



## **SADC COUNCIL OF NGOs PRELIMINARY STATEMENT ON ZIMBABWE 2013 HARMONISED ELECTIONS**

**2 August 2013, Rainbow Towers Hotel, Harare**

### **1. Introduction and background**

The Global Political Agreement (GPA) reached in the Post-2008 Electoral Stalemate has not only charted the way for Zimbabweans towards new elections. It has above all provided Zimbabwean political leadership with the opportunity to work together, a reality which though had not been without challenges, clearly set the country in a direction towards economic recovery and social development. The SADC-CNGO would like to commend and appreciate the efforts that SADC made in this process as the guarantor of the GPA.

Agreement on a constitution through a national referendum that brought significant developments to the Zimbabwean Political system, including the reforms on the electoral system that catapulted Zimbabwe towards democratic dispensation, is a landmark of the journey Zimbabwe has travelled. However not all provisions and key objectives envisaged in the GPA aimed at ushering in democratic, free and fair elections, were achieved. This includes security sector

reforms and media reforms, among others. The SADC-Council of NGOs (SADC-CNGOs) which remained seized with the situation in Zimbabwe since 2008, has commissioned an observer mission for the Zimbabwe 2013 elections in pursuance of these objectives as contemplated in the GPA.

SADC Council of NGOs, therefore, through this statement, pronounces its interim observation on the Zimbabwe 31<sup>st</sup> July 2013 Harmonised Elections. This pronouncement is underpinned by the goals as contemplated by the founding objectives of the GPA, and is premised on:

- (i) The political, structural and legal environment;
- (ii) The national , regional, continental principles and frameworks;
- (iii) The information which SADC-CNGOs Observer Mission collected and
- (iv) Recommendations on how the election process in Zimbabwe could be improved.

## **2. The Legal Framework, Principles and the Context**

The Zimbabwean election has been held under the Zimbabwe Constitution (No.20) Act 2013, the Electoral Act 2013(Chapter 2 85:13) which, among others, made provision for Media dispensation, Codes of Conduct for the Political parties, Candidates, Chief election agents, Election agents and Observers as well as the subsidiary piece

of legislation namely Electoral Regulation 2005(89/2013). This legal framework provides guideline to be followed in the preparation and conduct of elections in Zimbabwe.

The regional and continental principles on elections, on the other hand, provide the basis for the establishment of the democratic electoral systems and procedures for member states which Zimbabwe is a signatory. These principles find expression in both legislation and the political environment within which elections are conducted. In this regard, the SADC Council of NGOs recalls the following:

## **2.1 SADC Principles and Guidelines Governing Democratic Elections**

Under this framework, member states undertake to adhere to among others the following principles;

- (a) Equal opportunity for all political parties to access the state media; and
- (b) Voter education

## **2.2 The AU Charter on Democracy, Governance and Elections**

Member states commit to among others ‘Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections’;

### **2.3 The AU Declaration on the Principles Governing Democratic Elections in Africa**

Member states undertake to among others ‘establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections’;

### **2.4 The Principles for Election Management, Monitoring and Observation in the SADC Region**

Under this framework, member states undertake to adhere to among others the following principles;

- (a) The voter registration should promote broad participation and should not inhibit the participation of eligible voters;
- (b) There should be sufficient time for eligible voters to register, for public inspection of the voters’ roll, for objections and for the adjudication of appeals
- (c) Parties should have access to the voters’ roll, without charge;

The SADC-CNGOs Election Observer Manual equally informed by the said principles and standards provides practical guidelines through which civil society can assess the extent to which states adhere to the above principles. It is a firm belief of civil society that assessment on

the basis of this framework provides a reflection that could go a long way in ensuring democratic elections in the SADC region.

The ‘Harmonised Elections’ in Zimbabwe as we may recall is a result of the collaboration between Zimbabweans on the one hand and the brothers and sisters in the region on the other. The declaration of 31<sup>st</sup> July 2013 as the Election Day has been received with conflicting reactions both in Zimbabwe and in the region. The SADC interjection on the possibilities of extending the election time to allow time for the finalisation of legal and logistical frameworks which are necessary for free and fair elections in Zimbabwe, taken up to the court by the Government of Zimbabwe was not approved by the court. Under these circumstances, nothing could be done but to move ahead with Zimbabwe Elections.

### **3. THE SADC-CNGOs METHODOLOGICAL APPROACH TO OBSERVE THE ZIMBABWE ELECTIONS**

The work of SADC-NGOs in relation to Zimbabwe 31<sup>st</sup> July 2013 harmonised elections have been in phases. The first phase involved sending fact finding missions in the country where the political environment was assessed through interaction with various stakeholders (including civil society, ZEC, JOMIC, Political Parties etc. This culminated with a regional civil society seminar in December 2012. The second phase is the one where several contact sessions which led to the present SADC-CNGOs Observer Mission.

### **3.1 Composition and Deployment**

The SADC-CNGOs Observer Mission is made of civil society from the SADC region. A total number of 150 observers were deployed under 25 teams which were distributed in all the provinces of Zimbabwe focusing, mostly mostly in rural areas.

### **3.2 Orientation of SADC-CNGOs Observer Mission**

The teams have attended several meetings which all contributed immensely in helping members to understand not only the legal framework but also the political and the logistical issues related to the Zimbabwe 31<sup>st</sup> July 2013.

The ZEC briefing to the Observer Missions on the 23<sup>rd</sup> July 2013 gave the SADC-CNGOs Observer Mission the opportunity to understand the level of ZEC preparedness not only from its formal presentation but also from the issues raised by other stakeholders. The SADC-CNGOs Mission was taken through in-house observer refresher training. This highlighted the key legal peculiarities that Observers should be aware of. The joint Seminar for Zimbabwe Elections Stakeholders by SADC-Electoral Commissions Forum, National Association of Non Governmental Organisations and the SADC-Council of NGOs provided a significant platform where different political parties gave their perspective on the level of preparedness of ZEC.

### **3.3 SADC-CNGOs Observer Operations**

The SADC-CNGOs Observer teams have visited a total of 2,000 polling stations before the polls, during voting and at counting. In these places, observers have observed the preparedness of ZEC for voting in terms of availability of critical material, environment under which people were voting and a manner in which officials conducted their work and other key observation issues as contained in the observer check list designed by SADC-CNGOs.

### **3.4 The SADC-CNGOs Command Centre**

The observer teams in the field have been backed up by the Command Centre made up of those observers who received progress reports and dealt with emerging issues. The Command Centre Observers also identified the issues of contention raised, followed them up with various stakeholders for verification and attended meetings with other missions.

## **4. SADC-CNGOs OBSERVER MISSION PRONOUNCEMENT ON THE ZIMBABWE 2013 HARMONISED ELECTIONS**

On the basis of the International Standards for democratic elections referred to above and the legal framework for Zimbabwe and the observation undertaken through the specified methodological approach, the SADC-CNGOs Observer Mission makes the following preliminary statement on Zimbabwe 31<sup>st</sup> July 2013 Harmonised Elections;

#### **4.1 Voter Registration and Voters' Roll**

The concerns over the voter registration and credibility of voters' roll raised by some groups came to the attention of the SADC-CNGOs Observer Mission. The delayed release of Voters' roll has also been a noted with concern. **In as far as concerns on the voter registration and voters' roll are concerned; the SADC-CNGOs Observer Mission has the following to say:**

- (1) the situation that about 26,000 authorised Special Voters were not able to cast their vote on the 14<sup>th</sup> and 15<sup>th</sup> July 2013 during the Special Voting due to unavailability of ballot papers reflected the inadequate preparedness of the ZEC and that constituted violation of voters right to choose their government;
- (2) the decision of the ZEC to appeal to the Constitutional Court to uphold the *right to vote* over the procedural and logistical legalities is highly commendable. The decision of the Concourt to reclaim the right of those who faced disenfranchisement is also applauded;



- (3) However, the circumstances referred to in (1) and (2) above created a controversy that even those who voted during the Special Voting could vote again on the ordinary voting day. Factors leading to this controversy included that (a) during the Special Voting the names of those who voted were not crossed in the voters' roll as required by Electoral Act Section 56(4) (b) but only recorded on site and (b) that since the indelible ink would have long been removed on the ordinary voting day those who voted on the Special Voting may not be recognisable. These contribute to the difficulty to distinguish between those people who got authorisation to vote in the Special Voting but never did so (those which the concourt permitted) and those who actually voted. The legal provision to avoid double voting has been undermined;
- (4) the packages for Special Votes received in the constituencies were handled outside the provisions of the law;
- (5) further the provisions of Electoral Act Sec 81 F and its sub-sections providing for transparency handling of the Special Votes have been violated hence that process has been compromised;
- (6) the unavailability of Voters' Roll to the political parties, candidates and the public up to the last day before elections in some areas have not only undermined Sections 20 and 21 of the Electoral Act and their sub-sections but also denied political parties, candidates and voters a right and time to inspect the roll. Inspection of the voters' roll is in any election is a very sensitive

issue because it ascertains who would and would not be eligible to vote in particular elections.

## **4.2 Media Reporting and Accessibility**

Though the Electoral Act sections on Media Coverage of Elections resonates with the AU Charter on Democracy, Governance and Elections, SADC as well as other instruments listed above on the *equitable access by contesting parties and candidates to state controlled media during elections*, the election coverage by the state owned media has been biased towards the ZANU-PF. In like manner the election coverage by the private media has been biased towards MDC-T.

## **4.3 Voting**

The polling stations opened on time. The fact that polling stations were ready at the opening time to start, is the reflection of the high logistical preparedness of the ZEC. While this is commendable, the question which still lingers is why such capability to handle the ordinary elections could not be reflected in handling in the overall management of elections.

The voting went well and people cast their vote without any form of visible intimidation in the polling stations that SADC-CNGOs teams observed. The elderly, people with disability and those who needed

helped were helped. The voter education which is provided for by the law has not been properly done. Given the changes made to the electoral legal framework and the multiplicity of ballots involved, people should have been educated on these changes.

The fact that many voters returned from polling stations without casting their vote due to either that their names did not appear in the voters' roll or any other cause which could have been identified and corrected had the voters' roll been made available earlier for public inspection, marked disenfranchisement. Another issue which was observed is that many people including those known to be literate claimed illiteracy and requested to be assisted to vote. In some stations in Mashonaland Central in every three voters one was an assisted voter. In Chiwore out of 375 voters who had cast their vote when SADC-CNGOs observers came to the station 129 were assisted.

#### **4.4 Political Environment and Peace**

Besides some isolated reports of intimidation and display of threats, the political environment in Zimbabwe has been calm and conducive for peaceful elections. The presence of unaccredited JOMIC groups in various polling stations where in some they did not heed the call to leave the place due to lack of credentials, has raised alarm not so much on the conduct of these members but the intention. The persistent call for peace by political party leaders in their campaign is well noted and highly commented.

In consideration of the regional and continental principles, the Zimbabwe legal framework referred to above and the observation of its teams, the SADC-CNGOs Observation Mission makes the following preliminary determination;

**Though the scope and extent of the impact of the observed anomalies on the outcome of elections could not immediately be ascertained, they in themselves constitute serious electoral deficits. This Mission concludes that the credibility, legitimacy, free and fair conduct of the Zimbabwe 31<sup>st</sup> July 2013 Harmonised Elections and therefore their reliability as the true expression of the will of the people of Zimbabwe have been highly compromised.**

In conclusion the SADC-CNGOs would like to make the following recommendations for improvement;

#### **4.5 Recommendations**

1. The Electoral Act of Zimbabwe should make provision for the specific time within which voters' roll should be complete and made available. The legal provision that ZEC will make the voters' roll available 'within a reasonable time' is that the law provides for now leaves much to be desired;

2. The role of office of Register –General on the production of Voters’ Roll should be reviewed. Since ZEC is entrusted to deliver elections to the people of Zimbabwe, it would be desirable that it is empowered to deal with the voters’ roll entirely;
  
3. The ZEC should consider partnering with Civil Society Organisations whose interests in elections has been demonstrated by fielding the highest number of Election Observer.