

Zimbabwe's adherence to the regional and international principles and guidelines governing the conduct of democratic elections

Paper presented T E Mwanyisa at the Post Election Conference
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Introduction

Zimbabwe held its Presidential, Parliament and Local Government election on 30 July 2018

Issues going into the election

- ❑ November 2017 transition
- ❑ a lack of government responsiveness and a lack of trust in government institutions;
- ❑ lack of trust in the Election Management Body (ZEC)
- ❑ weak accountability and transparency;
- ❑ low citizen knowledge of their governing institutions;
- ❑ slow implementation of the devolution process;
- ❑ little productive interaction between elected officials and citizens; and
- ❑ the need for greater respect for human rights.
- ❑ History of disputed elections

Introduction

History of disputed elections

The political environment in Zimbabwe, going into the 2018 election:

- remained fluid and unpredictable,
- Lessons learnt from review of past election concluded that the political environment prior to the election may not give rise to a credible election
- Some, if not, most of the past elections held in Zimbabwe have been heavily contested and characterized by violence.
- unequal playing field and selective application of laws.

Introduction

November 2017 transition provided opportunity for:

- Deepening and consolidation of democracy
- usher a political culture that allows for full and equal participation by all citizens in electoral processes
- to ensure that the elections are free, fair and credible and in line with regional and international standards governing the conduct of elections.

Introduction

The 2018 election gave the country an opportunity to depart from its legacy in order to show commitment to the rule of law and rebuild the image of the country

This paper will

- interrogate whether the elections in 2018 met international and regional standards governing the conduct of elections.
- analysis of standards governing the conduct of elections in Zimbabwe
- assessment of key milestones used to measure compliance of these standards during elections.
- The paper will conclude the 2018 election to **some extent** managed to meet international and regional standards governing the conduct of elections.
- The caveat, however, is that the use of these standards to gauge the credibility of elections tend to be limited given the generalized format these standards do take.

International and Regional Standards Governing the conduct of elections

International and regional standards are principles defined in international and regional instruments, including political declarations, and to the clarification and interpretation that has developed within the framework of human rights bodies and courts to specify the scope of application and content of these principles.

These include:

1. the 1948 United Nations Universal Declaration of Human Rights (UDHR) and
2. the 1966 International Covenant on Civil and Political Rights (ICCPR), including interpretations of the ICCPR by the Human Rights Committee in the form of General Comments.

Regional instruments have been compiled and adopted within regional organisations, in the case of Zimbabwe, such as

1. the African Union (AU), and
2. the Southern Africa Development Community (SADC) .

International and Regional Standards Governing the conduct of elections

United Nations Universal Declaration of Human Rights (UDHR)

In the Universal Declaration, the right to participation is included in Article 21 that provides for:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will 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.

International and Regional Standards Governing the conduct of elections

This paper will focus

- on regional standards as they relate to elections in Africa and these are the SADC Principles and Guidelines Governing Democratic Elections and African Union Charter on Democracy, Elections and Governance.
- Treaties address rights and freedoms broadly but often lack detail that can help interpret how they should be applied in practice .
- If we are to solely judge elections based on treaties most elections will pass the assessment because of this.

Methodology of Assessment

- ❑ The temptation was to assess these elections against specific principles
- ❑ this paper will take an approach of consolidation.
- ❑ A scan of both international and regional standards shows that there are common standards and principles.
- ❑ This paper takes the “Application and good practices” approach adopted by the European Union in the handbook, Using International Election Standards focusing on specific principles of each aspect of the electoral process.
- ❑ Reports of International and regional observer groups used, challenge no final reports from most regional observers.

How did the Zimbabwe 2018 harmonised elections fair against these standards?

- Electoral system
- Electoral administration
- Voter education
- Voter registration
- Candidate registration
- Election Campaign
- Media coverage of the elections
- Voting – Types of voting
- Counting and results management
- Electoral complaints
- Election observation

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Choice	Any electoral system should provide each person with the same number of votes and ensure equal weight of votes (equal suffrage).	The electoral system in Zimbabwe provides for each person the same number of votes. Presidential election, majority runoff system 50+1. Parliament and provincial/metropolitan system provide for a joint plurality system.

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Boundary delimitation	Boundary delimitation must be carried out by an independent and impartial body	Was not carried out for this election, was last conducted before the 2008 election. The ZEC has the responsibility of carrying out the boundary delimitation. Accusations of Gerry meandering in previous elections
	Boundaries must be drawn on the basis of admissible criteria set in advance to avoid discrimination (gerrymandering).	The Constitution stipulates that once every 10 years, the ZEC must conduct a delimitation of electoral boundaries exercise. Unfortunately, the last boundary delimitation process occurred before the 2008 elections and therefore, constituency delimitations do not represent the most recent census figures

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Boundary delimitation	To guarantee equal voting power variances occurring between the number of voters and constituencies or representatives should not exceed 10% from the average. To avoid such deviations a review of boundaries should take place at least every 10 years.	Sec 161 of the constitution, boundaries should be delimited to achieve as far as possible equal number of reg voters in each constituency. It stipulates that no constituency or ward should have 20% more or fewer registered voters than other constituencies or wards. However, for the 2018 elections, the number of registered voters for 106 of 210 constituencies varied by more than 20 percent, undermining the equality of the vote.

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Thresholds	Thresholds should not be set too high with the intention of excluding specific political parties, denying national minorities representation or causing wasted votes.	Not applicable to the Zimbabwe election at law but in practice
Special Measures	Such measures aiming to increase representation of underrepresented groups are not in principle opposed to equal suffrage	The threshold for women quota representation is within accepted international limits. 60 seats are reserved for women in the National Assembly. 60 seats are provided for in the Senate. Closed list is used using Zebra strip method with female candidates on top

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Legal framework	A clear, detailed and accessible framework for elections must be created by statutory law and implemented according to the rule of law	The legal framework does have provisions that provide for fair electoral process, its in application that we should reflect on.
	Framework and amendments should be the result of an inclusive and consultative process.	A new constitution was promulgated on May 22, 2013 following a protracted consultative process and a referendum. The Electoral Act was aligned to the constitution over a period. Use of Presidential Powers in some respects took away the consultative process of amending the laws. Several provisions are still to be aligned to the constitution such as the Public Order and Security Act (POSA) and Access to Information and Protection of Privacy Act AIPPA) and the Citizenship Act

Assessing the Electoral System

	Electoral System (Standards and good Practice)	2018 Assessment
Legal framework	Amendments to the fundamental elements of electoral law (e.g. electoral system, boundary delimitation) may not be made less than one year before an election	The last amendment to the Electoral Act was on 28 May 2018 very close to the election and not enysc with this standard and good practice. The provisions were positive in so far as they provide for Biometric Voter Registration, removal of channeling VE funds through ZEC, the setting up of the Multi Party Liaison Committee and the establishment of the Electoral Court

Assessing Electoral Administration

	Electoral Administration (Standards and good Practice)	2018 Assessment
Independence and impartiality	The EMB should be independent from political interests.	The Commission is established as an independent constitutional body. Sections 10A and 11 of the Electoral Act provides for the establishment of an independent Electoral Commission. The Independence is undermined by the role played by the Ministry of Justice, Legal and Parliamentary Affairs specifically as it relates to approval of regulations approved by the commission, the hiring and firing of senior staff.
	EMB staff members must be able to act free from intimidation or threats to their safety	Allegations have been made that the ZEC staff members are intimidated and threats are made on their safety, but this has not been proved and documented.

Assessing Electoral Administration

	Electoral Administration (Standards and good Practice)	2018 Assessment
Independence and impartiality	The EMB should have its own (sufficient) budget and other resources.	During the election period the Commission constantly complained about inadequate funding. The Commission does not make public its budget nor its expenditure. Budget allocation is through a ministry compromising the independence of the Commission.
Formation	The government should have a limited role in the formation of an independent EMB	Six Schedule to the Electoral Act gives the President the power to unilaterally set the terms and conditions of Commissioners. The Independence is undermined by the role played by the Ministry of Justice, Legal and Parliamentary Affairs specifically as it relates to approval of regulations approved by the commission, the hiring and firing of senior staff.

Assessing Electoral Administration

	Electoral Administration (Standards and good Practice)	2018 Assessment
Formation	The appointment of the polling officials should be inclusive and impartial.	ZEC gets most of its polling officials from the civil service. The list of constituency election officers is published.
	Criteria for the appointment of election officials should be clear and objective	These are seconded from the civil service, trained and remain under ZEC for the duration of the election. There have been accusations that the ZEC is staffed by active military personnel an allegation that ZEC has denied.
	EMB members should not run as candidates.	The law is specific to Civil Servant running as candidates, one must resign before running for office.
Special Measures	Special measures can be taken to boost female representation in electoral commissions.	No measures are in place to boost female representation in ZEC

Assessing Electoral Administration

	Electoral Administration (Standards and good Practice)	2018 Assessment
Training	Standardized training should be provided for EMB members.	All ZEC official receive standardized training. Cooperating partners assisted ZEC in reviewing training materials
	Training for polling officials should be equally provided to all officials	
	The training of the EMB should emphasize transparency.	Training material reviewed by the author show high levels of emphasis on impartiality.

Assessing Electoral Administration

	Electoral Administration (Standards and good Practice)	2018 Assessment
Mode of operation	Electoral commissions should work transparently, especially by holding open meetings, and ensure that the decision-making process is inclusive	Commission meetings are not held publicly, nor the decisions of the commission made public unless they are decisions the Commission wishes to share. ZEC set up the MPLC as a vehicle to provide a platform to share information with political parties. This vehicle was temporarily abandoned midway during the election process.
	All decisions should be made public in a timely manner	Decisions on newly created polling stations, ballot printing, failure to provide the final voters roll, the design of the ballot paper and observing the printing of the ballot paper called into questions the transparency of some of these electoral processes.

Assessing Voter Education

	Voter Education (Standards and good Practice)	2018 Assessment
Content, target groups, means	The authorities should provide basic information about elections and conduct broader civic education programmes	Election education conducted all out ten days before the election on both national and local electronic and print media. Information ranged from how to vote and does and donts on election day. VE was very visible especially close to election day.
	Authorities are obliged to announce all received candidatures as well as inform voters appropriately about lists and the candidates standing	Election calendar, full list of polling stations, the voters roll, list of nominated candidates, election officials manual, the list of constituency elections were published.
	Voter education specifically targeting gender equality and the needs of national minorities is reasonable and admissible.	Specific messages were targeted at women, first time voters, people living with disabilities and those visually impaired.

Assessing Voter Education

	Voter Education (Standards and good Practice)	2018 Assessment
Providers	Voter education may be provided by the EMBs, CSOs, political parties, candidates, etc	Section 40B (3) provides that the Commission “may permit any person to assist in in providing voter education”. The legal framework for voter education was amended to repeal the provisions requiring the disclosure of source of funding and need to channel it through ZEC. As result 79 organisations were accredited to conduct voter education. This was a positive
Special measures	In areas where there is a significant minority, such programmes should also be conducted in the language of the minority group	Voter education materials were translated into 13 languages
	Voter education should be adjusted to the special needs of people with disabilities	Specific messages were targeted at people living with disabilities and those visually impaired.

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter Eligibility	<p>To ensure universal suffrage, mentally incapable people should not be automatically denied the right to vote. Only conviction for serious crimes should be a reason for deprivation.</p> <p>Disenfranchisement should only be admissible due to a court decision.</p>	<p>Section 67 of the constitution provides for every Zimbabwean over 18 the right to vote. Disqualifications apply for people detained as mentally disordered. Diaspora potential voters were rules not eligible to vote. The Electoral Act stipulates in Section 133, entitled 'Special penalty for politically motivated violence or intimidation', that a person convicted of such an offence may be prohibited, 'for a period not exceeding five years from the date of the conviction, of (a) being registered as a voter or of voting at an election; or (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution'. This consistent with democratic norms.</p>
Voter registration and voter register	<p>Voter registers should be accurate, complete and regularly updated</p>	

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter registration and voter register	Where active registration is applied there should be enough time for eligible voters to register	The ZEC conducted a second round of registration having noted the low uptake in some areas. A further mop up blitz was undertaken between January 10 and 8 February. Overall there was enough time accorded to the voter registration
	A centralised voter register should be established to prevent multiple registrations	As result of the BVR exercise a centralised voters roll was established. The changes to the law moved the responsibility of managing and maintaining the voters roll from the Registrar General's Office to ZEC.
	Changes in the voter register that lead to disenfranchisement should be made early and supported by an information campaign	This was not observed in these elections

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter registration and voter register	There should be clear mechanisms of data exchange between the civil and electoral registry	Every eligible voter should produce his/her national registration Identity in order to register. The Registrar General issues these IDs. Some people failed to obtain IDs in time to register and some were turned away either because their ID number did not exist, or they were duplicates of other IDs. The law provides that the Commission and the former Registrar-General of Voters, in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General of National Registration, have a duty to cooperate with each other to ensure that their respective databases, as they relate to the eligibility or potential eligibility of voters, are in harmony with each other. The Registrar General should be applauded for issuing IDs during reg but in most cases were behind the ZEC reg team rendering those issued with IDs unable to register.

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter registration and voter register	Newly established electronic voter registers should be tested before election day	A deduplication exercise was undertaken to clean the register and to rid it of duplications. It is however not clear how this was done and the result of this exercise.
	To avoid multiple registrations, voter registration should be generally finished before election day	The law provides that no person shall be registered as a voter for the purposes of voting at any Presidential election or election of members of the Parliament or councillors unless he or she lodges a claim for registration or transfer of registration under section 24 or 25 no later than the second day following the publication of proclamation referred to in section 38 or a notice referred to in section 39, as the case may be, in relation to that election.
	Voter lists should be published and provided for public scrutiny, including a detailed breakdown of the number of voters added and removed	A verification period was undertaken between 19-29 May 2018 The law stipulates that the roll should be shared in an analysable format to political parties and candidates. The roll was only shared as searchable CD on June 18. The roll was not pasted at inspection centres to allow for people to cross check for people on the list and

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter registration and voter register	Practices on the disclosure of personal data should be formalised and harmonised among different laws. Personal data should be sufficiently protected.	Provisions relating to disclosure of personal data are not clearly defined in the Act. The Act however provides that one cannot, without the prior written consent of the Commission, make use of the voters roll for commercial or other purposes unconnected with an election; However, this is of paramount importance if a level of credibility of the roll is to be maintained. A few days after registration ZANU-PF sent out SMS to most of the registered voters encouraging them to vote for the party. This raised serious questions on the safety of personal information and its source. ZEC denied that it gave the party the information. A number of voters also claimed that they were asked to surrender their registration slips forcing ZEC, after public outcry, to issue a statement on the matter.

Assessing the voter registration

	Voter Registration (Standards and good Practice)	Comments
Voter registration and voter register	For corrections and challenges an expeditious court decision should be provided	If the Commission is satisfied that a person is registered twice the law allows to commission to remove the duplicate. The law states that no notice is required before a name is removed, and any aggrieved person can appeal to the magistrate courts.
Groups with special needs	Voter lists and other material should be available in minority languages	This was not adhered to. The voters list was only issued in English possibly because of the high cost associated with the translation and issuing in in brail
	IDPs must not be denied the right to vote or to be registered	This in the diaspora were denied the right to register.

Assessing results management

	Results management (Standards and good Practice)	Comments
Transmission and Publications	Preliminary and final results should be immediately published with a complete breakdown of the vote by polling station to increase transparency.	Commonwealth noted that although the final results were delivered by the ZEC within the legally stipulated timeframe (in approximately 77 hours), the communication strategy of the ZEC did not foster an atmosphere of confidence or trust.
	Results should include the total number of voters and turnout at each polling station, the numbers of valid and invalid votes, votes cast for each as well as against all candidates, and the number of spoiled ballot papers.	The ZEC provided stakeholders with a free CD-ROM copy of the presidential results in a protected excel format with a breakdown per polling station, which provided a level of transparency to the process. However, the initial results provided by ZEC contained errors and inaccuracies, which raised questions regarding their reliability and the competency of ZEC. The ZEC acknowledged some errors, which it attributed to double counting of some wards and transcription mistakes. After correcting the errors, ZEC released revised results, which showed a slight drop in the percentage for Mnangagwa and a similar increase for Chamisa, but not enough to affect the announced results

Assessing the 2018 Elections using international and regional standards

Overall Assessment

Electoral System	The electoral system applicable to the 2018 harmonized elections generally provides adequate conditions for competitive elections, if implemented in good faith.
Election Campaign	Political freedoms were respected during a generally peaceful campaign, but mistrust in ZEC and misuse of state resources were pervasive and reports of intimidation of voters undermines belief in the right to vote freely
Electoral Administration	Administrative arrangements for polling were in place, but ZEC lacked transparency and inclusivity; and further enhancement of the level of trust stakeholders, including voters, have in its independence and in the electoral process is required (EU)
Voter Education	Voter education for this election was more visible compared to previous elections. There was deliberate effort to convey voter education messages in local languages and also targeting specific groups such as People with Disabilities
Candidate Registration	The voter roll is generally inclusive but could be further improved. Enhanced ZEC transparency on data for voter registration is vital in order to help address anomalies and to boost confidence

Assessing the 2018 Elections using international and regional standards

Overall Assessment

Media coverage of the elections	Media operated in a generally free environment, but overwhelming bias in state media meant legal provisions for fair and balanced reporting were not respected
Voting, counting and results management	Reasonably well-managed and peaceful voting and counting process in polling stations, some queue mismanagement and results not posted in some instances
Electoral complaints	The handling of the legal challenge against the outcome of the presidential election was transparent and timely, but overall the handling of election disputes highlights that the right to an effective legal remedy is not adequately provided for
Election observation	Overall, it is clear from the number of accredited national and international observers that the requisite freedoms were put in place to enable such actors to undertake their duties, and ZEC also established reasonably effective and timely accreditation procedures.