



ELECTIONS REPORT:

**Human Rights Violations in the Context of the 2018
Harmonised Elections**

By the Zimbabwe Human Rights NGO Forum

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ACDEG	African Charter on Democracy Elections and Governance
AIPPA	Access to Information and Protection of Privacy Act
BVR	Biometric Voter Registration
CBD	Central Business District
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
ConCourt	Constitutional Court
EU	European Union
EUEOM	European Union Election Observation Mission
GoZ	Government of Zimbabwe
ICCPR	International Covenant on Civil and Political Rights
IRI	International Republican Institute
MDC	Movement for Democratic Change
MDC-A	Movement for Democratic Change- Alliance
NDI	National Democratic Institute
POSA	Public Order and Security Act
SADC	Southern Africa Development Community
US	United States
ZBC	Zimbabwe Broadcasting Corporation

ZANU PF	Zimbabwe African National Union Patriotic Front
ZEC	Zimbabwe Electoral Commission
ZNA	Zimbabwe National Army
ZRP	Zimbabwe Republic Police

Executive summary

On the 30th of July 2018, Zimbabwe held its historic plebiscite without its old time leader former President Mugabe who was ousted in a coup in November 2017. There were incidences of harassment and intimidation coupled with a spike in cases of intra party violence. Harassment and intimidation was high in rural areas where villagers were still being forced to submit serial numbers of their BVR slips mostly by traditional leaders and ZANU-PF supporters. Food aid and agricultural inputs were also used as tools of coercion by mostly traditional leaders.

There were also concerns over the administration of elections by the Zimbabwe Electoral Commission (ZEC) which was not transparent in the management of the electoral process. In general, there was limited trust in ZEC due to the exhibited lack of openness and accountability around its operations. As has been the case in previous elections, the voter's roll remained a contentious issue. ZEC failed to avail the voters roll in time for the sitting of the Nomination Court and also for the general elections.

Voting day was relatively calm and peaceful save for isolated cases bordering on harassment and intimidation that were documented in areas such as Buhera South, Marondera, Hurungwe and Chivi among other areas. Cases of assisted voters were high in rural areas such as Rushinga in Mashonaland Central.

The post-election period witnessed a spike in human rights violations. This followed the intervention by the Zimbabwe National Army (ZNA) on 1 August 2019 in quelling a demonstration by citizens and opposition supporters who were protesting the perceived delay in the announcement of the presidential results. The soldiers indiscriminately shot and assaulted civilians including those who were not taking part in the demonstration resulting in the extra-judicial killing of seven (7) people and the injury of many more.

The 1st of August violence was followed by violence initially in Harare's high-density suburbs. The violence spread to rural areas and the target was real and perceived supporters of the MDC-Alliance and those who had acted as polling agents for the opposition party. While the main perpetrators of violence in Harare were the ZNA, in the rural areas it was ZANU PF supporters and traditional leaders. The Forum documented a total of 274 post-election human rights violations from the 1st to the 30th of August 2018. Documented post-election human rights violations included assaults;

abductions; torture; politically motivated rape; harassment and intimidation; arbitrary arrests; extra-judicial killings; malicious damage of property; sexual torture); displacement; attack on human rights defenders; home and office raids; partisan distribution of food aid and agricultural inputs; attacks on journalists; and disrupted meetings.

The Presidential results were disputed by the MDC-Alliance, which lodged a legal challenge with the Constitutional Court and lost.

In light of this the Forum makes the following recommendations

a. Recommendations to the Government of Zimbabwe

- I. The GoZ must urgently consider ratifying the African Charter of Democracy Elections and Governance (ACDEG)\ The Charter seeks to promote adherence by African states to the universal values and principles of democracy and respect for human rights premised upon the supremacy of the constitution and respect for the rule of law.*
- II. The GoZ must also investigate all allegations of human rights violations, prosecute and punish perpetrators of acts of violence in order to bring justice to victims in particular the 1st of August Human rights violations that resulted in the extra judicial killings of seven civilians.*
- III. The GoZ must come up with legislative framework that compels political parties to comply with constitutional provisions and equal representation of men and women in their respective parties to ensure gender parity.*
- IV. Traditional leaders must remain apolitical in line with section 281 of the Constitution of Zimbabwe.*
- V. The government must also align come provisions of POSA, AIPPA and the Criminal Law as they hinder of the enjoyment of fundamental freedoms such as freedom of assembly and association (section 58), freedom of expression and of the media (Section 61)*
- VI. The government must implement the findings and the recommendations of the Commission of Inquiry into the 1st of August post- election violence. All those found responsible of the violence and in particular the killings must be brought to account.*

Recommendations to the Zimbabwe Electoral Commission

- I. The Forum urges ZEC to be true to its mandate in section 239 (a) of the Constitution to be truly independent, professional and transparent. The lack of transparency contributed to the mistrust between ZEC, political parties and all stakeholders.*
- II. The parliament of Zimbabwe must carry out comprehensive electoral reforms. The first priority being the alignment of the Electoral Act with the Constitution so that all Zimbabweans enjoy their political rights in particular the right to vote.*
- III. ZEC must also ensure that for future elections the voter roll is updated and available on time for all electoral purposes.*
- IV. ZEC must ensure transparency in the printing and designing of ballot papers by all stakeholders.*

Recommendations to political parties

- I. Political parties must educate their supporters on the effects of political violence and also to urge their supporters to desist from electoral mal practices such as vote buying, defacing of posters hate speech and cyber bullying among other human rights violations.*
- II. Political parties must deploy polling agencies at all polling stations and these polling agents must observe all the processes at the respective polling stations. This is so as to enhance transparency.*

Recommendations to Parliament

- I. Parliament must priorities the alignment of all electoral related laws with the Constitution.*

Recommendations to the Independent Commissions

- 1. The Zimbabwe Electoral Commissions must comply with its mandate to receive complaints and take such action which is appropriate as provided for in section 239 of the Constitution.*

2. *The Zimbabwe Human Rights Commission (ZHRC) must comply with its mandate to investigate human rights violations in line with their independence as provided for in section 243 of the Constitution.*

PART A

Introduction

The report is a reflection of the monitoring and observation of the electoral process by the Zimbabwe Human Rights NGO Forum (the Forum). On the 30th of July 2018, Zimbabwe held its historic plebiscite without its old time leader former President Robert Mugabe who was ousted in a coup in November 2017. This then became a very interesting election that was run on a so- called ‘reformist’ agenda by President Mnangagwa who took further steps to invite International Election Observers from the European Union (EU), the United States (US) and the Commonwealth- a position that had been abandoned by the former President Mugabe when he had come under extreme scrutiny and vilification because of accusations of gross human rights violations perpetrated by members of the ruling Zimbabwe African National Union Patriotic Front (ZANU PF) party and State agents This report is a reflection of the 2018 harmonised elections from a human rights perspective.

Methodology

Information for the compilation of this report involved both primary and secondary sources of information.

Primary sources

The primary sources of information were as outlined below.

- ✓ The Forum devised a strategy to have all the Forum secretariat staff and its human rights monitors in the country’s 10 provinces accredited for the observation of 2018 harmonized elections;
- ✓ Two toll free lines were secured for reporting on human rights violations;
- ✓ A call centre was established where human rights violations were received from citizens;
- ✓ The Forum also participated in various stakeholder meetings relating to the electoral process;

- ✓ In addition, the Secretariat and member organisations deployed a team of monitors and lawyers to observe and assist victims of the post-election violence in Harare's Central Business District (CBD), Dzivarasekwa, Highfields, Chitungwiza, Waterfalls, Kuwadzana and surrounding areas;
- ✓ Citizen reports received via the Ziso/Ilihlo platform;
- ✓ Human rights monitors collected reports on human rights violations across the country;
- ✓ The Forum's Public Interest Unit;
- ✓ General reports from walk in clients; and
- ✓ In order to ensure a coordinated response to cases of organised violence, members operating on the ground came together to share and verify information as well as to coordinate responses.

Secondary sources

Secondary sources of information included:

- ✓ A review of reports by the regional and international observer missions; and Reports from the Forum's member and partner organisations;
- ✓ Verified media reports; and
- ✓ The Forum convened the third human rights policy and reflective meeting on the 19th of September 2018 at Holiday Inn Hotel in Harare. The meeting focused on the 2018 elections from a human rights perspective. Some of the issues raised in the presentations are included as part of this report.

Legal framework for elections in Zimbabwe

Zimbabwe runs a system of harmonized elections, that is, all three elections are held simultaneously: presidential, legislative and local elections. This year's elections were polling station-based meaning that voters cast their vote at the polling station at which they are registered.

Elections in Zimbabwe are conducted in accordance with standards set out in domestic, regional and international laws governing elections.

Domestic legislative framework

At the domestic level, the main legal instrument governing elections in Zimbabwe consists of the following;

- a. *The Constitution of Zimbabwe Amendment (No. 20) Act 2013*-The Constitution has a number of provisions that enhance and promote the principles of democracy and good governance in line with regional and international laws. Section 67 provides for political rights while fundamental freedoms are provided for under Sections 58-61. A broader framework of elections and the functions of the Zimbabwe Electoral Commission (ZEC) are provided for in Chapter 7 and Section 239 of the Constitution respectively.¹

- b. *The Zimbabwe Electoral Act of 2008 as amended in 2018*-The Act covers all aspects of the election including; timing of elections; registration of voters; preparation, compilation and maintenance of voters rolls; qualification of voters; nomination and election of candidates to Parliament, the office of President and local authorities; guidelines for voting and counting procedures; the Electoral Court and its functions, observation and accreditation of observers and voter education. The Electoral Act also provides for a polling centre based voters roll. Moreover, the Act sets out electoral malpractices, which are punishable at law e.g. defacing political posters, intimidating others, campaigning at the polling station etc; a code of conduct for all political parties participating in a general election; multi-party liaison committee, which is made up of political party representatives and ZEC; the dispute resolution mechanisms for election related matters and the electoral court, which hears election related matters/petitions.

Regional and international framework

Zimbabwe is party to international and regional treaties, which promote the holding of democratic elections and the political rights of citizens. These instruments include:

- ✓ The Universal Declaration of Human Rights

¹ See the Constitution of Zimbabwe Amendment (No. 20) Act 2013

- ✓ The International Covenant on Civil and Political Rights
- ✓ The Convention Against all forms of Discrimination Against Women (CEDAW)
- ✓ The African Union (AU) Declaration on Principles Governing Democratic Elections in Africa
- ✓ The AU Guidelines for Election Observation and Monitoring Missions
- ✓ The African Charter on Human and Peoples' Rights (ACHPR)
- ✓ The SADC Principles and Guidelines on Elections

NB: On 21 March 2018, Zimbabwe signed the African Charter on Democracy, Elections and Governance (ACDEG). However, the Government of Zimbabwe (GoZ) has not taken any further steps towards the ratification and domestication of the Charter. The ACDEG can only be useful in the running of elections once it is domesticated.

PART B

The pre-election period and related human rights issues

The pre- election period witnessed for the first time in many years the significant opening up of civic space. Political parties and citizens were able to exercise fundamental freedoms to peacefully demonstrate and petition, freely assemble, associate and express themselves in governance issues without restraint. For example, the main opposition party the Movement for Democratic Change (MDC) under the banner of the MDC Alliance (MDC-A) was for the first time in many years since its formation in 1998, able to hold two protest marches in Harare CBD with no hindrance from the Zimbabwe Republic Police (ZRP).

Voter registration

The right to vote is provided for in Section 67 (3) of the Constitution, which states that:

“Every Zimbabwean citizen who is of or over eighteen years of age has the right to vote in all elections and referendums... and to stand for election for public office and if elected to hold such office.” The 2018 harmonized elections were conducted using a new voters roll. Voters were registered using the Biometric Voter Registration (BVR). The BVR was launched in October 2017 and ran until February 2018. Again for the first time in the history of elections in Zimbabwe, the so -called ‘aliens’ were allowed to register and participate in elections. A total of 5.681.604 registered to vote in the 2018 harmonized elections. Of these, 54 % were females and 46% were males.

However, voter registration was not free of human rights violations. As reported in the State of Human Rights Report Zimbabwe 2017,² ZANU PF supporters and some traditional leaders continued with their practice of compelling people to submit their

² See The Zimbabwe Human Rights NGO Forum, State of Human Rights Report, Zimbabwe 2017, <http://www.hrforumzim.org/wp-content/uploads/2018/05/SOHRR-2017.pdf>

voter registration slip serial numbers. Although the noting of serial numbers does not constitute an electoral fraud, the effect it has on voters tantamount to electoral fraud through harassment and intimidation, and is a breach of the Electoral Act and section 67 of the Constitution, which guarantees political rights. According to ZEC, *“the offences border on voter intimidation, impersonification of ZEC officials and trespassing should the persons enter your premises and are in violation of the Electoral Act and Section 156 (c) of the Constitution among others.”*³ The ZRP in a statement warned perpetrators that, *“It is a criminal offence for any citizen to coerce another citizen and take down or record their voter registration serial numbers and voter registration details.”*⁴

However, most incidences are never reported and in some instances the police take no action. At a Human Rights Mobile clinic conducted by the Forum in Mutare on the 25th of April 2018, the Forum received reports that police were not taking any action against those demanding BVR serial numbers in spite of some individuals making official reports. The Forum documented only one case of Abel Mauchi who sued a ZANU PF supporter, Matora Masiwa for assaulting and injuring him after he refused to surrender his voter registration slip.⁵

Internal political party democracy: Primary Elections

The two main political parties, ZANU PF and MDC-A conducted their primary elections in April and May respectively. These elections were characterised by intra-party violence, a demonstration of a high level of political intolerance amongst candidates and their supporters. From January to 15 June 2018, the Zimbabwe Peace Project (ZPP) recorded a total of 105 cases of intra-party violence. Of these, 62 cases were of intra party violence in ZANU PF and 53 cases in the MDC Alliance.⁶

³ Capitalkfm.com/article/demanding-voter-reg-slips-illegal-zec

⁴ Muza Mpofu, Full statement: ZRP warns culprits demanding serial numbers from voters' registration slips, 30 January 2018, <https://www.myzimbabwe.co.zw/news/15522-full-statement-zrp-warns-culprits-demanding-serial-numbers-from-voters-registration-slips.html>

⁵ Ziso/Iihlo Citizen Report

⁶ ZPP, Monitoring Report Week ended 15 June 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/ZPP%20Monitoring%20Report%20Week%20Ending%20June%202015.pdf>

The violence emanated from the jostling for the House of Assembly and local government candidature. For instance, the MDC-Alliance consensus-building meetings conducted in May were characterized by violence in most parts of the country. Violent skirmishes, allegations of voter rigging, manipulation and intimidation characterized the MDC-A meetings held in Budiro, Glen View North and South, Zengeza, Kambuzuma and Gokwe.

- On 20 May 2018, in Budiro suburb, MDC-A youths from Ward 43 resisting the imposition of Costa Machingauta blocked people from voting and closed the entry gate to the community hall resulting in the postponement of the elections.⁷
- On 27 May 2018, In St Mary's, Chitungwiza, violence characterized the consensus- building process, with counter complaints and arrests, home invasions, emotional and physical fights, mainly fronted by the MDC-A youths.⁸
- On 27 May 2018, in Glen View South Vimbai Tsvangirai Java the then aspiring legislator had to be escorted out of the venue after MDC-A party supporters turned violent and accused her of imposing herself in the constituency.⁹

Similarly, the ZANU PF primary elections that were held from the 29th of April to the 1st of May 2018, were tainted by irregularities which included, violence, assault, vote buying, ballot stuffing, harassment and intimidation, manipulation of voter registers and the deployment of police officers as polling agents.¹⁰

- On 03 May 2018, in Chegutu West, at Chinengundu Primary School, there were intra party skirmishes involving Dexter Nduna and his rival resulting in Nduna discharging a firearm and the injuring of one person.
- On 13 July 2018, at the ZANU PF Tembwe offices in Epworth, Ward 4, two people namely Chakafira Sande and Arthur Tome were seriously injured whilst 11 more people were injured during inter-party clashes which started at 1000 hrs and ended around 1500hrs. A group of ZANU PF youths from Epworth Ward 7, under the leadership of Kudakwashe Damson, Gift Kupfirira, Lavet Kwaramba and Peter Kadumbu disrupted a meeting held at Tembwe and accused the people from ward 4 of supporting Zalerah Makari. Makari was the

⁷ ZISO / Iihlo Citizen Reports

⁸ IYWD and Alliance of Community Based Organisations (ACBOs) Preliminary of MDC-T primary elections Observation Report <http://kubatana.net/wp-content/uploads/2018/06/Alliance-MDC-Primaries-Observation-Report.pdf>

⁹ Ibid

¹⁰ Heal Zimbabwe, Statement on the recent ZANU PF Intra-party violence, 04 May 2018, available on, <http://kubatana.net/2018/05/04/statement-recent-zanu-pf-intra-party-violence/>

Member of Parliament though she was campaigning as an Independent candidate since she had lost the primary elections. The accusations were then followed by a full swing assault of all Tembwe ZANU PF supporters present. Eight of the victims were arrested and charged with inciting public violence. The Forum lawyers assisted the eight victims. The matter was taken to CID Law and Order in Harare and the trial kicked off on the 16th of October 2018. The matter was removed from remand and the State was advised to proceed by way of summons when it is ready for trial.

International Solidarity

The departure of former President Mugabe unlocked a new chapter in Zimbabwe's international relations in particular efforts for re-engagement after more than two decades of international isolation. For the first time since the 2002 Presidential elections, Zimbabwe invited international observers. The government also formally requested to be re-admitted to the Commonwealth. It can be observed that since the November 2017 coup, President Mnangagwa recognised the participation of international observers would strengthen the credibility of the election process and therefore the doors of Zimbabwe were flung open to a number of observer organisations, who had been denied access to Zimbabwean elections by the former long-time President Robert Mugabe over the past two decades. The invited groups included missions from the European Union (EU), the Commonwealth, the Carter Centre, the National Democratic Institute (NDI) and International Republican Institute (IRI), as well as the African Union (AU) and Southern African Development Community (SADC) from closer to home.

According to Section 40b of the Electoral Act election observers accredited by ZEC are entitled to: (a) observe the election process and conduct of polling on Election Day; (b) be present during the counting or collation of votes, as well as verification of polling station returns by presiding officers; and (c) bring any irregularities in the conduct of elections to the ZEC's attention.¹¹ ZEC accredited 1,007 international observers, 202 foreign journalists and 11, 019 local observers.

¹¹ See the Zimbabwe Electoral Act

Observer Missions

- a. The AU-** deployed fourteen (14) long-term observers with a core team of four and 50 short-term observers for polling and counting.
- b. SADC-** deployed a total of 63 Short and Long Term Observers to all the ten Provinces of Zimbabwe. The observers were from 11 SADC Member States.¹² Honourable Tete António, Secretary of State of the Ministry of External Relations of the Republic of Angola, the Head of the Mission emphasized that given the political and economic challenges Zimbabwe has faced in the past two decades, SADC attached great significance to the potential of the 2018 General Elections to enable sustainable political and economic prosperity. He further said democratic elections, if professionally managed; and when anchored upon consensus-based rules and international human rights principles, contribute significantly to peace and stability. Conversely, poorly managed electoral processes serve as triggers of conflict.
- c. The EU-** had the biggest mission deployed across the country. It deployed 140 observers, the first time in 16 years. The head of the last European Union observer mission, Pierre Schori, was thrown out of Zimbabwe in 2002 on the eve of Presidential elections that were condemned as flawed. In the intervening years the EU did not send missions to other Zimbabwe polls as former President Robert Mugabe refused to grant them observer status in elections post 2002. The vote assessment by the EU was critical in determining whether Zimbabwe could earn the trust of the international community, which could help trigger an economic revival after many years of economic decay and recession.
- d. The Commonwealth observer mission-** the mission composed of 23-members. Former President of Ghana John Dramani Mahama chaired the Commonwealth Observer Group. The Commonwealth had last observed elections in Zimbabwe in 2002. This was the first time the Commonwealth had observed elections in Zimbabwe since the country withdrew its membership in

¹² The 11 SADC member States are namely, Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Namibia, Malawi, Mauritius, Mozambique, South Africa, Tanzania and Zambia

2003. The first election it observed in the country was the Independence elections in 1980.

- e. **International Republican Institute (IRI) and National Democratic Institute (NDI)** The IRI observer mission, led by former Liberian President Ellen Johnson Sirleaf, and NDI delegation, led by former Central African Republic President Catherine Samba-Panza. The mission comprised of 60 observers.

The Nomination Court

The Nomination Court sat on the 14th of June 2018 through out the country. The nomination process was generally peaceful. However, as has been the case in previous elections, the voter's roll remained a contentious issue. ZEC failed to avail the voters roll on time for the sitting of the Nomination Court violating Section 155 (2) (c) of the Constitution which stipulates that ZEC must ensure that all political parties and candidates must have access to all material and information necessary for them to participate effectively. In addition, the Electoral Act in Section 21(1) and (3) explicitly states that "the voters' roll shall be a public document and within a reasonable time period after calling of an election, the Commission shall provide it in printed or electronic form as the person may request." Further, the secrecy around the printing of the ballot papers was also a major concern to the contesting parties and individual citizens. Section 52A (a) of the Electoral Act states that ZEC should without delay provide information to all political parties, candidates and observers on,

- a) *"where and by whom the ballot papers for the election have been or are being printed; and*
- b) *the total number of ballot papers that have been printed for the election; and*
- c) *the number of ballot papers that have been distributed to each polling station"*

The conduct by ZEC of maintaining secrecy around the printing of ballot papers and the delay in availing the voters roll in time for the nomination court fell short on SADC and the AU guidelines on the conduct of free, fair and credible elections.

A total of 23 candidates registered for the presidential candidacy, 1.631 for the National Assembly and 6.576 for Local Authorities elections.

Human Rights Violations during the nomination process

The Nomination process was generally peaceful, however, the Forum Researchers who were observing the process in Harare noted disturbances at the Chitungwiza Municipality Nomination Court. The human rights violations documented by the Forum and ZESN are summarized.

On 14 June 2018, at the Chitungwiza Municipality, trouble began when an MDCT Khupe candidate tried to skip the queue and submit papers for all his party's Council candidates and he was barred by the MDC-A supporters. After being stopped he then tried to smuggle the papers through the window using another party member who was already in the Nomination Court room. This did not go well with the MDC-A youths who assaulted and manhandled him until the uniformed police officers intervened by hiding him in another room away from the angry MDC-A supporters. Commotion continued with youths singing derogatory and obscene songs against Thokozani Khupe calling her a 'sell out' and 'prostitute' and threatened to deal with if she continued selling out. One police officer was also manhandled by the rowdy and visibly intoxicated youths. The riot police had to be called to quell the situation and they came armed with tear gas canisters, baton sticks and in full anti-riot regalia and attack dogs. All supporters and non-candidates were dispersed from the Nomination arena and were allowed to observe from outside the gates. Justice Chigumba (ZEC Chairperson) had to attend to the scene later and she entered the premises for a briefing and left about 20 minutes later. The chanting of slogans and singing continued outside the arena as youths manned the gate and searched everyone who wanted to enter making sure they would not submit any more notification papers on behalf of the MDC- T Khupe candidates. Most of the nomination papers for the MDC T Khupe candidates were torn by the angry MDC -A youths.

ZESN monitors reported two (2) cases of violence, which are as follows.

- On 14 June, at the Chitungwiza Municipality Office, in Harare Province, some MDC-T Alliance supporters blocked the gate, preventing some people who had

lost in the primary elections from entering the Nomination Court. Riot police had to intervene.¹³

- On 14 June, in Uzumba Maramba Pfungwe, Mashonaland East Province, police had to be called in to remove one aspiring candidate who had forced his way into the Nomination Court without approval from his party.¹⁴

Media coverage

Section 155 (2) (d) of the Constitution obliges the State to provide all parties and candidates with fair and equal access to the electronic and print media both public and private. The State-owned or State controlled media largely dominates the media landscape in Zimbabwe. Allocation of broadcasting licenses has so far benefitted only radio stations directly or indirectly linked to the government. The legal framework for the media, while providing for fundamental rights, needs improvement. Laws such as the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Services Act (BSA) and the Public Order and Security Act (POSA) contain provisions that are not in line with fundamental freedoms included in the Constitution such as freedom of expression and of the media (Section 61) and access to information (Section 62).

Media (both print and digital) plays an important role in the realization of the right to freedom of expression and participation. Objective and unbiased information helps citizens to make informed decisions in democratic processes such as elections.

In general, the media operated in a generally free environment. Although the public print and electronic media was opened up to other political parties and contesting candidates, it remained polarised and skewed in favour of ZANU PF and continued to act as its mouthpiece¹⁵

According to the Media Monitors–Zimbabwe report, Government-controlled newspapers The Herald and The Chronicle also heavily favoured ZANU-PF, by

¹³ See ZESN's Report on 2018 Nomination Court, June 2018

¹⁴ See ZESN's Report on 2018 Nomination Court, June 2018

¹⁵ The Commonwealth, Preliminary Statement of the Commonwealth Observer Group, Zimbabwe Harmonised Elections, 2 August 2018, http://thecommonwealth.org/sites/default/files/inline/FINAL%20-%20Zimbabwe%20Preliminary%20Statement%20-%202020August%202018_1.pdf,

allocating 62.8% and 64.8%, respectively, of their electoral coverage to the ruling party. While 43.5% of the reports about ZANU-PF in both newspapers were presented in a positive tone, 59.3% of the coverage received by MDC-A in The Herald and The Chronicle portrayed the opposition party in a negative tone¹⁶. Such unbalanced reporting also characterised the coverage by private newspapers in favour of MDC-Alliance. Some news and opinion articles published by The Herald, The Standard and Newsday on 29 and 30 July violated the campaign silence period. Both ZANU-PF and MDC-A Presidential candidates violated the campaign silence period by sending out campaign messages on 29 July, through Facebook and in the course of a press conference, respectively.

ZBC gave the most coverage to political parties as they covered 13 parties overall. Of the parties covered, ZANU PF accounted for 65% of the total time, ahead of Independent political actors and MDC Alliance who were featured in 25% and 6% of the coverage respectively. A closer look at the time allocated to the political parties shows that the coverage was not equitable. The remaining ten parties featured on the stations combined for 4% of the time allocated to political actors.

While print and electronic media at national and provincial levels made efforts to provide some coverage to minor parties, ZANU-PF and the MDC-Alliance largely dominated the election-related information presented to voters. In accordance with the Electoral Act, the State broadcaster the ZBC afforded free access to political contestants through various programmes (“The Manifesto”, “The Candidate” and “The Debate”) aired on the State-owned TV and radio stations. Nevertheless, ZBC failed to abide by its legal obligation to ensure equitable and fair treatment of all political parties and candidates in its news and current affairs programmes.

According to the European Union Election Observation Mission (EUEOM) preliminary statement, *“media operated in a generally free environment, but overwhelming bias in state media meant legal provisions for fair and balanced reporting were not*

¹⁶Media Monitors- Zimbabwe, Media coverage of the 2018 elections in Zimbabwe, An Assessment of the Medias Coverage of the Electoral Period, 31 May -22 July 2018
<http://www.mediamonitors.org.zw/assessment-of-the-medias-coverage-of-the-election-period/>

respected”¹⁷ The Commonwealth Observer Mission’s report state that the state broadcaster; the Zimbabwe Broadcasting Corporation (ZBC) had “*a patent tilt in coverage in favour of the governing party.*”

Social media

Social media channels played an important role in the dissemination of opinions and information during the 2018 election campaign. However, hate speech and abusive language proliferated on social media during the campaign; much of it directed at women for instance the heckling of Thokozani Khupe the Presidential candidate for MDC-T and ZEC Commissioner Justice Priscilla Chigumba.

Freedom of expression and of the media

Section 61 of the Constitution guarantees freedom of expression and of the media. Journalists were threatened and assaulted during the scope of their employment. The following are some of the documented cases by MISA on violation of freedom of the media.

- On 14 May 2018, Tawanda Mudimu, a photographer with The Herald was manhandled by MDC-A supporters while covering a demonstration at the party’s headquarters in Harare.
- On 26 June, Miriam Mangwaya, a reporter with The Mirror was harassed by a ZANU PF youth while traveling from the burial of Chief Hama in Chirumanzu district.

Postal voting

Section 72 of the Electoral Act states that registered voters located outside Zimbabwe on government duty and their spouses are eligible to vote by post. If they wished to do so, they must have sent an application for a postal ballot paper to the Chief Elections Officer. The deadline for returning postal vote ballots was July 16, 2018. Postal ballots would then be counted together with ballots cast on July 30, 2018.

¹⁷ EOEOM, Preliminary statement on Zimbabwe harmonised elections, 01 August 2018, https://eeas.europa.eu/election-observation-missions/eom-zimbabwe-2018/49034/preliminary-statement-eucom-zimbabwe-2018-harmonised-elections_en

The case of special voting or postal ballots has been a contentious grey area and a historical note on it is worth elaborating on. In the March 2008 Zimbabwe harmonised election, members of the security sector, who would be out of their constituencies on election related duties on polling day, were allowed to cast a postal ballot in advance. In 2008, some 4 350 members of the security sector apparently met the necessary criteria and were granted postal votes. However, evidence emerged that this system was abused, as members of the security sector were obliged to complete postal vote forms under the watchful eye of their superiors. The system was thus changed under the amended Electoral Act for 2013 to provide a “Special Vote” for sector members who met the same criteria of absence from the constituency on account of duty. ZEC received nearly 66 000 applications¹⁸ for Special Votes from the ZRP, and accepted 63 268,¹⁹ a number which appeared massively inflated against what the then Minister of Finance, Tendai Biti claimed was an establishment on the payroll of 44 133. Allegations were made that the number had been increased by the inclusion of spouses of members and general hands employed at police stations²⁰. The police spokesperson claimed that the large figure was due to the inclusion of the Special Constabulary that would be on duty during elections.

Interestingly in 2018 the high figures, which had raised eyebrows in previous elections were brought. For instance, 7 464 people successfully applied for the postal vote and these were members of the ZRP, the Zimbabwe National Army (ZNA), Air Force of Zimbabwe, Ministry of Foreign Affairs officials and electoral officials. Of these 6 177 were returned to ZEC on time for processing.

The postal vote almost led to a credibility crisis for the election because on the 12th of July 2018 an uproar erupted among the opposition MDC Alliance, ZEC and the police over the law enforcement officers’ ‘clandestine and illegal voting’ in Bulawayo amid vote-rigging fears. Despite no agreement on the ballot papers and within one day of

¹⁸ Originally reported as being 69 222 - Special Vote Court Case Postponed as ZEC U-turns on Voters“ Roll SW Radio 17.07.13. As quoted in RAU (2014). "Numbers out of Tune? An examination of the vote in Harmonised July 2013 Election. "Full Report. Harare: RAU.

¹⁹ Joyce Kazembe, the Deputy Chair of ZEC, reportedly supplied the revised numbers – see ZEC Starts Ballot Paper Distribution The Herald 24.07.13. As quoted in RAU (2014). "Numbers out of Tune? An examination of the vote in Harmonised July 2013 Election. "Full Report. Harare: RAU.

²⁰ Flawed Special Voting System The Zimbabwean 10.07.13. In RAU (2014). "Numbers out of Tune? An examination of the vote in Harmonised July 2013 Election. "Full Report. Harare: RAU.

ZEC saying that printing was complete, ballot papers were used at police stations for postal ballots. There also were no electoral officials and polling agents and election observers in violation of the Constitution. When ZEC was challenged over the absence of electoral officials at Ross police camp in Bulawayo, ZEC’s Acting Chief Elections Officer Mr. Silaigwana responded: *“There is nothing wrong with the absence of ZEC there because remember let us say someone is in Darfur on peace keeping mission or someone is at the embassy in the United States, do you think ZEC can be in all those places?”*²¹ Although ZEC later confirmed that postal voting did take place at Ross Camp, it failed to explain why there were no officials at Ross Camp.

It was later clarified by ZEC that what had happened was that postal voting had occurred and some police officers had chosen to post their ballots through their respective police station which is Ross Camp while others posted on their own but no illegalities had occurred as everything was done as prescribed under Section 72 of the Electoral Act and these ballots were to be received by ZEC by the 16th of July 2018 i.e. 14 days before actual polling.

A summary of human rights violations – the pre-electoral environment

Human rights violations during this period emanated directly and indirectly from; inter and intra party violence; ZANU PF and MDC-Alliance primary elections and from the general the administration of elections.

Table 1 below summarises cases of human rights violations that were documented in the pre- electoral period.

Table 1: Cases of human rights violation for the period April to June 2018

Nature of violation	April	May	June	July	Total
Assault	6	7	16	24	53
Abduction	-	-		4	4

²¹ The Herald, *Postal voting underway: ZEC*, 13 July 2018, <https://www.herald.co.zw/postal-voting-underway-zec/>

Arbitrary arrest & detention	1	1	1	-	3
Harassment & intimidation	23	104	138	168	433
Malicious damage of property (MDP)	-	6	13	32	51
Politically motivated killings	-	2	1	-	3
Rape/ sexual assault	-	-	-	1	1
Torture	3	1	-	1	5
Violation of freedom of assembly and association	20	4	5	6	35
Violation of freedom of the media	1	1	2	-	4
Violation of freedom to demonstrate & petition	3	-	-	1	4
Violation of freedom from arbitrary eviction	-	-	1	-	1
Intra party violence	20	34	44	-	98
Abuse of power by traditional leaders	-	2	4	4	10
Partisan distribution of food aid & agricultural inputs	-	1	1	5	7
Infringements of political rights	-		1	4	5
BVR intimidation/ harassment	18	-	-	-	18
Denial of the right to education	-	-	-	7	7
Total	95	164	227	257	743

Source: Statistics were obtained from the Citizen reports received via the Ziso/Ilihlo platform; the Forum's member organisations, the Forum are Public Interest Unit; and from verified media reports.

Harassment and intimidation

The pre-electoral environment was characterised by high incidences of cases of harassment and intimidation. It is important to note that irrespective of the different contexts in which elections have been held in Zimbabwe, harassment and intimidation remain at the core of ZANU PF election campaign strategy. From as far back as the 1985 elections, organized violence and intimidation has been a strategy of ZANU PF to coerce citizens to vote for them and also to punish opposition party supporters.²² Traditional leaders and youths are often used as instruments of perpetuating violence.

Politicization of food aid and agricultural inputs

Reports of partisan distribution of food aid and farming inputs were also received. The main perpetrators were the traditional leaders who were reportedly denying opposition supporters' food aid and inputs. The role of traditional leaders in Zimbabwean politics has always been a bone of contention. Traditional leaders have always been meddling in politics and openly declaring their allegiance to ZANU PF in violation of Section 281 (2) (a), which prohibits traditional leaders from participating in partisan politics or acting in a partisan manner. In previous elections traditional leaders assumed the role of ZANU PF campaign managers by forcing villagers to attend ZANU PF rallies and to vote for it.

Use of public institutions and resources

The 2018 harmonized elections witnessed the overt abuse of public institutions and resources in particular during the run up to the elections. The ruling ZANU PF party was the main culprit in this regard. The tendency by ZANU PF to abuse State resources for party activities is exacerbated by the current set up in which there is a conflation of the State and the Party. From its primary elections, ZANU-PF relied on state resources. For example, police officers and other security agencies were used as polling officers

²² Todd Moss and Stewart Patrick, *After Mugabe: Applying post-conflict recovery lessons*, Africa Policy Journal, Vol. 1 Spring 20060

during its primary elections. School premises, school buses, fuel allocations, helicopters, government vehicles were all abused by ZANU-PF.

School children were reportedly forced to attend ZANU PF rallies and social media was awash with pictures of school children donning party regalia on top of their school uniforms. The involvement of school children in politics and the abuse of school infrastructure for campaign rallies and other politically related activities have always been a cause of concern for the Forum. It seems ZANU PF cannot go into an election without using government property. However, this year ZANU PF was not that lucky as the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) in partnership with VERITAS (a member of the Forum) sought an interdict to stop the use of school property for political purposes and the forced attendance of school children at political rallies. In a landmark ruling, the High Court interdicted ZANU PF from:

- a) *“Encouraging / forcing school children to attend rallies;*
- b) *Causing the closure of schools for any of its rallies or activities;*
- c) *Compelling teachers to attend rallies, to wear party regalia, to prepare performances for children to deliver at rallies, or to make contributions towards rallies; and*
- d) *Using school property for political purposes, which covers commandeering buses to ferry people to and from their rallies*

The Minister of Education and his officials were also prohibited from assisting political parties in any of the prohibited activities. The Minister was also ordered to take measures, including the drafting of regulations to prevent political parties from abusing school property, staff and school children.”²³

It is sad to note that ZANU-PF appealed the decision to the Supreme Court, which automatically suspended the High Court’s decision and ZANU PF reportedly continued using school premises for its rallies.

Traditional Leaders

The role of traditional leaders in Zimbabwean politics has always been a bone of contention. Traditional leaders have always meddled in politics and openly declared their allegiance to ZANU PF in violation of section 281 (2) (a), which prohibits traditional leaders from participating in partisan politics or acting in a partisan manner.

²³ VERITAS, Election Watch 27-2018 - VERITAS/ARTUZ Court Case to Stop Abuse of Schools, Election Watch, 27/2018, 4 July 2018

In previous elections traditional leaders assumed the role of ZANU PF campaign managers by forcing villagers to attend ZANU PF rallies and vote for it. In January this year at a government function in Gweru where traditional leaders were handed over new cars, they again pledged their support of ZANU PF.

During the BVR exercise traditional leaders were identified as some of the leading perpetrators in the recording of serial numbers from the registrant's voters slips.²⁴

However, on a positive note regarding the role of traditional leaders in politics, on the 9th of May 2018, Justice Clement Phiri ordered the President of the Chief's Council, Chief Fortune Charumbira to retract his statements stating a seven (7) day ultimatum to withdraw his statement that traditional leaders would support the ZANU PF presidential candidate in the 30th July 2018 harmonized elections. The Ministry of Local Government was also ordered to take disciplinary measures against him. This followed a court application by the Election Resource Centre (ERC) compelling the chief to retract his statement, which was a violation of Section 281(2) of the Constitution. However, at the expiry of the ultimatum, Chief Charumbira had not complied with the High Court order. Instead, the Chief applied for a rescission of the judgment arguing that he was misquoted.

However, on the 18th of June 2018, Chief Charumbira requested a retrial, claiming that he had not known about the case resulting in the case being placed on hold pending a final decision, which never came until the Election Day

Administration of elections

In general, there was limited trust in ZEC due to the exhibited lack of trust and accountability. As has been the case in previous elections, the voter's roll remained a contentious issue. ZEC failed to avail the final voters roll to election stakeholders, parties and candidates, consequently the voters roll that was used on polling day was different from the voters roll that was availed to political parties.

²⁴ See The Zimbabwe Human Rights NGO Forum, State of Human Rights Report, Zimbabwe 2017, <http://www.hrforumzim.org/wp-content/uploads/2018/05/SOHRR-2017.pdf>

As such, Zimbabwe went to the elections with unresolved issues around the voters roll and over transparency and credibility of ZEC. Over the years ZEC has behaved as an appendage of ZANU PF.

PART C

The Election Day

The Forum deployed 40 election observers, these (included the secretariat and the human rights monitors in the country's ten provinces) to observe the voting on the 30th of July. The Election Day was generally peaceful. Most polling stations opened on time. However, there were cases of voter intimidation and voter buying. The following are some violations that were noted on the Election Day.

Violation of the Constitution by Traditional Leaders

Section 281(2)(a) and (c) of the *Constitution of Zimbabwe Amendment No.20* provides that traditional leaders must not be members of a political party, or in any way participate in partisan politics or act in a partisan manner. These are principles that traditional leaders must comply with. Traditional Leaders are duty bound to keep away from engaging in politics or openly declaring their political interests. Any such conduct is an affront to the Constitution. On election day, sadly,

. some traditional leaders were reportedly shepherding their villagers to the polling booths in areas like Mudzi, Muzarabani and Buhera South. with an instruction to vote for ZANU PF in what is popularly known as "sabhuku nevanhu vake" (a village head and his subjects). There was partisan involvement of traditional leaders in the electoral process. According to the reports from the Forum's monitors, traditional leaders were deployed as election agents for ZANU PF. These reports were also buttressed by ZESN's preliminary report, which states that in Gokwe, Chireya area, approximately 30 traditional leaders were deployed as election agents representing ZANU PF. The conduct of the traditional leaders was in violation of the principles to be observed by traditional leaders as entrenched in the Constitution.

Vote buying: Section 147 (1) (b) of the Electoral Act prohibits the canvassing of votes in the vicinity of the polling stations. This makes any coercive conduct by a political party in the vicinity of the polling station an electoral malpractice. This conduct where the circumstances are befitting can also amount to bribery where the giving of gifts are meant to procure a vote for a political candidate as prescribed by section 136 of the Electoral Act. In some instances food aid was placed within the vicinity of the polling station thus coercing citizens to support certain political parties because of the perceived economic benefits in the form of food aid and agricultural inputs. Some ZANU members were actually distributing food and other goodies at polling stations. In Mazowe Central, Mashonaland Central ZANU PF candidates were seen distributing maize using forms from the Ministry of Labour and Social Welfare a day before polling day.

Disenfranchisement of the right to vote: The Constitution provides in section 67 (3) (a) for the right of every citizen, subject to the constitution, to be able to vote in all elections and referendums to which the constitution applies or any other law. Some voters did not vote because they were not appearing on the voters roll where they expected to find their names.

Undue Influence: The Electoral Act in section 134 provides that any person who uses threats to induce voting or the refraining from voting commits an offence. As a result of intimidation, some areas like Rushinga in Mashonaland Central and Masvingo province recorded a high number of assisted voters.

- In addition, the following are some of the cases that were documented by the Forum on Election Day, On 30 July Village Heads Givemore Nerwande (Nerwande village), Simon Ruvhute (Ruvhute village) and Mark Tupe (Mavi village) in ward 4, Gokwe were reportedly seen at Chireya and Kayenga polling stations accredited as ZANU PF polling agents. One of them was chased away by the presiding officer.
- On 30 July ZANU PF representatives allegedly sent by Cleopas Kundiona and Cornelius Mutodza were seen outside Nehanda Hall, Dombotombo hall in ward 2, Tapfuma Primary school and Wilshire Primary School polling stations in Marondera urban taking down names of people who had voted.

- On 30 July, Musafa Garapa and an unidentified woman of ZANU PF in Ward 11, Magunje were seated at the entrance of Mahororo School polling station where they were reportedly advising people to vote for ZANU PF. The Presiding Officer was informed and no action was taken.
- On 30 July in Bikita East, ward 25, ZANU PF Chairperson Richard Mabiti went to Muvava Business Centre and highlighted that people were supposed to vote ZANU PF to avoid a repeat of the 2008 violence.
- On 30 July in Buhera South, ward 21, outside Chabata Primary School, polling Station, ZANU PF councilor David Chirinda and activists Faith Chipadza and Abraham Peresu convened a meeting to intimidate voters. Other villagers intervened leading to the arrest of the two.
- On 30 July, in Chivi South, ward 25 at Ngundu, Roman Catholic polling station head Mike Matavire from Imbayago village was marking a register as people voted.
- On 30 July, Florence Chijoto, a ZANU PF supporter in Ward 17 at Muzika Polling station in Mutoko, was reportedly seen noting down ID numbers and serial numbers of ZANU PF party members queuing to vote. The ZEC presiding officer later stopped her.

Participation

“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by

*equivalent free voting procedures.*²⁵”

The right to participation, assembly and free expression is safeguarded in Sections 67, 58 and 61 of the Zimbabwe Constitution respectively. These rights are also enshrined in regional and international human rights instruments that Zimbabwe is a party to such as SADC Principles and Guidelines Governing Democratic Elections, the ACHPR, and the ICCPR among others. These sets of rights are highly tested during election time. Section 67 of the Zimbabwe Constitution gives citizens the right to participate peacefully in political processes, including voting. However repressive laws such as the infamous POSA and AIPPA act as barriers to the realization of the right to participate in public life.

Human rights violations and participation

Zimbabwe has a history of unresolved human rights violations abetted by a culture of impunity. Most of the electoral violence happens in the rural areas to an extent that the rural people have not participated freely in elections from as far back as 2000 following the formation of a formidable opposition party the MDC. Indeed some communities are still haunted by the 2008 violence. Memories of the 2008 so -called ‘short’ and ‘long sleeves’ and the military led “*Operation makavhotera papi*” (Operation where did you place your vote) are still very fresh in most people.

Further, some of the perpetrators of human rights violations leave in communities as the victims. As such genuine participation is compromised as some will participate and make decisions based on their fears. This is exacerbated by traditional leaders who have become partisan and have openly shown their allegiance to ZANU PF to an extent they have become ZANU PF campaign managers. In October 2017 Chief Charumbira at a meeting of traditional leaders in Bulawayo openly declared that traditional leaders would support ZANU PF in the elections. Furthermore, partisan village heads are responsible for compiling lists of beneficiaries of food aid and agricultural inputs. As such villagers are either dissuaded from participating in political processes or they do so out of fear of retributive violence.

²⁵ See Article 21 of the Universal Declaration of human rights and section 155 of the Constitution of Zimbabwe

Participation by the Diaspora

Following an exodus of Zimbabweans to the Diaspora for both political and economic reasons, there have been calls for them to be included in the political processes including the right to vote. However, this has remained a pipe dream, as legal challenges have not been successful. Three applications have so far been filed seeking the Diaspora vote and all have not been successful. The Madzingo case was the first case brought before the Supreme Court in 2005.²⁶ This was followed by the Bukaibenyu case²⁷, which again was dismissed by the ConCourt. In April 2018 Gabriel Shumba and other Zimbabweans living in the Diaspora²⁸ filed a ConCourt application challenging Section 23 (3) of the Electoral Act, which prohibits Zimbabwean citizens who have been living outside the country to participate in electoral processes. The Act states a voter who is registered on the voters roll for a constituency shall not be entitled to have his or her name retained on such roll if, for a continuous period of 12 months, he or she has ceased to reside in that constituency.²⁹ The application like the previous two was also dismissed implying that about 4 million Zimbabweans in the Diaspora with the majority in South Africa remain disenfranchised. This is in spite of the right of all Zimbabwean citizens to vote being protected in Section 67(3) of the Constitution unfortunately the Electoral Act is still to be aligned with the Constitution.

Women participation

Section 17 of the Constitution obliges the State to promote full gender balance and in particular the full participation of women in all spheres of society. In addition Zimbabwe has signed and ratified regional and international conventions such as CEDAW that advance gender equality and women's rights. In spite of this Zimbabwe

²⁶ Madzingo and others v Minister of Justice Legal and Parliamentary Affairs and Others (22/0) ((22/0)) [2005] ZWSC 100 (22 February 2005), Judgment No. SC100/05

²⁷ Bukaibenyu v ZEC Chairman & Others (CCZ 12/17 Const. Application NO. SC 126/12) [2017] ZWCC 12 (28 June 2013);

²⁸ The application was filed by Gabriel Shumba, Sibonile Mfumisi (both from South Africa) and Darlington Nyambiya (from the United Kingdom) v (1) Minister of Justice, Legal & Parliamentary Affairs, (2) The Chairperson of (3) ZEC (4) The Minister of Foreign Affairs (5) The Minister of Finance & Economic Development (6) The Attorney General of Zimbabwe, Judgement No.CCZ4/18, Case No. CCZ3/18

²⁹ See Section 23 (3) of the Electoral Act, Chapter 2:13

continues to lag behind in upholding gender balance. Although women constituted the majority of voters, their participation as candidates remained low during this election. Out of the 210 legislative seats only 25 seats were won by women representing 12%. Under proportional representation, out of 270 seats, women got 85 representing 31.5% and of the 80 senatorial seats, 35 were won by women representing 43.5%. In the actual election, the results show that only 12.4% women were elected outside the women's quota for National Assembly. In spite of all this, for the first time, there was an increase in presidential candidates. There were four women presidential candidates. On a very sad note, women candidates and election officials were targets of hate speech and cyber bullying. They were also subjected to unfair media and public scrutiny compared to their male counterparts.³⁰ However, in spite of all the abuses towards women, the Zimbabwe Gender Commission Preliminary Election Monitoring Report notes that female presidential candidates were in the top four despite a wide gap from the top two presidential contenders.³¹

Participation of persons with disability

Persons with disability have reserved representation. Further, Zimbabwe acceded to the Convention on the Rights of Persons with Disabilities in 2013, but no enabling act of the rights of persons with disabilities, as well as a prohibition on unfair discrimination on disability grounds in Section 56. There was no provision for Braille ballot papers. However, visually impaired people were allowed to be accompanied by a trusted person to assist in the casting of the votes in line with the provisions of the Electoral Act. However, this procedure does not protect the secrecy of the vote as provided for in the Constitution. A High Court application to compel ZEC to provide Braille ballot papers was rejected.

³⁰Zimbabwe Gender Commission Preliminary Election Monitoring Report on the 2018 Harmonised Elections, 16 August 2018,<http://elections.co.zw/zimbabwe-gender-commission-preliminary-election-monitoring-report-on-the-2018-harmonised-elections/>

³¹ Zimbabwe Gender Commission Preliminary Election Monitoring Report on the 2018 Harmonised Elections, 16 August 2018,<http://elections.co.zw/zimbabwe-gender-commission-preliminary-election-monitoring-report-on-the-2018-harmonised-elections/>

Results

The Final results as announced by ZEC declared Emmerson Munangagwa as the President of Zimbabwe with 2 460 463 (50.8%). Nelson Chamisa of the MDC-A had 2 147 436 (44.3%) votes. The national Assembly results were as follows ZANU PF 145 seats, MDC-A 63 seats, National Patriotic Front 1 seat and an independent candidate won the other 1 seat. The outcome was largely disputed by the MDC-A in particular the presidential results. Mr. Nelson Chamisa the President of the MDC-A lodged a legal challenge with the ConCourt. However the Concourt upheld the results.

PART D

Post election period and human rights violations

Optimism about Zimbabwe turning a new page in the aftermath of the first election since the removal of the then President Robert Mugabe quickly evaporated when citizens and opposition supporters took to the streets on the 1st of August 2018 to protest against the perceived delay in the announcement of presidential results. Riot police tried to disperse protesters but military armored vehicles unexpectedly rolled onto the streets. Soldiers fired live ammunition and indiscriminately assaulted civilians including those who were not taking part in the demonstration. According to official statistics seven (7) people died from gun shots and many more were injured. The table below is a profile of the victims of the 1st of August extra-judicial killings.

Table 2: Extra-Judicial Killings 2018

	Date of death	Name	Cause of death	Narration	Bio-sketch
1.	01 Aug	Sylvia Matambo	Gun shot	Victim was shot in the back as she tried to escape following gunshot by the ZNA. She was laid to rest on the 4th of August at Zororo Park in Chitungwiza	Sylvia was 52 years old. She was working at the Zimbabwe National Water Authority. Sylvia was married to Robert Maphosa & is survived by two sons, one daughter and one grandchild
2.	01 Aug	Gavin Charles Dean	Gun-shots	Victim was shot twice in the arm and in the pelvis by members of the ZNA	Gavin was 48 years old and unemployed. He is survived by a 13-year old daughter Orianna.
3.	01 Aug	Ishmael Kumire (Shuz)	Gun-shots	Victim was shot by members of the ZNA & was buried on 04 August 2018	Ishmael was 41. He was a fruit vendor in Harare & a sole breadwinner. He was married to Suspicious

				at Matope village, Domboshava	Ziyamba & is survived by four (4) children
4.	01 Aug	Jealous Chakandira	Gun-shots	Victim was shot on the chest from the front by members of the ZNA while walking along Nelson Mandela and Julius Nyerere. The incident occurred around 1600hrs. He died on the spot. He was buried in Mutawatawa.	He was a Commuter Omnibus driver for the Mount Pleasant route.
5.	02 Aug	Challenge Tauro	Gun - shots	Victim was shot twice in the abdomen on the 1 st of August 2018 near Gulf Complex where he worked. He was taken to Harare hospital first then to Parirenyatwa hospital where he died. He was buried at New Valley Farm, Chifamba Ward 20 in Mazowe	Challenge was 20 years old and worked at the Gulf complex in Harare CBD. He is survived by his wife.
6.	01 Aug	Brian Zhwao	Gun Shots	Victim was shot on the 1 st of August at Copacabana in the CBD	Brian was a vendor at Copacabana market in the CBD.
7.	02	Fungai Mukanyire	Gun Shots	Victim was shot on the 1 st of August at Copacabana in the CBD	Mukanyire was shot by the military on the 1 st of August

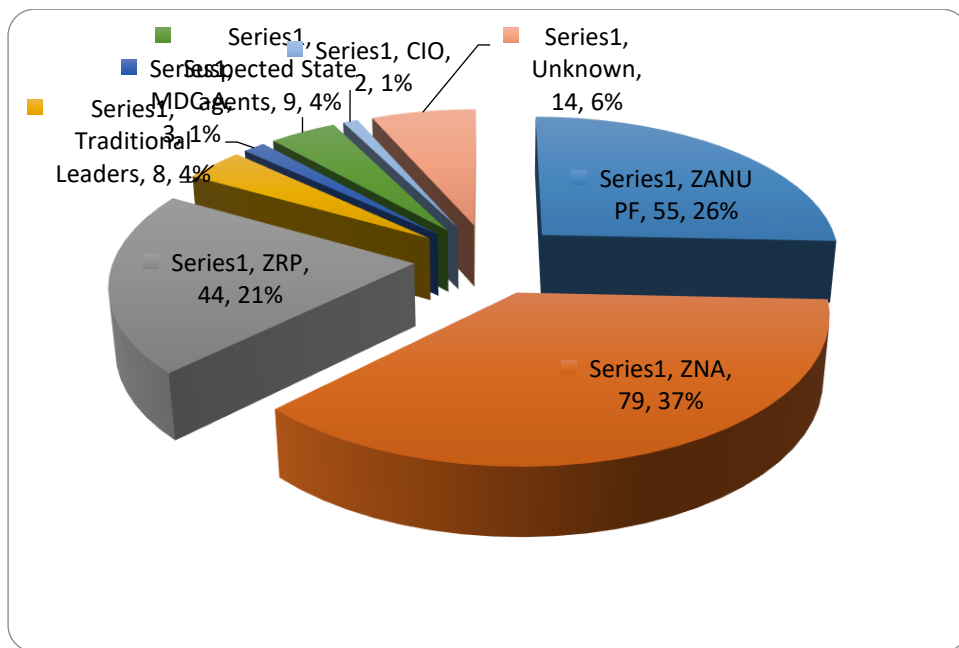
The 1st of August military intervention was followed by a military crackdown of real and perceived supporters of the MDC-Alliance in Harare's density suburbs. The ZNA officers were the main perpetrators of violence that took place in Harare from the 1st to the 4th of August 2018. The violence spilt over to rural areas in particular Mashonaland provinces, Masvingo, Midland and Manicaland provinces were reports of retributive violence on citizens perceived to have voted for the MDC or those who acted as polling agents for the MDC Alliance were reported. The Forum documented a

total of 274 cases of post election violence. The violence was in the form of assaults (58); abductions (17); torture (4); politically motivated rape (3); harassment and intimidation (60), arbitrary arrests (51); extra- judicial killings (7); malicious damage of property (10); sexual torture (3); displacement (28); attack on human rights defenders (3); home and office raids (8); partisan distribution of food aid and agricultural inputs (6), attacks on journalists (7); and disrupted meetings (4).

The main perpetrators of retributive violence in the rural areas were mainly ZANU PF supporters and traditional leaders.

The chart below is a summary of the perpetrators of the post election violence.

FIGURE 1: Perpetrators of violence by institution affiliation 1- 31 August 2018



The ZNA were the main perpetrators of the post election violence accounting for 37% of the violence, followed by ZANU PF which accounted for 26%, ZRP 21%, Unknown 6%, traditional leaders and suspected State agents accounted for 4% and the MDC-Alliance and the CIO accounted for 1% of the post elections violence.

The ZNA was also responsible for the seven (7) extra- judicial killings and also for the 42 of the 58 cases of assaults. In Harare’s high-density suburbs, for example in Chitungwiza and Kuwadzana community members were assaulted by man in military uniforms who were moving around the suburbs in military trucks. The army and

unidentified man in masks also conducted overnight raids on MDC-A supporters' homes and those suspected to have organized the 1st of August protests. For example, on 03 August 2018, Tendai Biti one of the MDC-A leaders, Happymore Chidziva the MDC-A youth leader and Philian Zamchiya an advisor to Chamisa had their homes raided by soldiers.

Key Interventions by the Forum

Following the post-election violence, that broke up on the 1st of August 2018, the Forum through its leadership position in coordination and shaping of the human rights agenda in Zimbabwe managed to coordinate responses to the violations. The table below illustrates key intervention by the secretariat and member organisations.

TABLE 1: Key Interventions by the Forum

Organisation	Intervention
Media Institute of Southern Africa-Zimbabwe (MISA-Z)	<p>Filed an urgent chamber application to the High Court in Harare challenging the constitution of ZEC led Media Monitoring Committee</p> <p>Challenged ZBC monopoly and partiality</p> <p>Filed urgent application to live stream the hearing of the election challenge</p>
<p>The Counselling Services Unit (CSU),</p> <p>The Forum,</p> <p>The Zimbabwe Human Rights Association (ZimRights),</p> <p>Zimbabwe Lawyers for Human Rights (ZLHR)</p> <p>Zimbabwe Association of Doctors for Human Rights (ZADHR)</p>	<p>Carried out verifications missions in the most affected areas and documented all pre- election, election day and post election human rights violations</p> <p>Produced a comprehensive Post –Election Violence Monitoring Report covering the period 01- 31 August. The report was used as the advocacy tool for engagement with the diplomatic community, the government and the ZHRC</p>
The 20 members of the Forum	Issued press statements and press briefings regarding the 1 st of August killings. To a large extent the statements

	influenced reports of the regional and international observer missions
Media Monitors Zimbabwe (MM-Z)	Media Monitors produced a report on ‘An Assessment of the Media Coverage of the Electoral Period 31 May-22 July 2018’ the report was used as an advocacy tool and informed the preliminary reports of most observer mission including the EUEOM, the commonwealth, the African Commission and National Democratic Institute
CSU, The Forum, ZimRights, ZLHR, and ZADHR	Engaged on advocacy with the diplomatic community and international observer missions regarding the election related violence. The diplomatic community and observer missions including the UN and the African Commission condemned the violence in their respective statements
ZLHR	Litigated on cases of arbitrary arrests following the protests, challenged violations of the electoral law and provided legal assistance to victims of human rights violation
CSU	Provided medical and psycho- social support to victims some of whom are still coming for assistance

The National Transitional Justice Working Group

The NTJWG issued an election briefing highlighting the following issues of concern.

- ✓ An escalation in the use of language of violence and the increase in cases of political violence and intimidation;
- ✓ The emergence of social media has created an army of social media activists (so called varakashi) who were determined to fan the tensions day and night.

This was so despite the signing of the Peace Pledge, facilitated by the National Peace and Reconciliation Commission (NPRC);

- ✓ Opposition leaders mobilised their supporters, threatening to rise against an outcome that does not translate to victory for them. This came at the back of senior government officials claiming that the military will not recognise opposition victory;
- ✓ Hate speech against female candidates was also been reported.³²
- ✓ An increase of partisan behaviour by traditional leaders in rural areas like Buhera, where traditional leaders were holding clandestine meetings asking people to rehearse voting for ZANU PF in groups.

The Commission of Inquiry

Following the 1st of August Killings, on 29 August, President Mnangagwa set up a Commission of Inquiry in terms of the Commission of Inquiry Act [Chapter 10:07] to investigate the death people in the army crackdown on post-election protests. The Commission comprises of seven members four foreigners and three locals and was chaired by Kgalema Motlante, the former South Africa's president. The Commission is expected to make public its findings within three months. The terms of reference are as follows,

- ✓ to inquire into the circumstances leading to the 1st of August 2018, post-election violence;
- ✓ to identify the actors and their leaders, their motive and strategies employed in the protests;
- ✓ to inquire into the intervention by the ZRP in the maintenance of law and order;
- ✓ to investigate the circumstances which necessitated the involvement of the military in assisting in the maintenance of law and order;
- ✓ to consider whether the degree of force used was appropriate to the ensuing threat to public safety, law and order;
- ✓ to assess extent of damage/ injury caused thereof;
- ✓ to investigate any other matters which the Commission of Inquiry may deem appropriate and relevant to the inquiry;
- ✓ to make suitable recommendations; and

³² NTJWG Pre- Election Transitional Justice Briefing

- ✓ to report to the President in writing, the result of the inquiry within a period of three months from the date of swearing in of the Commissioners.³³
- ✓

The Commission through its life span had its own challenges. The Forum noted the following challenges with regards the operation of the Commission.

- a. The choice of venue in Harare remained a major cause of concern; Cresta Lodge Msasa was far from being a central and accessible location. Further the venue was small, and the overspill tent had its own challenges, as the audio quality in the tent was bad. The Commission could have chosen a central and an accessible venue for which would take as many interested parties as possible.
- b. The Commission's programme was unclear. The commission failed to set out its *modus operandi* right from the beginning. Its operations always appeared to be impulsive. The announcement that the Commission was going to Bulawayo just came more like from nowhere. It would have been easier if the commission had come up with a shared draft programme which they reserved the right to amend as and when it was necessary. It came therefore as a surprise to hear the Commission spokesperson advising that the Commission had finished hearing oral evidence and was now consolidating its report. This happened when basically people were still queuing to give the commission evidence. Why it became necessary to close people out, write a report within two days and present the report three weeks ahead of schedule remains a mystery.
- c. There was no clear way on how witnesses were being invited. For example the Forum secretariat requested on less than thrice to be invited to explain the evidence that was submitted before the Commission with no favourable response.
- d. The Commission failed to protect witnesses. The witnesses were giving sensitive information and yet there was no witness protection programme by the Commission. Four members of the Mthwakazi Republic namely Welcome Moyo, Mayor Ncube, Marshall Sibanda and Terrence Wisdom Mkhwananzi were arrested in Bulawayo immediately after Mkhwananzi had testified. Also

³³ VERITAS, Commissions – Commission of Inquiry into Post-Election Violence on the 1st of August 2018, 01 September 2018, Watch, <http://www.veritaszim.net/node/3189>

the alleged abduction of Retired Lt Colonel Piki though he later escaped is a cause of serious concern for all those who testified before the Commission.

- e. Concerns were also raised around media access, initially only the State media, the Zimbabwe Broadcasting Corporation was allowed to broadcast the proceedings from the Commission of Inquiry. Private media was only allowed inside after they protested against that decision.
- f. There were concerns on the apparent lack of transparency into who will give evidence before the Commission and the criteria used in the selection of such witnesses. A multitude of citizens were witnesses to the events leading to the 1st of August 2018 violence and wish to give evidence to the Commission.
- g. Failure to inform the public of the criteria by which witnesses were selected increased the risk of the Commission losing credibility.

PART E

Reports from stakeholders

This section summarises reports of some of the local and international observer missions by local and

Summary of Local Observers reports

The Catholic Commission of Justice and Peace- Zimbabwe

The CCJPZ 2018 elections report noted some improvements in the 2018 Harmonized Elections. According to the report, the pre-election period was relatively peaceful with less incidents of overt violence save for incidences of harassment and intimidation in the form of the narrative of fear motivated by promises of a return of 2008 political, politicization of humanitarian aid and agricultural inputs and the threats of eviction from the land which have become a common and ‘normalized’ political life in most Zimbabwean rural communities. As such, some poor and marginalized citizens, who are the majority of voters, were heavily squeezed to give up democracy and political independence to secure their residential places and benefit from welfare and humanitarian aid. Thus since 2008, through 2013 to 2018, majority of Zimbabwean voters, especially from the rural areas have voted under duress. Fear and desperation have been the common denominators. “It is under such circumstances where the “freeness” and “fairness” of 2018 Harmonized Elections becomes heavily compromised.”

The Zimbabwe Gender Commission

The Zimbabwe Gender Commission in its preliminary report applauded the comparatively peaceful environment before and during the elections. The reports however with concern the following gender issues. Although women constituted the majority of voters, their participation as candidates was limited as evidenced by the low number of women who succeeded in the primary elections of different political parties (15% at National Assembly and 17% at local Government). In the actual election the results show that only 12.4% women were elected outside the women’s quota for National Assembly. Further the report noted the conscious targeting of women as voters, candidates and election officials in hate speech, inflammatory language and

cyber bullying was prevalent. The report recommends to all stakeholders to collaborate in exploring and adopting measures to increase participation of women as candidates in future elections. This also includes incrementally raising the number of women in leadership and decision- making positions through appointment at other levels.

The Zimbabwe Human Rights Commission

According to the Commission, the overall environment was peaceful compared to other electoral periods in the country. However, in some provinces, the pre-election environment was marred by electoral mal practices, which included, partisan distribution of food, use of hate speech, threats and intimidation. The Commission's report concluded that the 2018 harmonised elections were a mixed bag. And that while this election can be hailed as one of the most peaceful elections post 200, there were challenges in fulfilling the right to vote as provided for in the Constitution. Some citizens were subjected to conditions that made it impossible for them to enjoy their human rights in full as they were exposed to intimidation and threats.³⁴

The Zimbabwe Election Support Network

The 2018 elections highlighted a positive shift in electoral processes with the upholding of fundamental freedoms. Notable improvements in law and practice were also witnessed during the 2018 harmonized elections. The report noted improvement of ZEC engagement with stakeholders compared to the 2013 elections. However, the integrity of the 2018 harmonized elections was undermined by an uneven pre-election playing field which was characterized by widespread intimidation of registrants during the BVR exercise; the partisan role of some traditional leaders who openly engaged in partisan politics, the partisan distribution of food aid, the use of state resources in campaigns, biased reporting by the public media, and the rather ineffective stakeholder engagement by ZEC also marred the electoral processes. This resulted in a skewed electoral playing field. The outcome of the election was a heavily contested plebiscite with ZANU PF securing the control of urban and MDC-A the rural constituencies

³⁴ The Zimbabwe Human Rights Commission Preliminary Report, 23-31 July 2018, <http://kubatana.net/2018/08/06/zimbabwe-human-rights-commission-zhrc-preliminary-election-monitoring-report-23-31-july-2018/>

resulting in a deeply divided nation. ZESN recommends that the government invest in efforts that promote national healing and reconciliation.³⁵

Summary of reports by International Observers

Southern Africa Development Cooperation

According to SADC, there has been a remarkable improvement in the exercise and protection of civil and human rights compared to 2008 Pre-election and Voting processes were in line with key legal and constitutional provisions and SADC Principles and Guidelines Governing Democratic Elections.

The African Union- Observer Mission

The AU noted that ZEC carried out all electoral processes on time and all political parties were able to exercise their rights. The observer mission urged ZEC to be transparent and speedily in their results announcement processes.

The Commonwealth

According to the group, important gains were made in these elections. The pre- election environment was peaceful and calm. There was a marked change in the behavior of security services, who, in a break from the past, did not place constraints on the freedoms of association and assembly. Political parties were able to campaign freely. However, there were reports of incidents of covert intimidation attributed to ZANU-PF, the blatant state media bias in favour of the ruling party, and a spike in the use of social media to propagate hate speech and the ZEC's limitations in the implementation of its mandate. The polls were conducted in a peaceful manner and were well managed and transparent. However the post election period was violent and resulted in and the behaviour of security forces marred this phase of the elections. As a result the Commonwealth "could not endorse all aspects of the process as credible, inclusive and peaceful"³⁶

³⁵ ZESN, Report on the 2018 harmonised election, <http://www.zesn.org.zw/wp-content/uploads/2015/11/ZESN-Report-on-the-30-July-2018-Harmonised-Election-Advance-Copy.pdf>

³⁶ The Commonwealth, Preliminary Statement of the Commonwealth Observer Group, Zimbabwe Harmonised Elections, 2August2018,http://thecommonwealth.org/sites/default/files/inline/FINAL%20-%20Zimbabwe%20Preliminary%20Statement%20-%202020August%202018_1.pdf,

The International Republican Institute/ National Democracy Institute

The IRI /NDI observer mission noted the limited transparency and public confidence in the administration of the election. The mission also noted with concern the June 23 2018, Grenade attack in Bulawayo which killed 2 people and injured 49. Recommended to the police and the military to exercise restraint and ensure that the election process produces a peaceful outcome and to Zimbabweans to weigh the Constitutional Court ruling in light of the overall electoral process to determine the credibility if the election. The IRI and NDI concluded that it was the people of Zimbabwe who would ultimately determine the credibility of their elections.

The European Union

The EU in its final report noted that the elections were competitive, the campaign was largely peaceful and, overall, political freedoms during the pre-election campaign, including freedom of movement, assembly and speech, were respected. However, the misuse of state resources, instances of coercion and intimidation, partisan behaviour by traditional leaders and overt bias in state media, all in favour of the ruling party, meant that a truly level playing field was not achieved, which negatively impacted on the democratic character of the pre-electoral environment.³⁷ The report also noted that the tragic deaths of protestors on 1 August, as a result of excessive use of force by security forces, and the subsequent abuses of human and political rights of members of the opposition further marred the perception of the electoral context. According to the EU, it is clear that there is a thirst for democratic change and the people want to see democratic dividends delivering a better life for all Zimbabweans.³⁸

³⁷ EUOM, Final report Republic of Zimbabwe harmonized elections, 2018, https://eeas.europa.eu/election-observation-missions/eom-zimbabwe-2018_en/51896/EUEOM%20Zimbabwe%20Final%20Report%20on%20the%202018%20harmonised%20elections

³⁸ Ibid

Recommendations

The Forum makes the following recommendations to the following stakeholders

a) Recommendations to the Government of Zimbabwe

- VII. The GoZ must urgently consider ratifying and domesticating the African Charter on Democracy, Elections and Governance (ACDEG), which the government signed in March 2018. The Charter seeks to promote adherence by African states to the universal values and principles of democracy and respect for human rights premised upon the supremacy of the constitution and respect for the rule of law.
- VIII. The GoZ must also investigate all allegations of human rights violations, prosecute and punish perpetrators of acts of violence in order to bring justice to victims in particular the 1st of August Human rights violations that resulted in the extra judicial killings of seven civilians.
- IX. The GoZ must come up with legislative framework that compels political parties to comply with constitutional provisions and equal representation of men and women in their respective parties to ensure gender parity.
- X. Traditional leaders must remain apolitical in line with section 281 of the Constitution of Zimbabwe.
- XI. The government must also align come provisions of POSA, AIPPA and the Criminal Law as they hinder of the enjoyment of fundamental freedoms such as freedom of assembly and association (section 58), freedom of expression and of the media (Section 61)
- XII. The government must implement the findings and the recommendations of the Commission of Inquiry into the 1st of August post- election violence. All those found responsible of the violence and in particular the killings must be brought to account

Recommendations to the Zimbabwe Electoral Commission

- V. ZEC must be truly independent, professional and transparent. The lack of transparency contributed to the mistrust between ZEC, political parties and all stakeholders.
- VI. The parliament of Zimbabwe must carry out comprehensive electoral reforms. The first priority being the alignment of the Electoral Act with the Constitution so that all Zimbabweans enjoy their political rights in particular the right to vote.
- VII. ZEC must also ensure that for future elections the voter roll is updated and available on time for all electoral purposes.
- VIII. ZEC must ensure transparency in the printing and designing of ballot papers by all stakeholders.

Recommendations to political parties

- III. Political parties must educate their supporters on the effects of political violence and also to urge their supporters to desist from electoral mal practices such as vote buying, defacing of posters hate speech and cyber bullying among other human rights violations.
- IV. Political parties must deploy polling agencies at all polling stations and these polling agents must observe all the processes at the respective polling stations. This is so as to enhance transparency.

Recommendations to Parliament

- II. Parliament must priorities the alignment of all electoral related laws with the Constitution.

Conclusion

While the Forum appreciates that the pre- electoral environment was relatively peaceful save for a spike in cases of covert human rights violations. The post-election violence was not a surprise to the Forum at all as the NTJWG had predicted “The 2018 elections are set to be another addition on Zimbabwe's long litany of contested elections which are the major source of the many problems that have bedevilled Zimbabwe for the past

two decades.”³⁹ The state however failed to come up with mechanisms to resolve electoral disputes amicably. As such, Zimbabwe’s 2018 harmonized elections were disputed. It is important for the government to invest in a comprehensive dispute resolution mechanism to ensure stability, peace and national healing. Further, the government must investigate all cases of human rights violations and ensure that perpetrators are investigated and punished.

Following the post-election violence, there is also need for the government to build confidence between the citizens and the security forces, in particular, the army. Zimbabweans regardless of their political affiliation need to see and believe that the military and the police are there to protect and not threaten them. There is also need for transparency in the appointed Commission investigating the post-election violence. Thorough investigations and judicial processes for those responsible for human rights violations must be the first step towards national healing.

Lastly regarding the serious issues raised around the transparency and credibility of ZEC dented hopes of a credible electoral process. It is important for ZEC to build confidence amongst all stakeholders and for the Commission to remain transparent and professional. Further piecemeal reforms to the Electoral Act and insincere electoral administration seriously dented hopes of a credible electoral process.

³⁹ The NTJWG Pre- Election Transitional Justice Briefing, 26 July 2018, <http://www.ntjwg.org.zw/news.html>