

**ZIMBABWE:
ARE FREE AND FAIR ELECTIONS POSSIBLE?**

HEARING
BEFORE THE
SUBCOMMITTEE ON AFRICA
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

—————
FEBRUARY 28, 2002
—————

Serial No. 107-66
—————

Printed for the use of the Committee on International Relations



Available via the World Wide Web: http://www.house.gov/international_relations

—————
U.S. GOVERNMENT PRINTING OFFICE

77-897PDF

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON INTERNATIONAL RELATIONS

HENRY J. HYDE, Illinois, *Chairman*

BENJAMIN A. GILMAN, New York	TOM LANTOS, California
JAMES A. LEACH, Iowa	HOWARD L. BERMAN, California
DOUG BEREUTER, Nebraska	GARY L. ACKERMAN, New York
CHRISTOPHER H. SMITH, New Jersey	ENI F.H. FALEOMAVAEGA, American Samoa
DAN BURTON, Indiana	DONALD M. PAYNE, New Jersey
ELTON GALLEGLY, California	ROBERT MENENDEZ, New Jersey
ILEANA ROS-LEHTINEN, Florida	SHERROD BROWN, Ohio
CASS BALENGER, North Carolina	CYNTHIA A. MCKINNEY, Georgia
DANA ROHRABACHER, California	EARL F. HILLIARD, Alabama
EDWARD R. ROYCE, California	BRAD SHERMAN, California
PETER T. KING, New York	ROBERT WEXLER, Florida
STEVE CHABOT, Ohio	JIM DAVIS, Florida
AMO HOUGHTON, New York	ELIOT L. ENGEL, New York
JOHN M. McHUGH, New York	WILLIAM D. DELAHUNT, Massachusetts
JOHN COOKSEY, Louisiana	GREGORY W. MEEKS, New York
THOMAS G. TANCREDO, Colorado	BARBARA LEE, California
RON PAUL, Texas	JOSEPH CROWLEY, New York
NICK SMITH, Michigan	JOSEPH M. HOEFFEL, Pennsylvania
JOSEPH R. PITTS, Pennsylvania	EARL BLUMENAUER, Oregon
DARRELL E. ISSA, California	SHELLEY BERKLEY, Nevada
ERIC CANTOR, Virginia	GRACE NAPOLITANO, California
JEFF FLAKE, Arizona	ADAM B. SCHIFF, California
BRIAN D. KERNS, Indiana	DIANE E. WATSON, California
JO ANN DAVIS, Virginia	
MARK GREEN, Wisconsin	

THOMAS E. MOONEY, SR., *Staff Director/General Counsel*

ROBERT R. KING, *Democratic Staff Director*

SUBCOMMITTEE ON AFRICA

EDWARD R. ROYCE, California, *Chairman*

AMO HOUGHTON, New York	DONALD M. PAYNE, New Jersey
THOMAS G. TANCREDO, Colorado	GREGORY W. MEEKS, New York
JEFF FLAKE, Arizona	BARBARA LEE, California
BRIAN D. KERNS, Indiana	EARL F. HILLIARD, Alabama

THOMAS P. SHEEHY, *Subcommittee Staff Director*

CHARISSE GLASSMAN, *Democratic Professional Staff Member*

MALIK M. CHAKA, *Professional Staff Member*

ALYSSA JORGENSEN, *Staff Associate*

CONTENTS

	Page
WITNESSES	
The Honorable Walter H. Kansteiner, III, Assistant Secretary, Bureau of African Affairs, U.S. Department of State	6
John W. Makumbe, Ph.D., Chairman, Transparency International Zimbabwe .	16
Thomas Bayer, Director of Programs, Africa and the Near East, International Foundation for Election Systems	21
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
The Honorable Walter H. Kansteiner: Prepared statement	7
John W. Makumbe: Prepared statement	17
Thomas Bayer: Prepared statement	23
APPENDIX	
Material Submitted for the Hearing Record	35

ZIMBABWE: ARE FREE AND FAIR ELECTIONS POSSIBLE?

THURSDAY, FEBRUARY 28, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:30 p.m. in Room 2172, Rayburn House Office Building, Hon. Edward R. Royce, [Chairman of the Subcommittee] presiding.

Mr. ROYCE. This hearing will come to order. Today we will look at the political crisis in Zimbabwe where a presidential election is scheduled for the 9th and 10th of March.

Two weeks before the parliamentary elections were held in June of 2000, this Subcommittee held a hearing entitled "Zimbabwe: Democracy on the Line." Well, democracy remains on the line in Zimbabwe as we look today at whether this election in 9 days' time can be free and fair.

We have previously traveled as a Committee to Zimbabwe, and I had looked forward both to going to the parliamentary election and to these elections. Unfortunately, the Government of Zimbabwe did not allow us travel visas as election observers for the parliamentary elections in 2000 and have turned down our observers for this election.

At the time of our hearing 2 years ago, the government of President Robert Mugabe was systematically attacking human rights. He was attacking democratic freedoms. These violations have intensified. Today, we are seeing a relentless government harassment of the independent media there. We are seeing the operation of a newly established, government trained youth brigade or youth militia which attacks those who support the opposition parties. We have seen no-go zones for opposition campaigning throughout much of the countryside, and that means no one can go there to campaign.

We have seen police disruptions of opposition political rallies, the reported operation of torture camps where rapes and other acts of violence are being committed against opposition supporters, and we have seen an escalation of political killings. The Zimbabwe Human Rights Forum reports that through February 16 there have been 25 more deaths from political violence this year, 25 deaths, and the victims include Richard Shatunga, Richard Mopoza and Henry Moyo. You know, the overwhelming majority of the victims have one thing in common. They were known opposition supporters.

Statements by President Mugabe and other government officials, including the head of the Army, raised doubts about whether the President would peacefully relinquish power should he lose the election. This is occurring despite the Zimbabwe Government's commitment to static countries to respect human rights and uphold the rule of law.

The government's recent charge of high treason against Movement for Democratic Change candidate Morgan Tsvangarai appears to be the latest government act of harassment of the opposition. This election climate strikes many observers as worse than it was for the very flawed 2000 election.

I hope the Zimbabweans turn out in high numbers at the polls, despite all the clouds over this election. The political opposition has remained peaceful despite government assaults. We should encourage the MDC and Zimbabwe society at large to remain peaceful by commending its restraint, but also by strongly condemning government attacks of human and democratic rights. It is important that all peaceful Zimbabweans be given moral support through knowing that the world knows who is perpetrating this violence. The Administration should keep up its good effort in this regard.

The legitimacy of this election is ultimately for Zimbabwe to determine, but the judgement of international observers will be key, especially observers from the Southern African Development Community (SADC), Zimbabwe's neighbors. These countries, which are committed to democratic practices, have a big responsibility to call it as they see it.

A spokesman for the U.N. Secretary General Kofi Annan has called this election a critical test of democracy not only in that country of Zimbabwe, but in all of Africa. This election is certainly a test for the New Partnership for Africa's Development, an African proposed arrangement with industrial countries in which African countries commit to self-police the continent in order to maintain good governance in exchange for greater development aid.

Good governance is at stake in Zimbabwe, and the world is watching. It is hard to champion greater aid for African education, for example, when ZANU-PF youth squads are terrorizing teachers in front of their students and neighboring states remain mum.

One of today's witnesses will testify that in Masvingo Province alone, no less than 35 schools have had to close because teachers have fled in fear. Why do the teachers flee? Because the teachers traditionally in Zimbabwe society are the poll watchers, and the government does not want them at the poll so they strip them. They have these gangs intimidate them and drive them off before the election.

I believe how southern Africans react on March 11 is potentially very important to how many Americans view southern Africa. There is cause for hope in Zimbabwe. The country enjoys a vibrant civil society, empowered by the internet and other means of communication which have allowed it to battle government oppression.

Zimbabwe has considerable economic potential. There is no reason why Zimbabwe should not be experiencing the impressive job creation its neighbors are enjoying through, for example, the African Growth and Opportunity Act; no reason except its government's disregard for the rule of law. It is my hope that we see cred-

ible elections and are soon after able to recognize a legitimate government in Zimbabwe.

We have with us several Members who would like to speak today. If it is okay, I am going to ask the Ranking Member, Mr. Payne, to—

Mr. FLAKE. Mr. Chairman, if I can just say a word for a minute?

Mr. ROYCE. Yes.

Mr. FLAKE. I have to leave. I have a previous engagement. I just wanted to tell Mr. Kansteiner I really appreciate the work that the State Department is doing.

Having lived in Zimbabwe myself and being very concerned, we are going to follow this very closely and really appreciate and apologize that I cannot be here to hear the testimony. We have it, though, and we will be watching.

Thank you for coming and also the other witnesses. I wish that I could hear them, and I thank the Chairman for calling the hearing.

Mr. ROYCE. Thank you, Congressman Flake.

We will now go to the Ranking Member, Congressman Don Payne of New Jersey.

Mr. PAYNE. Thank you very much, Mr. Chairman, and thank you for calling this very important hearing on Zimbabwe and the pre-election environment in a run up to the presidential election scheduled for March 9 and 10.

While news reports indicate that the situation is already intensifying, I believe that we should be cautious, though, about predicting the outcome of the election until the election is technically held. Yesterday, President Chissano from Mozambique also cautioned the audience at the Woodrow Wilson Center not to call the election's determination before the election has been held, and so I kind of share that feeling.

Of course, the pre-election environment is becoming tense, and, therefore, everything remains to be seen. We know the problems, many problems in Zimbabwe, of land reform, the pandemic and ongoing war in the neighboring Democratic Republic of Congo. These are concerns of the people of Zimbabwe and where they are going.

We know that there is a long history of the handling of the land question from Lancaster House in the early 1980s where there was a tentative agreement that land reform would be supported through contributions from Great Britain primarily, but that the U.S. would also participate in a process to try to purchase land. Twenty years later, the issue of land is still unresolved.

We have and I have very strong feelings about Zimbabwe, having traveled there the first time over 30 years ago when it was Rhodesia and when I met with people in the bush when Mr. Mugabe and Mr. Oncomo were in the freedom movements. Because of my long time interest, I wrote to President Mugabe, who is a long-time associate that I have known, a letter. I just wanted to say a couple of things because it kind of indicates my feeling about Zimbabwe.

Very briefly,

“As I am writing to you as a long-time friend of yours and Zimbabwe, I do so in all honesty.”

This was sent in December of 2002 [sic].

“Because of the deteriorating conditions in Zimbabwe over the years, I have followed with interest events in Zimbabwe because I consider your country an important friend of the United States. Like many Americans and other freedom loving people, I support your struggle for independence. I do not consider myself anti Zimbabwe or anti ZANU–PF. Rather, I see myself as a concerned friend who is determined not to see another African country in a political chaos post independence.

“Zimbabwe clearly demonstrates much of the best of Africa and what Africans are capable of doing. Despite decades of repressive white rule, white Zimbabweans were embraced, not chased out of the country or mistreated as the cynics predicted. Human rights were largely respected, and the rule of law prevailed across the country.

“Indeed, Zimbabwe has long been a model country with a stable government and modern economy, but in recent years conditions have gone from bad to worse. The economy is in a shambles, and your once politically stable country is increasingly becoming chaotic. Human rights abuses are extensive and increasing, and your government seems to care little about the rule of law.

“I have tried desperately to engage your government in a constructive dialogue to address these concerns over the years, but it seems my government and I have failed miserably. I am resolved to help the people of Zimbabwe realize their dream of true freedom. I am equally committed to seeing a just and equitable distribution of land consistent with the rule of law.

“If Zimbabwe fails, I am afraid the consequences for other countries in the region will be grave. It is within your power as head of state to change the course for better. Time is of the essence.”

I concluded,

“I appeal to you as a fellow freedom fighter and a friend of Zimbabwe to do the right thing for your country and your people. To do so will help the people of Zimbabwe and all of Africa. It will also avert a more contentious relationship with the United States and the international community. Please consider this message carefully and be assured that it is done with all sincerity and love for your country.”

I sent that because of the long relationship and the interest that I have in the country. With that, we will see what course the next several weeks will take.

Mr. Chairman, I will yield back to my colleague.

Mr. ROYCE. Thank you, Don.

We will go to Congressman Dan Burton of Indiana.

Mr. BURTON. Thank you, Mr. Royce. I have had a longstanding interest in the entire continent of Africa. I worked with Don for many years on this, and I was the senior Republican on the Africa Subcommittee for 10 years. Although we hope that there is going to be a fair and free election, I think most people who are observing what is going on over there right now doubt that that is going to occur.

I have some very dear friends who are citizens of Zimbabwe. They have owned land. They have lived there their entire lives. They have called me and told me that they are very, very concerned that this election is not going to be free, it is not going to be fair and that there are going to be political reprisals even worse than we have seen so far if it looks like Mr. Mugabe is not going to prevail.

I want to say a word about Secretary Kansteiner. I talked with him just recently, and he has assured me that the United States is going to do everything that we can from the outside. Obviously we are not going to have observers there, as Mr. Royce has said, but we are going to do everything that we can from the outside to make sure that these are free and fair elections, but I am very concerned that that is not going to be the case.

I would like to say one thing about the region that has not been talked about, and I am sure it will be later today, and that is that I think South Africa and their government is going to be jeopardized if we do not have a free and fair election in Zimbabwe. There has been a mass migration of people from Zimbabwe so far into South Africa, and the South African Government is not going to be able to contend with this influx of people if it continues to escalate. We think that that might very well hurt or undermine the Government of South Africa and hurt the entire region.

For stability's sake, I hope that there are free and fair elections and that if Mr. Mugabe is not successful, as I do not believe he will be from what I have been told by people who are living over there, that he will relinquish power in an orderly way and will not try to hold onto power after he is defeated.

These friends of mine who are citizens of Zimbabwe who do live there are very, very concerned. They have seen the political killings. They have seen the reprisals. As Mr. Royce said, they have seen people fleeing the country, teachers and others. They think that bodes very ill for the future of Zimbabwe, and so I think along with Mr. Payne and Mr. Royce I would implore Mr. Mugabe to stand by the people's choice in this election and make sure that their wishes are accepted and if he is defeated that he will yield power in a peaceful way. I think that would be the best thing for not only Zimbabwe, but for the entire southern African region.

With that, Mr. Royce, thank you very much for allowing me to be with you today.

Mr. ROYCE. Thank you, Congressman Burton.

We are now going to go to our first panel and welcome Walter H. Kansteiner, III. He was sworn in as Assistant Secretary of State for Africa in June of last year. This is your first appearance before this Subcommittee. You have escaped us until now, but it is good to have you with us today.

The Assistant Secretary served in the first Bush Administration with the National Security Council as the Director of African Affairs and as an Africa specialist on the staff of the Secretary of State. Mr. Kansteiner has extensive private sector experience in Africa, having advised businesses on a wide range of mergers and acquisitions and privatizations throughout the continent. He was a founding principal of the Scowcroft Group. He has also served as an Executive Vice-President of a commodity trading company.

It is good to have you with us today. Please, Mr. Kansteiner.

**STATEMENT OF THE HONORABLE WALTER H. KANSTEINER,
III, ASSISTANT SECRETARY, BUREAU OF AFRICAN AFFAIRS,
U.S. DEPARTMENT OF STATE**

Secretary KANSTEINER. Thank you very much, Mr. Chairman. I thank you and your Committee for all the good work that you have done not only on Zimbabwe, but all of Africa. This is my first official appearance, but it is not the first appearance. We all have worked together on a number of issues. I am honored to be here and very pleased.

Zimbabwe is a topic that we have discussed a lot in the last 6 months because it is a very problematic issue. The economy of Zimbabwe is rapidly declining, as all of the Members have mentioned. It has a knock on effect throughout the region. It is taking a serious toll on southern Africa.

This is not only discouraging foreign investment in Zimbabwe itself, but I believe it is having a very negative impact on the region at large. Foreign direct investment, portfolio investment, currency trading all have suffered because of the correct perception that Zimbabwe is at a political and economic crisis. Now on top of that we are starting to see a real humanitarian crisis develop. There are food shortages springing up in Zimbabwe, and, unfortunately, we expect those crises to deepen and get worse.

Efforts by both Congress and this Administration have helped mobilize international attention, and with that attention we have helped mobilize some pressure against what is really an increasingly despotic regime. The international scrutiny has given hope and encouragement to those struggling for peaceful change; at least I hope it has. Perhaps some of the panel members on the next panel can attest to that or not.

I hope that our attention has mitigated some of the worst abuses orchestrated by the government. I think correspondence to Zimbabwe's leadership from Congressman Payne and others who have clearly been friends of Zimbabwe for a long time, is important and helpful. I think it is keeping the reins on what could be an even worse situation, so I want to thank you all for that.

For many years, the U.S. Government has maintained a substantial assistance program to help the people of Zimbabwe, and we continue to do that. We have focused on strengthening democratic institutions, including the parliament, civil society and the independent media. We have also provided significant funding to help Zimbabwe combat the tragic HIV/AIDS pandemic.

Here in the United States, the positive engagement between the Administration and Congress has underscored the U.S. Government's common, clear position on Zimbabwe, and I think that is very important. I think the Government of Zimbabwe and the people of Zimbabwe know exactly where we stand, and that really is rule number one in any foreign policy. Make it clear, succinct, and let the people know what you are saying.

I believe that position was articulated well in the Zimbabwe Democracy and Economic Recovery Act of 2001, which this body passed overwhelmingly. The legislation sent a firm and unambiguous signal to the Government of Zimbabwe that the United States

stands ready to help Zimbabwe recover politically and economically when certain conditions are met. It also issued additional notice to Zimbabwe's leadership that we are prepared to take stern measures should the government and its supporters not reverse course.

Unfortunately, on February 22, President Bush signed what we hoped we could avoid, and that was a presidential proclamation that imposed targeted travel sanctions against those individuals most responsible for undermining or injuring Zimbabwe's democratic institutions.

As recommended in the Zimbabwe Democracy Act, we have been actively consulting with our countries on the issue of economic sanctions. This Administration will continue to consider the use of such targeted sanctions in the months ahead.

Regarding the election that is now just a few days away, we believe that the campaign of repression orchestrated by the Government of Zimbabwe has gone on for too long, and it has been too profound and too pervasive to allow for an untainted election. Nonetheless, it is possible that the brave people of Zimbabwe will vote with such conviction and in such numbers that the election will produce a meaningful result. The voice of the people can still be heard, even with the unlevel playing field that we see emerging in the country today.

The Government of Zimbabwe should have no illusions about the consequences of a seriously flawed or annulled election. Legitimacy cannot be won through violence and electoral manipulation. The international community and, most important I believe, the people of Zimbabwe will not allow it. An unfair election that denies the fundamental right of Zimbabwe's people to choose their leader is not an acceptable outcome to the crisis in Zimbabwe.

The U.S. Government must continue to support the efforts of those struggling for justice and freedom in Zimbabwe. I think you will hear from one such Zimbabwean in a few minutes. The Administration, working closely with you all, would like to continue pressing, urging, cajoling and watching and assisting those in Zimbabwe who do want to see a democratic outcome.

Thank you very much. I would be happy to take questions.

[The prepared statement of Secretary Kansteiner follows:]

PREPARED STATEMENT OF THE HONORABLE WALTER H. KANSTEINER, III, ASSISTANT SECRETARY, BUREAU OF AFRICAN AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, Members of the Committee. Thank you for inviting me to testify today. I would like to briefly outline U.S. policy toward Zimbabwe, and offer the State Department's assessment regarding the presidential election in that country which is now only nine days away.

Zimbabwe's rapidly declining economy and political instability are taking a toll on southern Africa as a region, discouraging foreign investment, creating the potential for a refugee crisis, and reducing trade within the region. A food shortage—created largely due to the government's policies and actions—threatens to develop into a true humanitarian crisis. U.S. efforts working with countries in the region to promote stability and development through regional integration have been seriously undermined by the actions of Zimbabwe's government.

As Zimbabwe's crisis has deepened, the United States Government has worked on several fronts to support democracy, restore the rule of law, and end human rights abuses. Our extensive diplomatic efforts have helped mobilize international pressure against an increasingly despotic regime. In the face of continuing violence and repression, international scrutiny has given hope and encouragement to those struggling for peaceful democratic change, and the international spotlight now trained on Zimbabwe has almost certainly helped mitigate some of the worst abuses orches-

trated by a government that is desperate to stay in power. Although impossible to quantify, I believe that our efforts have helped save innocent lives.

For many years and throughout the period of the current crisis, the United States Government has maintained a substantial assistance program to help the people of Zimbabwe. Our democracy and governance programs have made some progress toward leveling the political playing field by strengthening democratic institutions including the parliament, civil society, and independent media. We have provided significant funding to help Zimbabwe combat the tragic HIV/AIDS pandemic. Those working to promote democracy, a strong economy, and social justice in Zimbabwe have repeatedly told us our efforts are having a meaningful impact and must be continued.

Here in the United States, the positive engagement between the Administration and Congress has underscored the fact that the U.S. Government has a common, clear position on Zimbabwe. That position was articulated well in the Zimbabwe Democracy and Economic Recovery Act of 2001, passed with overwhelming bipartisan support in both houses, and signed by President Bush on December 21st last year. The legislation sent a firm, unambiguous signal to the Government of Zimbabwe that the United States stands ready to help Zimbabwe recover politically and economically if certain conditions are met. It also issued additional notice to Zimbabwe's leadership that we are prepared to take stern measures should the government and its supporters not reverse course. Sadly, to the clear detriment of the people of Zimbabwe, the Government of Zimbabwe has chosen not to heed our repeated warnings.

On February 22, President Bush signed a Presidential Proclamation that imposed targeted travel sanctions against those individuals most responsible for undermining or injuring Zimbabwe's democratic institutions and impeding its transition to a multiparty democracy. This measure maintains pressure on an intransigent government and signals our continued support for democratic forces. As recommended in the Zimbabwe Democracy and Economic Recovery Act, we have been actively consulting with other countries on the issue of economic sanctions against individuals responsible for the deliberate breakdown in the rule of law, and the politically motivated violence and intimidation in Zimbabwe. The Administration is considering the use of such targeted sanctions and other measures as appropriate if the Government of Zimbabwe continues its repression and does not respect the will of Zimbabwe's people as expressed in the upcoming presidential election.

Regarding that election, it is the State Department's assessment that the campaign of repression orchestrated by the Government of Zimbabwe has gone on for too long, and it has been too profound and too pervasive, to allow for an untainted election. Nonetheless, it is possible that the brave people of Zimbabwe will vote with such conviction and in such numbers that the election will produce a meaningful result. The world is watching how the Government of Zimbabwe responds to the will of Zimbabwe's electorate.

The Government of Zimbabwe should have no illusions about the consequences of a seriously flawed or annulled election. Legitimacy cannot be won through violence and electoral manipulation. The international community and, most importantly I believe, the people of Zimbabwe will not allow it. A manifestly unfair election that denies the fundamental right of Zimbabwe's people to choose their leader is not an acceptable outcome to the crisis in Zimbabwe.

The presidential election may well prove to be the most critical moment in Zimbabwe's history since independence. It could be the moment at which Zimbabwe's potential as a beacon of freedom on a troubled continent is affirmed, or the moment at which Zimbabwe's leadership decides to fully embrace the dictates of despotism. The United States Government must continue to support the efforts of those struggling for justice and freedom in Zimbabwe, and the Administration will continue to work closely with Congress to that end.

Thank you.

Mr. ROYCE. Thank you. Let me begin, Mr. Kansteiner, by saying that this week the Presidents of Angola and Mozambique and Botswana were in town here, and I would ask what message the Administration sent to these leaders concerning Zimbabwe, particularly on the conduct of this election?

Secretary KANSTEINER. Right. In fact, it was a wonderful opportunity that neighbors of Zimbabwe were in Washington and had a chance to meet with the President, as well as the various Cabinet members.

The message was clear. In fact, I believe President Bush used similar language to that you all have been using, namely it does not appear that the government of Zimbabwe really is concerned about the rule of law. The perception certainly is that it is discarding the rule of law, and it applies the rule of justice arbitrarily.

President Bush then focused specifically on ZANU–PF and President Mugabe’s leadership, or lack thereof, in terms of economic and political policy and really surmised that Zimbabwe right now is an embarrassment to Africa. He encouraged the neighbors to keep a strong watch and become involved and not let this opportunity pass. I mean, Zimbabwe is at a crossroads. In fact, I even think both the Secretary and the President used that term. This is the time to be strong.

Mr. ROYCE. Secretary Kansteiner, the Zimbabwe Democracy Act, which was signed by the President in December, encourages the Administration to freeze the assets of those individuals responsible for the breakdown of the rule of law in Zimbabwe. Last week, the Administration acted to ban travel to the U.S. to top Zimbabwe government officials.

In your testimony, you mentioned that the Administration is considering imposing economic sanctions against select individuals, as the EU has. What do we know about Zitco Holdings, alleged by some to be the center of what has been described as Mugabe, Inc.?

Secretary KANSTEINER. Thank you, Mr. Chairman. We are looking at mechanisms that we could in fact freeze individuals’ assets and perhaps corporate assets as well. We are examining those mechanisms now. I am not completely familiar with Zitco Holdings.

I will say this. There are a number of corporate assets and shell companies in Zimbabwe that have gained wealth through the Congo and other business enterprises, if you will, and those could possibly be part of assets freeze if we go that way.

Mr. ROYCE. On Tuesday, *The Washington Post* profiled the illicit operations of a United Arab Emirate-based former Soviet military officer, Victor Bout, who it suggests runs the biggest weapons trafficking network in the world, one which purportedly has supplied Al-Qaida, has supplied the Revolutionary United Front in Sierra Leone and factions in the Congo.

Peter Hain, the British Minister for Europe and someone who has investigated the arms for diamonds trade, has called Bout “Africa’s merchant of death.” Last year, a U.N. investigation of the exploitation of natural resources in the Democratic Republic of the Congo reported that Zimbabwean holdings there seemed to be “controlled by top military and party officials who are also the direct beneficiaries,” according to that *Post* story.

These operations include diamond mining. We are learning more and more about unsavory diamond operations throughout Africa. Is it possible that top ZANU–PF members are associated with Bout’s companies there?

Secretary KANSTEINER. Victor Bout has fingerprints all through various parts of Africa, and his activities extend into a wide variety of corners and places on the continent.

Quite frankly, I would be very comfortable in describing what we know about Victor Bout in a closed hearing, but I will say that there is a fair amount of evidence, an increasing amount of evi-

dence, that Bout has extensive operations in east, west and central and southern Africa.

Mr. ROYCE. The Zimbabwe Democratic and Economic Recovery Act signed into law in December stated the sense of Congress that the Administration should begin consultation with allies on imposing economic sanctions against those responsible for the breakdown of the rule of law in Zimbabwe. Have any such consultations been held yet?

Secretary KANSTEINER. Consultations with our allies?

Mr. ROYCE. Exactly.

Secretary KANSTEINER. They have. We have worked closely with the EU, with the Commonwealth, with SADC, a number of organizations. Perhaps our travel ban coordination with EU is the most closely linked, but we do have regular discussions with a whole wide range of regional associations, as well as bilateral.

Mr. ROYCE. What is the Administration's view of the charges of high treason leveled against Movement for Democratic Change candidate Morgan Tsvangarai on February 25? Does the Administration believe these charges have validity?

Secretary KANSTEINER. We have not seen convincing evidence that there is a basis to these allegations. The charges seem to be very much part and parcel of a campaign and a campaign strategy.

Mr. ROYCE. Yes. I should mention that Simon Barber of *Business Day* has reported that the man behind the charges, R.A. Ben-Manashe, was the driving force behind a number of bogus stories in the past. I am just reading from his column here.

“The credibility of the Montreal based political consultants was compromised well before they began working for Mugabe's security chief, Nicholas Goche. Since 1987, they have been the driving force behind several major U.S. press hoaxes after convincing gullible reporters at the time that he was a top level Musaad operative.”

He goes on to say,

“A bipartisan congressional investigation exposed one of his shams in 1993 and concluded that Ben-Manashe lied copiously. Reportedly a Montreal food exporter, Lexold, who was Manashe's helper in this affair, is wanted in the U.S. for his role in a Ponzi scheme that involved selling about \$13 million of fraudulent stock to Florida retirees between 1993 and 1996. He is also under indictment on separate fraud charges in Louisiana. In 1993, Immigration officials refused to extend his visa, and he then sought asylum in Montreal.”

This is from *News Day* today, which is an interesting report on the background of these two individuals.

I again want to thank you, Secretary Kansteiner, for testifying here today. I would like to turn now to our Ranking Member, Mr. Don Payne, for his questions. Thank you.

Mr. PAYNE. Thank you very much, Mr. Chairman. Mr. Assistant Secretary, it is good to see you again.

As we look at Zimbabwe today, and I think we have to take a look at Zimbabwe of the future. Whether the elections are fair and free, whether Mugabe or the opponent wins, these are things that

we will not know until several weeks from now, but what do you see are our objectives or what is it that we would like to see or assist in or move forward as it relates to Zimbabwe?

There has been an awful lot of attention drawn to Zimbabwe, and I just wonder whether we have any suggestions of a plan of what to do. I know that we have done very little in relation to assistance. Sanctions I believe have been imposed, and IMF and the World Bank have not been lending funds, and so the economics have continually decreased.

On the other hand, I think when action like that occurs then others rogue type nations step in. I understand Libya has been supportive in some of the economic crises because I suppose someone has to try to help out the situation that is becoming very bleak for many people in the country.

I just wonder. How do you see our objective? How do you see us moving forward as we attempt to move Zimbabwe in a stable, right direction?

Secretary KANSTEINER. Thank you, Congressman. Of course, the ultimate goal is a democratically sound country that respects the rule of law and human rights and has a vibrant economy. You know, that all sounds great, but how do you actually get them there?

As you suggest, there is going to be a tremendous amount of reconstruction, and that is really what it is; reconstruction needed for this country. Economically, you know, you have no capital flows right now. The place is bust. It is bankrupt.

You are going to have to get the economy producing again, both agriculturally and in manufacturing goods. You are going to have to get some capital flows, both private and public, back in. You are going to have to rebuild the physical infrastructure and also the human resources infrastructure. You are going to have to get people refocused on productivity and commercial and economic activity. One cannot do any of that until one surmounts the political hurdle.

If you do get over the political hurdle and there is an election where the body politic of Zimbabwe is in fact heard and recognized as such and politically the country moves on, even there you are going to have to rebuild some political institutions. They have been frayed. There is going to be a lot of work done that has to be done.

Mr. PAYNE. Thank you. How strong do you feel the judiciary is in the country? Do you think that if there is a question in the election whether the Supreme Court of the land is independent enough or has the strength to be able to question any potential irregularities?

Secretary KANSTEINER. Well, the character of the Court has changed in the last 12 months significantly, and the independent nature of the Court has been called into question. The Supreme Court, as well as the High Court and the entire court system of Zimbabwe, have changed from the courts, which all through the 1980s and 1990s, quite frankly, were strong institutions in Zimbabwe.

I mean, it was recognized as independent, and it was recognized as a voice separate from the party politics of the day, so it was

tragic when that seemed to be fraying and in fact becoming less objective and less independent.

I will note that as recently as yesterday the country's Supreme Court took a decision that went directly against the government on certain pieces of legislation that the Mugabe Government ran through Parliament. Court ruled these unconstitutional. It remains to be seen how the President and ZANU-PF will respond to that. There are some signs that there is still some objectivity and strength there. Let us hope that that can be beefed up and strengthened.

Mr. PAYNE. Just finally on Zimbabwe about the military. If indeed there happened to be an election that was transparent and free and say that the opposition won, in your opinion where does the military stand?

Do you think that we would see what happened in Nigeria some years ago when Abiola won the election, but then Abacha brought the generals out and they annulled the election? How do you see the military reaction?

Secretary KANSTEINER. Mr. Congressman, I think that is a key question, and it is a question we continually ask ourselves and ask the neighbors and our allies.

My hope is this, and I think I say this with some belief that our analysis is moving us toward this conclusion. The military is by and large a professional military. There have been some unfortunate statements coming from some top ranking commanders that would suggest that they are heavily politically motivated, but I think it is just a handful. I hope it is just a handful at the top. Our general conclusion is the military will listen to the will of the people and in fact remain professional.

Mr. PAYNE. Thank you. That concludes my questions on Zimbabwe, but since you are leaving today and will not be around I just have one quick question if the Chairman will allow me to ask a question, one last question.

Several days ago, you may know that the Government of Sudan's National Islamic Front Army attacked and destroyed a village using chemical weapons, T-55 tanks, infantry and six helicopter gunships. It appears that they killed hundreds of civilians. Not only did they use these attack helicopters, but also it appears that there were maybe two millimeter mortar with chemical/biological weapons, nerve gas, et cetera.

You know how I feel about the Government of Sudan, so I need not say anything about that.

Secretary KANSTEINER. Yes, sir.

Mr. PAYNE. I just wonder. What is the position? I know that there had been a change in policy after September 11 because the Sudan Government said they would be cooperating on the war on terrorism.

Is there any separation between people who kill their own people, but say they will help us get Osama bin Laden, who lived in their country for 6 years? I just wonder. Where do we stand now on that Sudan question?

Secretary KANSTEINER. Yes, sir. The bilateral relationship between the United States and Sudan will be driven by what happens in Sudan. That is not to say we do not want to encourage the

counterterrorism cooperation that has gone on between Khartoum and the U.S. We do. We expect that cooperation to continue.

In the mid and long term, what is going to define our relationship is what is happening in Sudan. As you mentioned, there have been recent reports that are extremely worrisome. Quite frankly, we have been working very hard on trying to get some momentum for a peace process, and the two sides seem to be making some progress.

As you know, in Switzerland a cease fire was negotiated for Nuba Mountains. It was a good sign. It was a key part of Senator Danforth's four point proposal. We thought we were making some progress so we were very disappointed in these recent helicopter attacks against civilians, but they know that ultimately the relationship is going to be defined by what the Sudanese do in their country.

Mr. ROYCE. On behalf of the other Members of this Committee, I just want to thank our Ranking Member, Don Payne, for his important work on Zimbabwe and so many other African issues over the years, including the plight of the people of southern Sudan.

We are going to go to a Member from New York, Mr. MEEKS.

Mr. MEEKS. Thank you, Mr. Chairman.

Mr. Secretary, let me just ask a couple of quick questions, actually. First, I have had an argument recently presented to me, and we talked about if the elections are fine the economic recovery, but some have said that the initial or the root cause of when Zimbabwe started to go down economically was when President Mugabe adapted some of the IMF/World Bank structural adjustments. Then they got into problems, and then he jumped to the land use issue to regain popularity.

I wondered if you had thought about that and could give us your opinion as to whether that statement is somewhat accurate or not?

Secretary KANSTEINER. No. I think that the real cause for the economic decline that Zimbabwe has seen in the last 2 years really results from the government's political decisions. The questions around the land issue are questions that have been in Zimbabwe for a long time, and they need to be addressed. Land reform has to be addressed.

Did the IMF structural adjustment programs start this? I do not think so, no. I think this entire political gamesmanship turned bad and had bad economic knock on effects. I think that is really what is driving it.

Mr. MEEKS. And I think I concur with you that if part of the political crisis I believe we can say and some of the economic crisis deals with this whole question of land. If the elections were free and fair, et cetera, what would our policy be? What would our policy be with respect to Zimbabwe and the land use issue? What would you suggest or recommend that it be?

Secretary KANSTEINER. That is a very important question, and we have started looking at exactly how we could help with the land reform issue. The prerequisite for us getting really excited and involved would be a clear, fair, transparent process, you know, where rule of law is being applied.

That is the problem. The rule of law has not been applied in the land issue today. It has been very arbitrary and in fact sometimes

quite violent. If we can see a process laid out that is transparent and fair and clear, we are not only willing; we are eager to help.

Mr. MEEKS. My final question and I guess a follow up to that would be, you know, as we have been doing in other areas where we have been trying to engage the other countries that may surround a country that is in crisis, and for whatever the reason I have noticed that the surrounding countries to Zimbabwe, many of them have failed to criticize Mr. Mugabe, et cetera, but they would have to be involved in this process.

Do you see a policy for the United States to be involved in some of the neighboring countries along with Zimbabwe, given that the elections are fair and partial, to come up collectively with something that may be an answer to the land use issue?

Secretary KANSTEINER. Absolutely, and I think the neighborhood is very important. We have to keep that in mind.

Not only just the land use, but also the macroeconomic structures, too. You know, Zimbabwe is a land locked country. It has to have access to ports and to the sea, so that immediately calls into the involvement of South Africa and Mozambique, for example. Those countries are Zimbabwe's to the ocean. The neighborhood has to stay involved, and I think they know it.

Mr. MEEKS. I said the other one was my last question, but this really is my last question.

As a follow up to Mr. Payne's question in regards to the possibility of there being a military coup, because I know there are some military men who have said that if the President is someone who is not there when they receive their independence they will not accept him, I am wondering if there was a military coup what would you recommend the United States' position be? What would we do in that instance?

Secretary KANSTEINER. Of course, there are some automatic things that happen with a military coup. You have 508 sanctions. You know, you go into kind of a whole other category of targeted restrictions.

Then back to your other question is, you know, what do the neighbors do at that point, I mean, if you really have an army coup d'etat, which would be the first one in southern Africa. Southern Africa has been blessed in the sense that it has not gotten involved in that game. I think that would be a very worrisome scenario.

Mr. MEEKS. Thank you, Mr. Chairman.

Secretary KANSTEINER. Thank you, sir.

Mr. ROYCE. Thank you, Mr. Meeks.

The Subcommittee moved legislation supporting land reform. The Zimbabwe Democracy Act authorized \$20 million for land reform aid in Zimbabwe if it is done in a transparent way. I think that on land reform the fast track land reform that we saw in Zimbabwe in 2000 suffered from a lack of transparency, and in the common vernacular that means corruption. I mean, corruption was the issue.

A recent study by the University of Western Cape School of Government, which is a study sympathetic to land reform, has found that the political allies and military allies of President Mugabe got the best agricultural land. Now, one of the difficulties reportedly is that farms are being sold not to Zimbabweans, but instead to, for

example, Libyan business interests, Libyan business allies, to raise money for ZANU–PF.

The reality is that taking a lot of this land out of circulation and not having it go to Zimbabweans, but having it go to people who are from outside the country and then do not work the land, has helped create a situation where arguably there are 500,000 Zimbabweans facing starvation.

This is an issue we do have to revisit. We have to have land reform done the right way, but it has to be done transparently. It has to be done through the rule of law. We had a chance to talk to the Prime Minister of Namibia recently, and he said that as he moves forward with land reform in his country, he is doing it by respecting the law. He wants, he said, to lift everyone up, not bring people down. I think that is one of the questions here.

I wanted to also ask you about any evidence that you might have that the Movement for Democratic Change has conducted or is planning to conduct systematic violence. Is there any evidence that they are involved in conducting violence?

Secretary KANSTEINER. I have not seen any good reporting, quite frankly, on that. There has been speculation that there is a frustration level within the society that will force some to take that course. We would strongly advise against that. In fact, I think the real power behind the MDC is that in fact it hopefully is an organization that would not resort to that.

Mr. ROYCE. Well, I concur with you, and I certainly agree.

By the way, for the record, Simon Barber's comments that I quoted earlier appear in today's issue of *Business Day*.

In closing, let me just say that in 1982, the Mugabe Government conducted a military campaign with North Korean trained troops that led to the deaths of people in Matabeleland. Several thousand people were killed. When we were in the country, we were shown a well where many people had perished by being thrown down this well.

Now, one of the things that worries me is that newly recruited youth brigades are receiving government training similar to that received by the militias who conducted these massacres in the past. Violence does appear to be escalating.

We all hope for the best, but in Africa in years past too often we have been caught off guard, and I hope we are looking also at worst case post election scenarios so that we will be prepared should something like that happen again.

Secretary KANSTEINER. Yes, sir.

Mr. ROYCE. Secretary Kansteiner, I appreciate your appearance here today. We are now going to go to the next panel.

Secretary KANSTEINER. Thank you all very much.

Mr. MEEKS. Mr. Chairman, just on your—

Mr. ROYCE. Yes? Absolutely. Mr. Meeks?

Mr. MEEKS. [continuing]. On your last statement, because I kind of agree. There is some information you just said about land use that I did not know, but I just would like for us and the Subcommittee, in the future maybe we should have a hearing specifically on land use.

Mr. ROYCE. I think we should. I am going to work with the Ranking Member, Mr. Payne, and we will be happy to hold a hearing on that very issue. Thank you very much for that suggestion.

We will now go to our next panel. Mr. John Makumbe is a lecturer at the University of Zimbabwe where he has served as the Deputy Dean of the Faculty of Social Studies and Chairman of the Department of Political and Administration. He is a prominent civil society activist and is Chairman of Zimbabwe's chapter of Transparency International.

Professor Makumbe was awarded a doctorate in Public Administration at the University of Tasmania in Australia and earned undergraduate degrees at the University of Zimbabwe and University of Botswana. He is the co-author of Politics in Zimbabwe and has delivered papers at conferences around the globe.

We also have with us on our second panel Mr. Thomas Bayer. He has been the Director of Programs for Africa and the Middle East at the International Foundation of Election Systems (IFES) since 1998. He supervises regional democracy and the governance programs for seven field offices in Africa and the Middle East.

Prior to joining IFES in 1991, Mr. Bayer was a Peace Corps volunteer for 4 years Mali. Thomas Bayer received a Master's in Public Affairs in Environmental Policy and International Affairs from Indiana University.

Mr. Makumbe, if you could begin? Thank you.

**STATEMENT OF JOHN W. MAKUMBE, Ph.D., CHAIRMAN,
TRANSPARENCY INTERNATIONAL ZIMBABWE**

Mr. MAKUMBE. Thank you, Mr. Chairman. I appreciate the audience you have given us.

Mr. ROYCE. Thank you, sir. We are going to limit it to 5 minutes because we have your written testimony.

Mr. MAKUMBE. That is right.

Mr. ROYCE. Then we will go to questions.

Mr. MAKUMBE. I will just highlight a few things in my testimony, which is particularly that the current violence is state sponsored. We wish the Committee to take note of that in the sense that not only are the ZANU-PF militia trained by the government of Mr. Mugabe, but they are also financed from state coffers. They are transported in state government vehicles.

The army is also involved in this violence in a number of places. They have in fact meted out violent punishment to the civilians. The police as well have been active in perpetrating violence particularly on people who have been arrested at political rallies, campaign rallies and the central intelligence organization as well, so the whole state is involved in this violence.

There is displacement of people, particularly from rural areas. The latest figures are 70,000. Most of them have moved into urban areas. A lot of them will not be able to vote in those areas as the law retains to vote in your constituency.

Next, the assault on the media is very severe. In the past 2 weeks, one of Zimbabwe's most senior journalists had to flee the country. But the authorities also largely aim at the private media, while the state media largely, you know, remains safe and publishes propaganda for the re-election of Mr. Mugabe.

Apart from that, we have seen draconian laws, particularly the Public Order and Security Act and the General Laws Amendment Act and the Access to Information and Protection of Privacy Act, of which the first two have been signed already into law. President Mugabe is at any time going to sign the Access to Information. All these laws erode severely civil liberties of expression, of movement and even of association.

The situation analysis at the moment in Zimbabwe is that more than 100 supporters of the opposition MDC have been killed since last year, and many have been tortured. Seventy thousand, as I say, have been displaced. An unknown number have actually been kidnapped. We are hoping that some of them will be returned while still alive, but we also know that a lot of them may have died.

Thirty-five schools in one province have been closed. If you look at the whole country, more than 59 schools have been closed so far. One headmaster was stripped naked and beaten up by the war veterans and the militia in front of his students.

As you know, the EU has already withdrawn its observers, and now the South African observer teams remain the most credible, you know, observer teams in Zimbabwe. There are very few, and we do not think they will do a very good job.

The POSA, Public Order and Security Act, is being used to inhibit the holding of rallies by the MDC, but also to inhibit the holding of civic meetings by civil society. We hope that, through your action, through your decision, the United States Government can be seen to be implementing smart sanctions.

It can identify and freeze the assets of the culprits, the perpetrators of bad governance in our country, and it can restrict the travel of the civil servants from the Mugabe Government with immediate effects. We would like to see that visibly. It is not good enough to just sign the document. We need to immediately be aware. The people of Zimbabwe understand smart sanctions, and the regime cannot, you know, drop the word smart and just say we are placed under sanctions. The people understand that.

We would also like to see an increase in financial support for alternative media systems that we are putting in place in civil society, including the recording of progressive messages and distributing them by tape throughout the country.

I thank you.

[The prepared statement of Mr. Makumbe follows:]

PREPARED STATEMENT OF JOHN W. MAKUMBE, PH.D., CHAIRMAN, TRANSPARENCY
INTERNATIONAL ZIMBABWE

It is my submission that free and fair presidential elections are not possible in Zimbabwe for a number of reasons, some of which will be briefly discussed below:

1. Widespread and escalating political violence:

1.1. Both State-owned and independent media reports indicate that there is widespread political violence, largely perpetrated by the ruling ZanuPF party of President Mugabe. A few months ago, ZanuPF recruited several thousands of unemployed young people and gave them basic military training at the Border Gezi Training Camp. The trained militia has since been deployed in various parts of the country. They harass the general public, identify suspected supporters and sympathizers of opposition political parties, especially the MDC, demand the production of ZanuPF party cards and severely beat up those that fail to produce the cards.

1.2. The Mugabe government has deployed several thousands of self-styled liberation war veterans whose task is to mobilize political support for Mugabe's re-election

as president. The war veterans (war vets) are reputed to be violent in their tactics of mobilization. There are several reports of beatings, shooting, and even rape perpetrated by the war vets, few of them have been arrested and charged with criminal offences. By and large the police desist from investigating cases of violence involving ZanuPF elements arguing that these are politically motivated crimes over which they do not have jurisdiction unless ordered by politicians to handle them. War vets have allegedly harassed rural based civil servants, especially teachers and local government employees, whom they accuse of being supporters of the MDC. For example in the Masvingo province, no less than 35 schools have had to be closed because the teachers have all fled to urban areas where they are relatively safer. I need to point out here that war vets are now paid a monthly pension by the Mugabe government. A change of government, therefore, is perceived as a threat to this direct benefit, although the MDC has not threatened to cut this privilege on assuming office.

1.3. The army has been instrumental in punishing ordinary Zimbabweans who voted against the government sponsored draft constitution in February 2000. In urban areas, soldiers used to invade specific suburbs and beat up whole families for no apparent reason. At this point in time, several hundreds of soldiers have already been deployed to areas known to be MDC strongholds to harass civilians. For example, soldiers have been camped in Lupane, Matabeleland North for the past five weeks, according to media reports.

1.4. The police and the Central Intelligence Officers (CIO) are actively carrying out acts of violence against civic organizations and members of the opposition MDC party. Several people who have reported cases of violence against themselves by ZanuPF elements have ended up being arrested and tortured by the police themselves. Civic demonstrations and meetings have been disrupted by the police and several people arrested and tortured while under police custody. A specific case in point is the arrest and torture of NCA members last week and their torture while in the cells.

The following is an excerpt from the Zimbabwe Human Rights Forum of which my organization, Transparency International Zimbabwe, is a member. This Forum reports on incidents of violence from throughout the country on a monthly basis:

Overview:

As the presidential campaign begins in earnest, of gravest concern are the 16 politically motivated murders that were reported in the month of January. This figure may be higher as it is possible that other deaths went unreported. This is the highest number of deaths recorded in any one month since the first politically motivated murder that was recorded in March 2000. This confirms the oft-repeated assertion that Zimbabwean elections are almost always accompanied by gross human rights violations and loss of life. These human rights violations undoubtedly build up a climate of fear and terror among the electorate. It also puts paid to any suggestions that political violence may be on the decline when in fact it is increasing at an alarming rate.

Although spontaneous incidents of political violence do occur between groups of party supporters, it is of great concern to the Human Rights Forum that carefully orchestrated violence is still prevalent as part of a modus operandi to crush opposition party support. The attack on schoolteachers, whose recognized competence to influence and inform their communities has long been considered a threat by the government, continued unabated. It is lamentable that this violence, which also affects school children, has been allowed to continue without redress. At times government ministers and officials have been at the forefront of the onslaught which has not only disrupted schooling but has also displaced numerous teachers and their families who have been forced to flee the areas in which they were being prosecuted. At least 35 schools were reported to have been closed in Masvingo. The Zimbabwe Teachers Association (Zimta) has also condemned this relentless attack on teachers who are real or perceived MDC supporters. MDC members have frequently been arrested in cases where they are in fact the victims of violence who had gone to the police station to make a report. This has inhibited the reporting of criminal violence to the police. In addition some of these victims have been assaulted while in police custody.

19-31 January 2002 Totals

January 2002 Cumulative Totals

Sources: HR Forum legal statements, CFU reports and newspaper reports, Amani Trust medical assessments

Notes to Tables:

Unlawful Arrest/Detention: Unlawful arrests perpetrated by members of the police force and unlawful detentions by state agents, members of political parties and private individuals.

Torture:

All cases under torture fall under the definition of torture according to the general definition of torture given in the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment.

Displacement/Eviction: More than 70 000 persons were internally displaced since January 2001.

2. Politics of incumbency:

2.1. President Mugabe is commandeering State resources for his own political benefit but does not allow the opposition candidates to make use of the same resources. For example, Mugabe flies around the country in Airforce of Zimbabwe helicopters and can address up to three campaign rallies in one day. Morgan Tsvangirai has to make do with driving across the country in a truck and can barely address two rallies in one day. Further, all of Mugabe's campaign rallies are covered by the Zimbabwe Broadcasting Corporation (ZBC) as news items rather than as adverts while the same outfit (ZBC) ignores the MDC campaign rallies. When and if they cover them at all, they ensure that they are severely limited in terms of time of exposure whether on radio or on TV. Finally State vehicles, cars, lorries, buses, etc., are commandeered to ferry ordinary citizens (some reluctantly) from their homes to the venues where Mugabe will be addressing campaign rallies. In several reported cases, even privately owned buses have been forced to ferry people to these rallies for no compensation whatsoever. As a result some transport operators have since stopped operating in the rural areas until after March 9/10, 2002.

2.2. Intimidatory statement by chiefs of staff: The chiefs of the army, the police, the CIO, the airforce and prisons, a few weeks ago, issued a public statement to the effect that they would not support or salute a successful presidential candidate with questionable liberation war credentials. The spurious statement was essentially aimed at discrediting Morgan Tsvangirai of the MDC and garnering support for President Mugabe in the forthcoming presidential election. This statement was roundly condemned both inside and outside Zimbabwe, but may still have had the effect of dissuading some voters from participating in the election, or from voting for their choice of candidate in the March contest.

3. Assault on the independent media:

3.1. The independent media is severely assaulted through the State-owned media and physically at their offices some of which have been bombed or stoned by marauding supporters of ZanuPF. The State agents have done little or nothing to investigate and prosecute anyone for these cases.

3.2. The electronic media is 100% State-owned and controlled (all four radio channels and two television channels). Their programming is deliberately partisan in favor of Mugabe's ZanuPF, while the opposition MDC party and its leadership are consistently harangued and projected in bad light.

3.3. The ZanuPF militia has created "no-go areas" where the MDC and independent newspapers are banned. Individuals seen with copies of, say the Daily News are beaten up and tortured. There is a clearly desperate move to prevent the electorate from being informed about what is happening in their country and about the proposed policies and programs of the MDC.

3.4. In the past few weeks the regime has fast-tracked such draconian pieces of legislation as the Public Order and Security Act, General Laws (Amendment) Act, and the mis-named Access to Information and Protection of Privacy Act (now awaiting Presidential assent). All these laws are aimed at severely curtailing and controlling the operations of the media. They are also aimed at implementing strong-arm tactics against the general public in the light of rapidly declining popularity for President Mugabe.

4. New oppressive legislation:

4.1. Public Order and Security Act (Posa): replaces and is more draconian than the colonial Law and Order Maintenance Act; requires that all individuals carry personal identity with them at all times and produce the same to a police officer on being asked; criminalizes criticism of president; requires that police be notified if a public meeting is to be convened (three gathered people considered a public meeting); authorizes police to disallow or stop any public meeting, street demonstration, etc. if deemed to have the potential to disrupt or disturb the peace or cause public disorder. Media reports indicate that more than 42 people have since been charged under this new law: all of them members of either MDC or civil society, none of them involved in violence, and no ZanuPF member has yet been charged under this draconian law.

4.2. Labor Relations (Amendment) Act: prohibits strikes, stayaways and most forms of collective or industrial action by labor; penalties for employers perceived to be co-operating with employees on job-action; provides for the criminal treatment of labor leaders accused of encouraging "illegal" job action by workers.

4.3. General Laws (Amendment) Act: This is a sort of omnibus law aimed largely at tightening the screws against both civil society and opposition political parties; requires the production of proof of residence in a given area before one is allowed to vote in all kinds of elections (not previously required under the Electoral Act 1990); effectively disenfranchises thousands of people who either do not own the premises they live on, or do not receive official mail (such as electricity, telephone or water bills) at their places of residence; prohibits all courts from charging anyone with contempt of court except through the approval of the attorney-general (AG). This arrangement effectively violates the doctrine of separation of powers since the AG is a member of the Executive Branch of government. This is a vivid manifestation of the Mugabe regime's desperation to curb the autonomy of the judiciary.

5. *Electoral Act (1990) variously amended:*

This Act has been amended virtually every time there has been an election in this country. Practically every amendment has resulted in the whittling away of the electorate's civil liberties in one way or another. For example, some of the amendments have resulted in the postal vote being restricted to absentee civil servants, diplomats and uniformed forces only. No other Zimbabweans are allowed to make use of the postal vote. This is obviously from the realization that the majority of Zimbabweans who have left the country tend to be hostile to the ruling ZanuPF party and to President Mugabe. The General Laws (Amendment) Act makes further amendments to the Electoral Act.

The Act gives the President extraordinary powers to, practically, do as he wishes in relation to the electoral process. For example, section 158 empowers the president to invalidate any action done in violation of the Electoral Act as well as invalidate any action that may have been taken in conformity with the said Act. Such an open check is tantamount to bestowing despotic powers on a mortal person. The sad part for Zimbabwe is that President Mugabe has not hesitated to make use of these powers. In the current circumstances where he faces the toughest contest of his political life, the temptation to harness these powers has been irresistible for him.

6. *Pre-election situation analysis: as at 2002-02-25:*

6.1. More than 100 people have so far been killed in suspected political murders. The majority of these have been MDC supporters;

6.2. More than 70 000 villagers have been displaced from their rural homes as marauding ZanuPF militia continue their reign of terror against suspected members and supporters of the MDC;

6.3. In Masvingo province, more than 35 schools have been closed because the teachers have been beaten up, harassed and tortured by ZanuPF militia and war vets. In Manicaland, Midlands and Matabeleland, several schools have also been reduced to militia bases. The ZanuPF militia stays at these schools from which they launch their daily forays into the neighboring areas.

6.4. Almost all universities have been barred from re-opening for the new semester until after 9/10 March. The only logical rationale for this is that the regime would like to avoid situations where students congregate in one place. The students and the workers are probably the most feared group of the civilian population in Zimbabwe because of their numbers and capacity to organize themselves for mass action quickly.

6.5. The European Union observer mission has been withdrawn following the Mugabe government's refusal to accept Mr. Schori, the designated head of that mission, simply because he is a Swede. Sweden and a further five countries were barred from participating in the EU observer mission.

6.6. Two members of the South African observer mission were injured when ZanuPF militia in Kwekwe attacked them. Members of the Mugabe militia also attacked the SADC observer mission in Chinhoyi, and two of its members were slightly injured.

6.7. The POSA has been used to prohibit the holding of no less than seven election campaign rallies last week-end (16/17 February 2002) and some five civil society meetings on voter education in Harare, Bulawayo and Mutare.

6.8. More than five thousand women bused into Harare from Bindura and from rural areas demonstrated against Britain, the EU, the MDC and the Daily News. The demonstrators who were being escorted by the police smashed the offices of the Daily News. When the demonstration turned violent, the police just looked on without making any effort to stop the lawlessness.

6.9. Morgan Tsvangirai, the President of the MDC has formally been charged with treason following the telecasting of a highly doctored documentary in which he allegedly plots to “eliminate” President Mugabe.

On the basis of all of the above. I submit that it is not possible to hold free and fair elections in Zimbabwe right now.

7. What should the US Government do?

7.1. Begin to implement smart sanctions on Mugabe, his cabinet and senior party officials, as well as his business associates. These need to be implemented in a visible manner and incrementally so that you do not play all your cards, and also so that you demonstrate that you are giving the regime adequate time to mend its ways.

7.2. Publicize and freeze whatever assets you may have identified belonging to the targeted people and the companies that they are associated with.

7.3. Urge the Commonwealth countries Australia, South Africa and Canada that have observer teams in Zimbabwe to treble the number of people in their observer missions to facilitate more effective observation of the elections and the decline in incidents of violence.

7.4. Devise ways and means of strengthening civil society and the opposition MDC at this critical moment in Zimbabwe’s history. These are the key to a successful transition to democracy and good governance in Zimbabwe and indeed, in the region.

7.5. Support the World Food Program (WFP) to ensure that the people of Zimbabwe do not starve as a result of the current drought. Urgently provide badly needed food aid through NGOs, carefully selected churches and civic organizations (including some of the local government authorities).

7.6. Support an alternative media (Information Dissemination) project of the Crisis Co-ordinating Committee aimed at ensuring that as many people as possible receive information on what is going on in the country through audiotapes and short-wave radios and tape recorders.

7.7. Support (financially) several cases of litigation to be mounted by civil society against the regime in regard to all of the draconian pieces of legislation discussed above both in the immediate period and after the 9/10 March presidential elections.

Mr. ROYCE. Thank you very much for your testimony here today.

We will now go to our next witness and hear from Mr. Thomas Bayer.

STATEMENT OF THOMAS BAYER, DIRECTOR OF PROGRAMS, AFRICA AND THE NEAR EAST, INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS

Mr. BAYER. Thank you, Mr. Chairman, Members of the Subcommittee, for this opportunity to comment on the turbulent environment in which Zimbabwe’s presidential elections are being prepared. I would like to excerpt from my comments if I may this afternoon.

I believe it is important to say that the Zimbabwe pre-electoral terrain displays many distinguishing characteristics—capricious rule making, increased restrictions on personal freedoms of expression, association, security and property and the deliberate mystification of the electoral process. If the March 9 and 10 election reflects the will of the Zimbabwean electorate, it will be in spite of and not because of the pre-election period.

IFES realizes that to pass conclusive judgement on an election before the fact would be a disservice to Zimbabweans at home and abroad who are dedicated to realizing their personal and national democratic potential. If anything, our words and actions and those of the international community should seek to support Zimbabwe’s navigation of a complex and treacherous period.

Since September, 2001, IFES’ efforts to operate in Zimbabwe as monitors and observers have not borne fruit. Therefore, I sit before

you today as more of an armchair quarterback than would be IFES' preference under normal circumstances. Fortunately, we are able to glean a good deal of information from what has been internationally disseminated by a galaxy of Zimbabwean individuals, institutions and organizations at, I should note, a great personal and professional risk, as well as by international institutions and organizations.

Through the mid 1990s, many Africa watchers and democracy specialists remained optimistic that Zimbabwe would weather this pivotal political period. However, the constitutional drafting and review process exposed the depth of the polarization of Zimbabwean society, a polarization that found its voice in the resounding no vote against the draft constitution in 2000.

Overcoming the attempts of the Zimbabwean Government and the majority ZANU-PF to limit their access to process, the opposition, led by the MDC, capitalized on that momentum from the referendum to leverage small spaces from which it could begin to participate in the political game.

Although fraught with shortcomings, the elections, as have been earlier noted, the legislative elections did change the face or reshape Zimbabwe's Parliament. However, there we continued contraction of political space exemplified by the reconfiguration of the judiciary and the institution of complex qualification requirements for citizenship, two things that have been very important in the pre-election period leading up to the presidential elections. With the reduction in political space came the substantial increase in politically motivated violence and the wholesale unraveling of economic and social safety nets of this proud nation.

This morning's report noted earlier by the Assistant Secretary of the Supreme Court's declaration of the unconstitutionality of significant recent amendments to the elections framework demonstrates that brave personalities committed to standing for the rule of law remain in the judicial system.

Zimbabwean citizens have demonstrated the government's selected adherence to universal standards for democratic elections before and during the pre-election period. Commonly applied in the valuation of election processes, those standards are by no means alien to Zimbabwe or to southern Africa.

A review of the basic election process building blocks provides a sense of the environment that faces Zimbabweans as they will be reporting to the polls on the 9th and 10th. Understandably, as we have seen today from yesterday's decisions in Harare, the daily events inside and outside Zimbabwe are sure to modify the image.

Looking at the legal framework very quickly, the election architecture remains mysterious both to aspiring voters and to interested observers. Key pieces of legislation have been put into place or legislation amended less than 60 days before the election.

As for security, Dr. Makumbe has already reported the yet to be quantified numbers of Zimbabwean deaths that have been attributed to political violence. Zimbabwean human rights and media monitoring organizations report that tens of thousands of Zimbabweans have suffered human rights violations and/or have been displaced since the beginning of the new year.

In the area of voter education, Dr. Makumbe has covered that. The Government of Zimbabwe has imposed excessive limitations on individuals and organizations who want to disseminate information or educate voters about elections and political processes. The Citizenship Act in the area of voter registration has impacted a significant constituency, that of second and third generation Zimbabweans, who enjoyed the rights of citizenship prior to January 6, 2002.

In the area of monitoring, needless to say the Government of Zimbabwe continues to selectively issue accreditation, focusing primarily on individuals or a respective nationality versus groups. In the election process, Zimbabwe's electoral terrain can shift under foot with little or no warning, and we anticipate that there will be further changes in the days leading up to the election. It is not clear that those responsible for elections administration maintain any semblance of service provision ethic toward voters, political parties and other process stakeholders.

Finally, most of the procedural shortcomings cited here are not new issues. Since 1990, the constitution and the election law have been the focus of study and debate inside and outside of Zimbabwe. The fact that the Zimbabwean authorities have been less than responsive to persistent and well documented calls by the populous for the reform of the constitution to better reflect Zimbabwe's post independence realities and its citizens' aspirations and to demands for the professionalization of an autonomous election administration must not be overlooked in assessing these elections.

Since the referendum, Zimbabwean citizens have demonstrated their deep and clear commitment to the exercise of the voting franchise. On March 9 and 10, Zimbabwean voters determined to have their voices heard will report to the polls. Despite the turbulence of the environment in which these elections will occur and an election playing field steeply tilted in favor of the incumbent regime, IFES calls on all stakeholders to follow election day procedures. We hope that individuals not in agreement with the election outcome will pursue peaceful means of redress.

Mr. Chairman, distinguished Members, thank you for making time this afternoon to discuss this important topic.

[The prepared statement of Mr. Bayer follows:]

PREPARED STATEMENT OF THOMAS BAYER, DIRECTOR OF PROGRAMS, AFRICA AND THE NEAR EAST, INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to comment on the turbulent environment in which Zimbabwe's presidential elections are being prepared. I note that this is not the first time that the Subcommittee has dedicated time to focusing on electoral politics in Zimbabwe, the last being immediately prior to the June 2000 parliamentary elections.

The concerns of the Zimbabwean people and the international community as to the commitment of the Republic of Zimbabwe's government to organize transparent and participatory presidential elections on March 9th and 10th, 2002 have led us to meet today to explore the central question: "Zimbabwe: Are 'Free and Fair' Elections Possible?"

Zimbabwe's pre-electoral terrain displays many distinguishing characteristics: capricious rule making; increased restrictions on the freedoms of expression and association, and rights to security and property; and the deliberate mystification of the electoral process. As a result, the approaching 2002 election has the patina of a transitional or post-conflict election: not of a regular, constitutionally mandated, participatory, and competitive reallocation of political power.

The examination of this question is unusual for two reasons: the fact that it is a question at all, and the timing of the discussion. First, through the mid-1990s, many Africa watchers and democracy specialists remained optimistic that Zimbabwe would weather this pivotal political period. However, the constitutional drafting and review process exposed the depth of the polarization of Zimbabwean society: a polarization that found its voice in February 2000 with Zimbabwean voters reporting to the polls in numbers exceeding prior expectations to register a resounding “No” vote against the draft constitution.

Despite the attempts of the Zimbabwean government and the majority Zimbabwean African National Union Patriotic Front (ZANU–PF), the opposition, led by the Movement for Democratic Change (MDC), capitalized on the momentum of the government’s referendum defeat, leveraging small spaces from which it could begin to participate in the political game. The Zimbabwean government placed countless bureaucratic, legal, and political hurdles before the opposition parties and candidates, civil society organizations, the independent media, and election monitors and observers, all interested in participating in or witnessing that important political event.

Although fraught with shortcomings, the elections reshaped Zimbabwe’s parliament, giving the opposition 58 seats to the 92 (30 appointed, directly and indirectly, by the president) held by the majority. In subsequent months, there was further contraction of political space, exemplified by a reconfiguration of a once neutral and professional judiciary and the institution of complex qualification requirements for citizenship, raising the specter of broad based disenfranchisement. With the reduction in political space came a substantial increase in politically motivated violence, exacerbated by the wholesale unraveling of the economic and social safety nets of this proud nation.

In spite of this, brave personalities committed to standing for the rule of law remain in the judicial system, as demonstrated by this morning’s news of the Supreme Court’s declaration of the unconstitutionality of recent amendments to the Electoral Act.

Second, IFES, the International Foundation for Election Systems, realizes that to pass conclusive judgment on an election before the fact would be a disservice to Zimbabweans at home and abroad who are dedicated to realizing their personal and national democratic potential. If anything, our words and actions and those of the international community should seek to support Zimbabwe’s navigation of a complex and treacherous period.

I traveled to Zimbabwe with my IFES colleague Laurie Cooper in early September 2001, intending to initiate a series of US Agency for International Development (USAID)-funded technical pre-election studies to continue through the presidential election. We hoped to follow the pre-election studies with a substantial international election observation mission (pending invitation by the responsible Zimbabwean authorities). Unfortunately, our efforts to meet and discuss our plans with Registrar General Tobaiwa Mudede, the central figure in the administration of Zimbabwe’s elections since 1981, resulted in our being told to immediately depart Zimbabwe by officials acting in the name of the Department of Immigration.

Since September 2001, IFES’ consistent efforts to return to Zimbabwe to engage in the pre-election study, and subsequently to obtain accreditation as international observers, have not borne fruit. Therefore, I sit before you today as more of an “arm-chair quarterback” than would be IFES’ preference under normal circumstances. Fortunately, considerable information about the pre-election environment has been collected and disseminated internationally by a galaxy of Zimbabwean individuals, institutions, and organizations at great personal and professional risk, as well as by international institutions and organizations.

A thorough evaluation of an election process requires the review of the broad spectrum of events indirectly associated with the election-day ritual. This is not an easy task, and it is one that is the focus of considerable debate among national, regional, and international organizations involved in elections as administrators and participants. Today’s core principles for democratic governance trace their origins to the 1948 Universal Declaration of Human Rights, which establishes fair and free elections as a fundamental human right. Over the past 15 years these principles have been echoed and enhanced through the adoption of international, regional, and national legal instruments.

The standards commonly applied in the evaluation of election processes are by no means alien to southern Africa. For example, in March of 2001, the Plenary Assembly of the Southern Africa Development Community Parliamentary Forum adopted the *SADC Parliamentary Forum Norms & Standards for Elections in the SADC Region*. Although the Zimbabwean government has not officially recognized these standards, they reflect a common regional framework for competitive elections.

A brief overview of the standard components of a national electoral process provides a sense of the environment in which Zimbabwean voters will report to the polls on March 9th and 10th. Understandably, events unfold daily inside and outside of Zimbabwe that will modify the composite image. That said, Zimbabweans have effectively articulated, and Zimbabwe watchers cannot help but to remark, on the GoZ's selective adherence to the universal standards for democratic elections over the pre-election period.

Following are some key areas of concern and notable developments affecting the election process.

LEGAL FRAMEWORK

Zimbabwe's election architecture, and the shifting sands of its legal foundation, remains mysterious, both to aspiring contestants and voters and to interested observers. As was the case before the referendum and the parliamentary elections, the legal framework for the presidential elections remains a work in progress. Key pieces of new legislation have been put into place, or existing legislation amended, less than 60 days before the election. By and large, there exists ample opportunity to question the GoZ's and the ZANU–PF majority's commitment to equal access and to the rule of law.

The new and revised legislation includes:

- *The Public Order and Security Act*. Replacing the *Law and Order Maintenance Act*, the Act imposes more restrictive provisions negatively impacting the operations of the media and individuals' rights to free speech.
- *General Laws (Amendments) Act*. The Act made changes to the *Electoral Act* placing significant obstacles (merely 4 weeks before election day) in the way of Zimbabweans registering to vote.
- *The Access to Information and Privacy Act*. The Act places severe restrictions on the activities of Zimbabwean media and journalists, establishing a licensing committee headed by the Information Minister. The Act also requires new foreign journalists and media organizations (particularly those traveling to Zimbabwe to cover the elections) to be formally registered with the government—modified from an earlier suggestion that even those organizations and journalists currently in Zimbabwe would have to re-register.

SECURITY

Historically, the role of military and public security forces in any election process receives inadequate attention. Less than 90 days into 2002, some 30 Zimbabwean deaths have been attributed to political violence. Zimbabwean human rights and media monitoring organizations report that tens of thousands of Zimbabweans have suffered human rights violations and/or been displaced by violence since last year. A significant number of these victims were either persecuted by a member of the military or public security forces, or they were assaulted in a relatively public setting under the unresponsive gaze of members of the police or the army.

- On January 9, 2002, Zimbabwe Defense Forces commander Vitalis Zvinvashe made clear that the Zimbabwean military would not support an opposition victory, stating, “We would therefore not accept, let alone support or salute anyone with a different agenda that threatens the very existence of our sovereignty, our country and our people.”
- The *Public Order and Security Act*, passed on January 10, provides for:
 - Up to 20 years in prison for organizing a group that applies pressure to the GoZ with boycotts, civil disobedience campaigns, or resistance to any laws.
 - Up to 5 years for “communicating to others a false statement intending to undermine public confidence in a law enforcement agency.”
 - Up to 1 year for “intentionally making a public statement that engenders feelings of hostility towards or causes hatred, contempt, or ridicule of the president (whether person or office).

VOTER EDUCATION & CITIZEN INFORMATION

The GoZ has imposed excessive limitations on individuals and organizations who want to disseminate information or educate voters about elections and political processes. These restrictions infringe upon individual fundamental rights and freedoms enumerated by the Zimbabwean constitution.

- The ESC is the only institution permitted to provide voter education, or to register organizations to deliver education. Previous legislation allowed any person or civic organization to educate voters.
- Organizations cannot implement voter education programs with international funding. The former regulations permitted foreign funding of voter education.
- Radio and television networks are state-owned and operated.
- GoZ accreditation of international journalists is limiting and inconsistent.
- Civic organisations are restricted from engaging in voter education. Only the ESC may conduct voter education and only the ESC is permitted to receive foreign funds for voter education.

VOTER REGISTRATION

The Citizenship Act of July 6, 2001 that came into force January 6, 2002 stipulates, for the second time since independence, the legal steps for the renunciation of dual citizenship. This legislation affects a significant constituency—second and third generation Zimbabweans—all of who enjoyed the rights of citizenship prior to January 6, 2002. The GoZ views this constituency as likely to support the opposition.

- The Zimbabwe Citizenship Act denies citizenship to anyone whose parents were born outside of Zimbabwe unless one renounces his or her claim to a second citizenship.
- The requirement to produce proof of residency in one's constituency (such as a passport or a utility bill) prevents Zimbabweans abroad from registering, and ultimately, from voting.
- No public access to the complete voter roll has been permitted since before the June 2000 parliamentary elections.
- No independent verification of the register's accuracy has been conducted this year.
- Under the amendments, wide-ranging power is given to the Registrar General and the constituency registrar to alter the voters' roll (to correct errors or admissions) including voter names and addresses.

MONITORING AND OBSERVATION

As was the case for the parliamentary elections, the GoZ continues to selectively issue accreditation, focusing primarily on individuals and their respective nationality, versus groups. 11th hour changes to the Electoral Act obscure the previously clear distinction between 'monitors' and 'observers.'

- Only public servants appointed by the ESC and trained by the Registrar General will be accredited as election monitors.
- The Minister of Foreign Affairs invites foreign election observers; the law does not preclude "non-invited" international entities from observing, but implies a strict selection process.
- The Minister of Home Affairs has the sole discretion to invite persons to represent local organisations.
- Only public servants are qualified to be appointed as election monitors. Prior to the revisions, any citizen of Zimbabwe who was not a poll worker or a political party member could be appointed as a monitor.
- The definition of "observer" has been broadened beyond only foreigners to include specific local persons, including eminent persons from within Zimbabwe and individuals representing local organizations. Election observers are invited by the Ministry of Justice.
- The GoZ requirement that accredited international observers pay a small processing fee is not unusual. The GoZ requirement that accredited national election monitors pay a processing fee is, however, unusual. The regulations are silent on the fee requirements faced by national observers.

ELECTION PROCESS

Zimbabwe's electoral terrain can shift underfoot with little or no warning. It is not clear that those responsible for the elections administration maintain any sort of service provision ethic toward voters, political parties, democracy advocates, and all other process stakeholders.

Administration

- Elections Directorate—presidential appointment of ED chairperson and Ministerial appointment of ED members. Registrar General sits on the ED.
- Registrar General—presidential appointment. Attached to the Ministry of Home Affairs.
- Judicial Supervisory Commission—presidential appointment. Attached to the Ministry of Justice and Legal and Parliamentary Affairs.
- Electoral Supervisory Commission—presidential appointment, in consultation with the Judicial Supervisory Commission. Attached to the Ministry of Home Affairs.

Ballot Access

- Per recent amendments to the Electoral Act, only diplomatic staff and defence force personnel outside Zimbabwe will be able to vote by mail. Zimbabwe's large expatriate civilian population cannot vote by mail.
- In a first-past-the-post (simple majority) electoral system, a country is geographically considered as a single constituency. However, in Zimbabwe those running the election have announced that voters may only cast ballots in the constituencies in which they are registered.
- Less than three weeks before the election, the Registrar General had yet to provide data on the location of voting stations and the number of voters allocated to each table.

Vote Counting and Tabulation

- Zimbabwean election law and procedure does not provide for vote counting at the voting station. At the close of polling ballot boxes are transported to constituency counting centers for counting and tabulation.

Calendar

- The Harare mayoral and ward elections were originally scheduled to take place the days of the presidential elections. The High Court demanded that they take place on February 11, 2002. An appeal of that decision by the Registrar General resulted in a reversal of the Court's decision. The Harare election will take place at the same time as the presidential election on March 9–10.

Most of the procedural shortcomings cited here are not new issues. Since 1990, the constitution and the election law have been the focus of study and debate inside and outside of Zimbabwe. The fact that the Zimbabwean authorities have been less than responsive to persistent and well-documented calls for the reform of the constitution to better reflect Zimbabwe's post-independence realities—and its citizens' aspirations and to demands for the professionalization of an autonomous election administration—cannot be overlooked in assessing these elections.

Since the referendum, Zimbabwean citizens have demonstrated their deep and clear commitment to the exercise of the voting franchise. On March 9th and 10th Zimbabwean voters determined to have their voices heard will report to the polls. Despite the turbulence of the environment in which those elections will occur, and an election playing field steeply tilted in favor of the incumbent regime, IFES calls on all stakeholders to follow election day procedures. We hope that individuals not in agreement with the election outcome will pursue peaceful means of redress.

Mr. Chairman, Distinguished Members, thank you for making time this afternoon to discuss this important topic.

Mr. ROYCE. Thank you, Mr. Bayer. You mentioned the personal and professional risk that many were taking in trying to guarantee free and fair elections in the face of President Mugabe's actions. One of those individuals is your co-witness there, Dr. Makumbe.

Dr. Makumbe, we appreciate very much your bravery. We appreciate your willingness to travel such a great distance here to testify today. I would like to ask a question specifically about the current violence. Dr. Makumbe, do you believe that violence will have a major impact on voter turnout, or do you believe people will defy the violence and go to the polls?

Mr. MAKUMBE. I believe people will defy the violence, and some will actually come to vote because of the violence, but I believe

there are a number of measures that will be taken by President Mugabe's government to insure that the turnout will not be in the favor of the MDC.

I believe that there are a lot of people now saying you beat us up. We will not vote for you. Mr. Mugabe himself has said to his inner circle the violence is not working, so he is tongue in cheek, you know, from time to time publicly condemning violence, but he is not condemning anyone accused of perpetrating the violence.

I think the violence is not going to work, and he knows it so he is going to try something like 11 or 12 other measures to steal the election.

Mr. ROYCE. Do you think that most of the ZANU-PF members support the violent tactics that are being employed? One of the questions I have is if the Movement for Democratic Change were to win the election, do you think it would extend an olive branch to ZANU-PF?

Mr. MAKUMBE. I do not think so myself. The leader of the MDC has said in a meeting with civil society that as a motivation for Mr. Mugabe to step down we should in fact promise him an olive branch, a sort of amnesty after, you know, he leaves office through a ballot.

We chided him, and we told him he had no right to say that or even to promise that. You know, only the people of Zimbabwe can do that. We told him that if he promised Mugabe an olive branch he would basically be saying to the nation when I get in to the state house, if I mis-rule you, please extend also an olive branch to me.

We cannot run African countries on the basis of impunity and expect our leaders to get away with it. We told him that we will not accept that. The people of Zimbabwe will themselves perhaps through a public site decide whether to grant Mr. Mugabe and his inner circle an amnesty but I do not think there is any individual who can do that.

It is very unlikely that after the ballots on the 9th and 10th that the people of Zimbabwe will just grant ZANU-PF an olive branch. I think we are going to see people demanding that people account for their actions when they are in government.

Mr. ROYCE. Let me ask you another question. You mentioned that there were 10 or 11 other ways that you feared an attempt to steal the election. Could you quickly recap for us what you see as the most problematic?

Mr. MAKUMBE. Yes. The first one, and these were sent to us by people in the Registrar General's office himself. The first one is to reactivate the names of dead people on the voter register and make those dead people vote. It has been done before. It will be done again.

Second is to deactivate the names of known MDC members so they will not be able to vote. The third one is to militarize the Electoral Supervisory Commission, and this has already been done. A lot of the trained militia and a lot of the soldiers are now working for the Electoral Supervisory Commission and for the Registrar General.

Fourthly, engage the militia's Electoral Supervisory Commission officers not just within the Electoral Supervisory Commission itself,

but at the polling stations. The very people who were beating up the voters during the campaign period will be the officers looking at them and giving them the ballot when they vote. This will be highly intimidating.

Fifthly, an official temporary transport crisis so that some boxes will not be sent to their polling stations or from their polling stations in time, giving an opportunity to tamper with them and to stuff them with, you know, fake votes.

The CIO and the military will be used not only as election officers, but as hangers on, people who just walk up and down the queues of voters just winking and winking at them and telling them we will see you after the election if you vote the wrong way. Some will even be holding binoculars and giving the impression they will be able to look in to see how you vote. This intimidation has been done before.

Next is the transfer of ballot boxes from rural areas. The law says people who not election officers—if they are agents of the candidates, if they are representatives of political parties—may not ride in the same vehicle as the ballot box, so every one of these agencies will have to have alternative transport to chase the boxes as they travel the countryside to the counting station.

Mr. ROYCE. I do remember a discussion about some change—

Mr. MAKUMBE. That is right.

Mr. ROYCE [continuing]. They were trying to make to have those transported by military vehicles.

Mr. MAKUMBE. It has not come through yet, and still they are prohibited.

Mr. ROYCE. They are trying to change that now.

Mr. MAKUMBE. Yes. Then spoil MDC votes. We believe that there are people currently marking votes at night at the headquarters. We have done surveillance on three out of five nights in a week and seen boxes turn up at the headquarters at 12 midnight and people going in and voting. The regime has printed seven million ballots for 5.4 or 5.6 million registered voters. What happens to the other one million?

Mr. ROYCE. Well, let me ask Tom Bayer then from the International Foundation of Election Systems. What do you see in terms of ballot security here? Will the MDC or will civic observers be allowed to oversee the vote tabulation process?

Mr. BAYER. Thank you, Mr. Chairman. It is an important point. Dr. Makumbe has already raised some of the inconsistencies in the election law, and it comes down to at the end of the day their interpretation.

One of the things that we find very problematic as an organization committed to provision of assistance, to democracy assistance and to assistance in election processes, is the whole issue of transporting the ballot box.

The law does not provide and there has been no extra legal provision made for additional transport to accompany the boxes or special steps to be taken to make sure that the boxes can be determined not to have been tampered with between the time they leave the voting station and the time they go to the tabulation center.

It should also be noted that this is a 2-day election, so there is an intervening evening between the 9th and the 10th during which

monitors are allowed to stay with the boxes, but observers are not, I believe, if I am reporting correctly. The Zimbabwean law does make a distinction between observers and monitors, monitors being nationals, observers being internationals.

Mr. ROYCE. When Congressman Payne and I were in Nigeria for the elections, they made certain or they tried to make certain that representatives of each political party were both represented as observers at every ballot box. There was an attempt by using a thumbprint, each one being distinctive obviously, to have each vote recorded and had a tabulation process whereby we could check precinct by precinct.

What involvement or level of involvement do you think observers are going to have in that process? Of course, we are not going to have that opportunity to have observers from the U.S., and we saw the EU being blocked, but what have you heard on that front?

Mr. BAYER. Well, Mr. Chairman, I think the series of points that Dr. Makumbe raised are important points for the observers to be noting and be prepared for as they plan their deployments and how they are going to be reporting on the observation.

We had the benefit, I believe, of witnessing the same election in Nigeria. The performance in Nigeria was quite inconsistent. I think reports bore that out. In some cases, we did have a number of instances at those voting stations where there were no political party representatives, and that did create a problem and anomalies also in the counting process where they did not have to move the box, but forms were tampered with between the time that they left the voting station and went to the tabulation station.

That was a reflection of the level of preparation and the ability of the political parties to put their agents to really do a parallel vote tabulation at the same time as the national commission was doing theirs.

Mr. ROYCE. I am going to go to Mr. Payne, the Ranking Member.

Mr. PAYNE. Thank you very much.

Is there an election commission in Zimbabwe? Either one of you can answer.

Mr. MAKUMBE. There is an Electoral Supervisory Commission. There are something like five commissioners. It has no secretariat. It is loaned a secretariat by the Ministry of Justice, Legal and Parliamentary Affairs.

It is very weak. It is headed by a war veteran who is nonetheless a lawyer, but a war veteran. Recently, the regime has appointed a non-existent post of a deputy to that director, and that deputy is a senior Army officer.

Mr. PAYNE. Let me ask, Mr. Bayer. Is IFES at all in Zimbabwe? Were you there at the previous parliamentary elections several years ago, a year and a half, whenever it was?

Mr. BAYER. Thank you for the question, Congressman. No, we were not present for the parliamentary election.

A colleague of mine and I were in Zimbabwe in September of last year with the intention of setting up with funding from USAID a periodic series of monitorings, pre-election studies culminating we were hoping in an election observation effort, but soon after, merely days after our arrival in Zimbabwe, an attempt to contact the Registrar General to inform him of our mission and to talk to him

about the scope of our activities, we were contacted by the Department of Immigration and told to leave the country and subsequently have been unable to return to Zimbabwe.

Mr. PAYNE. The previous election was interesting. First of all, as you probably know, the population of Zimbabwe is pretty literate, and people are pretty good thinkers. They are able.

I had the chance 3 or 4 years ago—3 years ago, 4 years ago, both times—to meet with groups, women lawyer groups, et cetera. They seem to be kind of pretty sharp and focused.

The last election actually I think the opposition party won probably over 50 percent of the popular vote. However, the system is that the President can appoint 10 or 15 percent, so you really have to get about 65 percent to get a majority. That is not bad if you are the President.

However, the people are pretty focused. They determined on the legislative branch that they wanted a change, and that occurred. Do you feel that the people will be able to express themselves one way or another even in the climate?

The climate then was not healthy. It may not have deteriorated to the extent it has now, but do you think that there is a possibility for an 80 or 90 percent kind of fair election, either one of you, especially because of the uniqueness of the Zimbabwe people?

Mr. BAYER. Are you addressing me, sir? Well, I think first to make the comparison between the pre-electoral climate now and the pre-electoral climate prior to the legislative elections, I believe it was stated earlier today, and we do agree, the climate is worse now.

The level of deterioration and also the violence is much—the level of deterioration is greater and violence much higher. In other words, the playing field is tilted much more steeply this time around.

It remains to be seen if the eligible electorate will turn out in mass numbers. Once again, if they do and if the ballot box or the process provides results that reflect the will of the people, then it will be in spite of the situation now, not because of it.

Mr. PAYNE. Do you know which groups have been allowed in as election monitors? I know there has been some exclusion.

You know, certainly I think that there should be observers and people should be allowed to come in. However, there seems to be in particular in the European countries a strong, you know, predetermined, almost anti Mugabe feeling, and it would be more difficult for the government to feel that the observers are going to be totally fair and free.

It might be judged there was a predetermination in the minds of a number of people and that it was not going to be fair and Mugabe is wrong, so it appears that there has been on the part of the government a restriction on people that evidently the government feels would be prejudiced.

How does that grab you? I mean, do you think that there is something to that? I have been places—as a matter of fact, an election—where if the guy lost it would have been just a big mistake. It was a mistake that he won, but there could not have been any way that he could have lost, and he did not do anything that was illegal. It was just that he had money, he had posters, he had

workers, he had everything, and the place was plastered. He had fed people for half a year.

The question was well, was that election fair and free? Well, there was no tampering. It was just that, you know, the opposition just really had nothing. In Liberia, you know, when Charles Taylor went back he had control, he had money, he had workers. He outspent. No one else had any money.

When the observers came back they said well, there was really no intimidation. Nobody was, you know, prevented from voting. However, the people voted probably saying if I do not vote for the guy I do not know what is going to happen to the country. That becomes a tough way to judge what is in the minds or motive of people when they vote.

Mr. MAKUMBE. Well, the people of Zimbabwe are determined to express themselves, and they will express themselves. We as civil society have told the MDC that rigged elections can be won, and they have demonstrated that in Masvingo, in Bulawayo and in Chegutu in mayoral elections,

Mr. Mugabe is going to rig this election, but the people will have spoken, and the people we believe will turn out in such numbers that even if he does MDC is very likely to still win.

So far, the European countries that we know are operating invited is only Norway since the EU withdrew its observers, which was unfortunate and premature. We also know that a number of African countries are also invited and will send observers. The ACP countries have been invited. So far we have not seen anyone show up. They are not particularly interested, but they will probably send a delegation. The Commonwealth are there. There are not many, about 50. They have also not been robust in dealing with Mr. Mugabe.

The SADC, the original body, has a team in Zimbabwe also very weak. In the past, they have observed something and written exactly the opposite in their reports. South Africa is about the strongest team in Zimbabwe at the moment, but again in 2000 they observed something and wrote the opposite. They closed ranks with Mugabe, and we do not expect them to do any better this time.

Mugabe must be understood as the original bully, and practically every country in southern Africa is dead scared of him and so they are very careful what they write in their reports because they know in a year or two's time they will also be having their own elections.

Mr. PAYNE. I think my time has expired, but thank you very much for both of your observations. Thank you.

Mr. ROYCE. Mr. Houghton has joined us. He is the Vice-Chairman of this Committee, and he represents a district in New York.

Let me say that it is our hope that the democratic will of the people of Zimbabwe is expressed in this election. Zimbabwe has many friends in the United States Congress, including the three of us sitting here and the other Members of this particular Africa Subcommittee.

I am going to close with one last question to Dr. Makumbe, and it goes to the issue of information. You know, the Zimbabwean Government has expelled the Baltimore Sun and several other newspapers in the United States in the last few days that were trying to cover the election.

In your testimony, you mentioned the government attacks on the daily news, the two bombings there, and other newspapers calling this an attempt to prevent the electorate from being informed about the political developments in the country.

My question is how many Zimbabweans have access to newspapers which are the only source I guess of independent information in the country? The radios are controlled by the government. How many newspapers are independent, and are foreign broadcasts listened to? If so, which ones?

Mr. MAKUMBE. Yes. Thank you very much for that question. I would put it at a maximum of 30 percent of the population would have access to non-state information dissemination.

The only, you know, radios or television systems that are either watched or listened to by the general public, something like 10 to 15 percent tend to be from foreign sources. Short wave radios are in short supply, and they are likely considered, you know, old technology. They are very difficult to acquire in Zimbabwe. They are very expensive.

There are areas, as I say in my statement, where if you are seen reading an independent paper you may lose your life, and so the information is really very severely restricted in Zimbabwe.

Mr. ROYCE. Dr. Makumbe, again we appreciate you taking the trip from Harare here today to testify. Thank you.

Mr. Bayer, thank you for coming before Congress.

Mr. MAKUMBE. Thank you.

Mr. ROYCE. Again, it is our hope that these elections allow the people of Zimbabwe to express their will, and we thank you very much for your testimony here today.

Mr. MAKUMBE. Thank you.

Mr. ROYCE. We will adjourn the hearing at this time.

[Whereupon, at 4:30 p.m. the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF NEIL HICKS, DIRECTOR, HUMAN RIGHTS DEFENDERS' PROTECTION PROJECT, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Chairman Royce and Ranking Member Payne, the Lawyers Committee for Human Rights, an independent non-governmental organization that promotes respect for international human rights standards around the world, welcomes this opportunity to present its concerns about human rights violations in Zimbabwe at this time. The situation in Zimbabwe has reached crisis point, as the breakdown in the rule of law threatens a catastrophe that will have a devastating impact on the region as a whole. The international community, led by Zimbabwe's neighbors in southern Africa, must impress upon the Zimbabwean government of President Robert Mugabe the absolute imperative of observance of the democratic process in the forthcoming presidential elections, and of full respect for the basic human rights that belong to all Zimbabweans.

The outcome of the presidential elections in Zimbabwe, to be held on March 9 and 10, is crucial to the future of the country and of the entire southern African region. The consequences of ignoring the crisis in Zimbabwe are great; not just for the Zimbabwean people, but for the whole region, which faces increasing destabilization and negative economic impact. Zimbabwe stands on the brink of a catastrophe and the international community must act to prevent the total collapse of the rule of law and avert a humanitarian crisis.

A volatile mix of factors renders the current situation in Zimbabwe highly dangerous. Should President Robert Mugabe declare himself the winner of the March presidential elections, in the face of clear evidence of vote rigging and subversion of the electoral process by the president and his supporters in the Zanu-PF party, these elements risk causing an explosion with devastating consequences. Our efforts, even at this late stage, should be directed at ensuring that this worst case scenario is averted. One way of doing this is for the international community as a whole to make clear that an election tainted by further gross irregularities will have no credibility, and that any attempt by President Mugabe to remain in office by illegitimate means will not be accepted. If the election is stolen by the incumbent, it must be made clear that there will be no benefit for him and his supporters, and that he would be leading his people into further privation and instability.

ESCALATING STATE REPRESSION:

Over the preceding months, President Mugabe has erected a highly repressive system of governance in Zimbabwe. Several aspects may be briefly noted:

- An atmosphere of fear and violence has been created, to cow the opposition and force people to vote for President Mugabe. Political violence has increased significantly in the past weeks and months. Supporters of the opposition Movement for Democratic Change (MDC) are physically attacked on a regular basis by groups of Zanu-PF and associated militias. (A chronology of recent incidents of political violence is appended to this testimony.) In January alone, sixteen political killings were reported, and the total for February looks likely to be similar. Abductions and beatings are commonplace, along with the destruction of property. Several MDC offices have been ransacked and burnt down.
- Violence and threats of violence are not limited to members or supporters of the MDC. Human rights organizations and individual activists have been subjected to a variety of forms of attack and persecution. Independent journalists

are under intense pressure and have been attacked and forced to leave the country. The offices of the main independent newspaper have been attacked. Judges have also been the targets of threats and intimidation, forcing several to resign. The independence of the judiciary has been seriously compromised as President Mugabe has installed new judges who will rubber-stamp his policies and legislation. Election observers from southern African states and from the Commonwealth, in Zimbabwe to monitor the elections, have witnessed violence and have themselves come under attack.

- The parliamentary process has also been subverted and legislation passed that muzzles the opposition and all forms of dissent. Electoral rules have been passed that effectively prevent thousands of Zimbabweans from exercising their right to vote (by prohibiting postal votes and requiring forms of proof of residency that many do not possess).
- The Public Order and Security Act (POSA), forced through Parliament in January 2002, is arguably the most repressive piece of legislation that has been seen in Zimbabwe's entire history. The Act is now being used on a daily basis to prevent the MDC from holding rallies, to prosecute journalists who criticize the government, to intimidate human rights organizations that seek to expose torture and other human rights violations committed by the security forces, and to justify forcible action by the police in a range of contexts. The terms of the POSA clearly violate a number of international and regional conventions to which Zimbabwe is a party, as well as being contrary to the rights contained in the Zimbabwean constitution.

The Public Order and Security Act

The Lawyers Committee for Human Rights considers that several provisions of the POSA violate fundamental human rights and freedoms protected by international law and the Constitution of Zimbabwe. The provisions of the new law appear designed to mute criticism of the government, and of the President, in the run up to the elections, as well as to prepare the ground for suppressing dissent in the event of the election being stolen by the incumbent president.

The POSA amends three existing statutes and replaces the Law and Order (Maintenance) Act. In a memorandum that accompanied the Bill in its passage through the parliament, it is stated that its provisions are intended to "protect public order and security in Zimbabwe while paying regard to the fundamental freedoms of assembly, association and expression laid down in Chapter III of the Constitution." In addition to the detailed constitutional provisions on freedom of expression, assembly and association, Zimbabwe is also bound by the *International Covenant on Civil and Political Rights* (ICCPR), since its accession to that treaty in 1991, and the *African Charter on Human and Peoples' Rights*. The Lawyers Committee believes that the terms of the POSA do not strike an appropriate balance between respect for basic rights the need to maintain public order and, instead, breach the standards contained in articles 19, 21 and 25 of the ICCPR, articles 9, 11 and 13 of the African Charter, and articles 11, 20 and 21 of the Constitution.

The following provisions of the POSA are of particular concern:

- Article 5, which renders "coercing or attempting to coerce the Government" a criminal offence, punishable by imprisonment for up to twenty years. In the same clause, "coercing" is defined to include "constraining, compelling or restraining" through "civil disobedience or resistance to any law, whether such resistance is active or passive." Anyone who engages in, advocates or organizes acts of civil disobedience, or threatens to do so, may be subject to prosecution under this clause.
- Article 15, which criminalizes "publishing or communicating false statements prejudicial to the State." A person may be fined or imprisoned for up to five years for publishing a false statement which carries the risk of promoting public disorder, or undermining public confidence in the police, armed forces, or prison services.
- Article 16, making it an offence to make a public statement with the intention to, or knowing there is a risk of "undermining the authority of or insulting" the President. This prohibition includes statements likely to engender "feelings of hostility towards" the President, cause "hatred, contempt or ridicule" of the President, or any "abusive, indecent, obscene or false statement" about him personally, or his office.
- Articles 23–31, regulating the organization and conduct of public gatherings. By these provisions, a senior police officer is designated as a "regulating authority" and given broad powers to issue directions concerning a public gath-

ering, to disperse a gathering (using “reasonable force” if necessary), to prohibit a gathering, or even to prohibit all public gatherings in an area for up to three months.

These provisions contain unjustifiably broad measures of prior restraint. Their effect is to muzzle legitimate criticism of the government, prevent individuals and organizations from gathering together for peaceful political demonstrations or rallies, and put all persons who object to government policies and practices at risk of prosecution, should they seek to engage in, advocate or organize acts of peaceful civil disobedience.

The POSA has a particularly damaging impact on the legitimate activities of human rights defenders, whose work exposing violations of human rights by government agents or officials might easily fall into the category of “undermining public confidence” in the security forces, or of “undermining the authority of the President.” Article 6(c) of the *United Nations Declaration on Human Rights Defenders* provides that everyone has the right, individually and in association with others “to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.”

The Human Rights Committee, which monitors the implementation of the ICCPR in all States parties to the Covenant, has recognized the crucial importance of the rights to freedom of expression, association and assembly in any democratic society. In its General Comment to article 25 of the ICCPR (on the right of all citizens to take part in the conduct of public affairs, to vote and be elected, and to have equal access to public service), the Committee states that:

“In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas.”

Likewise, in several complaints brought through the mechanism contained in Optional Protocol I to the ICCPR, the Committee has emphasized that, “the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3.” (See Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo, Communications 422/1990, 423/1990, 424/1990.) The Committee has also emphasized that restrictions on freedom of expression must meet a strict test of justification (See, e.g. Tae Hon Park v. Republic of Korea, Communication 628/1995).

The enactment of the POSA sends a message to mobs and militias who support the ruling Zanu-PF party that human rights defenders are criminals and legitimate targets of attack. The Lawyers Committee has received continuing reports of violence and threats directed against human rights activists in Zimbabwe. For example, in December 2001, Johannes Mudzingwa, of the organization Zimrights, was physically assaulted by a group of war veterans and Zanu-PF supporters. Zimrights officials have been warned to cease their work or face the consequences. A mob ransacked the offices of Harare law firm, Gill, Godlington and Gerrans, which had represented a white farmer seeking the return of property from a retired general who had occupied his farm.

Particularly in the run up to the presidential elections, it is vital that all persons in Zimbabwe are able to engage in a free political debate and to express their views concerning the government and its policies. Members of the press, opposition candidates and leaders, human rights defenders and organizations, all must be able to contribute to the democratic process without fear of repercussions. The POSA further restricts the ability of those who advocate democratic change and progress towards increasing respect for human rights to make their voices heard.

UNDERMINING THE ELECTORAL PROCESS

All available indicators demonstrate that popular support for President Mugabe is low. Recent polling shows that the vast majority of Zimbabweans do not wish him

in office for another term. In spite of increasing political violence, there is still a high expectation that peaceful change can occur in the country, through the democratic process. If the outcome of the election is perceived as unfair, there is likely to be deep frustration among the population and this frustration may be expressed through violence. Protests and expressions of dissatisfaction are also likely to be met with increased government-sponsored violence. Moreover, the subversion of democracy in Zimbabwe will likely influence other countries where democracy is under threat, such as Zambia and Malawi.

A variety of tactics are expected from President Mugabe, to ensure his victory in the elections. These include: the use of old, opaque ballot boxes, which are not entirely sealed; the prevention of polling agents from accompanying ballot boxes when they are transported from polling stations to counting stations; manipulation of the number and placement of polling stations, so that a minimum number are placed in the cities (where the MDC enjoys greatest support) and mobile stations are placed in rural areas where Zanu-PF is considered strong; the shipping of Zanu-PF supporters to polling stations in the cities, putting them at the front of voting queues to prevent MDC supporters from casting votes; the presence of army personnel inside polling stations to intimidate voters; the continued confiscation of identity cards from MDC supporters, so that they are unable to vote.

A REGIONAL HUMANITARIAN CRISIS

Zimbabwe's economy has been devastated and famine is imminent. A severe drought has already ruined most crops in the south and threatens those in the north of the country. This situation, coupled with the sense of frustration and potential violence described above, could lead to thousands of starving people moving into neighboring countries in search of food. The *New York Times* reported on Sunday February 24, 2002 that already thousands of Zimbabwean refugees and migrants are attempting to cross into South Africa each week to escape from hunger and, in some cases, political persecution. This number will be multiplied many times over if election irregularities result in further political violence.

THE INTERNATIONAL RESPONSE

The international community must recognize that this combination of factors threatens not only Zimbabwe, but also the entire region. The flow of refugees will have a serious impact upon South Africa, Botswana, Mozambique and Zambia. In addition, destabilization will have extremely negative consequences for investment in southern Africa, damaging the economies of many states.

In Zimbabwe, very real fears are already being expressed about vote-rigging and subversion of the electoral process. If the election is seriously flawed, it is imperative that the entire international community respond immediately and all states refuse to recognize the results.

African states must take the lead in speaking out clearly to condemn any failure by the Zimbabwean government to afford its people the right to choose their leader through free and fair elections in accordance with national, regional and international norms and standards. The United States must use its power and influence in Africa and with its allies around the world to assist the Zimbabwean population in averting a human rights and humanitarian calamity through observance of the democratic process and restoration of the rule of law.

The current crisis of human rights and the rule of law in Zimbabwe has been foreseeable for many months. The European Union and the United States government have responded late in the day, imposing targeted sanctions on President Mugabe and his immediate supporters. These measures are unlikely to be sufficient to alter the course of events, or to restore the damage that has already been done. The primary responsibility for the protection and promotion of human rights in Zimbabwe lies with the Zimbabwean government. If it continues to fail in its obligations, then neighboring states, especially South Africa, have a strong interest in ensuring that they do not become the victims of destabilization generated by their neighbor. Other powerful African states, like Nigeria, have a key role to play in making clear to the Zimbabwean government that they will not condone flagrant disregard of international standards. The promotion and protection of human rights is required by international law and is in the interests of all states. The price of continuing to ignore massive abuses of human rights is huge, and in the case of Zimbabwe that price will be paid by many countries in southern Africa, and the whole African continent. It is incumbent upon the United States to work with its partners in Africa to ensure that the rule of law is restored in Zimbabwe and that human rights are respected during and after the presidential election.

A framework exists for Zimbabwe's southern African neighbors who are members of the Southern African Development Community (SADC). The U.S. government must encourage SADC member states to work together to insist that President Mugabe respect the "Norms and Standards for Elections in the SADC Region," adopted by the SADC Parliamentary Forum in March 2001. In addition, the principles contained in the New Partnership for Africa's Development (NEPAD) initiative, concerning the promotion and protection of democracy and human rights, should be realized. SADC and other regional organizations must present a united front against the subversion of democracy and negation of the rule of law in Zimbabwe. If there is clear evidence that the presidential elections are seriously flawed, the results must not be recognized and, in these circumstances, any purported government must be isolated.

While the rule of law in Zimbabwe is collapsing, there remain many courageous individuals in the country, who struggle to promote human rights and fundamental freedoms. These persecuted individuals and organizations require urgent assistance and support from the international community. Any measures taken by the international community must be carefully targeted against those who violate international law so that the suffering of the Zimbabwean people is not further compounded. Regardless of what happens in the presidential elections, it is clear that there will be need for humanitarian assistance to Zimbabwe in the months ahead. Such assistance should not be held hostage to the political situation.

Nevertheless, until the people of Zimbabwe have a government that will respect their basic rights and freedoms, the prospects for economic recovery and regional stability remain bleak. Respect for human rights and the rule of law in Zimbabwe are essential to regional security and development.

APPENDIX

POLITICAL VIOLENCE IN ZIMBABWE SINCE JANUARY 30, 2002

(This summary is taken from various news reports, and does not in any way represent the total number of acts of political violence being committed. The Zimbabwe Human Rights NGO Forum (a coalition of several local groups) continues to publish monthly reports documenting incidents. These can be found on www.kubatana.net)

Monday, February 25, 2002

International election observer vehicles stoned by ZANU(PF) supporters in Chinhoyi, north of Harare, after attending an MDC rally in the town. Several of the observers from southern African states were injured. Vehicles carrying observers from the Commonwealth were also stoned.

Friday, February 22, 2002

MDC opposition leader Morgan Tsvangirai's motorcade was shot at by soldiers during a rally in Masvingo. No one was injured.

2 South African election observers were attacked by Zanu-PF supporters in Kwekwe.

Thursday February 21

The Human Rights NGO Forum reports 8 political killings in the period 1-16 February, plus 41 cases of intimidation, 62 abductions and 159 cases of torture.

Wednesday February 20

It is reported that Mugabe supporters have set up at least 22 militia bases across the country. There are reports of violence, abduction, and killings from these bases.

A mob of Zanu-PF supporters attacked the Chinhoyi MDC office.

The house of a MDC activist in Marondera was looted, petrol bombed and burnt to the ground by a group of ten youths

Tuesday, February 19

Two members of the Election Support Network, a non-governmental organization assaulted by Zanu PF supporters while delivering voter education material in the Cranborne area.

Monday, February 18

MDC headquarters in Harare stormed by a group of Zanu-PF supporters, assaulting the occupants and breaking windows. Amnesty International reports that riot police contributed to the attack.

David Coltart, a member of parliament and MDC legal affairs spokesperson, charged with discharging a firearm from his home.

The EU decides to impose sanctions on Mugabe, and begins withdrawal of its observers.

Saturday February 16

11 church leaders arrested in Bulawayo, for violations of the POSA

Friday February 15

15 members of the National Constitutional Assembly arrested under the POSA for a peaceful demonstration. Several allege mistreatment in custody.

Thursday February 14

Mobs of Zanu-PF supporters rampaged in Lower Gweru, attacking homes and shops of suspected MDC supporters

Wednesday February 13

Groups of war veterans and Zanu-PF supporters went on the rampage in Bulawayo.

Tuesday February 12

MDC leader and presidential candidate Morgan Tsvangirai detained briefly by secret police in Harare.

Monday February 11

Two petrol bombs thrown at the Daily News offices in Bulawayo.

Saturday February 9

Attack on MDC members in Gokwe, who were attempting to set up a rally for the next day. Truck set on fire.

MDC spokesman says that since the POSA was passed (3 weeks ago), 67 rallies have been cancelled.

Friday February 8

Three MDC MPs abducted, beaten and tortured in Nkayi. Earlier this week, two other MDC supporters reportedly beaten to death, in Matabeleland.

Thursday February 7

A mob of Zanu PF and war veterans raided MDC offices in Buhera North, vandalized premises and stole property. The MDC district secretary for Buhera North has gone into hiding

Monday February 5

Journalist Basildon Peta arrested under the POSA and held overnight. Charges pending. [Peta subsequently fled the country]

Thursday January 31

Parliament passes the Access to Information and Protection of Privacy Act (banning journalists from working without government accreditation and banning foreign journalists from living in Zimbabwe). This remains to be signed into effect by the President.

Wednesday January 30

Three journalists protesting against the media bill arrested under the POSA.

