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## REPORT ON THE BIKITA WEST BY-ELECTION: 21 JANUARY 2017

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### 1. INTRODUCTION

Section 243(1) (c) of the Constitution of Zimbabwe, mandates the Zimbabwe Human Rights Commission (ZHRC) to monitor, assess and ensure observance of human rights and freedoms. This mandate includes the enjoyment of the right to free and fair elections as provided for in the Constitution<sup>1</sup> and the Electoral Act<sup>2</sup>.

Section 129(1)(i)(i) of the Constitution provides that the seat of a Member of Parliament becomes vacant if the Member is convicted in Zimbabwe of an offence of which breach of trust, dishonesty or physical violence is an essential element and sentenced to imprisonment for six months or more without the option of a fine or without the option of any other non-custodial punishment, unless on appeal the Member's conviction is set aside or the sentence of imprisonment is reduced to less than six months or punishment other than imprisonment is substituted. The Bikita West Constituency National Assembly seat became vacant after its former Member of Parliament (MP), Munyaradzi Kereke was

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<sup>1</sup> Section 67 of the Constitution of Zimbabwe Amendment, (No. 20) Act 2013

<sup>2</sup> Section 3 of the Electoral Act (Chap 2:13)

imprisoned. Thus, his Excellency President Robert Mugabe proclaimed 21 January 2017 as the date for the Bikita West Constituency By-Election.

ZHRC undertook a monitoring and investigation mission in the Bikita West Constituency from the 13<sup>th</sup> to 16<sup>th</sup> of January and 18<sup>th</sup> to the 24<sup>th</sup> of January 2017. The purpose of this mission was to ensure that elections were conducted freely, fairly and in accordance with respecting the human rights and freedoms to which the candidates and electorate are entitled.

## **2. Objectives**

The objectives for monitoring the by-election were to: -

- 2.1. 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;
- 2.2. Fulfil the obligations of election observation as stated in Section 40G of the Electoral Act and;
- 2.3. Ensure the political environment is conducive to a peaceful, fair and credible election.

## **3. Methodology**

The monitoring team used a questionnaire, to interview the candidates, electoral officials, and the electorate. ZHRC assessed the pre-election, election day and post-election environment of the Constituency. ZHRC also attended the Zimbabwe African National Union Patriotic Front (ZANU PF) and Zimbabwe People First (Zim PF) rallies on the 18<sup>th</sup> and 19 of January respectively. ZHRC had one team deployed to cover the monitoring and investigation mission in a constituency which consisted of 11 wards and 58 polling stations. The first deployment was conducted a week and a half before Election Day. On the Election Day, ZHRC team managed to observe at least two polling stations in each ward.

In carrying out the investigations from issues that were brought to the attention of the ZHRC, the ZHRC employed several methods which included interviews with complainants, members of the community, interviews with the alleged respondent and focused group discussions.

## **4. FINDINGS**

ZHRC commends the Zimbabwe Electoral Commission (ZEC) for being prepared and working hard towards a successful election process. ZHRC witnessed that structures such as the Multi Party Liaison Committee were in place and parties to these meetings openly dialogued on various issues of concern. Polling Officers were timely trained and deployed and equipped with the required resources. Opening and closure of polling stations was timeous in accordance with provisions of the Electoral Act. The voting process was conducted in a peaceful and systematic manner. ZEC officials were welcoming and cooperative, however at some polling stations some Presiding Officers declined to disclose the voting statistics to the ZHRC observers. They referred them to enquire at the Ward Center. Holistically, the election process took place smoothly and all candidates accepted the results.

### **4.1. Pre-Election Period**

The pre-election monitoring focused on the state of preparedness of ZEC in conducting the election. It also assessed whether the constituency environment was conducive enough to hold a free and fair election, particularly the respect of the rights and freedoms enshrined in the Bill of Rights. These rights relate to; freedom of assembly and association (Section 58); freedom of expression and freedom of the media (Section 61); freedom of conscience (Section 60); access to information (Section 62); and political rights (Section 67).

#### **4.1.1. Freedom of Assembly and Association**

Section 58 of the Constitution accords the citizens of Zimbabwe the right to gather and not be forced to belong to an association or attend a meeting. Article 21 of the International Covenant on Civil and Political Rights (ICCPR) further emphasizes that as long as an assembly is peaceful, it should be recognized and not restricted. Throughout the pre- election period, ZHRC received numerous allegations from the contesting candidates and their agents that the electorate was being forced and or intimidated not to attend their rallies by the ruling party ZANU PF. These allegations were further confirmed by the community who revealed that at times their village heads or ZANU PF chairpersons directed them to attend ZANU PF meetings without giving them an option to refuse attendance. In some instances, a ZANU PF meeting would be disguised as a food distribution gathering from the donor community, the community would attend in great numbers only to realise at the meeting that it was a campaign meeting for ZANU PF. ZHRC notes that such conduct by any party interferes with a person's right to a freedom of assembly. ZEC is encouraged to educate contesting candidates to refrain from any methods of intimidation during campaigns and allow the electorate to make their own free choices.

#### **4.1.2. Freedom of Expression and Freedom of the Media**

Section 61(4) (c) of the Constitution obligates state owned media to afford fair opportunity for the presentation of divergent views and dissenting opinion to be effected in an impartial manner. Through the ZHRC media monitoring reports it was noted that during the campaign period opposition parties received minimal coverage of their campaign activities. Moreover, most media reports both state owned and private would print stories which mainly pointed towards the negative aspect of the By-Elections. Therefore, ZHRC urges the media fraternity to be balanced in its reporting and accord equal media coverage for all contesting candidates.

#### **4.1.3. Freedom of Conscience**

Section 60 of the Constitution guarantees freedom of conscience which includes freedom of thought and opinion whether in private or in public. The ZHRC monitoring team

received reports from the electorate to the effect that ZANU PF was issuing out agricultural inputs and food to the community, urging them to vote for the party. This was confirmed by some village heads who indicated that these products were stored by the Grain Marketing Board (GMB), brought to distribution points by the Department of Social Welfare (DSW), but the process of distribution and addressing of people was conducted by the ZANU PF leadership. The DSW distributes Government food and inputs stored at the GMB to vulnerable members of the community only. Thus, the department hardly distributes food products to the whole community. GMB officials informed the ZHRC monitoring team that it stores and manages all government foodstuffs for products such as Command Agriculture, Presidential Inputs Scheme and Social welfare etc.

In as much as the ZHRC received various information from all these parties, it observed that on the days of food distribution, trucks were loading from GMB. Considering the fact that the ruling party's foodstuffs were originating from GMB placing them on a leverage of state funded resources which they are using to lure votes, can be interpreted as an interference of the voters' freedom of conscience. In turn the ruling party remains at a considerable advantage which is unfair for the other contesting candidates who have limited resources to campaign at such an angle. This is also not in line with Electoral Code for Political Parties and Candidates under the Fourth Schedule which prohibits political parties or their members from bribing a voter to exercise his or her vote in a particular manner.

#### **4.1.4. Political Rights**

Section 67 of the Constitution, provides that political parties are entitled to campaign freely and peacefully. ZHRC applauds competing parties for campaigning peacefully.

ZHRC interviewed five<sup>3</sup> out of six candidates who all acknowledged that they conducted their meetings and rallies freely, however in some instances they experienced

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<sup>3</sup> The interviewed candidates were ZIMPF (Kudakwashe Gopo), Independent (Heya Shoko), Progressive Democrats of Zimbabwe (Terence Makumbo), Independent (Innocent Muzvimbiri) and National Constitutional Assembly (Madock Chivasa). The only candidate who was not interviewed was ZANU PF (Beauty Chabaya) who continuously indicated to be too busy to schedule an interview with ZHRC team.



disturbances. The other candidates complained that the ZANU PF party was detaining people by distributing food products at the same time that they were hosting their meetings or attempting to do door to door campaigns. The ZHRC team confirms this occurrence as it happened on the 19<sup>th</sup> of January, ZIM PF had scheduled a rally at Nyika growth point and at the same time people were gathering at ward centers to receive foodstuffs. ZHRC witnessed people gathered at Makotore, Maregere and Zvinoitavamwe shopping centers, and managed to establish that they were receiving fertilizer and seed. In addition, youths dressed in ZANU PF regalia tried to hang party posters at the ZIM PF rally venue and distribute t-shirts. They were dismissed by ZIMPF supporters and police attended to the matter. This indeed infringed the ZIM PF party's right to freely campaign as other candidates did not have equal access to the electorate and that their activities were being interrupted.

#### **4.1.5. Rights of Vulnerable Groups**

The ZHRC commends ZEC for making an effort to establish a high number of polling stations all around the constituency, enabling the electorate to cast their votes. An example of a means towards catering to the needs of the disabled was exercised at Bikita Fashu polling station which consisted of a ramp and wide doors and the Presiding Officer explained that they setup in that place to enable those with wheelchairs to easily access the polling station. However, ZHRC team observed that some polling stations were established too far from some of the electorate's reach. The distances to the polling stations were exhausting and tiresome for the elderly and disabled. At Makotore polling station the ZHRC team witnessed an elderly man being pushed in a wheelbarrow through the bumpy road to cast his vote at the polling station.

### **5. ELECTION – DAY**

The election process ran smoothly in all the wards as observed by the ZHRC team. Polling stations opening and closure was timeous. All polling stations observed by ZHRC were manned by the requisite staff, equipped with the required material for the election.

At each polling station, voters were standing orderly in queues and systematically following instructions for voting. Most voters cast their votes early in the morning and the day proceeded with less people trickling in. For example, more than two hundred voters had arrived at the polling station by opening time at Chitsanga Primary. Overall the turnout at the polling stations was very high.

In three-quarters of polling stations which were observed by the ZHRC team there was a significant number of assisted voters both young and old. For instance; at Chitsanga polling station 30 voters had been assisted by 12pm, and at Jaravaza polling station more than 40 voters had been assisted to vote after midday. Reasons for the need for assistance were based on eye problems, blindness, and illiteracy. Some voters were turned away because they did not appear on the voters' roll, or they did not produce an original identification document, or their identification was not clear. Redirected electorate were informed of the correct polling station to cast their vote.

ZHRC applauds ZEC for accrediting observers who were visible throughout the constituency on the Election Day. However, an issue of concern which ZEC needs to address in future elections is to educate all presiding officers to cooperate in sharing statistics with observers. ZEC confirmed to ZHRC that the result consolidation process was peaceful and candidates accepted the outcome of the By-Election.



*Picture above was taken at Jaravaza Primary School where voters waited to cast their votes.*

## **6. Role of police**

The ZHRC commends the role played by the Zimbabwe Republic Police (ZRP) during the period of the By-Elections. Police confirmed that they received a couple of elections related violence cases which they attended to. The police also set up two police bases at Maregere and Makuvaza respectively to provide convenience for communities to report any complaints during the election period as well as to maintain peace and order. Police indicated that the constituency was generally calm and of the cases that were reported, prompt response was effected. At polling stations, police were providing security for the process to run smoothly. The ZHRC team did not encounter any interferences with the voting process. During deliberations with the public, no complaints/ issues were raised against the police. Thus, police presence in Bikita West was highly commendable.

## **7. Matters of concern & Investigations**



During the monitoring period a number of matters were brought to the attention of the ZHRC team which, related to a breach of human rights and freedoms. ZHRC made efforts to follow up on most of the matters lodged and interviewed parties to the matter in order to have a balanced assessment and understanding. The following are some of the matters it came across and investigated;

- 7.1. ZHRC received information that at Hozvi in ward 10, a member of ZIM PF was beaten up by some ZANU PF supporters after he attended a food distribution meeting which was being hosted by the ZANU PF party. ZHRC managed to attend the Multi- party liaison meeting where the matter was raised. The ZANU PF candidate acknowledged the issue and indicated that the matter had been settled and a fine was paid. ZHRC lauds the Constituency Elections Officer for encouraging the need for coexistence amongst the candidates and to desist from political violence.
- 7.2. In ward 22, ZHRC received a case where a woman was assaulted by a ZANU PF chairperson at a ZANU PF food distribution meeting. She alleges that she had previously attended a ZIM PF meeting before, and later received communication that everyone in the ward was required to attend a ZANU PF meeting. At the meeting she was confronted and told by the Chairperson that she did not qualify to receive any food products since she was linked with the opposition party. As a result of the beatings she sustained a miscarriage and ear problems. She was then assisted by ZIM PF leadership in the area and managed to make a police report and seek medical attention. The case is now before the courts and ZHRC is following up on the progress of the matter.
- 7.3. On the day of the ZIM PF rally, ZHRC received complaints of ZANU PF members interfering with the ZIMPF rally by distributing t-shirts and hanging posters close to the ZIMPF gathering. ZHRC noted that the complaint was addressed by the police, who confirmed that they had received the complaint and acted rapidly to address the situation through deployment of riot police. The police were stationed at the rally to address any disruptive incidences. ZHRC commends the police for promoting political rights during this particular incident and for maintaining peace and order during the By-Election period.

7.4. ZHRC received a report on the assault of NCA candidate and his Chief Election Agent by a group of people suspected to be ZANU PF supporters. ZHRC monitors interviewed the candidate on the 17<sup>th</sup> of January 2017, two days after the assault. He described everything that took place on the day, how he had noticed that the vehicle with the perpetrators followed him the whole day till the time they assaulted him. Owing to the assault, both complainant and his agent sustained head injuries. Contrary to media reports there were no gunshots fired. They sought medical attention and reported the matter to the police. ZHRC followed up on the matter with the police, who confirmed receipt of the complaint and were investigating the matter and were also awaiting a medical report for the NCA candidate and his Chief Election Agent.



*The injuries sustained by the NCA Candidate*

7.5. ZHRC received complaints about people gathered outside polling stations and intimidating voters such as at Agritex, Makotore, Chikukutu and Simbaravanhu amongst others. At Makotore polling station, ZHRC saw a group of women stationed outside the school gate and upon enquiring why they were there, they indicated that they were chasing away people who were still campaigning. At Simbaravanhu, ZHRC was informed of a group of women stationed outside the polling station who were later dispersed by

the police. After the election, ZHRC interacted with ZEC and police who both confirmed that they had received the Agritex report and attended to it promptly. They discovered that they were ZANU PF members waiting to receive their wages for assisting with the campaign.

ZHRC condemns such behavior as it interferes with the election process since these people were positioned in places where they could easily intimidate the electorate.

- 7.6.** ZHRC observed limited level of appreciation of the voting process by both the young and old in Bikita West. Quite a number of people were not aware of the steps to be taken into account in casting the vote. There remains to be a misconception of the privacy of the voting process. Communities believe that ballot papers can be traced and be linked to the voter, voter slips need to be submitted to the village head or councilor for recording and that their ballot choices are determined by their local leadership. Some candidates, school staff, and other professionals who talked to ZHRC also indicated their concern about the level of voter education in the communities. Some interviewees indicated that certain parties could spring on the ignorance of the electorate and give communities wrong information which was diluting the whole electoral process. ZHRC raised this matter with ZEC who indicated that they were continuing with voter education in communities and welcome suggestions on how best to improve voter education

## **8. Recommendations**

ZHRC wishes to make the following recommendations for consideration during future elections, in order to advance the Zimbabweans' civil and political rights;

### **8.1. ZEC**

- 8.1.1.** To strengthen voter education exercises in areas where elections are to be held through collaboration with other partners.
- 8.1.2.** To increase accessibility of polling stations especially by special interest groups such as the elderly and the disabled.

## **8.2. Zimbabwe Republic Police**

- 8.2.1. Police to continue supporting electoral processes through stationing security at rallies, polling stations and in communities.
- 8.2.2. Police to continue investigating politically motivated violence during elections period.

## **8.3. Legislature**

- 8.3.1. To strengthen the Electoral Act to deal effectively with anyone inciting politically motivated violence, including disqualification of candidates and arrest or imprisonment without the option of a fine.
- 8.3.2. To amend the Electoral Act to ensure the independence of ZHRC in its role of monitoring but not as part of the Special Liaison Committee.
- 8.3.3. To enact laws and regulations prohibiting the use of State or Tax Payers' resources to gain political mileage.
- 8.3.4. To expedite alignment of POSA and AIPPA to the Constitution.
- 8.3.5. To enact laws that empower the Department of Social Welfare and the GMB in carrying out their mandate in the storage and distribution of food products without fear or favour ie impartially.

## **8.4. Media Commission**

- 8.4.1. To enforce good media ethics and practices in relation to election processes.
- 8.4.2. To ensure that state media accords equal and balanced media coverage to all contesting parties.

## **8.5. Journalists and Civil Society**

- 8.5.1. Journalists and Civil Society Organisations to report the occurrence of events clearly and accurately as opposed to exaggerating and causing unease, alarm and despondence.

## **8.6. Political Parties and Candidates**

- 8.6.1. To desist from inciting their supporters to engage in political violence.



- 8.6.2. To desist from using coercion, intimidation and vote buying to secure votes.
- 8.6.3. Political parties and candidates should allow ZHRC access to interact with them in order to confirm certain concerns raised by the community and other candidates.
- 8.6.4. To refrain from using “state owned resources” in order to influence support by the electorate.