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Introduction

Although the fairness of an election is unlikely to be determined solely by reference to what happens on the Election Day, the actual process of balloting deserves particular attention. Among other issues, balloting raises the question of polling stations and their accessibility for the population, the presence of competent staff vested in the procedures of voting, the presence of party representatives, secrecy of the act of voting and secrecy of the ballot box, the integrity of the counting process and its translation into a genuine political result. According to international standards of

free and fair elections, the organisation and management of elections also includes the opening and closing of polling stations at stated times, the arrangement of booths and the orderly movement of voters, the identification and verification of voters and an established procedure for objection and challenge. Also important is the marking of ballot papers out of sight of officials or other voters, the deposit of marked ballots and the use of indelible ink in order to prevent double voting. The counting process in turn requires measures to ensure that the ballot boxes are empty before voting begins and that counting is done fairly and transparently

(*International Law And Practice: Free And Fair Elections*, 1994).

Polling Stations

The following table indicates the distribution of polling stations per province for the 2005 General Election in Zimbabwe:

PROVINCE	NO
Harare	533
Bulawayo	210
Manicaland	1125
Mashonaland Central	825
Mashonaland East	1155
Mashonaland West	982
Masvingo	1021
Matabeleland North	632
Matabeleland South	681
Midlands	1181

Source: *The Herald*, 22 March 2005

A total of 8 300 polling stations were used during the

general election. In the urban areas there was an average of 30 polling stations while the rural areas had an average of about 90. Although the opposition parties complained that the ruling party had deliberately increased polling stations in the rural areas to benefit them, it may be concluded that the geographical dispersion of villages in the rural areas necessitated the increase. This was also a result of the adoption of the one-day polling strategy instead of the traditional two days.

In the general election in Zimbabwe, voting commenced at 0700 hours, some voters had been queuing from 0500 hours. After around midday, queues became shorter and most polling stations were deserted. In most provinces, reports were submitted that there were no more voters coming to vote. Polling ended at 1900 hours on 31 March 2005 as stipulated in the Electoral Act. There were no remaining potential voters when the polls closed.

Verification and balancing of ballots commenced at 2200 hours the same day and announcement of results took place on 1 April around 0400 hours. The efficient voting process was a result of the added number of polling stations in both rural and urban constituencies and also the efficiency of polling officers.

Opposition parties complained that some of the polling stations were in non neutral areas like the chief and herdsmen's homesteads who are perceived to be for the status quo. Some of the polling stations indicated in the Gazette were not there on the day of polling. The government printed the final list of polling stations adding two more constituencies in Gweru urban, this was said to be an omission in the previous publication. The final list of polling stations was only available on polling day. There was no evidence put forward that intimidation took place at those non neutral places on polling day.

Secrecy of the Ballot

Secrecy of the ballot is one aspect of fundamental rules relating to the exercise of electoral rights. Also included is the aspect of non discrimination which requires that no one shall be denied or prejudiced in the exercise of rights for reasons such as race, colour, sex, language, religion, political, place of origin or other status. Access does not only mean physical access but also freedom from violence and intimidation, obstruction by police and other extra-governmental forces and convenient polling booths (*ibid*, 1994).

Also implied in the international legal principle is the aspect of equal

suffrage, which requires that no vote shall have greater value than any other vote. The principle also includes the use of indelible ink during voting to avoid double voting. Secrecy of ballot also entails free voting procedures, which includes the use of booths during voting. This principle automatically disqualifies the use of the public queuing system where voters queue behind the photograph of their preferred candidate. Poor layout of polling stations, inadequate screens and insufficient management of voting streams compromises the concept of secrecy of the ballot. The process of marking of the ballot papers of illiterate voters in the presence of election agents is vital to ensure secrecy. The Zimbabwean electoral system is somewhat similar to the British system, in that both systems use the Presiding Officer who is in charge of the electoral process, on duty police, the candidates as well as polling and election agents (*op cit*, 1994).

The presence of international observers and non partisan civic organisations help in building voter confidence and ensures the integrity of the voting system. A report on the Malawian voting process in 1993 noted that domestic monitors are an important key to the fairness of any election, as they are a check against errors,

misconduct and fraud because their very presence limit opportunities for wrong doing. Effective local monitors either party officials or recognised impartial officials appear likely to satisfy national aspirations for a free and fair electoral system. Secrecy of the ballot also entails a correct arrangement of polling stations, that the ballot box is empty before polling, checking against impersonation of voters and checking to see that no one is denied the right to vote for any apparent reason, ensuring the vote is truly secret, preventing campaigning and intimidation around polling stations and in queues, observing the counting and verification of votes cast as well as checking for any tampering of ballot boxes.

Electoral Act 2:13 stipulates that polling should take place over one day, from 0700 hours to 1900 hours, and any voter who is in the queue at the time of closing the polls should be permitted to vote. This is clearly in line with international standards of free and fair election management. The elections in Zimbabwe which took place on 31 March adhered to recognised principles as far as opening and closing of polling stations is concerned. By midday the majority of people had cast their votes.

Thirty minutes before the commencement of polling all

ballot boxes at every polling station were emptied to satisfy all concerned that the boxes were truly empty. There was no single case reported where there was a possibility that the ballot boxes were staffed with ballot papers before voting began. Presiding officers who were mandated to seal the ballot boxes upon completion of voting were able to carry out their task encountering no problems.

During the 2005 Parliamentary election, registered voters were able to cast their vote irrespective of their race, colour, political affiliation, and sex or otherwise.

Minor cases of voter intimidation were reported during the polling day. For example, in Glendale an opposition supporter was attacked by a ruling party supporter in full view of the police and polling officials. He sustained injuries and was referred to a central hospital for treatment. In another incident in Insiza, the ruling party candidate shot at an opposition candidate who fled and hid for a couple of hours before resurfacing to observe the election on the polling day. In both instances the police intervened although it was not clear what actions were taken by the police against the ruling party candidate who fired shots. The same candidate had done the same act during primary elections.

Unlike the 2000 and 2002 elections, there were no reported cases of the police or extra-governmental forces obstructing and intimidating voters. Universal suffrage was exercised where all votes cast had the same value. Secrecy of the ballot was ensured through the use of booths which were well covered and ensured the free exercise of one's right.

The use of indelible ink was introduced in the 2005 elections whereas in previous elections there was the use of invisible ink and the Ultra Violet (UV) light to determine who would have voted and who had not. The previous system was condemned because there were allegations that only one person operating the UV would determine such and allegations of partisan officials operating the UV were levelled against the government. The use of indelible ink ensured that the ink was visible to every one and thereby reducing the chances of double voting. Allegations that there were some people who used a concoction of chemicals to remove the ink and voted twice were levelled against the government. It is alleged that the South African observer mission was challenged to witness the cleansing process and they refused. The allegations were never substantiated.

There were three voting queues, each containing at

least one ballot box, allocated for the use of voters whose surnames began with letters A–L, M and N–Z according to the Electoral Act. Voters were requested to produce proof of identity or voter's registration certificate before a ballot paper would be handed to the voter. After receiving the ballot paper, the Chief Elections Officer would then ascertain whether the voter had previously been allocated a ballot paper if not then the voter would receive a mark with indelible ink which was readily visible to the naked eye.

Every ballot paper was of equal size to ensure that no manipulation would take place to compromise secrecy of the ballot. The ballot papers had photographs, names of all nominated candidates as well as symbols, if any and other such particulars. When the voter received the ballot paper she/he took the paper to the booth provided, placed a cross in the rectangle provided then folded the ballot paper so the official mark was visible but the cross and the name of the candidate voted for was not. The voter then held up the ballot to the Presiding officer who would recognise the mark before the voter dropped the ballot paper in the ballot box. If the voter noticed that they had spoilt the paper they went back for a second ballot paper. The spoiled ballot paper was then

retained by the Presiding Officer who immediately cancelled it.

At the request of illiterate voters, the Presiding Officer, the monitor and the police officer on duty would assist the voter to mark on the ballot paper in accordance with the voter's wishes. The names of all the people who voted were cancelled from the voters roll to identify who voted and who did not vote.

After the poll, the Presiding Officer closed the poll and sealed the aperture of the ballot box in the presence of candidates and their chief election agents. The same affixed her/his seal to the aperture of the ballot box.

As soon the polling was over, Presiding Officers opened and unsealed ballot boxes and started counting the votes.

Election Material

The following is recorded as election material for the 2005 general election:

- Indelible ink
- Voters roll
- Ballot paper
- Booth
- Candles, matches and lanterns
- Ballot boxes
- Locks for ballot boxes
- Seals
- Posters giving directions to polling stations
- Stamp and pads

The indelible ink replaced the invisible ink that was used in previous elections. This was in accordance with SADC Principles and Guidelines governing the conduct of democratic elections. As previously stated, allegations were levelled against the ruling party that a partisan official would be placed at the U.V desk where they would check whether a person had voted or not. Allegations were that the partisan official would let people vote more than once since only one official would check through the UV. In the 2005 general election, the indelible ink used was visible to every eye and lasted for 21 days until it disappeared.

As stated before, opposition political parties alleged that the ink was removed using a concoction of brake fluid and lemon. Several youths were seen removing the ink and then going to vote for the second time. The South African observer mission was challenged to come and witness the ink removal which took seven minutes but turned down the invitation without giving reasons (*The Standard*, 1 April 2005).

As explained, there were three voting queues, each containing at least one ballot box, allocated for the use of voters whose surnames began with letters A–L, M and N–Z according to the Electoral Act. Although this

made the voting process quicker and more efficient, some traditional leaders and youths were alleged to have said that the use of the compartment system would enable them to know which voter voted for which candidate.

Although there were stringent measures put in place to account for ballot papers and boxes, seven ballot boxes and papers were discovered at the home of a Zaka District Administrator's house. A Presiding officer in the same district 'lost' a ballot box when she was transporting the ballot boxes. Although both were arrested for violating the Electoral Act, one wonders how ballot boxes were not accounted for and how many more are not accounted for and the impact of such acts on election results (*The Standard*, 10 April 2005).

The ballot paper used was the same throughout and no complaints were raised about ballot papers. Ballot papers per constituency had a stamp that was peculiar to that constituency. This assisted in reducing chances of stuffing ballot papers.

The voter's roll used per constituency had no other problems besides the ones listed before. The voting booth provided the necessary secrecy and was well placed in all cases. There were no reported cases of electoral

compromise concerning the voting booths.

Candles, matches and lanterns were used to light up the voting rooms where necessary. In Mbare and Mabvuku, darkness fell before the polls closed and the election officials did not have lanterns and candles. These had to be provided as an emergency which demonstrated lack of preparedness on their part.

Locks and seals were used to secure the ballot boxes after voting and these were immediately broken to commence the process of verification and counting of ballot papers. Posters were used to give directions and to indicate polling stations. These were visible and served their purpose well

Counting

Complementary to the principle of the secret ballot, is the integrity of counting which ensures that the expressed wish of the people had been taken into account. It is therefore paramount that the results declared correspond with the total number of votes cast. Therefore transparency of process is as valuable as accuracy in counting. Transportation of ballot papers raises fear of the stuffing of ballots. Again the presence of party representatives builds up confidence in the electoral system. The monitoring of

votes cast as part of election observation helps boost the confidence of voters suspicious of possible fraud (*International Law And Practice: Free And Fair Elections*, 1994).

Parallel voting tabulation is a process whereby there is independent verification of results reported by electoral authorities. In this process, monitors record results obtained from polling stations and compare them with official results.

According to the Electoral Act, the Presiding Officer and one Chief Election Agent as well as polling officers and their candidates are expected to be present when vote counting takes place. The Presiding officer can reject a ballot paper that:

- does not bear an official mark
- which is not marked by the voter
- does not indicate with certainty the candidate for whom the voter intended to vote

The Act notes that the Presiding Officer shall not reject any ballot paper where the voter has indicated with certainty the candidate of one's choice. After the counting is completed, the Presiding officer without delay then records votes at a polling station for each candidate, and the number of rejected ballot papers. The completed polling station return was displayed to those

election update 2005 Zimbabwe number 3

present and affords each candidate or his/her election agent the opportunity to put

their signatures. Below is a table that indicates progress made in terms of voting in

selected constituencies as announced by the ZEC.

CONSTITUENCY	VOTES CAST AT 10h00	VOTES CAST AT 12h00	VOTES CAST AT 14h00	VOTES CAST AT 19h30
BUHERA NORTH	4 407	7 224	9 556	16 595
CHIMANIMANI	4 525	6 697	10 254	23 896
CHIPINGE NORTH	1 498	4 563	9 269	23 951
MAKONI WEST	3 725	6 145	12 277	18 365
MUTASA NOTH	1 934	3 264	8 639	10 936
NYANGA	1 574	4 753	8 843	13 896
BULAWAYO EAST	5 100	8 073	11 804	12 635
NKULUMANE	4 959	8 733	12 454	15 174
BUDIRIRO	7 223	12 681	17 135	21 388
GLEN VIEW	8 664	14 051	16 495	17 931
HIGHFIELD	9 123	13 988	14 994	15 970

Source ZBH and ZTV announcement 1 April 2005

Announcement of Results

The number of votes received by each candidate was shown in each polling station return form and the number of postal votes received by each candidate was added to the number of constituency votes. The greatest number of votes of one candidate meant he/she would be duly elected as a Member of Parliament with effect from the date of such declaration. The names of persons duly elected in each constituency were published in the *Gazette*, giving their full names, constituency and

political party. It should be noted that announcement of progress reports is not only desirable but it is also in line with international standards of polling. Progress reports help build confidence in the polling process and the ZEC partially adopted the principle when they announced progress reports for six constituencies but stopped abruptly for reasons to be discussed.

POST ELECTION REVIEW

ZANU PF won the General election with 78 seats while

the MDC won 41 seats, and only one independent candidate won a seat. ZANU PF won the two thirds majority enabling them to amend the constitution, a privilege they were denied in the last general election. The President indicated during the election that if his party won the two-thirds majority, they would set up a Senate to accommodate some political losers of the primary elections.

The following table indicates election results per province:

PROVINCE	TOTAL CONSTITUENCIES	ZANU PF WINS	MDC WINS	INDEPENDENT WINS
BULAWAYO	7	0	7	0
HARARE	18	1	17	0
MANICALAND	15	13	2	0
MASHONALAND CENTRAL	10	10	0	0
MASHONALAND EAST	14	14	0	0
MASHONALAND WEST	13	12	1	0
MASVINGO	14	13	1	0
MATABELELAND NORTH	7	1	5	1
MATABELELAND SOUTH	7	3	4	0
MIDLANDS	16	12	4	0

Source: *The Herald* 10 April 2005

The South African Observer Mission (SAOM) held that the Parliamentary elections held on 31 March reflected

the will of the people of Zimbabwe and were conducted smoothly and efficiently. SAOM said the

political environment that prevailed prior to and during the polls was conducive to elections. The head of the

mission Mr. Mdladlana, who is also South Africa's Minister of Labour noted that the elections were conducted in line with the country's laws and in line with SADC Principles and Guidelines governing the conduct of democratic elections. He went on to note that voting went on without any notable irregularities. The South African Observer Mission had deployed over 50 observers to provinces country wide compiling daily reports from the time they were deployed to the polling day. Mr. Mdladlana argued that their conclusion was based on these reports that were submitted by the observers. SAOM also acknowledged that parties and candidates had the political space to campaign. The team also noted that the voter's roll had no irregularities and claims by the opposition parties to the contrary were not substantiated. On the number of people turned away on the polling day, the team reiterated that it did not doubt the findings of the polling day (*Sunday Mail*, 3 April 2005). Suggestions were however made to simplify the voting process and to ensure that voter education is conducted on time by relevant institutions. Suggestions were also made on the need for wide publication of an updated voter's roll for verification.

The African Union Observer team, the South African

Development Community (SADC), the Malawi Electoral Observer Mission, the SADC Electoral Commissions Forum endorsed the election as free and fair and reflecting the will of the people. Like

SAOM, the Botswana National Observer Mission (BNOM) were satisfied that the poll was free and fair and was conducted in a peaceful atmosphere. The poll was said to be in line with SADC Principles and Guidelines governing the conduct of democratic elections. The team commended the verification process and vote counting which they said was professionally done because it was said to be systematic and transparent. The three men team noted that various political parties campaigned without fear and freely so. The observation was a deduction of the events that took place on the polling day as well as the environment that prevailed before the election. The team did not witness any intimidation and they held a belief that there was equal access to the media and the political field was even as far as they were concerned (*The Sunday Mail*, 11 April 2005).

The Malawi Electoral Observer Mission arrived in the country in two groups, the first on 24 March and the second on the following day, a week before the election and endorsed the election as free and fair.

The Regional Faith Based Joint Initiative, a faith based organisation consisting of the Catholic Inter-Regional Meeting of Bishops in Southern Africa (IMBISA), the Association of Evangelicals (AEA), Ethics, Peace and Justice Commission and the fellowship Christian Councils in Southern Africa (FOCCISA) deployed a team of 225 observers from the region a day before the election, having spent time the period pre- election interviewing political parties, government and other stakeholders. In addition, the observers monitored the media as well as the campaign process and were satisfied that the elections were free and fair and were held in line with SADC Principles and Guidelines governing the conduct of democratic elections. The team was impressed by the manner in which vote counting took place, although concern was raised as to the number of people turned away on polling day.

Concerns were raised by the British Foreign Minister, Jack Straw that the election was seriously flawed. Although not an observer, the British have vested interests in terms of elections in Zimbabwe. The Australian Foreign Minister also condemned the election because of the uneven playing field. He however acknowledged the reduction in political violence. The

German Junior Foreign Minister, Kerstin Mueller expressed the view that elections were stolen in Zimbabwe (The *Independent*, 8 April 2005). The Swedish Foreign Minister also condemned the election as fraudulent.

The main opposition party, the MDC condemned the election and noted rampant irregularities. The irregularities stemmed from the fact that after voting was completed, an official of ZEC announced the number of people who had voted in each constituency but the announcement was abruptly stopped without giving any explanation. When the election results were announced, the figures for

votes cast announced by a ZEC official varied with the total number of votes cast for all the candidates in a constituency. This raised questions prompting the ZEC officials to hold a press conference. The situation got worse when ZEC officials failed to give a reasonable explanation as to the discrepancy. He could only say the figures were not a true reflection of the people who had voted but a rough estimate as other constituencies had not submitted their reports. The ZEC had previously announced votes cast as polling progressed. Votes cast by 1000 hours, 1400 hours and 1930 hours were announced on national television and radio. It was

the 1930 hour total votes cast that prompted the debate. ZEC officials later denied that the total votes cast were accurate and were given without prejudice. The electoral body then retorted and said the figures given for 1930 hours were actually for 1400 hours. Asked why some figures given as the total votes cast by 1930 hours (or 1400 hours as per ZEC's later explanation) were higher than the total votes cast for all candidates in a constituency, the ZEC could not explain the discrepancy.

A discrepancy was noted in 31 constituencies and below is a table that illustrates some of the anomalies:

NAME OF CONSTITUENCY	NUMBER OF TOTAL VOTES ANNOUNCED BY ZEC	TOTAL VOTES FOR THE CANDIDATES IN A CONSTITUENCY	UNACCOUNTED VOTES
CHEGUTU	19 763	24 828	5 065
BEITBRIDGE	36 821	20 602	16 219
GOROMONZI	15 611	25 360	9 749
MAKONI NORTH	14 068	24 987	10 919
MUTARE SOUTH	14 054	28 575	14 521
MUREHWA SOUTH	8 579	23 786	15 207
SEKE	11 344	24 277	12 933
MANYAME	14 812	24 303	9 491
KARIBA	16 676	24 142	7 466
BUHERA SOUTH	25 447	28 959	3 512
MARONDERA EAST	25 193	29 935	4 742
BUHERA NORTH	16 795	22 688	5 893
MUTASA SOUTH	15 733	19 573	3 840
MUTASA NORTH	10 986	17 204	6 218
NYANGA	13 896	22 739	8 843
CHIMANIMANI	23 896	27 642	3 746
CHIPINGE NORTH	23 896	27 576	3 625
CHIPINGE SOUTH	29 479	30 704	1 225
MAKONI EAST	20 454	17 341	3 113
HWEDZA	23 698	26 736	3 038
MUTARE WEST	18 584	20 950	2 366
CHIKOMBA	18 401	26 050	7 649
HURUNGWE	22 533	26 552	4 019
MUDZI EAST	12 499	22 420	9 921
MUDZI WEST	10 998	22 796	11 798
MUREHWA NORTH	17 606	22 353	4 747
MUTOKO NORTH	10 721	20 652	9 931
MUTOKO SOUTH	15 863	23 481	7 618
INSIZA	20 220	21 377	1 157
GWANDA	10 961	24 594	1 300

Source: *Zimbabwe Independent*, 8 April 2005 and the MDC Report to ZEC

The legitimacy sought by the ruling party appears to be slipping through their fingers as explanations for the variance in figures is not convincing. Although regional observers all noted that the elections were free and fair and reflect the will of the people of Zimbabwe, such was expected from 'cherry picked' observers some of whom had prejudged the election to be free and fair before the polls. The spirit of solidarity and brotherhood that is evident among African countries appears to be more important than objectively judging the election.

It is puzzling to understand how any reasonable person can conclude that the voter's roll is in good order when discrepancies are so evident. It just needed the observer team to take a sample of 100 people and cross check the information. It is regrettable that most of the observers were in the country only three weeks when they were supposed to be here 90 days before the election, as per SADC Principles and guidelines governing the conduct of democratic elections. The 90 day period could have been used to check the voter's roll among other issues. It also appears the observers were found wanting in terms of cross checking results of constituencies and what was announced by the National Logistics Committee, a government staffed

command centre with no polling agents. Most of the comments emanating from observers were largely on the evaluation of the polling day rather than view the election as a process and not an event. It is true that the polling day was relatively peaceful and that access to the media in the month of the election was relatively balanced but election observation goes beyond the polling day.

The observers could also have used the 90 day period to evaluate electoral legislation enacted by the ruling party dominated Parliament. Of particular concern is the Political Party (Finance) Act which banned all foreign funding to political parties, except through the ZEC. Although all major and minor political parties are known to source foreign funding, foreign funding should not be criminalised in a democratic state.

The double standards of the international community are also a point of concern. When the MDC visited more than twenty countries to highlight the lack of democracy and the uneven playing field in the country giving reasons why they should not participate in the election, it is alleged that the international community, Britain, the United States of America and Australia strongly recommended that the MDC should participate

in the elections irrespective of the uneven playing field. One senior MDC official felt that the recommendation amounted to a threat. It is interesting to note that the same international community is condemning the election that they knew very well was being conducted on an uneven playing field. Like the African observers, the Europeans, save for Russia, had prejudged the election.

The polarisation seen at the international community level depicts regional interests. The African brothers and sisters would not want to be seen to condemn their fellow brother hence the Quiet Diplomacy and the prejudging of elections. The Europeans on the other hand, are disgusted by a little known country that has seized land from among their white counterparts and distributed the land to landless peasants. Both regions cannot be expected to produce objective reports on the election in Zimbabwe.

The gerrymandering of constituencies is also a point of concern that resulted in ZANU PF strongholds gaining three constituencies while the opposition stronghold lost two. The use of the 2004 national census figures could have assisted in giving a more objective delimitation process acceptable to both the ruling and opposition parties.

Postal voting was also of concern and was allegedly concluded before the polling day without the knowledge of some political parties. The opposition claimed that they were not involved in the polling process of the armed forces. Election observers were not even been invited when polling by the uniformed forces took place. Opposition political parties now allege that the use of postal votes facilitated election rigging. In some constituencies, it was alleged that postal votes were bought by polling agents, an unacceptable development.

Given the problems of the voter's roll, the gerrymandering of constituencies, the biased media before March 2005 (especially the print media), the electoral legislation, partisan electoral institutions as well as the discrepancies of figures announced by ZEC and the total polling statistics, it would be difficult to conclude that the election was fair. It may be concluded that although the election was relatively free from violence and intimidation, it may pass the freeness test but fail the fairness test.

New Parliament

The 120 elected Members of Parliament were sworn in as per the Electoral Act. The President appointed 12 non-constituency Members of Parliament who joined the 8

Chiefs and 10 Governors. The following Governors were appointed:

NAME OF GOVERNOR	PROVINCE
MR. TINAYE CHIGUDU	MANICALAND
MR. RAY KAUKONDE	MASHONALAND EAST
MS. THOKOZILE MATHUTHU	MATEBELELAND NORTH
MR. WILLARD CHIWEWE	MASVINGO
MR. CEPHAS MSIPA	MIDLANDS
MR. NELSON SAMKANGE	MASHONALAND WEST
MS. ANGELINAH MASUKU	MATEBELELAND SOUTH
MR. EPHRAIM MASAWI	MASHONALAND CENTRAL
MR. CAIN MATHEMA	BULAWAYO METROPOLITAN
MR. DAVID KARIMANZIRA	HARARE

Source: *The Herald*, April 12, 2005

Six Governors were reappointed and four new ones were also appointed. The four new Governors were from Mashonaland East, Masvingo, Manicaland and Matebeleland North. The new Governors replaced those who were elevated to ministerial posts or were relieved of all functions for one reason or the other.

Eight chiefs were elected by the National and Provincial Council of Chiefs. The appointment was made in accordance to Section 4 of the Provincial Councils and Administrative Act and Section 38 of the Constitution. The twelve non-constituency Members of Parliament are as follows:

- Vice President Joseph Msika
- Emerson Mnangagwa
- Edna Madzongwe

- Patrick Chinamasa
- Samuel Mumbengegwi
- Paul Mangwana
- Amos Midzi
- Sikhanyiso Ndlovu
- Titus Maluleke
- Canisia Sathiwa
- Abigail Damasane
- Munacho Mutezo

The swearing in ceremony consisted of 78 elected members of ZANU PF, 41 elected MDC members and one independent candidate. 8 elected chiefs, 10 non-constituency Members of Parliament and 10 Governors and Resident Ministers who constituted the 150 member House of Parliament. The august house is headed by the Speaker of Parliament who was appointed by the President as well as the Deputy Speaker. The swearing in of the two vice Presidents together with the mentioned marked the beginning of the first session of the sixth Parliament of Zimbabwe.

No dramatic shift of policies or legislation is expected from the new Parliament. Although there seems to be injection of new blood from the ruling party, no major changes are likely to take place. Sanctions and the isolation of Zimbabwe from the international community are likely to intensify and the economic hardships worsen. South Africa's Quiet Diplomacy is not likely to bring about real democracy in Zimbabwe. The show of some democratic practices

by Zimbabwe during the election may have been a show for the international and regional communities, it still remains to be seen whether these democratic principles will be intensified.

The election of only 41 Members of Parliament for the MDC is highly unlikely to bring democracy neither is it expected to bring policy shift within the country. For the MDC to be appreciated by Zimbabweans there is need for them to play a complementary role to government rather than be consistently antagonistic. It is interesting to find out how the MDC is going to address concerns of urban voters who elected them to office. If the MDC fails to address the concerns of the urban voters, they are likely to be irrelevant to the political landscape. It will be interesting to find out how government will address economic problems of the urban and rural constituencies. The urban electorate plays a fundamental contribution to the economy and although they voted for the opposition, government should also tackle their problems.

AN EVALUATION OF THE 2005 GENERAL ELECTION

Determining whether an election is genuinely free and fair involves more than assessing whether voters

turned up to vote. It requires judgement on a dynamic and often evolving process which is critical. There are usually split decisions in terms of observers as to whether the elections were free and fair. Observer experience is no less important when an election fails to meet standards of representative democracy.

The reality is that such evaluations are sometimes not possible particularly when some of the allegations can not be collaborated. At times, observers simply report the allegations and their observations without necessarily addressing the ultimate question of whether the elections were free and fair (*International Law and Practice: Free and Fair Elections*, 1994). It is against this background that the evaluation of the 2005 Parliamentary election in Zimbabwe should be seen on the basis of international law, the practice of free and fair elections and on SADC Principles and Guidelines governing the conduct of democratic elections. This is based on the following principles:

- Full participation of citizens in the political process
- Freedom of Association
- Political tolerance
- Regular intervals for elections as provided for by Constitution
- Equal opportunity for all political parties to access the state media

- Equal opportunity to exercise the right to vote and be voted for
- Independence of the Judiciary and impartiality of electoral institutions.
- Voter education
- Acceptance and respect of election results by political parties
- Challenging election results as provided for in the law of the land

The Full Participation of Citizens in the Political Process

The full participation in the political process of one's country is a general right, covered by the right to personal liberty, the right against discrimination, freedom of expression and the freedom of assembly and association. The citizens have also the right to be informed of policies and programmes of various political parties wishing to contest for elections. The right not to be discriminated against stems from the notion that governments may bar certain races, political parties, religious organisations and gender from contesting in elections. Full participation also entails the right to express one's opinion and the right to assemble and associate with like-minded people in order to make an informed political choice. The above mentioned rights complement each other in order to deepen political rights for citizens. This

means that every person irrespective of their political party, colour of their skin, religious orientation or sex have a right to participate fully in the way their country is governed.

The 2005 general election in Zimbabwe took place in accordance with the Electoral Act 2:13. Voter registration was not discriminatory as all people irrespective of their colour, sex or political affiliation were allowed to register in order to participate in the elections. Although there was voter apathy in terms of voter registration, the Registrar General Voters countered this challenge by conducting door to door registration of voters which increased the number of people who would participate in the election. Voter inspection also took place according to the Electoral Act. Voters' rolls were opened for inspection for a reasonable time frame in order to enable all registered Zimbabweans to check and correct any anomalies before the polling day. Again, the process was marked by apathy, though no one was discriminated against in terms of voter registration and inspection.

Political party registration, candidate nomination and the sitting of the Nomination Court were all done in accordance with the law, unlike previous elections where the nomination

process was marred by intimidation and violence and other candidates were barred from submitting their nomination papers. The 2005 general election was peaceful in terms of the nomination paper submission. All political parties and independent candidates submitted their papers with no encounters. Political party registration though it was done in accordance with the Electoral Act, was costly and prohibitive and resulted in some political parties withdrawing from the race while others scaled down and reduced their level of participation. It may be recommended that the registration fee for the registration of political parties be revised to enable all parties to be able to register.

The full participation of all citizens was also hindered by the non participation of Zimbabweans who fall within the *Diaspora*. Although the Electoral Act is clear in spelling out who should vote and who should not, an estimated three million Zimbabweans mainly in South Africa and the United Kingdom could not participate in the election.

It appears that the Electoral Act was put in place to marginalise these Zimbabweans. It is interesting to note that the government recognises them as Zimbabweans when they

want them to repatriate foreign currency through the Reserve Bank scheme, *Homelink/Kumusha/Ekhaya* but when it comes to voting they are excluded. It may also be noted that those in the *Diaspora* may have fled the country due to the political violence of the previous two elections or they could have fled the economic decadence bedevilling the economy. In both cases the Zimbabweans in the *Diaspora* were unlikely to vote for the ruling party hence their disenfranchisement. Lessons may be learnt from Malawi and South Africa (post apartheid) and Zimbabwe (before the enactment of the Dual Citizenship Act), where every citizen was allowed to exercise their right to vote irrespective of where they reside.

Except for the prohibitive cost of the registration of political parties and the disenfranchisement of Zimbabweans in the *Diaspora*, all other processes were in line with SADC Principles and Guidelines governing the conduct of democratic elections.

Political Tolerance

Political tolerance is respect for other people's views and their political parties. All political parties, both major and minor, have a right to campaign, have a membership and assemble and associate freely with

their members in particular and citizens in general. Political intolerance is a situation whereby one political party tries to exterminate and get rid of other political parties so that it remains the only unopposed political party in the election. This extermination can be done by vote rigging, vote buying, cooption and even violence.

Political tolerance and maturity was compromised in the previous elections where some details of the uniformed forces, extra governmental arms and citizens were intolerant of any dissenting voices. The 2005 general elections though marked by patches of intolerance, revealed political maturity and professionalism among the uniformed forces and citizens.

Although violence and intimidation was observed two months before the elections, the month of March was marked by the police enforcing laws irrespective of political affiliation. The youths and extra governmental forces were less vigilant and allowed the opposition to campaign in areas that were previously no-go areas. Whether one month was enough to establish a culture political tolerance or not is debatable, but relative to the previous elections, improvements were noted in the 2005 general election.

Regular Election Intervals

Holding free, fair and regular elections is a principle of democracy because regular elections ensure that citizens can choose the people who should govern them. Regular elections also mean that new people and new political parties can contest the elections. The concept of regular elections means that any political party in power that fails to perform will be voted out the following general election. Zimbabwe has always carried out both Presidential and Parliamentary elections in line with the law of the land.

Equal Opportunity for all Political Parties' Access to State Media

For one to exercise freedom of expression there must be press freedom. Equal opportunity for all political parties means that political parties must have equal access to the press and the press too, should be available to all political parties and should give an honest balanced view of policies and programmes of all political parties.

An independent and democratic press takes the responsibility of informing civil society on the policies of political parties. An informative press will make accountable those in power and will expose their wrong doings. In a democratic society, it is acceptable to

impose reasonable restrictions on the press so that the press is not abused or misused to tarnish the rights of others. The restrictions imposed on the press should be reasonable and not restrict the right to access information.

Access to Information and Protection of Privacy Act [AIPPA] as well as the Broadcasting Services Act compromised the right to access the media. The opposition parties were only given access to the media a month before the election date. The independent candidates wishing to contest the election were given coverage though skewed towards the ruling party. A report by the Media Monitoring Project noted that on the whole the ruling party got 83% of coverage on ZTV, Radio Zimbabwe and Power FM while the MDC got 10% and independent candidates got 7%. This cannot be in line with SADC Principles and Guidelines governing democratic elections.

The ruling party was allowed to denigrate the president of the opposition by calling him a stooge and a mouthpiece of imperialists yet the opposition could not be allowed to exercise such privileges. Where opposition parties were given coverage, it was almost always in the negative. It should be appreciated that opening of the airwaves to the

opposition was in relative terms.

Equal Opportunity to Exercise the Right to Vote and Be Voted For

Just as the right to full participation, the right to vote and be voted for must be exercised. All peoples aged 18 and over can participate in an election and stand for any office except where it is otherwise stipulated. This means that one should not be discriminated against simply because of the colour of one's skin, gender or political affiliation or any other criteria of discrimination.

In terms of equal opportunities to stand for office, the ruling party made major strides in incorporating women and putting in place a quota of 30% reserved for women candidates. The ruling party also appointed a female to be one of the two vice Presidents, the first female to hold such a position and another female as Deputy Speaker of Parliament.

These measures should be commended because of the attempt to narrow the gap between political participation of males and females. Political participation was conducted irrespective of sex, colour of skin, religion, political affiliation or other such criteria.

Independence of the Judiciary and the Electoral Institution

Independence of the judiciary means that judges shall not be subject to or control of any person or authority while exercising their judicial functions. This independence means independence from the legislature (Parliamentarians) and the executive (the President). It also means independence from political influence by the government, political parties, the public or the judges' political involvement. Impartiality means that for a fair trial to be conducted, the judges will not be prejudiced or influenced in any way. The independence of electoral institutions is questionable in Zimbabwe. The Registrar General Voters was given a new name but exercised the same functions. The office was supposed to be supervised by the ZEC but it conducted most functions before the appointment of the ZEC. The alleged partiality of the Registrar General Voters has been noted for a long time. An institution accused of inefficiency and rigging previous elections should not have been used in the 2005 general election. The Electoral Supervisory Commission (ESC), previously accused of being dominated by the uniformed forces and inefficiency as well as underfinanced should

have been disbanded and a more impartial institution put in place.

The ZEC has been oscillating between partiality and impartiality. Its appointment was controversial, in that members were directly or indirectly appointed by the President. Their initial functions appeared impartial until the courts allowed a jailed Member of Parliament (MP) for the opposition to stand for the general election while in prison. The President issued a statement calling such a ruling madness. On the following day, the ZEC made an urgent court application barring the MP to stand. It was speculated that either the ZEC was being directed contrary to the Electoral Act or it was complying to the whims of those who appointed them. There is a need to put in place electoral institutions that are perceived to be independent in order to obtain legitimacy and reduce political tension following elections.

Voter Education

Voter education is a vital component of freedom of expression. Freedom of expression is said to be one of the most precious of all guaranteed freedoms and the foundation of a democratic society. For this reason, freedom of expression will always be jealously guarded by the courts. The

Zimbabwean Constitution says that no person shall be hindered in the enjoyment of the freedom of expression, the freedom to hold opinions, receive and impart ideas and information without any hindrances. Speech is an expression of self, to express feelings and thoughts and to contribute to discussion and debate. It also strengthens the capacity of individuals to participate in decision making. Voter education helps people understand different policies of different political parties so that voters can choose who they want to represent them.

In Zimbabwe, the ZEC Act stipulates that voter education is conducted by the ZEC. Previously voter education was conducted by churches, NGOs, youth's groups, women's groups, student organisations and anyone who adhered to the code of conduct. The new legislation banned voter education by civil society and non governmental organisations. It is evident that the role of NGOs was paramount in voter education. The number of voters turned away was alarming and unprecedented. The following is a table that shows some of the constituencies with numbers of people who voted in the 2005 General election and those who were turned away for not having their names appearing in the voter's roll, inappropriate identity cards

or turning up in wrong constituencies.

Constituency	Voted	Turned away	% turned away
BUHERA NORTH	16595	1437	10.7
CHIMANIMA-NI	23896	2204	16.4
CHIPINGE NORTH	23951	2387	17.7
MAKONI WEST	18365	1219	9
MUTASA NORTH	10936	1482	11
NYANGA	13896	1530	11.4
BULAWAYO EAST	12635	1813	13.5
NKULUMANE	15174	1402	10.4
TOTAL		13474	

Source: *The Herald*, 8 April, 2005

The following is a table that indicates voters turned away per province:

Province	Total votes cast	Total turned away
MASHONALAND WEST	250 806	35 267
MANICALAND	282 471	26 976
HARARE	340 708	31 872
MASHONALAND EAST	291 851	16 796
BULAWAYO	107 259	11 352
MATABELELAND SOUTH	138 978	10 892

Source: *Zimbabwe Independent*, 1-7 April 2005

Acceptance and Respect of Election Results

It is important for political parties to accept and respect the election result but political parties can only accept and respect election results if they feel that the election was free and fair. Elections have to be free and fair from the beginning of the election process that includes the independence of election bodies, the Delimitation of boundaries, voter registration, and the nomination process through to vote counting and

announcement of election results. If the above are free and fair, then political parties will accept the results but if they are not, then parties will reject results and may even be violent.

Soon after the announcement of election results, isolated cases of violence erupted perpetrated by the MDC who felt that the elections were rigged. Several youths including an MDC legislator were arrested. The President of Zimbabwe then issued a press statement calling for cooperation between the MDC and government.

Challenging Election Results

SADC states agreed that political parties can challenge election results through an independent Electoral Court. This court too, must be independent. The MDC is likely to challenge election results given the discrepancies indicated. The MDC indicated that election petitions filed in the 2000 and 2002 elections are still pending and were pessimistic that meaningful and speedy judgements would be handed down. The Electoral court in Zimbabwe stipulated exorbitant fees for election petitions.

Conclusion

Because of the relatively peaceful and non violent manner in which the

elections were held, the 2005 Parliamentary elections can be said to be free but because of the gerrymandering of constituencies; the voter's roll which is in shambles; the discrepancies in the announcement of voters as

well as the appointment of 30 Members of Parliament by the President, the election cannot be said to be fair. It is thus concluded that the 2005 general election in Zimbabwe was free but not fair.

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