



## **Brief Report on the 2013 Harmonised Elections.**

### **SAPES Policy Dialogue Forum meeting, 6<sup>th</sup> August 2013**

#### **Preliminary comments:**

A number of preliminary comments are necessary in order to more fully understand these elections.

The fundamental purpose of the Global Political Agreement (GPA) and the Inclusive Government was to take Zimbabwe out of crisis into full international acceptability, and this had been necessitated by the unacceptable elections in 2008. However, apart from relatively minor changes, the reform agenda envisaged under the GPA did not materialise, and there was endless wrangling over the “outstanding issues”.

From the Livingstone Summit in March 2011 right up to the Maputo Summit in June 2013, SADC insisted on a Road Map that had a new Constitution and reforms, and then an election. This again did not happen: the Constitution finally emerged months before the end of the life of the 2008 Parliament, but no reforms had taken place of any substance by the time that the President set the date for elections.

In Maputo, SADC requested more time to ensure that the elections were credible, but this did not happen. The SADC Facilitator report also specifically mentioned adherence to the SADC Principles and Guidelines Governing Democratic Elections, and it is relevant that a number of Zimbabwean groups made statements about the pre-election, and all largely concluded that there were serious problems that appeared in violation of these Principles and Guidelines<sup>1</sup>.

#### **The Pre-Election Period:**

As noted by various Zimbabwean organisations, there were problems in the pre-election period.

Firstly, the decision of the Constitutional Court to maintain the election date as the 31<sup>st</sup> July 2013, without detailed judgement, led to a series of illegalities. Most serious of these, and apparently condoned by the Constitutional Court, were the constitutional and legal problems occasioned by the Presidential Proclamation, and the likelihood that the subsequent use of the Presidential Powers (Temporary Measures) Act to make a number of electoral amendments in violation of the Constitution, the legal basis for this election is highly dubious to say the least.

Secondly, the precipitate proclamation of the election date for the 31<sup>st</sup> July 2013 itself resulted in a continuous number of illegalities on the part of ZEC, and some of these have had to be “cured” through decisions of the Courts. Paramount amongst these problems were the Special

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<sup>11</sup> See, for example, *Statement on the Pre-election Conditions for the 2013 Harmonised Elections*, from a special meeting of the SAPES Policy Dialogue Forum, 30<sup>th</sup> July 2013.

Votes, and the condoning of the failure to release the Voters' Roll.

Thirdly, there was an apparent bias towards the registration of rural voters in the intensive voter registration process. This seems to be against the intention of the new Constitution (155(2):

*The State must take all appropriate measures, including legislative measures, to ensure that effect is given to the principles set out in subsection (1) and, in particular, must—*

*(a) ensure that all eligible citizens, that is to say the citizens qualified under the Fourth Schedule, are registered as voters;*

*(b) ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to cast a vote, and must facilitate voting by persons with disabilities or special needs;*

Fourthly, there were extreme concerns over the state of the Voters' Roll, as indicated by a number of separate audits of the June 2013 Roll, and these concerns were conveyed to the Zimbabwe Electoral Commission (ZEC). Amongst the concerns were the following found in an audit by the Research and Advocacy Unit (RAU):

1. The large discrepancy between the numbers of persons on the Voters' Roll and the numbers indicated for each Constituency;
2. The very large numbers of young persons (under 30 years) that do not seem to have been registered as voters;
3. The large differences between the numbers of citizens registered in rural areas as opposed to in urban areas, with an overwhelming bias towards older persons again being more represented.

ZESN found a similar picture on their analysis of the voters' roll – 99.97% of rural voters as opposed to only 68% of urban voters.

Additionally, there were serious concerns about the number of duplicate voters [317,913] on the roll as indicated by the statement by Mr. Dumiso Dabengwa. Similar concerns were raised by RAU, conveyed to ZEC, but without response from ZEC. The concern here was that these duplicates all have valid National IDs and that this cannot arise through error. This meant a potential 635,926 votes, with a hugely skewed distribution: 74% of these were in the four Provinces of Bulawayo, Matabeleland North, Matabeleland South, and the Midlands.

Sixthly, the final Voters' Roll was not made available as required by Section 21 of the Electoral Act, (as amended), and the grounds for this unavailability were unacceptable on the eve of an election.

Seventh, the publication of the full list of polling stations and their placement was excessively delayed to the disadvantage of the voters, and in violation of Section 155 (2) of the Constitution.

Finally, there were numerous reports by civil society organisations monitoring the pre-election climate of intimidation and increasing violence, predominantly by supporters of ZANU PF.

Thus, it can plausibly be claimed that the lead-up to the elections showed a wide number of irregularities, that these irregularities were *prima facie* violations of the SADC Principles and Guidelines, and may be so serious that they would render the elections not free, fair, or credible.

## Voting Day

All groups observing commented on the peaceful environment, the efficiency, the satisfactory counting, and the completion of all legal niceties (completion of V.11 forms & posting of results).

Therefore, everybody said that it was “free”.

However, problems emerged with the deciding of “fair” or “credible”.

The first major flaw was the failure of ZEC to deliver electronic copies of the final voters’ roll to all parties and all candidates that requested these. The excuse seemed unreasonable: the claim that the registrar-General’s Office cannot fix a computer but could nonetheless print hard copies. This seems to be a breach of the law, but the excuse was upheld by the High Court.

The second flaw was administrative, and this was the very late announcement of the polling stations, and this disadvantaged many voters, and probably made worse by lack of access to electronic copies of the roll for candidates.

Then, there were the problems that emerged during the polling day itself:

- People being turned away, and this was much higher in urban areas than rural areas. According to ZESN, 82% of urban polling stations as opposed to 39% of rural had more than 25 voters turned away;
- The apparently high numbers of assisted voters was a matter of concern in a country with such high literacy rates. ZESN said that this was 38% overall – 38% of constituencies had 25 or more assisted - but assisted voters were 49% in rural constituencies and only 5% in urban constituencies. However, 88% of these chose the person they wanted to assist them;
- The apparently high use of voter registration slips was another concern. High numbers were noted using slips generally, but there is no hard data on how many turned away because the details were incorrect. An incident was reported in Hatfield over the use of phony slips. However, without the final Voters’ Roll, there is no information about the 780,000 “new voters”, how many were on the Roll, how many had to use registration slips, and how many were allowed to vote with these slips and how many were turned away. Here we will have to wait until ZEC releases all the data on the election.
- There were complaints about the bussing of voters into constituencies. This was noted in several reports, but there is no real hard data yet.

## Observer Conclusions:

The preliminary observations of the various observer groups can be categorised into those that “positive”, “qualified”, or “negative”.

## **Positive responses:**

### **SADC<sup>2</sup>:**

The SADC Election Observer Mission (SEOM) noted most of the problems described above, but made few evaluative comments. SEOM however made a number of recommendations:

- Encourage the implementation of Chapter 12 Part 5 Section 248 of the Constitution on media reform to be read together with the Electoral Act Section 160 E to 160 H;
- Timely release of funds to the Electoral Commission;
- Continuous updating of the voters' roll to be in line with the national population registry; and
- The availing of the voters' roll on time for inspection.

### **COMESA<sup>3</sup>:**

As was the case with SEOM, the COMESA Election Observer Group (CEOM) noted that peaceful process, but also noted most of the irregularities described above and also by SEOM.

### **Electoral Commissions Forum of SADC Countries (ECF-SADC)**

ECF-SADC noted all the irregularities of the other observer groups but nonetheless stated that there was a *peaceful, credible and efficient electoral process*.

All these observer groups encouraged Zimbabweans to accept the results.

## **Qualified response:**

A more qualified response came from the AU.

### **African Union Election Observation Mission<sup>4</sup>:**

The AUEOM observed that there was a peaceful atmosphere in its preliminary report, but also noted that it will give a final report in two months' time. However, the AUEOM noted a range of problems:

- Inspection of the Voters' Roll by the public and provision of copies to candidates;
- Printing of high number of ballot papers
- High incidence of voters turned away
- Late publication of final list of polling stations

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<sup>2</sup> SADC ELECTION OBSERVATION MISSION TO THE REPUBLIC OF ZIMBABWE PRELIMINARY STATEMENT BY HON. BERNARD KAMILLIUS MEMBE, MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION OF THE UNITED REPUBLIC OF TANZANIA. AND HEAD OF THE SADC ELECTION OBSERVATION MISSION TO THE HARMONISED ELECTIONS OF THE REPUBLIC OF ZIMBABWE HELD ON 31 JULY 2013

<sup>3</sup> COMESA ELECTION OBSERVER MISSION TO THE 31 JULY 2013 HARMONISED ELECTIONS IN THE REPUBLIC OF ZIMBABWE

<sup>4</sup> African Union Election Observation Mission to the Harmonised Elections of 31 July 2013 in the Republic of Zimbabwe. Preliminary Statement . Rainbow Towers, Harare, Zimbabwe. 2<sup>nd</sup> August 2013.

- High number of assisted voters
- Polarised media – state media could have done better

The AUEOM finally pointed out the need to maintain peace and use legal challenges for any disagreements.

### **Negative Response:**

The negative responses came from most local observer groups and a number of regional civil society observer missions.

### **ZESN:**

ZESN's preliminary report states that the preparations were inadequate, voter registration and voters' roll was flawed, voter education was limited and the special voting was chaotic. Polling day processes were smooth and no major incidents were reported. ZESN pointed out that the irregularities were serious. As ZESN commented:

*We urge observers and all stakeholders to look below the surface as there are some grave issues that have arisen. All is not well.*

### **Southern Africa Regional Civil Society and Social Movements Observer Mission:**

This group commented that the elections were heavily compromised and fall short of SADC Principles and Guidelines. The Mission noted a range of problems:

- High number of police in and outside polling stations (and in queues);
- High use of voter registration slips;
- High number s of assisted voters;
- High numbers of turn aways;
- Bussing of voters;
- Use of private property as polling stations.

### **Zimbabwe CSOs:**

The statement of the Zimbabwean CSOs was more forthright, stating that "*we regard this election as illegitimate and not reflective of the will of the people*". The statement outlined a range of problems:

- Lack of Integrity of the Voters' Roll
- Lack of timely availability of the Voters' Roll
- Suspiciously high number of voters turned away
- Suspiciously high number of assisted voters
- Bussing of people from outside constituencies
- Contested election timing and rules
- Failure to implement agreed reforms
- Systematic and intentional disenfranchisement of potential and registered voters

### **SADC-CNGO**

This observer group noted all the irregularities above, and concluded that "*the credibility, legitimacy, free and fair conduct of the Zimbabwe July 31, 2013 harmonised elections and therefore their reliability as the true expression of the will of people of Zimbabwe have been highly compromised*".

## **Southern Africa Trade Union Coordination Council [SATUCC]<sup>5</sup>**

SATUCC noted a number of the irregularities as did the other groups, and concluded as follows:

*In the view of the above SATUCC concludes that the 2013 harmonised elections to large extent lack credibility and fail to pass the free and fairness test. At the same time we commend the people of Zimbabwe for having held a largely peaceful voting.*

## **The Federation of Unions of South Africa [FEDUSA]**

FEDUSA was part of the SATUCC observer group and issued a very strong press statement that included reference to the problems seen by all groups.

“Firstly we must agree that the Zimbabwean elections of 2013 was peaceful and without obvious intimidation, especially in light of what happened in 2008. However, we can categorically state that the electoral processes were not fair”.

All these local and regional civil society observer groups stated that the poll was not fair or credible. And it seems evident that it is very difficult to conclude that elections were not free, in the sense of being non-violent, but also very difficult to conclude that there were not substantial irregularities. However, the big question is whether the irregularities will explain the enormous win for ZANU PF.

## **WAY FORWARD**

First, there must be the urgent release by ZEC of electronic copies of the voters’ roll – then all problems about over and under-registration, and duplicates can be resolved.

Second, there must be the release of all information related to the voting – the number of people turned away, the number of persons assisted, the number of people voting by slip as opposed to ID or passport.

Thirdly, we await the final report from ZESN – 7,000 observers make this the largest observer group and their findings can lay to rest many of the allegations or provide much stronger evidence for the basis of all the irregularities.

Fourthly, the election petition needs to be carried out expeditiously with full, transparent access to all of the election residue. There must be no undue delays as was the case for the petitions in 2000 and 2002.

## **RAU**

**6<sup>th</sup> August 2013**

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<sup>5</sup> Southern Africa Trade Union Coordination Council Observation Mission to the Zimbabwe Harmonised Elections of 31<sup>st</sup> July 2013. Preliminary Statement. 4 August 2013 Cresta Jameson Hotel, Harare, Zimbabwe.