

ELECTION WATCH 31/2023

20th October 2023]

Observer Missions' Views on Elections : Part 2

SADC Election Observer Mission Final Report

Spokespersons for the Government and ruling party were indignant when the SADC Election Observer Mission issued its preliminary statement in August criticising the way that month's general election was conducted. We analysed the Mission's statement, and evaluated the Government's allegation that the Mission had exceeded its mandate, in Election Watches 28/2023 [\[link\]](#) and 30/2023 [\[link\]](#).

Now the Mission has prepared its final report, which has been sent to the Government by the President of Zambia. It can be accessed on the Veritas website [\[link\]](#), and as we shall show in this bulletin, the Mission generally stands by its criticisms of the election.

Pre-election Visit by SADC Electoral Advisory Council

The Mission's report notes that in April a SADC Electoral Advisory Council visited Zimbabwe to assess the political and security environment as well as ZEC's preparedness for the elections. The Advisory Council concluded that the country was ready to hold democratic elections, but made three key recommendations:

- The Zimbabwe Electoral Commission [ZEC] should provide all interested parties immediately with updated copies of the electronic voters roll.
- The Police should exercise restraint in the rejection of proposed political gatherings, in order to build confidence among all political parties.
- State media should comply with the Electoral Act in their coverage of competing political views and events.

The Mission found that none of these recommendations had been heeded.

Observation by the SADC Election Observer Mission

The Mission started observing the pre-election environment on the 18th August, five days before polling, and its 50 observers covered all the country's 10 provinces. They visited 172 polling stations on polling days and continued to monitor the situation in the country after polling.

The SADC Observer Mission's Mandate

Government spokespersons responded to the Mission's preliminary statement on the elections by alleging that the Mission had exceeded its mandate. Probably in response to that criticism, the Mission's final report carefully explains what its mandate was under the SADC Principles and Guidelines Governing Democratic Elections [\[link\]](#).

“The mandate of the SEOM [SADC Election Observer Mission] shall be to determine the adherence of the Member State holding elections to relevant principles of the SADC Principles and Guidelines Governing Democratic Elections.”

The report also lists factors which, according to the SADC Principles and Guidelines, the Mission must consider in carrying out its mandate, including:

- whether the country’s legal and constitutional framework guarantees fundamental democratic freedoms;
- whether ZEC is independent;
- whether delimitation of electoral boundaries was properly carried out;
- whether the security forces were neutral in carrying out their duties;
- whether all parties and candidates had equal access to news media; and
- the extent to which the electorate trusted the electoral system.

All these are factors which the Mission took into account in its preliminary statement and which the Government, wrongly, claimed fell outside its mandate.

Criteria for Free, Fair, Credible, Peaceful and Transparent Elections

In addition to explaining its mandate, the Mission set out what it was expected to take into account in determining whether Zimbabwe’s elections were free, fair, credible, peaceful and transparent.

Free elections: Elections are free if fundamental human rights and freedoms have been adhered to. Electoral freedom is measured by the extent to which the following freedoms, rights and principles have been observed: freedom of speech and expression; freedom of assembly and association; the right of access to information; the right to transmit and receive political messages; the principles of equal and universal suffrage; the right to vote in secret; and the right to lodge complaints without undue restrictions or repercussions.

Fair elections: Fairness of elections is measured by the following criteria: whether the elections were conducted in conformity with established rules and regulations; whether they were managed by an impartial, professional and competent body; whether the rule of law was respected; whether the rights of citizens were legally protected; whether all parties and candidates had equitable access to financial and material resources; whether there was violence, intimidation or unfair discrimination.

Credible elections: Elections are credible if they have considerable support from citizens and the international and regional community, and if they lead to results that are acceptable to those participating in the elections.

Peaceful elections: Peacefulness is assessed according to whether elections are undisturbed by violence, intimidation or conflict; whether citizens are free to exercise their right to vote and can offer themselves for election without

intimidation; and whether citizens can communicate their electoral choices freely and enjoy freedom of assembly and association.

Transparent elections: transparency is measured according to whether the elections are conducted in an open, clear, visible and unhindered manner.

Many of these criteria are overlapping and some are vague, but if that is a fault it is the fault of the SADC Principles and Guidelines, not the Observer Mission. The Mission had to assess the elections according to those criteria – that was its mandate.

The Mission's Findings

Independence of ZEC

The Mission received reports that four members of ZEC were close relatives of high-ranking politicians. The Mission could not verify the reports, but said that appointing close relatives of politicians would have the potential to compromise the Commission's impartiality.

Delimitation

The Mission considered that ZEC had used a wrong formula to calculate the permissible variation in the number of voters in constituencies, with the result that variations between constituencies exceeded the 20 per cent maximum laid down in section 161 of the Constitution. This affected the equality of votes in parliamentary elections, but not in the presidential election where voters did not vote by constituency.

The voters roll

ZEC's delay in providing contesting parties and candidates with electronic copies of the voters rolls that could be searched and analysed breached ZEC's constitutional obligation to deliver fair elections. ZEC was obliged to comply with the Constitution as the supreme law and could not rely on legislation such as the Cyber and Data Protection Act to withhold access to voters rolls.

Nomination of candidates

The Mission noted concerns about high nomination fees which restricted participation in elections, in contravention of para 4.1.7 of the SADC Principles and Guidelines.

Freedom of assembly

Despite the recommendation made by the SADC Electoral Advisory Council (see above), the same concerns were reported to the Mission about the Police cancelling opposition rallies.

Freedom of expression

The new section 22A of the Criminal Law Code, introduced by the "Patriot Act", was a cause of concern. Election observers found some voters reluctant to talk to them for fear of being arrested under the section, which was

incompatible with section 61 of the Constitution and paras 4.1.2 and 5.1.10 of the SADC Principles and Guidelines.

Participation of women as candidates

Despite the introduction of women's quotas in Parliament and local authorities, the Mission noted that there were fewer women candidates contesting constituency seats in 2023 than in previous elections. This might be due at least in part to the high nomination fees.

Independence of the judiciary

The judiciary, the Mission was told, had received large financial and material incentives which might be construed as an attempt by Government to buy their loyalty.

Intimidation of voters

The Mission received information that the rural vote might have been compromised by the activities of a group called Forever Associates Zimbabwe. The authorities professed ignorance of the group before the election, but afterwards they acknowledged it.

Postal voting

Stakeholders expressed concern about alleged coercion of police officers who voted by post. The Mission noted that there was no provision for independent observation of postal voting.

Coverage of election by State-owned media

While there was some improvement compared to the 2018 elections, the Mission noted that the public broadcaster and State-owned newspapers were in favour of the ruling political party, contrary to section 64 of the Constitution and para 4.1.6 of the SADC Principles and Guidelines.

Diaspora voting

The Mission took note of para 4.1.8 of the SADC Principles and Guidelines, which encourages regular reviews of the participation of diasporan citizens in national elections.

Ballot papers

The Mission received complaints that ZEC did not inform stakeholders in good time about the design and printing of ballot papers.

Polling stations

The Mission observed that 64 per cent of polling stations opened on time but some opened more than 12 hours late. According to ZEC, the delay in Harare and Bulawayo was caused by unavailability of ballot papers – despite ZEC having assured the Mission before polling day that all necessary voting materials, including ballot papers, were available and ready for use. The

delays dissuaded some voters in the affected constituencies from casting their votes.

Eight per cent of the polling stations visited were not accessible for people living with disabilities, and at 50 per cent of them the elderly, pregnant women and persons living with disabilities were not given priority.

At some polling stations persons dressed in the regalia of Forever Associates Zimbabwe were observed taking down voters' names before they cast their votes. Some voters were intimidated by them.

More generally, however, at 97 per cent of the polling stations voting was free from irregularities and the environment was calm and peaceful.

Counting of votes

Counting of votes proceeded according to the Electoral Act, but results were not posted outside the polling stations in 93 per cent of cases – though party agents received copies of the results.

The SADC Mission's Conclusion

The Mission commended the people of Zimbabwe for conducting themselves in a peaceful, orderly and exemplary manner during the elections, and commended political leaders for spreading the message of peace and non-violence throughout the electoral cycle.

The Mission however concluded that some aspects of the elections fell short of the requirements of the Zimbabwe Constitution, the Electoral Act and SADC Principles and Guidelines Governing Democratic Elections. These shortcomings are noted above.

The SADC Mission's Recommendations

The Mission made the following recommendations:

Implementation of recommendations from 2018

All stakeholders should consider and implement recommendations made by the previous SADC Election Observer Mission after the 2018 elections, namely:

- **Alignment of the Electoral Act to the Constitution:** Outstanding aspects of the Act were still to be aligned. This should be expedited.
- **Public communications by ZEC:** ZEC should adopt a pro-active communication strategy engaging stakeholders at all relevant stages of the electoral cycle.
- **Postal voting:** The authorities should ensure that postal voting was conducted in private to guarantee secrecy of the vote.
- **Diaspora:** Consideration should be given to permit voting by Zimbabweans in the Diaspora.

- **Media:** ZEC and the Media Commission should ensure that the Constitution and electoral laws are enforced with respect to the media.
- **Announcement of results:** Sections 68 and 110 of the Electoral Act should be aligned to ensure a maximum time within which parliamentary election results are announced.

New recommendations

The Mission added some new recommendations of its own:

- **Ballot papers:** The government should consider involving stakeholders in the design of ballot papers and laying down clear timelines for ZEC to provide information on them.
- **Voters rolls:** the Government should consider clear time-lines for providing voters rolls to stakeholders. ZEC should avail voters rolls to stakeholders in enough time to allow the rolls to be inspected and verified.
- **Independence of ZEC:** Close relationship with senior politicians should be regarded as a disqualification in recruiting ZEC officials.

Women and gender parity: All stakeholders should work towards gender parity by promoting women to positions of political leadership in their governance structures.

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