not arrived at the counting centres (and many were prevented from getting there on time), the boxes were opened anyway – with no independent witnesses present.
- Government invited only its own friends to observe and its own employees to monitor this election. It drastically cut the number of observers and chased out competent local and foreign observers with

In March 2002 the old techniques of rigging were used, but there was one very significant change in the political environment. In 2000, unsophisticated voters were convinced that the way they voted could be known, using binoculars, computers, cellphones and other hi-tech equipment. But by 2002, practically everyone was convinced that their vote was their secret. So beating people no longer worked as well as it used to. Less visible techniques of swinging the vote were needed.

Perhaps the new subtlety in rigging also came about because, from their June 2000 experience, the international observers had learned what to expect. Pierre Schori had led the European Union observers in June 2000, and they had condemned that election. In February 2002, Schori was expelled and prevented from leading the EU team, which was then withdrawn. One diplomat said that the Zimbabwean government acted 'to delay the arrival of international election observers, to limit their number, and to ensure that they moved around the country as little and as late as possible'. The 727 international observers could not possibly observe all 4 067 fixed and 647 mobile polling booths.

Nor could the 873 local monitors. Patrick Chinamasa said 12 500 local monitors were too many, and the Electoral Supervisory Commission refused to accredit the vast majority trained by the Zimbabwe Election Support Network.

Moreover, the Electoral Code of Conduct for Political Parties and Candidates was signed only on 8 March, the day before polling. It outlawed threats of harm, provocative and intimidatory language, false or defamatory allegations against competing candidates, and racial and other discriminations. Many of its prohibitions had repeatedly been broken by Zanu PF during its campaigning. Introducing this Code at the very last moment was one way to let that happen.

Rigging the results?

In four of the 120 constituencies, MDC electoral agents were not allowed to check the counting of votes. In another five, MDC agents were allowed to be present for only part of the time.

In all 120 constituencies, the figures given by the Electoral Supervisory Commission and the Registrar-General of Elections, Tobaiwa Mudede, differed – by between 12 and 19 141 votes. These discrepancies totalled 475 750 votes. Two-thirds of these discrepancies were found in only 30 constituencies, mainly in the Midlands, Manicaland and Masvingo.

Of 3 062 303 votes accounted for by the ESC, at least 526 479 (17,2%) had problems. These do not include voters not allowed to vote, turned away from the polling booths, or who spoiled their papers. If we include these, over one million votes were problematic.

Many results changed as viewers watched the television screen after they had been announced, including those for Buhera North, Guruve South, Murehwa South, Gutu North, Gokwe North and Nkayi. These post-announcement changes in just six constituencies added 19 886 votes to Robert Mugabe's total.

A month after the verified results had been announced (and changed), the Registrar-General announced new results, for the Harare mayoral poll as well as the presidential contest. There appeared to be a very serious problem in his office – how to add up figures accurately the first time.

The question is: for how long are we going to tolerate this wholesale corruption of Zimbabwe's hard-won democracy and abuse of our political rights?

Political violence

Voting was largely peaceful, despite the dispersal of many urban voting queues by the riot police. In the usual pattern of trouble-free voting,. But there was heavy political violence in the ten weeks before polling. It increased even more dramatically after the results were announced, with massive retaliation against those who voted for Morgan Tsvangirai.

Table 1. Human rights violations resulting from political violence in Zimbabwe,
February to March 2002

	<i>Feb Unreported</i>	<i>Feb Reported</i>	<i>March Unreported</i>	<i>March Reported</i>	<i>TOTALS</i>
Total Violations	254	>6526	278	>22519	>29575
unlawful killings: Total	0	14	(3)	19	33
(by state officers)	0	1	0	6	7
(by Zanu PF/ZNLWVA)	0	11	(3)	17	28
(by MDC)	0	2	0	0	2
attempted killings	0	0	0	0	0
Unlawful detention/Arrest: total	38	7	36	9	90
(by state officers)	23	5	11	3	42
(by Zanu PF/ZNLWVA)	13	0	23	5	41
(by MDC)	0	2	0	1	3
(unknown)	2	0	2	2	6
Assault :Total	69	188	67	429	753
(by state officers)	14	8	14	12	48
(by Zanu PF/ZNLWVA)	52	39	45	46	182
(by MDC)	2	15	0	11	28
(unknown)	1	3	8	4	16
Torture	25	11	36	7	79
Disappearance/Kidnap	3	6	4	26	39
Firearms offence:total	0	3	1	3	7
(by state officers)	0	1	1	0	2
(by Zanu PF/ZNLWVA)	0	1	0	3	4
(by MDC)	0	1	0	0	1
Death Threats	0	30	2	11041	11073
Death Penalty	0	0	0	0	0
Political Intimidation	2	>1055	0	>5008	>6065
Political Discrimination	0	18	1	>5142	>5161
Right to Vote	0	>5001	0	45	>5046
Right to work	2	26	2	>196	>226
Freedom of Information	0	2	0	13	15
Freedom of Expression	0	0	0	0	0
Freedom of Assembly/Association	0	>5	0	>106	>111
Freedom of Movement	0	7	1	1	9
Schools Closure	0	>21	0	7	>28
Property Related	8	43	18	357	426

>means more than

* victims were sometimes held by both Zanu PF and/or the 'war veterans', and later the State, hence there is some overlap

Human rights vis-a-vis the amendments to the Citizenship Act and the right to vote

Before and during the 2002 Presidential Elections a plethora of court cases were brought in the High Court and Supreme Court on the issue of voting rights. This all started with the Citizenship Amendment Act, number 12 of 2001, which stated that a Zimbabwean citizen with a foreign citizenship had to renounce the foreign citizenship, in accordance with the law of the foreign country of which s/he held citizenship, by 6 January 2002 or lose his/her citizenship of Zimbabwe. It was stated that

people who did so were entitled to have permanent residence status stamped in their passports. The law was therefore very clear.

However, the Registrar General's office began interpreting the Act to the effect that all Zimbabwean citizens with a potential right to a foreign citizenship must renounce the foreign "entitlement" if they wished to remain Zimbabwean citizens. At this point it was alleged that the Registrar General's office was removing affected people from the voters roll on the basis that they were no longer citizens of Zimbabwe. An application was brought before the High Court on these points in the case *Morgan Tsvangirai –v- Registrar-General*. The case also sought an extension of the deadline for a year because of the administrative problems faced by individuals attempting to renounce their various citizenships.

A provisional order was granted by the High Court to the effect that the Registrar General could only remove people from the voters' roll in accordance with the procedures set out in the Electoral Act and judgment was reserved on the other issues. On 27 February 2002 the Honourable Mr Justice Adam handed down judgment. The judgment extended the deadline for renunciation to 6 August 2002. The order also stated that Zimbabwean citizens by birth do not have to renounce a potential foreign citizenship unless they actually hold the said foreign citizenship. This was in line with the Honourable Mrs Justice Makarau's order (below). The Registrar-General immediately appealed this judgment and Justice Adam's order was suspended.

Meanwhile, on 25 January 2002 judgment in the matter of Morgan Tsvangirai – Registrar-General of Elections and 1 Other, and Morgan Tsvangirai –v- Registrar-General of Births and Deaths and 10 Others HH 22-2002 was handed down by the Honourable Mrs Justice Makarau. *Inter alia*, she ordered that, "The Registrar-General shall restore to the voters' roll of any constituency, all voters who, on or before January 18 2002 were on that roll or were eligible but were refused to be on that roll, who may have lost or renounced their citizenship of Zimbabwe, but who since 1985, have been regarded by a written law to be permanently resident in Zimbabwe." The Registrar-General immediately appealed this judgment. On 15 February 2002 the Supreme Court of Zimbabwe sat to consider the appeal in this case. On 28 February 2002 judgment was handed down. The majority of the Supreme Court (Chidyausiku CJ, Ziyambi, Malaba and Cheda JJA) overturned Makarau J's decision. They held that citizens and permanent residents are separate and distinct categories. In terms of section 3(3) of Schedule 3 to the Constitution, those who have renounced their Zimbabwean citizenship in terms of the 2001 amendment are considered to have ceased to be Zimbabwean citizens and summarily lost their right to vote. Therefore they considered section 25 of the Electoral Act to be superfluous or non-applicable to their situation. In a judgment the Honourable Judge of Appeal Mr Justice Sandura held that citizenship by either birth or registration includes permanent residency and therefore persons in either of these categories are entitled to remain on the voters' roll and vote both as citizens and as permanent residents, and when they renounce their citizenship, but remain permanent residents, they are entitled to vote in the capacity of permanent residents.

After the election it appears that the Registrar General continues to apply the law to the effect that an individual with the right to a foreign citizenship who has not renounced this right has lost his Zimbabwean citizenship as people are being refused Zimbabwean passports and even birth certificates for their children on the grounds that they have not renounced their entitlement to foreign citizenship. While the decision by Justice Adam is on appeal it is important to note that the Registrar General subsequently conceded that those Zimbabwean citizens who do not hold a foreign citizenship do not lose their entitlement to vote simply because they did not renounce an entitlement to a foreign citizenship. The reasoning behind this concession can only have been that these people continue to be citizens.

It is our opinion that the case law indicates that such action is incorrect and that a logical interpretation of the Citizenship Act as amended is that unless you actually hold a foreign citizenship

you cannot lose your Zimbabwean citizenship. Those Zimbabweans who are citizens by registration but who do not hold a foreign citizenship also do not lose their Zimbabwean citizenship by failing to renounce their potential foreign citizenship. The logic of the judgment by the Honourable Justice Adam can be applied equally to those Zimbabweans who were born in a foreign country but have lost their foreign citizenship by operation of the law when they acquired Zimbabwean citizenship.

NB: Please note that in our last issue, *Human Rights Monthly Number 22, January 2002*, the following errors were made-

1. In the 2nd paragraph on page 1, the line that read:

“ We also hope that those who killed others for short-term political reasons will guilty of intentional murder. “

should have read:

“ We also hope that those who killed others for short-term political reasons will examine their own morality Under our current law, they would face the death penalty if found guilty of intentional murder.”

2. Table 1 on page 2 labelled:

“Human Rights Violations during 2001 in Zimbabwe, including those resulting from political violence”

should have been labelled:

“Human Rights Violations during January 2002 in Zimbabwe, including those resulting from political violence”

We apologise for any inconvenience and misunderstanding caused by these errors.

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