

# **AFRICAN UNION COMMISSION**



## **REPORT OF AFRICAN UNION ELECTION OBSERVATION MISSION TO THE 31 JULY 2013 HARMONISED ELECTIONS IN THE REPUBLIC OF ZIMBABWE**

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**LIST OF ABBREVIATION**

|                |  |
|----------------|--|
| <b>AIPPA</b>   | Access to Information and Protection of Privacy Act        |
| <b>AU</b>      | African Union  |
| <b>AUC</b>     | African Union Commission                                   |
| <b>AUEOM</b>   | African Union Election Observation Mission                 |
| <b>BSA</b>     | Broadcasting Services Act                                  |
| <b>BSA</b>     | Broadcasting Services Act                                  |
| <b>CAF</b>     | Central African Federation                                 |
| <b>CHOGM</b>   | Commonwealth Heads of Government Meeting                   |
| <b>COMESA</b>  | Common Market in East and Southern Africa                  |
| <b>EMB</b>     | Election Management Body                                   |
| <b>ESC</b>     | Electoral Supervisory Commission                           |
| <b>EU</b>      | European Union   |
| <b>FPTP</b>    | First Past the Post (FPTP)                                 |
| <b>GNU</b>     | Government of National Unity                               |
| <b>GPA</b>     | Global Political Agreement                                 |
| <b>LTO</b>     | Long Term Observer   |
| <b>MDC</b>     | Movement for Democratic Change                             |
| <b>MDC-T</b>   | Movement for Democratic Change-T                           |
| <b>NDP</b>     | National Democratic Party                                  |
| <b>PAP</b>     | Pan-African Parliament                                     |
| <b>PF</b>      | Patriotic Front  |
| <b>POSA</b>    | Public Order and Security Act                              |
| <b>PPFA</b>    | Political Parties Financing Act                            |
| <b>PR</b>      | Proportional Representation                                |
| <b>RF</b>      | Rhodesia Front   |
| <b>RG</b>      | Registrar General  |
| <b>RGV</b>     | Registrar General of Voters                                |
| <b>SADC</b>    | Southern African Development Community                     |
| <b>SADC-PF</b> | Southern African Development Community Parliamentary Forum |
| <b>STO</b>     | Short Term Observer  |
| <b>UANC</b>    | United African National Council                            |
| <b>ZANLA</b>   | Zimbabwe African National Liberation Army                  |
| <b>ZANU</b>    | Zimbabwe African National Union                            |
| <b>ZANU-PF</b> | Zimbabwe African National Union–Patriotic Front            |
| <b>ZAPU</b>    | Zimbabwe African People’s Union                            |
| <b>ZAPU-PF</b> | Zimbabwe African People's Union – Patriotic Front          |
| <b>ZEC</b>     | Zimbabwe Electoral Commission                              |
| <b>ZESN</b>    | Zimbabwe Electoral Support Network                         |
| <b>ZHRC</b>    | Zimbabwe Human Rights Commission                           |
| <b>ZRP</b>     | Zimbabwe Republic Police                                   |

## I. INTRODUCTION

1. In response to the invitation by the Government of the Republic of Zimbabwe and the Zimbabwe Electoral Commission (ZEC) H.E Dr. Nkosazana Dlamini-Zuma, the Chairperson of the African Union Commission (AUC), deployed an African Union Election Observation Mission (AUEOM) to Zimbabwe to observe the Harmonized Elections held on 31 July 2013. The AUEOM took place from 21 July to 6 August 2013 and was preceded by African Union (AU) Long Term Observers (LTOs) who arrived in Zimbabwe on 15 June and remained in the country until 14 August 2013.
2. The AUEOM was led by H.E, Olusegun Obasanjo, former President of the Federal Republic of Nigeria as Head of Mission and H.E. Dr Aisha Abdullahi, African Union Commissioner for Political Affairs, as Deputy Head of Mission. The AUEOM comprised 69 observers (long term and short term) drawn from members of the Pan-African Parliament, members of the Permanent Representative Committee (PRC) of the African Union in Addis Ababa, Election Management Bodies (EMBs) and African Civil Society Organisations from the following countries: Nigeria, Cameroon, Gabon, Mauritius, Ethiopia, Djibouti, Algeria, Saharawi Republic, Zambia, Namibia, Lesotho, Burkina Faso, Cote d'Ivoire, Libya, South Africa, Kenya, Tanzania, Gambia, South Sudan, Uganda, Sierra Leone and Botswana.
3. The AUEOM was supported by a team of experts from the AUC, the Pan-African Parliament (PAP) and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. H.E. Dr. Nkosazana Dlamini-Zuma, Chairperson of the AUC paid a working visit to the Republic of Zimbabwe from 24 to 26 July 2013.

## II. OBJECTIVE AND METHODOLOGY OF THE MISSION

### Objective

5. The objective of the AUEOM was to make an independent, objective and impartial assessment of the 31 July 2013 Harmonised Elections in Zimbabwe. Pursuant to this objective, the AUEOM observed the elections within the spirit and letter of the Durban Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 (XXXVIII)), as adopted by the Assembly of Heads of State and Government of the African Union in July 2002; the African Charter on Democracy, Elections and Governance (2007), which came into force on 15 February 2012; the African Union Guidelines for Election Observation and Monitoring Missions as well as the legal framework for the conduct of elections in the Republic of Zimbabwe.

### Methodology

6. The AUEOM to Zimbabwe adopted a long-term observation methodology, which covered the pre-election, election and post-election phases. The first component of the AUEOM involved the deployment of nine (9) LTOs on 15 June to 14 August 2013. The second component was

the deployment of 60 Short Term Observers (STOs) who joined the LTOs beginning from 21 July to 6 August 2013.

7. To enable it achieve its objectives in accordance with the above-mentioned AU instruments, the AUEOM undertook the following activities:
- During the 6 weeks of pre-election phase, the LTOs were deployed in 4 teams that visited a total of 52 of 62 districts in the 10 provinces of Zimbabwe.
  - The LTOs observed several components of the pre-election phase including: voter registration, candidate nomination, campaigning, voter education, training of election officials and special voting by security forces and staff of the ZEC. LTOs also consulted with a wide range of stakeholders at national and provincial levels as part of the primary process of purposefully gathering information that would inform the work of the AUEOM. The stakeholders consulted by the LTOs included: the President of the Senate; the Prime Minister; the Minister of Foreign Affairs; the Co-Ministers of Home Affairs; senior officials of the foreign ministry; the diplomatic Corp; the UN Resident Representative; the ZEC; the Human Rights Commission, senior officials of the ZANU-PF, MDC-T and MDC. Others include the media, human rights groups, women's coalitions, the disabled association, domestic observer groups and civil society umbrella organisations.
  - Based on the observations by the LTOs of the political environment, party primaries, election preparations, registration, nomination and special voting processes and informed by consultations with key interlocutors prior to the elections, the AUEOM presented a Pre-Election Statement at a press conference held on 26 July 2013.
  - The LTOs were joined by the STOs from 23 July 2013 and went through a two-day orientation. Before deployment, the STOs were also briefed by representatives of ZEC, Zimbabwe Republican Police (ZRP), Zimbabwe Electoral Support Network (ZESN), Zimbabwe Women's Coalition, Zimbabwe Human Rights Commission (ZHRC), and the Research and Advocacy Unit (RAU) on preparation towards the elections.
  - As part of the commitment of the leadership of the AU to democratic elections on the African continent, H.E. Dr. Nkosazana Dlamini-Zuma, Chairperson of the AUC paid a working visit to the Republic of Zimbabwe from 24 to 26 July 2013. During her visit, Dr. Dlamini-Zuma consulted with the President of the Republic of Zimbabwe, the Prime Minister, the Deputy Prime Ministers, presidential candidates the Diplomatic Corps, Civil Society Organisation, and interacted with the Media. Dr. Dlamini-Zuma concluded her visit with a tour of the offices of ZEC.
  - The AUEOM leadership, headed by H.E. Obasanjo, also consulted with the relevant authorities and various electoral stakeholders as part of the AUEOM's continuous assessment of the country's electoral preparedness and to seek clarifications on issues of concern raised by stakeholders. Stakeholders consulted by the AUEOM leadership included: the ZEC, the President of the Republic of Zimbabwe, the Prime Minister, Deputy Prime Ministers, Minister of Justice, Minister of Finance, presidential candidates, political party leaders and presidential candidates, the Registrar General of Voters (RGV), the Diplomatic Corps and civil society organisations.

- The AUEOM also took the lead in coordinating the activities of international observer groups that were present in Zimbabwe to ensure a cross pollination of ideas, information and preliminary assessments. In this regard, the AUEOM convened pre and post-election joint meetings of heads of other international election observation missions. These meetings were attended by the following observer missions: SADC, SADC Council of NGOs, SADC Election Commission Forum, SADC Parliamentary Forum, SADC Electoral Support Network and COMESA.
  - During the election period, the AUEOM deployed 26 teams of observers to all 10 provinces, covering 52 of 62 districts. AUEOM observers witnessed the final stages of the campaigns, pre-polling activities and the polling and counting processes. On Election Day, AU observers visited a total of 350 of the 9700 voting stations.
8. Based on its observations and consultations during the election phase, the AUEOM to the 31 July 2013 Harmonised Elections in Zimbabwe presents this report covering pre-election, Election Day and post- Election Day period.

### III. BACKGROUND TO THE 31 JULY 2013 ELECTIONS

9. Formerly known as [Southern] Rhodesia, Zimbabwe lies between the Zambezi and Limpopo Rivers, and is bounded by South Africa, Botswana, Zambia and Mozambique. Zimbabwe covers an area of 390,759 sq. kilometres and has ten provinces: Harare, Mashonaland Central, Mashonaland West, Mashonaland East, Manicaland, Masvingo, Midlands and Matebeleland South, Bulawayo and Matebeland North. The country attained independence on 18 April 1980 after a protracted liberation war to dislodge Ian Smith's ultra-right wing Rhodesian Front (RF) that was intent on retaining white minority rule. The formation of the Central African Federation (CAF) by the British in 1953 – despite popular discontent from African nationalists in the territories – became, by and large, a rallying point for intensified, organised resistance to colonialism. Southern Rhodesia, with its relatively more developed manufacturing sector became, inevitably, a major fulcrum for labour-based opposition to the Federation. To this end, Joshua Nkomo, a leading labour activist in his time, was instrumental in forming the All-African Convention embracing nationalists from the territories to resist the federation, curtail white privilege and install equal rights and majority rule.<sup>1</sup>
10. The period between 1953 and 1964 was punctuated by intense political activity and significantly, the formation of organised African political parties albeit imperilled by restrictive colonial laws. The creation [and subsequent proscription] of the National Democratic Party (NDP) in this regard was seminal in the history of Southern Rhodesia, as it was out of the ensuing de-registration that - the Zimbabwe African People's Union (ZAPU) emerged in 1961 under Nkomo.<sup>2</sup> ZAPU was similarly banned in 1962 and consequently exiled. In August 1963, the Zimbabwe African National Union (ZANU) was formed, led by Reverend Ndabaningi Sithole only to be proscribed as ZAPU before it. While the Federation was broken up in 1963, as a consequence of concerted nationalist actions and British concessions, potentially paving

<sup>1</sup>. Zimbabwe DemocracyFactfile.1999.SARDC: Harare.

<sup>2</sup>. Chirambo K. & McCullum H.1999.Reporting Elections in Southern Africa: A Media Handbook. SARDC: Harare.

way for the independence of the three territories, the rise of Ian Smith in the RF in Southern Rhodesia prevented the country today known as Zimbabwe from transitioning into majority rule as its northern neighbour (Zambia) and Nyasaland (Malawi), both of which were granted independence in 1964<sup>3</sup>. Instead, exploiting a limited black franchise election in 1965, Smith's RF won all 50 seats in the legislative council and demanded independence from Britain for the white controlled colony. Despite the threat [and subsequent imposition] of international sanctions, Smith proclaimed a Unilateral Declaration of Independence (UDI) on November 11, 1965. The leaders of ZAPU and ZANU were imprisoned or exiled and both liberation movements consensually agreed to an armed struggle – a move that was to re-define race and ethnic relations and the democratization process in the country for the foreseeable future.

11. On 28 April 1966 (known as Chimurenga Day),<sup>4</sup>ZANU's guerrilla wing, the Zimbabwe African National Liberation Army (ZANLA) launched the first foray on Rhodesian forces at Sinoia (now Chinoyi), leading to an extended 13 year liberation struggle. Despite the release from prison of Nkomo, Robert Mugabe, and Sithole under negotiated terms brokered by President Kenneth Kaunda of Zambia in 1974, further efforts toward a ceasefire collapsed, igniting intensified conflict. Within ZANU, Mugabe was chosen to take over leadership from Sithole, upon the former's release from prison. Confronted by economic crisis and declining white morale, Smith attempted to appease Africans with an internal settlement' between his RF with the United African National Council (UANC) of Bishop Abel Muzorewa<sup>5</sup>. The elections, which ushered in Muzorewa as surrogate Prime Minister in April 1979 were delegitimized by a mass boycott and condemnation by a majority of the Africans – and therefore fell far short of installing a transitional regime for Rhodesia. Two key negotiated processes eventually paved way for the independence of Rhodesia hence: the first of these was the Commonwealth Heads of Government Meeting (CHOGM) held in Lusaka, Zambia in 1979; the second, was the Lancaster House Conference held from 10 September to 21 December, 1979, ranged at settling the armed struggle, discussing an independence constitution and arrangements for a transitional ceasefire period to facilitate elections.
12. The Lancaster House Agreement allowed the Patriotic Front (PF) parties [ZANU and ZAPU as they were termed], an opportunity to test their popularity – independent of each other - at the polls.<sup>6</sup>Following the first multi-party elections based on universal adult suffrage in February 1980, PF-ZANU won 57-seats, PF-ZAPU 20 seats and the UANC three (3) seats. The Rhodesian Front of Ian Smith dominated the 20 seats reserved for the white population as a result of the Lancaster House agreement.

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<sup>3</sup>. The Federation of the two Rhodesia's and Nyasaland ceased in 1963, after Britain recognised the strength and hostility of the African movements toward the coerced union. White settlers were displeased with these developments and hence pursued their own political ends. It is this settler movement that shored up Ian Smith's RF when it emerged to oppose independence for Zimbabwe and proclaim white supremacy. Despite threatened sanctions, smith declared UDI, supported by Apartheid South Africa and Portuguese controlled Mozambique.[Brown R.1995.Zimbabwe: Recent History, Africa South of the Sahara. Europa: London].

<sup>4</sup>.Chimurengas are wars of liberation closely associated with the parlance of ZANU-PF. The 1876/7 Shona/Matebele uprising is known as the first Chimurenga, followed by the 1966-1979 liberation war [Second Chimurenga]' and the protracted reclamation of land of the early 2000 [Third Chimurenga].

<sup>5</sup>.Brown R.1995. Zimbabwe: Recent History: Africa South of the Sahara. Europa: London.

<sup>6</sup>. During the liberation struggle, ZANU and ZAPU had entered into an uneasy alliance under the rubric of the Patriotic Front (PF).ibid.

13. The Prime Minister and leader of ZANU, Robert Mugabe, declared a policy of national reconciliation and reconstruction. The policy was meant to create stability and peace and some ZANU members were incorporated into Cabinet as part of the reconciliation project. Following the discovery of arms caches in 1981, allegedly belonging to PF-ZAPU, Joshua Nkomo was expelled from the Cabinet, and an armed rebellion in parts of Matabeleland and the Midlands provinces ensued from this period.
14. In 1985, elections were held in the context of an armed conflict in parts of the country. ZANU won 64 seats, ZAPU 15, the Conservative Alliance of Zimbabwe 15, the Independent Zimbabwe Group 4, ZANU (Ndonga) 1, and an independent candidate 1. Parliament from this period could make amendments to the Lancaster House Constitution as prescribed in the Agreement of 1979. One of the most significant developments in this regard was the scrapping of the 20 legislative seats reserved for whites in October 1987. The post-election phase was however shadowed by the imminence of civil conflict. Given the fact that ZANU and ZAPU forces were on the verge of conflict, Nkomo, who was accused of fomenting trouble, fled the country to the United Kingdom. The two sides eventually signed a Unity Accord on 22 December 1987 resulting in the formation of ZANU-PF with Mugabe as president and Nkomo as vice president. The united ZANU-PF won 117 of the 120 parliamentary seats in the 1990 elections.<sup>7</sup>
15. An economic Structural Adjustment Programme was introduced in the 1990s, and trade unionism became very active as a response to what urban workers saw as a consequential decline in their living conditions. Labour and civil unrest in 1997 conditioned by stringent economic restructuring led to ‘black November’ defined by the collapse of Zimbabwe dollar against international currencies, high interest rates, and increased inflation. There were also sharp declines in unemployment, healthcare and education. This marked a period of uncertainty for the country. During the same period disenchanted war veterans demanded compensation for their role in the liberation struggle – and despite an unbudgeted pay-off to the war heroes – violent occupations of white owned farms followed in 1998 led by the veterans.<sup>8</sup>
16. The emergence of the Movement for Democratic Change (MDC) in 1999, a creation of the trade union movement and civil society, benefitted from these changing political economic dynamics, re-igniting competitive multiparty politics in Zimbabwe. The MDC-civil society nexus and the ZANU-PF started competing and parallel constitutional reform processes respectively in 1999, which resulted in the government establishing a Constitution Reform Commission that formulated a draft constitution. The MDC and civil society campaigned for a “No” vote against the government-proposed constitution in a 2000 constitutional referendum resulting in its rejection. The period between 2000 and 2008 was characterized by more violent farm ‘invasions’ and repossessions; and the introduction of media, security and electoral laws

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<sup>7</sup>. Zimbabwe Democracy Factfile.1999. SARDC: Harare.

<sup>8</sup>. Eaglestone E. & Chitsike K.2013.Compromise or Compromised? An Assessment of Democracy in Transitional Zimbabwe Idasa: Cape Town.



which civil society formations and MDC denounced as being part of a scheme by ZANU-PF to consolidate power in the face of a new opposition and general unrest.<sup>9</sup>

17. Morgan Tsvangirai, president of the MDC, lost the 2002 presidential poll, which was declared 'not free and fair' by the European Union (EU), leading to an era of travel bans, freezing of accounts for top ZANU-PF officials and sanctions on Zimbabwe by the West. Further, Zimbabwe was suspended from the Commonwealth. Zimbabwe experienced extreme hardships resulting in mass migrations of citizens to neighbouring countries, hyperinflation, unemployment and unprecedented levels of instability.
18. After several interventions by SADC, Zimbabwe introduced electoral reforms in conformity with SADC Principles and Guidelines Governing Democratic Elections (2004), which saw the introduction of the Senate. The MDC split over whether it should participate in the 2005 parliamentary elections<sup>10</sup>; resulting in two factions – the MDC – T (led by Tsvangirai and MDC-M, led by Arthur Mutambara. Mutambara was later to lose intraparty favour, and was replaced by Professor Welshman Ncube). ZANU-PF prevailed in the 2005, amid claims of rigging by the MDC formations.
19. ZANU-PF enjoyed a parliamentary majority until the 2008 elections, which produced a hung Parliament. In the presidential election of the same year, Morgan Tsvangirai from MDC obtained 46% and President Robert Mugabe 43% in the first round. Following widespread political violence, Tsvangirai withdrew from the second round and President Mugabe was declared the winner. The resulting political crisis was mediated by SADC and ended in a Global Political Agreement (GPA), a power-sharing arrangement between the three dominant parties, ZANU-PF and the two MDC factions (MDC-Tsvangirai and MDC-Mutambara).<sup>11</sup>
20. The GPA helped to stabilize Zimbabwe politically and economically and committed its principals to constitutional and democratic reforms. Further, the GPA committed the parties to common problem resolution of the country's dire economic situation, the repatriation of millions of Zimbabweans in the diaspora; employment creation, national healing and reconciliation. The country in the period 2008-2013 also introduced a multi-currency economy, essentially 'outlawing' the Zimbabwe dollar.
21. The ensuing Government of National Unity (GNU) succeeded in conducting some political, economic and social reforms, and drafting and adopting a new constitution, which was approved by a national referendum in March 2013, coming into effect in May of the same year. It is against this background, that the 31 July 2013, Harmonised Elections were to be held.

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<sup>9</sup>. Ibid.

<sup>10</sup>. Presidential and parliamentary elections were not harmonised during this period and were held three years apart. The first Harmonised elections were held in 2008.

<sup>11</sup>. MDC-T in its 2013 manifesto, asserts that it joined the GPA as a strategic decision to stem the steep economic decline the country was experiencing and abuse of power; and commence a change toward a free and democratic Zimbabwe. MDC-T; 2013.

#### IV. LEGAL CONTEXT

##### The Constitution

22. The new Zimbabwean Constitution was enacted in May 2013 following a successful 'Yes vote' in a referendum to replace the Lancaster House Constitution of 1980. The adoption of the Constitution was part of the implementation of the GPA underwritten by AU and SADC. The Constitution sets out the standards for the conduct of elections, including electoral systems and processes, the timing of elections and delimitation of boundaries. The Constitution contains a declaration of rights, which guarantees *inter alia* freedom of assembly, association, expression and the media.
23. Further, the new Constitution provides for a hybrid system of First Past the Post (FPTP) and Proportional Representation (PR) systems. The FPTP is used for the 210-member National Assembly, while the PR is used for the 80-member Senate, the women's quota of 60 seats in the National Assembly, and the Provincial Councils based on the outcome of National Assembly elections. The President and Vice Presidents are elected directly by voters through the first past the post system. Each voter receives 3 ballot papers: one each for the Presidential, National Assembly and Local Government elections. The proportion of votes each party receives in the National Assembly election in each province will determine the number of seats that party receives in the Senate, in the women's lists for the National Assembly and in the Provincial Council elections.
24. In addition, the Constitution provides for the establishment of an independent ZEC to prepare for, conduct and supervise elections and referenda.

##### The Zimbabwe Electoral Commission Act

25. The Zimbabwe Electoral Commission Act as amended by the Presidential Powers (Temporary Measures) (Amendment of Electoral Act) Regulations S.I. 85 of 2013, provides for the functions of the ZEC which include delimitation of Constituencies and electoral boundaries; voter education, accreditation of election observers; preparation for and voting at poll; special and postal voting; conflict management (through Multi-party Liaison Committees) and monitoring of media coverage during elections. Sections 3c and 3d as amended by SI 85 of 2013 stipulate that all political parties and candidates have the right to fair and equal access to electronic and print media, both public and private. Schedule four of the ZEC Act sets out an electoral code of Conduct for political parties and candidates contesting elections. The Act further provides for the establishment of an electoral court, which has exclusive jurisdiction to hear appeals, applications and petitions as well as review any decision of the ZEC. Section 182 of the Electoral Act provides that every election petition shall be determined within 6 months of its presentation. Section 93 of the Constitution stipulates that challenges to a presidential election should be lodged within seven days after the declaration of the results of the election. In this regard, the Constitutional Court must hear and determine a petition or application before it within fourteen days.

26. Further regulations on Media Coverage of Elections-2008, Voter Registration, Accreditation of Observers, Nomination of Candidates and Special and Postal Voting Regulations 2013, read together with the Electoral Act make a composite legal framework for elections.

#### **Political Parties (Finance) Act**

27. The Political Parties Finance Act (PPFA) provides for funding of political parties by the State. Section 6 of the Act prohibits foreign funding of political parties and the solicitation of funds by citizens of foreign countries within Zimbabwe for political parties in Zimbabwe. Parties that garner 5% or more of the total number of votes cast in a general election are eligible to make an application to the Minister of Justice and Legal Affairs, who is the custodian of the funds.<sup>12</sup> Funds are disbursed each parliamentary year. The Act does not provide a distinction between electoral and non-electoral expenses of the funds received nor prescribes limits to donations or spending.
28. Currently, the legal framework does not require political parties or candidates to account to oversight bodies for the funds received. Section 8 of the PPFA grants the Minister of Justice and Legal Affairs power to make regulations that prescribe the form and manner in which records of donations are kept by political parties as well as the keeping of proper books of accounts, the audit of the accounts of political parties, and the form, content and publication of statements of accounts by political parties. Such regulations are yet to be adopted.

#### **Public Order & Security Act**

29. The Public Order and Security Act (POSA) have a bearing on electoral processes to the extent to which political parties and candidates may organise public gatherings. The POSA empowers the police to accept or turn down notifications of public political meetings or processions. Under Section 24 (1) of the Act, every person, organisation or association which wants to hold a public gathering should give at least four clear days' written notice of the holding of the gathering to the regulating authority (police) for the area in which the gathering is to be held. Section 24(6) makes it an offence (liable to a fine or imprisonment not exceeding six months) if an organiser does not notify the police of a public gathering as outlined in section 24(1).

### **V. PRE-ELECTION FINDINGS**

#### **Electoral Reforms**

30. Upon its deployment on June 15, the LTOs undertook an assessment of the legal and constitutional framework of Zimbabwe and the nomination, registration, campaigning and Special Voting Processes. Based on the assessments and reports of the LTOs, the AUEOM

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<sup>12</sup> The Constitutional Court heard an application by the Zimbabwe Development Party which sought funding for elections from the treasury. Mr Kisinoti Mukwazhe, ZDP leader, said his party required US\$1.5 million but it was denied funding on the basis that it did not garner five percent of House of Assembly seats as stipulated by the Political Parties Finance Act. He argued that the decision infringed the party's right to participate in the elections and it gave bigger parties an unfair advantage over smaller ones. The Constitutional Court dismissed the case indicating that reasons for its decision would be passed in due course.

released its Pre-election Statement on 26 July, 2013 which noted that the Constitution sets out the basic principles of the electoral system, including the regular holding of peaceful, free and fair elections conducted by secret ballot, based on universal adult suffrage and equality of votes, free from violence and other electoral impediments.

31. The AUEOM noted further that the principles enshrined in the new Constitution were in accordance with the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa. In addition, the AUEOM observed that the Constitution restored citizenship and voting rights to ‘aliens’ that were previously disenfranchised. The promotion of the participation of women through the introduction of legislated gender quotas in the National Assembly was also acknowledged. Similarly, the representation of persons with disabilities in the Senate was noted. The AUEOM, in addition, noted the introduction of the *Special Vote* for security forces and the ZEC officials who are deployed outside of their wards on Election Day. The AUEOM observed that the Special Vote was an open and public process conducted at designated polling stations. The AUEOM further acknowledged that the process was open to observers (foreign and domestic), political party agents and the media.
32. Nevertheless, the AUEOM highlighted the concerns raised by several stakeholders about the need to review communication, media-related and security laws in line with the new Constitution. The AUEOM took cognizance of several interlocutors’ views that fundamental freedoms may be curtailed should there be no further review of the provisions of the Broadcasting Services Act (BSA) and the POSA and the manner in which they were being implemented. Thus, the political antecedents that contributed to the post-elections violence of 2008 were feared to still exist.
33. While amendments were made in the electoral law to improve the participation of disabled persons in the electoral process by granting them the right to be assisted by a person of their choice; the AUEOM noted that greater efforts and improvements could still be made in this regard. For instance, by developing ballots in Braille for persons with visual impairment, this will further guarantee the secrecy of their votes.

### **Election Management and Election Preparedness**

34. As a preamble to its pre-election findings, the AUEOM noted that the credibility of any electoral process is partly predicated on the professionalism, service mindedness and integrity of the ZEC. To this end, Article 17 of the African Charter on Democracy, Elections and Governance (2007) emphasizes the primacy of independent and impartial national electoral bodies responsible for the management of elections. Article III of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa AHG/Decl. (XXXVIII) also re-affirms the centrality of all-inclusive, competent and accountable national electoral bodies to the management of a credible electoral process. The AUEOM recognized that since 2004, Zimbabwe had undertaken a number of inter-related steps to restructure its electoral management system. Between 1980 and 2004, the electoral management structure consisted of a complementary electoral governance system encompassing the Electoral Supervisory

Commission (ESC), the Delimitation Commission, the Registrar-General (RG) of Elections and the Election Directorate. Following recommendations by political parties, Civil Society Organisations and the ESC, the country re-modelled its electoral management system taking into account the SADC *Principles and Guidelines Governing Democratic Elections* adopted by the SADC Heads of State and Governments in Mauritius in 2004. Upon the abolition of the ESC through Constitutional Amendment No.17, the ZEC replaced the ESC and assumed the functions previously performed by the Registrar General of Elections, whose title had since been aligned to the new role of the Registrar-General of Voters (RGV).

35. Further efforts were made through facilitated inter-party dialogue within the framework of the GPA, to engender the institutionalization of an independent electoral management body, consistent with SADC and AU instruments governing democratic elections. Constitutional Amendment no: 19 of 2008 provided for the re-establishment of the ZEC, based on an apparently competitive, more inclusive and consultative method of appointing commissioners to the ZEC. Therefore, while the AUEOM noted the reservations expressed by some interlocutors about the independence or lack thereof, of the ZEC Secretariat, the AUEOM observed that the majority of the cross-sectoral stakeholders expressed confidence in the integrity and abilities of the Chairperson and Commissioners appointed under the reconstituted ZEC to professionally manage the elections in Zimbabwe. These perceptions were tested at national, provincial and district levels throughout the AUEOM's observation of the proceedings of the Nomination Courts and of registration processes. The AUEOM, therefore, was of the view that there was a perceptible improvement in the public's appreciation of the ZEC.
36. The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002) emphasizes that Member States are to ensure that the requisite logistics and resources, including funding, are availed to the electoral management bodies to enable them to execute their functions. Zimbabwe's July 31 elections were fore-shadowed by two inter-related factors: The first of these, was the unsuccessful applications to the Constitutional Court by Minister of Justice and Legal Affairs Hon. Patrick Chinamasa (responding to the recommendations of the Extraordinary Summit of the SADC held in Maputo on 31 June 2013); the MDC formations; and two private citizens, all seeking extensions to the date proclaimed by President Robert Mugabe. This raised expectations on the one hand, and trepidation on the other, regarding the time-frames necessary for the finalization of arrangements for critical elements of the electoral administrative process. Secondly, the AUEOM noted the persistent allegations of lack of funding for the ZEC to enable it to manage the electoral process effectively.
37. In the same vein, the AUEOM noted that the two pre-election interventions by the ZEC, that is, the *registration exercise* and *Special Voting* processes, were clouded by uncertainties about funding. The Special Voting process was exacerbated by logistical and management challenges encountered by the electoral management body during the Special Voting period (14&15 July). However, the AUEOM was re-assured by the statement by Minister of Justice and Legal Affairs Hon. Patrick Chinamasa that funds were availed to the ZEC for election purposes, in time for the 31 July Harmonized Elections.

### Voter Registration

38. Schedule 6 of the 2013 Constitution, provides that for the purposes of the first elections, the RGV is responsible for the registration of voters and compiling voters' rolls, under the supervision of the ZEC. The same provisions stipulate that the Registrar General must conduct, under the oversight of the ZEC, a special and intensive voter registration exercise for at least 30 days after the publication of the Constitution. The LTOs observed nomination and registration processes between 24 June and 9 July in all 10 provinces of Zimbabwe. In general, they noted a peaceful and largely orderly conduct of these processes in all centres observed. The AUEOM noted that registration, though essentially slow in pace, experienced increased interest from potential registrants toward the closing phases, indicative of the level of enthusiasm amongst the Zimbabwean people to exercise their democratic right.
39. While acknowledging the increased number of registered voters from 5.2 million to 6.4 million, as reported by the ZEC, the AUEOM noted that thousands more Zimbabweans were unable to register due to the expiry of the 30 day prescription period. The AUEOM also noted complaints of exclusion by previously disenfranchised Zimbabweans, whose citizenship rights were restored by the Constitution, about the relatively short time-frame in which they were required to regularise their citizenship and registration status. Although the extent of this exclusion could not be determined at this point by the AUEOM, the occurrence raised some concerns, if not important lessons for the future. The closure of this process, the AUEOM observed, was occasioned by disquiet from civil society and some interlocutors, who felt much more could have been done particularly in terms of embracing non-state actors in the pre-registration voter education exercise.

### Special Voting

40. Section 81 of the Electoral Act provides for the Special Vote—an instrument configured to facilitate early voting by disciplined forces and electoral officers assigned to duty on election-day. From AUEOM's observation of the *Special Vote*, it was generally noted that the process was characterised by logistical and management challenges, that denied 26,160 out of 65,956 registered members of the disciplined forces and electoral officers to cast their vote. In all centres, observed by LTOs, the special voting process was paralysed by a failure to deliver ballot papers timeously by the ZEC, resulting in long queues in most centres or complete inactivity in others.
41. The general impression of the AUEOM was that a combination of inter-related factors may have contributed to this occurrence: the complexities of managing a novel mechanism; late finalization of ballot papers, compounded by power outages, human resources incapacities and slow printing processes.

42. Notwithstanding the nascent challenges experienced by the ZEC in this regard and based on its analysis and consideration of the historical factors that occasioned the introduction of the *Special Vote*<sup>i</sup> the AUEOM was of the view that the *Special Vote* did, in fact, respond to African Union Principles Governing Democratic Elections with regard to its engendering increased levels of transparency and accountability not previously associated with voting arrangements for security forces.

### **Civic and Voter Education**

43. The OAU/AU Principles Governing Democratic Elections enjoin Member States to promote civic and voter education in close liaison with civil society groups and other relevant stakeholders. The AUEOM noted that while legislative provisions exist that enable the transmission of knowledge to the electorate by the ZEC, and/or by persons so designated by the ZEC, civil society stakeholders consulted, felt excluded and marginalised from the pre-registration voter education process. The AUEOM observed, consistently, through-out the registration process, the absence of civil society organisations in the electoral arena, a matter which raised some concerns about the principles of collaboration in this regard. The AUEOM was of the view that the pre-registration process might have benefitted greatly from cross-sectoral collaboration between the ZEC and other actors permitted by law to undertake these exercises.

### **Electoral Campaign**

44. The AUEOM noted that political campaigns were undertaken in a peaceful environment, conditioned by reconciliatory and messages of peace from all political actors. Notwithstanding the isolated reports of minor skirmishes, the AUEOM commended the leadership of the contesting political parties and Zimbabwean citizens for promoting a peaceful environment leading up to the elections.

### **The Media Environment**

45. Article 17(3) of the AU Charter on Democracy, Elections and Governance (2007) stipulates the principle of fair and equitable access by contesting parties and candidates to public media. Also Section 61 of the Constitution of Zimbabwe provides for freedom of expression and freedom of the media, while Section 62 encompasses the right to access information. Stakeholders from civil society, media-based organisations and opposition parties brought to the fore their continued concerns about the application of legal instruments related to freedom of expression such as the Access to Information and Protection of Privacy Act (AIPPA), introduced in 2003 and the Broadcasting Services Act (BSA), which, they claimed, constrain the expansion of private or community radio stations, therefore limiting the public sphere of communication.
46. While the AUEOM had not independently observed the selective application of these provisions, it noted that the media environment in Zimbabwe was highly polarised regardless of its classification.

47. Whereas, the AUEOM recognised the independence of the media to editorially determine the content of their broadcast or other communication, as provided for in Section 61 of the new Constitution of Zimbabwe, it was observed that both private-owned and State-owned media establishments were evidently politically inclined in their reportage.
48. The AUEOM's emphasis, however, was on the function of the public broadcaster which has a central role in elections, in terms of the *AU Charter (2007)*, to provide a platform for airing political messages or news coverage emanating from all political contestants. Further, the Constitution of Zimbabwe provides fair opportunity for the presentation of divergent views and opinions. In this regard, the AUEOM noted that the national broadcaster tended to provide live and in-depth coverage largely to a single political party. The AUEOM acknowledged, however, the marked improvement in political advertising from a number of political parties in the programming of the public broadcaster towards the general poll.

### **Election Security**

49. In its consultations with the Zimbabwe Republic Police (ZRP), the AUEOM was assured of the preparedness of the Police to sustain the peaceful political environment; and to exercise professionalism and impartiality in enforcing the law.

## **VI. ELECTION PHASE OBSERVATIONS**

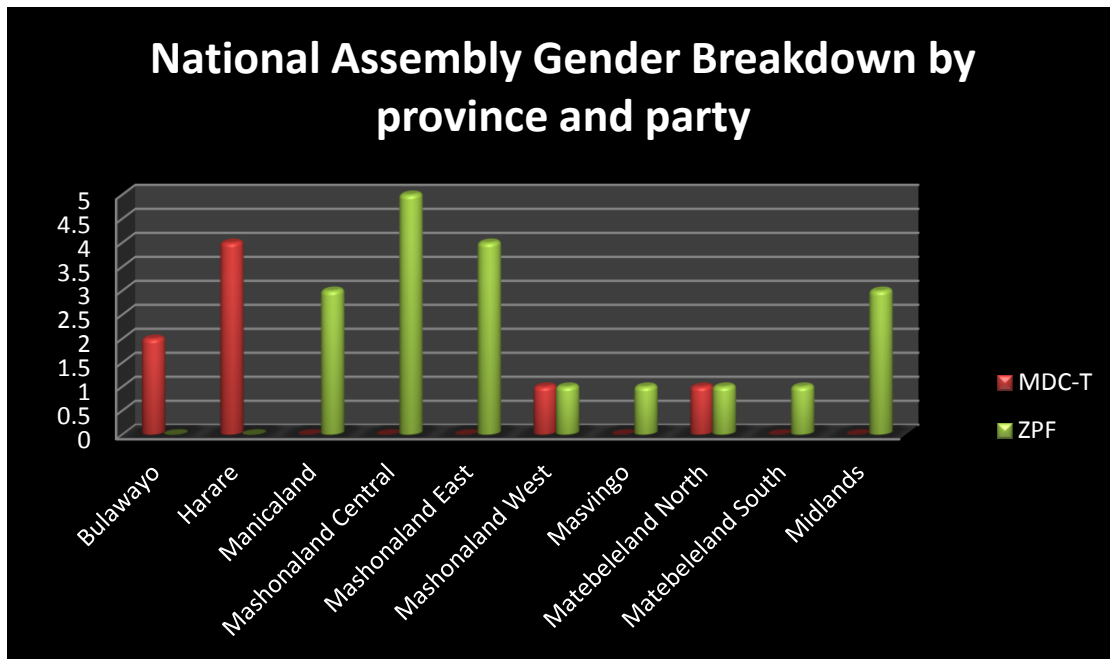
### **General Environment**

50. Following its observation of campaigning and Election-Day Activities, the AUEOM released its Preliminary Statement on August 2, 2013. The AUEOM noted that the polls were an important phase in a series of measures undertaken by the inclusive Government, under the terms of the GPA of 2008, during which Zimbabweans approved a new Constitution. The Constitution, enacted in May 2013, the AUEOM reiterated, had contributed immensely towards the improvement of the political climate in the country for holding peaceful elections.
51. The AUEOM observed that on 31 July 2013, Zimbabweans went to the polls with enthusiasm and in large numbers to elect their President, Parliamentarians and Local Authorities. The voting and counting processes took place in a peaceful and tranquil environment. Most of the polling stations observed by the AUEOM opened on time and were generally fully staffed, with all the required materials, and adequately secured by the ZRP.
52. Voting was conducted in an atmosphere devoid of violence, harassment and disturbances. The AUEOM observed generally, that from a historical perspective and in comparison to the 2008 elections, Zimbabwe had taken an important step in the conduct of its elections.



## Women's Participation

53. The AUEOM noted the pre-eminence of women serving as polling staff through-out the electoral process. With regard to performance of women candidates in the elections, the AUEOM noted the breakdown by Party of 210 National Assembly seats as follows: women garnered 11% of the 210 seats that were contested through the FPTP system. A gender breakdown by Province and Party of the 210 contested National Assembly seats showed that ZANU PF won 16 of 23 seats, while MDC-T won 7.<sup>13</sup>



54. Again, the AUEOM observed that the total number of seats for women in the National Assembly (including the 60 PR seats reserved for women in accordance with section 124 (1) (b) of the Constitution) is 83 out of 270 which translates to 31% of the total seats in the National Assembly. This was a major improvement from the 14% average presence of women in the legislature, in previous elections.

## Preparedness of the Electoral Management Body

55. The AUEOM noted that the institutionalization of an independent electoral management body in Zimbabwe, in line with AU principles for democratic elections, had improved confidence in the integrity and professionalism of ZEC to manage elections. The AUEOM acknowledged the improvement in the manner in which the ZEC managed the logistics of the 31 July, election after the lessons learnt from the special voting process.

56. The AUEOM further noted the initiatives taken by the ZEC to recruit and train officials who were professional in the conduct of the process on Election Day. The AUEOM commended

<sup>13</sup>. Please note, that the final verified results to be released by ZEC may present a slightly altered picture. These calculations, were provisional and for the purposes of informing this report in the interim.

ZEC for the high number of women recruited as polling staff during the harmonised elections. This was a positive development for the participation of women in the electoral process.

57. However, the AUEOM, also took cognisance of the following shortcomings during various aspects of the elections:

*Inspection of the Voters' Roll by the public and provision of copies to candidates*

58. While Sections 20 and 21 of the Electoral Act requires the ZEC to provide a copy of the Voters Roll within 'a reasonable' period of time, the AUEOM noted that the final Voters' Roll, was made publicly available two days before the election - rather late for meaningful inspection and verification by voters, parties and candidates to take place.

59. Whereas, the AUEOM took note of the rationalisation provided by the RGV to the AUOEM leadership in respect of the financial and time constraints faced by the RGV in compiling, updating and finalising the Voters' Roll within the limited timeframes following the proclamation by the President of the Republic of Zimbabwe of the 31 July as the election date, it was our view that the reasons for the non-availability of electronic copies of the final Voters Roll should have been publicly communicated to ease the anxieties that have been consistently expressed by several stakeholders throughout the pre-election period.

60. Given the strategic importance of a Voters' Roll to the conduct of a transparent electoral process, it was the AUEOM's view that the RGV and the ZEC should have better collaborated to ensure that all stakeholders were timely and regularly updated on the constraints and challenges relating to the Voters' Roll; and efforts being made to rectify them to meet the 31 July deadline. The AUEOM believed this could have minimised the persistent negative pre-election perceptions regarding the Voters' Roll. Further, greater transparency on the matter may have allayed fears raised by political contestants on the veracity of the Voters' Roll.

61. The AUEOM continued to express concerns about the matter of the Voters' Roll: Despite assertions by the RGV that hard copies of the voter's roll were availed to all political parties, - other than for one political party – AUEOM observers found no evidence that hard copies were generally available to all who required them and who by law should have them.

62. Related to this, the AUOEM noted serious concerns raised by some stakeholders regarding the duplication of voter names, which must not be allowed. The concerns about the Voters' Roll are critical in determining the degree of disenfranchisement or disqualification of legitimate voters from voting. It was the AUEOM's view that, the Voters' Roll should have been made available on time and displayed publicly in accordance with the law.

*Printing of ballot papers*

63. The AUEOM noted that the number of ballot papers printed (8.7 million), corresponding to 35% above the number of registered voters, was significantly higher than international best

practices (5-10%) and raised concerns of accountability of unused ballots. The AUEOM hopes that ZEC will account for the ballots to the satisfaction of stakeholders and all interested parties.

64. The AUEOM further noted that a significant number of local government ballot booklets had missing ballot papers and were not serially identified. One such case was noted at a polling station at Town House where two local government ballot booklets had only 99 papers instead of 100.

***High incidence of voters referred to command centre***

65. The AUEOM noted with great concern the high incidence of voters who were turned away at polling stations. Illustrative of this widespread phenomenon, in a polling station in Gwanda, Matebeleland South, 85 voters were referred to the Command centre. Reasons adduced by polling officers varied from voters appearing at the wrong ward and names not found on the Voters' Roll.

***Late publication of final list of polling stations***

66. The late publication of the final list of polling stations, barely 48 hours to the opening of polls, may have contributed significantly to the high number of voters who were turned away for being at the wrong polling stations and/or redirected to other polling stations or referred to the Command Centre. The AUEOM generally noted the recurrence of this phenomenon in various polling stations they observed. It would help to allay the fears and reduce agitation about possible disenfranchisement if the ZEC would make public the total number of eligible voters that could not exercise their civil right and duty of voting.

***High number of assisted voters***

67. The AUEOM noted the occurrence of high number of assisted voters in many polling stations nation-wide. Examples included polling stations in Muzarabani District, Mashonaland Central; at Musengizi, at the time of observation, 97 voters out of 370 were assisted; Kapembere Primary School 77 voters out of 374 were assisted and Bore Primary School 85 voters out of 374 were assisted. Furthermore, at a polling station observed by the AUEOM in Manicaland there were 97 assisted voters out of a total of 370 voters. The AUEOM noted that while the current electoral laws provide for assistance by presiding officers, electoral officers and police officers, the involvement of such officials may influence or restrict the free will of the assisted voter.
68. The AUEOM further noted that additional facilities for assisted voters such as wheel chair ramps and provision of materials in braille could significantly ease access by persons with disabilities.

*Media*

69. The media remained highly polarised along party lines and generally biased in their reporting, in clear violation of Article 160 J of the Electoral Act. The AUEOM reiterates that the State broadcaster could have provided a balanced platform for all competing parties and alternative voices in accordance with Article 17(3) of the African Charter on Democracy, Elections and Governance (2007).

**VII. POST-ELECTION ENVIRONMENT**

70. Post-Election Day, the LTOs continued to monitor the post-election environment in the 10 provinces until 14 August 2013. In general, the LTOs reported a tranquil post-election period throughout Zimbabwe, but one punctuated by unease as the losing parties took diametrically opposite positions in regard to responding to the election outcomes. The period was characterized by the announcement of the final results with ZANU PF and its President, H.E. Robert Mugabe being declared as winners of the 31 July 2013 Harmonized Elections.
71. However, a Presidential Petition was lodged by the MDC-T to the Constitutional Court, which sought to audit the outcomes and ascertain the authenticity of the results. In total, the MDC-T indicated to the AUEOM that it would be petitioning 100 results in the Electoral Court, in accordance with Section 93 of the Constitution which provides for the challenge to the validity of a presidential election within seven days after the date of declaration of the results of the election. The AUEOM noted that while the MDC-T in particular pursued the legal route, it did not discount the option of political dialogue to resolve its grievances with the ZANU-PF. In this regard, the assurance by MDC-T spokesperson Douglas Mwonzora that the Party would use legal, diplomatic and political routes was somewhat encouraging.
72. The AUEOM also noted that ZAPU claimed irregularities and illegalities in the conduct of the elections and forewarned its supporters through its website that its legal team would petition the Electoral Court.
73. The AUEOM observed further that while MDC-T and ZAPU were initially more inclined to petition the results, the other former GPA party MDC, led by Professor Welshman Ncube had conceded defeat and indicated it would not pursue the matter through the Court of Law, or approach SADC or the AU.
74. In terms of electoral management, the AUEOM observed that while the ZEC received positive feedback from various observer missions for its professional conduct of the polls in the face of the financial, logistical and organisational constraints occasioned by the 30 day window to the 31 July election day, the resignation of two commissioners ignited media speculation about a possible linkage of their actions to the MDC-T petition which was feared by some stakeholders to have the latent effect of denigrating the electoral management body's credibility. Both Commissioners were nominees of the two MDC formations. By the close of the AUEOM, it

had not independently ascertained the reasons for resignation or their relationship with the outcomes of the polls, if any.

75. Another contentious issue that arose in the post-election phase, which was raised in the AUEOM's Preliminary Statement, pertained to the occurrence of referred voters: Responding to an inquiry by the LTOs, the ZEC indicated from preliminary and unverified provincial statistics provided on the 8 August 2013 that 304,890 persons were turned away out of a total of 3,480,047 voters (8.7%). These voters were either found to have had improper documentation or were unregistered in the wards in which they presented themselves, among other considerations.
76. The AUEOM, noted, finally, that the ZEC announced results in accordance with its Constitutional mandate. The results were announced within the 5-day timeframe provided by Section 110 of the Electoral Act. Presidential results were announced on Saturday 03 August 2013.

### Post-Election Disputes and Complaints

77. The AUEOM observed that electoral disputes and complaints were expeditiously channelled to the Electoral Court as defined by law, by the losing parties, resulting in the eventual dismissal and inauguration of the winner: ZANU PF President, H.E. Robert Mugabe on 21 August 2013, within the stipulated 14 days post-election period. The application by Hon. Morgan Richard Tsvangirai, President of the MDC-T, to the Constitutional Court seeking the nullification or setting aside of the results of the 2013 elections, cited President Robert Mugabe as the 1st Respondent, the ZEC as 2<sup>nd</sup> Respondent, the ZEC Chair as the 3<sup>rd</sup> respondent and the Chief electoral officer as 4<sup>th</sup> respondent. The petition challenged the results on the following grounds:
- *The Elections were held in breach of constitution:* The MDC-T contended that the proclamation of 31 July 2013 as the Election Day by President Robert Mugabe – allegedly without consultation – and supposedly using the Presidential Powers (Temporary Measures) Act and the amended Electoral Act was ultra vires the constitution. The MDC-T argued that Section 157 of the Constitution prescribes that electoral amendments could only be made by Parliament.
  - The MDC-T argued further that the closure of registration centres on 9 July 2013 rendered up to 750,000 potential registrants unable to register, violating sections 155, and sections 67 and 68 which guaranteed citizen voting rights.
  - The alleged denial by the RGV to avail the electronic voters' roll in searchable and analysable format; and delivery of final versions of the hard copies 'a few hours before' the polls violated the provisions of the law.
  - The Voters' Roll allegedly contained 870,000 names in duplicate rendering it difficult to determine the number of people registered to vote. In addition, the petition, asserted, the ZEC printed 2 million extra ballots, over and above the 6.4 million registered voters, allegedly increasing the risk of multiple voting.

- *Abuse of the special voting system:* There was no credible means to ensure there was no double voting in the Special Voting Process and subsequently, in the July 31 Polls. The MDC-T president argued further that the number of persons eligible to vote under Special Voting did not tally with the number of personnel in the Service of the ZRP.
- *Postal votes:* – designated for public servants in the Foreign Service – were delivered to the Ministry of Foreign Affairs on 17 July 2013, allegedly hours before the stipulated deadline rendering it improbable for postal voting process to be executed in accordance with the law.
- *Intimidation and violence:* The MDC-T president argued that while there may not have been overt physical violence, the election was characterized by psychological violence carried over from the violence and trauma visited on citizens during the 2008 elections – an allegedly significant part of this, having been orchestrated by uniformed forces.
- *Voting under duress – the problem of assisted voters:* Thousands of [mostly rural] Zimbabweans were allegedly forced to plead illiteracy, and therefore assisted to vote. The MDC-T president contends that the 206,901 assisted voters were coerced to vote for ZANU-PF. The petition contended that more than 200,000 votes attributed to President Mugabe in the final tally were due to electoral fraud – a basis upon which the poll result should have been nullified.
- *Turning away of voters at polling stations:* Hon. Tsvangirai claimed further that up to 750,000 voters were turned away for a variety of reasons, which violated their voting rights and contravened the SADC Principles and Guidelines Governing Democratic Elections (2004).
- The petition also alleged that there was rampant and illegal use of voting slips, which persons whose names did not appear on the register were allowed by ZEC to use in order to vote. MDC-T president argued that the Constitution specified that only persons on the voter's roll should be permitted to vote.
- The petition further alleged that not only did the ZEC print 35 % more ballot papers [compared to the 5% internationally recommended], it allegedly provided no information on ballots for special voting. The petitioners demanded, in this regard, a forensic audit by an independent firm.
- *Bribery:* The petition further alleged that ZANU-PF was involved in vote-buying through mass distribution of food relief during the campaign in contravention of the Party Political Code of Conduct and the Electoral Act.
- *Media Bias:* Lastly, the MDC-T president alleged that 90 % of the programming by the state broadcaster, the ZBC, was dedicated to positive depictions of the ZANU-PF while 10 % was apportioned to the opposition, presented in largely negative terms.<sup>14</sup>

78. The AUEOM noted that, in an opposing affidavit filed by Justice Rita Makarau, the ZEC Chair's approach was to argue that the MDC-T petition 'lacked sufficient precision as to

<sup>14</sup>. Presidential Petition in the matter between Morgan Tsvangirai & Robert Gabriel Mugabe & ZEC & Rita Makarau & Chief Electoral Officer, in the Constitutional Court of Zimbabwe held at Harare: Case Number CCZ. 2013.

inform the 2<sup>nd</sup> respondent on the case he or she has to answer'. According to the affidavit availed to the AUEOM, the following were the counter-arguments advanced by the ZEC Chairperson Justice Rita Makarau:

- The ZEC acted as an independent Commission in accordance with the Laws of Zimbabwe – and not as an agent of ZANU-PF president Robert Mugabe.
- Hon. Tsvangirai had not advanced any grounds to support his allegations that the results declared by the ZEC were not valid.
- The times-frames for conducting the 2013 Harmonized Elections were determined in line with the directives given by the Constitutional Court, whereupon the ZEC put in place all measures necessary for the conduct of a free and fair election.
- The ZEC was in constant consultations with all stakeholders including Hon Tsvangirai and at no point did he indicate that the measures being taken by the ZEC were not in accordance to the holding of a free and fair election – or that preparations for the polls should cease.
- The ZEC could not accede to a demand for opening of ballot boxes by the applicant because in terms of Electoral Act, Section 70 (4) all material related to the election was to be sealed and opened only in accordance with a court order (the ZEC underscored that Hon. Tsvangirai was duly advised upon this approach to the Electoral Court).
- The 30 day registration period had run its full course (10 June, to July 9, 2013); and Hon Tsvangirai had allegedly not demonstrated how many eligible voters remained unregistered nor how this detracted from the results of the 2013 polls. The Chairperson of the ZEC argued further that the voter's roll was constituted as a data-base of registered voters – not eligible or unregistered electors.
- The conduct of the *special and intensive voter registration exercises* were the responsibility of the RGV – ZEC was merely a supervisory body. Nevertheless, ZEC Chairperson contended that the RGV had done its utmost under prevailing time constraints to increase registration teams in each district from 4 to 8 to cater for those eligible to vote.
- The Chairperson of the ZEC underlined that the RGV also issued national Identity cards, birth certificate and replacement IDs during the same exercise which might account for the increased number of prospective registrants [so not all in the queue desired to vote]. The Chairperson of the ZEC doubted Hon. Tsvangirai's right of action in relation to disenfranchisement matters because voter registration was a continuous process; therefore the phenomenon of eligible voters was a daily occurrence. The Chairperson of the ZEC asserted further that Hon. Tsvangirai should have demonstrated the number of his supporters disenfranchised and how this would have affected the results of the 31 July 31 Harmonised Elections. To this end, the ZEC was satisfied that it had catered for as many voters as practicable under the circumstances and the 3, 480, 047 Zimbabweans who cast their ballots on polling day – had done so out of their own volition, leading to a credible election.
- The matter of access to the electronic voter's roll had been settled in a preceding Electoral Court application by the MDC-T before Justice Mafusire; where a full

explanation was proffered by the RGV regarding the challenges his office faced in producing both hard copies and electronic versions of the rolls. It was agreed by the parties that the hard copies of the voter's roll would be provided while the electronic version would be availed as and when those challenges were resolved. In the context of the RGV's arguments and the subsequent agreement between the parties, the ZEC's assertion in this regard, was that the applicant (MDC-T) had agreed that it would be 'reasonable' to be supplied a copy of the electronic roll outside of the legal framework but through the court order. Justice Makarau of the ZEC argued that Hon Tsvangirai should have reserved his rights at that stage.

- The ZEC argued that the extract of the voters roll with duplicate names presented by Hon. Tsvangirai had been dismissed by the RGV as not being authentic. Further, the ZEC contended that while Hon Tsvangirai had indicated his awareness of the duplication of voter details in June 2013, he had raised no formal legal objection until the aftermath of the elections. In addition, the Chairperson of the ZEC's affidavit maintained that Hon. Tsvangirai had failed to demonstrate how double voting would occur – and if it did; how it might favour other candidates other than himself.
- To this same end, the ZEC asserted that Special Voters, numbering to 60,000 approved voters, could not have altered the results even if they had 'double voted' given that President Mugabe won the poll by more than one million votes. In addition, the total number of Postal Votes was only 92.
- The ZEC further argued that Hon Tsvangirai could not demonstrate how he determined that the alleged 200,000 assisted voters, voted in favour of President Mugabe since the law provided for a secret ballot. The right of action in that regard, the ZEC, contended, did not lie with Hon Tsvangirai, but with the 200,000 who were allegedly forcibly assisted. The ZEC explained further that assisted voting is provided for a variety of reasons – not just illiteracy. Ill health and unfamiliarity with the electoral process were among the several considerations.
- The ZEC argued further that the MDC-T President could not adduce evidence that 750,000 voters were turned away or how this would have altered the result. ZEC contended that voting patterns did not, in any case, favour Hon Tsvangirai: In Mashonaland West, where Hon. Tsvangirai's party won all but one seat, 56,733 persons were turned away; In Manicaland where MDC-T lost 3 National Assembly seats of those it previously held, 42, 525 voters were turned away. To this end, President Mugabe could equally have made the same claims and therefore, the MDC argument was not sustainable and the applicant 'incapable of proof'.
- The indelible ink used during the polls was to international specifications and was certified by SICPA South Africa (PTY) Ltd on 19 July 2013 and confirmed by the ZRP Forensic Science Lab.
- The printing of 35% extra ballots was to ensure adequate voting material to meet any exigencies that might arise.
- The ZEC contended that it received only one complaint from MDC-T regarding the allotment of space for advertisement by ZBC and had responded in a meeting with the ZBC to rectify the situation.



- The ZEC denied any relationship with Israeli company NIKUV International Projects and declared its lack of knowledge of the firm's nature of business; and that any relationship with RGV would be outside of the ZEC's purview.<sup>15</sup>

79. The AUEOM noted that Hon. Tsvangirai withdrew his petition on 16 August, 2013, citing the non-availability of election material. The AUEOM further noted that in a related matter, High Court Justice Chirembiri Bhunu had reserved judgement in the case in which the MDC-T sought to compel the ZEC to release election materials used in the 31 July 2013 Harmonised Elections.

80. Following the withdrawal of the petition for the reasons here stated, the Constitutional Court, presided over by Chief Justice Godfrey Chidyausiku, dismissed the petition and made the following ruling:

- An election petition challenging a presidential election was unique; in that it could not be terminated by a withdrawal in terms of section 93 of the constitution of Zimbabwe. It could only be finalized by a determination of the Constitutional Court by either declaring the election valid, in which case the president is inaugurated within 48 hours of such determination or alternatively; by declaring the election invalid, in which case a fresh election must be held.
- Zimbabwe's 31 July 2013 Harmonised Elections were held in accordance with the laws of Zimbabwe, in particular the constitution of Zimbabwe and the Electoral Act (Chapter 2:13).
- That the election was free, fair and credible – consequently the result of that election was a true reflection of the free will of the people of Zimbabwe who voted; and
- That Robert Gabriel Mugabe was duly elected president of the Republic of Zimbabwe and declared winner of the 2013 Harmonised Elections.<sup>16</sup>

81. The AUEOM acknowledges and commends the political contestants for adhering to established legal channels in resolving their post electoral disputes and hopes for a sustained post-election dialogue to continue to address any outstanding matters pertaining to the 2013 Harmonized Elections.

## VIII. RECOMMENDATIONS

82. In general, while the AUEOM observes that the 31 July 2013 Harmonised Elections in Zimbabwe were professionally and successfully conducted by the ZEC despite the financial, time and staff constraints. Based on the overall observations of the AUEOM, it offers the following recommendations to help address some of the shortcomings identified:

<sup>15</sup>. Opposing Affidavit of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Respondents in the matter between Morgan Tsvangirai & Robert Gabriel Mugabe & ZEC & Rita Makarau & Chief Electoral Officer, in the Constitutional Court of Zimbabwe held at Harare: Case Number CCZ.2013.

<sup>16</sup>. <http://www.thezimbabwean.news/zimbabwe/6>.

- a. While in the end, the ZEC was provided the necessary resources to conduct the 31 July, 2013 Harmonised Elections, the AUEOM observed with concern, that the funding was not consistent or timely at various stages and tended to generate undue anxieties. To this end, it is recommended that there be greater transparency on; and adequate provisions of; logistics and resources to the ZEC for organising elections as prescribed in the OAU Declaration on the Principles Governing Democratic Elections in Africa (2002).
- b. The Voters' Roll should be made available to all stakeholders for verification and inspection, in both electronic and hard copy format, at least 14 days before elections. The integrity of the Voters' Roll must be assured through greater transparency, accessibility and public communication, with strict adherence to the provisions of the relevant statutes in laws of Zimbabwe.
- c. There should be sustained public communication regarding the time-frames for special and intensive voter registration exercises and the closing dates thereof; to avoid unnecessary disputes and complaints.
- d. The AUEOM recognizes the complexities of the Special Voting and the necessity of it, in equal measure. The Special Vote allows for uniformed forces and the ZEC officials deployed on Election-Day to cast their vote so as to dedicate time to electoral security, management and administration. As noted earlier, this facility has engendered transparency in the conduct of these special votes, which were previously not subject to independent domestic or foreign observation. However, to ease the strain on the ZEC, it is recommended that further exploration be made by the ZEC amongst Member States employing this facility to find ways of lubricating the process. Further, the requirements for persons to be afforded special voting privileges, may need to be subjected to inter-party and public dialogue to enable consensus-based outcomes.
- e. Security markings on ballot papers need to be improved [as in some instances, observers noted the poor quality of the inscriptions] to prevent any possibility of duplication.
- f. Zimbabwean authorities should reconsider the use of Police Officers in assisting voters as it may unduly influence the manner in which they vote. In future, authorities might wish to consider the reduction of parameters that necessitate persons to qualify as 'assisted voters'. The number of persons allowed to 'assist' voters should also be reviewed with a view to reducing it downward from four.
- g. While the AUEOM acknowledges that the 6.4 million registered voters in the 2013 Harmonised Elections was relatively high, it calls for the greater involvement of non-state actors in civic and voter education throughout the democratic process to enhance and sustain participation in elections in future. To this end, consideration must be made to review relevant sections of the Electoral Act to enable the wider involvement of civil society in these processes.
- h. The lack of/or limited access to the State Broadcaster was one of the most persistent complaints from opposition parties and non-state actors in the pre-election and election phases, and has been the subject of post-election disputes. The role of the media, particularly, the state broadcaster has been well articulated in relevant

instruments of the AU as being central and cardinal to levelling the playing field and contributing to fair practices. The AUEOM observes that this matter has formed the basis on much contestation in the 2013 Harmonised Elections therefore it is recommended that the ZEC scrupulously enforces the relevant regulations of the Electoral Act to afford alternative voices and all political parties equitable access at all times during elections.

- i. The AUEOM further recommends that the provisions of the BSA be fully implemented to enable the liberalization of radio and television ownership, thereby providing a broader platform for all stakeholders to voice their opinions, consistent with the stipulations of the new Constitution. The involvement of civil society and other actors in the review of the legislation such as the AIPPA and POSA and the manner in which they are applied will also enhance the country's progress toward democratic consolidation.