



**REPORT ON THE OBSERVATION OF BY-ELECTIONS HELD ON**

**10 JUNE 2015**

## Foreword: ZHRC June 10 2015 By-Election Report



***E.H Mugwadi (Chairperson)***

**The Vice President responsible for Ministry of Justice, Legal and Parliamentary Affairs**

**Dear Honourable Vice President,**

The Zimbabwe Human Rights Commission (ZHRC) wishes to submit this report in line with Section 244(2) of the Constitution of Zimbabwe [Amendment (No.20) Act 2013], which states that,

“In addition to the report it is required to submit in terms of section 323, the Zimbabwe Human Rights Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to human rights and freedoms which, in the Commission’s opinion, should be brought to the attention of Parliament”

It is my pleasure on behalf of the ZHRC Commissioners and Secretariat, to present to you our report on the election monitoring visit that we conducted during the 10<sup>th</sup> June By-Elections.

The report highlights the findings of the ZHRC before, during and after the elections and the ZHRC’s own observations.

The report concludes with specific recommendations to various Government Ministries and Departments as well as to the Parliament for areas that need attention in regards to sustain the electoral environment in the country.

It is my sincere hope that this report will assist in improving the general conditions in the conduct of any future elections in Zimbabwe.

Yours Faithfully,

Commissioner Elasto Hilarious Mugwadi

## **Chairperson- Zimbabwe Human Rights Commission**

### **Acknowledgements**

The ZHRC would like to express its sincere gratitude and appreciation to the following stakeholders who made the production of this Report a success:

- Ministry of Justice, Legal and Parliamentary Affairs
- Ministry of Home Affairs
- Ministry of Local Government, Public Works and National Housing
- The Zimbabwe Electoral Commission
- The European Union
- Danish Institute for Human Rights (DIHR)
- ZHRC Commissioners and members of the Secretariat
- The Royal Danish Embassy, Harare
- The Royal Norwegian Embassy, Harare

### **1. INTRODUCTION**

1.1 The Zimbabwe Human Rights Commission (ZHRC), one of the Independent Commissions that are established in terms of section 232 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013, has the mandate to promote, protect and enforce human rights and fundamental freedoms in Zimbabwe. The establishment of the ZHRC is in terms of section 242 and its functions are outlined in section 243 of the Constitution. One of the ZHRC's roles is protecting and promoting the right to free and fair elections as provided for under section 67 of the Constitution which stipulates that:

“Every Zimbabwean Citizen has the right to free, fair and regular elections for any elective public office in terms of the Constitution or any other law and to make political choices freely”.

1.2 This mandate can be realized by the ZHRC through observing and reporting on the enjoyment and exercise of citizens' right to free, fair and regular elections for any elective public office established in terms of the Constitution or the Electoral Act, Chapter 2:13.

1.3 In light of the above, the ZHRC Commissioners and Staff were accredited as observers for the 10 June 2015 by-elections in 16 Constituencies and were in the

field from 8 to 11 June 2015 to assess the observance of human rights before the Election Day, during the voting process and after the announcements of the results. The ZHRC deployed a total of thirty- two (32) observers in the country's five (5) Provinces where by-elections were held. This report will analyse the legislative framework, the two day pre-election period beginning 8 June 2015, the Election Day and the 11 June situation after the election and release of results.

#### **1.4 Legal and Policy Background Governing the By – Elections:**

The by-elections conducted in the 16 constituencies were held in terms of the Constitution, after 14 MDC-T MPs were recalled from Parliament after joining a new party. The other two seats fell vacant after ZANU PF dismissed two MPs for the Headlands and Hurungwe West Constituencies and recalled them from Parliament. All the MPs were unseated in terms of section 129(1)(k) of the Constitution which provides that a seat becomes vacant when a member ceases to be a member of the political party of which he/she was a member when elected to Parliament.

1.5 The vacant constituencies, grouped by Province were as follows:

- Bulawayo Metropolitan [5 seats]: Lobengula, Luveve, Makokoba, Mpopoma/Pelandaba, Pumula
- Harare Metropolitan [6 seats]: Dzivaresekwa, Glen View, Harare East, Highfield West, Kambuzuma, Kuwadzana
- Manicaland [2 seats]: Chikanga-Dangamvura, Headlands
- Mashonaland West [1 seat]: Hurungwe West
- Matabeleland North [1 seat]: Tsholotsho
- Midlands [1 seat]: Mbizo.

## **2. Objectives**

The objectives of observing the by-elections were;

2.1 To assess the observance of human rights and freedoms during elections with particular reference to the realisation of the rights and freedoms enshrined in section 67 of the Constitution; and

2.2 To fulfil the obligations of election observation as stated in section 40G of the Electoral Act, Chapter 2:13.

### **3 Methodology**

3.1 The observation teams used a set of guiding tools and a questionnaire developed by the Commission. This was not the first time for the ZHRC to observe elections as the ZHRC Commissioners went out in 2013 to observe both the Referendum and Harmonised Elections.

3.2 The teams went out with the purpose of observing the conduct of contestants, electoral officials and the electorate during the by-elections and forming their opinion from that. The teams observed the pre-election period, election day and observed the counting and posting of the results outside the selected polling stations.

3.3 Discussions were carried out in some instances with the Zimbabwe Electoral Commission (ZEC) Officials, Candidates, Election Agents, Presiding and Election Officers to ascertain the observance of human rights and freedoms before and during the election period.

## **4 LEGISLATIVE FRAMEWORK GOVERNING OBSERVATION OF ELECTIONS**

The ZHRC was guided by the following national, regional and international instruments that provide a basis for the holding of free and fair elections;

### **4.1 CONSTITUTION OF ZIMBABWE**

Section 67 of the Constitution of Zimbabwe (Amendment No. 20 of 2013) provides for the political rights of every citizen, that is, the right to free, fair and regular elections and to make political choices freely.

### **4.2 ELECTORAL ACT, Chapter 2:13**

The Act provides for the framework for the holding of free and fair elections in Zimbabwe. Section 40 G of the Electoral Act provides that persons may be accredited by the Zimbabwe Electoral Commission (ZEC) to:

- (a) Observe the election process and in particular the conduct of polling at the election.
- (b) Bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of votes to the attention of the Commission;
- (c) Provide the Commission with a comprehensive review of the elections.

### **4.3 SADC GUIDELINES FOR THE HOLDING OF FREE AND FAIR ELECTIONS**

The Guidelines provide that Member States have an obligation to ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors. They further provide that the voting process should be conducted in one day.

### **4.4 The 2002 Constitutive Act of the African Union (The Constitutive Act):**

Under the Constitutive Act, the African States have committed to promote democratic principles and institutions, popular participation and good governance. This also includes promoting and protecting human rights in accordance with the African Charter on Human and Peoples' Rights, and other relevant human rights instruments<sup>1</sup>.

### **4.5 The African Charter on Democracy, Elections and Good Governance:**

Under this Charter, the African Union Partner States commit to:

- i. Promote adherence, by each partner state, to the universal values and principles of democracy and respect for human rights;
- ii. Promote the holding of regular, free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of government;
- iv. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press, and accountability in the management of public affairs;

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<sup>1</sup> Under Article 3.

- v. Promote best practices in the management of elections for purposes of political stability and good governance<sup>2</sup>.

#### **4.6 AFRICAN UNION DECLARATION ON PRINCIPLES GOVERNING DEMOCRATIC ELECTIONS IN AFRICA (2002):**

Under these Principles, Democratic Elections should be conducted freely and fairly, under democratic constitutions and in compliance with supportive legal instruments. Elections should be held at regular intervals, as provided for in national constitutions by impartial, all inclusive competent accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics.<sup>3</sup>

#### **4.7 Universal Declaration of Human Rights:**

The Declaration recognizes that everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives<sup>4</sup>. It further provides that:

*“The will of the people shall be the basis of the authority of government; this 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”<sup>5</sup>*

#### **4.8 International Covenant on Civil and Political Rights:**

The Covenant recognizes the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives; and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot <sup>6</sup>

### **5. GENERAL OBSERVATIONS AND FINDINGS (PRE-ELECTION PERIOD)**

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<sup>2</sup> Under Article 2.

<sup>3</sup> Under Principle 3.

<sup>4</sup> Under Article 21 (1)

<sup>5</sup> Under Article 21 (3)

<sup>6</sup> Under Article 25 (a), (b) and (c).

- 5.1 The ZHRC faced resource constraints to carry out a proper pre-election period monitoring exercise. The teams were therefore only dispatched into the field two days before the by-elections when resources became available. As a result time was inadequate to form an accurate analysis on the protection of human rights and civil liberties of all citizens in the affected areas, including conducting of campaigns freely and peacefully as well as access to media on the part of all stakeholders as provided for in the Bill of Rights (Constitution of Zimbabwe (Amendment No. 20 of 2013).
- 5.2 The pre-election period was meant to be focused on the observance of the following rights and freedoms that are enshrined in the Bill of Rights; freedom of movement and residence (section 66); freedom of assembly and association (section 58); freedom of expression and freedom of the media (section 61); access to information (section 62); and political rights (section 67) that is the right to make political choices freely.
- 5.3 The ZHRC observers had discussions with election agents and candidates to determine the challenges faced during the pre-election period. Most candidates complained of limited media coverage in the State media and alleged that the ZANU PF party monopolised ZBC Radio, ZTV and state owned print media.
- 5.4 Section 40 (1) (a) of the Electoral Act calls upon ZEC to provide adequate, accurate and unbiased voter education and to ensure that voter education by other persons is adequate and not misleading or biased towards a certain political party. The process of voter education was conducted within a week of proclamation of elections in line with the Electoral Act.
- 5.5 According to some of the electorate interviewed in the constituencies the pre-election period was generally peaceful and free of violence except for Hurungwe West Constituency where there were allegations of violence perpetrated against those viewed as sympathetic to the independent candidate. An investigation was carried out in response to complaints received by the ZHRC in terms of sections 243 (1) (d) and (f) of the Constitution. A report was prepared by the ZHRC on its findings informed by the investigative visit prior to the election date.



5.6 Allegations of political intolerance were raised in Dangamvura/Chikanga and Hurungwe West, where candidates alleged that their posters and campaign materials were being pulled down by supporters of competing candidates. In Hurungwe West political agents for both the independent candidate and the ZANU PF party accused each other of pulling down posters. At Boka Shopping Centre in Chikanga, an election agent for Freedom Front Party complained that the ZANU PF supporters were removing their campaign posters at Sheni Primary school and the team proceeded to Sheni Primary School. Indeed three people were removing posters from the school durawall and they said they were instructed by the ZANU PF Ward Chairpersons to remove all the posters because they were too close to the polling station i.e. less than 300m radius from the polling station. It was later learnt from the Presiding Election Officer at Dangamvura Beit Hall that in such cases the Political parties had the responsibility to remove their own posters and not those of the other political parties.

5.7 Some polling stations, especially the mobile/tent set up, were ill – equipped for use by election officials and agents. The ZHRC teams noted with concern lack of basic necessities like water and sanitation facilities for convenience. Some mobile toilets were made available about a day after the officials had already camped while water supply concerns were not addressed.

## **6 ELECTION DAY**

6.1 The mandate of the ZHRC Observers in relation to the by – election was to evaluate the degree to which the secrecy of the ballot was guaranteed and ultimately the respect for the general human rights in this regard. The ZHRC Observer Teams were able to be at their respective polling stations before the opening of the voting process and witnessed the preparations before the voting process began.

6.2 The observers had spent the previous two days familiarizing themselves with the location of the different polling stations in their respective constituencies. All teams reported being able to be at the first polling stations in time to observe the opening procedures. Observers noted that the commencement of voting was

carried out in a peaceful manner, with polling officers exercising their responsibilities in a professional manner.

6.3 The Zimbabwe Electoral Commission had adequate materials for carrying out the by-election in all constituencies. However, the absence of the ultra violet light was visible in all polling stations. Polling Officers had to check the left finger for evidence of voting by the naked eye, a situation which could compromise the concept of free and fair election through multiple voting.

6.4 Generally it was noted that persons with disability were able to exercise their right to vote, as assisted voters. In a few circumstances, it was noted that some polling stations were inaccessible to persons with disability. For instance at one polling station in Kuwadzana, the tent was erected in uncleared land with overgrown grass, and most schools did not have access ramps which made it difficult for those on wheel chairs to access the polling station.

6.5 There was generally heavy police presence in most constituencies. A discussion with ZEC established that each polling station was supposed to have two police officers and increased numbers in areas where there were possible threats and higher security risks. The aim was for the maintenance of law and order yet in some polling stations there were up to nine (9) uniformed Police Officers in one place. Some schools were host to 3 polling stations adjacent to each other. The presence of the higher numbers of uniformed police officers at the main entrances was viewed by some voters and polling agents as having an intimidatory effect. This applied to both urban and rural polling stations.

6.6 Most observers noted that there were no campaign activities carried out within the 300m radius of the polling station by midnight preceding the day of polling. However, in Chikanga/Dangamvura, observers noted that there was a political rally disguised as a roadshow where one political party denigrated the names of the other contesting candidates and chanted their party slogans. There was no police presence at the 'roadshow' in violation of the Electoral Act.

6.7 All observers noted that most of those qualified to vote were able to cast their vote, although there appeared to be high numbers of people turned away at most of the polling stations due to various reasons which were established as: being

aliens, attempting to vote in the wrong wards, being registered in other wards where one used to live prior to being resettled or relocating, use of identification documents which were defaced and not originals and names not appearing on the voters' roll. Voters did not seem to appreciate the Ward based voters' roll and the Ward boundaries. This could be attributed to limited voter education or the voters failing to fulfil their duty of checking for their names on the voters' roll prior to the day of the election.

6.8 The elections were held on a school day. It was observed that schools that were being used as polling stations were open as usual in some areas whilst in others they were open until around 11am ( or up to lunch time) on the day preceding the election thereby hampering the preparatory work of polling officers. However, the schools hosting polling stations were all closed on Election Day, while the rest of schools not involved in polling activities carried on with their usual programmes.

6.9 In Hurungwe West, some polling agents of the independent candidate alleged that in some polling stations suspected ZANU PF supporters and village heads were recording the details of voters before they arrived at a polling station and after the voters had cast their votes. There were also reports that traditional leaders escorted their subjects to vote on the Election Day in violation of the Electoral Act.

6.10 The ZHRC also noted the general low voter turnout within the urban areas such as in Harare, Bulawayo and Mutare. In rural areas, Tsholotsho, Headlands, Hurungwe West Constituencies there was a reasonable increase in turnout compared to that in the urban areas.

6.11 The process of verification of the ballot papers and counting took place at the respective polling stations. All observers confirmed that the verification exercise was conducted smoothly in almost all the polling stations monitored. The counting was concluded quicker in urban areas due to fewer ballots and took longer in rural areas where there were slightly more ballots cast.

## **7 Conclusion and Recommendations**

7.1 The Zimbabwe Human Rights Commission commends all stakeholders responsible for ensuring that citizens enjoy their right to participate in the governance of their country through freely elected representatives in accordance with the national, regional and international legal frameworks.

7.2 The ZHRC commends ZEC and relevant stakeholders for organising peaceful elections despite the resource challenges that saw the disbursement of finances at the 11<sup>th</sup> hour. It is further commended for ensuring all the vacant constituencies were able to hold elections.

7.3 The ZEC is further commended for its role in educating the public on the elections through the media and as evidenced through the posters that were at and near polling stations informing the public on the elections to be held in the 16 constituencies. The directions to the polling stations were also visible for the public who wished to cast their vote.

7.4 The ZHRC concludes that the voting process was generally peaceful and transparent, save for those constituencies mentioned above where;

- a. the electorate was escorted to the vote and had their names unlawfully recorded before and after voting as such conduct impedes the right to freely exercise one's choice
- b. there was inordinate police presence
- c. denigration of rival candidate through a "roadshow" campaign.
- d. defacing and pulling down of posters and other campaign materials

7.5 The Hurungwe West by – election investigation report and specific recommendations by the ZHRC is of reference.

**In order to improve the conduct of future elections, the ZHRC recommends the following;**

7.6 There should be adequate civic education focusing on the right of all citizens to participate in the elections and voter education, particularly on the ward based voting system and the election process in general in accordance with section 40D of the Electoral Act.

7.7 Whilst the Government has made strides in ensuring that voters who cannot vote owing to some limitations such as illiteracy and disability can be assisted to vote in terms section 59 of the Electoral Act, voter education should be intensified for those persons with disability so that they are able to exercise their rights. This could be done through the Ministry of Public Service, Labour and Social Welfare and designated Civil Society Organisations (CSOs) with a focus on persons with disability. In addition, polling stations should be accessible for persons with disability by ensuring that the paths leading to the polling stations are cleared of any obstacles that could hinder mobility and access by wheel chair or other assistive devices.

7.8 The ZHRC recommends the adoption of Guidelines on the number of police officers to be at each polling station. It is further recommended that each polling station have a limited number of police officers and a special unit on stand-by at a nearby police station, to avoid a situation of crowding polling stations thus having an intimidatory effect on the electorate.

7.9 The playing field should be levelled to ensure all candidates campaign freely in all areas without intimidation and to ensure voters vote freely without undue influence by other community members such as traditional leaders.

7.10 There should be an up to date voters' roll that does not disenfranchise people in any way including those formerly referred to as 'aliens' who may find themselves stateless.

7.11 The ZHRC recommends strict adherence to the electoral law, for instance, on the enforcement of deadlines for campaigning for all contesting parties.

- 7.12 The ZHRC recommends that there be fair media coverage for all political parties by the public broadcaster and state owned print media.
- 7.13 The youths should be encouraged to vote to ensure inclusivity in promoting democracy and wider participation in the choice of leadership.
- 7.14 Elections should either be held during weekends or election days should be declared non-working and non-schooling days in order to allow the working class, college and university students and teachers, eligible to vote to participate.
- 7.15 Related to 7.13 above, election planning should ensure that the voting processes do not interfere with children's right to education because once their classrooms are used as polling stations it disrupts learning. Further, closure of some schools while others continue with their programmes discriminates against those students who must then make up for missed lessons.
- 7.16 Where elections are held on a schooling day, the Ministry of Primary and Secondary Education should communicate on time with school heads regarding what to do when confronted with electoral processes that require the use of school facilities.
- 7.17 Voter registration should be an ongoing process in the country to ensure that the voting population does not miss out opportunities to get registered (or transfer to different wards or constituencies) and eventually cast their vote in any subsequent election.
- 7.18 ZEC should raise awareness on elections in vernacular languages, throughout the constituencies where elections would be taking place. In Headlands, the ZHRC only saw one poster in the Shona language which only informed the public to go and vote in their wards. The poster had no election dates on it. The rest of the posters were in English and had polling dates. Similar challenges were noted in other constituencies.
- 7.19 ZEC should prioritise the welfare of its staff and officials who are deployed to polling stations by ensuring the timely availability of proper facilities like water, sanitation and offices. Some of the polling stations, especially using the tents were not user friendly for the election officials.

7.20 Finally, the government should timeously release adequate resources to ZEC, ZHRC, ZRP and other relevant institutions for them to effectively and efficiently carry out their respective constitutional mandates in the conduct of elections.

**Signed:** .....

**Elasto H. Mugwadi**

**Chairperson, Zimbabwe Human Rights Commission**