

**ZIMBABWE:
THE ELECTIONS ON 29 MARCH AND THE LATER
RUNOFF EVENT AND BY-ELECTIONS ON 27 JUNE
2008**

Report
by
Kåre Vollan

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Preface

Norway was not invited to observe the elections in Zimbabwe in 2008¹ but two diplomats at the Norwegian embassy were accredited as observers for the 29 March elections under arrangements allowing resident accredited diplomats to obtain observer accreditation. Due to the lack of legitimacy of the runoff the Embassy decided not to seek accreditation for the 27 June event. The Embassy engaged Kåre Vollan as an advisor through NORDEM to work with the Embassy from 18 March to 6 April and from 21 June to 5 July to analyse available information and to write this report on the electoral process of Zimbabwe in 2008. Similar NORDEM reports are available for the 2002 and 2005 elections as well.²

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¹ Norway was invited in 2002, but not in 2005.

² See: NORDEM report 02/2002 <http://www.humanrights.uio.no/forskning/publ/nr/2002/0502.pdf>
and NORDEM report 11/2005 <http://www.humanrights.uio.no/forskning/publ/nr/2005/1105.pdf>

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Introduction

The 29 March 2008 elections in Zimbabwe included presidential elections, elections for both houses of the parliament and local council elections. The official results of the presidential elections showed that no candidate had got the required majority for a straight victory and a runoff was announced for 27 June. The campaign of the runoff was marred by violence and irregularities which led to a withdrawal of the candidate who had got the highest number of votes in the first round, but a broad call for postponing the election was ignored by the authorities. On the same day three by-elections to the House of Assembly were held.

Even though this report is not based upon first-hand information collected by long-term and short-term observers in accordance with proven methodologies, there has been a reasonable amount of reliable information available during the various phases of the electoral process. The domestic observer network Zimbabwe Election Support Network (ZESN) had good coverage of polling stations during the 29 March election, and they made a very credible job in their sample based analysis of the presidential election results. For the runoff it is impossible to verify any official information submitted since neither ZESN nor the opposition were in the polling stations. The official results will be referred to in this report but not as a reflection of what happened in the polling stations and certainly not as a reflection of the will of the people on election day.

In Zimbabwe it has been important that regional standards are applied when assessing elections. In Appendix A there is a brief summary of some standards relevant to Zimbabwe.

This report covers only the national elections in detail, even though many of the comments are valid also for the local ones.

Summary and Overall Assessment

There were sharp contrasts between the elections on 29 March and the runoff and by-elections held on 27 June. Whereas the former was seen – with its faults and shortcomings – as being a legitimate expression of the will of the people the second was marred by pre-election violence, restrictions on campaigning, lack of transparency and total control of the media by the ruling party. The opposition candidate withdrew from the race five days before the runoff, and none of the major international observer missions assessed the election to meet international standards.

Prior to the 29 March elections the defectors from mainstream ZANU PF had brought a new and less predictable dimension into the elections in Zimbabwe. The former finance minister Simba Makoni was running as an independent presidential candidate and he had explicit support of a few prominent ZANU PF leaders. The general assumption was that he had additional silent support of a faction of ZANU PF. The incumbent president Robert Mugabe was running again for ZANU PF and Morgan Tsvangirai was running

for the Movement for Democratic Change (MDC Tsvangirai) as he did in 2002 for MDC and some pollsters predicted him as the winner.

On the backdrop of the 2000, 2002 and 2005 elections the main question asked before the elections was whether the elections would be conducted in a correct manner and whether the elections could produce a peaceful change of powers if the election results should require such change. Robert Mugabe stated in his rally meetings during the weekend immediately prior to election day that a vote for MDC would be wasted because Tsvangirai would never ever, ever, ever be allowed to rule the country. This could be interpreted as electoral rhetoric, but also as a very specific threat that every means would be used to keep Tsvangirai out of powers. At the same time government spokespersons stated that the ZANU PF would respect any election result.

Three heads of security agencies said publicly before the elections that their loyalty would always be with Mugabe. It was noted, however, that a number of such chiefs were silent on the matter, including the important heads of the air force.

The pre-election period was peaceful, and the candidates were able to rally all over the country. Technically the voting and the count in the polling stations seemed to be carried out in a correct manner, and even though the publication of parliamentary election results was slow, it seemed to be done in a professional and reliable manner.

The main problems started when the release of presidential results were delayed. First of all the results of the 29 March elections had been announced in a very slow pace which jeopardised the transparency and trust of the process. After having published the results of the House of Assembly elections by 2 April the Zimbabwe Electoral Commission (ZEC) decided on 12 April to recount all races in 23 House of Assembly constituencies. By 26 April the ZEC had announced that 18 of the House of Assembly constituencies had been recounted and that the seats had remained with the candidate who had won according to the first announcement. After that it has been made clear that also the last five constituencies remained unchanged in terms of the winner, but detailed new vote counts have not been published.

The presidential results ZEC declared only on 2 May, five weeks after the elections, after tremendous domestic and international pressure to release the results. Representatives for the candidates had been invited to review the results before the publication but that process was not carried out with the same level of detail as for the parliamentary results.

The opposition (MDC Tsvangirai and MDC combined) won a clear majority in the House of Assembly (the principal chamber of the parliament) and half the seats in the Senate. Morgan Tsvangirai won the highest number of the presidential votes with the incumbent Robert Mugabe as number two. According to the official results Tsvangirai gained less than the 50% of the votes required to be elected in the first round and a runoff between him and Mr. Mugabe is therefore required. The Movement for Democratic Change (MDC) Tsvangirai claimed that Tsvangirai had 50.3% of the votes and that a runoff is not needed, but decided to participate anyway.

By not publishing the results as they were produced the general integrity of the elections is highly questioned. Transparency in each step of the electoral process is a prerequisite for building trust and confidence in the elections. This includes an immediate publication of results as they come into the central election authorities, even if they may be preliminary at the time of publication. On the other hand, the candidates' party agents were, for the parliamentary election, allowed to verify the detailed results prior to the publications, and even though the process is unusual the results were generally credible.

It must be assumed that the delay of presidential results came by order from the ruling party. In addition wide-spread post election violence and retaliation on opposition members and party agents have destroyed the impression from election day that this had been the best election organised in Zimbabwe so far.

After some hesitation Morgan Tsvangirai decided to participate in the runoff, provided that the election would be open for international and national observers. Following a period of massive ZANU PF sponsored violence, intimidation, ban on election activities, arrests and abuse of media by the governing party Morgan Tsvangirai withdrew from the runoff on 22 June, a race that had already become irrelevant due to conditions which could never support a free and fair election.

The SADC led negotiations prior to the election

The aim of the SADC (Southern African Development Community) led negotiations between the government and the opposition starting in 2007 was to create conditions for undisputed elections to be held in 2008. Even though the negotiations were not brought to a successful end, they did result in the constitutional changes of October 2007 and in changes to the election law and some other key laws in January 2008, which all together considerably improved the conditions for the elections. These changes were instrumental for the conduct of the best multi-party election in Zimbabwe ever held, up to the point of publication of presidential results.

The main improvement resulting from the SADC led negotiations was in the composition of the House of Assembly which is the principal house of the parliament. From 1990 to 2005 a unicameral parliament with 150 members had 30 members appointed by the president or indirectly elected in a process controlled by the president. In a constitutional change of 2005 a Senate was reintroduced (the 1980 constitution included a bi-cameral system), but both the House of Assembly and the Senate had appointed members.

With the constitutional change (amendment No 18) the House of Assembly increased its membership to 210, and they were all to be directly elected in single member constituencies.³ The Senate, however, were still to have appointed, *ex officio* and indirectly elected members.

The election law and the law of the Zimbabwe Election Commission (ZEC) were also changed as a result of the negotiations. The changes did result in improvements, for example the exclusion of the police in and close to the polling stations⁴, clear requirement for immediate posting of the election results outside each polling station, and a better procedure for the immediate posting of the election results outside every polling station.

³ A draft amendment gazetted on 8 June, 2007 included 200 elected and 10 appointed members in the House, but that was changed during the SADC led negotiations in Pretoria in September.

⁴ This provision was later reversed by the president, see below.

The SADC involvement in 2007 came after an attempt already in 2004 to influence the conditions for the 2005 elections. SADC held a meeting in Mauritius on 7 to 14 August 2004 where they passed the SADC Standards for elections (see Appendix A). It was stated that they were not designed for one particular country or situation, but they clearly did have the then upcoming elections in Zimbabwe in mind.

The standards resulted in legal changes in January 2005 which introduced:

- An independent election commission (ZEC).
- The count to take place in the polling stations as opposed to in counting centres, and this significantly enhanced the transparency and security of the process.

In addition the following measures were taken:

- The elections were held on one day instead of two. This eliminated the doubts about the security of the voting material during the night between the first and second election day;
- The ballot boxes were translucent, which reduced the risks of ballot stuffing. (This is in accordance with a recommendation of the SADC Parliamentary Forum standard.)

The introduction of the ZEC came too late to have a real affect in 2005 but by 2008 the ZEC was written into the constitution, the Election Supervisory Body had been abolished and the ZEC was given all responsibilities for the conduct of the elections.

The State Structure

The division of powers

Zimbabwe has a presidential system of government. The president is head of government, the ministers are responsible to the president, not the parliament⁵, and there is no prime minister post. The president has also a strong legislative power⁶, *i.a.* by:

Being able to deny assent to laws passed by the parliament. Only a two-third majority in the House of Assembly can overrule a presidential veto.

- Issuing decrees in accordance with the Presidential Powers (Temporary Measures) Act in cases of urgency. Such laws expire after six months unless approved by parliament, or they may be nullified by parliament at its next session.

In addition presidential appointees or dependents are members of the Senate. The power of the Senate is, however, limited, see below.

⁵ A minister can, however, be dismissed by a to-third vote of non-confidence of each house of parliament.

⁶ Article 32 of the Constitutions clearly states that the “legislative authority of Zimbabwe shall vest in the Legislature which shall consist of the President and Parliament”.

Such a strong presidential position⁷ is giving the majority extra powers, which is normally not favourable in deeply divided societies⁸. In addition, decision making becomes complicated under such a system should the presidential and parliamentary election be won by different political groups.

The parliament structure

The parliament consists of two Houses: The House of Assembly and the Senate. The House of Assembly is the principal chamber and Senate may only delay legislation and money bills. In case of disagreement between the two chambers the House of Assembly vote is decisive.

The House of Assembly is now a fully elected chamber. Between 1990 and 2008 the principal house of the parliament⁹ had only 120 elected members out of the total of 150.

The Senate now has 93 members¹⁰:

- 60 members, six from each of the ten provinces, elected in a first-past-the-post system in single member constituencies;
- The ten provincial governors;
- Two members being the president and the vice-president of the Council of Chiefs;
- Sixteen chiefs, two from each of the non-metropolitan provinces, elected in accordance with the elections law (which stipulates an indirect election where the provincial assembly of chiefs are the electoral collage);
- Five members appointed by the President.

The governors are appointed by the president and the chiefs would normally be loyal to and dependent of the executive.

One official reason given for the strong element of appointed and indirectly elected members of the Senate (and earlier even for the principal chamber) has been to strengthen the inclusion of groups which are otherwise excluded (women, disabled, etc). However, the way it has worked is to strengthen the influence of the majority rather than promoting inclusiveness for marginalised groups. There are other more efficient ways of securing representation of excluded groups where the groups themselves and the voters have the final say in who should be their representatives.

⁷ This is similar to the division of powers in the USA.

⁸ See Aanund Hylland, Kåre Vollan and Jarrett Blanc: "State Structure and Electoral Systems in Post-Conflict Situations", IFES/Quality AS, 2006, Section 7.6.

⁹ From 1990 to 2005 the parliament was unicameral.

¹⁰ The draft amendment in 2007 included 84 senators out of which 50 were to be elected, but that was also changed during the SADC led negotiations in Pretoria in September.

The Election Related Legal Framework

The Electoral Systems

The president is elected under a majority system. A candidate needs more than 50% of the valid votes to be elected, and if none of the candidates would obtain that much, a second round is to be held within 21 days. In the runoff only the two candidates with the highest number of votes in the first round are contesting, and in that round the candidate with the highest number of votes is elected.

Due to an inconsistency in the election law between the main body of the law (article 110) prescribing the two round system and Schedule 2 prescribing a plurality one round system, doubts were raised to whether the Zimbabwe Electoral Commission (ZEC) would interpret the law according to the schedule and declare the candidate with the highest number of votes as the winner. On 25 March the Zimbabwe Lawyers for Human Rights went public and announced that the ZEC in a letter to them dated 13 March 2008, had stated categorically that “110(3) supercedes section 3(1) of the second schedule to the Electoral Act for the reason that the latter is a schedule made in terms of the former.”

That meant that before election day there was no doubt that the electoral system for the president is a two-round majority system. However, it is unusual that such an important element of the electoral system is not regulated by the constitution. It should not be up to a simple majority in parliament to be able to change such an important rule of the game.

The (directly elected) members of both houses to parliament are elected under a plural system in single member constituencies where the candidate with the highest number of votes is elected, regardless of the share of the vote (first-past-the-post). For the House of Assembly each constituency should have the same number of registered voters within a margin of ten percent up or down. However constituencies can not cross province boundaries, which mean that the 210 seats are first distributed to the ten provinces according to their number of voters before the constituencies are being drawn up within the provinces.

For the senate the 60 directly elected seats are distributed with six to each province, and the constituencies are drawn up within the provinces. In drawing the senate constituencies it is not necessary to make the number of voters as equal as possible within the province.

Two indirect elections are held on dates determined by the president to elect additional members of the senate:

Each of the ten provincial assemblies of chiefs elects the Council of Chiefs which in turn elects a President and a Vice President who are both *ex officio* members of the senate.

Each of the eight provincial assemblies of chiefs of the non-metropolitan provinces (all except for in Harare and Bulawayo) elects two members of the senate.

The elections of chiefs have to be at the earliest on the general election day and at the latest 48 hours later, and the elections are regulated by the election law. The elections of the senators from the provincial assembly of chiefs is done by a secret vote under a plurality system where each member can cast as many votes as there are seats to be filled (normally two) and the ones with the highest number of votes are elected (the block vote system). Only members of the assembly may be nominated as candidates.

No particular rules apply to the presidential appointment of five senators, and the ten governors are, according to the constitution, appointed and removed by the president, and he does not have to act upon advice from his cabinet.

The Election Legislation

The laws directly related to organising the elections are the Electoral Act and the Zimbabwe Electoral Commission Act, both last amended on 11 January 2008. Even though it is clearly possible to organise good elections under this legislation if the will is good, there are clearly areas which can be further improved.

Some improvements already came as a result of the SADC led talks, with the requirement for the immediate posting of the election results outside every polling station after the count. Even in 2005 there was a requirement to post the results, but in a number of places the requirement was interpreted to mean that the posting was only to be done after the review by the constituency election officer. As it turned out, making it absolutely clear that the protocols should be posted immediately made a big difference for these elections.

The exclusion of the police from the polling stations was an important point in the agreement between the parties when the law was amended. It was therefore a setback when the President on 17 March 2008 issued a so-called Statutory Instrument (No 43 of 2008) where he changed the election law to again allow police inside the polling stations.

The regulation not only reintroduced the police officers into the polling stations, but it also included them on the list of people who should assist illiterate (article 59 (1) and physically incapacitated (article 60(1)) voters. The changes made to the law in January 2008 following an agreement between the parties stated that “the presiding officer, in the presence of two other electoral officers or employees of the Commission at the polling station, shall assist the voter...” This was changed to “the presiding officer, in the presence of two other electoral officers or employees of the Commission *and a police officer on duty* at the polling station, shall assist the voter...” Letting police officers assisting such voters was by many seen as an intimidation introduced by the president. He did this under a law permitting him to change laws when there is an urgent need, but there was clearly no urgency in this matter, and in particular not in allowing police officers to assist in the voting. See Appendix C for a description of the use of the Presidential Powers (Temporary Measures) Act.

The transparency in the tabulation of the results has been an issue during all the elections since 2000 when the opposition became significant. It is an important principle that the tabulation at every level is being published with detailed results. That would mean that the ward, constituency and national results should be published not only as a final sum per candidate, but it should include the tabulation of the results at the levels below. In practice that would mean that all tabulation should be made available by ZEC from polling station level to constituency and national level. Only in this manner can possible discrepancy with any parallel count by observers or parties be explained, and those present in a polling station can check the correctness of the tabulation.

For the presidential elections the return is to be broken down by polling station, and this is to be displayed at constituency level. This is not stated explicitly for the parliamentary elections, and it is not stated for any election that the ZEC needs to publish the break down centrally. See Section 12 for a more detailed discussion.

In order to improve the transparency of the tabulation requirements for publishing detailed polling station results both at constituency and at national level for all elections should be written into the law.

The legislation leaves ZEC with all responsibility to perform voter education, and only such organisations certified by ZEC to do so are permitted to carry out voter education. In this way efficient voter education is hampered and good opportunities for NGOs to participate in the effort are lost.

Other Related Laws

Three laws passed after the 2000 election have represented severe limitations on the right to free expression, meetings and fair access to media: The Public Order and Security Act (POSA) of 2002, the Access to Information and Protection of Privacy Act (AIPPA) of 2002 and the Broadcasting Services Act of 2001. All of these were changed in January 2008, and some of them contributed to the significant improvement of the campaign environment for these elections, in particular in the possibility for holding meetings and the coverage of the campaign by the public media.

Even though the changes to POSA did loosen the control of public meetings, it retained regulations which could be misused for political control of parties and NGOs. Examples of some of the very detailed regulations which were still part of the Public Order and Security Act included:

- prohibition of giving any statement - with or without intention - which he *i.a.* does not have reasonable grounds for believing is true, and which promotes public disorder or adversely affects economic interests of Zimbabwe, etc,
- prohibition of making abusive, indecent, obscene or false statement about the President, whether his person or office,
- prohibition of organising public meetings without five days (three days during elections prior written notice to regulating authorities (the police). The police may then give directions about the conduct of the meeting which they seem reasonable to prevent public disorder.

The definition of a public meeting was, however, now more limited, by excluding political meetings held in private places and any public place that is not wholly in the open. The meeting also had to have at least fifteen participants to fall under the regulations.

The AIPPA regulated access and protection of information, the accreditation of journalists and the registration and certification of mass media services and the code of conduct for the same. The law was detailed and had a clear emphasis on control. However a new body, the Zimbabwe Media Commission, was introduced and its membership was supposed to be more inclusive than the current Zanu PF dominated Media and Information Commission, by including representatives of journalists and media. The commission was to be appointed by the president, but the idea was to give broader representation. There are also other technical improvements. However, the new body was not appointed before the elections and it therefore remains to be seen if the changes will be implemented in good faith.

The Broadcasting Services Act regulates broadcasting services and provides for the control of the broadcasting service bands by the issuing of licenses for broadcasting outlets and their conduct. The law was changed on some points. For example the Broadcasting Authority of Zimbabwe Board which gave the minister advice on licensing issues has a broader representation of people with experience in broadcasting, NGOs

traditional chiefs etc. The purpose of the changes was to issue more licences in addition to the current public broadcaster. It remains again to be seen if the law will be implemented in good faith and be a vehicle for a freer broadcasting situation in Zimbabwe.

The Electoral Bodies

After pressure from SADC an independent Zimbabwean Electoral Commission (ZEC) was established immediately prior to the 2005 election. That came too late to have full effect, but by the 2005 elections the ZEC was written into the constitution with the responsibility to prepare for, conduct and supervise elections and referendums at all levels. The commission should supervise the registration of voters by the authority charged with that responsibility, which is the Registrar General. The Commission could give “instructions to the Registrar-General of Voters in regard to the exercise of his functions under the Electoral Law or any other law” and “other persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of any election or referendum”.

The commission was also in charge of delimitation of election constituencies and for accreditation of observers, the latter however, only upon invitation by ministers assigned for domestic and international observation.

Before 2005 the Registrar General was in charge of organising the election, and he did not gain a reputation for being independent of the ruling party when conducting election administration. The introduction of a commission independent of the government structure was therefore a clear improvement.

The appointment of a commission is always an issue of concern. In Zimbabwe the commissioners are appointed by the president for a five year term. The chairman needs to be a judge of the High Court or the Supreme Court or a person qualified to be appointed as a judge of the High Court or the Supreme Court and should be appointed after consultation with the Judicial Service Commission and six members were appointed among nine persons nominated by the Committee on Standing Rules and Orders. This procedure is not sufficient to *guarantee* that independent personalities are appointed, but it *may* provide for an independent commission. A broader nomination process to enable all political forces to propose candidate could enhance the confidence in the commission. In any case an implementation of the constitutional requirement in good faith may produce an independent commission, whereas if there is no will to have a truly independent commission, the president would be able to appoint a biased commission as well.

It was unclear to what extent the commission was sufficiently equipped with staff and resources to take the full responsibility for the process. The ZEC had an administration headed by a Chief Election Officer (CEO) but there were still claims that the structure of the Registrar General continued to run important parts of the process. The national command centre which was supposed to receive and tally all information from constituency level seemed to work more like a press centre, and it was not obvious where the actual work was conducted. The lack of transparency in how the work was actually done raised unnecessary doubts in particular about the tabulation process.

When it became clear that the opposition had done very well in the elections it is clear that the ZEC was under an enormous pressure from the ruling party. Instead of immediately releasing results as they came in from the constituencies, ZEC decided to slow down the process (see the tabulation section below). On the other hand, before releasing the parliamentary results they did invite all parties to participate in reviews, and they eventually released results for the House of Assembly and the Senate which the opposition signed up to¹¹. The publication of the House of Assembly results was the first election result published in the history of Zimbabwe which did not give Robert Mugabe a comfortable majority. The ZEC would earn credit for this process, even though it was slow and not generally transparent to the public. The ZEC seemed for a while to have been able to resist pressure from the government and the ruling party even under extreme circumstances.

After the publication of the parliamentary results, the verification and publication of presidential results stopped. This was clearly due to pressure from the ruling party, which also demanded a re-count of a number of constituencies. The results of the recount of twenty-three constituencies were also published at a slow pace and the detailed figures from all the constituencies were never officially announced. The recount itself was said to be done in a correct manner but the storing of voting material between the elections and the recount was not transparent.

The Pre-election Phases

Voter registration

The voters register is maintained on an ongoing basis. It is linked to the citizens register and it is supposed to be automatically updated with records of deceased persons. When an election is announced, cut-off dates for registrations effective for that election are set. The registration for the 29 March election ended on 14 February 2008. The final number of registered voters was published by ZEC on 18 March and the breakdown by province on 29 March. Since the delimitation of constituencies and up to the deadline the total number had increased by more than 300,000. The following shows the development of the number of registered voters over the last elections:

¹¹ Except for one constituency for the House of Assembly, where MDC Tsvangirai meant the result was wrong, but they were willing to accept the result anyway.

Province	Registered voters			
	2000	2002	2005 ¹²	2008
Bulawayo	357,281	363,028	339,990	320,772
Harare	799,452	882,176	832,571	784,598
Manicaland	575,404	658,694	686,767	774,482
Mashonaland Central	418,277	480,092	490,181	522,107
Mashonaland East	506,817	589,185	610,715	658,123
Mashonaland West	502,964	572,677	593,354	625,729
Masvingo	593,778	655,122	675,234	740,969
Matabeleland North	317,405	338,186	342,745	366,271
Matabeleland South	319,015	343,993	341,258	355,480
Midlands	658,422	724,659	745,822	786,237
Total	5,048,815	5,607,812	5,658,637	5,934,768

It should be noted that the registration figures are inflated, and possibly to an increasing extent, because deceased people and those who have moved permanently out of the country have not been removed from the registers.

According to the law parties were allowed to buy a copy of the voter registers in electronic form. The delivery was not completed a couple of days prior to election day and the format of the registers has been on image form which means that they can not be used for searching and sorting. The opposition parties did start a limited audit and on 27 March MDC Mutambara, MDC Tsvangirai and Kavambo-Kusile-Dawn (Simba Makoni) held a joint press conference presenting their findings from a sample at the Harare North constituency. In the undeveloped part of Hatcliffe 8,000 voters had been registered and two polling stations were defined. The claim was that there were hardly any settlements in the area and the addresses given to many of them do not exist. The three parties' worries were that this was not a single incident but part of a bigger fraud scheme.

The ZEC explained the observers of the Pan-African Parliamentarians that registration could be done on the basis of a communal address system. The possibility to register on same address on a community basis does certainly raise concern and it does give possibilities for politically based registration. On election day approximately 3,000 out of the 8,000 registered voters turned out to vote.

For future elections the voters registers should be cleaned up and copies should be given to the parties as per the legal regulations well in advance of the election day.

¹² During the delimitation of constituencies for the 2005 election the total number of registered voters was 5,658,637 as shown above. However, immediately prior to the elections the ZEC published the new figure of 5,789,912 (23 March 2005).

Delimitation of Constituencies

When the constituencies were drawn up the voter registers contained 5.6 million voters. This number later increased to 5.9 millions. The constitutional requirement was that the size of the constituencies should vary a maximum of twenty percent variation from the average size. The following table shows the number of constituencies for each province and the average size of constituencies, both when the delimitation was done and at the cut-off date for registration. The legal requirement is connected to the status when the constituencies were drawn up, but large shifts would obviously undermine the process.

The distribution of constituencies per province was done in accordance with well recognized proportional distribution methods (e.g. the method of largest remainder with Hare's quota). Both sets of figures met the requirements for maximum variation the average for each province.

Province	Number of Constituencies	At the time delimitation		The final register	
		Registered voters	Average size	Registered voters	Average size
Bulawayo	12	313,459	26122	320772	26731
Harare	29	766,478	26430	784598	27055
Manicaland	26	709,664	27295	774482	29788
Mashonaland Central	18	488,477	27138	522107	29006
Mashonaland East	23	624,630	27158	658123	28614
Mashonaland West	22	582,589	26481	625729	28442
Masvingo	26	699,199	26892	740969	28499
Matabeleland North	13	345,264	26559	366271	28175
Matabeleland South	13	342,280	26329	355480	27345
Midlands	28	739,510	26411	786237	28080
Total	210	5,611,550	26722	5,934,768	28261
Lower bound for the constituency size (-20%)			32066		33913
Upper bound for the constituency size (+20%)			21377		22609

Within the provinces the number of registered voters at the time of delimitation is also within the limits, but it has not been possible to check if this was distorted by the final figures. It has also not been possible to check if the actual border delimitation was done in a fully neutral manner.

Nomination of candidates

Since 2000 there have been two main political parties in Zimbabwe. The party in power since independence was Zanu PF and the opposition party since 2000 was the Movement

for Democratic Change (MDC). In 2005 MDC split over the issue of whether they should participate in the election for the senate¹³, after the ruling party had used its majority in the parliament to change the constitution and introduced a two-chamber system. The two factions ran in the 2008 elections under the names MDC Tsvangirai after its leader Morgan Tsvangirai, and MDC, often referred to as MDC Mutambara, after its leader Arthur Mutambara. Both parties continued using the party symbol: an open hand.

The independent candidate for the presidency, Simba Makoni, had a movement Mavambo – Kusile – Dawn which he before the elections announced might be turned into a party.

Candidates for all levels could be affiliated by political parties or run as independents. The conditions for running were simple; only ten voters need to support a candidate for parliament and even for the presidency. There was a deposit to be paid, but the amount was not prohibitive¹⁴. Shortly before the elections president Mugabe stated that all candidates should have party affiliation and referred to the possibility for running as an independent as a “loop-whole” in the law, referring to the candidacy of Simba Makoni.

It is quite unusual that such a liberal nomination system has not been exploited by far more candidates without any public support than the case is in Zimbabwe. In many new democracies it not unusual to have ten to fifty candidates for seats in parliament and for the presidency. In order to prevent situations which are clearly confusing for the voters it is common to require some evidence of support, for example by a number of signatures of support (often from 500 to 10,000 depending on the size of the constituency). Candidates for parties which have earlier won seats in parliament would sometimes be exempted.

Most countries would maintain a possibility for running as an independent candidate, if they can prove a certain level of support, which Simba Makoni would obviously have been able to do. It is recommended that the clear requirements for candidacies are worked into the law, in order to allow candidates who can show proofs of support, for example by collecting a minimum number of signatures, to run for the different elected posts.

The actual nomination process seemed to be conducted in an orderly and neutral manner. After the close of the nomination, the following candidates were nominated:

Presidency:

Robert G. Mugabe, Zanu PF

Morgan Tsvangirai, MDC Tsvangirai

Simba Makoni, Independent

Towungana Langton, Independent

MDC (Mutambara) publicly declared their support for Simba Makoni.

¹³ There were other disagreements as well, but this was the official reason for the split.

¹⁴ With effect of 6 January 2008, the deposit for a candidate for parliament was Zim \$ 100,000,000 (raised from 10,000) and for the presidential candidate Zim \$ 1,000,000,000 (raised from 50,000), paid in cash. At that time the market value of the amounts were approximately USD 3 and 30 respectively.

House of Assembly:

774 candidates were nominated for the 210 seats contested. Three candidates died before the election day and the election got postponed in their three constituencies¹⁵.

Senate:

For the 60 seats contested for the senate 197 candidates were nominated. One constituency¹⁶ had only one candidate, and the candidate was automatically elected.

Local Councils:

For the local councils 1,958 seats were contested in 57 Rural and 28 Urban District Councils. 3431 candidates were nominated, out of which 413 were unopposed.

Freedom of Speech and Association

It was a general opinion among the contesters that the possibilities for opposition candidates to organise a campaign all over the country had improved and the state media did cover the opposition campaign, even though still in a very biased manner.

There can be no doubt that there were far fewer reports of state controlled, systematic violence prior to and during the election day than in 2000 and 2002.

Media

The most important media is radio, whereas TV plays a role mainly in the cities. Electronic media were all state owned and controlled. Candidates were given access to programmes where they are questioned on their political platforms and issues. In addition, there are provisions for paid advertisements. This positive development started already in 2005 and came as a direct result of the SADC Standards having been agreed to in 2004.

The state TV and radio were still biased and gave much more time for the coverage of Zanu PF than of the opposition, and the coverage of the opposition was mostly negative. The programmes that were not directly related to the elections, such as the news and other current affairs programs, were still overly biased in favour of the incumbents.

After the Daily News was closed in 2002, there was no daily newspaper in Zimbabwe supporting the opposition, but the opposition had the support of some independent weeklies.

To what extent the changes to the Broadcasting act will give more diversity in the media picture remains to be seen.

Political violence and intimidation

Both the parties and the independent election network, ZESN, stated immediately prior to the elections that the amount of political violence had been much less than in 2000, 2002 and 2005. That did not mean that there had not been incidents, and political violence was still a worrying feature of the pre-election period¹⁷, but the volume was less than before. However, there were reports on intimidations and threats that voting for the opposition would have effects on life for the population after elections, including

¹⁵ Pelandaba-Mpopoma, Gwanda South and Redcliff.

¹⁶ Rushinga.

¹⁷ See for example reports from the Zimbabwe Human Rights NGO Forum.

distribution of food. There were also reports on distribution of goods immediately before the election day, and that was by observers seen as attempts of vote buying.

The statements of the President and the heads of security forces prior to the elections

To what extent a change following an election would at all be possible, clearly depended on whether the elections would be conducted in a correct manner, and the will of the incumbent to respect the result. Robert Mugabe stated in his rally meetings the last weekend before the elections that a vote for MDC would be wasted because he would “never allow Tsvangirai to rule ever, ever, ever!” This could be seen as electoral rhetoric, but it could also be seen as a very specific threat that every means would be used to keep Tsvangirai out of powers. At the same time government spokespersons stated that the ZANU PF will respect any election result.

The following three heads of security agencies said publicly on 27 February that their loyalty will always be to Mugabe:

Police Commissioner-General Augustine Chihury,

Commissioner of Prisons Retired Major-General Paradzai Zimondi, and

Commander of the Zimbabwe Defence Forces General Constatine Chiwenga.

It was noted, however, that a number of such chiefs was silent on the matter on that occasion, including the important heads of the air force and the army commander¹⁸.

Voter Education

Voter education could according to the law only be performed by the ZEC or by somebody approved for the task by ZEC. This highly unusual arrangement was criticised in previous elections. ZESN applied for such a role, but was not approved. Apart from a campaign run by the Women’s Trust to promote women in politics, only ZEC ran campaigns, and the ZEC campaign started rather late.

Ballot printing

There were consistent rumours both before and after the elections that a number of extra ballot papers unaccounted for and with the same serial numbers as the official ones have been printed. The Pan-African Parliamentary (PAP) observer mission raised the issue with the ZEC and, according to the PAP statement after the election, the Chairman indicated that it was for "strategic reasons".

Postal voting

Postal voting is open for security forces on duty on election day and for staff of the diplomatic missions abroad. Within the deadline only 8,000 police officers had applied for a postal ballot according to the ZEC. The postal voting system is less transparent than regular votes, and measures should be taken to improve the possibilities for parties and observers to review the registers, and the collection and distribution of ballots cast.

¹⁸ Air Force of Zimbabwe Commander Air Marshal Perrance Shiri, Director General of the Central Intelligence Organisation Retired Major-General Happyton Bonyongwe, and Zimbabwe National Army Commander Lieutenant-General Philip Sibanda.

Concerns about manipulation of the vote prior to the elections

In terms of possibilities for manipulation of the elections there is a significant difference between constituency based parliamentary elections and nationwide presidential elections. With the first-past-the-post elections in constituencies a simple majority suffices to win a seat. It does not really matter if the number of votes is vastly exceeding the next competitor or only just enough to be elected, as long as the candidate gets the highest number of votes. Therefore parties do not need to worry about constituencies where the result is obvious in any direction and they should concentrate on the marginal seats. This is true both for the legitimate campaign activities and for vote rigging wherever that is a risk.

For presidential elections the situation is different. There, every vote counts wherever it is cast in the country and the means of campaigning or rigging will be different.

During the 2002 presidential elections the ruling party used intimidation and violence to exclude the opposition from campaigning and from monitoring the elections in the rural areas where their control was dominant. In the metropolitan cities where the voters would vote for the opposition, the capacity of the polling stations was too low to accommodate the voters and thousands of voters never got a chance to cast their vote in Harare and Bulawayo.

In the 2005 parliamentary elections, the violence immediately before the elections was less than in 2000 and 2002 and the capacity of the polling stations was better, also in the cities. The city constituencies would be won by the opposition anyway and it did not really matter how many voters would secure the result. The irregularities in 2005 were rather in the count and the lack of transparency of the tabulation, and there were doubts raised on certain delimitation of some constituencies.

In the 2008 elections where both presidential elections and parliamentary elections were held simultaneously, there were concerns about each of the possibilities for manipulating the results. However, widespread election violence and strangling of the capacity of the polling stations where the opposition was strong did not happen. There might have been attempts to move the registration of voters into marginal constituencies by creative use of voter registration rules. This is outside the control of the ZEC, since the Registrar General is still in charge of voter registration, but the failed distribution of voters registers well in advance of the elections made the process much less transparent and therefore credible than it ought to be.

The capacity of polling stations

The fact that the voter had to cast not only one but four ballots would slow down the process. The number of polling stations was increased compared to in 2005, but the numbers changed continuously and even up to election day. With an atmosphere of suspiciousness before the elections it was not clear to all stakeholders whether this was

due to a genuine effort to ensure sufficient capacity or if it was also because of an effort to establish polling stations in a non-transparent manner and thus prevent NGOs and parties from having observers and party agents in all polling stations.

Even though it should be underlined that continued changes to the lists of polling stations all the way up to elections day represented a challenge for the observers not actually knowing if they had missed some stations in their planning, it seemed clear that there was a genuine effort to get the capacity right.

One way of increasing the capacity was to make so-called composite polling stations. That would mean that within a school one could have up to six separate polling stations. In the end the NGO-network ZESN said that there had been approximately 9,400 polling stations including each of those making up the composite stations. The breakdown of these was never given, but the last specification was as follows:

Province	Number of registered voters	Number of polling stations according to ZEC 15 March	Average number of voters per polling station
Bulawayo	320,772	241	1,331
Harare	784,598	722	1,062
Manicaland	774,482	1,138	624
Mashonaland Central	522,107	819	596
Mashonaland East	658,123	1,048	596
Mashonaland West	625,729	1,058	551
Masvingo	740,969	1,210	578
Matebeleland North	366,271	755	457
Matebeleland South	355,480	627	546
Midlands	786,237	1,380	536
Total	5,934,768	8,998	624

In addition to the polling station mentioned here the ZEC published an increase of 254 composite stations. On election day they published a detailed list which increased the number of polling stations in Harare to 780. A full breakdown of the allegedly 9,400 was never published.

Since the voter registers have a large number of deceased people and people who have left the country, it turned out that the capacity of the polling stations was good, even in the big cities. There were lines of voters in early morning but by noon on election day the waiting time for the voters was short.

It is recommended that the transparency in both the numbers and the places of the polling stations are improved for future election.

Candidate Agents and Observers

Party agents

All parties had the possibility to register party agents and list of such party agents were duly published in the newspapers by ZEC. There were some reports of party agents which had not been able to enter some polling stations in the election morning but the issues got resolved later.

Observers

Observers could only be accredited upon prior invitation by the Ministry of Justice for domestic observers and Ministry of Foreign Affairs for international observers.

The main domestic observer group was the Zimbabwe Election Support Network (ZESN), an umbrella organisation of some 35 organisations. They had received their invitation for the 11,800 requested people, and they deployed around 8,000 observers. They had also another set of 435 observers which were deployed to carefully selected polling stations. Their reports on the process and on the presidential election result formed a basis for ZESN's early predictions of the election results. The selection was supposed to be representative within carefully calculated error margins and a confidence interval of 95%, see the discussion on the results publication below.

The Catholic Commission for Justice and Peace (CCJP) had an additional 1,000 observers and the Centre for Peace Initiatives in Africa (CPIA) had accredited 100 observers who were concentrating on possible election related violence and intimidation.

Other domestic organisations were also accredited. It seems that, apart from a cumbersome procedure, the ZEC accommodated domestic observers with necessary accreditation.

As for international observation the Foreign Ministry continued the forum shopping from the 2002 and 2005 elections. Not only European and American organisations have been excluded, but even the SADC Parliamentary Forum was not invited. The reputed South African institute EISA had 20 potential observers in the country but were never invited nor accredited.

The following missions were invited and had mission in the country:

SADC (Southern African Development Community) arrived on 11 March and was headed by the Minister of Foreign Affairs of Angola who delegated the task to the Minister of Youth, Sport and Culture: Mr. José Marcos Barrica. They had 163 observers, including a group of 55 from South Africa headed by Ambassador Kingsley Mamabolo.

The Pan African Parliament, which was formed three years earlier, was a body within the African Union. They arrived on 22 March and were headed by Mr. Marwick Khumalo (MP from Swaziland). They were 19 parliamentarians and 15 staff. This was the second election to be observed by PAP, after the Kenyan one.

Of other international observer groups were: The SADC Electoral Commissions Forum (ECF) which arrived on 22 March, headed by Reverend Felix Mokobi (Botswana) including 21 observers, and the African Union (AU) arrived on 27 March, was headed by former president of Sierra Leone, Mr. Ahmed Tejan Kabbah and had 21 observers.

The Election Day

The general conduct

All observer missions and parties agreed that the election day was conducted in a peaceful manner. Observers and party agents were admitted into the polling stations, even though there were a few incidents where the constituency officials had to act to make it happen. The lines of voters were orderly and the capacity of the polling stations was sufficient to handle the lines.

Multiple voting

The vote was ward-based, which meant that voters could vote at any of the polling stations in a ward. Every polling station of a ward would have the same voters listed on the voters registers, which in turn meant that it was the ink on the fingers which was the measure to prevent multiple voting.

The poor quality of the voter registers opened for impersonation of voters which were deceased or out of the country and again the ink was the measure to prevent this from happening together with the identity control. The law was, however, ambiguous on the requirements for producing an identity card if the voter had a voter registration certificate issued for that ward.

In all elections relying on ink on the fingers there are claims that the ink may be washed off with certain solutions. There was no evidence of massive fraud relating to the ink. However, the ZEC could have done more to raise the confidence in the ink by being more transparent on its qualities before the elections.

Voters Registers

A comparatively high number of voters were turned away from the polling stations because they did not find their name on the register. The shift to a ward based system from a constituency based and the redrawing of constituency boundaries added to the confusion, and the quality of the registers might not have been very high in the first place. It was estimated that 8 to 12% were turned away, but some of them might have been able to vote in a polling station in the ward allocated to them.

Major efforts in information and review of the voters registers should be made for future elections to solve this problem which has been consistent over all the past elections.

Police and assistance to voters

As already mentioned the police was allowed back in to the polling stations by a presidential regulation reversing a change of the law in January 2008. This meant that illiterates and disabled people who had to be assisted also had to have a police officer among those helping out. Even though observers generally reported that the police were professional in their conduct, there is no doubt that this practice would feel intimidating by some voters.

The count and tabulation

The Count in the Polling Stations

In 2005 the transparency was improved by requiring the count to take place in the polling stations immediately following the vote. After the count the signed protocols were to be posted outside the polling stations. However, in 2005 the protocols often went for review to the constituency level first and they were (or were not) posted only many hours after the count had finished. Before the 2008 elections the law was changed and it was now absolutely clear that (article 64 of the law):

“the presiding officer shall without delay, in the presence of such candidates and their election agents as are present—

- (e) affix a copy of the polling-station return on the outside of the polling station so that it is visible to the public.”

Then, when that is done the following shall be done:

“Immediately after affixing a polling station return on the outside of the polling station in terms of subsection (1)(e), the presiding officer shall personally transmit to the constituency elections officer for the constituency to which the polling station belong”.

This process seemed to have been followed in almost all polling stations. ZESN reported that they agreed to the count in 99% of the polling stations and the party agents had agreed and signed the protocols in the same 99% of the sample they had monitored.

The Tabulation of the results at constituency level

One other key element for a credible election is the transparency of the tabulation of polling station results up to constituency level and national level for the president elections. Tabulation from polling station level was not published in earlier elections.

Both ZESN and the parties carried out parallel tabulations. In 2005 ZESN identified a discrepancy between their own sample and the official results, but without having the official tabulation available the doubts about the result could not be removed.¹⁹

If the tabulation is made public observers, party agents and others can easily verify if the polling station they have observed is correctly aggregated. Otherwise any discrepancy in results between parties and the official will cast a shadow on the credibility of the results.

In the election law publication of the tabulation is mandated for the presidential elections but the law is silent on the issue for parliamentary elections. In article 65 (2) it said that “At the time and place notified for the verification and collation of the polling-station returns referred to in subsection (1) and in the presence of such candidates, their chief election agents, monitors and observers as are present, the constituency elections officer shall display each polling-station return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each polling-station return.”

¹⁹ The Norwegian Ambassador sent a letter to the ZEC on 6 April 2005 encouraging them to publish the tabulation of polling station results.

The process is to be fully transparent to all present but it is not said that the protocol is to be posted outside the constituency control centre, and it is not said that that it should be broken down by polling station.

The presidential election has a separate process defined in the second schedule of the law. Here it is said that:

“After the number of votes received by each candidate as shown in each polling-station return has been added together in terms of subparagraph (i) of subsection (3) of section *sixty-five* and the resulting figure added to the number of postal votes received by each candidate, the constituency elections officer shall forthwith—

- (a) record on the constituency return the votes obtained by each candidate and the number of rejected ballot papers in such a manner that the results of the count for each polling station are shown on the return; and
- (b) display the completed constituency return to those present and afford each candidate or his or her polling agent the opportunity to subscribe their signatures thereto; and
- (c) transmit to the Chief Elections Officer by hand through a messenger the constituency return or a copy thereof certified by the constituency elections officer to be correct.

(2) Immediately after arranging for the constituency return to be transmitted in terms of paragraph (c) of subparagraph (1), the constituency elections officer shall affix a copy of the constituency return on the outside the constituency centre so that it is visible to the public.”

This means that the process is supposed to be transparent and the detailed tabulation is to be displayed at the constituency command centre for the review by the public. The only difference from the polling station procedure is that the public display is not immediate, but after having arranged for the return to be sent to the Chief Election Officer (CEO). A similar language had been interpreted in 2005 to mean that the review at higher level should have taken place before the display, even though this was not what the law said.

The practical implementation of these rules varied. Many places detailed tabulation was displayed for all elections. However, there were also examples of constituency election officers not being willing to disclose the tabulation to observers present before having them cleared at the CEO level. This clearly was against the law and the transparency was less than prescribed.

For future elections the law should be changed to:

- Require the full tabulation from polling station level to be displayed at constituency level for all elections where relevant;
- Publish the tabulation immediately, and before sending it to the CEO.
-

The tabulation of the results at ZEC level

For parliamentary elections the CEO receives the results from the constituency level (where the results are being declared) and his role is according to the law simply to publish them, as per article 68:

“As soon as the names of the persons declared duly elected for the several constituencies have been received by the Chief Elections Officer, he or she shall cause a notice to be published in the Gazette, giving the full names of the members returned, together with the constituencies which they severally represent and the days with effect from which they were so elected.”

For the presidential elections the second schedule gives the CEO a clear role in the verification of the results as well:

“Procedure on receipt of constituency returns

2.(1) The Chief Elections Officer shall give reasonable notice in writing to each candidate or his or her chief election agent of the time and place where the Chief Elections Officer will verify and collate all the constituency returns.

(2) At the time and place notified for the verification and collation of the constituency returns referred to in subparagraph (1) and in the presence of such candidates, their chief election agents and observers as are present, the Chief Elections Officer shall display each constituency return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each constituency return.

(3) When the Chief Elections Officer has completed the verification of the constituency returns under subparagraph (2) the Chief Elections Officer shall, in the presence of such persons referred to in subsection (2) as are present, add together the number of votes received by each candidate as shown in each constituency return.”

In practice the ZEC assumed a role in verification of parliamentary seats as well. This is positive and should be written clearly into the law. Preliminary results should be published at constituency level, but the ZEC should have a duty to verify the results.

The ZEC command centre was established in the Rainbow Towers Hotel. The centre gave the impression of a press room, and little seemed to happen there except for at periods when the results were published. There were consistent speculations that the “real” command centre was at a different location. However, for the parliamentary results the parties were involved in the verification of results at ZEC level.

There is no explicit requirement for the ZEC to publish results aggregated from polling station level to constituency level.

For future elections the law should be changed to accommodate for the ZEC to eventually (at the first practical occasion) to publish all results from polling station to constituency level for all elections. This is the only way that any discrepancy in results between observer groups, parties and the ZEC can be resolved in a transparent manner.

Observer reports

In its statement on the day after the elections ZESN stated *i.a.*:

“Overall, while there have been improvements from past elections (for example fewer incidents of overt violence), the pre-election and campaign environment continues to affect adherence to the SADC Principles and Guidelines Governing Democratic Elections. In particular, concern remains about the lack of political tolerance, limited access to state media, and use of state resources. Other issues of concern include restrictive proof of residence, status of the voters' roll, delayed and limited voter education and information, lack of transparency in postal voting and production and distribution of ballot papers. These problems have an impact on the conduct and outcome of the elections.”

They also said:

“ZESN encourages the ZEC to conduct the tabulation of election results as quickly as possible. The announcement of results in a timely, transparent and accountable manner helps reduce tensions following any election. It is important to underline that this process is not over. ZESN will continue to observe this process and will issue additional statements and updates as appropriate. We urge ZEC to carry out its duties in an impartial, orderly and transparent manner.”

The SADC mission had the most significant international observer mission. In their statement on the day after the election they made some reservations to the process and stated: “We thus conclude that, notwithstanding the concerns highlighted above, the elections held in Zimbabwe on 29 March 2008 for President, Senate, House of Assembly and local government, have been a peaceful and credible expression of the will of the people of Zimbabwe.”

On being asked how they could draw the conclusion before the results had been published, they said they did not review the results, which is dictated by the will of the people. They did not add the reservation that observer missions normally do when publishing preliminary reports, that they will follow the process to the end and that the preliminary statement only covers the process up till the point of issue, or that they would insure that the last part of the process would reflect the will expressed by the voters in the election. They did, however, state: “It is SADC's greatest hope that the spirit of co-operation and political tolerance which prevailed thus far, will continue to thrive amongst all parties and role players in the post-election phase.” However, the SADC mission generally failed to cover the electoral process after the night of the vote count in the polling stations, even though they did have observers present in some counting centres for the recount of 23 constituencies.

The PAP did, in their press conference on 31 March, not fail to clarify that the statement is only a preliminary one and that the final conclusions could only be drawn after the results had been published. After having highlighted some shortcomings they said:

“Notwithstanding the above, the Mission has concluded that the environment for holding an election was conducive. It is the Mission's considered view that the irregularities that were detected were not so major as to compromise the flow of the electoral process. However the Mission is concerned that two days after the closure of the polls, the overall outcome of the elections remains unknown. This concern was communicated this afternoon to the Chairperson of the Commission.

On the overall, the basic conditions of credible, free and fair elections as contained in the OUA/African Union Declaration on the Principles Governing Democratic Elections in Africa of 2002 were reflected in the Zimbabwe Harmonised Elections, thus far. Nonetheless, the post-election phase which forms part of the entire electoral process, including the announcement of results, remains a concern and needs to be closely monitored.”

The post election phase

The publication of results by ZEC

The official results were published by the ZEC at a very slow pace. First the results for the House of Assembly were published batch-wise, and then the senate results. After that only the presidential results remained, and the ZEC had not published them even a month after election day.

The first six constituency results for the House of Assembly were published in the morning of 31 March, and they followed in all together in twelve batches ending on 2 April. For a long time the ZEC published such constituencies which would give the ruling party and the opposition the same number of seats. However, it was clear from the selection that the opposition had done a very good election and in the end the balance was 97 seats to Zanu PF and 110 to the opposition out of the 207 seats contested. Two of the three constituencies with by-elections needed to be held because some candidates had died before the elections were seen to be opposition strongholds.

On 3 April the ZEC started announcing the senate election results and those were completed by 5 April, this time published in three batches.

The slow publication of results gave rise to speculations over manipulation by the government. The MDC president Morgan Tsvangirai said, however, on 4 April that the process, though being too slow, had been correct so far. MDC representatives had been able to verify all results and whenever there were discrepancies, they had been able to check the tabulation from polling station level. This was taking time, because the verification was based upon the original polling station protocols. He also said that the presidential results would take another two or three days because the verification process had not even started for these elections. The patience did, however, seize the day after, see below.

It is clear that the ZEC must have been under tremendous pressure from the ruling party before and during the publication of the parliamentary results. These were clearly a blow to Zanu PF and the slow publication could also have been due to the need for preparing the party for defeat. This process is far from ideal. The best practice is for an election authority to publish partial results as they get in, but under the condition that they will have to be scrutinised and that should also be done in public. Any discrepancies would then have to be dealt with afterwards.

Under extreme circumstances it may be excused as long as the verification process behind scenes is correct and the results are correct. It might have been more difficult to risk publishing inaccurate results which would have to correct later.

Had the publication of the presidential results followed the same pace and the same procedure of verification as the House of Assembly results, the slow process would have been forgiven and probably understood by all involved.

The delay of publication of the presidential election results

On 5 April MDC changed the tone and demanded an immediate publication of the presidential results. They open a case with the High Court to force the ZEC to publish the results. The international pressure grew to have the results published, whereas Zanu PF claimed that the time was needed for the review of the results.

MDC stated already in a press conference on 2 April²⁰ that according to their figures Morgan Tsvangirai had won a majority of 50.3% against 42.8% for Mugabe and that a second round was therefore not necessary. ZESN had on 31 March published their projection based on a sample of 435 pre-selected polling stations and they predicted 49.4% for Tsvangirai with a 2.4% margin of error²¹ so the MDC result was within what seemed likely. According to ZESN, Mugabe had 41.8% (2.6% error margin), Makoni 8.2% (1.1% error margin) and Towungana 0.6% (0.1% error margin).

A SADC summit with heads of states met in Lusaka on 12 April to discuss the situation. President Mugabe was not present, but both Tsvangirai and Makoni were. The Summit concluded after a 12 hours meeting ending early morning of 13 April as follows:

“14. The Summit urged the electoral authorities in Zimbabwe that verification and release of results are expeditiously done in accordance with the due process of law. Summit also urged all the parties in the electoral process in Zimbabwe to accept the results when they are announced. By due process of law, Summit understood to mean that:

(a) the verification and counting must be done in the presence of candidates and/or their agents, if they so wish, who must all sign the authenticity of such verification and counting.

(b) SADC offers to send its Election Observer Mission who would be present throughout such verification and counting.

15. If such verification and counting makes it necessary for the parties to go for a runoff, the Government is urged to ensure that the runoff elections are held in a secure environment. SADC offers to send an Election Observer Mission.”

The summit said clearly that the opposition should take part in the verification of the results and the government would have to make sure that if a runoff happened, the same peaceful environment, free from intimidation, would be guaranteed.

The court case

On the 5 April the MDC tried to file a case with the High Court to force the ZEC to publish the results. Tsvangirai said in his press conference the same day that their lawyers had been prevented by Zanu PF militia from entering the court building to file a petition but they managed the next day.

This case was pending and then combined with the case of the recount of 23 constituencies. Already on 4 April Zanu PF challenged the results in 16 House of Assembly constituencies a number raised to 22 later. The ZEC decided on 12 April to recount 23 constituencies, because 22 had been disputed by Zanu PF and one had been contested by MDC. MDC challenged the recount decision at the High Court and a decision on both issues, the recount and the publication of presidential results, was published on 14 April.

Article 67A (1) of the election law states that “any political party or candidate that contested the election in the ward or constituency concerned may request the

²⁰ Morgan Tsvangirai had revealed that they had results showing more than 50% already the evening before without giving accurate figures.

²¹ And a 95% confidence interval.

5	Zvimba North	1701	6784	944					9429
	<i>Masvingo:</i>								
6	Bikita South	6916	5284			299			12499
7	Bikita West	7048	7029						14077
8	Chiredzi North	2679	18413	1122					21428
9	Gutu Central	6398	4767						11165
10	Gutu North	5045	4343						9388
11	Gutu South	5757	3559	1570		334			11220
12	Masvingo Central	4905	4793			327	543		10568
13	Masvingo West	4513	4121			900			9534
14	Zaka West	4734	4030			307	347		9418
	<i>Matabeleland North:</i>								
15	Lupane East	1352	3368	5424					10144
	<i>Matabeleland South:</i>								
16	Bulilima East	2181	3104	3180					8465
	<i>Midlands:</i>								
17	Gokwe-Kabuyuni	7234	7156						14390
18	Mberengwa East	1251	7292	616					9159
19	Mberengwa North	2352	9722						12074
20	Mberengwa South	1309	8291	665					10265
21	Mberengwa West	2912	5508	315					8735
22	Silobela	4624	4137	679	642	1462			11544
23	Zhombe	5445	5122	2289					12856

The process of recounting took a long time. There were observers and party agents present. MDC Tsvangirai who had failed to stop the recount by a court rule were present in many counting centres, but with a less active role. A number of irregularities were reported on missing or broken seals, broken ballot boxes, missing voting material, etc. By 26 April eighteen constituencies were confirmed to have the same outcome in terms of seats as the original count. However, still five constituencies failed to be officially reported, including some constituencies where MDC won a very small margin: Masvingo Central, Masvingo West, Bikita West, Bikita South and Silobela. The results from these are, however, known from the observers present confirming the previously announced result, and no change were ever announced by the ZEC.

During the recount there were a few incidents of violence, including a party agent dragged from the recount venue in Bikita West and Gutu²², beaten and subjected to a mock execution by an army officer. However, the report by ZESN stated that the recount was conducted in a peaceful manner, that election officials made every effort to

²² According to a diplomatic observer report.

be impartial and non-partisan, and that the few discrepancies found were due to human error.

ZESN published the figures from the recount and the largest discrepancy was in Mberengwa East where Zanu PF was given 1,632 more votes in the recount. Their victory was anyway overwhelming there.

Following the recount 105 petitions were filed with the court challenging the results, 53 from Zanu PF and 52 from MDC.

The publication of the presidential result

On 1 May representatives of the candidates were invited by ZEC to participate in the verification of the presidential results. That was expected to take some days, but a detailed review was not carried out, possibly due to lack of information submitted by the MDC representative and the ZEC publish the results the next day. These showed that Tsvangirai had won the highest number of votes with Robert Mugabe as number two, but Tsvangirai did not get the sufficient majority to avoid a runoff. ZESN stated after the announcement that they had no possibility to verify the result since there had not been a verification process including them and representatives of the parties.

Generally speaking detailed tabulations broken down by polling stations have not been published for any elections. Only such detailed tabulations will enable all observer groups and parties to verify the results.

The situation after the election

The situation was tense after the elections. When it was clear that the opposition had won the parliamentary elections there were rumours of actions by the security forces. On the morning of 30 March it was reported that the police had been looking for Tsvangirai at the Meikles hotel where he was staying. He then went to a safe place, but he made public appearances again on 1, 4 and 5 April. On 3 April his Meikles office was in fact raided.

At his press conference on 3 April the MDC Secretary General Biti said that if the ZEC should publish results indicating that a second round was needed, he would respect that reluctantly and participate as the law required, even though he was convinced that he had won a straight majority.

On 3 April the police came to question NDI advisors to the ZESN where they stayed at York Lodge, and on 4 April one of them was held back for 24 hours for questioning on his way out of the country. There was also a demonstration by veterans in Harare on 4 April, but generally the atmosphere was peaceful while waiting for the final results.

On 4 April the Polite Bureau of Zanu PF met and issued a statement saying that they would support Mugabe for a second round should the result show that this was necessary.

In a briefing for diplomats on 4 April Tsvangirai again stated that he was prepared to participate in a runoff if it was held within the framework of the law. He claimed that Mugabe considered using his presidential powers to postpone the second round by three or even six months, beyond the 21 days prescribed in the law.

The tone of MDC had changed when Tsvangirai held a press conference on 5 April. Now he raised doubts that a second round could be held under peaceful and fair circumstances. He claimed Zanu PF put pressure on the ZEC to publish results with less than 50% for him, so that a second round would be necessary. There was a fear that the ruling party prepared for a runoff by use of a thousand militants remobilised, veterans,

introduction of no-go areas, more money for bribes, etc. similar to in 2000 and 2002. Under such circumstances they could not participate. But even now Tsvangirai said that MDC was prepared to participate in a runoff within the framework of the law.

A week later the government banned political rallies, while the opposition called for a general strike. The ZEC command centre is being closed and moved to a place not known to the public. Fifteen election staff was arrested for allegedly having conspired with MDC in vote rigging.

In addition there were a large number of reports on increased political violence, including killings and retaliation against those having supported the opposition, the military presence was stronger in all provinces and the youth militia and the war veterans were mobilised.²³

On 25 April the MDC office at Harvest House was raided and approximately 200 people were arrested. At the same time the ZESN offices were raided and equipment and files were taken by the police. No-one were arrested, but according to CNN ZESN chairman Noel Kututwa told AP that police wanted to arrest him and the national director Rindai Chipfunde-Vava, but they were away from the office and went after that in hiding for some time. The harassment continued by detaining the ZESN chairperson, injuring observers who have had to take shelter with friends or with the organisation, confiscation of a vehicle, etc.

The Results

The House of Assembly

The votes according to the publication the first week after the election²⁴ were as follows:

Constituency	MDC T	ZANU PF	MDC M	MDC T 2	Zanu PF 2	MDC M 2	Indep	Other parties	Total
Bulawayo	40,090	11,406	27,611	0	0	0	3,883	2,122	85,112
Harare	213,953	68,401	20,749	0	1301	0	4,882	2,153	311,439
Manicaland	195,743	141,655	10,700	0	5876	0	10,336	1,065	365,375
Mashonaland Central	63,096	150,210	7,478	1,173	0	0	4,157	2,487	228,601
Mashonaland East	101,405	169,480	10,646	0	0	0	5,858	1,402	288,791
Mashonaland West	89,053	138,505	13,245	0	0	0	3,401	1,308	245,512
Masvingo	131,355	161,792	9,441	0	2384	440	7,895	2,345	315,652
Matabeleland North	53,736	47,667	39,715	1,335	0	0	6,223	226	148,902
Matabeleland South	24,613	45,739	37,830	0	0	0	1,174	273	109,629

²³ Reported for example by Zimbabwe Human Rights NGO Forum.

²⁴ As published by the web-site Kubatana after The Herald 4 April 2008.

Midlands	111,996	168,357	23,945	10,958	0	1,346	7,372	0	323,974
Total	1,025,040	1,103,212	201,360	13,466	9,561	1,786	55,181	13,381	2,422,987

All the parties MDC Tsvangigai, MDC (Mutambara) and Zanu PF had instances where they nominated two candidates in the same constituency. The result for the second candidate is indicated by the number 2 in the table above.

The seats were won as follows:

Province	MDC T	Zanu PF	MDC M	Independents	Comment
Bulawayo	11	0	0		By-election pending in Pelendba-Mpopoma
Harare	28	1	0		
Manicaland	20	6	0		
Mashonaland Central	2	16	0		Zanu PF candidate uncontested in Muzarabani South
Mashonaland East	4	19	0		
Mashonaland West	6	16	0		
Masvingo	14	12	0		
Matabeleland North	5	4	3	1	Jonathan Nathaniel Moyo, Independent won in Tsholotsho North
Matabeleland South	2	3	7		By-election pending in Gwanda South
Midlands	7	20	0		By-election pending in Redcliff
Total	99	97	10	1	

The total is 207, pending three by-elections where the candidate died after nomination and before the elections. Elections were not held there. At least two of the three were likely to be taken by MDC as mentioned earlier.

In 10 constituencies Zanu PF won seats where the MDC T and MDC M candidates combined had majority²⁵. In one constituency the MDC T won the seat where the two Zanu PF candidates had majority combined²⁶.

²⁵ 1 constituency in Manicaland (Mutare South), 1 in Mashonaland Central (Mazowe South), 1 in Mashonaland West (Magunje), 1 in Matabeleland North (Lupane West), and 6 in Midlands (Chirumanzu, Chiwundura, Gokwe, Gokwe-Kana, Vungu and Zvishavane-Ngezi)

²⁶ In Manicaland (Makoni North)

The table below compares the official results for the elections of 2000, 2002, 2005 and 2008. The 2008 results are for the House of Assembly only.

Party	2000 Parliament		2002 President	2005 Parliament		2008 House of Assembly of Elections	
	Number of Votes	Number of seats	Number of Votes	Number of Votes	Number of seats	Number of Votes	Number of seats
ZANU PF	1,206,962	62	1,695,549	1,569,867	78	1,112,773	97
MDC (in 2008 both factions)	1,169,894	57	1,283,911	1,041,292	41	1,241,652	109
Smaller parties		1 ²⁷		6,608 ²⁸	0	13,381	
Independents				16,878	1 ²⁹	55,181	1 ³⁰
Spoiled				62,025			
Total	2,552,844³¹	120	2,979,460³²	2,696,670	120	2,422,987	207

The Senate

The official results as published in the newspapers from 3 to 5 April in terms of votes were as follows:

Constituency	MDC T	ZANU PF	MDC M	MDC T 2	Indep	Other parties	Total
Bulawayo	46,424	12,328	32,251	0	2,452	2,514	95,969
Harare	194,427	61,323	18,741		10,928	432	285,851
Manicaland	202,297	148,592	9,836		9,013		369,738
Mashonaland Central	46,107	137,689	6,884			11,052	201,732
Mashonaland East	97,301	168,682	15,544	8,690	1,996	1,577	293,790
Mashonaland West	82,117	139,945	6,921	19,655		1,111	249,749
Masvingo	132,292	162,404	11,022		7,551	765	314,034
Matebeleland North	62,941	46,988	37,451		1,719		149,099

²⁷ Zanu Ndonga.

²⁸ Zanu Ndonga

²⁹ Jonathan Moyo

³⁰ Jonathan Moyo

³¹ Valid votes only.

³² The valid Zanu PF and MDC votes only.

Matabeleland South	27,643	51,131	38,322			1,213	118,309
Midlands	128,584	173,031	15,718	7,034	11,598		335,965
Total	1,020,133	1,102,113	192,690	35,379	45,257	18,664	2,414,236

This gave the following seats distribution:

Constituency	MDC T	ZANU PF	MDC M
Bulawayo	5		1
Harare	6		
Manicaland	4	2	
Mashonaland Central		6	
Mashonaland East		6	
Mashonaland West	1	5	
Masvingo	3	3	
Matabeleland North	2	1	3
Matabeleland South	1	3	2
Midlands	2	4	
Total	24	30	6

There were no cases where the MDC T and MDC M candidates combined had more votes than a winning Zanu PF candidate.

The Presidential election

Presidential results declared by ZEC gave the following distribution of votes

Candidate	Votes	Percent
Morgan Tsvangirai	1,195,562	47.9
Robert Mugabe	1,079,730	43.2
Simba Makoni	207,470	8.3
Langton Towungana	14,503	0.6
Total	2,497,265	100.0
Spoilt	39,975	

The turnout was reported to be 42.7 percent. Broken down per province the results were:

Constituency	Morgan Tsvangirai	Robert Mugabe	Simba Makoni	Langton Towungana	Total
Bulawayo	49,657	11,118	35,510	400	96,685
Harare	227,166	61,215	25,234	380	313,995
Manicaland	212,029	141,592	13,529	1,948	369,098
Mashonaland Central	75,722	157,626	6,788	1,129	241,265
Mashonaland East	119,661	160,965	10,777	1,331	292,734
Mashonaland West	107,345	134,730	11,860	1,226	255,161
Masvingo	145,198	156,672	12,032	2,343	316,245
Matabeleland North	70,611	42,823	35,895	1,781	151,110
Matabeleland South	34,885	46,158	36,213	1,928	119,184
Midlands	153,288	166,831	19,632	2,036	341,787
Total	1,195,562	1,079,730	207,470	14,502	2,497,264

The turnout

The development of the turnout is given below. However, with a voters register containing deceased people and people having left the country, the figures do not reflect the real turnout in the elections.

	2000	2002	2005 ³³	2008 House of Assembly
Number of Registered voters	5,048,815	5,607,812	5,789,912	5,934,768
Votes cast for ZANU PF and MDC only	2,376,856	2,979,460	2,611,159	2,354,425 ³⁴
Total number of votes cast	2,490,296 ³⁵	2,998,758 ³⁶	2,696,670	2,422,987 ³⁷
Turnout in per cent	49.3	55.8	46.6	40.8

³³ The published turnout figures have often been relative to the September 2004 registration figures used by the Delimitation Commission when they drew up the constituencies. The figure given here is relative to the final registration figure published by ZEC on 23 March 2005.

³⁴ Including both factions of MDC

³⁵ Valid votes only.

³⁶ Valid votes only.

³⁷ Valid votes only.

The presidential runoff and the three by-elections

The call for the elections

The election law article 110 (3) states:

“ Where two or more candidates for President are nominated, and after a poll taken in terms of subsection (2) no candidate receives a majority of the total number of valid votes cast, a second election shall be held within twenty-one days after the previous election in accordance with this Act.”

The runoff is organised between the two candidates “who received the highest and next highest numbers of valid votes cast at the previous election” (Article 110 (4)).

It has been assumed that “after the previous election” means after the results have been announced. In many countries the deadline refers to the election day but then it is taken for granted that the results are promptly released. The presidential results were released on 2 May and 21 days from that date would be 23 May.

On 15 May the ZEC gazetted a Statutory Instrument 73A/2008 making provision for the Presidential runoff election to be held within 90 days, instead of the 21 days, of the 2 May. The Statutory Instrument invoked the powers given to ZEC by article 192 which in paragraphs (4) and (5) states:

“(4) Notwithstanding any other provision of this Act but subject to subsection (5), the Commission may make such statutory instruments as it considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation connected with, arising out of or resulting from the election.

(5) Statutory instruments made in terms of subsection (4) may provide for—

(a) altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;”

It is rather unusual that an election commission is given an authority to alter deadlines explicitly specified in the law, and such provision should be used with caution. It has been argued that the ZEC had the power to change the deadline in order to allow for the time needed to get the funding and logistics in place for the runoff. The ZEC decision was challenged in the Supreme Court by professor Jonathan Moyo MP, but the case was not heard before the day of the runoff.

The by-elections were held by virtue of the election law’s article 50 regulating the situation occurring if a candidate dies. Paragraph (2) states that “[i]f a nomination officer is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he or she shall stop all proceedings relating to that election and forthwith notify the Chief Elections Officer.” Then “all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred” (paragraph (1)).

According to article 39 (2) regulating vacancies, the “President shall, within a period of fourteen days after [...] (b) a declaration is made by the Chief Elections Officer

in terms of section *fifty* [...] publish a notice in the *Gazette* ordering a new election to fill the vacancy in the same manner [...]"

The declaration, which should include the date for the by-election, did not come within the prescribed fourteen days. However, the same statutory instrument issued by the ZEC on 15 May extending the time for the runoff extended the period within which the President had to call the pending three by-elections to 25 June.

Then on 16 May the ZEC announced Friday 27 June as the date for the runoff and for the three by-elections to the House of Assembly.

MDC's participations

On 8 May Tsvangirai declared that he would not participate in a runoff, but on 10 May he changed his mind and stated he would participate provided that the runoff would be open for international observers. In addition he said that the runoff should be held within two weeks. The fear was that the violence and intimidation would amount to a level which would make elections impossible.

The nomination of candidates to the House of Assembly by-elections

On 30 May 2008 the Nomination court accepted nomination papers for the three constituencies where by-elections were to take place. In Gwanda South, the MDC candidate first proposed was disqualified as he was not a registered in the constituency but the party managed to replace him with another candidate. The nominated candidates were:

Constituency	Candidate Name	Political Party
Redcliff, Midlands	Sengweni Tapera	MDC(T)
	Isheunesu Muza	ZANU PF
	Aaron Chenhara	MDC(T)
	Karingamombe Girimond	MDC
Gwanda South, Matabeleland South	Orders Mulilo	ZANU PF
	Nephat Mdllogwa	MDC(T)
	Elizabeth Ndlovu	MDC
Pelandave-Mpopoma, Bulawayo	Sikanyiso Duke Ndlovu	ZANU PF
	Dumani Gwetu	MDC
	Samuel Sandla Khumalo	MDC(T)
	Samuel Mahlamvana Ndlovu	UPP
	Chamunorwa Mahachi	ZDP
	Leonard Nkala	PUMA
	Job Sibanda	Independent

	Fungai Mutukwa	Independent
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MDC Tsvangirai and MDC had not been able to agree on mutual candidates and in Redcliff MDC Tsvangirai even filed two candidates.

The violence and the campaign environment

From mid April the political environment in Zimbabwe changed. From then onwards reports on arrests, intimidation and political violence became increasingly intense. The violence was overwhelmingly caused by ZANU PF youth, militia, war veterans and supporters at large, even though there were clashes involving opposition groups as well. This resulted in high numbers of deaths, people left homeless, internally displaced and injured. Reliable figures are not easy to establish since the police did not investigate the cases, but the documented figures published by the well reputed Counselling Services Unit (CSU) should be clearly on the conservative side. CPU documented 85 political murders from 1 May to 19 June and most of them were attributed to specified ZANU PF groups and only for a very few the circumstances were not clear. CSU also presented statistics on incidents of violence and the victims and perpetrators' political affiliation. Out of 1134 incidents where the data entry had been completed in May, 83% of the victims had MDC affiliation, and out of 695 cases in June 95% had MDC affiliation. Out of the same numbers 80% in May and 99% in June had ZANU PF war veterans, youths or supporters as perpetrators. Only 3 cases had MDC as the one instigating the violence, 16 cases were not specified politically and the rest were done by various branches of the security forces.

The SADC observers states in their report that “[o]n numerous occasions victims of politically motivated violence allege that the security forces did little to stop the violence o[r] arrest the perpetrators of violence”.

Mr. Marwick Khumalo, the head of the PAP observers said on 22 June to The New York Times that he had just returned from the Rusape District in Manicaland Province where the police chief told him six people, all from the opposition, had been killed. “How can you have an election where people are killed and hacked to death as the sun goes down? How can you have an election where the leader of one party is not allowed to conduct rallies?” he was quoted.

All the three missions SADC, PAP and AU condemned the politically motivated violence.

The month before the runoff was also marred by intimidation and threats to voters, including beatings and torture, threats of retaliation if they did not vote for the ZANU PF candidate, orders of noting the ballot number so that their ballot could be traced afterwards, threats that those without ink on the fingers after election day would face retaliation, etc. In some areas the people were rounded up for campaign meetings before the elections and told what to do on election day.

International observers expressed concern that the violence continued even after their missions had arrived in the country. The observers were able to visit victims and to witness violence first hand.

Freedom of movement and expression

The - for Zimbabwe - exceptional situation during the 29 March elections where all candidates were allowed to move freely all over the country and people could openly support the opposition, was totally reversed prior to the runoff. Morgan Tsvangirai was not given permission to conduct rallies and he was even detained by the police at a number of occasions³⁸ on his way to rallies. On 21 June the High Court of Harare ruled that the denial of Tsvangirai's rally at the Harare Showground on 22 June was illegal. However, the rally was stopped by ZANU PF supporters beating and chasing the arriving MDC supporters, under the eyes of observers.

The MDC Tsvangirai Secretary General Tendai Biti was arrested on 12 June at the airport in Harare as he returned to the country after an absence of two months. His whereabouts were unknown until 14 June when he was brought handcuffed to court by armed police officers. Mr. Biti had being accused of "treason and making malicious statements detrimental to the interests of the state," charges that could bring death penalty. The evidence was supposed to be a document titled: "The Transition Strategy" which he allegedly authorised on 25 March 2008. The document was rather naively written and Biti dismissed it as a falsification. Mr. Biti was only released on bail on 26 June after having suffered harsh detention conditions.

Another substantive difference from the 29 March election was that T-shirts, banners and posters for the MDC candidate were hardly seen, not even in Harare, and there were areas where MDC supporters could not go to at all.

The media access

It was reported after the 29 March election that the access to state media had been inequitable. For the runoff MDC's access was non-existing. Apart from participation in a few debates on TV there were no coverage of the MDC campaign (which did not happen anyway) and no advertisements were allowed, while the ZANU PF campaign got broad coverage in news items and advertisements were sent with intense frequency. In the government controlled newspaper The Herald (the only nationwide daily) only advertisements of ZANU PF were admitted.

Typical of the use of state media was a programme transmitted the night before the elections featuring a long interview with the ZANU PF National Chairman John Nkomo labelled "informative and educational", not campaigning. In the programme³⁹ he went through the reasons for why people should vote Zanu PF next day, for example the following: "The domestic vote we take for granted today was earned through the blood, sweat and tears of the gallant sons and daughters of Zimbabwe. Zanu-PF Presidential candidate Cde Mugabe is the embodiment of our arduous struggle for the independence and liberty. He is a man of the moment and future."

MDC's withdrawal and the international reactions

In a press conference in his home on 22 June Morgan Tsvangirai announced that the party had decided to withdraw his candidature from the runoff. The decision was

³⁸ For example on 4 June in Lupane after having met supporters but before meeting supporters in Tsholotsho, 6 June close to Bulawayo, 12 June twice, 14 June at Shurugwi

³⁹ An extract was given in The Herald the next morning.

confirmed in a letter to the ZEC on 24 June. He summarised eight reasons for his withdrawal:

1. The failure by the electoral commission to ensure free and fair elections

He mentioned in particular that the “Commission has failed to stop and/or condemn continued utterances by senior Zanu PF officials including Mr Robert Mugabe to the effect that irrespective of the election result, Mr Robert Mugabe was not going to move out of his office”, and that the Commission had failed to conduct the presidential runoff election within 21 days from the date of announcement of the presidential elections results.

2. Violence

He stated that “[t]he violence currently obtaining in this country which has resulted in numerous deaths, destruction of homes, displacement of various people and injuries to people is something that is clearly in the public domain. As of today, the country has recorded at least 86 deaths, 10 000 homes destroyed, 200 000 people displaced and 10 000 people injured”.

3. Threats of war

In particular he mentioned that “[t]hroughout its campaigns, ZANU PF has threatened that there will be war if an MDC win in the presidential run-off is pronounced.”

4. Participation of the uniformed forces in ZANU PF campaigns

The letter stated: “It is common cause that the Zimbabwe National Army through its senior officers has actively campaigned for ZANU PF and continues to do so.”

5. Intimidation

In particular “[t]he level of intimidation which is currently being subjected to our population particularly in the rural areas is alarming.”

6. Non-access to media

He mentioned that “[m]y party booked space for its advertisements with Zimpapers newspapers namely Herald, Sunday Mail, Chronicle, Sunday News and the Manica Post which adverts were to commence on the 13th June 2008.” They were not printed. “We also encountered problems with our electronic advertisements with the Zimbabwe Broadcasting Holdings which effectively resulted in our failure to have access to media.”

7. The banning of MDC rallies and meetings and disruption of MDC meetings

He wrote: “I have been detained at police stations on numerous occasions and thereby denied time to campaign. Our meeting and rallies have been banned by the police.”

Disenfranchisement of voters and lack of access to rural areas

Mr. Tsvangirai stated that “[t]he massive displacement of people already referred to herein (mainly from rural to urban areas) will result in the disenfranchisement of these people.”

The ZEC decided to proceed with the elections on the basis that it was too late to withdraw, and they believed that the environment was conducive for elections to be held.

It was argued by some that withdrawal between the two rounds of elections was illegal or at least that (as ZEC decided) the withdrawal came too late. This is a rather academic

question since the conditions for holding elections were not in place at all. Both holding the runoff as well as declaring Mugabe as winner based upon that there was only one candidate left in the race were two meaningless options given the situation.

In a regular situation, within the framework of a fair election, the legal situation is as follows:

Article 107 of the election law states that a “nominated candidate for election as President may, by notice in writing addressed to the Chief Elections Officer, withdraw his or her candidature at any time before twenty-one days from the day or first day, as the case may be, on which the poll in an election to the office of President is to be taken”. The first question is if the deadline of 21 days prior to election day applies also for the second round. The deadline would, in that case, coincide with the day the results of the first round are published. It would be possible to organise the runoff earlier than the 21 days after the election results are published, and the deadline for withdrawal would already have expired. Article 107 therefore seems to regulate only withdrawals before the first round of elections.

The second question is whether it is possible to withdraw at all between the two rounds. ZANU PF argued that since there is no separate nomination for the second round the candidacy is mandatory and there is no possibility to withdraw. Should that be the case it would mean that a candidate could stand for elections, be elected and withdraw from the post immediately after the elections. The Constitution prescribes that the two chambers of the parliament in a plenary session should fill the vacancy (see Appendix B for a more detailed discussion on filling vacancies). The voters would in such case be invited to an election where one candidate has the intention of withdrawing and they would therefore in practice be deprived of the right to elect the president for a full term in office. A more reasonable conclusion would therefore be that the law is silent about withdrawal between the two rounds and that a candidate may withdraw at any time before the runoff. It would not be necessary to specify a deadline for withdrawal since the consequence would be that no election is held, and . there is therefore no practical problem with confusion about names on the ballot paper not actually being a candidate, as opposed to for parliamentary elections.⁴⁰

If one candidate withdraws there is only one candidate left in the race⁴¹. Article 110 (1) states: “Where only one candidate for President is validly nominated at the close of the day on which a nomination court sits in terms of section 38(1)(a), the Chief Elections Officer shall declare such candidate to be duly elected as President without the necessity of a poll.”

Again the article is written with reference to the nomination procedure prior to the first round, but it would clearly be most reasonable by a parallel interpretation to assume that if there is only one candidate left in the race the Chief Election Officer should declare that candidate a winner without an election.

⁴⁰ It is, however, recommended that a possibility to withdraw between the rounds is explicitly regulated in the law.

⁴¹ The option that the candidate on the third place should move up is seems unreasonable since the runoff is clearly between number one and two.

The main point in the situation in Zimbabwe in June 2008 is, however, that the runoff could not be organised in a free and fair manner and the event on 27 June could not be seen as a legitimate election. Both holding the election and declaring a winner without an election were equally meaningless. The only options left in the days prior to the runoff were to negotiate an agreement between the parties or to postpone the election and establish conditions conducive for elections.

The MDC Tsvangirai and MDC (Mutambara) candidates running in the by-elections for the House of Assembly in three constituencies did not withdraw their candidacy, despite the fact that many of the same arguments could be used for those elections. They did not give an official explanation to why they decided to contest these elections but the calculation was probably that they would not risk losing one or two seats which they could secure even under the prevailing circumstances.

The election observation

After having announced the date for the runoff it was reported that the ZEC would accredit the same organisations as observers as for the first round on 29 March. However, it later became clear that accreditation would only follow after a new invitation by the Ministry of Justice, Legal and Parliamentary Affairs for domestic and the Ministry of Foreign Affairs for international observers.

ZESN which was the most important network of domestic observers during the first round (and in previous elections) had plans and capacity to cover all polling stations. During the first round the ZESN observers played a key role in securing the integrity and transparency of the process. On 2 June ZESN submitted 11,122 names to Ministry of Justice, Legal and Parliamentary Affairs and later they added another 4,311 bringing their total number up to 15,433. On 19 June the Ministry responded by reducing their total number to 500. The day after, ZESN submitted 500 names, but by 24 June they had not received an invitation necessary for accrediting even the 500 observers. Accrediting and deploying observers all around the country before 27 June had become impossible, and Morgan Tsvangirai's withdrawal for obviously good reasons had made the runoff quite irrelevant. ZESN therefore announced that they would not proceed to seek accreditation and they would not observe the runoff. Instead they would deploy 420 long term observers (two in each House of Assembly constituency) in order to report on incidents and general condition, but not on what would take place in the polling stations.

Other domestic observer groups such as the Zimbabwe Catholic Bishops' Conference (ZCBC)⁴² and Ecumenical Documentation and Information Centre in Southern Africa (EDICISA) had got their numbers reduced considerably. On 24 June, 14 organisations had received invitation for a total of 2,742 observers.

The reason given by the authorities for reducing the numbers of observers was that there would be too many people in the polling stations. However, 9,231 polling stations denying the most capable observer group the possibility to keep one observer in each polling station would not have represented any practical problem.

⁴² ZCBC got their number reduced from 1600 to 300 and EDICISA from 6500 to 300. EDICISA withdrew from the observation..

The policy of forum shopping continued when it came to inviting international organisations and foreign countries to send observers. The three most important international missions were the PAP, SADC and AU.

The “election” day and the results

A thorough review of the “election day” has limited interest when it is clear that the environment leading up to the elections could not possibly produce a fair election. The international observers still observing the elections did report that the election day was peaceful. However, in the days after the elections people in many areas lived in fear that the so-called operation red finger should take place, where people without the ink indicating they had voted would be carried out. Violence was also reported to continue.

The polling stations did not have party agents from MDC Tsvangirai having withdrawn from the presidential runoff and the main domestic observer group was not in the polling stations. Without any transparency of the process there is no reason to believe that the reported results from the polling stations and the aggregation up to the official results should reflect the ballots cast. Even if the results should be an accurate account of the ballots cast in the polling stations, the violence, intimidation and unequal campaign would rather make them a measure of the degree of intimidation than of the will of the voters.

The results officially presented is therefore still of interest as a measure of intimidation and of the degree of civil courage of people casting a vote for the opposition candidate, spoiling the ballot or simply staying at home. It should be mentioned that Morgan Tsvangirai had issued a letter to the voters on 27 June where he said: **“If possible, we ask you not to vote today. But if you must vote for Mr. Mugabe because of threats on your life today, then do so.”**

The official results were presented by the ZEC on 29 June afternoon showing the Robert Mugabe had won 90.2% of the valid votes against Morgan Tsvangirai’s 9.8%. 5.2% of all the ballots were said to be invalid and the turnout was claimed to be close to what it was in the 29 March election. These figures by themselves told a lot about the situation under which the votes were cast and on the credibility of the vote.

Commentators of ZANU PF rejected that voters had been under any kind of pressure and maintained that the results of the runoff showed the real will of the people after the lies of MDC had been revealed and the treason of defectors like Simba Makoni had been understood.

The breakdown of the results presented by ZEC was as follows:

Province	Mugabe	Tsvangirai	Total valid	Invalid	Total
Bulawayo	21127	13291	34418	9166	43584
Harare	156478	48307	204785	36447	241232
Mashonaland East	315119	11171	326290	7675	333965
Mashonaland West	256699	18459	275158	10821	285979
Mashonaland Central	276912	4066	280978	3409	284387
Manicaland	323284	29561	352845	17525	370370

Midlands	302407	33555	335962	19438	355400
Masvingo	321404	12804	334208	9740	343948
Matabeleland North	84185	40099	124284	9907	134191
Matabeleland South	92654	21687	114341	7353	121694
Total	2150269	233000	2383269	131481	2514750
Percent valid	90.2	9.8	100.0		
Percent all	85.5	9.3		5.2	100.0

The comparison between the two rounds shows the following:

Comparison	27 June		29 March⁴³	
	Mugabe	Tsvangirai	Mugabe	Tsvangirai
Bulawayo	61.4	38.6	18.3	81.7
Harare	76.4	23.6	21.2	78.8
Mashonaland East	96.6	3.4	57.4	42.6
Mashonaland West	93.3	6.7	55.7	44.3
Mashonaland Central	98.6	1.4	67.5	32.5
Manicaland	91.6	8.4	40.0	60.0
Midlands	90.0	10.0	52.1	47.9
Masvingo	96.2	3.8	51.9	48.1
Matabeleland North	67.7	32.3	37.8	62.2
Matabeleland South	81.0	19.0	57.0	43.0
Total	90.2	9.8	47.5	52.5

The degree of intimidation varied in the various areas, even though it was serious across the country. In the high density areas of Harare the effect was clearly higher than in low density areas. In addition the area with new cooperatives in Hatcliffe showed a significant change from March to June. This was the area where MDC Tsvangirai, MDC and Makoni had held a separate press conference on their worry before the March

⁴³ Only the votes given for Mugabe and Tsvangirai are taken into account.

election complaining that the voter register in the area allegedly added up to 8,000 voters, without having a population even close to that number. In March the number of votes in the two tents was around 1,550 and rising to 2,900 in June. The breakdown is as follows:

Polling station	The June event				The March election				
	Mugabe	Tsvangirai	Invalid	Total	Mugabe	Tsvangirai	Other candidates	Invalid (not available)	Total
Glen Forest Rd Tent	1635	26	25	1686	372	350	51	5	778
SIDRC Tent	1200	17	8	1225	372	380	20	13	785

There can be no doubt that the intimidation worked. It is worth noticing that the number of invalid votes is very small compared to other places. Outside these two polling stations long queues were observed during the day, so turnout probably reflects the number actually casting a ballot.

The House of Assembly by-elections were contested by MDC Tsvangirai and MDC candidates. The results showed that the intense intimidation had worked even there:

Constituency	MDC-T	MDC-T	MDC	ZANU PF	Others
Redcliff, Midlands	3189	2096	210	6661	
Gwanda South, Matabeleland South	1198		676	7860	
Pelandave-Mpopoma, Bulawayo	3795		646	1565	288

Pelandave-Mpopoma was won by MDC Tsvangirai. Under normal circumstances the winning margin would be close to a factor three or four, which was now reduced to a factor two. Nevertheless, the seat was won by the party being dominant in the constituency.

In Gwanda South ZANU PF were stronger than MDC in 2005 but with a margin which in March in most constituencies in Matabeleland South had changed in favour of MDC. In June ZANU PF won with a large margin.

The results for Redcliff seem not to be far from the 2005 election results⁴⁴.

Observer missions' reports

PAP presented their statement in a press conference on 29 June where they concluded:

⁴⁴ A direct comparison is not possible because of new constituency borders.

“In view of the above the Mission concludes that the current atmosphere prevailing in the country does not give rise to the conduct of free, fair and credible elections.”

They went on recommending that such conditions be put in place and calling for the SADC leaders working with the AU to engage in the broader leadership of Zimbabwe into a negotiated transitional settlement.

The PAP mission had 34 parliamentarian observers led by Mr. Marwick Khumalo as in the first round deployed in the country but when they before the elections concluded that a credible election could not be held they reduced to 11 and the character of the mission was changed from an observer mission to a mission monitoring events rather than all sides of the electoral process.

The biggest international mission was the SADC Election Observation Mission again headed by Mr. José Marcos Barrica. They deployed 413 observers. Their press conference announced for the morning of 29 June was delayed for hours before being cancelled and a statement was instead distributed in the evening. The statement concluded:

“The pre-election phase was characterised by politically motivated violence, intimidation, and displacements.

The process leading up to the presidential runoff elections held on 27 June 2008 did not conform to SADC Principles and Guidelines Governing Democratic Elections. However, the Election Day was peaceful.

Based on the above mentioned observations, the Mission is of the view that the prevailing environment impinged on the credibility of the electoral process. The elections did not represent the will of the people of Zimbabwe.”

The AU observer mission had 34 observers headed by Dr Ahmad Tejan Kabbah, former President of the Republic of Sierra Leone. Their preliminary statement was presented at a press conference on 30 June. The statement concluded:

“Against the backdrop of the foregoing factors, in the context of the AU Declaration of the Principles Governing Democratic Elections in Africa, it is the considered view of the African Union Observer Mission that the Election process fell short of accepted AU standards.”

This is the first time the three major African observer missions had a consistent view on the elections in Zimbabwe.

Recommendations for future elections

All measures must be taken by the government and the ruling party to stop intimidation, killing and harassment of political opponent and to secure a political environment conducive of free elections.

Provided that an environment free of violence, intimidation and threats is created the following improvements should be made to meet universal and regional criteria for credible elections:

- The two-round majority system for the presidential election should be written into the Constitution and not be subject to change by a simple majority in parliament. The time for a runoff should be set relative to the election day for the first round.
- The details regarding the possibility for withdrawing as a candidate before a presidential run-off should be written into the law.
- The law should be amended to make it clear that preliminary results are to be released immediately at national level, even though there may be verification and claims processes still pending.
- The Election Law should include a provision that requires the ZEC to publish the tabulation of polling station results up to constituency level without undue delay.
- Voters registers need to be reviewed in a transparent process in order to remove invalid entries and to ensure that everybody who is registered has been listed in the correct constituency.
- Voter registers should be made available to parties as prescribed by regulations.
- The conditions for running as candidates should be linked to some proof of support such as signatures, either at party level or for independent candidates.
- The number and address of polling stations should be made available in full to parties and observers for them to plan their observation on election day and for the general public in order to find the polling stations.
- The suppressive parts of legislation on associations, expressions, press and electronic media must be removed. The passed, but not signed, act on NGOs needs to be stopped.
- Ordinal numbers on the ballot papers should be abolished. There is no legitimate need for printing numbers on the ballots. Should it be seen to be necessary for the ballot tallying, the numbers could be kept on the stubs only.
- In order to improve the transparency of the tabulation requirements for publishing detailed polling station results both at constituency and at national level for all elections should be written into the law
- Conduct of voter education should be open to all organisations without censorship.
- The rules for and practise of public media need to change so as to provide a balanced coverage of the incumbents and the opposition.
- Clear rules for use of public resources by the incumbents should be introduced.
- The delimitation of constituencies should be done after consultation with all parties.
- The ZEC should be equipped with sufficient staff and resources to enable them to take full charge of the process. All doubts about which body is in charge of the elections should be removed, and the appointment of the chairperson of the ZEC should be made on the basis of a broad nomination process.
- Vacancies of the office of the president should be filled by a direct vote by the voters, not by an indirect vote in the two chambers of parliament combined, if a substantial part of the term in office remains, provided that the presidency has the strong power of the present constitution.

Appendix A. International Standards and Conventions valid for Zimbabwe

Binding international conventions on elections are often general, but they still have clear meaning. The International Covenant on Civil and Political Rights (UN General Assembly Resolution of 16 December 1966, ratified by Zimbabwe in 1991), states in Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

In the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl. 1 (XXXVIII), Declaration adopted at the 38th Ordinary Session of the Organization of African Unity, 8 July 2002, Durban South Africa, Article IV states:

'We reaffirm the following rights and obligations under which democratic elections are conducted:

- 1. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.*
- 2. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.'*

In its summit in Mauritius 7 – 17 August 2004 the SADC countries agreed to the SADC Principles and Guidelines Governing Democratic Elections. The Standard calls up the OAU/AU Declaration AHG/Decl. 1 (XXXVIII) quoted above. In addition it states:

2.2 SADC Member States shall adhere to the following principles in the conduct of democratic elections:

- 2.2.1 Full participation of the citizens in the political process;*
- 2.2.2 Freedom of association;*
- 2.2.3 Political tolerance;*
- 2.2.4 Regular intervals for elections as provided for by the respective National Constitutions;*
- 2.2.5 Equal opportunity for all political parties to access the state media;*
- 2.2.6 Equal opportunity to exercise the right to vote and be voted for;*

2.2.7 Independence of the Judiciary and impartiality of the electoral institutions;

2.2.8 Voter education; and

2.2.9 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.

2.2.10 Challenge of the election results as provided for in the law of the land.

And further:

4.1 SADC Member States shall be guided by the following guidelines to determine the nature and scope of election observation:

4.1.1 Constitutional and legal guarantees of freedom and rights of the citizens;

4.1.2 Conducive environment for free, fair and peaceful elections;

4.1.3 Non-discrimination in the voters' registration;

4.1.4 Existence of updated and accessible voters roll;

4.1.5 Timely announcement of the election date;

4.1.6 Where applicable, funding of political parties must be transparent and based on agreed threshold in accordance with the laws of the land;

4.1.7 Polling Stations should be in neutral places;

4.1.8 Counting of the votes at polling stations;

4.1.9 Establishment of the mechanism for assisting the planning and deployment of electoral observation missions; and

4.1.10 SADC Election Observation Missions should be deployed at least two weeks before the voting day.

and

7. RESPONSIBILITIES OF THE MEMBER STATE HOLDING ELECTIONS

7.1 Take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country;

7.2 Establish, where none exists, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters and compilation of voters' registers, would be addressed;

7.3 Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;

7.4 Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes as provided for under 2.2.5 above;

7.5 Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;

- 7.6 Ensure the availability of adequate logistics and resources for carrying out democratic elections;*
- 7.7 Ensure that adequate security is provided to all parties participating in elections;*
- 7.8 Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/other observers/monitors;*
- 7.9 Encourage the participation of women, disabled and youth in all aspects of the electoral process in accordance with the national laws;*
- 7.10 Issuing invitation by the relevant Electoral Institutions of the country in election to SADC 90 (ninety) days before the voting day in order to allow an adequate preparation for the deployment of the Electoral Observation Mission;*
- 7.11 Ensure freedom of movement of the members of the SEOM within the host country;*
- 7.12 Accreditation of the members of the SEOM as election observers on a non-discriminatory basis;*
- 7.13 Allow the members of the SEOM to communicate freely with all competing political parties, candidates, other political associations and organisations, and civil society organizations;*
- 7.14 Allow the members of the SEOM to communicate freely with voters except when the electoral law reasonably prescribes such communication in order to protect the secrecy of the vote;*
- 7.15 Allow the members of the SEOM an unhindered access to and communicate freely with the media;*
- 7.16 Allow the members of the SEOM to communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators;*
- 7.17 Allow the members of the SEOM free access to all legislation and regulations governing the electoral process and environment;*
- 7.18 Allow the members of the SEOM free access to all electoral registers or voters' list;*
- 7.19 Ensure that the members of the SEOM have an unimpeded and unrestricted access to all polling stations and counting centres.*

In addition to these, the SADC Parliamentary Forum has issued detailed guidelines which they use when they observe elections.

Appendix B. Legal provisions for filling a presidential vacancy during a term in office

There were speculations prior to the elections about whether the ZANU PF strategy was to have Mr Mugabe elected and then for him to step down some time during his term in favour of a hand chosen candidate. That could be done using the ZANU PF majority in the two chambers of parliament combined to elect a new president from ZANU PF. Even if that was not a strategy the presidency could be vacant during a term in office, and the procedure for filling such vacancy is of importance.

The Constitution states in article 31 that a vacancy should temporarily be filled by a Vice President or, if that is not possible, by a minister according to a certain procedure. Such an acting president would have limited authority.

In the case the office becomes vacant due to death, resignation or removal of the President the vacancy is filled according to article 28 (3) (B) of the Constitution by an election by the members of the Senate and the House of assembly sitting jointly as an electoral body within ninety days after the vacancy occurred.

The election law prescribes a detailed procedure for such an election in its Schedule 5. The Chief Justice presides over the election, which is an open (not secret) vote. The members would gather in groups of support for each candidate and a candidate needs more than half of the votes to be elected. If no candidate receives such a majority in the first round, a next round is carried out after having eliminated the candidate receiving least votes in the previous election. This procedure is repeated until a candidate is elected.

This manner of filling a vacancy is to be followed regardless of how much is left of the president's term in office. The only justification for a presidency with so much powers resting in the position as in Zimbabwe is that he or she is directly elected by the voters. To replace that procedure with an indirect election is in itself doubtful. In addition comes that the Senate still has a high number of seats filled by appointment by the president. In a swing situation the reality may easily be that the president appoints the decisive votes of the body replacing him or her. The president appoints members of parliament who in turn elects the president. If the office becomes vacant when a substantial period is left of his or her term in office only a new direct election should be able to fill the vacancy.

Appendix C. The Use of the Presidential Powers (Temporary Measures) Act

An act was passed in 1986 “to empower the President to make regulations dealing with situations that have arisen or are likely to arise and that require to be dealt with as a matter of urgency; and to provide for matters connected therewith or incidental thereto”, the Presidential Powers (Temporary Measures) Act (Acts 1/1986, 6/2005). The act gives the president the authority to make urgent regulations:

“(1) When it appears to the President that—

- (a) a situation has arisen or is likely to arise which needs to be dealt with urgently in the interests of defence, public safety, public order, public morality, public health, the economic interests of Zimbabwe or the general public interest; and
- (b) the situation cannot adequately be dealt with in terms of any other law; and
- (c) because of the urgency, it is inexpedient to await the passage through Parliament of an Act dealing with the situation;

then, subject to the Constitution and this Act, the President may make such regulations as he considers will deal with the situation.”

Such regulations shall be laid before the Parliament within eight days of their next sitting. If the regulations are repealed or amended, the President may not pass similar regulations within six months. Regulations shall anyway expire one hundred and eighty days after coming into force.

Even though the term under (a) “the general public interest” is quite wide the act can only be used in cases of urgency. Allowing police into the polling stations could hardly be said to be an urgent matter, in particular in light of the recent agreement between the parties to the opposite effect, and the security situation had not changed. Mandating the police to help disabled and illiterates when voting had no security effect and was simply reversing an agreed improvement to the law.