

ZIMBABWE ELECTION SUPPORT NETWORK



Zimbabwe's Electoral Preparedness for the 2013 Harmonised Elections: Ready or Not?

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“The timeframe (for election readiness) is much longer than that envisaged by political parties. We have a huge task and that task includes cleaning-up of the voters roll and the lack of financial resources, which is the biggest challenge.” (Justice Simpson Victor Mutambanengwe, Chairman of Zimbabwe Electoral Commission, ZEC, 26 August 2010).

“What needs to be done in Zimbabwe before elections is to ensure that the environment is conducive for free and fair elections ...” (Mamadou Dia, Department of Human Rights and Elections of the AU Commission, 27 January 2011).

“SADC noted with grave concern the polarization of the political environment as characterized by, inter alia, resurgence of violence, arrests and intimidation in Zimbabwe” (Communiqué of Summit of the SADC Organ Troika on Politics, Defence and Security Cooperation, Livingstone, Zambia, 31 March, 2011).

“Summit also urged the political stakeholders to finalise the constitutional process including referendum before the holding of the elections in 2013” (Resolution 9.3 of The Extraordinary Summit of the Heads of State and Government of the Southern African Development Community (SADC) held in Dar es Salaam, United Republic of Tanzania from 7 – 8 December 2012).

INTRODUCTION

Since the installation of the Inclusive Government in 2009, Zimbabwe has been locked in a fragile and uncertain transition but is now at its most critical juncture with decisive elections looming in the next twelve months. The country is in a state of flux because of a number of factors that impinge on the complex situation. This is a delicate and tense state of affairs and bold choices need to be taken by the strategic actors in various decision arenas, principally the domestic and regional domains. But also vitally interested in the Zimbabwe situation are the continental (African Union) and the international communities. This paper is an attempt to understand this fluid condition with a view to recommending actionable interventions that will shepherd the country to a more democratic order as stipulated in its governance compass, the Global Political Agreement (GPA) of September 2008.

In 2011, ZESN produced a position paper entitled “The Zimbabwe Situation: Preparedness for and Conditions for Free and Fair Elections”. It lamented “the sad empirical finding in post-2000 Zimbabwe that elections and violence behave like unlike poles: they attract each

other.” It then posed a question that is still relevant today: “Will this be a self-fulfilling prophecy in the upcoming elections?” Recent survey evidence suggests that Zimbabweans think that the next elections will be definitive and that they will make a difference. The same evidence indicates a reincarnation of March 2008 electoral outcomes i.e. a hung parliament and a second round presidential election. Further, the public mood shows that though the country is not entirely ripe for the upcoming critical elections in 2013, the conditions for them are now significantly better than they were in mid-2010 to early 2011 and certainly profoundly better than the run-up to the June 2008 elections.

BACKGROUND

After a protracted and multi-layered crisis that was deepened by a viciously violent presidential run-off election in June 2008, the three main political protagonists signed the aforementioned GPA that was negotiated under the auspices of the Southern African Development Community (SADC) with former South African President Thabo Mbeki as the lead facilitator. The tripartite political pact involved the then ruling Zimbabwe African National Union–Patriotic Front (ZANU-PF) led by Robert Mugabe – and the two formations of the Movement for Democratic Change (MDC) each led by opposition leader Morgan Tsvangirai and Arthur Mutambara¹. The GPA was a road map to shepherd the country’s return to political and economic stability and normalcy through the establishment of a tripartite power-sharing government that was formed in February 2009.

The overarching goal of the GPA was:

... to create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation ... with the aim of resolving once and for all the current political and economic situations and charting a new political direction for the country (Article 11, GPA, 2008).

To achieve the above ambitious goal, the Agreement had a heavily loaded policy agenda including constitutional reform, comprehensive legislative reforms, the removal of economic sanctions or “restrictive measures”, and culminating general elections². In fact, the flagship agenda item was the crafting a new constitution for Zimbabwe to replace the founding Lancaster House Constitution which had been amended 19 times the last one being Constitutional Amendment No. 19 that incorporated the GPA.

¹ The MDC, formed in 1999, had split in 2005 with the mainstream remaining under its founding president Tsvangirai while the splinter party was led by Arthur Mutambara until 2010 when the party’s secretary-general Welshman Ncube took over at its controversial Congress.

² The priorities and objectives of the GPA were in four clusters: *Economic* (restoration of economic stability and growth, sanctions, land question); *Political* (new constitution, promotion of equality, national healing, cohesion and unity, external interference, free political activity, rule of law, state organs and institutions, legislative agenda and priorities); *Security* (security of persons and prevention of violence) and *Communication* (media and external radio stations), see the Agreement between the Zimbabwe African National Union-Patriotic Front (Zanu-PF) and the two Movement for Democratic Change (MDC) Formations, on resolving the challenges facing Zimbabwe, Harare, 15 September 2008.

At the time of writing (early January 2013), the country has completed nearly four years under the GNU and three topics dominate the public discourse: the finalisation of the new constitution, the subsequent referendum, and general elections, dubbed the “mother of all elections”³. Each of the three milestones to the next elections is a potential conflict trigger.

The anticipated elections will come five years after the inconclusive ‘harmonised’ elections of March 2008 which were followed by a three-month ‘reign of terror’ during the presidential campaign for the 27 June 2008 run-off election. That campaign was so violent and bloody that one of the two contenders, Tsvangirai of the main MDC faction who had come first in the March 2008 election, was compelled to withdraw about a week before the run-off. Mugabe, the only remaining contender, then scored a pyrrhic victory that was recognised by few outside his party. The widely discredited election and its illegitimate outcome triggered the dialogue process that culminated in the GPA and the GNU.

It is vital to stress that both the GPA and the coalition government were primarily designed to resolve a bitter post-election dispute, stabilise the increasingly tenuous if not explosive situation, and pave the way for a democratic transition that would be concluded through free, fair and credible elections that would deliver a credible result acceptable to the contenders for power. This is the lesson to be learnt from the 2008 elections, a lesson about what *not* to do.

As Zimbabweans brace themselves for another electoral contest, are the conditions right for free, fair and credible elections or will it be a case of another ‘June 2008’? This is the issue about which this paper is concerned.

THE IMPERATIVE FOR ELECTIONS WITH A CHOICE

Even hardened autocrats extol the virtues of elections as the hallmark of democracy, a tendency that some writers now characterise as ‘electoralism’, that is, a propensity to equate elections with democracy as if elections are all that democracy is all about. Elections do not make democracy. The key and overriding issue is the *meaningfulness* of the elections, not the procedural one of whether the elections are held or not.

To be meaningful, the elections must be a genuine and accurate reflection of the wishes of the voters as expressed in their votes. The vote must not only be counted; *it must count*. Further, and to the point, the ballot must be an opportunity for voters to freely express their wishes rather than their fears engendered by the coercion inbuilt in the prevailing political situation. In short, voting must be an opportunity for free rather than coerced decision-making. This is the fundamental difference between elections with a choice and elections without a choice. This paper has a very clear normative position: it is for elections with a choice and that this

³ See “Million new voters for Zanu-PF”, Sunday Mail, 2 December 2012. Available at: http://www.sundaymail.co.zw/index.php?option=com_content&view=article&id=32633:-million-new-voters-for-zanu-pf&catid=37:top-stories&Itemid=130

can happen only when the circumstances are right. As will be demonstrated below, *Zimbabwe today has taken fundamental steps to ensure the requisite reforms are in place*. However, there is need to ensure that the legal framework and the political environment is favourable for meaningful elections as we have defined them.

THE JURIDICAL FRAMEWORK

SADC and AU Conditions for Holding Free and Fair Elections

The generally accepted minimum conditions for holding free and fair elections in Zimbabwe and SADC at large can be derived from two principal frameworks – the *SADC Principles and Guidelines for Holding Elections* (hereafter referred to as “The SADC Principles” and the *African Charter on Democracy, Elections and Governance* (hereafter called “The African Charter”). These will be referred to in the evaluation of the preparedness of Zimbabwe for elections in 2013. SADC principles provide for:

- Full participation of the citizens in the political process;
- Freedom of association;
- Political tolerance;
- Regular intervals for elections as provided for by the respective national constitutions;
- Equal opportunity for all political parties to access the state media;
- Equal opportunity to exercise the right to vote and be voted for;
- Independence of the judiciary and impartiality of the electoral institutions;
- Voter education; and,
- 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 (Article 2 of SADC Principles, 2004).

The SADC Guidelines also stipulate guidelines for the observation of elections, code of conduct for election observers, rights and responsibilities of SADC election observers, and obligations of the member state.

The African Charter is more expansive as it lays down the conditions for a democratic polity, of which elections are an indissoluble part. According to the Charter, the following constitute the continental body’s democratic principles:

- Respect for human rights and democratic principles;
- Promotion of a system of government that is representative;
- Holding of regular, transparent, free and fair elections;
- Effective participation of citizens in democratic and development processes and in governance of public affairs;
- Strengthen political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties;

- Ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility;
- Observe popular participation through universal suffrage as the inalienable right of the people;
- Entrench the principle of the supremacy of the constitution in the political organization of the state;
- Respect and promote the culture of democracy and peace;
- Institutionalize constitutional civilian control over the armed and security forces to ensure consolidation of democracy and constitutional order;
- Establish independent and impartial national electoral bodies responsible for the management of elections;
- Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections;
- Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections;
- Each state must guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission;
- Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring; and
- Electoral observer missions shall be conducted in an objective, impartial and transparent manner (in ZESN 2010, 5-6).

Zimbabwe's Legal Framework

The centrepieces that define the country's juridical architecture for elections are the Zimbabwe Constitution and Electoral Act (Chapter 2:13), the latter recently amended extensively by the Electoral Amendment Act No. 3 of 2012. The Constitution, as is the case with other statutes, is supreme over the Act. There are many other pieces of legislation that have either a direct or indirect bearing on the running of elections in the country including but not limited to the Referendum Act (Chapter 2:10), the Zimbabwe Human Rights Commission Act of 2012, the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Services Act (BSA), the Public Order and Security Act (POSA), and the Criminal Law (Codification and Reform) Act. Some of the legislative dimensions are new in the sense of being enacted after the last set of elections in 2008.

The juridical framework for elections has previously been a terrain of bitter contestation between those political actors in power and those who aspire to get in. Some of the structural impediments to free and fair elections in Zimbabwe have included:

- Use of and manipulation of electoral laws and presidential prerogatives heavily skewed in favour of the incumbent regime;

- Use of repressive legislation to undermine and suppress the democratic institutions and rights necessary for all political players and the electorate to enjoy a free and fair electoral environment;
- Systematic intimidation and coercion of opposition party candidates, officials and supporters as well as alleged blatant rigging of the ballot (Feltoe, 2002, cited in Zimudzi, 2006:197).

The Electoral Act

In 2011, the Government introduced the Electoral Amendment Bill to amend the Electoral Act which had previously been amended by the Electoral Laws Amendment Act of 2008. This was pursuant to the GPA's Article 17.1 (b) which stipulates that the Government would "discuss and agree on further legislative measures which may become necessary to implement the Government's agreed policies and in particular, with a view to entrenching democratic values and practices". The Bill culminated in the Electoral Amendment Act which introduced several important changes to the then extant electoral law. The most important change was to try to consolidate into a single piece of legislation, all relevant aspects of law governing the conduct of elections in the country. It has thus been referred in some circles as "the omnibus of electoral regulation" (Report of ZESN Conference, 15 November 2012). One of the most significant changes was repealing the Zimbabwe Electoral Commission Act and incorporating it into the Electoral Act. In short, apart from other pieces of statutory law that impinge on elections as alluded to above, the net effect of the Amendment was to put all electoral issues in one basket. Below, the Paper discusses some of the key tenets and processes covered under the new Electoral Act.

Zimbabwe Electoral Commission (ZEC): The GPA provided for four independent commissions on the mass media (the Zimbabwe Media Commission), human rights (Zimbabwe Human Rights Commission), anti-corruption (Anti-Corruption Commission), and elections (ZEC). These were later covered under Constitutional Amendment No. 19 of 2009 (hereafter referred to as CA19). As agencies of restraint, these bodies are intended to hold responsible the executive branch of government and they are all vital for creating conditions that are necessary for conducting free, fair and credible elections whereby voters exercise "vertical" accountability at the polls. All four commissions sit alongside Parliament as agencies of "horizontal" accountability. In the immediate term, the media and electoral commissions are the most pertinent in enabling an environment for free elections.

By way of background, we note that in 2005, through Constitutional Amendment No. 17, various agencies responsible for administering elections were consolidated into the Zimbabwe Electoral Commission (ZEC). In practice, the previous ZEC had serious shortcomings, not least a lack of political and financial independence.

The present ZEC – the country's Electoral Management Body (EMB), was reconstituted in terms of CA19 and its composition is set out in Section 100B of the Constitution. Its status is that of a corporate body meaning it can sue as well as be sued. The supreme law now

stipulates that the Chairperson of the ZEC is appointed by the President in consultation with the Judicial Services Commission (JSC) and the Parliamentary Committee on Standing Rules and Orders (SROC) while eight other commissioners, at least four of whom must be women, are appointed by the President from a list of at least 12 nominees submitted by SROC. All Commissioners serve for six year terms (renewable for one further term only) and both the Chairperson and the Deputy work on a full time basis.

The recruitment and appointment of the current ZEC is far more transparent than was the case previously. For instance, SROC first invited applications for the eight Commissioner posts, shortlisted them, and subjected them to what was widely acknowledged to be “a rigorous public interview process by a panel of Parliamentarians” (see ZEC website: <http://www.zec.org.zw>). ZEC Commissioners can only be removed from office by the President but with the approval of the JSC and SROC (in the case of the chairperson), and in the case of other members, with the approval of SROC.

The checks and balances provided for in the Constitution in respect of the appointment and dismissal processes go a long way in ensuring the autonomy or independence of Zimbabwe’s EMB. IDEA stresses that: “The legal framework should require that EMBs be established and operate in a manner that ensures the independent and impartial administration of elections”⁴. This is exceedingly important if ZEC is to do its way without feeling encumbered by personal and political allegiances to the appointing authority as was regrettably the case previously. To further buttress its independence, Section 100H specifies that the State must make adequate legislative and other appropriate measures to ensure that ZEC is able to perform its constitutional duties “efficiently and independently” and that its staff can also exercise their functions “conscientiously, fairly and impartially”.

Sections 10A and 11 make detailed provisions designed to guarantee the independence of the Commission and ensure its impartiality and professionalism. Section 11 is particularly emphatic on this with references to “free, fair and democratic elections and referendums”, their “secrecy and integrity”, and the need to maintain “strict impartiality” so as not to compromise the Commission’s “credibility, impartiality, independence or integrity”. It may be noted that the Commission and its staff are now protected from frivolous and vexatious legal proceedings by being granted immunity for acts done in good faith and without gross negligence⁵. However, this immunity has attracted some criticism on account that it will be difficult to sue the Commission given “the blanket immunity which the Act seems to grant”⁶. Mandinde recommends that there be “balance” between “the interests of ensuring transparency and accountability with the need to enhance the independence of the Commission”⁷.

⁴ IDEA, “Electoral Management Bodies”, 2001. Available at: <http://www.idea.int/publications/ies/upload/6.%20Electoral%20Management%20Bodies.pdf>

⁵ In 2008, some ZEC officials faced criminal prosecution for various allegations relating to the conduct of the election, especially the vote count.

⁶ Wlibert P. Mandinde, “Legal Framework – An Analysis of the Electoral Amendment Act”, 2012, 2.

⁷ Ibid.

The issue of ZEC's independence is one that seized the parliamentarians a great deal. For instance, one MP suggested that the word "Independent" be added to the EMB so that it becomes "Zimbabwe Independent Electoral Commission" "so that it becomes really and truly independent"⁸. It was also suggested during the second reading of the Bill that ZEC must be able to report to Parliament rather than to the Minister "because ZEC is a creation of Parliament". In fact, the Electoral Act now provides that the Commission submits its reports to the President, the President of the Senate, the Speaker of the House of Assembly, and to the Minister (of Justice and Legal Affairs). It is the Minister who will in turn lay before Parliament a report of the Commission covering the activities of the previous financial year.

It is this paper's opinion that apart from the issue of reporting⁹, the juridical foundation for the autonomy of the electoral body is now reasonably firm, certainly much firmer than it has ever been – see Table 1 for a summary.

Table 1: Juridical Autonomy of the Zimbabwe Electoral Commission (ZEC)

Issue/Question	Status
Does the legal framework for elections provide for ZEC to be constituted as an independent and impartial body?	Yes However, improvement should be made to the financial autonomy of the Commission
Does the legal framework protect ZEC members from arbitrary removal?	Yes
Does the legal framework require ZEC to operate in an independent, impartial and transparent manner? Are there any provisions in the legal framework that could prevent ZEC from working in such a manner?	Yes The constitution and statutory law requires independence of Commissioners as well as staff
Does the legal framework clearly define the authority and responsibility of each level of ZEC and their relationships to each other as well as to other relevant governmental bodies and executive authorities?	In part Responsibility for election is largely in hands of ZEC. However, the function of voter registration is conducted by the Registrar General's Office, which falls under the Ministry of Home Affairs.
Does the legal framework provide for adequate opportunity to seek review or reversal of a ZEC decision?	In part Provision for appeal of certain decisions/acts exists. Effectiveness of this, however, may be counteracted in practice by the provisions of immunity of the Commission

⁸ Parliament of Zimbabwe, *Parliamentary Debates*, House of Assembly Vol. 38, No.47, 10 July 2012, 3987.

⁹ It must be noted, as the Minister of Justice and Legal Affairs did during the second reading of the Bill, that in Zimbabwe's parliamentary system, it is the Minister who answers questions relating to portfolios falling under his mandate. In this case, ZEC is represented in Parliament by the Minister and there does not appear to be a viable alternative to this arrangement.

Does the legal framework provide for continuity of electoral administration by staggering the terms of office of its ZEC members?	No staggering terms However, present ZEC has at least two members (including the Deputy Chairperson) who were in the previous Commission
Does ZEC have sufficient lead time to organize elections, especially at the lower levels?	Date of election is not legislated, nor specified in the Constitution. ZEC not empowered to set election date. President sets the date of election by gazette. The Electoral Act provides for minimum timeframes between gazetting and Nomination and Election day to give some certainty.
Does the legal framework provide for making available sufficient and timely funds to ZEC to manage operations?	No

Source: Adapted from Wilbert P. Mandinde, “Legal Framework – An Analysis of the Electoral Amendment Act”, 2012.

However, there are still areas of concern that tend to undermine the independence of the electoral agency some of which are noted in Table 1. Particularly troublesome is that the Commission does not get a direct budgetary allocation from the Consolidated Revenue Fund but from the Ministry of Justice. It is common knowledge that whoever pays the piper calls the tune. Further, any donation offered to ZEC must be approved by two Ministers, that of Justice and the Minister of Finance. Commentators point out that this “takes away the independence of ZEC provided in the Electoral Amendment Act”¹⁰. It is therefore imperative that ZEC gets a direct allocation from the Consolidated Review Fund and be free, with the usual requirements for transparency, to receive donations from well-wishers.

The functions of the EMB are outlined in Section 100C of the Constitution and are restated in Box 1. It is evident that ZEC is now *almost* fully in charge of the whole electoral process unlike previously when there was fragmentation of functions

¹⁰ ZESN, Report on CSOs Election Strategy Conference, Harare: 15 November 2012, 12.

Box 1: Functions and Powers of the Zimbabwe Electoral Commission (ZEC)

100C (1) The Zimbabwe Electoral Commission has the following functions:

(a) to prepare for, conduct and supervise:

- (i) Elections to the office of President and to Parliament; and
- (ii) Elections to the governing bodies of local authorities; and
- (iii) Referendums;

and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;

(b) To supervise the registration of voters by the authority charged with that responsibility under the Electoral Law; and

(c) To compile voters' rolls and registers; and

(d) To ensure the proper custody and maintenance of voters' rolls and registers; and

(e) To design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres; and

(f) To determine, subject to section 100J, limits of boundaries of local authority wards, House of Assembly constituencies and Senatorial constituencies; and

(g) To conduct voter education; and

(h) To accredit observers of elections and referendums in accordance with an Act of Parliament; and

(i) To give instructions to persons in the employment of the State or of a local authority *for the purpose of ensuring the efficient, proper, free and fair conduct of any election or referendum*; and

(j) To exercise any other functions that may be conferred or imposed on the Commission by the Electoral Law or any other law.

Despite the appointment of a new ZEC at the level of commissioners, there appears to be no meaningful reformation that has taken place in the electoral agency, especially at secretariat level. This is also a bone of contention between ZANU-PF and the two MDCs with the former happy with the status quo while the latter have been agitating for the removal of partisan staff.

A critical factor in the difficulties ZEC faces is in terms of the requisite resources. The electoral agency is almost perpetually financially broke. At the end of December 2012, the *Daily News* revealed that “the country’s electoral commission is saddled with a near million-dollar debt” which has rendered it “almost impotent”¹¹. Due to the financial stress faced by the EMB, it was announced in mid-December 2012 that there will be no fresh delimitation of constituencies: “There is no delimitation this time around. The 210 constituencies will remain

¹¹ Richard Chidza, “Zec 1 million in the red”, *Daily News*, 30 December 2012.

like what they are now. Even in wards, we will use what is there now,”¹² announced Joyce Kazembe, the Deputy Chair of the electoral body. At the same briefing, it was announced that the Government had revised downwards the projected ZEC budget for the referendum and elections from US\$220 million to US\$192 million. Yet, according to the 2013 National Budget, only US\$50 million was set aside for the two electoral events, not even enough for the revised referendum budget of US\$85 million. The dire financial straits in which the electoral agency finds itself in cannot be overemphasised.

Further, it was exposed that ZEC is operating with less than half of the required staff of around 700 but could not hire more personnel because it lacked the funds and due to a government freeze on staff recruitment. All these problems exist just few months before the watershed elections, a clear testimony that the EMB is far from ready to conduct elections.

To be credible and impartially steer the electoral ship, an election management body (EMB) must be independent and outside the influence of any structure or authority. EMBs must be guided by certain fundamental principles and features including:

- autonomy of policy decision-making and action;
- impartiality;
- Competence and efficiency;
- transparency and openness in carrying out its functions;
- efficient registration of voters;
- prompt announcement of results;
- the right to appeal its decision to the judiciary; and,
- gender representation (Tip, 2009:77-78).

The electoral process is a chain and voter education is a critical part of that chain and yet a very weak performance area for ZEC and up to the time of writing, the electoral agency had not embarked on discernible programme for voter education, but had taken steps to invite CSOs who wish to conduct voter education for approval in accordance with the Electoral Law and had developed a manual. The EMB blames lack of funding for this promising that “voter education would start anytime soon after donors ... provided funding for the exercise”¹³.

Voter education is absolutely essential for people to be able to participate in the overall voting process including: registering to vote armed with the required documentation; inspecting the voters’ roll to make sure ones name is recorded and correctly so; turning out to

¹² Takunda Maodza, “ZEC slashes poll budget ... No cash for delimitation commission, Constituencies remain unchanged”, *The Herald*, 15 December 2012. ZEC was briefing senior Government officials on preparations for elections.

¹³ See “ZEC, RG to clean up voters’ roll”. Available at: <http://www.zim.gov.zw/index.php/component/content/article/111-october-news/5918-zec-rg-to-clean-up-voters-roll->

vote and how to do it; and, more critically, making the right electoral choices. ZEC has historically been found wanting in this regard.

According to the Electoral Act, ZEC has the sole mandate to conduct voter education but the same Act allows the EMB to approve and authorise other organisations and individuals who have applied to conduct voter education after being vetted. The electoral agency also approves the education materials and programmes before dissemination to the public. In early October 2012, ZEC invited civic organisations interested in conducting voter education to register with it within four days; to date, it is not known how many applied and how many had their applications approved. However, ZEC claims that it had been conducting voter education as it has “always been part of the electoral process and it is on-going”. This voter education, ZEC revealed, has been conducted “at exhibitions such as Zimbabwe International Trade Fair and at provincial agricultural shows”¹⁴.

As part of the preparations for the expected 2013 elections, the EMB announced in September that it had finalised the manual for voter education to prepare people for elections and ensure that they are familiar with the electoral processes¹⁵.

The Empirical Context: the current political and operating environment

The next elections in the country will be run in the shadow of the last elections i.e. the March and June 2008 elections, especially the long, dark shadow of the 27 June 2008 run-off elections. By all accounts, the presidential run-off election was indisputably the most violence-ridden in the country’s history and literally an election without a choice.

The governance framework for Zimbabwe since September 2008 has been the GPA. Both the theory and the practice of the GPA have been faulted but this paper is not about dissecting that political settlement, suffice it to agree with Bratton and Masunungure that:

Political settlements that are externally driven by international actors, hastily negotiated under pressure of time and reluctantly accepted by the principal parties are unlikely to prove durable or legitimate. Such pacts may quell violence in the short run but they are unlikely to resolve the root causes of political conflict over the long term. One lesson of the Global Political Agreement of 2008 in Zimbabwe is that power-sharing agreements imposed from above by international third parties upon unwilling domestic partners are destined for deadlock, even stalemate.

The GPA, in addition to providing for the institutional arrangements for the coalition government (see Article 20), has a long policy agenda at the top of which is constitutional reform (Article 6), national healing and reconciliation, and reform of repressive pieces of legislation that vitiate the enjoyment of democratic freedoms and liberties. Both

¹⁴ See “Poll preps: ZEC invites aspiring voter educators”, *The Herald*, 5 October 2012.

¹⁵ See “ZEC finalises voter education manual”, *The Herald*, 13 September 2012.

constitutional and legislative reforms were designed to contribute to bringing about a political and institutional environment that would be conducive for free and fair electoral competition. As the coalition government painfully muddles through its policy agenda, and as talk of elections fills the air, it is timely and pertinent to pause and ask: to what extent have the flagship agenda items essential for meaningful elections been implemented?

Constitutional Reform: Constitutional reform is arguably the flagship policy agenda item in the GPA and, in fact, Article 6 is the only provision in the political pact that is time-framed and outlines the stages and procedures for crafting a new supreme law for the country. From the inception of the coalition government, an 18-months window is stipulated for the government to come up with the new constitution. Nearly four years have expired and there is still no constitution but a draft was produced in July 2012 and a Second National All Stakeholders Conference held at the end of October 2013. Several contentious issues remained even after the Second National All Stakeholders meeting and the principals in the coalition government felt compelled to snatch the process out of COPAC by appointing a special Cabinet Committee to iron out differences. However, at the end of 2012, the special committee was itself locked in contestations with no agreement in sight while a gap order was imposed on the negotiating officials from all the three GPA parties: “There are fears that if we allow these political players to speak on the process, it will be politicised and they will parrot their political ideologies ahead of national interests”, said the Minister of Constitutional Affairs, Eric Matinenga, with considerable exasperation¹⁶.

Irritated by the slow and tortuous constitution-making process, President Mugabe and his ZANU-PF party have been insisting that they will unilaterally declare elections dates for a poll to be held under the seriously flawed old constitution. At its December 2012 annual party conference, the party said it:

Implores the GPA parties to conclude the constitution making process before Christmas this year, failing which the Head of State and Government and Commander-in-Chief of the Defence Forces should in terms of the law issue the relevant Proclamation dissolving Parliament and fixing a date for the holding of the harmonised elections under the current Constitution¹⁷.

The close umbilical link between the new constitution and elections is understood by all political gladiators. All available evidence suggests that one main political party views itself as not benefiting from a new constitutional dispensation that could provide for new and robust institutional pillars that ensure the levelling of an electoral playing field which, presently, is heavily tilted in its favour. This party’s preparedness to hold elections without this new constitution should be understood in these terms.

¹⁶ Fungai Kwaramba, “We won’t fail, says Matinenga”, *Daily News*, 30 December 2012.

¹⁷ See “Resolutions of the 13th National People’s Conference”, *The Herald*, 10 December 2012.

Progress has however been made, on the 17th of January the Principals announced that they had reached an agreement on the contentious issues. Thereafter the draft would be synchronised and taken to Parliament and a Referendum thereafter.

A new constitution is essentially a minimum condition for holding elections and the GPA guarantors – SADC and the African Union – are highly unlikely to brook any breach of this condition. Given the improbability of elections being held defiantly under the old constitution, it is therefore necessary to review the remaining stages of the constitution-making process.

Table 2: Remaining Stages in the Constitution-Making Process

Remaining stages as of 1 January 2013	Timelines
COPAC's draft Constitution and its accompanying report must be tabled before Parliament has a month to debate the draft and report [presumably both Houses]	The draft and report must be tabled within 1 month of the second All-Stakeholders Conference.
Parliament [i.e. both Houses] must conclude its debate on the committee's draft Constitution and report.	Within one month
The draft must be gazetted before the holding of a referendum.	Time line not specified
A referendum on the new draft Constitution must be held	within 3 months of the conclusion of Parliament's debate
Gazetting of the draft Constitution as a Bill, if it is approved in the referendum	It must be gazetted within 1 month of the date of the date of the referendum.
The Constitution Bill must be introduced in Parliament.	This must be done no later than 1 month after the expiration of the period of 30 days from the date of its gazetting
President assents to the Bill and is gazetted as Zimbabwe's new Constitution	Within 21 days of President receiving the Bill from Clerk of Parliament
Synchronisation of old laws with new Zimbabwe Constitution	6-18 months

Source: Veritas

Table 2 suggests that it is likely to take 6-7 months from January 2013 to the enactment of the Constitutional Bill into the new Constitution for Zimbabwe. Thereafter, it may take a minimum six months to harmonise the old laws with the new Constitution, meaning, even a highly ambitious political schedule would not see the country going to elections before October 2013. Therefore, if a new supreme law is a mandatory condition for holding

elections, then it appears the country is far from ready for the much talked about harmonised elections. In short, from this perspective alone, Zimbabwe is not ready for fresh elections.

The Expansive and Partisan Role of the Security Forces: The Zimbabwe security sector is understood to comprise the State's coercive organs: the Zimbabwe National Army (ZNA), the Air force of Zimbabwe (AFZ), the Department of National Security (otherwise commonly known as the CIO, the Zimbabwe Republic Police (ZRP), and the Zimbabwe Prison Services (ZPS). In addition, and for politically partisan operations, the security sector also allegedly works hand-in-gloves with the war veterans. The security forces, especially the army, have been used by the state as an effective instrument with which to contain and suppress pressures for democratic change. The sector has in fact expansively redefined its role to include the defence and advancement of partisan interests. The result has been politicization of the army which, in turn, led to militarization of state institutions and functions, including the bodies responsible for organizing and overseeing elections (Zimudzi, 2006:198; Chitiyo, 2009).

Members of the security sector have previously been appointed to positions in which they have been responsible for administering all the important stages of the election process, among them delimitation of electoral constituencies, voter registration and education, election monitoring and even announcement of election results.

At the time of writing, some media reports allege that members of the security forces (especially the military) and war veterans have descended in some parts of the countryside and are spearheading (both discreetly and openly) the electoral campaign for a certain political party. This is particularly in the form of instilling (or rather re-instilling) fear in the affected communities, based on the residual fear from the April-June 2008 reign of terror¹⁸. This trend clearly needs to be arrested urgently and decisively; the political and electoral processes need to be *demilitarised*. The case for security sector reform is self-evident but it needs delicate handling if it is to produce desirable and avoid perverse results.

As elections inevitably approach, the most pressing priority is public security. A safe political and voting environment must be regarded as another minimum condition. An option to ensure a peaceful environment would be the presence of a robust regional election observer. Such an observer mission would be financed from a multi-donor fund, would comprise professional forces from SADC countries, have comprehensive mandate and would be in the country no later than two months before the scheduled poll. As an essential first step, the regional observers representing SADC should call on security force commanders (1) to pledge

¹⁸ See, for example: Tichaona Sibanda, "Army deploys battalion to campaign for Zanu PF", July 7, 2012. Available at: <http://www.swradioafrica.com/2012/07/18/army-deploys-battalion-to-campaign-for-zanu-pf/>; Alex Bell, "Soldiers turn Nyanga into a 'no-go' area for MDC supporters", October 4, 2012; <http://www.swradioafrica.com/2012/10/04/soldiers-turn-nyanga-into-a-no-go-area-for-mdc-supporters/>; "Zanu PF goes for broke in elections", The Independent, 7 December 2012. Available at: <http://www.theindependent.co.zw/2012/12/07/zanu-pf-goes-for-broke-in-elections/>

publicly to abide by the constitution and (2) to withdraw regular and irregular armed forces from partisan election campaigns.

The Media: Until three years ago, the Zimbabwe media sector was in a sorry state. Since 2000, there has been an unrelenting massive repression of the privately-owned media. The state used the repressive media legislation, such as the incongruously named Access to Information and Protection of Privacy Act, the Public Order and Security Act, the Criminal Law (Codification and Reform) Act, and the Criminal Procedure and Evidence Act (CPEA) to arrest, prosecute and harass private media practitioners. The draconian laws were and are still used against journalists from the independent media and, since 2003, to shut down privately-owned newspapers, among them the *Daily News*, the most popular daily then. The state-owned newspapers such as *The Herald*, the *Chronicle* and *The Sunday Mail* uncritically support the ZANU-PF branch of the present Inclusive Government.

To its credit, the post-GPA media commission – the Zimbabwe Media Commission (ZMC) – licensed a number of newspapers and some of them (including the revived *Daily News* and *Newsday*) have since started publishing. According to the Media Institute of Southern Africa (MISA) 2012 Report on the media in Zimbabwe, “more than 60 new publications” have been licensed by the ZMC in terms of the GPA and this “will go a long way in widening the space for debate as well as providing Zimbabweans with varied sources of information ...”¹⁹

However, the state has hardly loosened its vice-grip monopoly of the airwaves through the Broadcasting Services Act (2001), which it has used in the past to deny operating licences to independent broadcasters. Some progress has been made though. Two private owned radio stations – ZiFM and Star FM – were licensed in September 2011, amid heated controversy around the fairness of the process and the political affiliation of the winning bidders. MISA regrets that the coalition government (more specifically its ZANU-PF side) “appears to be dragging its feet in terms of instituting comprehensive legislative reforms that will free the media space, fundamentally as it pertains to the broadcasting sector as pledged in terms of the GPA”²⁰.

Sometimes hate language, partisan reporting and political jingles resurface in the public media – promoting and defending one party while denigrating the former opposition parties. Indeed, the more things change, the more they stay the same. Can the country go to elections under such a media environment?

State of the Voters Roll: Zimbabwe’s electoral system requires that an eligible person (18+ years old) must first register before s/he is allowed to vote and this has been the law and practice since the 1985 elections. As a consequence, voter registration is a critical function in the overall electoral process. It has been a highly contested function in Zimbabwe. Critics, opposition parties, and civil society have consistently complained that the voters’ roll needs

¹⁹ Media Institute of Southern Africa (MISA), *The State of the Media Report 2012*, Harare: December 2012, 17.

²⁰ *Ibid*, 18.

to be cleansed. As ZESN points out: “... a flawed voters’ roll can disenfranchise eligible voters and allow ineligible voters to vote” (n.d. 5).

Before the 2008 elections, the voter registration function was performed by the Office of the Registrar-General (R-G) of Voters but since 2008, the electoral laws state that overall responsibility for direction and control of the registration process, as well as custody of the voters’ roll, is vested in the ZEC.

To his credit, the new ZEC chairman Justice Simpson Mutambanengwe publicly conceded in August 2010 that: “As it is, the voters’ roll is in disarray” and that it needed cleaning up. He lamented the impediments to early elections including “the biggest challenge” i.e. “financial resources to conduct elections” (Smith, *ibid*). His assessment was that the electoral agency was not ready for elections in 2011²¹. One of the ZEC commissioners estimated that the agency would need at least a year to clean up the voters’ roll but in February 2011, the ZEC chairman said: “We need three months to work on the voters’ roll, and clean it up in preparation for the elections. There is going to be a lot of work to be done ...” (cited in Zvauya, *Newsday*, and 9 February 2011).

The above evidence demonstrates that from whatever angle one approaches the issue of timing of elections, the country cannot go to elections with a voters’ register that is flawed. It is simply not usable and is a recipe for disputable elections and a contested outcome, something that the GPA and its guarantors eagerly seek to avoid.

In March 2012, the Registrar General claimed to the state-controlled Zimbabwe Broadcasting Corporation (ZBC) that the voters’ register is “perfect” and defended the existence of thousands of centenarians on the voters’ list: “The law does not say once one attains 100 years he/she should be removed. It is their right to vote unless they come to say they want to be removed”²². Instead, the Registrar-General recently accused NGOs of tampering with the voters’ roll: “It is the same NGOs that have been very vocal as to the state of the voters’ roll, alleging it is in shambles. To them, the word shambles has become a song yet they are the manipulators of the voters roll”²³.

The rather murky division of labour between ZEC and the RG has sometimes caused confusion and policy inconsistencies. Justice Simpson Victor Mutambanengwe, the ZEC Chairperson, conceded that “the timeframe for election readiness is much longer than that envisaged by political parties” and that one of the “biggest challenges” is “cleaning up the

²¹ The ZEC Chairman was contradicted though by his deputy who claimed that ZEC’s mandate “is to implement Presidential proclamations as and when they are made. If a proclamation is made, we implement it”. She declared that ZEC would have no problems conducting the polls (see “ZEC in volte face on election preparedness” 19 October 2010” <http://zimbabwepointer.com/politics/1817.html>)

²² Quoted in Gilbert Nyambabvu, “Zimbabwe’s voter roll perfect: Mudede”, available at: <http://www.newzimbabwe.com/news-7392-Zimbabwe%E2%80%99s%20voters%20roll%20perfect%20Mudede/news.aspx>

²³ Quoted in Felix Shara, “5,5m on voters’ roll: Mudede”, *The Herald*, 21 December 2012.

voters' roll"²⁴. In January 2011, in an interview with the Zimbabwe Broadcasting Corporation, Justice Mutambanengwe "confirmed that allegations by some organisations that the voters' roll is outdated are to some extent correct ..." and that ZEC had begun formalities to engage the Registrar General's office "to clean up the voters roll"²⁵. Lastly, the ZEC Deputy Chairperson, Joyce Kazembe also candidly confirmed the need to clean-up the roll:

It's true; our voters' roll contains names of thousands of dead people. This is because legally, the Registrar General's office removes such people only when there is documentary evidencing confirming that so and so is dead.

This is not happening, especially in the country's rural settings. So you will find we have 109 year-olds in the voters' roll, *zvakaoma nhai* (it's difficult to fathom). You hear of people living that long in the Guinness Book of Records, but this is what you see in our voters' roll²⁶.

The voters' roll is everywhere a key instrument in the electoral process and when it is not properly compiled and regularly updated, this opens the floodgates to intractable electoral disputes. Zimbabwe's voter register has been a bone of contention in many previous elections and yet very little remedial action appears to have been taken over the years. And the country is heading for a watershed election while this key instrument abounds with errors. This is a clear recipe for a replay of 2008.

The Public Mood on Elections

Scientifically gathered public opinion is a useful and reliable barometer of what people think and want. It is indeed the cutting edge of a nation's political culture and prudent policy makers take heed of the heartbeat of the nation in their governance. Within society, the political and economic orientations of ordinary citizens also matter. After all, in a democratic regime, the electorate of voting age adults ultimately grants – or withholds – legitimacy from political leaders and state institutions.

What are the attitudes and perceptions of Zimbabweans towards elections (and their timing) in their country? The Mass Public Opinion Institute (MPOI), a Harare-based research organisation, has done a series of surveys to gauge the opinion of adult citizens on a range of topical issues, including constitutional reform and elections. The two most recent were in June 2012 (for Freedom House) and July 2012 (for the Afrobarometer) but references will be made to earlier polls where this sheds more light.

Public Opinion on Constitutional Reform: One of the key findings on constitutional reform is that a vast majority of Zimbabweans want the current Lancaster House Constitution – which has been amended 19 times in 30 years – to either be discarded altogether or to be amended.

²⁴ See "Zim not ready for elections", *Newsday*, August 26, 2010.

²⁵ Zimbabwe Broadcasting Corporation (ZBC), "ZEC to clean up voters roll", 31 January 2011

²⁶ See "Dead people will remain on voters' roll: ZEC", available at: <http://www.newzimbabwe.com/news-9670-Dead+people+to+stay+on+voters+roll+ZEC/news.aspx>

On average, in surveys conducted after the installation of the coalition government, more than four in every five Zimbabweans of voting age want the current supreme law amended or abandoned.

Clearly then, empirical evidence demonstrates that the current defective constitution is a constitution that people *do not want*, whether before or after elections. It is therefore imperative that the voters get the constitution they want before they get into the ballot box i.e. *no elections before a new constitution*. This is also what a large majority of Zimbabweans think.

If the people want to go to elections only under a new supreme law, and if they endorse the new constitutional draft in a referendum, surely it will need considerable time for the new institutions encapsulated in the new constitution to be established and take root. In other words, the new constitutional infrastructure needs to be institutionalised, as is the case in Kenya where a new supreme law was endorsed in August 2010 and elections will not be held until March 2013.

It must be noted that at its meeting of 31 March 2011 in Livingstone, Zambia, the Organ Troika on Politics, Defence and Security resolved that: “the Inclusive Government in Zimbabwe should complete *all the steps necessary for the holding of the election, including the finalisation of the constitutional amendments and the referendum*” (SADC Communiqué, 31 March 2011, my emphasis). It must however be stressed that “all the steps” that SADC says must be taken should not be a question of procedural or token compliance; the steps must be taken in a diligent and satisfactory manner.

Further, and most crucially for the issue under consideration, is that Zimbabweans place high primacy on elections as a method of selecting their leaders – see Table 3. Evidence from Afrobarometer is crystal clear on this question, and consistently so. The preference for the electoral method to choose leaders has firmed over time while that for “other methods” has diminished such that by July 2012, nearly nine in ten (87%) preferred to choose their leaders through “regular, open and honest elections”. Will the next elections provide Zimbabweans this chance? This is the question that the GPA principals and the GPA guarantors (SADC and the AU) should answer.

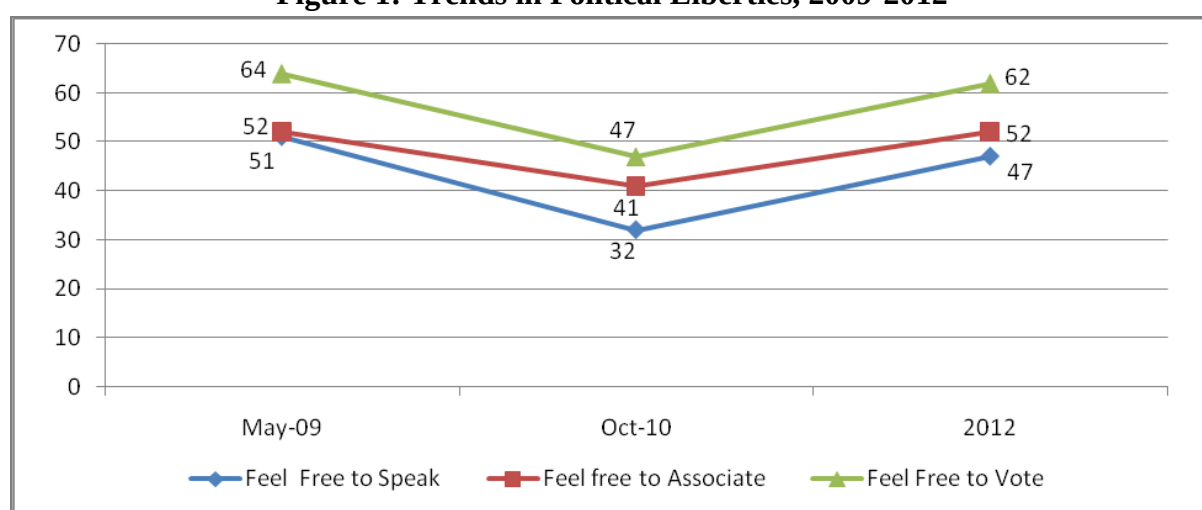
Table 3: Preferred Method for Choosing Leaders (2004-2010)

Agree/agree very strongly that:	2004	2005	2009	2010	2012
We should choose our leaders in this country through regular, open and honest elections	75	74	80	86	87
Since elections sometimes produce bad results, we should adopt other methods for choosing this country’s leaders	21	26	18	12	12

Source: Afrobarometer surveys conducted in 2004, 2005, 2009, 2010 and 2012.

Oscillating Political and Civil Liberties: Figure 1 demonstrates the fluidity of the political environment reflected in the fluctuations on various measures of political and civic liberties from May 2009 to July 2012. First, there was a sharp decline in perceptions of political and civic liberties between May 2009 and October 2010. For example, just over one half (51%) said they were “somewhat” or “completely” free to “say what you think” in May 2009, three months after the coalition government was in office. However, in the atmosphere of October 2010, only one third (32%) held the same opinion, a 19-point decline. Nearly two years later, the situation appears to have significantly improved with the 2012 survey showing an upswing in people’s readiness to speak what they think: 47% (15 points up) said they were “somewhat free” or “completely free” though still a majority of 53% felt constrained and does *not* currently feel free to speak their minds.

Figure 1: Trends in Political Liberties, 2009-2012



Source: Afrobarometer Briefing Paper No. 87, December 2010, Updated to 2012.

The same trend of robustness in 2009, then decline in 2010 and back to bullishness in 2012 is evident regarding the freedom to associate. Whereas 52% felt free to “join any political organization you want” in May 2009, only 41% continued to feel this way by October 2010, an 11-point decline. Then there was an upward swing back to 52% by July 2012.

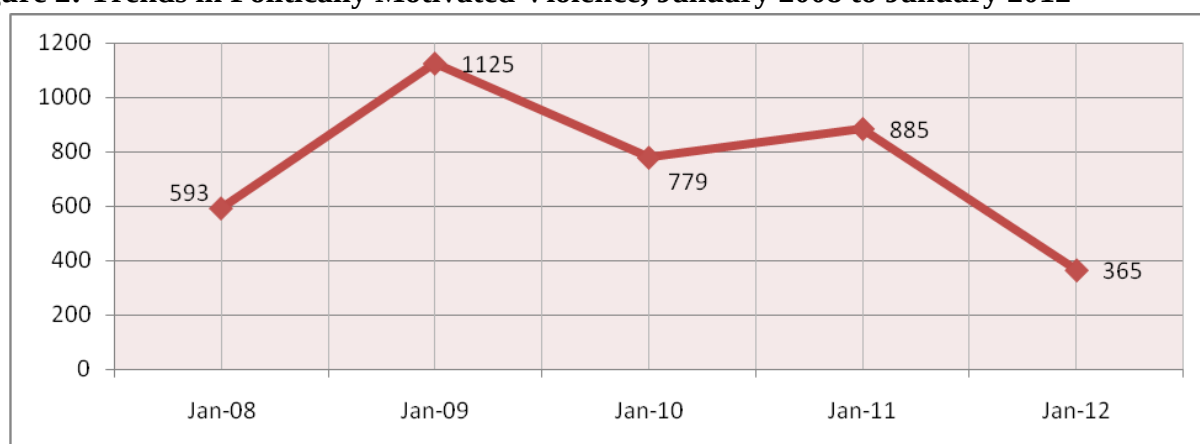
The same oscillation is apparent in respect to the most vital component of a democratic election i.e. the freedom to vote as one wishes. Whereas 64% felt free to choose who to vote for in May 2009, only 47% expressed such confidence in October 2010, a larger 17-point decline in less than eighteen months. Then there was a surge in feeling of freedom to vote to 62% in July 2012, 15 points up.

The question that should preoccupy election stakeholders is where the recent upsurge in the three civic and political freedoms is sufficiently and acceptably high to engender confidence that a free and fair election can be conducted. This is particularly so in respect of the freedom to speak where the proportion that says they are free to speak still constitutes a minority of the electorate. This is reinforced by the finding to a related question asked in the Afrobarometer 2012 survey: “In your opinion, how often, in this country do people have to

be careful of what they say about politics?” The finding reveals how shackled Zimbabweans feel with an overwhelming majority (88%) saying they “often” or “always” have to be careful. This is a serious indictment on the state of freedom to speak in the country.

Non-survey data also confirms the downward decline in politically motivated violations of human rights and political violence in the country. For instance, the November 2012 report by the Zimbabwe Peace Project (ZPP) – a civic body that monitors human rights violations including politically motivated breaches of the peace – notes that “the month under review (November 2012) has been witnessing a declining trend in incidents of human rights violations since 2008”.

Figure 2: Trends in Politically Motivated Violence, January 2008 to January 2012

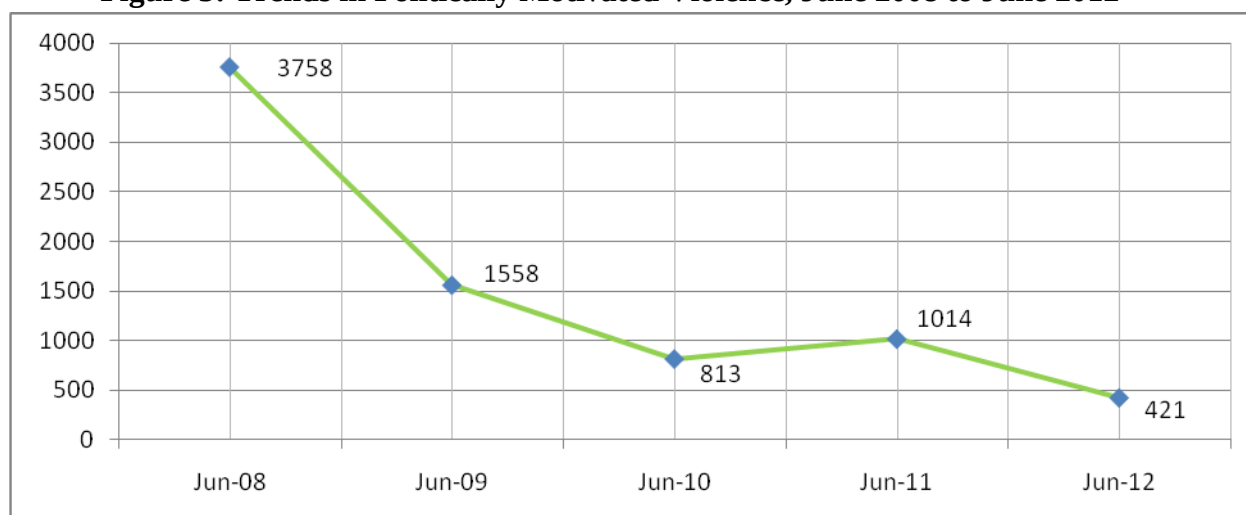


Figures 2 and Figure 3 summarise the story. Figure 2 shows that Zimbabweans enjoyed a reprieve after the Inclusive Government was formed in February 2009 with a 31% decline in politically motivated violations (PMVs) from 1125 cases in January 2009 to 779 cases in January 2010 but the ugly head of violence reappeared in January 2011, witnessing a 14% increase to 885 incidents. Then January 2012 witnessed a dramatic 59% decline in politically motivated violence to only 365, even much lower than the January 2008 figure.

According to the ZPP November 2012 Report, only two provinces stood out in terms of violations, and these are Midlands and Manicaland. The usually troublesome provinces of Mashonaland West, East and Central were relatively tranquil but the most peaceful were the three Matabeleland provinces of Bulawayo, Matabeleland South and North.

Year-on-year trends for January (Fig 2) and June (Fig 3) show the same pattern of decline in 2009, then increase in 2011 and decline in 2012.

Figure 3: Trends in Politically Motivated Violence, June 2008 to June 2012



The ZPP Report for June 2012 (see Fig. 3) clearly shows a marked decline from the June 2011 figure; in fact, there was 58% decline in the number of cases recorded. In most cases of violations, the perpetrators are the same usually political party activists.

Public Opinion on ZEC: In the court of public opinion, is Zimbabwe’s elections management agency (ZEC) ready to run elections and does it have the capacity to do so? Does the electorate have confidence in the agency’s impartiality? These questions were posed to respondents in the recent surveys cited above.

Table 4: Public Assessment of ZEC’s Readiness for Elections (December 2010 and June 2012)

		2010	Readiness for elections in	
			2012	2013
ZEC ready for elections	Ready	29	26	62
	Not quite	18	24	9
	Not at all	21	33	11

The question in the 2012 survey was: “Is ZEC ready for election in 2012 or will it be ready for elections in 2013?”

Note: This question was not asked to respondents who had earlier said they had not heard about ZEC.

Table 4 provides more evidence that there has been a general improvement in people’s perceptions about the political environment and electoral institutions. In the December 2010 survey, up to four in ten (39%) Zimbabweans said ZEC was “not quite” ready or not ready “at all” for the envisaged 2011 elections while only three in ten (29%) said it was ready. The same question was repeated in June 2012 but this time respondents were asked to assess

ZECs preparedness with reference to two time frames i.e. 2012 and 2013²⁷. For 2012 elections, respondents were even less confident that the electoral body would be prepared with just 26% saying it would be ready while 57% felt it would not be. However, when the question was asked in respect of ZEC's preparedness for the 2013 elections, the proportion who felt the EMB would be ready more than doubled to 62% while those who believed the electoral agency would still be not ready shrunk to only 20%. In other words, Zimbabweans were saying ZEC needed more time (and resources) to put its house in order before it can run the country's next elections in a credible way.

Sense of Political Security: Another crucial dimension of the public mood is the sense of political security. Do Zimbabweans feel they can go and vote without fearing adverse consequences from political players or their supporters? In the Afrobarometer surveys in October 2010 and July 2012, respondents were asked: "During election campaigns in this country, how much do you personally fear becoming a victim of political intimidation or violence" and Table 8 presents the results.

Table 8: Fear of Political Intimidation or Violence (October 2010 and July 2012)

	2010			2012		
	Total	MDC-T	ZANU-PF	TOTAL	MDC-T	ZANU-PF
A lot	58	72	39	45	58	29
Somewhat	14	12	14	18	21	17
A little bit	9	9	7	18	13	22
Not at all	19	8	40	19	9	31
Don't know	0	0	0	1	-	1

Question: During election campaigns in this country, how much do you fear becoming a victim of political intimidation or violence?

If we combine the "a lot" and "somewhat" response categories, we find that in 2010, more than seven in ten voters (72%) were fearful of election campaign violence and intimidation and more than half (58%) actually feared "a lot". This fear, though widespread, was particularly strong in urban areas (78%) and among MDC-T supporters, 84% of whom were fearful. Even ZANU-PF people were not immune to this fear with more than half (53%) expressing fear. Further, virtually all provinces were enveloped in this fear especially in Mashonaland provinces (Harare, 93%; Mashonaland East, 84%, Masvingo and Manicaland, 75% each) and lowest in Matabeleland South where still 44% said they are fearful.

Had the situation changed two years later by July 2012? Table 8 shows that indeed there has been a change but still the levels of fear were high. More than six in ten (63%) expressed fear of election campaign violence and intimidation with 45% actually fearing "a lot". The fear was still particularly entrenched among MDC-T supporters with up to 79% expressing such

²⁷ President Mugabe had insisted that elections were going to be held in 2012 before he changed to the current "elections by March 2013" stance.

fear, 33 percentage points less than the figure for ZANU-PF voters. The fear gap between the urban (65%) and the rural (63%) areas has been substantially narrowed compared to that of 2010. A provincial breakdown shows that in nine out of 10 provinces, more than half of the electorate is fearful of election campaign violence and intimidation but three provinces stand out as most fearful: Manicaland (77%); Masvingo (77%); and Midlands (71%). The least fearful province is Matabeleland North where less than half (41) expressed similar fear.

CONCLUDING REMARKS

Elections are not a sufficient but are a *necessary* condition for democracy and accountable governance. Zimbabwe's record of conducting regular elections when they are is easily unmatched on the African continent. But probably equally unmatched is its record of holding defective and violence-ridden polls i.e. poor quality elections. It is at the top on quantity but at the bottom on quality. Will the next elections be a departure from this historical record? Will Zimbabwe remain the stubborn black sheep of SADC and be allowed to remain so? These are questions that Zimbabwe's pivotal stakeholders ought to be seized with, especially the GPA principals, civil society, the GPA guarantors i.e. SADC and the AU, and indeed the international community. Surely Zimbabwe is not incapable of running credible elections that are free from fear; it is a matter of political will to do so.

The position paper has revealed a pattern since the installation of the Inclusive Government. The political situation significantly improved in 2009, then deteriorated in 2010 and 2011 before starting to improve in 2012. At the time of writing (early January 2013), there is no evidence of regression. It is vital to acknowledge that this improvement has been comprehensive and both survey and qualitative data confirms the trajectory of improvement.

The question that election stakeholders need to ask and answer is whether the improvement is *good enough* to allow the holding of free, fair and credible elections whose outcome is beyond dispute. Can the prevailing environment ensure an election with a choice as opposed to a choice less election as in June 2008?

As it is, the country's institutional and legal infrastructure has undergone some refurbishment and psychologically, Zimbabweans are more prepared for the next elections than they were two years ago. But they still exhibit a fear that militates against their preparedness to cast their vote freely without watching over their shoulders. At the very minimum, the country needs another 9-10 months of concerted voter confidence building rather than stampeding into another election which guarantees a contested outcome. Everything should be done to prevent another electoral disaster. Zimbabwe may well be SADC's biggest test case. Will SADC pass the test? Time and action (or inaction) will tell.

RECOMMENDATIONS

Many concerned Zimbabweans have proposed a raft of measures that ought to be taken to ensure that elections with a choice are held. The SADC Guidelines and the African Charter are non-substitutable reference points. From the foregoing evidence and by distilling the recommendations from various stakeholders, the paper proposes the following key and minimum recommendations:

- *A new, popular national Constitution is mandatory.* This is a minimum condition in any consideration of the timing of elections because this is what the electorate insists on. The GPA guarantors are also emphatic on this point. Further, the institutions encapsulated in the new constitution must first be established and be allowed to take root. Kenya provides an excellent African case study.
- Over the years, the reputation of the ZEC (and its predecessor) has never been above mediocre, thank to its performance that has never been perceived as laudable. Though there have been changes at the governance level, to date there is no convincing evidence that it has become more autonomous, impartial and professional. The new ZEC should change the way it does business and needs to be assisted to do so. The fact of ZEC being inadequately resourced, understaffed and undertrained is a legendary historical fact. While ZEC can take charge of its *modus operandi* internally, there is gainsay the reality that it needs external help to get out of its quagmire and be able to deliver on its constitutional and public mandate. The electoral agency needs to be *capacitated in terms of resources* – financial, human, logistical and even good will. Both the internal and external dimensions feed into each other. It will not obtain the good will from the political stakeholders and the public unless it exhibits professionalism at all levels of its structure and operations;
- The first litmus test for ZEC is the *compilation and production of a credible and usable voters' roll*. It is tragic that the voter registration exercise that was scheduled to start on 3 January 2013 had to be indefinitely deferred on account of unavailability of funds. This speaks to the reality that ZEC needs its own budgetary allocation (not via the 'parent' Ministry) and be allowed to mobilise external funding without undue bureaucratic constraints like approval from two Ministers;
- *ZEC must, without undue delay, begin the critical process of voter education.* Indeed, education of voters should be taken as a continuous process; it must not be tied to electoral cycles. Voter education should be regarded as a collective and national effort;
- It is imperative that the security forces (especially the military, police and state intelligence) *disengage from playing leading roles in electoral processes*. The security organs are instruments of law and order and must play the role within the confines of their constitutional and legal mandate and duties;

- *The media terrain must change both in terms of diversity and content.* The media regulator, the Zimbabwe Media Commission (ZMC) must be commended for opening up the print media and the same must be extended to the electronic public media well beyond the reluctant and controversial licensing of two radio stations. Further, the ZMC (and later ZEC) must ensure that both the public print and public electronic media stop being incubators and disseminators of hate speech against formerly opposition parties and being conduits for partisan and fear-inducing propaganda;
- *Political parties and candidates must be accorded the space they need to carry out their activities as defined in the GPA, the SADC Principles and African Charter.* Despite improvements, the playing field is still heavily tilted against former opposition parties and candidates and in favour of the former ruling party. Any credible election is normally preceded by a period of robust political campaigns to reach out to the electorate and appeal for their vote but this cannot happen when security agencies selectively throw spanners into the works; and
- Politically motivated violence and intimidation are the most potent and ominous threats to free, fair, and credible elections in Zimbabwe. Granted, there has been significant and commendable progress in this area but it is still far from normal. Given the pervasiveness of this problem throughout the country and its gravity in some parts of it, including in areas that previously were untouched (e.g. Harare), *it behoves all stakeholders, especially the SADC and African Union as guarantors, to deploy local, regional and international observers at least two months before and at least one month after the elections.* This will help in creating a climate of normalcy and, more importantly, engender a sense of personal and community security in the voting public. This will also ensure that the people's vote will be an expression of their preferences rather than their fear.

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