



**August 2013**

## **Free, but not fair: Why SADC poll endorsement was misinformed?**

Following the July 31<sup>st</sup> harmonised polls, it has become apparently clear that once again, Zimbabwe conducted a disputed poll that has failed to attract acceptability from a significant percentage of its citizens and interested electoral stakeholders. Resultantly, the contestation of the election outcomes remains in full swing on three fronts;

1. **Legal** - with the leader of the MDC -T seeking to have the constitutional court nullify the presidential poll and then withdrawing the court application having reportedly failed to access the necessary evidence to contest the poll outcome. . The MDC has also disputed electoral outcomes in 39 national assembly constituencies and accordingly filed petitions to have the poll results nullified.
2. **Diplomatic** - with the pro-democracy forces in Zimbabwe seeking SADC support in highlighting the challenges with the July 31<sup>st</sup> poll through engagement with SADC and other regional bodies.
3. **Political** - with supporters of the MDC-T entertaining the idea of engaging in street protests demanding a re-run of the poll

During the pre-electoral period the Election Resource Centre (ERC) expressed its disquiet that Zimbabwe was clearly ill prepared for the polls and that any attempt to stampede the nation into a premature election would definitely lead to an inconclusive outcome that would be disputed. Events following the July 2013 polls confirm the ERC concerns.

While almost all observer missions accredited for the July 2013 polls have declared the poll free and peaceful, it is rather disturbing that the same election monitoring groups did not give their assessments on the “fairness” of the electoral process leading to the election. The fact that all that the regional bodies have not fully explored the absence of fairness in this poll but

are still prepared to accept it, suggests that standards for elections in Zimbabwe have been lowered, unfortunately not by Zimbabweans but by the region itself.

This is a tragedy not only for the country but also for the region and the continent considering that seven of the SADC member countries that have endorsed the election are heading for general elections in their respective countries by the end of 2014.

The Election Resource Centre (ERC) remains worried that the regional body erroneously accepted the poll outcome without making comprehensive assessments of the entire electoral process. Granted, the Zimbabwe July 2013 polls could have happened in an atmosphere of relative calm and peace, but any verdict of elections which selfishly focuses on freeness without due recognition to the fairness relating to such an election can justifiably be dismissed for its lack of comprehensiveness. For elections to be deemed credible they have to meet the basic standards of both inalienable principles of fairness and freeness.

**The ERC therefore contends that SADC and AU assessments of the elections in Zimbabwe remain incomplete and therefore illegitimate in so far as such bodies are yet to give their verdict on the “fairness” of the polls.**

Had SADC remained faithful to the established SADC Principles and Guidelines Governing the Conduct of Democratic Elections in making their assessment of the harmonized elections, the regional body could have found it difficult to accept the July 2013 polls as credible, let alone being a reflection of the will of Zimbabweans.

As outlined in the table below, a measure of the election processes that obtained towards the July 2013 polls against agreed SADC standards for the conduct of democratic elections reveals vivid inadequacies which inevitably undermined the prospects of the polls passing the “fairness” yardstick.

**SADC Principles and Guidelines measured against the Zimbabwe Elections**

<p>2.1.1 Full participation of the citizens in the political process;</p>	<p>According to the Zimbabwean Electoral Commission, 304 890 potential voters, (8,7% of the total number of the votes cast) were turned away from voting during the July 31<sup>st</sup> poll for various reasons, some of which would have been avoided had Zimbabwe complied with other provisions of the SADC Principles and Guidelines Governing the Conduct of Democratic Elections.</p> <p>A further 206 901 (5,9% of votes cast) voters were assisted to vote, an occurrence that was most likely to compromise full participation of citizens in the political process given the</p>
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	<p>manner in which the assistance was provided. It was reported by observers that scores of literate individuals like teachers, nurses and youth were assisted to vote. There can be reasonable suspicion that the assistance of voters could have greatly undermined the secrecy of the ballot, an occurrence which also could have benefitted a single political formation. These figures alone should raise concern for countries like Swaziland whose published numbers of eligible voters stands at 600 000 or that of Botswana which in 2009 stood at 892 339. By comparison, the compromised vote in Zimbabwe is nearly the size of the voting population in two SADC countries.</p>
2.1.2 Freedom of association;	<p>Compared to the 2008 election, Zimbabwe did witness an enhanced respect for the freedom of association with supporters of different political parties generally enjoying the space to associate with their individual political parties undeterred. However reports of forced attendance at political rallies were reported in some sections of the media with business at times being shut down in order to limit competition for attention. These reports were made largely in the private media and investigations are necessary to authenticate them.</p>
2.1.3 Political tolerance;	<p>Political tolerance was broadly existent again in comparison to the 2008 elections, particularly the June 27 Presidential run-off. However incidences of political intolerance were reported by some supporters of the MDCT including in the post- election period with retributive violence being alleged in some areas in Harare and Mashonaland Central provinces. While the police have dismissed some of the reports, such serious allegations warrant thorough investigation to ascertain fact from fiction.</p>
2.1.4 Regular intervals for elections as provided for by the respective National Constitutions;	<p>In accordance with the legal framework of the country, Zimbabwe has been consistent, holding election periodically. While this is a necessary measure of compliance, greater emphasis should be placed on the quality of elections. Consistent holding of disputed polls can never and should never be used as a measure of acceptable compliance.</p>
2.1.5 Equal opportunity for all political parties to access the state media;	<p>The public media, which has an obligation to cover different opinions in the country, was beset by allegations of bias. It allegedly failed to provide equal space for all contesting political parties with ZANU PF rallies being aired live on national television while rallies of all other parties were relegated to small news items. It is however noted that the</p>

	private media was able to flight adverts of most contesting parties without apparent bias.
2.1.6 Equal opportunity to exercise the right to vote and be voted for;	<p>A significant number of Zimbabweans were denied an equal right to vote and to be voted through the following;</p> <ol style="list-style-type: none"> <li>1. Voter Registration – The process of mobile voter registration was blighted by numerous challenges ranging from allegations of partisan registration including the selective use of strict requirements for one to register, to the deployment of registration teams in an unequal manner that allowed potential voters residing in specific areas gaining an advantage over those in other areas. The voter registration process itself was not verifiable through a voters’ roll inspection after the initial registration to the extent that those that registered could not confirm their registration leading to over 300 000 people being turned away on voting day. Voter registration should be an auditable process as prescribed by the electoral law along with all other election processes. All registration material used during the two mobile voter registration processes should be availed to allow a thorough scrutiny especially given the astronomical numbers of voters turned away (over 300 000). Cumulatively, these numbers pose real doubt on the credibility of the just ended process.</li> <li>2. Nomination Process – Nomination of candidates was done while voter registration was still in progress thereby denying some potential candidates the opportunity to be nominated owing to the fact that they may not have registered or their supporters may still have been waiting to register in order for them to be nominators. (one cannot be nominated without being registered and one cannot support a nomination without being registered)</li> <li>3. Assisted voting – This remains highly contested but over 5% of voters in the July 31<sup>st</sup> poll were assisted to vote. The manner in which such assistance was provided points to the possibility of deliberate disenfranchisement which should be thoroughly investigated. The full extent of such disenfranchisement can only be measured if election residue is made available and a complete audit of the election is undertaken.</li> </ol>

	<p>4. Political parties and other election stakeholders had no access to the voters roll, which is the register of eligible voters. The voters roll was only accessed, in hard copy, on the Election Day. The electronic roll, which is the basis of the hard copy, was not made available; hitherto it has not been made available.</p>
<p>2.1.7 Independence of the Judiciary and impartiality of the electoral institutions;</p>	<p>Throughout the life of the inclusive government, the independence of the judiciary has always been a contentious issue, even prior the inclusive government. Questions around the appointment of the judiciary have been raised and leading up to the July 31<sup>st</sup> poll, appointments to the bench were made less than a month from the election. It was the same bench that was set to consider any electoral petitions that would arise from the process. Such judicial appointments, done on the eve of an election by an incumbent seeking another term, had a likelihood of bringing mistrust and expose any resolution of electoral disputes to potential compromise.</p> <p>The impartiality of the Zimbabwe Electoral Commission (ZEC) has always been another bone of contention whenever elections are on the horizon. The ERC contends that the individual background of persons tasked with the administration of elections does not really matter as long as the body can exhibit signs of professionalism and fairness. Unfortunately, the alleged lack of fairness, which has been acknowledged by observers, is an indictment on the election management body. Impartiality manifests itself in fairness during engagement and looking at the July 31<sup>st</sup> poll, there were legitimate concerns around fairness which unfortunately are not considered to have been significant enough to influence the outcome.</p>
<p>2.1.8 Voter education.</p>	<p>The issues of voter education were critical during the pre-election and election period. While the election commission did not have the financial resources to conduct adequate voter education, the law was used to impose restrictions on the conduct of voter education, leading to the arrest and charging of staff and volunteers of civic groups that attempted to conduct civic education or awareness raising. The fact that over half a million voters were either turned away from voting or assisted to vote is a clear reflection on quality of the voter education that was done leading up to the 31<sup>st</sup> of July election. Limiting access to information had a potential of disenfranchising voters and compromising the secrecy of the ballot, both of which had a direct bearing on</p>

	the electoral outcome, Keeping in mind that Zimbabwe now uses a combination of both proportional representation and first past the post electoral systems, voter education is important so that voters understand how seats are allocated in parliament.
2.1.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land.	As a principle guiding the conduct of democratic election, the acceptance and respect of the election results by political parties should only be expected in the event that all other guidelines have been adhered to. For SADC to expect aggrieved parties to accept disputable results would be contrary to the very spirit for which the principles and guidelines were adopted particularly where SADC itself has not spoken on the fairness of the elections
2.1.10 Challenge of the election results as provided for in the law of the land.	The principles and guidelines provide for the challenging of election results as provided for in the law of the land. In the Zimbabwean case, SADC quickly gave a verdict on the election without acknowledging the pending contest to the results. In fact, while those of opposed to the result may have withdrawn their challenge on the basis of emerging circumstances, such a withdrawal cannot warrant a premature declaration on the election without acknowledging clear areas of contestation, areas that could have been in clear violation of the same principles and guidelines on which the same declaration should be premised on. This principle also assumes that the courts where these results are to be challenged are themselves unbiased and that there is rule of law.

## CONCLUSION

While the regional body might have used its political wisdom in accepting the Zimbabwean poll as free and credible, the real tragedy of this election lies with the people of Zimbabwe who yet again have become victims of their own history. By embarking on a violence spree that left the entire region in shock in June 2008, we (because we have to all accept responsibility for this) lowered our peers' own expectations on Zimbabwe with regards our capabilities to conduct an acceptably free, fair, peaceful and credible election.

SADC has also become a victim of Zimbabwe's electoral debacles in being blinded to a point that the regional bloc is prepared to accept the minimum, in this case, mediocrity in exchange for some semblance of progression. The fact that SADC has not only accepted and endorsed the July 31<sup>st</sup> poll results, but also congratulated itself for handling the Zimbabwean situation,

should spell doom for all other countries in the region faced with an election in the next coming months. Zimbabwe`s electoral fiasco scourge will no doubt go viral, with SADC now greatly compromised to enforce credibility of democratic elections having lowered standards on electoral conduct in clear deviation of the regional body`s own set principles and guidelines.//Ends

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