

**South African Institute of International Affairs,
12 May 2005
Pointers on Zimbabwe**

On 12 May 2005, the South African Institute of International Affairs convened a half-day conference on Zimbabwe with the objective of providing a *constructive platform* for the exchange of viewpoints and to develop ideas about the prospects for the country in the years preceding the presidential election scheduled for 2008.

SAIIA invited a range of actors to participate in the event – ZANU-PF, the MDC, an independent MP, a Zimbabwean civil society organization, as well as South African parliamentarians from across the political spectrum who had participated as observers during the 2005 parliamentary election in Zimbabwe. Despite their acceptance to participate, no representative from ZANU-PF or the South African government attended.

A number of key observations and constructive recommendations emerged from the conference:

Role and responsibilities of observer missions

There is a lack of agreement on the role, duties and responsibilities of electoral observers. Furthermore, the training and briefings observers undergo in preparation for the missions do not necessarily conform to any agreed standard. It is also unclear what qualifies a particular body to conduct briefings and training for observers. This may to some degree account for some of the anomalous findings of respective observers and their missions. There is thus a need for agreed upon training and mission definition from credible electoral institutes as well as that of a regional body such as the SADC Parliamentary Forum or that of the Commonwealth. This proposal should be incorporated into the SADC and AU Guidelines.

However, it is important to stress that although there are very good guidelines in place on the continent, the element of political will is lacking to ensure not only adoption, but also implementation and enforcement – that guidelines and commitments to democracy and good elections are adhered to both in the letter and the spirit.

Definition of sovereignty

Internationally there is a growing trend in thinking that sovereignty cannot be used to justify non-interference by other states when there are violations of human rights. This shift in thinking is characterised by the establishment of the International Criminal Court. It is a reflection of the greater weight being placed on the necessity of states and leaders becoming accountable to their electorates for their actions and inactions. In this regard the decision by the OAU to disallow unconstitutional changes of power was a step in that direction.

Legal systems versus legitimate systems

This distinction is a useful guide in determining whether criticism is justified and valid. There are many pieces of legislation in Zimbabwe that, whilst technically legal or constitutional, are palpably unjust, such as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Amendment Act, and the pending NGO Bill. Although the latter has not yet been, it has created a climate of uncertainty among NGOs, thus starving them of donor funds.¹

Democracy is a process – and a way of life and operation on an ongoing basis rather than every four to five years. Elections are simply one institutional mechanism for the achievement and maintenance of democracy. The texture of democracy relates to many of the rights that the Zimbabwe government has curtailed over the last few years. Zimbabwe is suffering from a democratic deficit and observers must take this into account when observing, monitoring and declaring the conduct of elections.

What should happen internally?

- An *all-inclusive constitutional* debate is required that is NOT restricted to the level of parliament. It is critical that all Zimbabweans have an input into what should constitute the fundamental principles governing their society. This process should also look to restoring the separation of powers between the executive, the judiciary, and the legislature, and between party and state.
- The repeal of legislation such as AIPPA and POSA, so as to level the playing field.
- The resuscitation and emergence of a free and independent media.
- The commencement of a process of national reconciliation.

What should the regional community do?

- Strengthen institutions such as the SADC Organ on Politics, Defence and Security in the region to be both firm and assertive in encouraging states to ensure compliance on commitments made by the Heads of State themselves.
- Identify credible mediators that are seen as objective by both main role-players in Zimbabwe. Ultimately the solutions must come from Zimbabweans themselves, but as with South Africa, the region must play an important role in encouraging the political protagonists. This can happen through both ‘sticks’ and ‘carrots’. The region (and indeed the international community) should seek a calibrated response and rewards for the return to democracy and political normalisation.
- Pressurise the Zimbabwean government to debate the constitution and any amendments more broadly in society and not only within parliament.

¹ The *Business Day* reported on 20 May 2005 that Robert Mugabe has fused to sign the bill, probably as a result of mounting international pressure.

How should this be achieved?

- The Zimbabwe crisis has to be taken up by the African Union and a mandate granted by members for mediation in the crisis.
- SADC has to elevate the Zimbabwe crisis to the top of its agenda at the next Heads of State Summit and a decision taken to act collectively to ease the political impasse in the country.
- An all-party summit to address the Zimbabwe crisis has to be mandated by the AU and hosted by SADC.
- A number of international, continental and regional special envoys need to be appointed and mandated by the United Nations to act as credible interlocutors between the contending parties in Zimbabwe.
- Ultimately a timetable for constitutional and political reform has to emerge from all-party discussions.
- A reconstruction package from the international community and financial institutions needs to be drawn up and implemented in accordance with the achievement of constitutional and political reform.
- Targeted sanctions on the Zimbabwe government need to be broadened and intensified until progress is achieved.

Summary of the individual interventions and discussion during the conference

Dr Reginald Matchaba-Hove (Chair Zimbabwe Electoral Support Network – ZESN)

Matchaba-Hove noted that, unlike previous elections, the 2005 event could be measured against a number of regionally and continentally endorsed and acceptable guidelines. These included the SADC Parliamentary Forum guidelines, the SADC guidelines adopted at the Heads of State Summit in August 2004, the AU guidelines, as well as the SADC Electoral Commissioners' Forum and Electoral Institute Guidelines.

The pre-election period saw some improvements in election planning and conduct

- The adoption of the SADC guidelines including inter alia by Zimbabwe
- The establishment of the Zimbabwe Electoral Commission (ZEC)
- The establishment of electoral courts designed to resolve electoral disputes within six months of the election
- A degree of space provided via the electronic media for campaigning by both ZANU-PF and the MDC

In the 2002 presidential election a mere 400 ZESN observers were accredited, this contrasts with 6,000 in 2005. However there were 8,000 polling stations; thus ZESN could not cover 25% of the country. The police were slightly less partisan in 2005. A month before the election there was a drop in state-sponsored violence. There was an increase in polling stations. Translucent ballot boxes were a double-edged sword. Indelible ink was used. The MDC was also provided with some state funding before the elections.

There were, however, areas of concern:

The ZEC had insufficient time and resources to carry out its mandate. In reality it was operational only for a month before the election. Its staff was taken from the Registrar's office and civil servants. The voters' roll was compiled by the Registrar's office and was highly problematical. Post-Mauritius SADC Summit, electoral changes were made without consultation with the MDC and civil society, but rather through an act of parliament.

The election still took place against a raft of repressive legislation and regulation such as the POSA, which insists on notification of any meeting with more than four people. This has been interpreted by the police as the need to seek authority, clearance or permission to hold a meeting. Although the NGO Bill had not been signed into law it did affect the operation of civil society during the elections. In order for ZESN to conduct electoral education required it to seek approval from

the authorities. Overall ZESN was of the view that there was insufficient voter information to make the elections legitimate.

The delimitation of constituencies was not carried out in a transparent manner, there was gerrymandering of borders and population size and density were not taken into account in urban areas which tended to count against the MDC.

The new electoral act distinguishes between 'monitors' who can only be civil servants, including the police and intelligence officers and 'observers' such as ZESN.

The voters' roll was not available on time, nor was it accurate. Registration fees were increased a hundred-fold for candidates too. Although there was less state-sponsored overt violence there were instances of intimidation by traditional leaders such as informing voters that they could see their vote in the translucent boxes.

The SADC mission was only admitted a month before the election and independent monitors remained shut out. Furthermore there was still far too much military involvement in the management of the electoral process, for example the Electoral Supervisory Commission was staffed by military officers. There has been a dangerous trend of inserting the military into civilian spheres of operation in Zimbabwe.

In terms of the conduct of the parties, prior to the campaign ZANU-PF was marked by internal division, particularly during the primaries which witnessed some intra-party violence. Essentially ZANU-PF stood on an 'anti-Blair' campaign. By contrast, the MDC ran on the platform of the economy, jobs and food.

A key question is whether the MDC's earlier boycott and late entry into the election affected its performance. As voter registration closed on 4 February and the MDC took its decision to participate later, this may have had an effect on voter registration and particularly those potential MDC supporters.

ZESN noted that in the 75% of the polling stations at which it had observers, some 10% of potential voters were turned away. Moreover some ZESN observers were also turned away in the first few hours of the election when the bulk of people came to vote. They were also excluded from the vote counting in some instances. The ZESN noted a very high number of spoilt ballot papers. In most instances the ZEC and the ZESN vote counts do not tally, even where there is agreement on the winner. On the ZESN reckoning, 5 MDC candidates were deprived of winning their constituencies through irregularities.

ZESN also analysed why there was a reduction in violence immediately prior to the election. They contended that firstly, the Zimbabwe government staked its credibility on it being a violent-free poll. Secondly, it sought to more closely comply with the SADC guidelines. Thirdly, some of the groups previously

associated with state-sponsored violence such as the Tsholotsho group have been increasingly marginalised recently.

Matchaba-Hove speculated on what the immediate aftermath was likely to hold for Zimbabwe. As ZANU-PF has achieved a two-thirds majority it is likely to approve amendments to the constitution, particularly one that re-instates the institution of the Senate.

It is likely that presidential and parliamentary terms will be synchronised by 2010.

However, ZESN is calling for a single independent electoral authority and for there to be reform of the electoral system in Zimbabwe to provide for a mixed first-past-the-post system (FPTP) and proportional representation (PR) system. There is a need for broad-based electoral reform, not just a parliamentary driven process, but one that involves a broad range of civil society. Matchaba-Hove speculated that there may be leverage available for more moderates in ZANU to convince the party that it can win elections without resorting to violence and intimidation.

Finally, Matchaba-Hove recommended that SADC as an institution and its Organs need to be much more assertive, but more than this the leverage for change in Zimbabwe lay with South Africa.

Elinor Sisulu

Sisulu commented that food in Zimbabwe was being used as a political tool of retribution and coercion. Zimbabwe was facing a famine that was politically made. She argued that there was a need for a comprehensive nutritional survey of children under 5 as the nutritional status of children under 5 has declined.

Sisulu called for an All African conference on elections governance and democracy informed by a high degree of consensus among Africans. Elections observers must be in place 90 days beforehand (in conflict situations). She reiterated that the value of local monitoring groups was that they were better able to understand and interpret local conditions than those from Western countries. In this regard Sisulu commended the election reports of the SADC – PF. By contrast Sisulu berated the “sheer arrogance of the head of the South African observer mission” and the patronising attitude of its head Minister Mdladlana, who in her view lacked integrity. Sisulu noted that it was right to question the credentials of any and all observer missions to ensure they were qualified to do the job with which they were tasked.

Piers Pigou noted that much of the reportage around the Zimbabwe election was anecdotal, thus the Zimbabwe Solidarity Forum was embarking on a project to extract the detailed documentation of the local observer missions to Zimbabwe (both the South African and parliamentary missions). The Presidency and parliament had been approached in this regard to supply all relevant documentation. This would clarify how the missions went about their work and

how they reached their conclusions. Should it fail in its request to secure the requested information it will seek recourse through the provisions of the Access to Information Act.

Nthabiseng Khunou MP (ANC), SA Parliamentary Observer Mission

Khunou read from the observer mission report which although completed had not yet been sent to the Speaker's office and had not been before parliament. Khunou commenced by asserting that the guiding principle for the observers was that the "We must respect the sovereignty of Zimbabwe." She argued that the parliamentary observer team could not have been in Zimbabwe for 90 days in accordance with the SADC guidelines as this "would cost parliament too much." Although there needed to be an improvement in voter education, it was nevertheless "very good." For Khunou it was a "meticulously planned and executed election" from which South Africa could take some lessons, such as the three-line alphabetical queues at polling stations.

Diane Kohler-Barnard MP (DA), SADC Observer Mission

Kohler-Barnard was the only alternative (non-ruling party) MP on mission and three Mauritians. She commented that she and her ANC colleague "must have been observing different elections". She received no briefing from her party Whip, but was instructed to report what she observed. Kohler-Barnard informed conference that all her daily typed reports were faxed to the Head of Mission in Harare and were "thrown into bin". She documented numerous reports of violence, intimidation and election irregularities. One police commissioner proudly showed 11 MDC rallies not approved and all ZANU-PF approved.

In terms of the legal and political climate surrounding the election she noted that in terms of POSA it is illegal to criticise the president, but he was insulting and libellous regarding the opposition. In addition to being state-owned the media in Zimbabwe was highly skewed in favour of ZANU-PF and against the MDC. For example at the launch of the party manifestos ZANU-PF was given some four hours of coverage on television, whereas the MDC was given 2 minutes and 35 seconds on February 20, which was followed by scurrilous songs about MDC. The Zimbabwe Herald ran 5 full-page election adverts for ZANU-PF. In addition, MDC leader Morgan Tsvangirai was called a donkey.

In terms of the climate of violence and intimidation she noted that of 57 MDC MPs there were about seven who had not been arrested at some time or another since the 2000 parliamentary elections. She stated that, "the Zim public is frightened, beaten, starved".

Kohler-Barnard proffered a number of proposals regarding the way forward for Zimbabwe:

- The militia must be disbanded and de-politicised.

- There must be clear separation of state and party and 3 branches of government.
- A process of national reconciliation must be undertaken.
- A free and independent media, without government interference, must be established.
- There must be an independent electoral commission.
- Repressive legislation must be amended or repealed

Professor Welshman Ncube MP, General Secretary MDC

Ncube commenced by asserting that South Africa could help the Zimbabwe situation only if it made an honest assessment of the crisis in the country. “Mugabe is not going to solve crisis”. The Zimbabwe system is based on coercion. Such a system must always have instruments of coercion at its disposal on standby. The question then is when it will fall, not if.

Ncube stated that the following matters needed to be dealt with urgently:

Constitution

The importance of negotiating a new constitution – Zimbabweans must agree on fundamental principles governing society. There is a need for national consensus. SA and SADC must insist on this.

In contrast ZANU-PF favours a number of constitutional amendments:

- That all land acquired in the last 5 years will be declared state land; hence all court challenges become academic – can only raise the issue of compensation, not the validity of acquisition.
- Remove electoral supervisory commission – acknowledging the current duplication.
- Introduce 40-member senate (to be in place within 3 months from first April).

Then ZANU-PF wants a parliamentary process to review the constitution, but none of these proposals try to develop national consensus. By contrast Ncube argued that it was imperative to address all other non-constitutional aspects which resulted in democratic deficits. If not, it would be impossible to have any legitimate election in Zimbabwe.

Commenting on the election observer missions, Ncube argued that “the only mission report that makes sense, is the one written by the AU”.

Ncube bemoaned the lack of media freedom and independence in Zimbabwe noting that this needs to be addressed particularly as Zimbabwe is the only SADC country that has no private radio stations.

On the MDC’s decision to suspend its participation in the election and then to participate Ncube informed conference that the decision to suspend was taken until the government committed itself to comply with the SADC guidelines. The decision to later participate in the election was taken following consultation with

the MDC's structures in the 11 provinces who felt that it was necessary to participate and also because the MDC National Council felt contesting the election would increase the costs of dictatorship. The party felt that it should not surrender without a fight any of the democratic spaces it occupied at local and national level.
