

# The Elections in Zimbabwe on 31 July 2013

A NORDEM SPECIAL REPORT 2014



Kåre Vollan

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A NORDEM Special Report  
Editor: Karin Lisa Kirkengen

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NORDEM is a programme at

The Norwegian Centre for Human Rights  
The Faculty of Law  
University of Oslo  
P.O. Box 6706 St. Olavs plass  
NO-0130 Oslo  
NORWAY

[info@nchr.uio.no](mailto:info@nchr.uio.no)

Front page photo: Election posters in Zimbabwe in 2013. Kåre Vollan. Printed by permission.

ISBN 978-82-8158-076-3

Technical consultant: Christian Boe Astrup/NCHR  
Printed by: 07 Media AS

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## Preface

The 31 July 2013 elections in Zimbabwe were the first elections held after the new constitution was adopted in March 2013. There were some positive developments compared to previous elections held in the 2000s, such as more freedom to campaign and less election related violence. However, the elections were marked by a high degree of controversy and criticism.

NORDEM has sent election observers and experts to Zimbabwe since the year 2000 and has published reports on the 2002, 2005 and 2008 elections as well as on the constitutional history of Zimbabwe from 1980 to 2013.<sup>1</sup> Norway was not invited to observe the elections in Zimbabwe in 2013<sup>2</sup> but three diplomats at the Norwegian Embassy in Harare were accredited as observers for the 31 July elections under an arrangement that allowed resident accredited diplomats to obtain observer status. The independent election expert Kåre Vollan was engaged through NORDEM as an election analyst attached to the Embassy in Harare from June to August 2013.

This report provides a thorough analysis primarily of the technical aspects of the elections, complementing the observer reports that have been published by other organisations. We hope the report will prove useful to national and international actors working on election related issues in Zimbabwe specifically, but also on related topics in other countries.

NORDEM and the author would like to express our gratitude to the Norwegian Ministry of Foreign Affairs and the Norwegian Embassy in Harare for the generous support that made the writing and publishing of this report possible.

Marianne Kvan  
NORDEM Director

## 1 Background

Elections have been controversial in Zimbabwe since a significant opposition to the ruling party ZANU PF emerged in 2000. The Movement for Democratic Change (MDC) gained strength after having run a successful campaign together with the National Constitutional Assembly against a draft constitution in a referendum in 2000. The following elections in 2000 and 2002 were marred by violence and manipulation, and the violence continued till 2004. The 2005 elections were less violent but there were still reports of intimidation, biased media and an unlevelled playing field. In 2008 the elections were rather peaceful until the results of the first round of elections showed that the MDC presidential candidate had received the largest share of the votes. Before the presidential runoff, a massive campaign of violence against the opposition was launched and the MDC candidate withdrew.<sup>3</sup>

After mediation and pressure from the Southern African Development Community (SADC), ZANU PF, MDC-T and MDC (in this report referred to as MDC-N after its current leader Welshman Ncube) entered a global political agreement (GPA) which changed the constitution by introducing a prime minister position and some other political reforms. It also regulated how powers should be shared in the interim period and laid out a plan for the drafting and passing of a new constitution. SADC and the African Union (AU) were guarantors for the agreement and South Africa was appointed facilitator for the process. The Government of National Unity (GNU) was established in March 2009 with Robert Mugabe of ZANU PF as president as before, and Morgan Tsvangirai of MDC-T filling the new role of prime minister as explicitly stated in the GPA. In addition there was one deputy prime minister from MDC-N and one from MDC-T. The process of drafting and passing a new constitution was originally estimated to take twenty months from the inception of the GNU, but was only completed after four years and two months. The parties agreed on a draft, recommended it before a referendum, and the new constitution was passed in both chambers of the parliament without opposition. A detailed description of the process and the content of the constitution are found in the NORDEM Special Report 2013 by Kåre Vollan.<sup>4</sup>

The 31 July 2013 harmonised elections in Zimbabwe included presidential elections and elections for both houses of parliament (the National Assembly and the Senate), provincial councils, and local councils. This is the second time all elections were held on the same day, the 2008 elections being the first. The practice has now been written into the 2013 constitution. The partially directly elected province councils were first introduced by the new Constitution and the electoral system was changed by the introduction of elements of proportional representation.

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<sup>3</sup> See Vollan, K. (2008) *Zimbabwe: The Elections on 29 March and the Later Runoff Event and By-Elections on 27 June 2008*, Oslo: NORDEM, University of Oslo.

<sup>4</sup> Vollan, K (2013) *The Constitutional History and the 2013 Referendum of Zimbabwe*, Oslo: NORDEM, University of Oslo.

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<sup>1</sup> See: <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/nordem-report/>

<sup>2</sup> Norway was invited in 2002, but never after that.

The South African Development Cooperation (SADC) has played an important role in the electoral reforms in Zimbabwe. The development of regional standards has been important for the neighbouring countries' assessment of elections in Zimbabwe and a quite efficient tool in improving the elections, not least by introducing an election commission. In Appendix A there is a brief summary of election related SADC and African Union (AU) standards.

This report covers only the national and provincial elections in detail. However, many of the comments are valid also for the local elections.

## 2 The Objectives of the Report

The main purpose of this report is to present a thorough factual description of the elections and to draw lines from previous elections with an emphasis on technical aspects. The elections were highly controversial and the MDC formations who lost the elections contested their validity. The regional observer missions reported on irregularities but they did not dispute the validity of the results and neither did the neighbouring countries. Western governments were far more critical and doubted that the outcome was a genuine expression of the will of the people. The most credible domestic observer organisation ZESN also concluded that the process was seriously flawed. This report will not draw firm conclusions as to which extent the undisputable irregularities did cause ZANU PF to win ahead of MDC-T or whether the irregularities were so serious that they discredited the election process irrespective of the outcome. It is clear that serious violations of international standards occurred, but the report will concentrate on facts and figures which may help others in drawing more holistic conclusions. It will also refer the observer reports' main conclusions.

The report gives a detailed account of some of the legal processes preceding and following the elections. In particular the Constitutional Court decision on the date of the elections is extensively covered since the actual content of the deliberations has not been broadly discussed by commentators – only its conclusions. In addition the post-election complaints are being discussed.

The report also provides an analysis based upon results broken down to the constituency level, and the results have been compared to similar results in previous elections. The purpose is partly to provide a baseline for further analysis even of future elections and partly to provide indicators which may be used when investigating possible irregularities.

Finally, the mathematics of the proportional distribution formula is discussed. This is done in order to make improvements for the future but also to document some of the side effects of the method of largest remainder, a discussion which may become useful also in other countries.

## 3 Summary and Overall Assessment

The new constitution was passed in a referendum in March 2013. Both the ruling party ZANU PF and the two MDC formations, which were part of the coalition government from 2009 to the elections, recommended the draft which had been negotiated for four years. The parties agreed to hold elections shortly after the Constitution had been promulgated, but disagreed on the date. ZANU PF seemed to be more in a hurry to have elections fast, whereas the MDC formations wanted a few months for preparations. President Mugabe announced an early date, which was confirmed by the Constitutional Court. After that, all parties took part in the process. MDC-T was optimistic that they would win the elections as they had done in the first round in 2008 and implicitly accepted a number of deficiencies still in place on election day. However, they did not win. The official results showed that ZANU PF had won with a large margin. After the election, there were a number of allegations about rigging before and during the 31 July elections. The claims included, but were not limited to:

1. The capacity to register new voters in the big cities during the 10 June – 9 July registration drive was limited;
2. The final voter register was not given to parties and civil society for scrutiny before the elections;
3. Those who did not get a chance to vote during the special voting were given a possibility to vote on election day with high risks of double voting;
4. A large number of voters were turned away on election day because they were not found on the lists of the polling station they turned up at, even if they had been duly registered;
5. People were allowed to vote on the basis of voter registration slips if they were not found on the voter registers, which created a risk of double or illegitimate voting by such voters;
6. There was an unnatural movement of voters to certain constituencies;
7. There was a large number of assisted voters, which created a potential of intimidation of such voters by the police and election staff;
8. There were reports of intimidation by people of authority, such as traditional leaders, before and during the vote;
9. The conditions for the parties in public TV and radio were uneven.

All observers agreed that the campaign and the polling had been peaceful. There also seemed to be no allegations of false tabulation of results. The observers agree that the reported results did reflect the votes cast in the polling stations. The difference of opinion was in how serious the irregularities which clearly took place were. SADC and AU observers reported on the flaws but did not conclude that the elections as such could be questioned. They rather noted the irregularities as possibilities for improvements in future elections. The MDC formations dismissed the results totally and called for new elections. Western embassies and governments questioned the validity of the results.

It is not fruitful to try to assess if the irregularities related to the voters' registers and movement of voters would be enough to explain the substantial victory of ZANU PF. Intimidation and media bias can anyway not be measured accurately. However, for a nuanced assessment of the elections and to which degree they complied with international standards, a description of both the process improvements as well as the faults that occurred during these elections is required.

SADC had since 2005 pushed for an independent election committee to be in charge of the elections. These were the first elections where the Zimbabwe Electoral Commission (ZEC), which had been established earlier the same year, was in charge of most of the electoral processes. The exception was the voter register which was still under the control of the Registrar General. Most of the technical faults of the elections had to do with who was allowed to vote, not what happened once voters were in the polling station - with the exception of possible irregularities in the assistance of voters. The Registrar General had earlier had the full responsibility for organising elections, and had previously shown willingness to use any means to obtain a result favouring ZANU PF. The ZEC had a fairly balanced composition, but its professional staff had not been renewed or reviewed as had been demanded by the MDC formations. One of the big failures in the 2008 elections was the slow, and possibly wrong, publication of results. This fault was corrected during these elections. After the elections, the ZEC had information which could have uncovered whether voters had voted more than once or been turned away for no reason. However, the courts did not order the information to be disclosed. The Electoral Act should clarify that the ZEC has an overall responsibility to conduct correct elections and that the ZEC at its own initiative should be able to investigate all evidence available, without depending on a law decision. The ZEC could further within the framework of the law, have done more to improve the transparency of the tabulation, even if there were no claims of irregularities in the actual results calculation.

Regardless whether one believes that the ZEC did their best to follow correct procedures and that the intentional irregularities were solely the responsibility of the Registrar General, or whether one believes that also the ZEC did yield to political pressure, there can be no doubt that the ZEC did a much more credible job than any election organiser had done before in Zimbabwe.

The media imbalance and the intimidation by traditional leaders and others remained a serious problem, as in earlier elections. Clearly, this is in violation of international requirements for elections and had an effect on the results. It is impossible to assess what the results would have been if the conditions for the parties had been more equal.

## 4 The State and Government Structure

### 4.1 *The Division of Powers*

Zimbabwe is a unitary state but the new constitution foresees a devolution of powers to province and local levels. The discussion during the constitutional drafting process was more about the composition of the new bodies at province level than on the actual powers of the councils. The degree of devolution of powers from central to province level was still to be defined.

The new constitution retained the presidential system of government, or rather returned to it after having had a hybrid government model in the transition period. The president is head of government, the ministers are responsible to the president, not the parliament,<sup>5</sup> and there is no prime minister post.

### 4.2 *The Parliament Structure*

The parliament consists of two houses: The National Assembly (the lower house) has 270 members for the first two terms, after which it will be reduced to 210 members, and the Senate 80 members (with no transitional arrangements).

In the National Assembly the 210 members were elected by a first-past-the-post (FPTP) system in single-member constituencies (the current system) and the 60 extra members were all reserved for women. To fill these 60 seats, six women were elected from each of the ten provinces under a system of list proportional representation (List PR).

The Senate consisted of:

- (a) six members elected from each of the ten provinces, by a system of proportional representation;
- (b) sixteen chiefs, two elected by each of the Provincial Assembly of Chiefs from the provinces, other than the metropolitan provinces;
- (c) the President and Deputy President of the National Council of Chiefs; and
- (d) two members elected in the manner prescribed in the Electoral Law to represent persons with disabilities.

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<sup>5</sup> A minister can, however, be dismissed by a two-third vote of non-confidence of each house of parliament.

Except for in constitutional changes the Senate has little actual powers and the fully directly elected National Assembly is therefore the most important body. See Volla 2013 for further discussions on the relationship between the houses, the legislative process and the relationship between the executive and the legislature.

## 5 The Election Related Legal Framework

### 5.1 The Electoral Act

The Electoral Act was last amended with Statutory Instrument number 85 of 12 June 2013 given by Presidential regulations and not by amendments passed by Parliament. The President was empowered by terms of Section 2 of the Presidential Powers (Temporary Measures) Act [Chapter 10:20] to make such regulations as he considers necessary if the situation is affecting the general public interest of Zimbabwe and cannot be dealt with adequately in terms of any other law, and because of its urgency cannot await passage through Parliament.<sup>6</sup> The use of such powers in this instance raised protests by lawyers and the opposition, since the parliament was still in session and could have passed the amendments. The amendments mainly concerned the necessary adjustments to incorporate elements of the new introductions by the Constitution, such as the proportional electoral system at several levels of government. Those amendments were as such not politically controversial. The protests were moderate and did not set the opposition's participation in the elections at risk, even though the changes to the election law included disputed sections, such as the presence of the police in polling stations. Decisions made by the president according to the Presidential Powers (Temporary Measures) Act expire after 180 days, which for the Electoral Act means 10 December 2013. The Government gazetted on 3 January 2014 a bill to be tabled in parliament. This bill has almost the same content as the Statutory Instrument number 85 of 12 June 2013, with the notable difference that special voting for security personnel on duty on election day is removed and such personnel is instead given the possibility to cast postal votes. See Section 8.10 for a discussion of the special voting.

### 5.2 The Electoral Systems

In the future, the president will be directly elected on a common ticket consisting of the candidate for the president and the first and second vice president. However, for the first ten years, the elected president may appoint the vice presidents, which meant that for the 2013 elections only the presidential candidates were on the ballots.

The constitution did not specify whether the electoral system was a two-round system requiring at least fifty per cent of the votes or a plurality vote (first-past-the-post), but a

two-round system is prescribed in the Electoral Code in accordance with what had become the practice over the years.

The National Assembly has 270 members for a period of two terms. 210 members were elected by a first-past-the-post system in single-member constituencies (FPTP) and the 60 extra members, all women, were elected under a List PR system, six from each of the ten provinces. There was no separate ballot for the List PR race. The votes for the candidates in the FPTP race were added up for each party by province. The party totals in each province were then used for the distribution of the List PR women's race.

For the principal house of parliament equal voting powers is an important principle. For the sixty List PR seats to the National Assembly this principle is violated since the population of the provinces vary a lot, but the number of seats from each province is the same.

The Senate consists of eighty members out of which sixty were directly elected by List PR, six from each of the ten provinces. There was no separate balloting process for the 60 elected senators; here too, the total votes won by each party in the FPTP race of the National Assembly were added up by province, and the six seats in each province were distributed based on the respective share of each party. The lists of candidates for these seats had to have women and men alternating starting with a woman. This meant that fifty per cent – and possibly even more – of the 60 elected Senate seats would be filled by women. The remaining twenty members were eighteen chiefs and two members representing disabled people. Most of the chiefs were likely to be men.

In provinces that are not metropolitan provinces, ten members of the councils were elected by a List PR system, again using the votes cast in the FPTP National Assembly elections in the manner described earlier for the reserved seats for women and for the 60 elected Senators. In the metropolitan province councils, only the heads were directly elected for this purpose, others were *ex officio* members. Mayors for the metropolitan provinces were to be elected in accordance with regulations in the Election Law. This did not necessarily mean that they are to be directly elected, so in principle there was a choice between a direct election and the council electing them.

Urban and local authorities were also elected. In both cases a council was directly elected. In the case of urban authorities the mayor was also directly elected but in the case of local authorities the mayor (or chairperson) was elected by the local council.

Ballots were cast for the following races:

- i) The President;
- ii) The National Assembly by FPTP in single-member constituencies. These votes were also counted for the elections of the List PR women's race for the National Assembly, the List PR members of the Senate and the ten List PR members of the provincial councils. Votes cast for an independent candidate in the National Assembly election would not have an effect in the other races;

<sup>6</sup> Extract from the preamble of S.I. 85.

- iii) The members of local councils;
- iv) The mayor of the metropolitan councils (if directly elected);
- v) The directly elected mayors in urban local authorities, if any.

All voters would cast three ballots on election day. In these elections there were no directly elected mayors. The terms of office for all elected bodies were five years.

### 5.3 *The Proportional Distribution Formula*

In proportional elections parties register candidate lists, voters vote for a list and the parties receive a number of seats in proportion to their share of the votes. In Zimbabwe the system is a so-called closed list system which meant that the seats are filled from the top of the list according to the party's predefined priority. The parties had to nominate a number of candidates corresponding to the number of seats to be filled in the election. For the National Assembly women's race and the Senate the number was six, and for the provincial councils ten.

Obviously the exact share of the mandates which a party is entitled to will most often not be a whole number and there are a number of formulas for how to translate the number of votes into seats. In Zimbabwe the choice was the method of largest remainder with Hare's quota. This is a quite common method but it has some disadvantages which may discourage the use. In addition, the law has some inconsistencies and errors which could cause unnecessary problems. A discussion of the side-effects of the LR is given in Appendix B. It so happened that some of the side-effects surfaced in the 2013 elections, as discussed in the results sections below. The three problems being discussed are:

1. There is a chance for extremely small parties to win seats in a manner which will appear quite random;
2. The LR is not consistent in terms of variations to the votes for one party or the change of the total number of seats. A change to the number of votes for one party may affect the interrelation between two other parties, and an increase of the total number of seats may reduce the number of seats won by a party;
3. There were contradictions in the law where rounding was prescribed in the examples given when calculating Hare's quota but not in the prescribed procedure.

The conclusion of Appendix B is that the distribution method should be changed to one of the more robust division methods that do not have the disadvantages of the LR, such as the Sainte-Laguë method. If the LR is kept, one should consider introducing a threshold to avoid the first point above, and no rounding should be used when calculating the quota.

### 5.4 *Presence of the Police in the Polling Stations*

The role of the police on polling day has been controversial. ZANU PF wanted the police to be inside the polling station, witnessing the assistance to illiterate voters and other voter in need of assistance. The MDC factions wanted the police to stay outside the polling station, and they should only be admitted inside upon an explicit request by the presiding officer. They feared that the police would be perceived as intimidating if they were inside the polling station at all times. In January 2008 the election law was changed following an agreement among the parties on electoral reform, and on the issue of control of the polling station it stated:

- “55 Conduct of poll  
[...]
- (2) The presiding officer and other officers at the polling station shall—
    - (a) keep order thereat and regulate the number of voters to be admitted at a time; and
    - (b) exclude all persons other than—
      - (i) electoral officers present for the performance of their official duties; and
      - (ii) the candidates and their chief election agents; and
      - (iii) one election agent for each Presidential candidate or candidate standing in the constituency or ward where the polling station is located; and
      - (iv) accredited observers; and
      - (v) persons who are recording their votes; and
      - (vi) such other classes of persons as may be prescribed.
  - (3) Save as is provided in subsection (2), the presiding officer may require any person, other than a person actually recording his or her vote, to leave the polling station and—
    - (a) any person who fails to leave the polling station when so required may be arrested on the order of the presiding officer and shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;
    - (b) any person empowered by law to make arrests shall carry out an order of the presiding officer in terms of paragraph (a).
  - (4) The powers conferred by subsections (2) and (3) shall not be exercised so as to prevent any voter who is entitled to vote at a polling station from having an opportunity of voting at that polling station.
  - (5) For the purpose of keeping order at a polling station and the area surrounding it, every electoral officer at the polling station shall have the powers of a peace officer under the Criminal Procedure and Evidence Act [Chapter 9:07].
  - (6) A presiding officer may call upon a police officer for assistance in keeping order at the polling station and the area surrounding it, and every police officer so called upon shall provide whatever assistance is needed.
  - (7) The Commissioner-General of Police shall ensure that sufficient numbers of police officers are available to provide assistance if called upon in terms of subsection (6).”

The exclusion of the police from the polling stations in the list of paragraph (2) above was an important point of this agreement. 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 voters (Section 59 (1) and physically incapacitated voters (Section 60 (1)). The changes made to the law in January 2008 had 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 assist such voters was by many seen as an intended attempt of intimidation introduced by the President. He made the change in accordance with a law permitting him to change laws when there was an urgent need, but there was clearly no urgency in this matter.

After further negotiations on the election law the government gazetted an electoral amendment bill on 27 June, 2011. The bill again made it clear that the police could only enter a polling station upon the request of the presiding officer, or in order to vote. The bill introduced an addition to Section 55:

- “(7a) Police officers referred to in subsection (7)—
- (a) shall have the sole function of maintaining order and preventing contraventions of the law so that voters may freely cast their votes;
  - (b) shall not interfere with the electoral processes at a polling station;
  - (c) shall not enter a polling station except when called upon for assistance in terms of subsection (6) or to cast their votes in accordance with this Act;
  - (d) when inside a polling station, shall exercise their duties under the direction and instruction of the presiding officer.”

Before the bill was enacted as Act No 3 of 2012 the language was again changed. In Section 55 (2) (b) containing the list of people allowed in a polling station, a new line “(iiia) police officers on duty; and” was added. The language of the presidential decree of 2008 came back in paragraph (6): “A presiding officer may call upon a police officer for assistance in keeping order at the polling station and the area surrounding it, and every police officer so called upon shall provide whatever assistance is needed.”

In addition, Article 59 (1) (b) allowed two election officers and a police officer on duty to assist an illiterate or physically handicapped person upon request, provided that the person does have a person of choice to do so.

This language was also used in the law passed by presidential decree (SI 85) in June 2013.

Even after the changes in 2012 and 2013, there were discussions about whether the new language still meant that police officers could only be present when called upon by the presiding officer. It is, however, quite clear that the explicit language limiting the police presence had been changed, and that the ZEC and the police did not interpret the provisions to limit the presence of police in the 2013 elections.

### **5.5 The Process of Counting, Tabulating and Publishing Results**

A major concern after the 2008 elections was the lack of transparency in the tabulation of the results. Some improvements had been implemented already in 2008, such as the counting at the polling stations and the posting of polling station results outside the station immediately after the count. However, it was not allowed to publish projections of the results based upon parallel counting and the publication of results took an unusually long time (see Vollan 2008<sup>7</sup>). Ahead of the 2013 elections the counting and reporting system was further improved and deadlines for the publication of results were included in the Constitution<sup>8</sup> and the Electoral Act.<sup>9</sup>

The most transparent manner would have been to publish the polling stations results at each reporting level, at least at national level, so that all parties, observers and the public at large could check that their polling station results had been correctly tabulated. The polling station results were available for the ZEC at the national level for both the National Assembly and presidential elections and should be used by the ZEC to scrutinise the results coming from the constituencies. It was, however, not explicitly stated in the law that they would be made public at central level and this was not done. Still, the reporting process was quite transparent. However, in order to check the full process one needed to check all the ward reports (approximately 1,900).

#### **5.5.1 The Law and Regulations**

The Election Act and the Statutory Instrument, S.I. No 87 of 2013, regulated the reporting of results. The process up to ward level was the same for all elections, (including Section 65, 3 of the Act). Thereinafter Section 110, 3 regulated the procedure for the presidential election, and Sections 66, 67 and 68 for the National Assembly.

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7 Vollan, K (2008) *Zimbabwe: The Elections On 29 March and The Later Runoff Event and By-Elections on 27 June 2008*, Oslo: NORDEM, University of Oslo.

8 Article 156 “At every election and referendum, the Zimbabwe Electoral Commission must ensure that— [...] (b) “the results of the election or referendum are announced as soon as possible after the close of the polls.”

9 Section 110 (3) (h) requires the presidential results to be announced not later than after polling day, provided there has been no recounts. Section 129 (3) on local elections provides no particular deadline for the parliament results other than that each step should be conducted without delay.

## Common for All Elections

Results were first established at polling station level and the protocol was given to party agents and posted outside (Sections 64, 1, d1 and e and 37C, 4 a and b).

Then the ward protocol was set up with one line for each polling station result (Section 65, 3 and S.I. 87). The protocol should be given to agents and observers and posted outside (Section 65, 6, a and b).

## Local Councils

For the local council elections it was unclear who should announce the results. The previous Section 130 *Declaration and publication of result of election*, which was under the local election chapter, had been repealed and replaced by a section on run-offs for the parliamentary elections. The declaration of the ward results for the local councils seemed to be missing in the Act. The ZEC Manual on Transmission and Collation of Results, Harmonised Elections 2013, Section 4.2 stated that “Each ward collation centre will then announce the result of this election”, which was consistent with the system applied to the other elections.

## The National Assembly

The ward results for the National Assembly (NA) were sent to the constituencies (210), where a protocol similar to the ward protocol was compiled. That report added explicitly the ward results up to constituency level. For the National Assembly constituencies the official results were announced at this level (Sections 66, 1 and 37C, 4, c, ii).

The protocols from the constituencies were sent to the provincial level. The protocols tabulated the constituency results per party (Sections 65B, 3 and 4 and 37C, 4, e, i). The results were compiled to be used in the List PR election for NA, the Senate and the province councils. The National Assembly, Senate and province council List PR results were declared at this level (Sections 45 I and 65B, 3, b and 37C, 4, e, ii). Then all results were sent to the national level (Section 65 B, 5).

However, for the National Assembly results, the ward returns including the polling station results were also sent directly from the ward to the national level, in accordance with Section 37C, 4, b, and could be used for scrutiny at the central level.

## The Presidential Elections

The protocols for the wards were submitted to the constituency level where a protocol was compiled in accordance with Section 110, 3, a, i: “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*”. In other words, the results should be broken down by polling station. However, Section 37C, 4, c, i stated that this report was broken down by ward results only, and S.I. 87 (10B) gave

a design by wards only. The manual Section 2.3 also only mentions that this protocol was by wards. This was an unfortunate inconsistency, but it was most likely that Section 110, 3, a, i actually was a drafting mistake.

The constituency reports were posted outside the building, and the party agents were invited to inspect and sign them but they were not entitled to a copy (Section 110, 3, a, ii and iii).

The constituency reports were sent to the Chief Election Officer (Section 110, 3, a, iii), and to the province level (Section 37C, 4, d, ii and S.I. 87), where a report summarising each constituency was compiled. The province report was only mentioned in Section 37C and not in Section 110,3.

However, for the presidential results, the ward returns including the polling station results were also sent directly from the ward to the national level, in accordance with Section 37C, 4, b, which meant that polling station results are available at national level. The polling station results should be used for the scrutinising of the results coming from the constituencies at the national level, in accordance with Section 37C, 4, f, ii.

The Chief Election Officer compiled a report and the Chief Election Commissioner declared the result (110, 3, f).

## Conclusion

All information was in principle available to the public but only by checking at several levels and in a large number of places. In order to secure full transparency the ZEC should publish the whole tabulation from polling station level to constituencies, provinces and national level. In particular the figures used for the List PR elections at province level were never published. There seemed to be a mistake in the distribution of seats in Bulawayo, which could not be verified because the figures were not made available.

### 5.6 The Commission and its Secretariat

The Chief Elections Officer is mentioned in the law, in particular in the reporting of the results.<sup>10</sup> Giving the Chief Elections Officer a mandate in the act independently of the mandate of the ZEC can cause friction and create unclear command lines. The ZEC should be able to delegate powers and withdraw such delegation as they find most appropriate since they have the ultimate responsibility for conducting correct elections. It would therefore be better if the law only defined the role of the ZEC, who could chose to delegate powers to the Chief Election Officer. In some sections the Chief Election Officer’s role in announcing the results had been removed, such as in Section 110, (3) (f) on the announcement of the presidential results, but the Chief Election Officer was still mentioned in Section 67 (3) and Section 68, regarding the transmission of information to

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<sup>10</sup> E.g. Sections 67, 68, 70, 110.

the Clerk of the Parliament causing the names of elected candidates to be published.

### 5.7 Election Expenses

The law provides for a regulation of election expenses but does not include an explicit ban on use of public resources during the campaign. Mixing the roles of an incumbent office holder and a candidate may therefore occur without legal sanctions.

### 5.8 Other Related Laws

Three laws passed after the 2000 election have posed 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. Some legal changes made in January 2008 contributed to the improvement of the campaign environment for the 2008 elections, in particular regarding the possibility to hold meetings and the coverage of the campaign by the public media. However, POSA 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 POSA included:

- The prohibition of giving any statement - with or without intention - which one i. a. does not have reasonable grounds for believing is true, and which promotes public disorder or adversely affects economic interests of Zimbabwe.
- The prohibition of making abusive, indecent, obscene or false statements about the president, whether his person or office.
- The 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 deem reasonable in order to prevent public disorder.

The AIPPA regulates 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 is detailed and has a clear emphasis on control.

The Broadcasting Services Act regulated broadcasting services and provided 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 in 2008. The Broadcasting Authority of Zimbabwe Board, which gave the minister advice on licensing issues, was for example given a broader representation of people with experience in broadcasting: NGOs, traditional leaders, etc. The purpose of the changes was to issue more licences in addition to the current public broadcaster.

Further reform of POSA and AIPPA had been part of the SADC facilitated roadmap, but were among the issues that were not dealt with before the 2013 elections.

## 6 The Zimbabwean Electoral Commission (ZEC)

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 for the 2005 elections, but with effect from September 2005 the ZEC was written into the Constitution with the responsibility to prepare for, conduct and supervise elections and referendums at all levels. The commission did not get responsibility for the voter registration but should supervise the authority charged with that responsibility, which was the Registrar General.

The 2013 Constitution transferred even voter registration to the ZEC, but for the first elections in 2013 it was still the responsibility of the Registrar General to conduct the registration under ZEC's instructions. In practice the ZEC could do little with the voter registration.

The composition of the ZEC was inclusive in the sense that it included members that had the main parties' confidence. In February the commission got a new Chairperson when the previous one withdrew and Justice Rita Makarau took over. She was supported by the principals of the three leading parties. The ZEC first conducted the constitutional referendum in March 2013 and then the 31 July elections. There was no doubt that the ZEC for the first time took full charge of the electoral processes, except for the voter registration, even though the minister in charge of the elections, the Minister of Justice, exercised his influence on some issues.

UNDP had been the implementing agency for the international community's support to the ZEC. They were able to build up an information communication technology (ICT) infrastructure at the headquarters and down to province level prior to the March 2013 referendum.

A request for further financial support of the ZEC was sent to UNDP from the Minister of Justice and the Minister of Finance in February 2013. Support from the UNDP was dependent the conduct of a Needs Assessment by the Electoral Assistance Division (EAD) of the UN Department of Political Affairs. Such a mission was on its way to Zimbabwe in the beginning of April 2013, but was ultimately unable to conduct an assessment due to a disagreement over the scope of the mission and the access to national interlocutors. On 17 April 2013, the Government announced that it had withdrawn its request for UN electoral assistance. ZEC was during the elections still dependent on other agencies' equipment in order to transfer information including results from ward level to higher levels.

Capacity building at the ZEC had also been done by the South Africa based Electoral Institute for Sustainable Democracy in Africa (EISA). A request came to EISA from the ZEC on 4 June 2013 for a donation of up to USD 26.9 Million and ZEC also stated that they were ready to enter a new MOU with EISA. Some countries were willing to channel funds via EISA, but it became impossible because the MOU did not get extended in the

end. An article in The Herald on 7 June that was very critical of EISA had initiated a period of difficult cooperation with the ZEC, and their programme came to a stand-still. Some activities, such as the interparty liaison committees, had been set up, but the work had to proceed without EISA's facilitation in the end.

Finance Minister Biti also submitted a request for financial support to the international community on 24 June 2013, indicating a funding gap of USD 107 million. The letter came late and did not outline any implementation mechanism, and no funds were made available as a result of this letter.

In the end ZEC was funded by government resources in addition to the assistance already provided through EISA during its former MoU and by UNDP.

## 7 The Date of the Elections

The date of the elections became a controversial issue. ZANU PF was pushing for an early election whereas the MDC formations wanted a few months to prepare. The new Constitution stated in its Article 158:

“Timing of elections

- (1) A general election must be held so that polling takes place not more than—
  - (a) thirty days before the expiry of the five-year period specified in Section 143;
  - (b) where Parliament has passed resolutions to dissolve in terms of Section 143 (2), ninety days after the passing of the last such resolution; or
  - (c) where Parliament is dissolved in terms of Section 109(4) or (5) following a vote of no confidence, ninety days after the dissolution.”

However, the Sixth Schedule containing the transitional articles stated in Part 2:

“Commencement of this Constitution

3. (1) This Schedule, together with—

[...]

(e) Chapter 7, relating to elections, except Sections 158, 160 and 161;

[...]

come into operation on the publication day.

(2) Except as otherwise provided in this Schedule, the rest of this Constitution comes into operation on the day on which the President elected in the first elections assumes office.”

This meant that Article 158 was not in force for the first elections and the old Constitution would regulate the election day.

Two Articles of the previous Constitution were of interest in this regard:

“58 Elections

(1) A general election and elections for members of the governing bodies of local authorities shall be held on such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under Section 63(7) or, as the case may be, the dissolution of Parliament under Section 63(4) as the President may, by proclamation in the Gazette, fix.”

“63 Prorogation or dissolution

(4) Parliament, unless sooner dissolved, shall last for five years, which period shall be deemed to commence on the day the person elected as President enters office in terms of Section 28(5) after an election referred to in Section 28(3)(a), and shall then stand dissolved:

Provided that, where the period referred to in this subsection is extended under subsection (5) or (6), Parliament, unless sooner dissolved, shall stand dissolved on the expiration of that extended period.

[...]

(7) Subject to the provisions of subsection (4), any prorogation or dissolution of Parliament shall be by proclamation in the Gazette and, in the case of a dissolution, shall take effect from the day preceding the day or first day, as the case may be, fixed by proclamation in accordance with Section 58(1) for the holding of a general election.”

Mr Mugabe took office after the disputed run-off on 29 June 2008. The way it turned out, the elected bodies served the full five years term, and the parliament stood resolved on 29 June 2013. This is a regular case (no extraordinary extension or dissolution) and the relevant reference in Article 59 (1) is to Article 63 (4). This is not disputed, but the Constitutional Court read the paragraph in a rather unusual manner, which will be discussed below.

When assessing the time for the elections, the requirement of Schedule Six on an extraordinary voter registration drive of one month after the publication day and before the elections had to be allowed for. Part 3 Article 6 Stated:

“(3) The Registrar-General of Voters, under the supervision of the Zimbabwe Electoral Commission, must conduct a special and intensive voter registration and a voters' roll inspection exercise for at least thirty days after the publication day.”

Under the same schedule's Part 1 Preliminary it is said that “‘publication day’ means the day on which this Constitution, or the statute by which it is enacted, is published in the Gazette in accordance with Section 51(5) of the former Constitution.” According to this publication day was 22 May 2013.

On 31 May the newly formed Constitutional Court handed down a judgement in a case brought forward by a private person, Jealously Mawarire, who claimed that his constitutional right to have elections before the 30 June had been violated by the failure of the President to proclaim elections by that date. The Court agreed with the claimant but since it was already too late for 30 June, it set 31 July 2013 as the latest date for the elections.

The most obvious reading of Article 58 (1) of the old Constitution would be that elections would have to be held within four months of the dissolution of parliament, which was 29 June. That would mean that elections could be held any time before 29 October 2013. The Constitutional Court, however, set forward two possible ways of reading the paragraph, named by the Court as Reading A and Reading B:

“READING ‘A’  
Part 6  
Elections and Sessions

58 Elections

(1) A general election and elections for members of the governing bodies of local authorities shall be held on

- i. such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under Section 63(7) or,
- ii. as the case may be, the dissolution of Parliament under Section 63(4) as the President may, by proclamation in the Gazette, fix.”

“READING ‘B’  
Part 6  
Elections and Sessions

58 Elections

(1) A general election and elections for members of the governing bodies of local authorities shall be held on such day or days within a period not exceeding four months after:

- i. the issue of a proclamation dissolving Parliament under Section 63(7) or,
- ii. as the case may be, the dissolution of Parliament under Section 63(4) as the President may, by proclamation in the Gazette, fix.”

The Court argued that common sense would mean that there is no real reason for giving the president four months to call for elections in the case when the date of the dissolution is known long time in advance. Therefore Reading A was to their mind the most obvious.

This reading depends on introducing colons and numberings where such signs do not exist and it diverged considerably from a straight forward reading of the actual paragraph, to put it mildly.

Following the court decision the President on 13 June declared 31 July 2013 as election

day by the Statutory Instrument No 86 of 2013. The MDC factions protested against the decision, which had been made unilaterally without consultations with the Prime Minister.

An extraordinary SADC Summit in Maputo on 15 June “agreed on the need for the Government of Zimbabwe to engage the Constitutional Court to seek more time beyond the 31 July 2013 deadline for holding the Harmonized Elections”.

Then, without consulting or notifying his inclusive government colleagues from MDC-T and MDC, the Minister of Justice Chinamasa on 18 June filed a rather half-hearted application with the Constitutional Court seeking the postponement of polling until 15 August. The Prime Minister and other stakeholders, believing that this proposed extension still left too little time to prepare properly for elections, filed opposing papers and also made separate applications asking the court to postpone the date further. The Constitutional Court on 4 July 2013 not only dismissed all the applications, but also confirmed 31st July as the election date.<sup>11</sup>

After this all parties and the ZEC, continued preparing for the 31 July 2013 election.

## 8 The Pre-election Phases

### 8.1 Voter registration

The voter registration process and the voter register itself were subject to heavy criticism. In its transitional articles the new Constitution left the responsibility for the voter register to the Registrar General for this first election before transferring it to the ZEC. The ZEC should supervise the process but in practice the work was carried out by the Registrar General. The Constitution stated that there should be a one month special registration drive ahead of the election. This was carried out from 10 June to 9 July 2013. The process was criticised for the slow performance in the cities and for a lack of transparency.

The law stated in Section 21 that the parties and other stakeholders could have an electronic copy of the register for inspection:

- “(3) The Commission shall within a reasonable period of time provide any person who requests it, and who pays the prescribed fee, with a copy of any ward or constituency voters roll, either in printed or in electronic form as the person may request.
- (4) Within a reasonable period of time after the calling of an election, the Commission shall provide, on payment of the prescribed fee, to every political party that intends to contest the election, and to any observer who requests it, one copy of every voters roll to be used in the election, either in printed or in electronic form as the party or observer may request.

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<sup>11</sup> Court Watch 12/2013.

- (5) Fees prescribed for the purposes of subsection (3) or (4) shall not exceed the reasonable cost of providing the voters roll concerned.
- (6) Within a reasonable period of the time after nomination day in an election, the Commission shall provide -
  - (a) free of charge, to every nominated candidate, one copy in electronic form of the constituency voters roll to be used in the election for which the candidate has been nominated; and
  - (b) at the request of any nominated candidate, and on payment of the prescribed fee, one copy in printed form of the constituency voters roll to be used in the election for which the candidate has been nominated.
- (7) Where a voters roll is provided in electronic form in terms of subsection (3), (4) or (6), its format shall be such as allows its contents to be searched and analysed: Provided that—
  - (i) the roll may be formatted so as to prevent its being altered or otherwise tampered with;
  - (ii) the Commission may impose reasonable conditions on the provision of the roll to prevent it from being used for commercial or other purposes unconnected with an election.”

The provision was detailed by even stating that electronic copies had to be provided in formats which made it possible to analyse it. On the final register this never happened. The voter register as per June 2013, before the registration drive started, was made available for review. It contained 5,874,115 voters. The Research and Advocacy Unit (RAU) published their review of the register in July.<sup>12</sup> It concluded that the register had a number of duplicates and dead people on the lists and that a large portion of the young people had not been registered. It also stated that 63 constituencies had more registered voters than citizens according to the census 2012, and that 41 constituencies deviated with more than the permitted 20 % from the average number of voters.

After this report came out, similar reviews were impossible since the register was not made available to stakeholders. Only statistics from the later registration effort were published. On 9 July the Zimbabwe Broadcasting Corporation (ZBC) presented new figures broken down by province. The total was reported to have reached 6,187,003. Then finally, on 22 July the Registrar General announced in *The Herald* that the total had come to 6.4 Million, without providing a breakdown. He did, however, mention that 748,000 new voters were registered in the last registration drive.

The ZEC was responsible for giving the voters register to the parties but they pointed at the Registrar General when asked why they had not provided such copies. On election day MDC-T received a printed copy but that was too late for a review and the format made

<sup>12</sup> Research & Advocacy Unit (2013), *An Audit of Zimbabwe's 2013 Voters' Roll, July 2013*, Harare: Research & Advocacy Unit.

a proper analysis very difficult.

The accreditation of observers was not in place in time to observe the start of the last voter registration drive, but when it had been finalised ZESN could on 10 July report:

“Of major concern was the slow processing of people at the registration centres. ZESN has observed that people had to stand in long queues, sometimes up to eight hours before being attended and this was mostly observed in urban areas. ZESN observers in Bulawayo noted how some officials from the Registrar General’s office seemed to be inadequately trained. This resulted in some people being turned away at the close of the process despite having been in queues for the whole day.”

This is consistent with a number of other reports stating that in Harare and Bulawayo where the MDC formations have their main supporter base, the process of registration was extremely slow and many people gave up registering.

The development of the voter registration since 2000 is shown in Table 1 below.

Province	Registered voters				
	2000	2002	2005 <sup>13</sup>	2008	2013 <sup>14</sup>
<b>Bulawayo</b>	357,281	363,028	339,990	320,772	310,390
<b>Harare</b>	799,452	882,176	832,571	784,598	798,264
<b>Manicaland</b>	575,404	658,694	686,767	774,482	798,677
<b>Mashonaland Central</b>	418,277	480,092	490,181	522,107	568,600
<b>Mashonaland East</b>	506,817	589,185	610,715	658,123	710,323
<b>Mashonaland West</b>	502,964	572,677	593,354	625,729	656,036
<b>Masvingo</b>	593,778	655,122	675,234	740,969	769,263
<b>Matabeleland North</b>	317,405	338,186	342,745	366,271	383,267
<b>Matabeleland South</b>	319,015	343,993	341,258	355,480	371,143
<b>Midlands</b>	658,422	724,659	745,822	786,237	821,040
<b>Total</b>	5,048,815	5,607,812	5,658,637	5,934,768	6,187,003

**Table 1: The voter registers by province from 2000 to 2013**

<sup>13</sup> 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).

<sup>14</sup> The last breakdown published on 9 July 2013, but not the one used during the elections.

## 8.2 Delimitation of Constituencies

The Constitution stated in its transitional articles (Sixth Schedule Section 5) that the constituencies should not be re-drawn for these first elections. When the constituencies were drawn up in January 2008, the voter registers contained 5.6 million voters. The constitutional requirement at the time was that the size of the constituencies should vary a maximum of twenty per cent from the average size (Section 61A (6)). In the new Constitution the requirement was changed to “no constituency or ward of the local authority concerned may have more than twenty per cent more or fewer registered voters than the other such constituencies or wards” (Section 161 (6) (f)). This is a stricter requirement since the variation between any constituencies must not exceed twenty per cent as opposed to not vary more than twenty per cent from the average size. Appreciating that the transition articles set the requirement aside for these elections, Table 2 still shows how the average size of the constituencies per province meet the ideal of the Constitution at the time they were drawn up and the new requirement. The lowest average in 2013 was in Harare and the highest in Mashonaland Central. Adding twenty per cent to the Harare figures gives 31,039, which the Mashonaland Central exceeds with around 500. It must be noted that this check is done on the average size of each province, which means that there may be larger variations *within* the provinces. One should also note that the smallest constituencies were in Harare and Bulawayo which gave a small advantage to the MDC-formations.

Province	Number of Constituencies	At the time delimitation in 2008		The register as per 9 July 2013 (not final)	
		Registered voters	Average size	Registered voters	Average size
Bulawayo	12	313,459	26122	310390	25,866
Harare	29	766,478	26430	798264	27,526
Manicaland	26	709,664	27295	798677	30,718
Mashonaland Central	18	488,477	27138	568600	31,589
Mashonaland East	23	624,630	27158	710323	30,884
Mashonaland West	22	582,589	26481	656036	29,820
Masvingo	26	699,199	26892	769263	29,587
Matabeleland North	13	345,264	26559	383267	29,482
Matabeleland South	13	342,280	26329	371143	28,549
Midlands	28	739,510	26411	821040	29,323
<b>Total</b>	<b>210</b>	<b>5,611,550</b>	<b>26722</b>	<b>6,187,003</b>	29,462
Lower bound for the constituency size (-20%)			32066		
Upper bound for the constituency size (+20%)			21377		

Table 2: The average number of registered voters per constituency for each province in 2008 and 2013. In 2008 the requirement was not to deviate more than twenty per cent from the average, whereas the 2013 Constitution made a stricter requirement whereas the 2013 Constitution made a stricter requirement where the difference between any constituencies should not exceed twenty per cent. For the 2013 elections the transitional articles stated that the 2008 constituencies should be used as they were.

## 8.3 Voter Education

According to the law, only the ZEC and organisations accredited by the ZEC were allowed to carry out voter education. A number of such organisations were accredited.

## 8.4 Nomination of Candidates

Nomination for all elections closed on 28 June 2013. The following candidates were nominated:

### *The Presidency:*

Robert G. Mugabe, ZANU PF  
Morgan Tsvangirai, MDC-T  
Welshman Ncube MDC-N  
Dabengwa Dumiso ZAPU  
Mukwazhe Munodei Kisinoti ZDP

### *The National Assembly:*

757 candidates were nominated for the 210 single-member constituency seats contested. For the List PR female seats five parties (ZANU PF, MDC-T, MDC-N, ZAPU and AKE) filed lists, with a total of 204 individual candidates.

### *The Senate:*

For the 60 seats in the Senate six parties (ZANU PF, MDC-T, MDC-N, ZAPU, MKD and AKE) filed lists, with a total of 210 candidates.

### *Province Councils:*

For the contested seats in the eight province assemblies four parties (ZANU PF, MDC-T, MDC-N and ZAPU) filed lists, with a total of 248 candidates.

## 8.5 Freedom of Speech and Association

It was a general opinion among the contesters that the possibilities for all candidates to campaign across the country had improved a lot. There were no areas where certain candidates could not move freely or where candidates were not permitted to campaign.

## 8.6 Media

The most important media in Zimbabwe are TV and radio. State TV and radio were extremely biased in their coverage of the campaign and the State TV had in practice monopoly on political reporting. There were newspapers supporting both ZANU PF and the MDC formations. The Herald, a government newspaper, was mainly a spokes channel for ZANU PF and not the government as a whole. The media situation as a whole did not provide for a level playing field for all contestants in the elections.

## **8.7 Political Violence and Intimidation**

Political violence had been considerably reduced in the period leading up to these elections compared to other elections held after 2000. All observer missions agreed that the campaign and the elections were held in a peaceful environment. A Joint Monitoring and Implementation Committee (JOMIC) had been established by the GPA as a tool for reconciliation and for creating an environment conducive for future elections. They were able to build up capacity in all provinces before the elections and the three main parties operated in joint teams in order to resolve political tension and prevent violence. This probably contributed to a calm election environment. A further description of the JOMIC follows below.

There were still reports of intimidation by people of authority locally. Zimbabwe Election Support Network (ZESN) reported on the 31 July 2013:

“Political tolerance also remained low with polarisation characterising the environment as the state media often magnified this intolerance. Intimidation, allegedly mostly committed by ZANU PF supporters, received significant media attention, although there was little done to curb its occurrence. Several reports noted that the country’s political landscape is still blighted by fear that citizens have associated elections with violence to the extent that many are reluctant to participate in elections at all. ZESN’s observers reported in their regular reports that in some areas people were afraid to express their true opinions, or even to associate with ‘wrong’ elements, including reading newspapers of their choice. These freedoms of association were further violated by people being forced to attend ZANU-PF meetings and buy party cards, in some cases as a precondition to receiving food, loans and other necessities.

For some non-governmental organisations and community-based groups, working on soft issues the environment was relatively safe. Those organisations working in health and education were able to operate without much hindrance. For those working in the field of political education and civil rights, the situation was significantly different. These groups faced challenges, especially as they were sometimes denied police clearance to conduct workshops and seminars. Employees and volunteers working for several of these organisations were arrested. Cases of harassment of civil society activists continued during the countdown to the elections and persist in the post-election period. A number of these arrests centred on the fact that groups were alleged to have been conducting voter education illegally, without the consent and supervision of ZEC.”

## **8.8 Ballot Printing**

The commission printed 8.7 million ballot papers, which was 35 per cent more than the number of registered voters of 6.4 million. This is more than what is common in countries where the voters need to vote in wards where they are registered, and the turnout in various areas is quite predictable. On the other hand, if the process of accounting for the material at polling stations, the transparency throughout the voting, and the immediate counting at the polling stations work as per the procedures, it should not be possible to

actually misuse such a surplus. Nevertheless it did cause suspiciousness, which should be avoided at later elections.

## **8.9 Postal Voting**

Postal voting for diplomats and those stationed outside the country took place in 42 diplomatic missions in the week beginning on 22 July. ZEC indicated that there were only 262 applications for postal voting. ZESN was invited to observe the opening of the special vote and postal vote envelopes.

## **8.10 Special Voting**

Act No 3 of 2012 amended the Electoral Act to include provisions for special voting allowing electoral officers and members of a disciplined force performing security duties during the election to vote prior to election day. Statutory Instrument 84 of 7 June 2013 gave detailed regulations for such special voting.

The dates for special voting were set to 14 and 15 July. On 11 July the ZEC chairperson Justice Makarau was quoted in *The Herald* to say: “About 69 000 officers from the Zimbabwe Republic Police form the bulk of 87 000 people expected to cast the first votes of Election 2013 under the special voting facility. A total of 15 000 officials from ZEC, 2 000 from the Zimbabwe Prison Service and 140 officers from the Zimbabwe National Army are expected to vote next Sunday and Monday.” According to the interview the special voting was to take place at 209 polling stations countrywide.

MDC-T challenged the figure and the Minister of Finance said that the number of staff on the payroll of the police force was just over 40,000.

The first day of special voting was slow due to lack of ballot papers. ZEC stated in a press release after the first day that due to challenges to the nomination court decisions, the design of ballot papers had been delayed. On the first day only 6,092 had voted.

On 23 July Justice Makarau said to *The Herald*: “Out of the 63,268 voters comprising ZEC officials, police officers, soldiers and prison officers who were registered to vote using the special voting system on July 14 and 15 this year, only 37,108 managed to exercise their voting rights while 26,160 failed due to logistical challenges.”

Immediately after the special voting days, the chairperson Morgan Komichi of MDC-T went to the High Court seeking an order nullifying the special voting procedure. On Friday 19 July Justice Chiweshe dismissed the MDC-T application.

On 23 July the ZEC filed an application with the Constitutional Court in order to allow the 26,160 persons to cast their vote on election day. In the law it was clearly stated that those having applied for a special vote should be deleted from the voter registers and not

be allowed to vote, but since they were deprived of their voting right due to technical problems outside their control the ZEC argued that they should be allowed to vote on election day. They also urged the court to put in place conditions to ensure that those who had already voted could not vote again, when those who were left out of the process were afforded an opportunity to vote. They argued that “[t]he mechanism for doing so is provided for in terms of Section 81 D(3) of the Electoral Act.”<sup>15</sup> The article states that “The Chief Elections Officer shall ensure that the voters roll supplied to each ward centre for the purposes of the election has a line drawn through every voter in the ward who has been authorised to cast a special vote and shall inscribe opposite that person’s name the letters “S.V.”.

The Constitutional Court, despite opposition from MDC-T, granted ZEC’s application on Friday 26 July. This followed a hearing where MDC-T’s lawyer referred to evidence, in an affidavit by MDC-T deputy chairperson Morgan Komichi, of the discovery of special ballot papers in a dustbin near the ZEC National Command Centre by persons unknown.<sup>16</sup>

The MDC-T filed a Constitutional Court application on 26 July to nullify the whole of the special voting exercise conducted on July 14th and 15th. Their case was based on the concessions made by ZEC, when seeking an extension of the voting, that the special voting was marred by technical and administrative flaws. According to The Herald of 31 July, MDC-T withdrew the application which had been scheduled for a hearing on 30 July.

The main objection to letting those who were registered for special voting vote on election day was the fear that some of those who actually had voted during the special voting would vote again on election day.

The bill gazetted by government on 3 January 2014 with amendments to the Electoral Act has reversed the possibilities for special voting all together and instead added security personnel on duty on election day on the list of those who can cast a postal ballot. Postal voting is a less transparent process than voting in person so it is not certain that this will reduce the risks of fraud or allegations of fraud.

<sup>15</sup> Justice Makarao to The Herald on 24 July 2013.

<sup>16</sup> This led to the arrest of Mr Komichi at his home in the early hours of Sunday 28 July and he was taken to Harare Central Police Station, accused of breaking the election law. He was charged of fraud when he was claiming he had found the ballots in a bin, and on interfering with ballot papers. He was refused bail a number of times and was still in jail on 25 October 2013, when the trial was still on-going.

## 9 The Capacity of Polling Stations

On 10 July the ZEC published a list of 9,670 polling stations. Then on 28 July they published a new list in The Standard increasing the number with 65 polling stations. This list was also published on election day.<sup>17</sup>

Province	Number of registered voters 9 July 2013	Number of polling stations according to the final list 28 July 2013	Average number of voters per polling station 28 July 2013	Average voters per polling station in 2008
Bulawayo	310,390	392	792	1,331
Harare	798,264	875	912	1,087
Manicaland	798,677	1,303	613	681
Mashonaland Central	568,600	822	692	637
Mashonaland East	710,323	1,047	678	628
Mashonaland West	656,036	1,303	503	591
Masvingo	769,263	1,238	621	612
Matabeleland North	383,267	784	489	485
Matabeleland South	371,143	623	596	567
Midlands	821,040	1,348	609	570
<b>Total</b>	<b>6,187,003</b>	<b>9,735</b>	<b>636</b>	<b>660</b>

**Table 3: The Development of number of polling stations compared to registered voters in 2013 and 2008. In 2008 a total of 8,998 polling stations were used.**

## 10 Candidate Agents and Observers

### 10.1 Party agents

All parties and candidates had the right to have representatives in the polling stations. There were no reports of agents not being let into the polling stations or of difficulties in accrediting party agents.

### 10.2 Observers

Civil society organisations could be accredited as domestic observers. At earlier elections some organisations had difficulties getting accredited but this time there were no reports of unfair application of the rules. The accreditation had opened in all provinces so unnecessary travelling to Harare was not required any more.

<sup>17</sup> ZESN state in their report that the addition came after the 28 July publication, but it actually came on 28 July.

Only regional and African organisations were accredited as international observers. The most prominent missions were those from SADC, SADC Parliamentary Forum and African Union. Diplomatic missions to Zimbabwe were invited to accredit observers, and a group of them including the EU Mission and EU member countries, the US, Australia, Switzerland and Norway formed a so-called diplomatic watch exchanging information and deployment plans, without being a formal observation mission.

### **10.3 JOMIC**

The Joint Monitoring and Implementation Committee (JOMIC) was established by the GPA in 2008 as a tool for reconciliation and for creating an environment conducive for future elections. SADC put a lot of emphasis on its role. The Zimbabwe Institute, an independent political think tank implementing a number of projects in Zimbabwe, helped setting up its administration and coordinated the donor support. JOMIC had four members from each of the three main parties including the senior negotiators.

After a slow start, the political party liaison teams centrally and at province level worked well from the spring of 2011. In 2013 the capacity was expanded to two teams per province, which were to be operational during the 2013 elections. The members emphasised the value of representatives from all three parties delivering the same message of non-violence. They worked with the local authorities and with the police, and they took an independent position when the police was part of the problem.

The SADC summit at Sandton on 11 and 12 June 2011 decided to second three SADC troika representatives to JOMIC. They were able to take up their work only around the time of the 2013 referendum.

On 12 June 2013, JOMIC decided to increase their capacity considerably during the elections. They proposed to have one stationary JOMIC-team inside every polling station with observer accreditation. The donors were not convinced that this would be feasible, both from a practical point of view and from a division of labour point of view. Would the parties be able to recruit and train almost 30,000 team members that close to the elections? And would the new role of JOMIC teams be helpful in addition to observers and party agents? Observing elections requires skills different from conflict monitoring and mediation. The ZEC raised formal objections. Observers were supposed to be non-partisan, not multi partisan as the case was with JOMIC. ZEC agreed in the end to accredit 1500 JOMIC-monitors who would be allowed into the polling stations, whereas the rest of the teams would have to remain outside. JOMIC defined a methodology for their teams which would be different from observers and party agents. They were to assess in particular:

- The free access of voters, and accredited observers, party agents and media to the polling stations and the area around them.
- Whether unauthorised persons were allowed inside the polling station, as far as can be established from outside.

- Whether persons of authority (mayors, chiefs, employers, etc.) were present in the area, misusing their authority to influence or intimidate voters.
- Whether there was any sign of violence in the area.
- Whether there were any campaign posters or campaign material within the area prescribed by law to be free from such material.
- Whether there were any campaign activities going on within the observed area. Campaign activities were forbidden regardless of location on election day, whereas posters etc. were forbidden within 200 m of the polling station.

Some violations were to be reported to the JOMIC-teams by party agents or observers with access to polling stations and could only be verified by entering the station. In such cases the stationary team would call on a mobile team, which were accredited and therefore could enter the polling station to assess the situation.

In their public notice on 29 July 2013 JOMIC gave a presentation of their operation: “JOMIC advises that it will deploy observers and political environment monitors for the harmonised elections on 31 July 2013. These teams will operate at two levels:

1. JOMIC observers.

JOMIC will deploy 1 503 election observers who have been accredited by the Zimbabwe Electoral Commission. This team will be identified by their ZEC accreditation cards and reflective bibs clearly inscribed “JOMIC Election Observer” and they will operate at district and constituency level. They will observe the entire process from voting to the counting of ballot papers.

2. JOMIC monitors.

JOMIC monitors will be putting on JOMIC T-shirts and reflective bibs. Their role is to monitor the general political environment as provided for under the Global Political Agreement. They will operate outside the polling station.”

JOMIC did not have teams outside every polling station but they tried to cover every location where there were polling stations.

## **11 The Election Day**

### **11.1 A General Assessment**

Formal and informal observers had very different assessments of the 31 July elections. The observer missions from SADC and AU had critical comments but they concluded that the elections were generally credible. The head of the SADC Election Observation Mission concluded in his statement of 2 August, after having listed problems with media, voter registration, etc.:

“In the main, the electoral process was characterised by an atmosphere of peace and political tolerance. Political parties and candidates were able to freely undertake their political activities unhindered.

SEOM wishes to take this opportunity to congratulate the people of Zimbabwe for turning up in large numbers to exercise their democratic right to choose their political leaders. A new chapter in the process of consolidation of democracy in the Republic of Zimbabwe has been opened and we hope that the people of Zimbabwe will work together to build their country.

This is a major step in the implementation of the GPA and I therefore would like to take this opportunity to urge the political leadership and all the people of Zimbabwe to uphold peace and stability. SEOM wishes to implore all Zimbabweans to exercise restraint, patience and calm. The future of your country is in your hands.

More importantly, SEOM would like to call on all political parties to respect and accept the election results as will be announced by the constitutionally mandated Zimbabwe Electoral Commission (ZEC).

Whoever is aggrieved with the results, should not resort to violence, but rather should go to the court of law, or engage in dialogue.”

The African Union stated on 2 August: “The Mission wishes to express its hope for a successful conclusion to the 2013 Harmonised Elections, and urges all electoral stakeholders in Zimbabwe to continue to communicate messages of peace and non-violence to sustain the reigning calm political environment. To this end, it is critical for all contesting political parties to pursue the established legal channels and dispute resolution mechanisms in resolving disagreements that might arise.” In their final report released in October the AU observation mission stated: “82. In general, while the AUEOM observes that the 31 July 2013 Harmonised Elections in Zimbabwe were professionally and successfully conducted by the ZEC despite the financial, time and staff constraints.” After that they listed a number of recommendations.

SADC Parliamentary Forum (SADC PF) stated on 3 August:

“Based on its overall findings, the Mission is of the view that there existed a generally conducive and peaceful environment in which the elections were conducted. Notwithstanding the challenges and observations made thereto, Zimbabweans were mostly accorded the opportunity to freely express their will in voting for political parties and representatives of their choice.

The SADC PF Election Observation Mission to the 2013 Zimbabwe Harmonised General Elections is therefore of the view that the 2013 Zimbabwe Harmonised General Elections were, on the whole, a credible reflection of the will of the people

of Zimbabwe. Accordingly, the Mission declares the 2013 Zimbabwe Harmonised General Elections as having been free and fair. In Conclusion, the SADC PF Election Observation Mission to the 2013 Zimbabwe Harmonised Elections extends its hearty commendation Zimbabwe’s Political Leadership, the Zimbabwe Electoral Commission (ZEC), the People of Zimbabwe and other critical stakeholders for the mature and progressive way they conducted themselves prior, during and post the 2013 Zimbabwe Harmonised General Elections.”

Contrary to these international observers who despite reporting on deficiencies concluded in a positive tone, the main domestic observers organised by ZESN stated in their final report released in September 2013: “In conclusion, ZESN reiterates its concerns on the critical factors such as inadequate and delayed voter education, an inadequate and flawed voter registration process, failure to provide the voters’ roll to political parties and stakeholders on time, chaotic special voting, and the high numbers of assisted and turned away voters. These highlighted challenges seriously compromised the credibility and fairness of the 31 July 2013 Harmonised Elections.”

All observer missions and parties agreed that the election day was conducted in a peaceful manner. However, the assessment of how serious the deficiencies were for the credibility of the results varied a lot. The MDC-T stated immediately after the elections that they were a sham and they challenged the elections in court, a case they later withdrew because they felt the judges did not support them in providing evidence, see Section 14.3 on the MDC Constitutional Court Petition.

### ***11.2 The Voter Registers and Multiple or Illegitimate Voting***

The voting was ward-based. That meant that within each of the around 1,900 wards a voter could vote at any of the polling stations. Each polling station would have the same list of voters. The main measure against double voting was that the finger would be marked with indelible ink after the voting. The names on the voter lists were crossed out when voters voted. In theory one could check the voters list after the elections, but the lists were sealed off in packages that could only be opened by a court decision (the Election Code Section 70, and the Manual for Presiding Officers and Election Officers Conducting Ordinary Poll Harmonised Elections 2013 Section J<sup>18</sup>).

On election day many voters showed up in a ward where they thought they had been registered without finding their names on the lists. When this became a problem, the ZEC announced that voters should vote by presenting a voter registration receipt for the constituency. The presiding officer was to record the names of such voters. The receipt did not indicate the ward. This led to a number of allegations of fake voting receipts being issued to illegitimate voters who were then able to vote. There were also allegations that the ink could be removed and that voters then could vote several times, based on the false

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18 The provision to pack the voters list was only given in the manual, not in the act.

voting cards, or simply by voting in more than one polling station within a ward. JOMIC reported incidents of people handing out voters cards to voters and they reported that five persons were arrested in Harare South on such allegations.

The problem was both that voters who were registered were turned away and that people who should not have been allowed to vote, actually voted. After the elections ZEC published a figure of 304,890 voters who were turned away, or 8.7 per cent of those voting. However, this figure also includes those who might have gone to another ward and who were allowed to vote there. The figure is anyway high. There were no figures available indicating how many voted with registration slips only.

Constituency	Total valid votes	Turned away	Per cent of valid votes
Bulawayo	130,594	11,388	8.7
Harare	423,093	64,483	15.2
Manicaland	455,735	42,525	9.3
Mashonaland Central	380,880	18,517	4.9
Mashonaland East	419,404	20,464	4.9
Mashonaland West	387,528	56,733	14.6
Masvingo	405,352	29,292	7.2
Matabeleland North	196,254	14,424	7.3
Matabeleland South	156,129	11,521	7.4
Midlands	433,669	35,543	8.2
Total <sup>19</sup>	3,388,638	304,890	9.0

Table 4: Voters turned away on election day by province

There was evidence that voters were bussed in from the country side, and possibly even from neighbouring countries to vote in selected constituencies in the cities where MDC-T was strong. That could give ZANU PF seats in the National Assembly which they otherwise would not get. Some of the people being bussed in might also have registered in the city constituency. Due to lack of formal residency documents people can in practice register wherever they want. This liberal practice accommodates the mobility of the workforce. However, it was also used in the elections to direct voters to certain constituencies that they did not have any connections with.

The procedures aimed at preventing double voting by those registered to vote in the special voting varied. In some places, those who had already voted had been struck off the lists, but in other places they had not, leaving a risk for double voting by some 30,000 voters.

<sup>19</sup> Counting only valid votes, not all voting.

### 11.3 Assistance to Voters

Voters needing assistance due to physical disabilities or illiteracy could be helped by a person of their choice. If they did not request to be assisted by a certain person, the polling staff should assist them in the presence of the police. There were claims that this possibility was used to intimidate voters to vote in a particular manner, and the statistics showed an unusual high share of assisted voters. According to the ZEC 5.9 per cent of the voters were assisted. This is high in a country with a high literacy rate.

Constituency	Total valid votes	Assisted	Per cent of the valid votes
Bulawayo	130,594	2,313	1.8
Harare	423,093	4,089	1.0
Manicaland	455,735	31,277	6.9
Mashonaland Central	380,880	34,044	8.9
Mashonaland East	419,404	27,974	6.7
Mashonaland West	387,528	23,166	6.0
Masvingo	405,352	34,950	8.6
Matabeleland North	196,254	14,314	7.3
Matabeleland South	156,129	9,462	6.1
Midlands	433,669	25,312	5.8
Total <sup>20</sup>	3,388,638	206,901	6.1

Table 5: Voters assisted on election day by province

### 11.4 Police Presence

As mentioned earlier, the presence of the police in the polling stations was a controversial legal issue. The Electoral Act seemed to allow for their presence and so did the manual for polling staff. Apart from the possible intimidation of voters being assisted in the presence of a police officer, there were no reports that police officers did more than keeping order in and around the polling stations.

## 12 The Count and Tabulation

### 12.1 The Presidential Election

The presidential election results were published on 2 August, well within the constitutionally prescribed deadline of five days after election day. It pronounced the incumbent President, Robert Mugabe, the winner. Table 6 below shows a breakdown of the results for the presidential elections as published by the ZEC.

<sup>20</sup> Counting only valid votes, not all voting.

Province	Dumiso Dabengwa (ZAPU)	Robert Gabriel Mugabe (ZANU PF)	Munodei Kisimoti Mukwazhe (ZDP)	Welshman Neube (MDC-N)	Morgan Tsvangirai (MDC-T)	Total valid	Rejected	Total
Bulawayo	1,926	31,773	159	9,356	89,207	132,421	1,277	133,698
Harare	843	172,163	361	7,846	261,925	443,138	6,167	449,305
Manicaland	3,374	258,026	1,514	13,433	180,552	456,899	11,033	467,932
Mashonaland Central	2,182	327,455	615	3,525	46,533	380,310	6,678	386,988
Mashonaland East	2,212	320,719	795	6,231	90,165	420,122	6,731	426,853
Mashonaland West	2,066	277,312	883	5,603	100,616	386,480	7,683	394,163
Masvingo	3,855	285,806	1,515	9,878	104,912	405,966	9,804	415,770
Matabeleland North	3,034	81,207	1,352	13,003	98,596	197,192	6,490	203,682
Matabeleland South	2,776	81,180	1,166	12,726	58,633	156,481	3,592	160,073
Midlands	3,148	274,793	1,571	11,036	141,210	431,758	9,825	441,583
<b>Total</b>	<b>25,416</b>	<b>2,110,434</b>	<b>9,931</b>	<b>92,637</b>	<b>1,172,349</b>	<b>3,410,767</b>	<b>69,280</b>	<b>3,480,047</b>
<b>Total of valid</b>	<b>0.75</b>	<b>61.88</b>	<b>0.29</b>	<b>2.72</b>	<b>34.37</b>	<b>100.00</b>	<b>1.99<sup>21</sup></b>	

**Table 6: The results of the presidential elections by province**

## 12.2 The National Assembly

The votes aggregated to province level for each party were never published. However, media gave detailed results for each of the candidates per each of the 240 National Assembly constituencies. With such a high number of figures there would be mistakes and inconsistencies, and it was difficult to know which media outlet had the correct figures, but by comparing with the candidate lists, it has been possible to solve most such inconsistencies. The figures presented in the following are taken from The Herald, and checked against the figures published by Sokwanele. In the constituency Chipinge East in Manicaland the figures from The Herald have been used, with a total of 14,027 votes and not the 18,156 published in Sokwanele. Other discrepancies are insignificant, or they have been resolved using other sources.

The votes per main parties and provinces are shown in Table 7.

Constituency	MDC-T	ZANU PF	MDC-N	Independent candidates	Other parties	Total
Bulawayo	72,693	30,290	20,967	2,211	4,433	130,594
Harare	224,285	169,272	22,964	3,541	3,031	423,093
Manicaland	167,820	263,796	14,414	4,927	4,778	455,735
Mashonaland Central	37,040	335,895	7,641	188	116	380,880
Mashonaland East	72,925	316,317	13,187	15,830	1,145	419,404
Mashonaland West	88,241	281,262	9,761	7,577	687	387,528
Masvingo	94,059	295,190	14,194	1,392	517	405,352
Matabeleland North	88,036	82,764	18,152	1,728	5,574	196,254
Matabeleland South	49,095	81,582	18,600	3,049	3,803	156,129
Midlands	126,689	283,835	15,916	4,881	2,348	433,669
<b>Total</b>	<b>1,020,883</b>	<b>2,140,203</b>	<b>155,796</b>	<b>45,324</b>	<b>26,432</b>	<b>3,388,638</b>

**Table 7: The votes for candidates of the main parties and independent candidates in the National Assembly election by province. When a party had more than one candidate in a constituency the votes are added up. The numbers are based upon figures published in The Herald and Sokwanele.**

In some constituencies the parties MDC-T, MDC-N and Zanu PF had nominated two candidates in the same constituency. In Table 7, the votes for both such candidates have been added into the total for the party.

The single-member constituency seats were won as indicated in Table 8.

Province	MDC-T	Zanu PF	MDC-N	Independents
Bulawayo	12	0		
Harare	23	6		
Manicaland	4	22		
Mashonaland Central	0	18		
Mashonaland East	0	22		1
Mashonaland West	1	21		
Masvingo	0	26		
Matabeleland North	6	7		
Matabeleland South	0	13		
Midlands	3	25		
<b>Total</b>	<b>49</b>	<b>160</b>	<b>0</b>	<b>1</b>

**Table 8: The single member constituency seats distribution for the National Assembly**

<sup>21</sup> Per cent of all votes cast.

In 2008 ZANU PF won seats in ten constituencies where the MDC-T and MDC-N candidates combined won the majority of votes. In one constituency MDC-T won the seat where two ZANU PF candidates competed but together won the majority. Also in 2013 the MDC formations were not able to enter a tactical co-operation during the elections, neither for the National Assembly nor for the presidential election. With the mixed electoral system a co-operation would be somewhat more complicated than in a pure FPTP election, since the votes in the FPTP election also count in the List PR. The competition this time led to more lost seats for the MDC parties. If they had not been competing and the voters had voted for only one MDC candidate, they would have won another fourteen seats in the following constituencies: Chitungwiza South, Kadoma Central, Masvingo Urban, Lupane West, Nkayi North, Tsholotsho South, Gwanda North, Matobo North, Matobo South, Umzingwane, Bulilima West, Mangwe, Kwekwe Central and Zvishavane-Ngezi. ZANU PF did not lose any seats by fielding two candidates in the 2013 elections.

The higher loss for MDC this time was partly due to the margins not being in their favour, which they were in 2008, see below.

The List PR seats for the National Assembly, the Senate and for eight province assemblies were distributed according to the votes won by the parties nominating lists in the constituencies, added up to province level. There was no threshold for the distribution of seats among the parties.

Province	MDC-T	Zanu PF	MDC-N	AKE	ZAPU
Bulawayo	72,693	30,290	20,967	380	3,066
Harare	224,285	169,272	22,964		
Manicaland	167,820	263,856	14,414		
Mashonaland Central	37,040	335,895	7,641		
Mashonaland East	73,336	321,787	12,943		
Mashonaland West	88,241	281,262	10,321		
Masvingo	94,059	295,190	14,194		
Matabeleland North	88,089	82,281	17,269		4,957
Matabeleland South	49,095	81,582	18,600		3,803
Midlands	126,689	283,835	18,043		
<b>Total for lists</b>	1,021,347	2,145,250	157,356	380	11,826

**Table 9: The votes for the five parties running for List PR seats in the National Assembly. When a party had two candidates in the same constituency, the votes are added to the party result. The numbers are based upon The Herald and Sokwanele.**

The votes for the five parties registering lists for the women's List PR race for the National Assembly are shown in Table 9 and the official distribution of seats is shown in Table 10.

Province	MDC-T	Zanu PF	MDC-N
Bulawayo	4	1	1
Harare	3	3	0
Manicaland	2	4	0
Mashonaland Central	1	5	0
Mashonaland East	1	5	0
Mashonaland West	1	5	0
Masvingo	2	4	0
Matabeleland North	3	3	0
Matabeleland South	2	3	1
Midlands	2	4	0
<b>Total</b>	<b>21</b>	<b>37</b>	<b>2</b>

**Table 10: The official seat distribution as published by the ZEC for the List PR race for the National Assembly**

In Bulawayo the results calculated based upon the detailed results do not match the official distribution of seats. There may be several explanations for this, but the most likely is that the official calculation has taken into account only the results for one candidate per party. Some parties did have two candidates in some constituencies. In most provinces it made no difference if one added the votes of both candidates or just counted in the one with the highest number of votes, but in Bulawayo it made a difference for the National Assembly and the Senate results. The Constitution states in Article 124 (1) (b) that the distribution is “based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces.” The Electoral code defines a constituency candidate in Section 45B: “‘constituency candidate’ means a candidate for election as a constituency member,” and Section 45 C (5) states:

“The formula prescribed in the Eighth Schedule for the election of party-list candidates is calculated on the basis of the total number of valid votes cast for all the constituency candidates in the electoral province concerned, excluding any valid votes cast for constituency candidates—  
 (a) not belonging to any political party; and  
 (b) belonging to any political party which has opted not to field any party-list candidates for the Senate, National Assembly or provincial council, as the case may be, in the electoral province in question.”

The most reasonable interpretation seems to be that the results of all the candidates running for a party that has nominated candidates for the List PR race shall be added up in the calculation. That does not seem to have happened, however.

In Bulawayo the party ZAPU had two candidates in four constituencies. The party had no chance of winning a proportional seat in the province but it still had an effect on the

distribution among the three parties winning seats. This illustrates a feature of the method of largest remainder not being *consistent*. A change of votes for one party affects the seat distribution of the other parties. This is a negative feature of the method of largest remainder which division methods such as Sainte-Laguë do not have. Division methods are consistent. See Appendix B for further explanations to consistency and the related Alabama paradox. Tables 11 and 12 show how the calculation for Bulawayo changes when it is based first on only one candidate per constituency for ZAPU, which gives the same results as the official ones, and then based on the results for all ZAPU candidates.

Bulawayo Province			Quota (Rounded down): <sup>22</sup>		21,136	
Parties	MDC-T	ZANU PF	MDC	AKE	ZAPU	Total
Votes	72,693	30,290	20,967	380	2488	126,818
Integer	3	1	0	0	0	
Remainder	0.43929788	0.43309992	0.99200416	0.01797880	0.11771385	
Additional seat	1	0	1	0	0	
<b>Total</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>6</b>
Number of votes per seat	18,173	30,290	20,967			

**Table 11: The distribution of seats in Bulawayo for the List PR race for the National Assembly, based upon the votes of only the most successful ZAPU candidate in each constituency.**

Bulawayo Province			Quota (Rounded down):		21,232	
Parties	MDC-T	ZANU PF	MDC	AKE	ZAPU	Total
Votes	72,693	30,290	20,967	380	<b>3066</b>	127,396
Integer	3	1	0	0	0	
Remainder	0.42374717	0.42662020	0.98751884	0.01789751	0.14440467	
Additional seat	0	1	1	0	0	
<b>Total</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>6</b>
Number of votes per seat	24,231	15,145	20,967			

**Table 12: The distribution of seats in Bulawayo for the List PR race for the National Assembly, based upon the votes of all ZAPU candidates running in the province. Even if ZAPU is far from winning a seat the distribution among the three winning parties is changed. This is a feature of largest remainder methods, but not of division methods such as Sainte-Laguë.**

If the detailed reports of the media are correct, the official results for the List PR race for the National Assembly and the Senate are incorrect. Using the largest remainder method as prescribed in the law and including all the votes for all the candidates of ZAPU in the calculations, ZANU PF should have had one more seat and MDC-T one fewer. The result would have been reasonable, but that is an effect of the method chosen. If the Sainte-Laguë method had been used, the official results of four seats for MDC-T and one for each of the parties ZANU PF and MDC-N would have been the result. In that case

<sup>22</sup> Rounding down or not rounding makes no difference in this or in any of the other calculations during these elections.

the ZAPU results would not have had any influence on the distribution among the three winning parties. The official result and the result of the Sainte-Laguë method are the most reasonable ones in terms of the number of votes behind each winning seat.

### 12.3 The Senate

The votes added for the six parties running for the Senate are shown in Table 13.

Province	MDC-T	Zanu PF	MDC-N	AKE	ZAPU	MKD
Bulawayo	72,693	30,290	20,967	380	3,066	
Harare	224,285	169,272	22,964			972
Manicaland	167,820	263,856	14,414			
Mashonaland Central	37,040	335,895	7,641			
Mashonaland East	73,336	321,787	12,943			
Mashonaland West	88,241	281,262	10,321			
Masvingo	94,059	295,190	14,194			
Matabeleland North	88,089	82,281	17,269		<b>4,957</b>	
Matabeleland South	49,095	81,582	18,600		<b>3,803</b>	
Midlands	126,689	283,835	18,043			972
<b>Total for lists</b>	<b>1,021,347</b>	<b>2,145,250</b>	<b>157,356</b>	<b>380</b>	<b>11,826</b>	

**Table 13: The votes for the six parties running for List PR seats in the Senate. When a party had two candidates in the same constituency, the votes were added to the party result. The numbers are based upon The Herald and Sokwanele.**

Table 14 shows the official seat distribution for the Senate, which has the same mistake for Bulawayo as the distribution for the National Assembly:

Constituency	MDC-T	ZANU PF	MDC-N
Bulawayo	4	1	1
Harare	3	3	0
Manicaland	2	4	0
Mashonaland Central	1	5	0
Mashonaland East	1	5	0
Mashonaland West	1	5	0
Masvingo	2	4	0
Matabeleland North	3	3	0
Matabeleland South	2	3	1
Midlands	2	4	0
<b>Total</b>	<b>21</b>	<b>37</b>	<b>2</b>

**Table 14: The official seat distribution as published by the ZEC for the List PR race for the Senate**

Counting the results of all the candidates running for the participating parties with the method prescribed in the law would result in 3 seats for MDC-T, 2 for ZANU PF and one for MDC-N, which differs from the official seat distribution.

### 12.4 The Province Councils

The results for the Province Councils other than metropolitan ones are given in Table 15.

Province	MDC-T	Zanu PF	MDC-N	ZAPU
Manicaland	167,820	263,856	14,414	
Mashonaland Central	37,040	335,895	7,641	
Mashonaland East	73,336	321,787	12,943	
Mashonaland West	88,241	281,262	10,321	
Masvingo	94,059	295,190	14,194	
Matabeleland North	88,089	82,281	17,269	
Matabeleland South	49,095	81,582	18,600	3,803
Midlands	126,689	283,835	18,043	
<b>Total for lists</b>	<b>1,021,347</b>	<b>2,145,250</b>	<b>157,356</b>	<b>3,803</b>

**Table 15: The votes for the four parties running for List PR seats in Provincial Councils other than the metropolitan ones. When a party had two candidates in the same constituency, the votes are added to the party result. The numbers are based upon The Herald and Sokwanele.**

The official seat distribution is given in Table 16 and corresponds with the calculation based upon the votes of Table 15.

Constituency	MDC-T	ZANU PF	MDC-N	ZAPU
Manicaland	4	6	0	NA
Mashonaland Central	1	9	0	NA
Mashonaland East	2	8	0	NA
Mashonaland West	2	8	0	NA
Masvingo	2	7	1	NA
Matabeleland North	5	4	1	NA
Matabeleland South	3	6	1	0
Midlands	3	7	0	NA
<b>Total</b>	<b>22</b>	<b>55</b>	<b>3</b>	<b>0</b>

**Table 16: The official seat distribution for the List PR race in Provincial Councils other than the metropolitan ones. The official results are the same as the calculation based upon the votes of Table 15, using largest remainder.**

There is one interesting feature of these results which again illustrates a negative feature of the method of largest remainder. In Masvingo one seat was given to a very small party. The table below shows the number of voters behind each mandate by use of the largest

remainder and what would have been the results if the Sainte-Laguë division method had been used. See the discussion in Appendix B for further details.

Masvingo Results for the Province Council			Largest Remainder - Hare		Sainte-Laguë	
Party	Votes	Per cent votes	Seats	Number of votes per seat	Seats	Number of votes per seat
MDC-T	94,059	23.31	2	47,030	2	47,030
ZANU PF	295,190	73.17	7	42,170	8	36,899
MDC-N	14,194	3.52	1	14,194	0	NA

**Table 17: The results for Masvingo in the List PR election to the Provincial Council using the method of largest remainder with Hare's quota and using the division method Sainte-Laguë. With the largest remainder MDC-N wins a seat with only 14,000 votes, whereas the number of votes behind the other seats is 42,000 to 47,000. The MDC-N seat is unreasonably 'cheap'.**

### 12.5 The Turnout

The development of the turnout since 2000 is given in Table 18. However, since the voters register contains deceased people and people who have left the country, the figures are lower than the real turnout in the elections.

	2000 Parliament	2002 Presidential	2005 <sup>23</sup> Parliament	2008 House of Assembly	2013 Presidential
Number of Registered voters	5,048,815	5,607,812	5,789,912	5,934,768	6,400,000 <sup>24</sup>
Votes cast for ZANU PF and MDC <sup>25</sup> only	2,376,856	2,979,460	2,611,159	2,354,425	3,282,783
Total number of votes cast	2,490,296 <sup>26</sup>	2,998,758 <sup>27</sup>	2,696,670	2,422,987 <sup>28</sup>	3,480,047 <sup>29</sup>
Turnout in per cent	49.3	55.8	46.6	40.8	54.4

**Table 18: The voters registered and turnout in elections since 2000**

<sup>23</sup> The figure is relative to the final registration figure published by ZEC on 23 March 2005.

<sup>24</sup> Approximate number which was the last published before the elections.

<sup>25</sup> Including both factions of MDC from 2008 onwards.

<sup>26</sup> Valid votes only.

<sup>27</sup> Valid votes only.

<sup>28</sup> Valid votes only.

<sup>29</sup> Including 69,280 rejected votes.

## 12.6 The Results Comparison over Time

The table below compares the official results for the elections of 2000, 2002, 2005, 2008 and 2013. The MDC formations are added together from 2008 onwards.

Party	2000 Parliament		2002 President	2005 Parliament		2008 House of Assembly Elections		2013 National Assembly Elections	
	Number of Votes	Number of seats	Number of Votes	Number of Votes	Number of seats	Number of Votes	Number of seats	Number of Votes	Number of seats, FPP only
ZANU PF	1,206,962	62	1,695,549	1,569,867	78	1,112,773	97	2,140,203	160
MDC <sup>30</sup>	1,169,894	57	1,283,911	1,041,292	41	1,241,652	109	1,176,679	49
Smaller parties	113,985 <sup>31</sup>	1 <sup>32</sup>	43,264	6,608 <sup>33</sup>	0	13,381		26,432	
Independents			11,871	16,878	1 <sup>34</sup>	55,181	1 <sup>35</sup>	45,324	1 <sup>36</sup>
Total	2,490,841	120	3,034,595	2,628,037	120	2,422,987	207	3,388,638	210

Table 19: The votes for the main parties from 2000 to 2013

## 12.7 The Close Races

In 2008 most of the close races were won by MDC-T. In 2013 all but two of the twelve close races were won by ZANU PF. These two were won by an independent candidate and MDC-T. Table 20 shows the constituencies where the difference between the winner and the runner-up amounted to less than ten per cent. It also compares the result to the result for the same constituencies in 2008.

30 Including both factions of MDC from 2008 onwards.

31 Independent candidates and smaller parties are both included in this figure.

32 Zanu Ndonga.

33 Zanu Ndonga.

34 Jonathan Moyo.

35 Jonathan Moyo.

36 Jonathan T Samukange.

Constituency	2008 results			2013 results		
	MDC-T or MDC-N when indicated	ZANU PF and independent when indicated	Won by	MDC-T or Independent when indicated	ZANU PF	Total valid votes
Harare						
Chitungwiza South	6243	4597	MDC-T	7888	8126	ZANU PF
<b>Mashonaland East</b>						
Mudzi South	2735	8202	ZANU PF	7879	7742	Independent <sup>37</sup>
<b>Mashonaland West</b>						
Kadoma Central	8180	2738	MDC-T	9005	9571	ZANU PF
<b>Masvingo</b>						
Masvingo Urban	9162	4135	MDC-T	10424	10988	ZANU PF
<b>Matabeleland North</b>						
Lupane East	5424 <sup>38</sup>	3368	MDC-N	5305	5537	ZANU PF
Nkayi North	3234 <sup>39</sup>	4634	ZANU PF	5102	5184	ZANU PF
Tsholotsho North	4646	4874 <sup>40</sup>	Independent	4874	4646	MDC-T
<b>Matabeleland South</b>						
Matobo North	3503	3102	MDC-T	5219	5300	ZANU PF
Matobo South	3226	2858	MDC-T	4596	4692	ZANU PF
<b>Midlands</b>						
Kwekwe Central	5081	2501	MDC-T	5760	6051	ZANU PF
Zvishavane-Ngezi	3186	4632	ZANU PF	8720	9015	ZANU PF

Table 20: List of constituencies with close races in 2013 compared to the results of the same constituencies in 2008. The list includes the constituencies where the variation between the winner and the runner-up in 2013 was less than ten per cent.

This difference between the close races in 2008 and in 2013 does of course not mean that there must be something wrong in the tabulation of the results in 2013. There have not been claims to that effect. The results are consistent with the country-wide shift in favour of ZANU PF. Nevertheless, a review of the results compared to the voter registers could have been very interesting.

37 Jonathan T Samukange.

38 MDC-N.

39 MDC-N.

40 The seat was won by Jonathan Moyo running as an independent, having left ZANU PF, but he later re-joined the party.

## 13 Movement of Voters

The official results showed a shift from MDC-T to ZANU PF. We will not discuss how genuine such a shift was. However, there were some abnormal results which are impossible to explain as genuine changes in the voters' preferences. The most obvious of such results were those where ZANU PF won a seat which MDC had held in 2008 and where the change was extremely high. In most such places the voter turnout increased in an unusual manner. Table 21 shows the 27 constituencies where ZANU PF won a seat which in 2008 had been won by MDC-T, and where ZANU PF more than doubled their votes from 2008 to 2013.

Constituency	2008 results			2013 results		
	MDC-T	ZANU PF	Total votes cast for main contestants <sup>5</sup>	MDC-T	ZANU PF	Total valid votes
Harare						
Mount Pleasant	3875	1738	5613	3817	7945	12165
Mbare	7520	6121	14936	10932	14764	26803
Harare North	6710	3135	9845	6555	7917	15785
Epworth	6220	4758	10978	7951	15468	25248
<b>Manicaland</b>						
Makoni North	5055	3657	8712	5236	9412	14648
Mutasa South	8207	3409	11616	7932	8963	19297
Mutare West	7597	7577	15174	7483	16087	23570
Mutasa North	9396	4882	14278	7954	10151	18653
Nyanga North	8312	3931	13920	7985	10840	18825
Nyanga South	8029	5513	13542	6165	11752	18989
<b>Mashonaland Central</b>						
Bindura South	6059	5752	12940	4995	15441	21297
Mazowe Central	5573	4136	10803	3998	10823	15477
<b>Mashonaland East</b>						
Goromonzi South	6456	5305	13102	11102	17234	29716
Marondera Central	8022	3170	11794	7892	9378	17696
Murehwa West	7334	6313	13647	3665	12779	18055
<b>Mashonaland West</b>						
Chegutu West	6772	3713	11235	7399	11130	19463
Norton	6070	4516	11532	9360	10592	20975
Hurungwe West	5582	4203	9785	2553	8485	12295
Kadoma Central	8180	2738	10918	9005	9571	19756
Kariba	7019	5502	13903	8377 <sup>26</sup>	13849	22839
<b>Masvingo</b>						
Chiredzi West	6259	4542	11366	7978	12655	22026
Gutu South	5757	3559	10886	3723	7927	11650
Masvingo Urban	9162	4135	13841	10424	10988	22461
Masvingo Central	4905	4793	9698	3337	9931	13699
Zaka Central	5972	4974	12201	4158	10604	15487
<b>Matabeleland North</b>						
Hwange West	6318	2840	12719	5541	6864	14057
<b>Midlands</b>						
Kwekwe Central	5081	2501	8246	5760	6051	12319

**Table 21: The 27 constituencies where ZANU PF won an earlier MDC-T seat, and where ZANU PF increased its support with more than 100 per cent from 2008 to 2013.**

41 MDC-T, MDC, ZANU PF and Independents only, not the marginal parties.

42 The total for two MDC-T candidates.

Table 22 shows the 31 constituencies where ZANU PF won in 2008 and where the votes for ZANU PF now increased further by more than a factor 2.

Constituency	2008 results			2013 results		
	MDC-T	ZANU PF	Total votes cast for main contestants <sup>27</sup>	MDC-T	ZANU PF	Total valid votes
<b>Harare</b>						
Harare South	4389	7111	12319	7472	20069	29074
<b>Manicaland</b>						
Chipinge Central	5862	6377	12239	4290	12995	18215
<b>Mashonaland Central</b>						
Bindura North	5465	9093	15835	5485	23937	30066
Guruve South	4298	9284	13582	2069	18804	21568
Mazowe West	2410	5148	7558	1411	14383	16288
Mazowe South	4052	4109	9562	4116	11431	16483
Mazowe North	2508	5466	8691	1476	13338	15135
Mbire	6137	9610	15747	2332	19958	22958
Mt Darwin South	2698	9115	11813	1401	19680	21413
Muzarabani North	3918	7691	12582	607	16649	17418
Muzarabani South <sup>28</sup>				564	21310	22003
Shamva South	2669	8956	11625	1514	22332	24284
<b>Mashonaland East</b>						
Goromonzi West	5931	6193	12124	7123	12758	20421
Goromonzi North	4845	5626	10471	4134	11874	16885
Marondera West	2132	4284	7996	3665	12779	18055
Marondera East	2268	6514	9570	2113	15626	17975
Mutoko East	5238	7328	12566	1339	15064	16729
Mutoko North	3163	6922	14173	1989	16809	19095
Wedza North	3586	6267	9853	1536	14277	16546
<b>Mashonaland West</b>						
Hurungwe Central	1399	4997	6890	4267	12708	17841
Magunje	4264	4587	10460	3000	9473	13539
Chakari	2595	8543	11138	1642	19540	21182
Muzvezve	3906	7774	11680	3029	18832	22430
Makonde	2928	6526	13089	1569	15675	17673
Zvimba East	3554	5197	8751	4008	13113	17873
Zvimba South	2907	6752	9659	2536	13745	16831
<b>Masvingo</b>						
Gutu West	4082	5054	9136	2232	13499	16296
Masvingo North	4450	4799	9249	3277	10358	14434
<b>Matabeleland North</b>						
Umguza	2846	7065	12031	5387	16025	23478
<b>Matabeleland South</b>						
Beitbridge East	2194	4741	8046	3394	10191	15120
<b>Midlands</b>						
Shurugwi South	1977	5068	9745	2515	11506	14353

**Table 22: The 31 constituencies where ZANU PF won the seat in 2008 and where they increased their support with more than 100 per cent in 2013.**

43 MDC-T, MDC, ZANU PF and Independents only, not the marginal parties.

44 The 2008 numbers are missing.

Out of these, the following constituencies were won with a slim margin and there was a risk for ZANU PF of losing them: Chipinge Central, Mazowe South, Goromonzi West, Magunje and Masvingo North.

If the voters were actively transferred to some constituencies, it would be interesting to see where they might have come from. There are a number of constituencies in Matabeleland North and South which ZANU PF won in 2008 with a good margin, and where they also won in 2013 but now with a smaller margin. Such constituencies include: Bubi, Lupane East, Lupane West, Nkayi North, Gwanda South, Gwanda North, Insiza South, Umzingwane, and Bulilima West. This is not a proof for an organised move of voters from such constituencies to constituencies with less support for ZANU PF, but it constitutes a pattern that could be worth investigating more closely with a view to establish whether the voting was manipulated in an organised manner. The observations on election day confirm that massive bussing of voters took place into some constituencies.

## 14 The Post-election Phase

### 14.1 The Publication of Results by ZEC

The results were published promptly by the ZEC, and for the presidential elections, within the time prescribed. The newspapers published the votes cast for each candidate in the 240 constituencies, but the ZEC did unfortunately not publish such figures beyond reading them as they came in. ZEC also did not publish the tabulation from polling station level to constituency level or from constituency level to province level. This was very unfortunate because a central publication would have allowed observers to check the tabulation directly and any parallel counting would be unnecessary. It would further explain the discrepancies in the distribution of list proportional seats discussed above.

### 14.2 The Re-count

According to the Electoral Act Section 67A, any party or candidate may contest the count within forty-eight hours of the announcement of the results. Two such contests were filed for the National Assembly election, and ZEC on 5 August announced recounts in the Mashonaland East constituency Mudzi South and the Matabeleland North constituency Tsholotsho North. The first was conducted on 6 August and the second on 7 August. Mudzi South was won by the independent candidate Mr Jonathan Samukange with 7,879 votes against the 7,742 votes for the ZANU PF candidate. Tsholotsho North was won by the MDC-T candidate with 4,874 votes against the ZANU PF's candidate's 4,646 votes.

ZEC revoked its decision to hold a recount of votes in Mudzi South after the winning candidate successfully objected, arguing that the request was based on rigging of the elections rather than irregularities of the count.

In Tsholotsho North the prominent and controversial politician Jonathan Moyo was the ZANU PF candidate. He had successfully run as independent in the constituency in 2005 and 2008 and had later re-joined ZANU PF. The Bulawayo High Court stopped the recount on procedural grounds and the MDC-T candidate kept the seat.

### ***14.3 The MDC Constitutional Court Petition***

MDC-T did not accept the results of the elections. Already in his press conference on 3 August, Morgan Tsvangirai denounced the harmonised elections as “a huge farce” and “null and void.” He said that the party would use the legal possibilities and file a petition with the Constitutional Court.

On Thursday 8 August 2013 Mr Tsvangirai lodged two applications with the Electoral Court, seeking access to voting materials that were in the custody of ZEC in order to back his election petition challenging the validity of the presidential election. On the day after, within the Constitution’s seven-day deadline, Mr Tsvangirai filed his election petition challenging the presidential election result at the Constitutional Court in accordance with Article 93 of the Constitution. The petition asked for the presidential election to be set aside as invalid, and the respondents listed were President Mugabe, the ZEC, the Chair of the ZEC Ms Rita Makarau, and the Chief Election Officer. The petition listed the following grounds for the claim:

- The elections had been held in breach of the Constitution, as the date was set without consultations and the legislation was passed by the President, not the parliament.
- Voters were disenfranchised through restrictive voter registration, leaving “countless people [...] in queues to register”.
- Candidates were refused a copy of the voters’ roll.
- There were duplications of names on the voters roll.
- The special voting system was abused.
- The Chief Election Officer released the postal ballot papers to the Ministry of Foreign Affairs only on 17 July, leaving only a few hours for them to be legally returned.
- There were cases of intimidation and violence, by e.g. uniformed forces and traditional leaders.
- There were cases of voting under duress, cfr. the problem of assisted voters.
- Voters were turned away at polling stations.
- There was rampant misuse of voter registration slips.
- There was a lack of transparency in regard to ballot papers.
- There were cases of bribery, e.g. distribution of food etc. during the campaign.
- State media were grossly biased.

On 14 August, the Chief Justice held a case management meeting to settle the procedure for hearing the election petition. The Chief Justice directed that

- all parties had to file their papers, including heads of argument, by 8 pm on Friday 16 August; and
- the hearing of the case would commence at 10 am on Saturday 17 August.

Later on 14 August Justice Bhunu, sitting in chambers, heard arguments on Mr Tsvangirai’s application for access to material in ZEC’s custody for use in his election petition. The ZEC’s lawyer objected that under the new constitution only the Constitutional Court can deal with matters connected with a petition challenging the president’s election. The response was that under the Electoral Act only the Electoral Court can permit access to the sealed ballot boxes and packages in which Mr Tsvangirai was interested. Justice Bhunu reserved his decision indefinitely – and it had still not been handed down by Friday afternoon when the notice of withdrawal of the petition was filed.

On 16 August the MDC-T National Executive Committee meeting decided to withdraw their petition. The Committee cited the Electoral Court’s delay in setting down, and its failure to rule on, Mr Tsvangirai’s application for access to the ZEC material, which they said had seriously undermined his election petition, as the reason for the withdrawal. It complained that the handling of the Electoral Court case and the petition itself was not in accordance with constitutional guarantees of a fair hearing and administrative justice. Mr Tsvangirai’s notice of withdrawal was filed accordingly, stating also that the timelines imposed by the Chief Justice’s direction of 14 August meant that Mr Tsvangirai was obliged to file all his papers without knowing the position of the respondents – particularly of ZEC, which had still not provided an electronic copy of the voters’ roll and had “deliberately taken a position which is inconsistent with a just determination of this matter and which position obviously prejudices me.” ZEC’s uncooperative stance “effectively aids the first respondent [President Mugabe] and “makes it completely futile to pursue this petition.” In addition President Mugabe at the Heroes’ Day celebrations on 12th August had made “certain unsavoury comments in which he criticised my decision to approach this court. The fact that the Chief Justice was in attendance on the day and the fact that he is expected to preside over my petition does very little to inspire my confidence in the possibility of my constitutional right to a fair hearing. In this regard I make no imputation, gratuitous or otherwise, about the integrity of the Honourable Chief Justice. My concern is with the conduct of the first respondent [President Mugabe].” He also cited that adverse pre-trial publicity in the State media, particularly The Herald newspaper, had been prejudicial and inconsistent with the fair trial guarantee in the Constitution. Nothing had been done to stop it, which “gravely undermines the process which I had been prepared to submit to.”

Following the lodging of the notice of withdrawal, the Chief Registrar of the court announced that by direction of the Chief Justice the court would sit on 19 August. On 20 August, Chief Justice Godfrey Chidyausiku handed down the unanimous decision of the Constitutional Court dismissing Mr Tsvangirai's election petition. Even if Tsvangirai had withdrawn the petition they stated that the court had to make a decision in the case of the presidential election. The decision said:

“1. THAT the Zimbabwe Presidential election held on 31 July 2013 was in accordance with the laws of Zimbabwe and in particular with the Constitution of Zimbabwe and the Electoral Act [Chapter 2:13];  
2. THAT the said election was free, fair and credible. Consequently, the result of that election is a true reflection of the free will of the people of Zimbabwe who voted; and  
3. THAT Robert Gabriel Mugabe was duly elected President of the Republic of Zimbabwe and is hereby declared the winner of the said election.”

## 15 General Assessment

When assessing the elections, it may be useful to group the issues in three areas:

- i) The problems known to the parties as being unresolved before the elections, such as media and security.
- ii) The problems falling under the authority of the Registrar General.
- iii) The problems falling under the responsibility of the ZEC.

MDC-T did not seem to wish to risk that elections would not be held within reasonable time by insisting on creating a fair media situation before the elections. Security sector reforms and a review of the ZEC staff had also been mentioned in the roadmap sponsored by SADC, but neither was conducted. Probably MDC-T felt confident that they would win the elections and that they could deal with these issues later. The election date was disputed but when the rather strange decision of the Constitutional Court on the election date discussed above was confirmed all parties participated in the elections. The intimidation of voters before the elections was probably not worse than in 2008 when MDC-T won, but it may have been more subtle. The tactics may simply have been more efficient in an environment which was normalised compared to the extreme situation of economic chaos and an MDC-T that was seen as a victim of political violence and persecution.

The problems with the voters' registers can hardly be seen to be unintended mistakes. The difficulties in registering in the cities, the bussing of voters and the lack of transparency by not giving out electronic copies of the register timely and accurately must have been part of a plan. In addition, the possible fraud with issuing registration slips after the registration deadline and even on election day made the process less credible.

The ZEC did a lot of good preparations and the actual voting and counting was conducted in a correct manner with a few exceptions. The ZEC was very eager not to disenfranchise any legitimate voters. When they tried to find solutions they also increased the possibility for fraud. These decisions turned out to be doubtful, in particular the decision to let those who had registered to vote for special voting vote if they had not voted during the special voting, and the decision on voting based upon the registration slips only. When the decisions were taken and the practice was questioned ZEC should have initiated a review of the practice and asked the court to make the material available for scrutiny. Instead the MDC-T petition did not lead to the materials being released, and we do therefore not know to what extent there was fraud on election day.

The ZEC was also responsible for the procedure for assisted voting. To what extent this gave room for undue influence on voters by them or by local persons with authority is not possible to say. However, the ZEC published statistics showing an unusual high degree of assistance.

## 16 Recommendations for Future Elections

In addition to creating an environment free of violence, intimidation and threats, the following improvements should be made in order for elections in Zimbabwe 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 voter registers need a full overhaul, where all those who are not registered can effectively be enrolled and where duplicates are removed and deceased persons are removed within reasonable time.
- The distribution formula for the List PR races should be changed from the largest remainder method to Sainte-Laguë.
- As long as the system of letting the FPTP vote count even in the List PR races continues, it must be made clear that votes for all candidates for a party in the FPTP race running in a province should count in the distribution of seats.
- The number of seats for the National Assembly in the List PR race should be made proportional to the population in the provinces to ensure equal voting rights to the principal chamber.
- The List PR race for women to the National Assembly should be made permanent.
- The List PR elections should be conducted by separate ballots, not by recounting the FPTP votes of the National Assembly election.
- The details regarding the consequences if a candidate withdraws from the race before a presidential run-off should be written into the law.

- 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.
- ZEC should be able to and have as an expressed duty to review all material after the elections, at their own initiative and without having to have a court order.
- 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.
- Residence requirements for registration in a constituency should be defined in such a way that movement of voters for tactical reasons can be avoided.
- The possibilities for voting on the basis of registration certificates should be reviewed to avoid all possibilities of fraud.
- Voter registers should be made available to parties as prescribed by law.
- The number and address of polling stations should be made available in full to parties and observers well in advance of election day for them to plan their observation on election day and for the general public to find the polling stations.
- The suppressive parts of legislation on associations, expressions, press and electronic media must be removed.
- 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.
- Conduct of voter education should be open to all organisations without censorship.
- The rules for and practice 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 ZEC should be equipped with sufficient staff and resources to enable them to take full charge of the process. The staff should be reviewed and the duties of the Chief Election Officer should be defined by the ZEC, not by law.
- Surplus of ballots should be kept to what is needed in order to avoid possible misuse.

## Appendix A. International Standards and Conventions Related to Elections Valid for Zimbabwe

Binding international conventions on elections are often general, but they still set a meaningful standard for elections. 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 38<sup>th</sup> 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. These principles refer to the OAU/AU Declaration AHG/Decl. 1 (XXXVIII) quoted above. In addition they state:

*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 Timeous 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/or 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 principles, the SADC Parliamentary Forum has issued detailed guidelines which they use when they observe elections.

## Appendix B. The Problems with the Proportional Distribution Formula

### *The Law*

The Election Code was amended by the presidential powers on 12 June 2013 to cover the changes made to the electoral system by the new Constitution. The details of the List Proportional (List PR) element of the law were included in the amendment.

List PR is to be used at province level for three elections:

- The women's race for the National Assembly for the first two elections, six from each province,
- The List PR members of the Senate, six from each province,
- The ten List PR members of the provincial councils, other than for the metropolitan ones.

The votes cast for the first-past-the-post (FPTP) in the National Assembly are counted for all the three races.

### *The Distribution Formula*

The law prescribes the method of largest remainder with Hare's quota (LR) as the mathematical method of transforming the votes to seats. No threshold is included. LR is a quite common system, but it has some unfortunate side effects which are often underestimated. The side effects include:

- i) Unreasonably small parties may win a seat if there is no threshold defined in the law.
- ii) Variations to a party's votes may affect the distribution of votes between other parties (lack of consistency) or an increase in the total number of seats may lead to fewer seats for a party (the Alabama paradox).

Both these side effects did materialise in the 2013 elections in Zimbabwe. These disadvantages are imbedded in the method of largest remainder, regardless of the quota used (such as Hare or Droop). The other class of distribution methods commonly used are the division methods, with Sainte-Laguë and d'Hondt being the most common. This group of methods do not have the side effects mentioned and are therefore more robust. Sainte-Laguë is neutral in its distribution, whereas d'Hondt favours large parties. In the following we compare LR with the Sainte-Laguë method on the Zimbabwe 2013 election results.

In the implementation of LR one sometimes sees that the so-called quota is rounded up or down to the closest whole number. As will be discussed below, this is an unnecessary and not very logical rule which may give negative side effects. In Zimbabwe the rule is in addition unclear because it is not mentioned in the main rule, but is applied to the examples.

The law in its Schedule Eight includes three examples, one for each of the three elections, but the one for the National Assembly and the Senate are equal. One of the examples goes like this:

Six seats shall be filled, and 236,634 valid votes are cast for seven parties running. The quota is:  $Q = 236\,634 / 6 = 39\,439$ .

The distribution goes as follows:

Party	Votes	Per cent	Integer	Remainder	Additional seats	Total Seats
A	89,349	37.76	2	0.26549862	0	2
B	49,869	21.07	1	0.26445904	0	1
C	40,547	17.13	1	0.02809402	0	1
D	32,064	13.55	0	0.81300236	1	1
E	21,942	9.27	0	0.55635285	1	1
F	1,653	0.70	0	0.04191283	0	0
G	1,210	0.51	0	0.03068029	0	0
Total	236,634	100.00	4	2	2	6

Table 23: The National Assembly Example of Schedule Eight of the Electoral Act

Or in the terminology of the law which is mathematically equivalent to the table above:

Party	Votes	Provisional allocation of seats	Unallocated votes (Votes – Q*Provisional allocation)	Additional seats	Total Seats
A	89,349	2	10,471	0	2
B	49,869	1	10,430	0	1
C	40,547	1	1,108	0	1
D	32,064	0	32,064	1	1
E	21,942	0	21,942	1	1
F	1,653	0	1,653	0	0
G	1,210	0	1,210	0	0
Total	236,634	4	78,878	2	6

Table 24: The same example as Table 1 but in the terminology of the Electoral Act

### Seats for Very Small Parties

One feature of LR is that the results may seem quite arbitrary in some situations. The method is designed to minimize the deviation from the full proportional result but it does not differentiate between the small and big parties when doing so. This means that very small parties may happen to win a seat with very few votes. By modifying the examples of the act this is illustrated as in tables 3 and 4.

Another example which may be realistic in Zimbabwe is the following. There are a total of 217,288 votes for six seats and seven competing parties.

$Q = 36,214.66\dots$

Party	Votes	Per cent votes	Provisional allocation of seats	Unallocated votes (Votes – Q*Provisional allocation)	Additional seats	Total Seats
A	80,123	36.87	2	7693.66666...	0	2
B	78,543	36.15	2	6113.66666...	0	2
C	39,470	18.16	1	3255.33333...	0	1
D	8,134	3.74	0	8134.00000...	1	1
E	5,976	2.75	0	5976.00000...	0	0
F	3,201	1.47	0	3201.00000...	0	0
G	1,841	0.85	0	1841.00000...	0	0
Total	217,288	100.00	5	36214.66666...	1	6

Table 25: An example where a very small party (Party D) wins a seat

The table below shows the “cost” of the seats, or the number of votes behind each seat won by a party, using LR and the more robust division method Sainte-Laguë. The latter method would make the cost more equal, and it would be seen to be much fairer.

Party	Votes	Per cent votes	Largest Remainder - Hare		Sainte-Laguë	
			Seats	Number of votes per seat	Seats	Number of votes per seat
A	80,123	36.87	2	40,062	2	26,708
B	78,543	36.15	2	39,272	3	39,272
C	39,470	18.16	1	39,470	1	39,470
D	8,134	3.74	1	8,134		

Table 26: The cost of each seat won by the parties in terms of number of votes per seat. Using LR the cost for the seats won by parties A to C is approximately 40,000 and for party D only 8,134, whereas if Sainte-Laguë had been used the cost for all seats would have been between 26,708 and 39,470.

## Inconsistency and the Alabama Paradox

These are features of largest remainder method, but not of division methods. Two simple examples illustrate the problem:

### The Alabama Paradox

The Alabama paradox is the name for a situation where the total number of seats is increased, but where the number of seats given to a party is reduced.<sup>45</sup> This is not intuitive. If the total number is increased one would expect that no party would win fewer seats than before the increase. The effect requires the rules based upon LR to be more complicated, for example to cover the situation where a party may win more seats than it has candidates. With a division method this paradox does not occur and the rules become very simple.

In the example below the number of seats is increased from 10 to 11 whereby the party C will lose its seat and both the other parties will win one extra.

Party	Number of Votes	With 10 seats LR	With 11 seats LR
		Number of seats	Number of seats
A	703	7	8
B	243	2	3
C	54	1	
Total	1,000	10	11

**Table 27** An example of the Alabama paradox where a party (Party C) loses a seat even if the total number to be distributed is increased from ten to eleven

The same example with Sainte-Laguë would give:

Party	Number of Votes	With 10 seats SL	With 11 seats SL
		Number of seats	Number of seats
A	703	7	7
B	243	2	3
C	54	1	1
Total	1,000	10	11

**Table 28** The same example as in table 5, but now using the division method Sainte-Laguë. Division methods do not produce results with the Alabama paradox.

## Consistency

Consistency means that the interrelationship between parties is not changed by changing another party's votes. For example, if one party's vote is changed without changing the number of seats for that party, the number of seats for other parties should also remain the same. LR is not consistent, as is illustrated below, where four seats are to be distributed:

Situation 1		
Party	Number of Votes	Number of seats
A	233	2
B	135	2
C	32	0
Total	400	4

Situation 2		
Party	Number of Votes	Number of seats
A	233	3
B	135	1
C	0	0
Total	400	4

**Table 29:** An example showing the inconsistency when using LR. By changing the votes for Party C the inter-relationship between party A and Party B changes.

By removing the votes of an entity which has not won any seats the distribution between the other two changes. Sainte-Laguë would give the distribution (3, 1, 0) in both cases.

In the 2013 Zimbabwe elections there is a good example of the lack of consistency in Bulawayo, both for the National Assembly and the Senate elections. This is discussed in Section 12.2.

<sup>45</sup> Or the total number of seats is reduced and the number of seats for a party is increased.

## ***Decimals***

There is an inconsistency in Schedule Eight. In the definition of the quota in Part I Section 3 it states that the “quota is determined by dividing the total number of votes [...] by the number of seats [...]. There is no mention of rounding. However, in the examples of Parts II, III and IV in Section 4 it is said that the quota is determined by “dividing the total number of votes cast for the participating parties by the number six [or ten] (the number of seats) *with any fraction obtained being disregarded.*” It is hard to see why that has been added. First of all the examples do not follow the rules as described and one may be in doubt about what the law states. Secondly, by rounding here there is a realistic risk that there may be ties (equal number of unallocated votes) from time to time, a risk which is negligible if decimals are used in all calculations.<sup>46</sup> Rounding the quota does not add anything to simplicity or clarity. If it were to serve a purpose one should rather state with how many significant digits the remainder (or the “unallocated votes”) should be calculated with. The quota is just one part of a product determining the remainders, which are the numbers significant for the distribution of seats. However, regular computers have enough precision for this not to be a problem, and if needed the calculation may be done even by hand to the necessary accuracy to determine the highest remainder.

Since there is a chance that ties occur in the remainders, in particular when the quota is rounded, there needs to be a rule for breaking the ties. Such a rule has not been included in the act.

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<sup>46</sup> This actually happened in a municipality in Bosnia and Herzegovina in 1997.

## **The Author**

Kåre Vollan is an independent election expert and the director and owner of the company Quality AS. He has been working on elections in thirty countries and territories including Nepal, Kenya, Iraq, Palestine, Sudan, Egypt, Bosnia and Herzegovina and Zimbabwe. He has since 2006 provided advice to the Election Commission and politicians in Nepal, in particular on the group representation system. From 1999 to 2000, Vollan was the Deputy Head of the OSCE mission to Bosnia and Herzegovina, organising two elections. In the period from 1996 to 2009 he headed twelve OSCE/ODIHR and NORDEM election observation missions or teams. From 2003 he has issued opinions on election laws for the Council of Europe Venice Commission. Vollan, who is an applied mathematician by profession, has published a number of articles and reports on electoral and decision making issues.

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