



ANALYSIS

Regional Assessment of Elections: Controversy for Southern Africa

The final assessment of Zimbabwe's March 2005 parliamentary elections belongs to the citizens of Zimbabwe themselves. However, the assessment made by the Southern Africa Development Community (SADC) Election Observation Mission on the basis of the SADC *Election Principles and Guidelines* adopted at the August 2004 Mauritius Summit will probably be seen as the most important external evaluation of the elections, and will be heavily scrutinized both inside and outside Zimbabwe.

The mission is certain to be the subject of some controversy, with vigorous debate on the validity and adequacy of the SADC *Principles and Guidelines*, on the interpretation of the principles made by the mission and on the various political pressures which might affect the work of the mission.

The SADC mission could show how the observation and assessment of elections can become a tool of political strategy; alternatively, it could demonstrate the meaning and significance of a truly independent electoral evaluation.

Both the conduct of the mission and the outcome of the debate over Zimbabwe's parliamentary elections will be important indicators, not merely of electoral legitimacy in Zimbabwe itself, but also of the way in which the Southern African region handles internal differences with respect to democratic standards and democracy promotion.

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Introduction: The Changing Role of Electoral Observation

As the 'third wave' of democratization rolled over Eastern Europe, Africa and elsewhere in the 1990s, few elections in newly democratising countries were complete without a significant number of international observers. International election observation has been a major focus of activity and expenditure in the last 10 years, and is still often the subject on which media debate about international electoral involvement is focused.

However, questions soon started to be asked concerning the question of whether the evaluation of elections in emerging democracies was an appropriate and/or legitimate task for international observer missions. Especially in large countries, international observation missions often stayed only for a few days around polling day, could inevitably only be present in a tiny fraction of polling stations, and it was not always clear that observers knew what they were looking at.

An early response was the growth of domestic observation initiatives undertaken by local civil society organizations. Many domestic observation organizations were key contributors to the growing competence and professionalism of parallel vote tabulations, which have helped to identify and counter some attempts at electoral fraud. Especially when the opponents of democracy are really determined, domestic observer networks and international observation missions have worked effectively in partnership.

As the nature of observation changed, so did the efforts of those who seek to manipulate elections. Attempts to steal elections by ballot stuffing became rarer. Attempts to affect election results by selective criteria for electoral registration, or selective application of these criteria, became more common – because registration takes place when there are fewer outsiders around. Attempts to affect results by falsification of the numbers during counting and tabulation also continued.

Most insidious of all has been the realization by some governing elites that the entire electoral process can be allowed to be technically clean as long as the media and political environment in the months leading up to the election is sufficiently under their control. Opposition voices can even be allowed during that short period when the international spotlight is on the country in question. The observation community has professionalised its approach in response, trying to ensure that observation takes place throughout the electoral process, and deploying long term observers from the beginning of registration through to the swearing into office of those elected.

Towards Ownership: Regional Assessment of Elections

Even with these developments in observation methodology, the question began to be asked: who has the standing to evaluate elections? Voices began to be raised questioning the view that the legitimacy of elections depends in any real sense on the judgements of international bodies. Norms and standards for the conduct of elections have been widely debated, a process to which IDEA has made many contributions. While no common global text has been agreed, there is widespread understanding of what constitutes an

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election that is 'free' and 'fair' – and meets other requirements such as secrecy and transparency. Regional organizations began to develop regional norms and standards for elections – a movement which IDEA, among others, has promoted - based on the following principles:

1. The legitimacy of an election is judged above all by the people of the country concerned.
2. Regional co-operation is a means whereby common undertakings and principles can serve both to inform the assessment of individual elections held within the region in question, and to strengthen commitment to and the development of democratic institutions and standards within the region itself.

Southern Africa in particular has played a leading role in the movement towards establishing regional electoral standards and evaluations. In 2001, the SADC Parliamentary Forum (SADC-PF) produced a detailed set of principles for elections in the region, particularly highlighting the importance of the political environment in which an election is conducted. In 2003 the SADC Election Commissioners' Forum and the Electoral Institute for Southern Africa (EISA) produced a similar document, focusing primarily on detailed issues of election administration. Both SADC-PF and EISA have now observed a considerable number of elections in the region, and a considerable volume of regional expertise and experience in evaluating elections now exists.

The SADC Principles and Guidelines on Elections

At the SADC Summit in Mauritius in August 2004, all SADC member states present adopted the SADC *Principles and Guidelines on Elections*. This document is a political agreement, a declaration with no legal force that does not provide for any enforcement mechanism or sanctions in the event of non-compliance. It contains comprehensive provisions on the rights and responsibilities of electoral observers, including a code of conduct for observers, and also details of the responsibilities of a state hosting external observer missions.

While not going into detail in relation to electoral norms and standards, the SADC *Principles and Guidelines* list 10 principles to which member states are required to adhere in order to ensure the proper conduct of democratic elections. The principles include:

- full participation of citizens in the political process
- freedom of association
- political tolerance
- equal opportunity for all political parties to access state media
- equal opportunity to exercise the right to vote and be voted for
- independence of the judiciary
- impartiality of electoral institutions

The peaceful change of national leaders in Malawi, Mozambique and Namibia during 2004 on the basis of established constitutional provisions has provided examples of a

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promising outlook for continued democratic development and consolidation in the region. The introduction of the *SADC Principles and Guidelines on Elections* should be seen in this light – as an expression of the regional organization's ambition to further promote democratic consolidation in Southern Africa.

In the coming two years, however, the SADC region faces further national elections where the *SADC Principles and Guidelines on Elections* may have a critical role to play as a peer review instrument for promoting legitimate, truly democratic elections. The next country in line to hold elections is Zimbabwe, where parliamentary elections will be held on 31 March 2005. Zimbabwe will be followed by Mauritius and Tanzania later in 2005. It is likely that elections will take place in Angola and the Democratic Republic of Congo (DRC) during 2006. During this series of elections, the role of the *Principles and Guidelines* will be heavily tested, with their standing and their robustness to deal with difficult situations very much in the spotlight, together with the possible implications for the development of regional co-operation itself.

Zimbabwe's 2005 elections

Zimbabwe provides the next test of the *SADC Principles and Guidelines*. On 31 March 2005 Zimbabweans will go to the polls to select 120 members of the 150-member National Assembly, the remaining 30 members being appointed by President Robert Mugabe. Delivering a verdict on the outcome of elections conducted in contested and/or conflictual political environments is generally problematic, and Zimbabwe will be no exception. A chronology of elections in Zimbabwe appears in the annex below.

The new election legislation in Zimbabwe

There are several major issues on which change in Zimbabwe's election legislation has been sought since 2002 or even before. One of the most important demands, reflecting the common practice in Southern Africa, has been for the creation of an independent electoral commission that would have the authority and legitimacy to run an election free of political interference. In response to these demands the Zimbabwe Electoral Commission Act and the Electoral Act were drawn up and signed into law by President Mugabe in January 2005. The key issue in this respect, however, remains the independence of the new Electoral Commission, since its members are appointed directly by the President. The appointment of the five commissioners appears to have done little to enhance confidence in the electoral process. The five-member Zimbabwe Electoral Commission (ZEC) is headed by High Court Judge George Chiweshe, who is also a former Army officer. The Deputy Head of the ZEC is Sarah Kachingwe, a former Ministry of Information official, and other commissioners include George Kahari, an academic and long-time associate of President Robert Mugabe. In addition, confusion remains regarding the relationship between the new Election Commission and the former Electoral Supervisory Commission, which is a constitutional body and still in existence.

Leaving aside questions over its independence, the newly appointed Commission has had very limited time in which to give life to the *SADC Election Principles and Guidelines* in



practice. It has had only just over a month both to become fully operational and to organize the March 2005 parliamentary elections. While the setting up of the new Electoral Commission may amount to a degree of technical compliance with the SADC Guidelines, it will be difficult for changes to be seen on the ground with respect to either the run-up to or the conduct of the elections themselves.

Other serious concerns remain, related to the delimitation of constituencies – long an issue of contention in Zimbabwe. Voter lists have also long been a source of dispute in Zimbabwe, with the opposition alleging that their chaotic state is being used to effectively disenfranchise potential voters. Current concerns focus on allegations that the voter lists have been tampered with to alter information regarding certain voters.

The Zimbabwean authorities maintain that the new electoral legislation promotes compliance with the SADC *Principles and Guidelines*. However, in a submission to the Supreme Court opposing external voting by Zimbabweans outside the country, the Minister of Justice has recently made it clear that the *Principles and Guidelines* are viewed by the Zimbabwean authorities as a 'roadmap', not enforceable within the country's national jurisdiction.

Observation in Zimbabwe in 2005

The *SADC Principles and Guidelines on Elections* provide for election observation, to be carried out by the SADC Election Observer Mission (SEOM). The Zimbabwean authorities have begun accrediting observers, but appear to be doing so in a highly selective manner.

The SEOM only received an invitation from the Zimbabwean Government in February 2005 to monitor the March parliamentary elections. According to the *SADC Election Principles and Guidelines*, invitations to observer missions are supposed to be extended at least 90 days before polling day – which in the case of Zimbabwe would have meant by 29 December 2004 – 'to allow an adequate preparation for the deployment of the Electoral Observation mission'.

The SADC-PF, along with a number of other associations of parliamentarians in the SADC region, has so far not been given accreditation to observe the Zimbabwean elections. SADC PF was one of only a few regional African organizations that did not deem the 2002 Zimbabwean presidential elections to be free and fair. This is the first time that a SADC member country has refused to grant the SADC PF accreditation to observe an election. At the same time, accreditation for an EISA observation mission has not been forthcoming, and EISA has announced that it will not be sending a mission in any event because there is no longer time to for any mission to undertake a credible observation.

The majority of applications for accreditation of domestic observers have been accepted, with the exception of, among others, trade union observers.

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The broader political environment in Zimbabwe

The reports of political violence and intimidation that were commonplace in 2002 do not appear to be as widespread in 2005. However, the judiciary remains under tremendous political pressure. Judges continue to be intimidated and forced to resign, thus compromising the independence of the judiciary. Private media viewed by the government as sympathetic to the opposition have come under increased attack, and over the last few years independent journalists have been harassed and arrested. Freedom of association and assembly has been severely restricted through use of the January 2002 Public Order and Security Act (POSA) to regularly ban political meetings, in particular those held by opposition political parties. An Access to Information and Protection of Privacy Act (AIPPA) was passed in February 2002, making it a criminal offence to publish anything officially deemed to be 'false news'. Starting in 2003 this legislation was used to close down first the country's leading private newspaper, the *Daily News* and its sister paper, the *Daily News on Sunday*, and subsequently a string of other independent print media outlets.

Will the SADC *Principles and Guidelines* enhance electoral legitimacy in Southern Africa?

As with all national democratic elections, the decisive assessment of the March 2005 parliamentary elections rests with the citizens of Zimbabwe themselves. However, the assessment made by the SADC observation mission under the *Principles and Guidelines* will probably be seen as the most important external evaluation of the elections, and will certainly be heavily scrutinised both inside and outside Zimbabwe.

The SADC observer mission is certain to be the subject of some controversy, with vigorous debate on the validity, adequacy and efficacy of the SADC *Principles and Guidelines*, on the interpretations of the principles made by the mission and on the various political pressures affecting the work of the mission. The SADC mission could show how the observation and assessment of elections can become a tool of political strategy; alternatively, it could demonstrate the meaning and significance of a truly independent electoral evaluation.

Both the conduct of the mission and the outcome of the debate over Zimbabwe's March 2005 parliamentary elections will be important indicators, not merely of electoral legitimacy in Zimbabwe, but also of the way in which the Southern African region handles internal differences with respect to democratic standards and democracy promotion.



ANNEX

PREVIOUS NATIONAL ELECTIONS IN ZIMBABWE

- The **February 1980 election** – the first to be held under the new 1979 constitution – was based on proportional representation, through the party list system and was held in an environment characterized by tensions inherited from the recently ended national liberation struggle. The 1979 constitution, while establishing majority rule, also reserved 20 seats out of the 100-seat parliament for whites. In the end the more than 200 international observers present concluded that while the election had undoubtedly been held in a difficult and tense political environment, the election itself had been substantially free, fair, secret and free of undue intimidation. ZANU PF took 62.99 per cent of the vote and 57 out of the available 80 seats.
- In the **1985 parliamentary elections** ZANU PF increased its share of the vote to 77 per cent, winning 64 of the available 80 seats. The 1985 election differed from the 1980 election in that it was constituency-based and run on the first-past-the-post system. Some pockets of violence aside, the elections were deemed to have been conducted relatively peacefully.
- The **1990 parliamentary elections** were the first to be held after the expiry of the constitutional provisions reserving 20 seats for whites. The constitution was extensively amended in 1987 to abolish the bicameral parliament and establish a 150-member unicameral parliament. The new constitution also abolished the post of executive prime minister, replacing it with that of an executive president who was vested with wide-ranging powers, including the appointment of 30 of the 150 members of the National Assembly.
- In 1989 a unity agreement was reached between ZANU PF and PF ZAPU, thereby paving the way for the establishment of a de facto one party state. A new political party, the Zimbabwe Unity Movement (ZUM), was formed in 1989. The 1990 elections saw ZANU PF's share of the vote increase to 80.55 per cent of votes cast: it won 117 out of the 120 contested seats. The newly formed ZUM party obtained 17.59 per cent of the vote, winning two seats, and ZANU-Sithole achieved 0.92 per cent of the vote and won one seat.
- In terms of political competition, the **1995 parliamentary elections** are widely viewed as the lowest point in Zimbabwe's young electoral history. Some of the opposition political parties boycotted the elections, resulting in 55 seats going to ZANU PF uncontested. Adding the 30 seats that were filled by the president's nominations, ZANU PF had won the election with a healthy majority even before voting took place. ZANU PF securing 81.63 per cent of the vote in the election, and won 118 seats out of the 120. ZANU-Sithole won two seats from its ethnic constituencies in the east of the country. ZANU PF was later to lose one seat after



the result was successfully challenged as fraudulent by independent candidate Margaret Dongo, who went on to win the re-run.

- A variety of domestic, regional and international observers were present for the **2000 parliamentary elections**. These observer missions differed significantly in their judgments concerning both the democratic conduct and outcome of the election. The majority of observer condemned the significant levels of pre-election violence, noting that, while actual voting had been conducted in relatively peaceful conditions, the preceding violence had seriously tainted the credibility of the process. The opposition MDC immediately commenced court actions seeking nullification of the results in 38 constituencies. Most of these cases are still pending in the High Court and the Supreme Court.
- In the lead up to the **2002 presidential election**, political violence, principally targeted at political opponents of the government, escalated. Militias of young people were trained and deployed to intimidate perceived political opponents. The violent seizure and occupation of white-owned farms continued with the implicit support of the government.

On the regional and international front, pressure was brought to bear on the Zimbabwean Government to ensure that the 2002 presidential election would enable the Zimbabwean people to express their will freely. President Thabo Mbeki of South Africa urged dialogue between ZANU PF and the MDC. In January 2002, after a meeting in the Malawian capital Lilongwe in which President Mugabe participated, SADC expressed concern with the political situation in Zimbabwe. A press statement from this meeting stated that Zimbabwe had agreed to 'full respect for human rights, including the right to freedom of opinion, association and peaceful assembly for all individuals'.

Politically-related violence continued in the run-up to the election. With just over a week to go before polling day Movement For Democratic Change (MDC) Presidential candidate Morgan Tsvangirai was charged with treason. He was later acquitted of the charges in 2004. President Mugabe won the election, obtaining 56 per cent of the vote.

Domestic and international election observation teams of the 2002 presidential election were sharply divided in their views regarding its legitimacy. While the African Union (AU) and SADC observer missions concluded that the elections were legitimate, the SADC-PF came to the conclusion that the conduct of the elections had been neither 'free' nor 'fair'. Other international observer groups such as that from the European Union (EU) also did not recognise the elections as legitimate, and within Zimbabwe, 14 out of 15 domestic observer groups concluded that the elections were neither free nor fair. The MDC challenged the election result, as it had done after the 2000 election, alleging widespread fraud and intimidation. The case is still pending in the courts.

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