

ZESN PRELIMINARY STATEMENT ON THE CONSTITUTIONAL REFERENDUM



17 March 2013 – Holiday Inn, Harare

Summary

The Zimbabwe Election Support Network (ZESN), a network of 31 non-governmental organisations working on the promotion of democratic elections in Zimbabwe, observed the Constitutional Referendum on Saturday 16 March 2013. ZESN deployed approximately 600 observers across the country, drawn from some of its member organisations.

ZESN findings show that the process was generally, peaceful and smooth with very few recorded incidents of violations. ZESN commends ZEC for putting together the logistical support within a short time.

However our pre-referendum concerns remain as they impact on the voting processes. The untimely departure of the Zimbabwe Electoral Commission (ZEC) Chair Justice Simpson Mutambanengwe; the extremely limited time provided to ZEC to prepare for the Referendum; the inadequacies in voter education on the contents of the draft constitution, the inadequate and subsequent delay in allocating funding to ZEC; as well as the intimidation/harassment of civic organisations, contribute to our concerns.

ZESN commends the ZEC officials for responding timeously and professionally to concerns of the observers despite the shortcomings highlighted earlier.

ZESN acknowledges the process is not over and continues to observe post voting procedures – counting, tallying and the tabulation of results.

Methodology

As a non-partisan body, ZESN observes elections to ensure that Zimbabweans are able to freely exercise their right to vote and to provide citizens with independent information on the process. As an umbrella network we take no position on the merits or demerits of the new draft constitution. ZESN conducts its observation efforts in conformity with the Declaration of Global Principles for Citizen Election Observation and Monitoring which was launched at the United Nations on 03 April 2012^[1] as well as the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO).^[2]

Our findings and recommendations are made in reference to: The laws of Zimbabwe; the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections^[3] as well as other regional and African election standards.

^[1] see <http://www.gndem.org/declaration-of-global-principles>

^[2] see <http://www.eisa.org.za/EISA/publications/pemmo.htm>

^[3] see http://www.idasa.org/our_products/resources/output/sadc_principles_and_guidelines/

We deployed 600 observers comprising mobile observer teams, stationary polling station observers at specific polling stations, and constituency observers deployed to ZEC Constituency Centres to witness the collating of results.

Context

On February 11 the Minister of Justice and Legal Affairs, Patrick Chinamasa (ZANU-PF), announced that the ZEC Chair, Justice Simpson Mutambanengwe, had resigned. While Justice Rita Makarau was appointed the new ZEC Chair on the eve of Referendum Day, the Referendum preparations were conducted under the ZEC Vice -Chair Ms Joyce Letitia Kazembe.

Just a day later, on 12 February, Minister of Constitutional and Parliamentary Affairs, Eric Matinenga (MDC-T), announced that the Referendum would be held on Saturday 16 March 2013. On Friday 15 February the date for the Referendum was officially gazetted. This date provided very little time for the ZEC to prepare, or for COPAC to conduct comprehensive awareness campaigns for citizens to make an informed decision on the draft constitution.

Intimidation of Civil Society

During the run-up to the Referendum there was a disturbing pattern of intimidation against civic organizations involved in citizen election observation. These incidents included:

- 13 December the ZIMRIGHTS (a ZESN member organisation) was raided by the police;
- 14 January the ZIMRIGHTS Director, Okay Machisa, was arrested by the police;
- 11 February the Zimbabwe Peace Project (ZPP a ZESN member organisation) were raided by the police;
- 19 February the ZESN office in Masvingo was broken into and materials stolen;
- 20 February the ZESN main office in Harare was raided by the police; and
- 21 February the ZESN office in Masvingo was again broken into at gun- point and again materials stolen; and
- 07 March the Police Commissioner-General, Augustine Chihuri, appeared on television demanding that the ZPP Director, Jestina Mukoko (a ZESN Board Member) turn herself in to the police.

Accreditation

For the first time ZEC added a third accreditation centre in Masvingo. This was a positive step, making it easier for citizens to exercise their right to observe the electoral process. ZESN hopes that the accreditation of observers will be decentralised to all the country's 10 provinces even down to the district levels.

ZEC refused to accredit all ZESN members as observers under the umbrella body as has always been the case over the years. Instead, ZEC required ZESN member organisations to resubmit their applications as separate bodies to ***“unbundle the membership”***. In addition to being administratively burdensome, this violated the ZESN members' fundamental right to association. Further, the accreditation process appeared

discriminatory as other networks were accredited as single entities yet they are also coalitions.

Worse, ZEC made the arbitrary decision to refuse to accredit ZIMRIGHTS and the Director of the Zimbabwe Peace Project (ZPP), Ms Jestina Mukoko, who is also a Board member of ZESN, on the grounds that they were “under police probe”. We have since raised concerns over this issue given that the two organisations have not been found guilty of any crime and are protected by the constitutional right to be presumed innocent until proven guilty.

ZEC should apply the rules uniformly and put in place a clear accreditation criterion well in advance.

Setup and Opening of Polling Stations

The setup and opening of polling stations generally went well with most polling stations having adequate materials to commence voting. In isolated incidents, ZESN observers reported that polling stations opened late.

ZESN received three isolated reports of accredited observers initially being denied access to polling stations, but these issues were ultimately positively resolved.

There were a few reports of missing materials at polling stations, such as the official ZEC stamp (four) and indelible ink (five). The vast majority of polling stations were set up so that voters could mark their ballot paper in secret.

ZESN received reports of the presence of police officers inside polling stations, yet Section 19 of the Electoral Act as read with Schedule 2 of the Electoral Regulations 2005 as amended by Statutory Instrument 32 of 2008, states that only members of the Zimbabwe Electoral Commission, electoral officers on duty, election agents and accredited observers are allowed within the polling station.

Voting

ZESN observers reported compliance on many levels including ballot papers stamped with the ZEC seal being issued and voters’ fingers marked with indelible ink. Observers at polling stations reported that voters without a proper ID identifying their citizenship were not permitted to vote. Campaigning within 100 metres of polling stations was not permitted and there were no incidents of violence or intimidation; or attempts to disrupt the process.

In addition, the processing of voters was efficient which reduced waiting time for most voters. However, ZESN received several reports of unauthorized persons inside the polling station as well problems with assisted voters being unable to select the person who would assist them to vote.

Counting

Counting processes went on well except for a few incidents reported by observers. All ZESN polling station observers reported that the seals on the ballot box were intact when counting started.

Observers reported 14 requests for recounts of the ballots. Public posting of results took place in most polling stations except in a few cases (six) where ZESN observers reported that the official results were not publicly posted.

Critical Incidents

The ZESN Information Centre, located at the Holiday Inn, received a total of 178 voting incidents – primarily from its mobile observer teams – of which 142 have been confirmed.

The largest number of incidents, 38 reports, relate to violations of the voting procedures followed by 22 reports of unauthorized persons in the polling stations. There were also isolated reports of ZEC polling officials lacking identification badges and an incident of a ZANU-PF supporter in Mataga, Midlands Province, positioned within a five-metre radius of the polling station taking down names of the people who are voting.

The largest number of incident reports was received from Bulawayo, Harare and Masvingo provinces with 27, 22 and 22 reports respectively.

Recommendations

Despite the short notice, the ZEC was able to organize a generally smooth and credible Election Day process. However, there were shortcomings that ZEC should address in advance of the harmonised elections.

For the harmonised elections, ZEC should ensure:

- Police officers are deployed outside of polling stations as stipulated in the law (not inside);
- Sufficient voter education is conducted (inclusively involving civic organisations) to ensure voters bring the correct identification documents to polling stations;
- Polling officials are fully trained on the procedures for assisted voting, and voters are informed about their right to make their own choice of who will assist them, and that voters requiring assistance are permitted to select a person of their choice to assist them;
- Polling officials post the official results outside of all polling stations for public inspection. This will ensure a transparent process.
- The voters' roll is amended and updated.
- Further early decentralisation of the accreditation process to make it less cumbersome and cost effective.

ZESN again notes that additional electoral reforms are needed before the harmonised elections take place.

These reforms should include:

- Providing in-depth understanding of the proportional representation system to the electorate.
- The ZEC Commissioners, as an entity rather than the Chief Elections Officer, announce all election results
- Repressive laws, such as the Public Order and Security Act (POSA) should be repealed before new elections.

- All political parties must be able to have equal access to and coverage by the state electronic media and all political parties must be able to campaign in every province and constituency.
- The campaign of intimidation against civic organisations must stop immediately and they must be allowed to conduct civic and voter education as well as observe the electoral process if the harmonised elections are to be credible.

ZESN will continue to observe the process through the tallying of results at the various levels and the announcement of the official results by the ZEC and will issue additional statements as appropriate. ZESN is encouraged that ZEC has publicly committed itself to the timely release of the results and urges ZEC to release not only the national but also the provincial and polling station results.

Further, the campaign of intimidation against civic organisations must stop immediately and they must be allowed to conduct civic and voter education as well as observe the whole electoral process if the harmonised elections are to be credible.

PROMOTING DEMOCRATIC ELECTIONS IN ZIMBABWE

FOR COMMENTS AND FURTHER DETAILS CONTACT THE CHAIRPERSON OR NATIONAL DIRECTOR;
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