



## **An assessment of the country's state of preparedness to hold free, fair and credible elections in Zimbabwe.**

**A paper by the National Youth Development Trust.**

### **ABSTRACT**

*An election is a major institutional pillar of liberal democracy. The conduct of regular elections is considered the single most important indicator of the presence or absence of the democratic context of the rule-based free, fair and credible election. However, for elections to represent the wish of the electorate, it must be credible and the entire process must be free and fair. Thus, the process must not be left out to the government and government established electoral agencies alone. Rather, it requires the vigilance, involvement and monitoring of NGOs agencies like civil society neighboring countries and international institutions to prevent the government of the day from wielding the power of incumbency to skew the electoral process in its favor. This paper assesses what free, fair and credible elections entail, in terms of international standards, SADC guidelines and the current Zimbabwe's position in the context of its constitution. Additionally, the paper scans the environment on whether there are prospects of free, fair and credible elections. It further assess the role and participation of youths in 2018 elections, and their impact in achieving free, fair and credible polls.*

### **INTRODUCTION**

Free, fair and credible election is one of the prerequisites of democratic governance. Elections are a central component in any democratic state. They stand as an avenue of ensuring that those that are governed can freely express their choice on the type of leadership that appeals to them. Also

the governed can choose the particular policy that they think can be the solution towards the challenges they face, politically, socially and economically. Elections are rendered credible, when rules, regulations and laws governing the electoral process are followed and ultimately, a credible candidate is freely and fairly elected to represent the electorate.

According to Diamond (2002) free and fair elections have major four components. These are, independent political parties will compete in electoral process in freely and fairly, individuals must be free to participate in politics and election process based on their own choice, election process would be free and fair so that every adult can apply their voting and finally, outcome of the election or counting vote would be accurate and legitimate<sup>1</sup>. That is, if all the four above mentioned components are incorporated in the electoral process, that election can be viewed as credible, free and fair.

Additionally Rajasingham (2005), has mentioned three elements of free, fair and credible elections: (1) An enabling legislative framework, (2) The impartial and neutral administration including election commission and (3) Competitive electoral process accepted to all the political parties<sup>2</sup>. In the Zimbabwean case, elections have been held every five years since the country attained its independence in 1980. The elections have been guided and regulated by the legal framework in the form of the Electoral Act since 1990. The Act underlines that there shall be a commission that is overly responsible and oversees the administration and conduct of elections, which is Zimbabwe Electoral Commission. It is in this context that ZEC is at the fore-front of preparations for holding a free, fair and credible election in 2018. The Commission coordinates all election related processes.

In order to achieve and fulfill the statement of being fair, free and credible the Zimbabwean government has to conform to the elements of free, fair and credible which have been alluded to above. A comprehensive legal framework with effective mechanism of enforcement of regulations and the strong independent and empowered ZEC are the prerequisites. Complete error free voters roll, transparent procedure to conduct elections and timely or easy mechanism to resolve election

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<sup>1</sup> Diamond. L (2002). "A free and fair". The administration and conduct of the 1983 Nigerian Elections. Nigerian Government and Politics (1979-1983). Wusen Publishers.

<sup>2</sup> Rajasingham. S. K (2005). " Essentials of Free and Fair Elections Paper presented at Regional Dialogue on Free, Fair and Credible Elections, Islamabad, Pakistan Organized by PILDAT.

disputes. The government should present a level playing field for all political parties when campaigning.. Equal media coverage by state media of all political party's manifestos and rallies. International bodies to observe the elections to mention but a few.

### **Determinants of free, fair and credible elections within the Zimbabwean context.**

The existence of impartial and neutral administration of electoral commission is key. According to the Electoral Act, Zimbabwe Electoral Commission (ZEC) should be an independent electoral management body that is guided by universal principles of transparency, accountability and fairness. This implies that, in its conduct, the ZEC must not be perceived as biased and opaque. Notwithstanding the clarity of the electoral act, there have been growing allegations from both Civil Society Organizations and Opposition political parties that ZEC fails the basic test of transparency, accountability and fairness. This paper is therefore an evaluation of these allegations as a way of assessing the country's preparedness for the 2018 elections which are due at the end of the month of July.

solely and independent body and all political parties are supposed to be given equal access to information regarding voters roll and all the necessary information regarding printing and transporting ballot papers and boxes. However the transparency of the electoral body ZEC remains a challenge. Already the opposition parties are at loggerheads with the government on the issue of printing of the ballot papers as the opposition parties have been blocked from observing the printing of ballot papers. This dates back to the 2013 elections when there were allegations of election rigging which emanated from printing of ballot papers. Unconfirmed reports said that ZEC turned down demand for external auditors even when auditing of the voters roll is a prerequisite in electoral statutes. Disclosure of the tender process and the company which has been given the mandate to print ballot papers by ZEC has raised suspicion within the political arena. Political analysts believe that there is a lot which is being hidden behind that process. All these concerns raised are pointing to the prospects of the government failing to deliver free, fair and credible elections.

As stipulated in the Constitution Section 155 (2d), media access is key to free and fair elections. It is the minimum requirement in the attainment of fair elections. State owned and privately owned

media houses both print and electronic must cover activities of all parties which are participating in an election in a fair and balanced manner. However, Zimbabwe has not seen that witnessed that. The state-owned media only covers negative news happening within opposition parties like intra-party conflicts and leaving behind their campaigns. There is need to see ZBC, Chronicle, Herald and other state owned entities covering opposition rallies and campaigns. Private media has to cover ruling party gatherings so that the electorate makes an informed decision on who to elect. In its post-Zimbabwe 2013 Election assessment report, the SADC Elections Observer Mission raised concerns about the biased conduct of state media<sup>3</sup>. This situation has not changed. The 2017 media freedom ranking by the international media watch dog, Reporters without Borders place Zimbabwe 128<sup>th</sup> out of 180 countries. Reasons cited for the poor ranking include oppressive media legislation and harassment of journalists.

The continued existence of draconian laws such as Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) that limit the capacity of civic society organizations to effectively access the pre-election environment is a stumbling block in achieving free and fair elections. In the context of young people, they are being incapacitated by these laws in terms of access to civic education and freedom of assembly. Restrictions on rights to freedoms and expression, association must be urgently reviewed. Partisan policing and prosecution has worsened the impact of the repressive provisions in the AIPPA and POSA laws. Failure to repeal or significantly revise these laws and to develop mechanisms to address the partisan conduct of the police leaves little chance of the full enjoyment of rights to freedom of association and peaceful assembly prior to and during the coming elections.

A thorough and impartial election observation is therefore critical as demanded by civil society. SADC's role in particular will be important. Elections should be observed by all stakeholders including international agencies like European Union, SADC, and United Nations. Another worrying concern by NYDT, civil society political parties and political activists is that of accreditation of observers, it is supposed to be done on neutral grounds. What this means is that ZEC is supposed to be given the mandate to accredit or invite election observers. Criticism comes into play when the government which is currently under one political party is given the mandate.

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<sup>3</sup> See SADC Elections Observer Mission Report (2013) Zimbabwe 2013 Post-Election Assessment report

This would pave way for the government to only accredit countries which have been friendly to them leaving those countries which are hostile to them.

Additionally, there are calls by civil society organizations that those accredited to come and observe should come three months earlier before the election and one month post-election period. Three months before the election is very critical because that is when a lot of election malpractices takes place like voter intimidation. There have been reports about influential people amongst the communities who go around noting down serial numbers of voter registration slips. To some extent that is part of voter intimidation and malpractices which are already taking place and it is violation of the Electoral systems and processes.

According to NYDT (2013) research paper the legal provisions in the Electoral Act invest so much power especially in president who in most cases is also a contestant in the elections<sup>4</sup>. The Act gives the president powers to call when elections could be held. This scenario therefore leads to the president to fully use such powers to ensure that he has cutting edge over the other candidates. For example the timing in the call for elections is largely pronounced at a time when the environment is conducive for his party. This therefore will make the opposition parties to be more reactionary than proactive.

Additionally the president makes appointments for key strategic positions for example the Electoral commission chair and Registrar General and the members that make up the commission. Such a composition of the electoral management body has been noted by various critics that these appointees are more likely to be apologetic and soft to the one that appoints them. It is in line with such arguments that allegations have arisen that ZEC is composed of ex-military members and that will deter the attainment of free, fair and credible elections.

According to the Constitution of Zimbabwe Amendment (No 20) Act 2013 Chapter 7 Part 1 Subsection 155 (1) Elections, which must be held regularly, and refer and referendums, to which this Constitution applies must be (d) free from violence and other electoral malpractices. According to Research and Advocacy Unit (2018) by reference to public data on political violence for the period 1998 to 2018, Zimbabwe is compared with four of its neighbors in SADC that share

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<sup>4</sup> See NYDT 2013 Occasional papers, The salient yet silent voice in the Electoral process in Zimbabwe

a common history of armed struggle; Angola, Mozambique, Namibia, South Africa, and Zimbabwe. The analysis shows Zimbabwe to be the most violent of the five countries, with most violence aimed at civilians by political militia, and a very significant amount of the violence (46%) occurs during elections. Furthermore, the kind of political violence during elections is considerably more serious than that which occurs outside of elections. The findings provide a cautionary background to the forthcoming elections in 2018. The concerning part of election violence is that young people are being used by politicians to unleash terror and violence on their counterparts and elders. It is in this view that if youths desist from politically motivated violence free, fair and credible elections would be achieved.

Legislations of military involvement in national politics is key, in achieving free, fair and credible elections. Human Rights Watch (2017) stated that on November 24, High Court Judge George Chiweshe ruled that the military intervention that led to Mugabe's ouster was lawful under Zimbabwe's constitution<sup>5</sup>. Whatever the merits of the ruling, the judgment could embolden the military to carry out further incursions in Zimbabwe's political or electoral affairs in the future. The highly partisan stance of Zimbabwe's military leadership, particularly without meaningful security sector reforms, significantly reduce the chances that free, fair and credible elections can be held. There is an urgent need, ahead of the elections, for Zimbabwe's Constitutional Court to review Judge Chiweshe's ruling and ensure that members of the security forces observe strict political neutrality. Failure to ensure a professional, independent and non-partisan role for the security forces may make it difficult to deliver the elections needed to put Zimbabwe on a democratic and rights-respecting tracks

The Electoral law has to be aligned to the constitution of Zimbabwe. This will open up for major electoral reforms which need to be updated before the elections. NYDT notes with concern the piecemeal amendment to the Electoral Act as well as the lackadaisical approach by the ruling party which has the majority representation in parliament that it will take away the prospects of free, fair and credible polls set to be held by July 2018. The reforms would address the issues of media

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<sup>5</sup> Human Rights Watch (2017) Credible Elections and Human Rights Reforms December 12, 2017.

control and coverage, transparency in electoral processes, independence of electoral commission, strengthen institutions supporting democracy, and some other which have been allude to above.

### **Notable achievements so far in attaining free, fair and credible elections:**

Somewhat notable progress has been made by SADC by revising its election principles. Zimbabwe's 2018 elections will be observed under the revised SADC Principles and Guidelines Governing Democratic Elections. The new guideline has raised the bar somewhat in terms of the electoral management process, providing for long-term observation of the elections, a post-election review process, and more oversight for the SADC Electoral Advisory Council and enforcement mechanism for non-compliant states. Long term observation entails early deployment of observers, up to three months before the election. This is consistent with one of the key asks of the Zimbabwe civil society focused on elections.

Progress towards the new voters roll through the biometric voters roll can be hailed as a key achievement. The old voters roll have been criticized long back of being manipulated in favor of the ruling party. There are allegations that it had full of ghost voters and during the 2013 elections ZEC failed to avail the roll to the respective contesting parties.

SADC's approach is centered mostly on pre-empting election violence by making use of early warning and mediation. However, as Zimbabwe's 2013 election demonstrated , a violence free election does not negate the possibility of covert forms of intimidation, structural forms of unevenness and, in fact , subtle rigging. Several surveys point to the dominance of the fear factor in Zimbabwean politics which will take a long time to undo. Early deployment and long-term observation may assist in detecting and addressing some of these below the surface dynamics.

There has been positive outcomes in terms of accreditation and invitation of observing countries. According to Daily News dated 11 April 2018 invited and accredited countries include all 15

SADC member states, and all members of the European Union bloc<sup>6</sup>. Other European countries are Russia, Belarus, Norway, Serbia, Switzerland and Turkey. In North America, Government is inviting the United States of America, Canada and Mexico while Brazil, Ecuador, Nicaragua and Venezuela will represent South America. From Asia, Government approved China, India, Indonesia, Iran, Japan, Malaysia, Pakistan, Palestine, South Korea and Thailand and from the Caribbean invitations will be extended to Cuba, Jamaica, Trinidad and Tobago, Guyana and Barbados. Australia, New Zealand and Papua New Guinea are also going to be invited from the subcontinent. Regional liberation movements such as the African National Congress (South Africa), Chama Cha Mapinduzi (Tanzania), Frelimo (Mozambique), Botswana Democratic Party (Botswana) and MPLA (Angola) also top the list of invited observers. Organizations to be invited at SADC regional level are the SADC Parliamentary Forum and the Common Market for Eastern and Southern Africa (COMESA). International organizations coming to observe Zimbabwe's polls are the Commonwealth and the Non-Aligned Movement. The African Union Commission and the Pan African Parliament have also been approved to observe the elections and will join organizations such as the European Union Commission and the European Union Parliament. Over and above that, the African, Caribbean and Pacific Group and ACP-EU Joint Parliamentary Assembly are coming to witness the polls. Diplomats accredited to Zimbabwe will be authorized to observe the elections on request. This is a departure from the 2013 situation when only diplomats accredited on full time basis observed the polls.

Additionally, the government has somewhat opened up voter education for accredited civil society organizations across the country which is a notable progress towards achieving free, fair and credible election. One can allude that in the past era, civil society organizations have been labeled as traitors whose mandate is to further the interests of regime change agenda.

Conclusively, the likelihood however is that Zimbabwe will go into elections without most of the reforms envisaged by the new constitution, recommended by civil society organizations and opposition parties, the past observer mission reports and the electoral road map facilitated by South Africa under the Global Political Agreement, potentially setting the stage for another contested outcome. Despite the positive rhetoric from the top, Zimbabwe's path to democracy remains uncertain. Young people so far have not been given a significant chance to participate in 2018

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<sup>6</sup> [www.dailynews.co.za](http://www.dailynews.co.za) April 11 2018

elections by political parties and worryingly they are continuously being used in acts of violence as it has been witnessed in intra-party conflicts recently. The progress which has been made so far is far below par in achieving free, fair and credible elections. It becomes of significant importance that critical issues are wholesomely addressed so as to ensure free, fair and credible elections in Zimbabwe.<sup>7</sup>

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<sup>7</sup> This Paper was produced by **Musawenkosi Mpofu** on Behalf of NYDT 2018 Policy Papers