

Electoral Commissions Forum of SADC Countries

Plot 50362, Block C, Unit 3, Fairground Office Park

Private Bag 00284

Gaborone, Botswana



PRELIMINARY STATEMENT OF THE ELECTORAL COMMISSIONS FORUM OF SADC COUNTRIES ON THE ZIMBABWE HARMONISED ELECTIONS OF 2013

1. Introduction and Background

Following an invitation by the Zimbabwe Electoral Commission (ZEC), the Electoral Commissions Forum of the SADC countries (ECF-SADC) constituted an Observer Mission to observe the 2013 Harmonised Election of the Republic of Zimbabwe held on the 31st of July 2013.

The ECF-SADC Election Observer Mission was led by Adv. Notemba Tjipueja, Chairperson of the Electoral Commission of Namibia (ECN). The Mission consisted of observers drawn from the Electoral Commissions of Botswana, the Democratic Republic of Congo (DRC), Lesotho, Malawi, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zanzibar, respectively. The observation was done over the period July 23rd till August 2nd.

Prior to the deployment of the Observer Mission the ECF-SADC deployed a Pre-Elections Assessment Team (PEAT) to the Republic of Zimbabwe. The primary objective of the PEAT was to assess ZEC's readiness to conduct the 2013 Harmonised Elections. The PEAT was similarly led by Adv. Notemba Tjipueja and took place during the period 8-12 July 2013. The main findings of the PEAT form part of this preliminary statement.

2. Mandate of ECF-SADC

The ECF-SADC comprises of fifteen (15) electoral management bodies (EMBs) of the SADC member states' Electoral Commissions. It was launched in July 1998. The mandate of ECF-SADC as outlined in its Constitution, amongst others, includes the:

- strengthening of co-operation amongst Electoral Commissions in the SADC region; and the
- promotion of conditions conducive for credible and transparent elections in the SADC region.

The ECF-SADC views election observation as an important component of promoting democratic elections and consolidating democracy in the SADC region, hence its

Forum Presidency: Adv P.Tlakula - President (RSA), Rev A. Malumalu (DRC)

involvement. Through the election observation process, the ECF-SADC strives to assist fellow Election Management Bodies (EMBs) to identify areas needing improvement in elections administration and management and this also serve as an opportunity for mutual learning.

The ECF-SADC Observer Mission is strictly speaking a Peer Support Mission. Over and above monitoring all relevant aspects of the organisation and conduct of the electoral process to identify key strengths and challenges, our missions also identifies areas of need and explores the possibility of extending technical support from other sister Commissions in the SADC region.

3. Guiding Principles

ECF-SADC's election observation missions are principally guided by two (2) instruments, namely the Principles for Election Management, Monitoring and Observation (PEMMO) in the SADC Region and the Principles and Guidelines Governing Democratic Elections in the SADC Region. Compliance with the relevant provisions of the new Zimbabwe Constitution, the Electoral Act (Chapter 2:13) and its ancillary regulations, other pieces of legislations relevant to elections in Zimbabwe also served as guiding tools to assess compliance with the legal framework for conducting elections in Zimbabwe. The 2013 Zimbabwe Harmonised Elections were also benchmarked against the African Charter on Democracy, Elections and Governance which the country ratified on 31 May 2011.¹

Consistent with the abovementioned instruments, the ECF-SADC Observation Mission's work was guided by the principles of impartiality, neutrality, transparency, and objectivity.

The subsequent sections elaborate on the key areas which were assessed in determining the credibility of the 2013 Zimbabwe Harmonised Elections.

4. Observation methodology

The observation mission employed complementary data collection methods including documentary review, paying a courtesy visit to ZEC, conducting a one-day training based on Bridge training materials for members of its Observer Team on July 25th, hosting a multi-stakeholder seminar with local stakeholders on July 26th, reviewing the constitutional and legal framework governing elections in Zimbabwe, observing final campaign rallies, the polling and counting processes on July 31st 2013.

The Mission also interacted with other Observation Missions in order to exchange information and observations. All these various activities enabled the Mission to gather comprehensive information so as to critically assess the manner in which the 2013 Zimbabwe Harmonised Elections was managed.

¹ See Ratification status of the African Charter on Democracy, Elections and Governance. Available at <http://www.eisa.org.za/EISA/aucharter.htm>

ECF-SADC deployed six observer teams on 27 July- 1 August 2013 in five provinces.² Upon arrival in the districts, ECF-SADC teams held consultative meetings with local electoral stakeholders and other international observers. During this period, the teams also familiarised themselves with the local context and continued to observe the concluding stages of the campaigns and the pre-polling preparations.

5. The Constitutional and Legal Framework

The Mission noted several progressive changes introduced by the new Zimbabwe Constitution. These include, amongst others, the introduction of a five-year presidential term with a two-term limit; the inclusion of a bill of rights which guarantees an array of fundamental rights and freedoms. Those, most relevant to elections, include the rights to equality and non-discrimination, freedom of assembly and association, freedom to demonstrate and petition, freedom of expression and freedom of the media, access to information, and right to administrative justice.

The Mission further noted that the new constitution also calls for greater gender equality, evidenced by gender quotas in Parliament, greater protection and advancement for persons with disabilities a broader mandate for the electoral commission.³ The Mission particularly notes that article 239 of the new Constitution empowers the ZEC to prepare, conduct and supervise the country's elections, including the compilation of the voters' rolls and registers.⁴ The Mission notes though that the provisions of Schedule 6(2) of the Constitution allows the Registrar-General of Voters to still conduct the registering of voters and the compiling voters' rolls for these elections, albeit under the supervision of the ZEC.

The Mission further observed that Article 100H of the Constitution of Zimbabwe obliges the State to make adequate and suitable provisions through legislation and other appropriate means, to ensure that the ZEC is able to exercise its functions under the Constitution efficiently and independently and that the Commission's staff carry out their duties conscientiously, fairly and impartially. In addition, the Mission noted the extensive provisions of sections 10A and 11 of the Electoral Act [Chapter 2:13] meant to guarantee the independence of the ZEC and ensure the independence, impartiality and professionalism of Commissioners, staff and agents of the Commission.

6. Preliminary Findings

6.2. Pre-election phase

6.2.1 Special Vote

² Observer Teams were deployed in Harare (2), Manicaland, Bulawayo, Mashonaland Central, Midland,

³ International Foundation for Electoral Systems (IFES).2013. *Elections in Zimbabwe July 31 General Elections: Frequently Asked Questions*, p.6. Available at <http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2013/Elections-in-Zimbabwe-July-31-General-Elections.pdf>

⁴ See article 239(d) in particular.

The Special Vote was conducted on the 14th and 15th of July 2013. The Mission learned that that ZEC authorized 65 956 members of the security forces and armed forces and Commission staff. It further learned that 37 108 voted and that 26 160 did not vote.

Many stakeholders raised concerns on the manner in which the special vote was conducted which led to the disenfranchisement of a substantial number of eligible voters in this category. The Mission applauds ZEC for the bold step taken to seek permission from the Constitutional Court (ConCourt) for the affected voters to be allowed to vote during the general elections. The Mission is aware that the ConCourt granted ZEC's request. The Mission noted the unanimous concerns of stakeholders about the potential of double voting given the non-availability of the final voters' roll at the time these votes were conducted. The Mission notes with satisfaction the special efforts and measures taken by ZEC to guard against such concerns. These include quarantining the special votes to avoid 'contamination', the crossing out of special voters from the general voters' roll before commencement of the general elections at each polling station. The Mission noted that the special votes were indeed guarded and kept under security.

6.2.2 Postal vote

The Mission notes that the Electoral Act confines postal voting for those Zimbabweans (and their spouses) who are on duty in the service of the government abroad.⁵ The Mission is aware that the new Constitution does not allow for diaspora voting. However, it noted the ongoing debate around this issue. The Mission also recalls the recent judgment of the African Commission on Human and People's Rights (ACHPR) in which it ruled that the Government of the Republic of Zimbabwe must allow its diaspora to vote by postal ballot and to provide all such eligible voters with the same voting facilities it affords to Zimbabweans working abroad in the service of the Government.⁶ ECF-SADC takes note of the Constitutional Court dismissal of an application to allow diaspora voting citing impracticality for ZEC to implement diaspora voting for these elections.

6.2.3. Voter registration and Voters Roll

The Mission learned that approximately 6.4 million voters registered for the 2013 Harmonised elections.

The Mission noted with concern that the final voters' roll was not timeously made available for inspection. The Mission is particularly concerned that the said roll was made available only two (2) days before actual polling.

The Mission notes that the new Constitution entitled many people living in Zimbabwe who were previously classified as "aliens" to register for citizenship. The Mission is aware of ZEC's call to this category of persons to apply for national identity documents reflecting the changed status to allow them to be registered as voters. The Mission is, however, concerned

⁵ See section 72 of the Electoral Act.

⁶ Gabriel Shumba and Others v The Republic of Zimbabwe, Communication 430/2012, Adopted during the 13th Extraordinary Session from 19-25 February 2013, Banjul, The Gambia.

about reports that many of these persons might have been disenfranchised due to reported administrative impediments on the side of officials from the Registrar-General's office but is pleased to note that the electoral law provides for ZEC to take over the function of voter registration.⁷

6.2.4 Printing of ballot paper

The Mission learned that approximately 8.7 million ballot papers were printed for the 2013 Harmonised Elections. This, in the words of ZEC, represents an excess of 35 percent of ballot papers. The Mission expressed its concern in this regard and the double numbering of ballot papers to ZEC but was given assurances by ZEC that they would maintain safe custody of every ballot paper and account for every ballot paper issued.

6.2.5 Voter Education

The Mission has noted with satisfaction that ZEC collaborated with civil society organisations to carry out voter education throughout the country. However, concerns were expressed over the time period allotted to this important exercise. The commendable efforts of ZEC in the area of Voter Education is clearly manifested in the high number of voters registered for this elections.

6.2.6. The Electoral Campaign

The Mission noted with great satisfaction the general calm and peaceful atmosphere which prevailed throughout the period it observed the 2013 Zimbabwe Harmonised elections. No incidents of violence, harassment and/or intimidation were brought to the attention of the Mission.

6.2.7 Media

The Mission notes with appreciation the establishment of an independent, non-political Zimbabwe Media Commission (ZMC), which amongst others, must ensure that the people of Zimbabwe have fair and wide access to information.⁸ It further notes that the ZEC, with the assistance of the ZMC and the Broadcasting Authority of Zimbabwe is enjoined to monitor the Zimbabwean news media during elections to ensure that the conduct of political parties, candidates, broadcasters, print publishers and journalists are generally above board during this period.⁹ In this regard the Mission noted with satisfaction the existence of the Media Monitoring Committee chaired by ZEC to give effect to this statutory mandate.

⁷ Sibanda, Tichaona. (July 3, 2013). *Voter Registration Nightmare Continues for Aliens*. SW Radio Africa. Available at <http://allafrica.com/stories/201307040307.html>

⁸ See article 249(1)(f) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

⁹ See section 160K of the Electoral Act [Chapter 2:13].

The Mission noted with concern though, the partisan and biased coverage given to some political parties and their candidates by both the public and private media. This undoubtedly compromised the guiding principles of equality, equity and fairness.

6.2.9 The Role of Security Forces

The Mission noted with satisfaction that there was visible policing during political rallies and all the voting stations ensured law and order.

The Mission noted the concerns raised by several stakeholders regarding the candidature of serving members of the armed forces. The Mission was given assurance by ZEC that no serving member of the armed forces was registered as a candidate for any of the elections during this poll.

6.3 Election phase

6.3.1 Polling day

The ECF-SADC teams visited polling stations and observed the opening of the poll, the voting and counting processes at the polling stations, followed by the beginning of the tallying process in selected wards, constituencies and provincial centres.

The following observations were made:

- ✓ Most polling stations visited opened on time.
- ✓ Ballot boxes were properly sealed at the opening of poll. Inedible ink was available and used. The secrecy of the ballot was observed.
- ✓ The polling stations visited had adequate election material including ballot papers.
- ✓ There were variations in the manner in which the registration certificate was used. For instance, some voters provided registration slips issued after 10 July 2013 (after the end the registration period) and rightfully turned way.
- ✓ Some voters whose names did not appear in the voter register were referred to the command centre for verification of polling stations.
- ✓ Long and short voting queues were observed in the morning but subsided in the afternoon.
- ✓ The Mission noted with satisfaction that some polling stations had ramps to facilitate access for people with disabilities.
- ✓ In all polling stations visited, there was a remarkable representation of women as polling personnel. The Mission encourages that this be sustained as a best practice.

- ✓ It was noted that ballot boxes for the different elections all bear the same colour lids making it difficult to differentiate between Presidential, National Assembly and Local Authority elections.
- ✓ Some Presiding Officers did not know the number of registered voters at their respective polling stations.

6.3.2 Closing, Counting and announcement of votes

All polling stations visited were closed according to the election procedures. Voters already in the queue were allowed to vote.

The counting process was conducted in accordance with the statutory provisions. The process took place in the presence of party agents and observers.

The results were announced at polling stations and ward-level in the presence of party agents and observers as provided by the law.

7. Lesson and Good Practices from the 2013 Zimbabwe Harmonised Elections

The following lessons are drawn from the 2013 Zimbabwe Harmonised Elections and presented as areas and/or activities to be sustained as best practices. These include, amongst others:

- ✓ The deliberate constitutional and legislative steps taken to ensure greater representation and participation of women and people with disabilities in the electoral process;
- ✓ The statutory mandate given to ZEC to monitor the media during the election process;
- ✓ The transparent manner in which ZEC went about conducting the elections;
- ✓ Increased efforts initiated by ZEC to ensure stakeholder engagement;
- ✓ The use of local role models in voter education material;
- ✓ The design of voter education material in braille;
- ✓ Providing all observers with a CD rom containing the Constitution, the Electoral Act, regulations, code of conduct and other relevant information;
- ✓ Decentralization of accreditation of observers.
- ✓ The presence of ZEC offices in all provinces.
- ✓ The important role of the command centre to assist voters who need assistance on polling day.

8. Areas for improvement (recommendations)

Considering all the above, the Mission recommends that:

- 8.1 There is a need to clean up the voters' roll so as to ensure accuracy and adherence to legal provisions governing elections i.e. voters' roll & inspection.
- 8.2 ZEC enhance its poll readiness to ensure timely dispatching of election material to polling stations. This should include contingency planning and ensuring the arrival of polling material well ahead of polling day.

- 8.3 ZEC should intensify voter education on the legal changes introduced by the new Constitution; the possibility for the introduction of continuous voter education should also be investigated.
- 8.4 The percentage of excess ballot papers should be reduced.
- 8.5 The ZEC should take deliberate steps to produce braille ballot papers for future elections to give full effect for the constitutional ideal to making the electoral process accessible to people with disabilities.
- 8.6 The ZEC should take deliberate steps to improve warehouse facilities for the safe and secure storage of electoral of material.

9. Overall Assessment of the 2013 Zimbabwe Harmonised Elections

The ECF-SADC commends the Zimbabwe Electoral Commission for the tremendous efforts in organizing these elections and mobilizing the voters within such short period of time. This demonstration of professionalism and independence must be highly commended.

The Mission also commends ZEC, all political parties, candidates and the people of Zimbabwe for a peaceful, credible and efficient electoral process which was conducive for the people of Zimbabwe to freely participate in the 2013 Harmonised elections.

Signed on this 1st Day of August 2013, Harare, Zimbabwe.

Commissioner Adv. Notemba Tjipueja
Mission Leader
Electoral Commissions Forum of SADC Countries