

ZIMBABWE ELECTION SUPPORT NETWORK (ZESN)



*Report on the
Mudzi West,*

24 July, 2015

*Parliamentary By-
election*

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ACKNOWLEDGEMENTS

The Zimbabwe Election Support Network (ZESN) is grateful to its member organisations and volunteers who made observation of the Mudzi West by-election possible. This includes ZESN members who assisted in recruitment and pre-planning processes. Without their support, the election observation mission would not have succeeded.

ZESN is indebted to volunteers who observed electoral processes, voter registration and election-day processes, dedicating considerable time and effort. ZESN observers objectively reported on the processes.

ZESN commends the Zimbabwe Electoral Commission (ZEC) whose cooperation is indispensable to our successful election observation. The professional conduct of their polling officers is commendable.

ZESN also applauds citizens of Zimbabwe for voting in a peaceful environment during this by-election.

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
GNDEM	The Global Network of Domestic Election Monitors
ICCPR	International Covenant on Civil and Political Rights
JSC	Judicial Services Commission
MDC-T	Movement for Democratic Change -Tsvangirai
MMPZ	Media Monitoring Project of Zimbabwe
MPLCs	Multi Party Liaison Committees
NCA	National Constitutional Assembly
UDHR	Universal Declaration of Human Rights
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Election Support Network
ZHRC	Zimbabwe Human Rights Commission

1. EXECUTIVE SUMMARY

On 24 July 2015, the Zimbabwe Electoral Commission (ZEC) conducted a National Assembly by-election in Mudzi West. The by-election was necessitated by the death of the ZANU-PF incumbent, Aqualinah Katsande, on 28th March, 2015.

Following the invitation by ZEC, the Zimbabwe Election Support Network (ZESN) deployed 11 short term observers for the by-election comprising static observers based at some of the ward and constituency collation centres. In addition, two teams of mobile observers were deployed.

Zimbabwe's electoral legal framework generally provides a basis for the conduct of credible elections. This is also in line with the country's regional and international commitments. Notwithstanding this, there remains a need for electoral and political reforms as the prevailing polarised political environment and a culture of intimidation and threats have a negative impact on the professional conduct and management of elections by electoral and related state institutions. In addition, a piecemeal approach to electoral reform persists and alignment of electoral laws to the Constitution remains incomplete.

The pre-electoral environment was largely peaceful unlike that which prevailed before the 16 by-elections that were held on June 10, 2015, which were marred by reports of widespread voter intimidation, actions that constituted vote buying, abuse of state resources and traditional leaders. ZESN observers and interlocutors who ZESN interviewed in the period leading to the Mudzi West by-election attributed the relatively peaceful environment to the absence of genuine political contest.

ZESN continues to be concerned by the unusually high number of people that request assistance when intending to cast their vote. ZESN urges the Commission to develop inexpensive mechanisms to document the literacy levels of voters when voters present themselves for registration at voter registration centres. This will enable the Commission to gather the required statistics which can help develop voter education material that meets the unique needs of this category of voters. Consequently, the number of assisted voters will be reduced and the provision for assisted voters will hopefully be insulated from abuse.

In polling stations where ZESN observers were deployed, opening and setup procedures were successfully completed on time. Observers reported that all polling stations had all the required voting materials such as ballot boxes, ballot papers, ZEC official stamp, indelible ink and the voters' roll at the time of opening. All polling stations covered by ZESN observers had adequate polling personnel with an average of six per polling station. ZESN observer reports show that the process was generally peaceful and smooth with no major incidents reported.

At all polling stations where ZESN observed closing of polls and counting, the processes took place according to procedures and results were displayed outside the polling stations. At all

the ward collation centres and the constituency collation centre where ZESN observed, all party agents signed the V11 form thus agreeing that the process had been conducted well.

In addition to the observations above, ZESN further notes that there have been significant changes in the demographics of all the constituencies in Zimbabwe, since the last delimitation exercise was conducted in 2007. ZESN has previously made a comparison of Dangamvura/Chikanga and Highfield West constituencies to illustrate these changes. The comparison provides an example of constituencies that now have discrepancies between voting populations of up to 57%. The Constitution in section 161 envisaged that these discrepancies, at the completion of boundary delimitation, would not exceed 20%. Because of the changes in demographics Zimbabwe now has some constituencies that either have 20% more or 20% less registered voters when compared with other constituencies. The need for boundary delimitation cannot be over-emphasised as this exercise will restore equality of voting strengths in all constituencies.

ZESN therefore makes the following recommendations in order to improve future electoral processes:

- i. The Executive should demonstrate political will to fully align electoral laws to the Constitution by supporting a comprehensive review of the electoral law. This will address existing gaps in voter education constraints, voter registration, electoral court shortcomings and the right to vote for all Zimbabweans. There is need for holistic, and comprehensive, electoral legislation rather than piecemeal reforms.
- ii. ZEC capacity and independence: Government needs to avail adequate resources for electoral processes so as to enable ZEC to prepare and carry out its mandate effectively. There is also need to professionalise and capacitate ZEC Secretariat. ZEC should report directly to Parliament on its election management processes. The Electoral law should empower ZEC to make additional regulations that enhance election transparency without reference to or approval of the Minister of Justice, Legal and Parliamentary Affairs. In addition, there is need to regularise the potential conflict of interest that may arise if the Chairperson of ZEC remains the Secretary of the Judicial Services Commission.
- iii. There is need for effective stakeholder engagement on the voter registration methodology and resourcing of the process that ZEC will use for 2018 elections. There is also need for independent and ZEC sponsored audits of the voter's roll so as to determine the extent to which the current voters roll adhere to established principles.
- iv. There is need for ZEC to provide disaggregated statistics of the assisted voters. Such statistics will support the work of organisations advocating for the rights of the disabled and those seeking to support ZEC formulate more responsive and targeted voter education initiatives.
- v. Contesting political parties must ensure comprehensive deployment of political party agents to ensure informed advocacy interventions for electoral reforms.

- vi. There is need to revisit the issue of boundary delimitation as demographics have changed significantly since 2007 when the last delimitation exercise was conducted.

The recommendations above can only be fulfilled if and when there is adequate political will and commitment by political actors in Government.

2. INTRODUCTION

The Zimbabwe Election Support Network (ZESN) was formed in 2000 and is a coalition of 31 non-governmental organisations. The major focus of the Network is to promote democratic processes in general and free and fair elections in particular. ZESN is the secretariat of the Southern Africa Development Community Election Support Network (SADC-ESN) and is a member of The Global Network of Domestic Election Monitors (GNDEM).

Following the invitation by the Zimbabwe Electoral Commission (ZEC), ZESN deployed observers to Mudzi West, July 24, 2015 National Assembly by-election.

ZESN relied on reports from its field officers who observed the pre-electoral period and 11 observers who observed the Election Day processes.

ZESN is non-partisan and independent in its approach to election observation. ZESN election observation missions are guided by the Constitution of Zimbabwe, Electoral Laws of the Country and a number of regional and international standards, conventions and declarations which Zimbabwe is signatory to, such as the SADC Principles and Guidelines Governing Democratic Elections, the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

ZESN is also guided by the GNDEM's Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, Code of Conduct for Nonpartisan Citizen Election Observers.

3. BACKGROUND

The President called a by-election to fill the National Assembly Constituency vacancy in Mudzi West, following the death on 28th March of the ZANU-PF incumbent, Aqualinah Katsande. Statutory Instrument 57/2015 proclaimed 24 July, 2015 as the date for this by-election.

This by-election brings the total number of National Assembly by-elections held this year to 20. Three additional by-elections are scheduled to be held in Marondera Central, Epworth and Mbire Constituencies on 19 September 2015 as proclaimed by the President.

4. LEGAL FRAMEWORK

4.1. Legal framework for the by-election

The Constitution, Electoral Act, Statutory Instruments and Regulations form part of the Legal framework governing the conduct of by-elections in Zimbabwe.

The Legal framework requires that set polling dates comply with both section 158(3) and 159 of the Constitution, and section 39 of the Electoral Act, both of which require voting in a by-election to be completed within 90 days of the vacancy occurring. The Mudzi West by-election was therefore held within a timeframe set by the Constitution.

4.2. Nomination Processes

The nomination processes for this by-election were held in accordance with the provisions of the Electoral Act.

In terms of Section 47 (17) (c) of the Electoral Act, if at the close of nomination court, more than one person has been duly nominated for an election for a constituency, a poll shall take place in accordance with this Part and Part XIII¹ of the Electoral Act. Accordingly, the Nomination Court for the Mudzi West by-election was held on 21 May 2015, at the Marondera Magistrate Court. At the close of the nomination courts two candidates had successfully filed their nomination papers, namely Magna Mudyiwa of the Zimbabwe African National Union-Patriotic (ZANU-PF) and George Kawadza of the National Constitutional Assembly (NCA).

5. ELECTION ADMINISTRATION

5.1. Administration of the Elections

Section 239 of the Constitution gives the Zimbabwe Electoral Commission, the mandate to conduct and supervise elections and election related activities. However, the capacity to deliver this mandate is negatively affected by the inability of Government to avail adequate resources timeously.

Despite the perennial funding challenges that ZEC faces the commission continues to make commendable efforts to enfranchise voters. ZEC largely completed administrative and logistical preparations on time for the election; in particular, distribution of election material to polling stations was on schedule.

¹ Part XIII refers to preparation for and voting at poll

5.2. Voter Education

In every election, voter and civic education are necessary to ensure that all constituents—men and women alike—understand their rights, political systems, contesting parties' messages, and how and where to vote. For an election to be successful and democratic, voters must understand their rights and responsibilities, and must be sufficiently knowledgeable and well informed to cast ballots that are legally valid and to participate meaningfully in the voting process.²

Voter education is a resource intense exercise that ZEC has been unable to effectively deliver, and on a continuous basis, largely due to funding constraints. Section 239 of the Constitution gives ZEC the mandate of conducting and supervising voter education. Part IXA of the Electoral Act (sections 40A to 40F) goes further to give ZEC a virtual monopoly over the provision of voter education and imposes several additional restrictions on its provision by other entities such as Civil Society Organisations (CSOs) who can only engage in voter education at the invitation of the Commission. CSOs are required to print and use information that is provided for by the Commission in the form of flyers and posters. Organisations invited by ZEC to conduct voter education were required to provide four voter educators per ward. The methodology used is mainly door to door, distribution of materials and addressing community gatherings. Political parties on the other hand are permitted to provide voter education but are, however, constrained by lack of financial resources and technical capacity to deliver voter education.

ZESN recommends that the Commission engages stakeholders in the formulation of innovative voter education programmes that can leverage on the limited funding that both the Commission and electoral stakeholders have access to. Voter education content and messaging should be broadened and not just focus on the mechanics of voting but should be about enhancing knowledge, changing values, attitudes, behaviours and demystifying and allaying fears associated with elections and voting. The curriculum used for voter education should also be responsive to emerging needs and knowledge gaps such as the legal provisions for assisted voters, and the role of traditional leaders.

ZEC scheduled voter education for pre-polling in Mudzi constituency from 9 – 16 July, 2015, and deployed 40 voter educators (approximately eight voter educators per ward). At the invitation by ZEC, ZESN deployed a mobile team of four voter educators to complement the work of the much larger ZEC team. The ZESN team addressed over 1,500 people throughout the five wards. The ZESN constituency based voter educator was instrumental in securing opportunities for the ZESN team to address various community meetings whose scheduling coincided with the voter education period. The meetings included those organised by community leaders, sports events, and church gatherings. ZESN distributed 7,000 flyers which were translated to English (3,500 copies) and Shona (3,500 copies) to make the information more accessible to the voters. In addition 2,000 posters were strategically placed throughout the constituency.

² Civic and Voter education: <http://www.un.org/womenwatch/osagi/wps/publication/Chapter5.htm>

6. VOTER REGISTER

6.1. Voter Registration and inspection of the voters' roll

Effective voter registration is an important means of ensuring that the right to vote is protected. Voter registration is one means of promoting inclusive voting processes, while at the same time safeguarding against ineligible people.

Section 155 (2) (a) provides for the government to take all measures and ensure that all eligible citizens, that is to say the citizens qualified under the Fourth Schedule³, are registered as voters.

ZEC conducted voter registration and voters' roll inspection exercise. This was a special exercise that catered for the Mudzi West by-election only. The dates set for the exercises were in accordance with Section 26A of the Electoral Act which stipulates that the 12th day after nomination day is the last day for lodging a claim for registration on or transfer of registration to a voters' roll for the purpose of voting in a pending election. Voters' roll inspection was conducted from 19-23 June 2015, in accordance with the Law. Voters were able to inspect the voters' roll in the 22 inspection centres located throughout the constituencies.

6.2. Provision of the Voters' Roll

According to Section 21 (1) of the Electoral Act, the Commission shall within a reasonable period of time provide any person who requests it, and who pays the prescribed fee, with a copy of any ward or constituency voters' roll, either in printed or in electronic form as the person may request. The Electoral law also provides for provision of the voters' roll upon payment of a prescribed fee to every party that intends to contest the election, and to any accredited observer who requests it, one copy of every voters' roll to be used in the election, either in printed or in electronic form as the party or observer may request. The provision of the voters' roll to stakeholders has been an issue of contention, raising questions on its integrity and credibility. The 2013 electronic version of the voters' roll has not been given to stakeholders as the Registrar- General's office has been faced with alleged technical problems of replicating the roll. For this by-election, the Commission has made available copies of the constituency rolls to all the contesting candidates. This will go a long way in building confidence and trust in the running and management of elections amongst stakeholder and the ZEC.

However, ZESN remains concerned that the electronic voters' rolls that are given to stakeholders are in a 'non-readable format' making the voters' rolls very difficult to analyse. Consequently political parties are not able to effectively discharge their duty of assisting the Commission in the cleaning up of the voters' roll, by identifying irregularities within the

³ The Fourth Schedule of the Constitution contains qualifications and disqualifications for registration as a voter. A person is disqualified on grounds of mental disorder, if they are incapable of managing their own affairs or has been convicted of an electoral offence.

existing voters' rolls. ZESN urges the Commission to make available voters' rolls in a format that can be analysed as this facilitates independent audit of the voters' rolls.

7. ELECTION CAMPAIGNS

ZESN observed that campaigns for the NCA party were significantly affected by limited resources while ZANU-PF campaigns were robust owing to the party and candidates' access to significantly larger amounts of resources. This contributed to the creation of an uneven playing field. Consequently, the by-election was poorly contested. The absence of a genuine contest in this by election is, among other things, evident in the limited coverage by media outlets of electoral processes that led to this by election.

The need to review the current system of regulating party finances cannot be over emphasised. There is need for sustained discussion among electoral stakeholders on the appropriate mechanisms for political party financing that can help new entrants in politics to establish themselves. The new system should require appropriate disclosure, limits on expenditure and effective monitoring of party campaign finance. Democracy only thrives when the playing field, for political actors and political parties, is level and when elections are genuinely contested. Such a discussion is timely and relevant in light of the numerous challenges that independent candidates and smaller political parties continue to face when they try to participate in political processes.

The Constitution and the Political Parties (Finance) Act, as amended, provides for state funding of political parties. The 1997 Amendments to the Act set the threshold of political parties that could receive state funding to political parties that have received 5% of votes cast in the previous general election. Subsequent amendments to the same Act state that by-election results must be used to re-calculate the allocation for the parties. This adjustment should be made annually. Unfortunately votes cast for independent candidates are disregarded.

8. GENDER EQUALITY AND HUMAN RIGHTS

8.1. Gender Equality and Special Needs Groups

Active participation of women, youth, civil society organisations and marginalised groups in the electoral process constitutes a critical element for the strengthening of democracy and human rights in Zimbabwe.

ZESN commends the compilation of data on voters that is disaggregated by age and gender. ZESN, however, recommends that these statistics be shared with relevant stakeholders including political parties and civil society to aid their programming especially in the promotion of people living with disabilities and women's participation in elections. ZESN encourages ZEC to ensure that such data is made available via public platforms such as the ZEC website.

ZESN continues to be alarmed by the unusually high number of people that request assistance when intending to cast their vote. ZESN urges the Commission to develop inexpensive mechanisms to document the literacy levels of voters when they register to vote. This will enable the Commission to gather the required statistics which can enable the Commission to develop voter education material that meets the unique needs of this category of voters. Consequently the number of assisted voters will be reduced and the provision for assisted voters will hopefully be insulated from abuse. ZEC should also share the disaggregated statistics of assisted voters to allow for a clear distinction between illiterate voters and visually impaired voters and other categories of special needs groups.

9. ELECTION PETITIONS

Electoral petitions are part of the electoral justice landscape in Zimbabwe. The Electoral Court was established in terms of Electoral Act Chapter 2:13, 161 (as amended), and has exclusive jurisdiction to hear appeals, applications and petitions in terms of this Act; and to review any decision of ZEC or any other person made or purporting to have been made under this Act. The Court's mandate covers a wide range of potential cases, from voter registration disputes to election petitions by unsuccessful candidates.

The Judicial Service Commission (JSC) in February 2015 announced the appointment of four High Court judges (Justices Chinembiri Bhunu, Tendai Uchena, Andrew Mutema and Martin Makonese) as judges of the Electoral Court. The appointments are for the six-month period 16th February until 15th August 2015. ZESN, however, notes that the Electoral Court Judges have been sitting unconstitutionally because section 183 of the Constitution does not permit the appointment of Judges to sit on more than one court.

In addition, there is need to regularise the potential conflict of interest that may arise if the Chairperson of ZEC remains the Secretary of the Judicial Services Commission.

In Zimbabwe there are a number of institutions that play significant roles in facilitating the effectiveness of our electoral justice system. The institutions include, but are not limited to, ZEC, The Zimbabwe Human Rights Commission (ZHRC), Electoral Courts and the Zimbabwe Republic Police (ZRP). During the Mudzi by-election these institutions played a very minimum role with the exception of the police which provided security for the elections. This can be attributed to the fact that the Mudzi West by-election was poorly contested.

10. ELECTION DAY OBSERVATIONS

The Network deployed 11 short term observers for the by-election comprising static observers based at some of the ward and constituency collation centres. In addition, two teams of mobile observers were deployed. ZESN's observation efforts conform to the Electoral Laws of Zimbabwe and the report is informed by ZESN observer's findings.

Opening and Setup, Voting and Counting Procedures

In polling stations where ZESN observers were deployed, opening and setup procedures were successfully completed on time. Observers reported that all polling stations had all the required voting materials such as ballot boxes, ballot papers, ZEC official stamp, indelible ink and the voters' roll at the time of opening. All polling stations covered by ZESN observers had adequate polling personnel with an average of six per polling station. ZESN observer reports show that the process was generally, peaceful and smooth with no major incidents reported.

Counting

At all polling stations where ZESN observed closing of polls and counting, the processes took place according to procedures and results were displayed outside the polling stations. At all the ward collation centres and the constituency collation centre where ZESN observed, all party agents signed the V11 form thus agreeing that the process had been conducted well.

Assisted voters and turned away voters

ZESN observers indicate that there were significant numbers of assisted voters. By close of polls, ZESN noted that an average of 25 voters were assisted at each polling station visited by mobile observers and the majority of these were illiterate. Disturbing figures were observed at Tsakare Primary School ward four and Chipfuri Primary School ward five where our mobile observers reported that 38 and 52 voters had been assisted by 13:08hrs and 15:42hrs respectively. Furthermore, ZESN noted that some voters were turned away and reasons for this included the fact that some voters presented themselves at polling stations without identity documents while some were bringing the wrong identity documents and others did not appearing on the voters' rolls.

Voter Education

ZESN noted with concern that a large number of voters continue to be turned away in elections, an issue that could have easily been addressed by a comprehensive voter education programme. This observation is of concern given that voter education for the by-election was conducted. This therefore raises questions on the voter education methodologies employed, the reach and the timeframe allotted to the process.

Political Party Agents

It is regrettable that at most polling stations where ZESN observed only ZANU-PF had deployed election agents. ZESN notes that the failure by the other contesting candidate to deploy agents is unfortunate given that the presence of election agents is not only crucial in enhancing the transparency of the electoral process but provides candidates with a basis for informed calls for reforms to electoral processes. The role of party agents is provided for in the Electoral Law therefore political parties are encouraged to take full advantage of the provision.

Police presence

ZESN has repeatedly observed that police officers are actively involved in the election process especially in assisting voters. ZESN reiterates its position on police presence and roles inside the polling stations which goes against international best norms and standards. ZESN calls for the role of the police to be limited to maintaining law and order.

Data disaggregation

ZESN continues to observe the compilation of disaggregated data by age and gender and commends ZEC for collecting such crucial data that can inform voter education programmes and other electoral processes.

11. MUDZI WEST BY-ELECTION RESULTS

The graph below shows the results of the 2015 Mudzi West by-election.

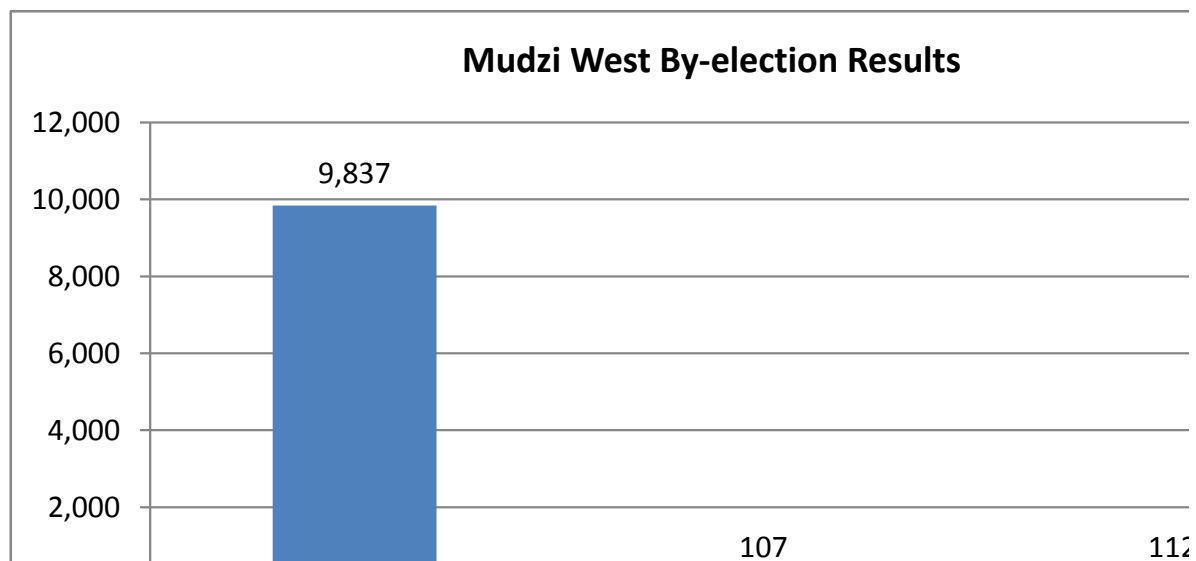


Figure 1: Mudzi West By-election results

Comments:

- ZANU-PF retained the Mudzi West Constituency Seat.
- The votes for the second winning candidate were less than the number of spoilt ballots.
- The By-election was poorly contested as the country's largest opposition party the MDC-T did not participate in this election. The MDC-T and its formations continue to boycott by-elections citing the need for electoral reforms.
- The ruling party ZANU-PF continues to enjoy overwhelming support in the Constituency as illustrated in figure two below. On the other hand a comparison of votes received by ZANU-PF candidates in the 2013 and 2015 National Assembly elections show a 31% decrease. Figure 2 below illustrates this. This decrease can largely be attributed to the fact that by-elections seem to generate less interest among the voting populace in comparison to general elections.

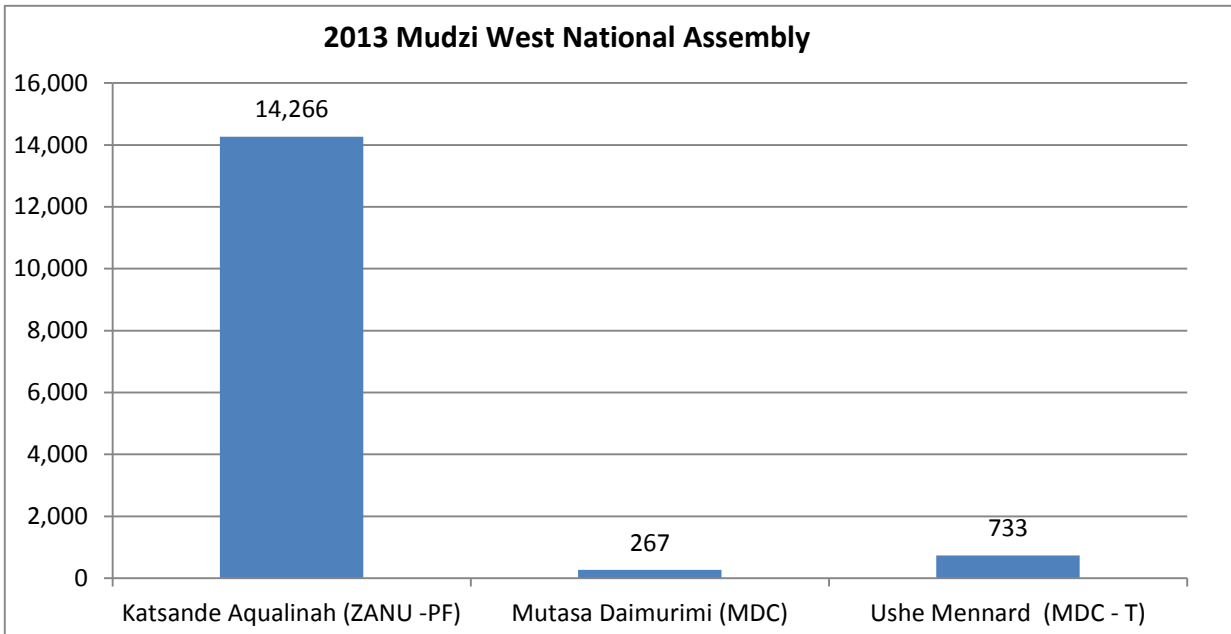


Figure 2: 2013 Mudzi West National Assembly Results

38% of the registered voters in Mudzi West turned up to vote on polling day, as illustrated in figure 3 below. Enhanced civic and voter education may help improve the level of interest in elections by different segments of voters. ZESN therefore urges ZEC to avail disaggregated statistics of voters as the statistics are of immense benefit to organisations that seek to contribute to the formulation of civic and voter education.

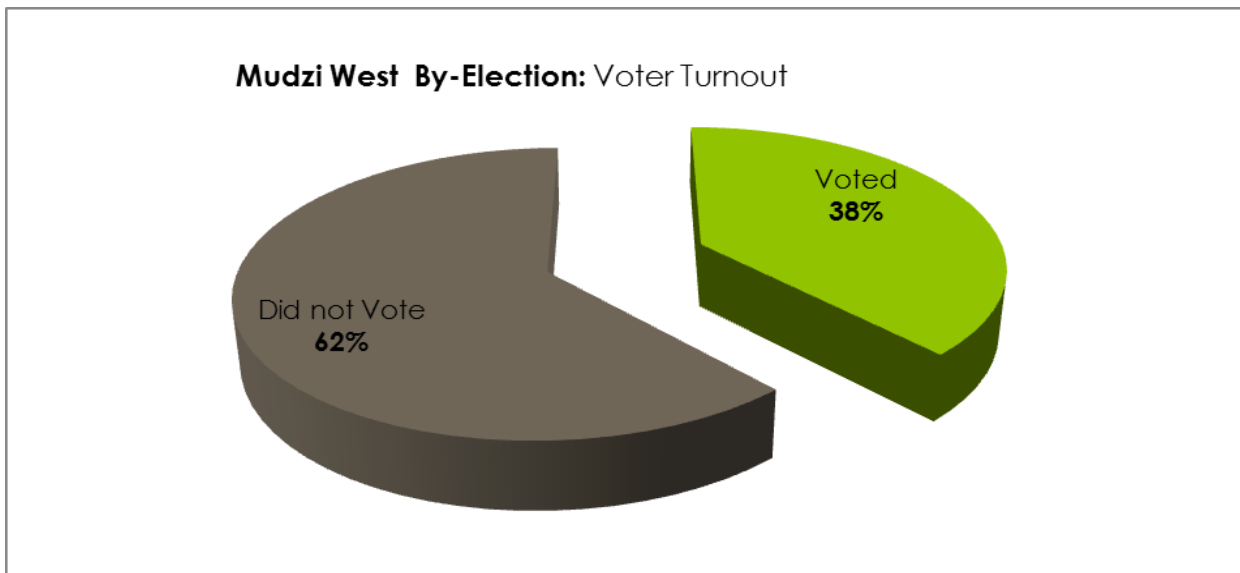


Figure 3: Mudzi West By-election percentage poll

RECOMMENDATIONS

ZESN makes the following recommendations in order to improve future electoral processes:

- i. The Executive should demonstrate political will to fully align electoral laws to the Constitution by supporting a comprehensive review of the electoral law. This will address existing gaps in voter education constraints, voter registration, electoral court shortcomings and the right to vote for all Zimbabweans. There is need for holistic, and comprehensive, electoral legislation rather than piecemeal reforms.
- ii. ZEC capacity and independence: Government needs to avail adequate resources for electoral processes so as to enable ZEC to prepare and carry its mandate effectively. There is also need to professionalise and capacitate ZEC Secretariat. ZEC should report directly to Parliament on its election management processes. The Electoral law should empower ZEC to make additional regulations that enhance election transparency without reference to or approval of the Minister of Justice, Legal and Parliamentary Affairs. In addition, there is need to regularise the potential conflict of interest that may arise if the Chairperson of ZEC remains the Secretary of the Judicial Services Commission.
- iii. There is need for effective stakeholder engagement on the voter registration methodology and resourcing of the process that ZEC will use for 2018 elections. There is also need for independent and ZEC sponsored audits of the voters' roll so as to determine the extent to which the current voters roll adhere to established principles.
- iv. There is need for ZEC to provide disaggregated statistics of the assisted voters. Such statistics will support the work of organisations advocating for the rights of the disabled and those seeking to support ZEC formulate more responsive and targeted voter education initiatives.
- v. Contesting political parties must ensure comprehensive deployment of political party agents to ensure informed advocacy interventions for electoral reforms.
- vi. There is need to revisit the issue of boundary delimitation as demographics have changed significantly since 2007 when the last delimitation exercise was conducted.

The recommendations above can only be fulfilled if and when there is adequate political will and commitment by the political actors in Government.

12. CONCLUSION

ZESN continues to note the recurring gaps and inadequacies in the legal framework of elections. The Network therefore reiterates that electoral reforms still remain a priority in promoting credible elections. ZESN implores political parties, government and parliament to support efforts to speed up the harmonisation of the Electoral Laws to the Constitution and

the need for political will to fully implement the electoral provisions as Zimbabwe prepares for the 2018 elections.