



**SADC Performs a Back-Step on Democratization – CIZC**



**Zim electoral dispute arbitration needs facelift**

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*satisfaction the holding of free and peaceful harmonized election”.*

THE Crisis in Zimbabwe Coalition (CiZC) has expressed concern that the Southern African Development Community (SADC) may have back-stepped from the democratization front, following the bloc’s endorsement of an unfair election in Zimbabwe that was characterized by several violations of regional poll standards.

Joy Mabenge, the CiZC Regional Information and Advocacy Coordinator, said the back peddling from democratic ideals was evidenced by lowering of electoral standards after the regional bloc endorsed the disputed July 31 election at the 33rd SADC Summit of the Heads of State and Government in Lilongwe, Malawi, which ended on August 18.

*“The reality of the matter is that we really need to push SADC because they set principles and guidelines which are water tight that must be followed by every member state and what seems to be happening now is that SADC is allowing itself to lower standards as evidenced by the Zimbabwean case,”* said Mabenge.

Although civil society had expected the regional bloc to look into the unfairness of the election given that several guidelines on democratic elections set and endorsed by the member states were violated, the Summit in Malawi gave the Zimbabwean government a pat on the back saying it *“noted with*



*“Principle 2.1.5 of the SADC principles and guidelines governing democratic elections stipulates that there should be ‘equal opportunity for all political parties to access the state media’ and yet it is clear from the behaviour of the Zimbabwe Broadcasting Corporation (ZBC) that they did not give equal access to other political parties and when they did it was simply a broadside on those parties without any fair coverage. The SADC observers witnessed this and it is shocking for SADC to then declare such an election as free and fair”,* added Mabenge.

Mabenge said that the failure by the bloc to censure Zimbabwe with regards to the unfair election could set a bad precedent and give the impression that democratic standards in the re-

gional bloc had hit a low point ahead of elections to be held in Madagascar, Malawi, South Africa, Mozambique and Swaziland by 2014.

The elections in the mentioned SADC countries are going to be held with President Robert Mugabe who “won” an unfair election preparing to take the bloc’s chair in 2014.

CiZC Director McDonald Lewanika said there were still avenues for engagement in search of democracy by Zimbabweans with SADC under the tenure of Malawi’s President Joyce Banda as SADC chairperson following her assumption of duty at the recent Summit in 2013.

Commenting on President Mugabe’s new role as deputy chairperson, Lewanika said: *“In reality there is nothing serious about that development because it’s a position which just rotates among the member states and not given on merit.”*

Mabenge, who attended meetings with civil society leaders from the region on the sidelines of the SADC Summit in Lilongwe, urged regional citizens to unite for the transformation of SADC itself and against a possible repeat of the trend of lowering standards, which he said was enabled by what he termed “protectionism”.

*“The problem is that we now have protectionism in SADC where the principle is that ‘you cannot harm your brother or sister’. The pressure that we would like to apply on the regional bloc from now onwards with fellow SADC citizens is that it is not good to lower standards as it flies in the face of the democratization agenda in the region,”* he said.

Mabenge said: *“As CSOs from Zimbabwe and across the SADC region pushing for accountability of our leaders at every level at which they operate, we left Malawi with greater strength and conviction that we shall keep on engaging and pushing SADC at all levels.*

*“We want to ensure that they remain true to their commitments as espoused in the guidelines, principles and protocols collectively set as standards for member countries.”*

On a positive note, Mabenge said that the civil society leaders who were in Malawi on the sidelines of the SADC Summit had welcomed the news of a possible re-introduction of the SADC tribunal.

*“It is encouraging to note that there is renewed effort to have the SADC Tribunal reinstated, with strong calls also for the establishment of a SADC Court of Justice to serve as a fall back institution where national processes fail citizens,”* he said.

The essence of developing the SADC principles and guidelines governing democratic elections was to enhance transparency and credibility of elections and democratic governance as well as ensuring the acceptance of election results by all contesting parties. The Guidelines are not only informed by the SADC legal and policy instruments but also by the major principles and guidelines emanating from the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa – **AHG/DECL.1 (XXXVIII) and the AU Guidelines for African Union Electoral Observation and Monitoring Missions – EX/CL/35 (III) Annex II.**

## Zim electoral dispute arbitration needs facelift

THE election dispute arbitration in the country has come under the spotlight in the wake of the disputed July 31 harmonized election with commentators arguing there is room for improvement despite new laws that set deadlines for the resolution of the disputes.

Following a dispute over the lack of fairness in the recent election, the Movement for Democratic Change (MDC) led by outgoing Prime Minister Morgan Tsvangirai approached the courts with a petition with analysts predicting that the matter would not be handled in a satisfactory manner as shown in the past.

Dr. Phillan Zamchiya, a lecturer at the Oxford University, recently told a civil society meeting in Harare that Zimbabwe's electoral dispute management system left a lot to be desired.

Dr. Zamchiya opined that in the past elections, since the emergence of potent opposition politics, the electoral dispute management system seemed to be pliant to the ruling Zimbabwe African National Union Patriotic Front (Zanu-PF) party.

*"Approaching the courts is a waste of time because some past electoral disputes were never resolved. President Robert Mugabe appointed all the judges," Zamchiya said.*



Recently, Transparency International Zimbabwe (TIZ) Director Mary Jane-Ncube told the Crisis Report that some of the institutions involved in electoral dispute arbitration were "captured institutions".

Trust Maanda, a board member with the Zimbabwe Lawyers for Human Rights said the previous disputes which were not resolved in the country were "bygones" because the amended Electoral Act now sets deadlines on resolution of the disputes although there was need to implement the law to make the improvement a reality.

*"What is left on the ground is whether they make the law a reality," Maanda said.*

The new Electoral Act amended before the 2013 elections saw a six month and 14 day deadline being set for the resolution of Parliamentary and Presidential election disputes respectively

after previous electoral disputes in 2000 and 2005 were not resolved in time until the lapse of the tenures of office over which they had arisen.

The failure by the MDC in its bid to have the court grant it access to the July 31 harmonized election material to supposedly evidence allegations of electoral fraud has since raised fresh concerns over the handling of electoral disputes.

Maanda said the Electoral Court's evasiveness with regards granting the MDC an opportunity to examine the electronic voters' roll and prove their allegations after they lodged a Constitutional Court petition to dispute the elections was inexplicable.

*"The law is clear that you must have a voters' roll. It will be wrong for the court to deny one that important document," Maanda said.*

High Court Judge Justice Chinembiri Bhunu presiding over the Electoral Court indefinitely postponed judgment on the matter of the voters' roll and other material requested by the MDC, while the Constitutional Court insisted on hearing the matter in spite of the MDC's indication that it had withdrawn the matter.

*"If a litigant has withdrawn a case he cannot be forced to pursue the matter. What if he can no longer foot the legal bills?"*

*"There is nothing new about constitutional court litigation, it is still litigation.*

*"The lawyers cannot be forced to argue a matter which their client is no longer interested in," Maanda said.*

Maanda said it was not clear why one would be forced to appear before the courts if they had been denied the evidence they need for arguing their allegations by a ruling of the same judiciary system, pointing to the incongruity of the MDC being dragged to Constitutional Court after the Electoral Court denied them access to election material.

Meanwhile, the Constitutional Court has made a ruling declaring President Robert Mugabe the winner of the election paving the way for his inauguration for a seventh term on Thursday, 22 August, 2013.