

ZIMBABWE ELECTION SUPPORT NETWORK (ZESN)

*Report on 22
October 2016
Norton
National
Assembly By-
election*

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ACKNOWLEDGEMENTS

The Zimbabwe Election Support Network (ZESN) is grateful and indebted to the member organisations and volunteers who made observation of the Norton by-election possible.

These ZESN Members assisted in the recruitment of the 56 volunteers who were deployed to each of the polling stations where voting took place on Election Day. ZESN appreciates the volunteers who demonstrated considerable commitment and effort to observe electoral processes such as nomination, voter registration and polling day processes. Without their commitment this and other reports by ZESN on the elections would not have been possible.

ZESN observers objectively reported on the processes and conducted themselves professionally throughout the Election Day. Their assessment of the by - election was informed by the Electoral Laws of Zimbabwe and a number of regional and international 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 observation was also guided by the GNDEM's Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, and the Code of Conduct for Nonpartisan Citizen Election Observers.

ZESN commends the Zimbabwe Electoral Commission (ZEC) whose indispensable cooperation made our election observation successful. ZESN also applauds citizens of Norton Constituency for coming in their number to vote on elections day.

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
FFP	Freedom Front Party
GLAA	General Laws Amendment Act
GNDEM	The Global Network of Domestic Election Monitors
ICCPR	International Covenant on Civil and Political Rights
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
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Election Support Network
ZHRC	Zimbabwe Human Rights Commission

1. EXECUTIVE SUMMARY

On 22 August 2016, the Zimbabwe Electoral Commission (ZEC) conducted a National Assembly by-election in Norton Constituency. The seat was declared vacant following the expulsion of Christopher Mutsvangwa, a former ZANU Legislator, from the ruling ZANU PF party.

Following the invitation by ZEC, the Zimbabwe Election Support Network (ZESN) deployed 72 observers comprising static (polling station and constituency collation centre based observers), and mobile observers. The election observation methodology employed allowed the Network to measure the by-election electoral processes' compliance with the Constitution and Electoral Laws to enable informed advocacy interventions for electoral reforms.

The pre-electoral environment was marred by isolated cases of violence and electoral malpractices which amounted to intimidation and vote buying. Vibrant political campaigns were conducted by two of the three electoral contestants namely the ruling ZANU PF candidate and the independent candidate while the campaigns by the NCA candidate were barely visible throughout the campaign season. The independent candidate faced considerable challenges in accessing public spaces for purposes for campaigning and also in getting clearance for public meetings from the Police.

Polling station based voter registration was conducted throughout the constituency, in accordance with the law. ZEC used two separate voters' rolls during this by-election as has become the custom. The main roll had 18,587 voters while the supplementary roll had 23,360 people bringing the total numbers of people eligible to cast their vote during the Norton by-election to 41,947 voters. The justification given by the Commission for this practice is that the Commission wanted to reduce the number of disenfranchised voters to a minimum.

On Election Day, all the polling stations where ZESN observed successfully completed opening and setup procedures on time and voting proceeded without incident. Counting

was reported to have taken place according to laid down procedures and results were displayed outside all the polling stations immediately after counting. At all the ward and constituency collation centres, election agents agreed that the process had gone well and signed the V11 forms.

Recommendations:

- i. Political and legal reforms are vital in order to create a conducive environment for the holding of elections in 2018. Provisions of the electoral laws and the electoral code of conduct need to be strengthened to ensure that punitive measures against electoral offenders are enshrined. Political reforms will ensure the creation of political will to investigate and prosecute offenders.
- ii. A regulatory framework for political parties and contesting candidates must be established as deterrence to violations to Electoral Law and the Political Parties' Code of Conduct.
- iii. The Government should facilitate the setting up of the Special Investigative Committee comprising the ZHRC and Special Police Liaison Officer whenever by-elections are proclaimed to expedite the investigation and prosecution of human rights and other violations during electoral periods.
- iv. Political parties and candidates contesting in elections and by-elections must invest more resources in observing key electoral processes by deploying an adequate number of election agents in order to enhance their ability to speak authoritatively on the administration of electoral processes.
- v. There is need for comprehensive voter education by ZEC and other stakeholders such as civic society organisations to ensure that voters are adequately informed about the requirements for voting and about their assigned polling stations.
- vi. There is need to enforce the media code of conduct on access to the media and on equitable coverage for all electoral contestants in line with Section 155 (2) (d) of the Constitution.
- vii. ZEC should adopt the open data policy to enhance trust and confidence in electoral processes such as results management and provision of disaggregated data on gender, age and persons living with disabilities.

- viii. There is need for legislative clarity on timelines on availability and access to voters' roll by political parties, contesting candidates and other stakeholders, "reasonable time" as provided for in Section 21 (3) of the Electoral Act is ambiguous.

2. BACKGROUND TO THE BY-ELECTION

2.1. The Observation Mission

ZESN as part of its observation of the 22 October Norton National Assembly by-election deployed 72 observers consisting of mobile and static observers. The static observers were deployed at every polling station in the Constituency whilst the mobile teams were roving around the Constituency assessing the political environment outside the polling stations.

The by-election was called after the recall from Parliament of former ZANU PF Members of Parliament (MP) Mr Christopher Mutsvangwa in accordance with Section 129(k) of the Constitution which provides for the tenure of seat of an MP.

ZESN conducts its observation efforts in conformity with the Declaration of Global Principles for Citizen Election Observation and Monitoring which was launched at the United Nations on 3 April 2012 as well as the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO). The findings and recommendations of this election observation are made in reference to the laws of Zimbabwe, the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections as well as other regional and African election standards.

3. LEGAL FRAMEWORK

The Constitution, Electoral Act, Statutory Instruments and Regulations form part of the Legal framework governing the conduct of by-elections. 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 Norton by-election was held within the prescribed 90-day deadline.

4. ELECTION ADMINISTRATION

4.1. 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.

4.2. Voter Education

Voter education is one the key elements of any electoral cycle. Voter education empowers all eligible citizens to make informed choices on who decides on their governance priorities. When well-conceived and adequately funded voter education programmes afford prospective voters accurate, comprehensible and adequate information upon which to make electoral choices

The ZEC conducted voter education for voter registration for the Norton National Assembly by-election from 10-16 September 2016. However, due to financial constraints the Commission was unable to do voter education for Nomination and for inspection of the voters' roll. ZEC also reduced the number of days for voter education for polling from the stipulated maximum period of ten days to five due to funding constraints. There is need for government to avail adequate funding for vital processes such as voter education to be conducted comprehensively.

To augment its efforts, the Commission invited civic society organisations to conduct voter education as provided for in the Electoral Act. ZESN heeded this call despite its own funding

challenges, and participated in the pre -polling voter education which was held from 14-18 October 2016. 2,500 voter education flyers and 500 posters were distributed in the targeted wards which included Ward 5, 12, 13, 14, and 15. ZESN was able to reach 1,297 people of which 690 were female. These wards were a mix of rural, farming, mining and urban wards and were selected following reports that these were hotspots and had limited access to information due to their location and the infrastructure connecting them to the rest of the constituency.

In addition to participating in the voter education for polling ZEC invited ZESN and other civic society organisations to observe the training sessions for the election officials who were to conduct the voter education training. ZESN was asked to make a presentation during the same session on the topic “The importance of elections” and to make inputs on the session on the Legal framework for elections in Zimbabwe.

4.3. Voter Registration

Polling station based voter registration was conducted throughout the constituency, in accordance with the law. ZEC used two separate voters’ rolls during this by-election as has become the custom. The justification given by the Commission for this practice is that the Commission wanted to reduce the number of disenfranchised voters to a minimum. Therefore voters who participated in the voter registration exercise for the Norton by-election were put in the main voters’ roll while, individuals whose names appear in the 2013 voters’ roll for the same constituency, but did not participate in the voter registration exercise for this by-election were put in the supplementary voters’ roll.

This practice, of using two voters’ rolls during by-elections has had the inadvertent effect of increasing the ZEC’s financial and logistical burden for the by-election. For instance instead of procuring election materials for just 18,587 voters, the Commission ended up preparing for 41,947 voters even though the trend in all the by-elections held since 2013 shows that the majority of voters who turn up to vote on polling day are those who participated in the voter registration for the by-election. The internationally accepted threshold for ballot

papers printed is between 5-10% as noted in the AUEOM Report on the 2013 harmonised elections.

5. ELECTION CAMPAIGNS

The pre-electoral environment was marred by cases of violence and electoral malpractices which amounted to intimidation and vote buying. Such practices were prevalent throughout the campaign season for the Norton by-election. Partisan distribution of food aid was so rampant that some of the relief agencies working with the Government on development programmes including food aid are reported to have warned the government that they could suspend funding if there is lack of transparency in the distribution of resources meant for vulnerable groups¹.

Vibrant political campaigns were conducted by two of the three electoral contestants namely the ruling ZANU PF candidate and the independent candidate while the campaigns by the NCA candidate were barely visible throughout the campaign period. The independent candidate faced considerable challenges in accessing public spaces for purposes for campaigning and also in getting clearance for public meetings from the Police. For instance the final rally for the independent candidate was disrupted by suspected ruling party supporters, while the initial campaigns for the same were affected by the reported refusal by the police to grant the independence candidate clearance to hold rallies, until the High Court intervened by ordering the Police not to interfere with the Independent candidate's rallies in the absence of the Court order empowering them to do so.²

5.1. Undue influence of resources on electoral processes

ZESN has previously indicated existing gaps in the regulatory framework on campaign financing. The existing laws only govern the party financing but do not regulate party and candidates spending on actual election campaigns. Such a vacuum opened up the electoral

¹ *Agencies warn Government over food aid politicisation*

<https://www.dailynews.co.zw/articles/2016/10/25/agencies-warn-govt-over-food-aid-politicisation>

² <https://www.thestandard.co.zw/2016/09/18/high-court-okays-mliswa-rallies/>

process to the undue influence of money and other incentives like food aid, residential stands and farming inputs which made the electoral playing field uneven.

5.2. Special Police Liaison Officer and Committee

ZESN notes with concern the failure to set up the Special Police Liaison Committee on time as provided for by Section 133(H) of the Electoral Act. The Network believes that the absence of this Committee impeded investigation of incidents of politically motivated violence that were reported to both the Zimbabwe Human Rights Commission and the Police. Such cases include the abduction of 18 year old daughter of the independent candidate's campaign team member in Ward 10, Norton (the young lady was allegedly detained and physically assaulted by alleged ZANU PF cadres at a 'base in Ngoni Township'. The Zimbabwe Peace Project reported that food aid distribution was being politicised in Norton constituency excluding other citizens who did not attend or belong to ZANU PF³.

There were reports of violent clashes at Ngoni Stadium between ZANU PF and independent candidate's supporters resulting in the burning of the ZESA transformer and the firing of tear gas on the crowd by the police details⁴.

6. MEDIA AND ELECTIONS

Media freedom is fundamental in promoting the political and civil and political rights and liberties enshrined in the Constitution of Zimbabwe. The media plays a critical role in electoral process, providing information to voters and a platform to political parties and candidates while serving a watchdog function. The public media both broadcast and electronic provided extensive coverage for the ruling party candidate while the limited coverage for the independent candidate was unbalanced. ZESN continues to observe this in all by-elections and urges ZEC to ensure that there is adherence to the Code of Conduct on election reporting.

³ <http://www.zimpeaceproject.com/wp-content/uploads/2016/01/ZPP-Food-Violations-Monitoring-.pdf>

⁴ <https://www.newsday.co.zw/2016/10/17/5-arrested-norton-violence-escalates/>

7. GENDER EQUALITY AND HUMAN RIGHTS

Active participation of women, youth, civil society organisations and marginalised groups in the electoral process constitutes a critical element for the deepening of democracy and human rights in Zimbabwe. Therefore ZESN urges the ZEC to avail statistics that would help stakeholders deepen their understanding of women and men's participation in electoral processes. This information which ZEC is already collecting needs to be shared with electoral stakeholders using inexpensive means such as posting the information on the ZEC website.

8. ELECTION DAY OBSERVATIONS

8.1 Polling Procedures and Conduct of ZEC Polling Staff

ZESN observer reports showed that all polling stations successfully completed setup and opening procedures on time. In addition, observer reports revealed 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 who discharged their duties in a professional manner. ZESN commends ZEC for ensuring that observers were not asked to sign the Official Secrecy Declaration Form thereby addressing the concerns raised by ZESN in the previous by-elections in Mazowe North and Guruve South.

8.2 Voting and Counting

ZESN observer reports show that voting went on smoothly at all the polling stations. At all polling stations, counting took place according to procedures and results were displayed outside the polling stations. At all the ward and constituency collation centres where ZESN observed, party agents who were present agreed that the process had gone well and signed the V11 form.

8.3 Turnout

ZESN observed that voter turnout at some polling stations was significantly high, for instance, by close of poll 1,139 of the 1,495 registered voters at Proposed Secondary School in Ward 12 had voted. While at PinPer Primary School the turnout was significantly low, out of 181 registered voters only 49 voted.

Table. 1. Analysis of voter turnout at Ward level

Ward No.	Chindedza Ronald (ZANU PF)	Choga David (NCA)	Mliswa Temba (Indep)	Votes rejected	Registered Voters		Total reg. Voters	% Turnout
					Main Roll	Supp Roll		
1	124	5	437	2	932	1,459	2,391	23.76%
2	80	1	80	0	324	242	566	28.45%
3	162	0	279	1	628	738	1,366	32.36%
4	246	11	522	6	1,241	1,772	3,013	26.05%
5	183	2	383	3	610	1,145	1,755	32.54%
6	122	5	361	4	533	899	1,432	34.36%
7	432	3	551	11	918	1,886	2,804	35.56%
8	211	5	509	5	728	1,487	2,215	32.96%
9	238	3	573	2	910	1,739	2,649	30.80%
10	342	6	702	3	1,208	2,344	3,552	29.65%
11	177	8	830	4	1,225	1,598	2,823	36.10%
12	1,064	9	1,389	12	3,112	1,806	4,918	50.31%
13	475	6	812	8	1,507	1,538	3,045	42.73%
13 Rural	675	6	217	7	990	1,022	2,012	44.98%
14 Rural	809	8	415	24	1,527	1,286	2,813	44.65%
15 Rural	852	11	867	22	2,194	2,399	4,593	38.15%
Totals	6,192	89	8,927	114	18,587	23,360	41,947	36.53%

Voter turnout was generally low in urban wards as compared to the rural wards. The highest turnout of 50.31% was recorded in ward 12 which was won by the Independent candidate. ZANU PF continues to enjoy support in the rural wards where they received the most votes.

8.4 Turned Away Voters

A significant number of voters were turned away for various reasons such as turning up at the wrong polling stations, bringing wrong identity documents such as driver's licence or expired passport and not appearing on the voters' rolls. High numbers of turned away voters were observed at polling stations such as St Johns Primary School A in Ward 13 and CCAP Church where over 80 and 100 voters were turned away respectively.

8.5 Voter Intimidation

ZESN notes that the whole campaign period in Norton continued with worrying trends of violence, intimidation in elections in violation of the Electoral Code of Conduct. On election day, ZESN observed that suspected ZANU PF officials were recording voters' names on their way from polling stations for instance at Clifford Primary in Ward 14 and in Ward 15 in Kingsdale. This gave observers the impression that voters in Norton were under surveillance therefore may have felt compelled to vote in a particular way in violation of Section 133B (c) (1) of the Electoral Act which outlaws any attempts to compel voters to vote for a particular candidate or party.

8.6 Election Agents

ZESN commends ZANU-PF and the Independent Candidate, Temba Mliswa for deploying election agents comprehensively across the constituency thus taking full advantage of Electoral Act provision which allow every political party to have one agent inside the polling station and to have an additional agent stationed within the vicinity of the polling station. It is however regrettable that the NCA failed to deploy a significant number of elections agents in the by-election.

Table 2. 2016 By-Election Results

Candidate	Political Party	Sex	Votes Received
Chindedza T Ronald	ZANU PF	M	6,192
Choga David	NCA	M	89
Mliswa Temba	Independent Candidate	M	8,927
	Rejected votes		114
	Total valid cast		15,322

Table 3. 2013 Harmonised elections – Norton results

Candidate	Political Party	Sex	Votes Received
Chinake Voice	MDC-T	M	9,360
Gumede Sipho	MDC	M	894
Mariro Chance	MKD	M	129
Mutsvangwa Christopher	ZANU PF	M	10,592
	Rejected		316
	Total Valid cast		20,975
	Total Votes cast		21,291

Source: ZEC**Analysis of results and voting patterns**

There is a decrease of 28% in the total votes cast in 2013 as compared to the by-election. In the 2013 harmonised elections a total of 21,291 votes were cast in the Norton compared to the 15,322 votes in the 2016 by-election. ZANU PF's votes received in the by-elections reduced by 42% as compared to the 2013 elections.

9. RECOMMENDATIONS

- i. Political and legal reforms are vital in order to create a conducive environment for the holding of elections in 2018. Provisions of the electoral laws and the electoral code of conduct need to be strengthened to ensure that punitive measures against electoral offenders are enshrined. Political reforms will ensure the creation of political will to investigate and prosecute offenders.
- ii. A regulatory framework for political parties and contesting candidates must be established as deterrence to violations to Electoral Law and the Political Parties' Code of Conduct.
- iii. The Government should facilitate the setting up of the Special Investigative Committee comprising the ZHRC and Special Police Liaison Officer whenever by-elections are proclaimed to expedite the investigation and prosecution of human rights and other violations during electoral periods.
- iv. Political parties and candidates contesting in elections and by-elections must invest more resources in observing key electoral processes by deploying an adequate number of election agents in order to enhance their ability to speak authoritatively on the administration of electoral processes.
- v. There is need for comprehensive voter education by ZEC and other stakeholders such as civic society organisations to ensure that voters are adequately informed about the requirements for voting and about their assigned polling stations.
- vi. There is need to enforce the media code of conduct on access to the media and on equitable coverage for all electoral contestants in line with Section 155 (2) (d) of the Constitution.
- vii. ZEC should adopt the open data policy to enhance trust and confidence in electoral processes such as results management and provision of disaggregated data on gender, age and persons living with disabilities.
- viii. There is need for legislative clarity on timelines on availability and access to voters' roll by political parties, contesting candidates and other stakeholders, "reasonable time" as provided for in Section 21 (3) of the Electoral Act is ambiguous.