

ZIMBABWE ELECTION SUPPORT NETWORK



Budiriro Parliamentary By-Election

Final Report

21 May 2006

Executive Summary

The opposition Movement for Democratic Change, anti senate faction's candidate Emmanuel Chisvuure beat the ZANU PF candidate, Jeremiah Bvirindi and Gabriel Chaibva of the MDC's pro senate faction in the Budiriro parliamentary by-election that was marred by a low voter turn out. Chisvuure polled 7 949 votes while Bvirindi and Chaibva polled 3 961 and 504 votes respectively.

The by-election held on 20 May 2006 following the death of the MDC Member of Parliament Gilbert Shoko, was also characterized by a significantly high number of voters who were turned away. The reasons for being turned away included being classified as aliens, the use of a drivers' licence as an identification document and not being on the voters' roll. Previously the drivers' licence has been an acceptable form of identification and most of the voters who were turned away claimed that they had voted in that constituency in the March 2005 general elections using the drivers' licence, in accordance with the Electoral Act which has not been amended since then. (see legal framework).

The Budiriro by-election was important to the MDC, particularly in view of its current internal strife during which it has been effectively divided into two separate parties. Morgan Tsvangirai, the leader of the pro-senate faction, described this election as a litmus test for the MDC. He will therefore view Chisvuure's victory as an endorsement of his leadership of the party. In spite of the low turn out, the results of the election have confirmed that Budiriro is still an MDC stronghold.

While both the MDC and ZANU PF appeared to have lost the faith of some of their urban voters, MDC is evidently more affected as its combined 8 453 votes are a pale shadow of the 17053 votes it garnered in the March 2005 parliamentary election. In fact, it is remarkable that the MDC votes have been gradually declining since 2000 when it polled 21 053 votes against ZANU PF's 4 410. On the other hand ZANU PF support has fluctuated since 2000 when it got 4 410 votes, 4 082 in 2002 and 4 886 in 2005.

Although the by-election recorded a low turn out of only 12 480 votes, this was not lowest ever turn out for a parliamentary by-election. The Harare Central by-election of August 2003, recorded a

mere 4 036 votes or 11% of the registered voters. This parliamentary by-election turn out also favourably compares to the 2003 Makonde parliamentary by-election that had 12 992 voters.

ZESN observed both the pre-election and the polling period, which were generally without incident. However, there were a few skirmishes on 12 May when four houses belonging to ZANU PF supporters were vandalized, by alleged MDC supporters. On the eve of the by-election, Gabriel Chaibva was arrested alongside his party leader, Arthur Mutambara and more than fifty supporters. They were later released without charge. On election day, a group of about ten people indiscriminately assaulted patrons at Equalizer Bar, approximately fifty metres from Budiriro No.5 B Shopping Centre polling station injuring four people in the process. Two people were arrested in connection with this incident.

Methodology

This report is based on information collected from 34 ZESN accredited observers and long term observers.

Legal framework of elections

This by-election was the first parliamentary by-election to be held under the sole management and supervision of the Zimbabwe Electoral Commission following the adoption of the Constitutional Amendment (No. 17) Act. The following Commissioners were appointed on 17 May 2006;

1. *Justice George Chiweshe (Chairperson)*
2. *Mrs. Joyce Kazembe (Vice-Chairperson)*
3. *Mr. Pharaoh Theophelus Gambe*
4. *Bishop Jonathan Siyachitema*
5. *Professor George Kahari*
6. *Mrs. Sarah Kachingwe*
7. *Mrs. Vivian Ncube*

It is notable that, as happened in 2005, commissioners were appointed on the eve of the election. This casts doubt on the Commission's preparedness and control over this election.

. The Zimbabwe Electoral Commission functions include the following:

- *To prepare for, conduct and supervise all elections and referendums and to ensure that such elections are conducted freely, fairly, transparently and in accordance with the law.*
- *To supervise the registration of voters being conducted by the Registrar of Voters*
- *To compile voters' rolls and registers*
- *To ensure the proper custody and maintenance of voters' rolls and registers*
- *To design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres*
- *To conduct voter education*
- *To accredit observers of elections and referendums*
- *To give instructions to the Registrar-General of Voters in regard to the exercise of his functions*
- *To instruct other persons in the employment of the state or local authority in order to ensure efficient, proper, free and fair conduct of elections, and*
- *To exercise any other functions that may be imposed on the Commission by the Electoral Law and any other law.*

It was unclear what effect the abolition of the ESC and the failure by Parliament to amend and correct the Electoral Act what the role of the observer would be, particularly at polling station level. The Electoral Act in section 14 (1) (c), states that observers are required to bring any irregularities in the conduct of the poll or the counting to the attention of the monitor on duty at the polling station. The code of conduct for observers, chief election agents and monitors also highlights this, though further stressing that observers shall not bring any irregularities to the attention of any electoral officer. However, there were no 'monitors' who previously fell under the mandate of the ESC.

Upon accreditation, observers were informed by ZEC that they could bring irregularities to the attention of the presiding officer. ZESN observers were able to do this on the whole. However there is still need for the amendment of the Act to clarify such issues.

Further, the aspect of monitors is not mentioned in the role of the ZEC. It remains unclear whether ZEC will take over this function.

The Ministries of Foreign Affairs and the Justice, Legal and Parliamentary Affairs were both involved in the invitation of election observers. While the former was responsible for inviting selected foreign observers, the latter was responsible for inviting representatives of local organisations and eminent persons from within Zimbabwe.

The Registrar of Voters also remained involved in elections through the registration of voters albeit under the supervision of the ZEC. ZESN is of the view that ZEC should be responsible for the entire electoral process and should take over this function from the Registrar General's office. For the purpose of this election no delimitation exercise was conducted and therefore the election will be held using the constituency boundaries that were drawn prior to the March 2005 election.

This election also raised the issue of proof of identity. Section 56 (3) of the Electoral Act No. 25 of 2004 stipulates “ unless otherwise directed by the Commission, the presiding officer shall require an applicant for a ballot paper to produce his or her voter registration certificate or proof of identity.” Further, section 4 of the Electoral Act defines proof of identity as “a valid Zimbabwe passport, or a notice or identity document issued in terms of section 7 of the National Registration Act [Chapter 10: 17], or a valid drivers licence containing an identity number assigned to the holder thereof under the Registration Act [Chapter 10:17]” ZESN is of the view that the Electoral Act does not empower ZEC to arbitrarily override any of its provisions.

Despite the clarity of these provisions, on polling day ZESN observed a large number of people turned away because they brought driver's licences as proof of identity. ZESN is of the view that these people were unlawfully turned away.

The apparent reason for this change was Constitutional Amendment No 17, which disenfranchised people who previously had the right to vote. This is because it is not possible to determine the citizenship of a voter from a drivers' licence. However, the manner in which ZEC changed the identity requirements without amending the Electoral Act, and subsequently adequately informing the people prejudiced the electorate.

Inspection of the voters' roll

The inspection of the voters' roll took place from the 1st to the 13th of April 2006 and was characterized by a low turn out. ZESN did not receive reports of any voters who were obstructed from inspecting the voters' roll or of any prospective voters being barred from registering as voters. ZESN, however, noted that the inspection centres were conveniently located, as people did not have to walk for long distances in order to inspect the roll.

Nomination court

The nomination court sat at Mashonganyika Building on 21st April 2006. After the nomination court proceedings, Emmanuel Chisvuure of the opposition MDC anti-senate faction, Gabriel Chaibva of the pro-senate MDC faction and Jeremiah Bvirindi ZANU PF were duly nominated to contest the election. ZESN did not receive any reports of any prospective candidates being barred from filing nomination papers.

Results of Previous elections

Below are results of the 2000 and 2005 parliamentary elections:

YEAR	ZANU PF	MDC	UP	INDEPENDENT
2000	4410	21 053	96	93
2005	4886	17 053	N/A	N/A

2002 Presidential elections results for the Budiriro constituency

YEAR	ZANU PF	MDC	Kumbula	NAGG	Siwela
2002	4 082	20 749	40	17	7

See annexure 2 for graphical presentation.

Campaigning and Political environment

The pre-election environment was largely peaceful despite some incidents of politically motivated violence. All the three candidates managed to campaign in the constituency with Chaibva preferring to hold meetings instead of rallies while Chisvuure and Bvirindi held rallies with one rally each addressed by their parties' Presidents.

The MDC anti-senate candidate was the first to pitch up campaign posters throughout the constituency. There were however numerous incidents of all candidates' posters being pulled down or being defaced by political rivals.

Though all candidates suffered through this act of political intolerance, Gabriel Chaibva was undoubtedly the most affected. His campaign posters were pulled down especially at Budiriro 4 and Budiriro 1 shopping centres. In one instance, the anti-senate faction pasted a poster advertising their 14th May 2006 rally on top of some of Gabriel Chaibva's posters.

The campaigns took an ugly twist when violence broke out in the constituency on Friday the 12th May 2006 when four homesteads belonging to some ZANU PF supporters were vandalized. Several window panes and household property worth millions of dollars were smashed in the process by a gang of youths armed with axes and stones. At the time of compiling this report no one had been arrested in connection with these cases of wanton destruction. Although it was reported that the culprits were putting on MDC regalia ZESN could not ascertain to which faction they belonged. Both factions of the MDC, however, disowned the youths arguing that they were committed to a peaceful campaign.

ZESN also observed two incidents in which suspected ZANU PF supporters were assaulted for attending MDC rallies. One supporter was assaulted at a rally held near Mic-Jop shopping centre on Friday the 12th of May 2006 after attending the rally clad in ZANU PF regalia. The other was assaulted on the 14th of May 2006 at a rally near Budiriro 4 shopping centre. He was accused of spying on behalf of ZANU PF. The rally was addressed by Morgan Tsvangirai.

On the eve of the election, Chaibva, Mutambara, Priscilla Misihairambwi, the MDC MP for Glen Norah, and almost fifty supporters were detained for several hours at Glen View 4 police station. The team, which was travelling in a convoy of five vehicles, was released without being charged. ZESN received reports that the police had intended to charge the candidate for failing '*to prevent a public gathering*' in terms of the Public Order and Security Act (POSA) and the drivers were to be charged '*for acting in a manner likely to endanger the public*' in terms of the Road Traffic Act. The rest of the team were to be charged with '*the conduct likely to provoke the breach of peace*' in terms of the Miscellaneous Offences Act. A ZEC official and the MDC pro-senate lawyers are said to have intervened leading to the release of the group.

ZESN also observed that there was an increased police presence in the constituency after the disturbances that took place on 12 May 2006. There was a significant increase in the number of policemen who carried out cycle of patrols thereby reducing incidents of political violence. These patrols continued until polling day.

The City of Harare Municipality were not left out in the battle to win the hearts and minds of the people of Budiriro. The Municipality's waste management department that had disappeared for a long time suddenly emerged and roads were either resurfaced or graded. An unofficial 'ceasefire' was also declared on unlicensed vendors who were able to sell their wares without fear of arrest. Previously, they had been engaged in running battles with the police.

Media coverage

According to the Media Monitoring Project of Zimbabwe (MMPZ), a member of ZESN, the media's coverage of the election was not thorough as it paid little attention to technical aspects of the

election. For example, since the nomination of candidates on April 21st till May 14th 2006 none of the media investigated the state of the voters' roll or apprised its audience on the constituency boundaries. ZESN also believes that the coverage of the ZANU PF candidate in The Herald on election day gave him an unfair advantage over the other candidates. (For more detail see MMPZ's update on Friday 26 May 2006 / The Standard 28 May 2006.)

ZESN activities

ZESN intended to hold a public meeting on the 11th of May 2006 at Budiro Community Hall from 1700hrs to 2000hrs and had invited all the three candidates and a representative from the Budiro Residents' Association to address the residents. Unfortunately the meeting could not take place after the police refused to accept ZESN's letter informing them of its intention to hold the public meeting. The police argued that they did not see the need for the meeting, which they felt, was going to be a source of violence since they argued that Budiro was a 'volatile' place.

ZESN however, held two community workshops in the constituency where it urged the electorate to participate peacefully in the election. The workshops urged them to exercise tolerance of opposing views and stressed that there was strength in diversity. It also discussed the qualities of good leaders and emphasized the importance of elections. Fliers, posters and other voter education materials were distributed at these workshops.

Accreditation

Accreditation of observers took place at the ZEC Boardroom in Harare from the 15th to the 20th of May 2006. ZESN fielded thirty-four observers who were derived from its secretariat, the national election observation taskforce and their respective members. ZESN had an observer at each of the twenty-four polling stations. It also deployed mobile teams, which assessed the political environment and coordinated the observation exercise in the constituency on the polling day.

Polling period

There were 24 polling stations. These are the same polling stations that were used during the March 2005 parliamentary election.

ZESN deployed at least one observer at every polling station who managed to witness the opening, voting and counting process. The observers noted that all the polling stations opened on time while the voting process went on smoothly. Their most significant observation was the numbers of voters who were turned away for various reasons. Most of those turned away were alleged to be aliens, while some did not have proper identification particulars. At Budiriro Clinic 113 people were turned away, 96 had drivers' licences as proof of identification while the rest were not on the voters' roll. Budiriro No. 4 Bus Stop and Glen View 3 Community Hall had also 126 and 146 people turned away respectively.

The majority turned up with drivers' licences which were no longer acceptable as proof of identity. ZESN could not ascertain why ZEC had taken this position but it is assumed that this was because a license does not indicate whether the voter is a Zimbabwean citizen. Some voters were dismayed to find out that they could not vote in the parliamentary by-election, and yet they had voted in the last 2005 parliamentary election using this form of proof of identity. This clearly showed that there was inadequate voter information and education in the constituency, prior to the parliamentary by-election. ZEC failed to clearly advise the electorate of this change (*refer to legal framework for more detail*).

Although the polling was peaceful there was an incident in which a group of about ten people indiscriminately assaulted patrons at Equalizer Bar, which was adjacent Budiriro No.5 B Shopping Centre polling station, injuring four people in the process. Two people were arrested in connection with this incident.

Although most electoral officials conducted themselves in a generally professional manner, there were other who refused to release statistics to observers. There was also one incident in which the presiding officer at Chemhanza Polling Station (tent) refused a ZESN observer the opportunity to observe counting arguing that she had not received such directive from her command center. The

observer was eventually permitted to observe the process following the intervention of ZESN coordinators.

ZESN observers also noted that results were affixed outside the polling stations immediately after counting and commend the electoral officials for meeting this term of the Electoral Act.

ZESN also conducted a quick count of the vote and observed that its results tallied with those released by ZEC. The network therefore commends ZEC for its openness in this by-election.

Post Election Period

There has been a general acceptance of the election result by all the candidates. There have been media reports that the anti-senate MDC faction, despite their victory, has made allegations that the ZANU (PF) vote was a result of electoral fraud. The crux of the MDC allegations centers around the voters roll, mainly that a large number of people were unlawfully removed from the roll. However no petitions have been filed to date.

ZESN did not receive any reports of incidents of violence in the post- election period.

Political analysis and implications of election results

ZANU PF went into this election with nothing to lose as it already had a working two thirds majority in parliament. The election therefore had no meaningful significance in that respect. ZANU PF has maintained its support base of about 4000. The manner in which the party engaged in a largely peaceful campaign and accepted the outcome of the election may have added weight to its claim that the electoral process for the Budiriro by – election was not flawed.

To the anti-senate faction of the MDC the outcome of this by-election will be the answer to its litmus test of who is the real MDC. It may also dilute the radical stance on the call for mass actions as elections may now be viewed as a viable option or the opposition.

The pro-senate faction emerges from this election weaker. It did not get sympathy from the urban electorate even after the arrest of its leaders. It had probably contested this election to reflect that it was not a regional party. However, the outcome of this election might be a pointer for the need for

the unification of the MDC or the mutation of the pro-senate faction into a completely new party. The voter turn out also shows that some voters may be disillusioned by the existence of two MDCs.

ZESN proposals

- Zimbabwe Electoral Commission (ZEC) as the sole body responsible for the preparations for and the actual running of elections should take full responsibility of the entire electoral process. This should include the preparation of the voters' roll currently being conducted by the Registrar of Voters' whose office ZESN believes should be abolished.
- ZESN proposes that a continuous and intensive voter education exercise be carried out in Zimbabwe by ZEC, both civic and political organizations in preparation for all future elections.
- The relevant authorities should review provisions of the Constitutional Amendment (No. 17) Act, which have suddenly disenfranchised thousands of Zimbabweans for their presumed foreign citizenship. Considering that these people are contributing to the economic well being of the nation, it is only proper and fair that they be allowed to vote.
- The provisions of the Public Order and Security Act, that inhibit free campaigns should be repealed if the country is to hold free and fair elections.

Conclusion

ZESN applauds the people of Budiriro for keeping peace during the polling day. It also urges those who did not exercise their right to vote, to consider doing so in future as democracy requires participation by all stakeholders.

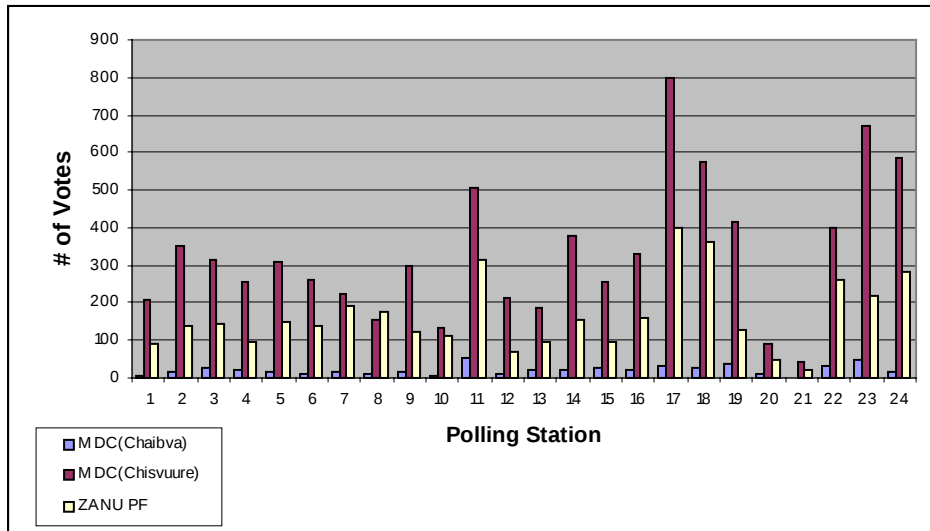
Annexure 1.

ZESN PARALLEL VOTER TABULATION RESULTS -BUDIRO CONSTITUENCY

	Gabriel Chaibva	Emmanuel Chisvuure	Jeremiah Bvirindi			
BUDIRO CONSTITUENCY	MDC (Chaibva)	MDC (Chisvuure)	ZANU PF	TOTAL VALID	REJECTED	TOTAL
1Budiriro No 1 Primary School A	3	207	88	298	3	301
2Budiriro No 1 Primary School B	16	354	136	506	6	512
3Budiriro No 2 Primary School A	26	313	143	482	1	483
4Budiriro No 2 Primary School B	23	254	95	372	3	375
5Budiriro No 3 Primary School A	17	309	148	474	0	474
6Budiriro No 3 Primary School B	10	259	140	409	2	411
7Budiriro No 4 Primary School A	14	225	194	433	3	436
8Budiriro No 4 Primary School B	9	153	174	336	5	341
9Budiriro No 5 Primary School A	14	298	122	434	3	437
10Budiriro No 5 Primary School B	6	133	110	249	1	250
11Glen View 3 Community Hall	55	508	316	879	2	881
12Glen View 4 Primary School A	13	212	71	296	2	298
13Glen View 4 Primary School B	23	185	95	303	4	307
14Glen View 6 Primary School A	22	376	155	553	1	554
15Glen View 6 Primary School B	28	256	96	380	0	380
16Budiriro Youth Training Centre	20	330	158	508	7	515
17Budiriro No 3 Shopping Centre (tent)	34	799	398	1231	4	1235
18Budiriro No 4 Bus Stop (tent)	29	577	360	966	0	966
19Chemhanza Stadium (tent)	36	413	130	579	8	587
20Budiriro No 1 High School A	9	90	48	147	0	147
21Budiriro No 1 High School B	1	42	22	65	0	65
22Budiriro No 5B Shopping Centre (tent)	32	397	259	688	2	690
23OK Shopping Centre (tent)	47	673	219	939	7	939
24Budiriro Clinic (tent)	17	586	284	887	2	889
TOTAL	504	7949	3961	12414	66	12480
Mean	21.00	331.21	165.04	517.25	2.46	519.71
Standard Deviation	13.31	186.47	96.44	283.52	2.28	283.65
Variance	177.04	34769.82	9300.04	80385.67	5.22	80454.82
Voter turnout	26%					

Annexure 2

Figure 1: Comparison of Votes by Polling Station, Budiriro Constituency, 20 May 2006



NB: The numbers in the x-axis correspond to the numbers in the worksheet in annexure1

Figure 2: Comparison of Votes by Party and Year, Budiriro Constituency

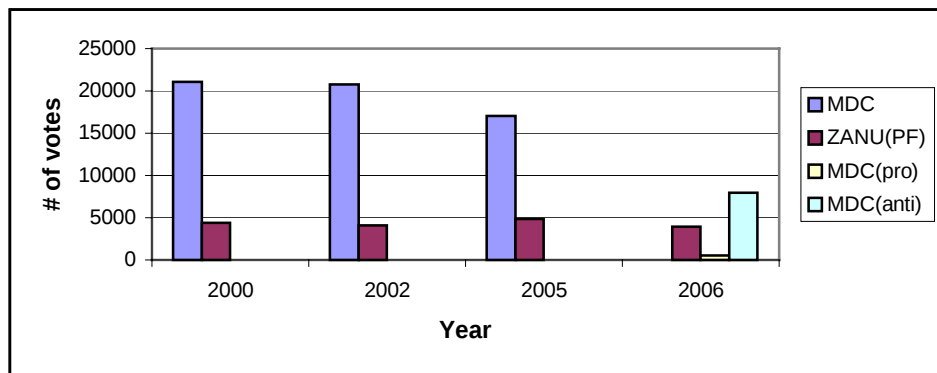


Figure 3: Comparison of Votes by Candidate, Budiriro Constituency, 20 May 2006

