

SADC Elections: Serious Hindrances To Free And Fair Elections Remain

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This paper looks at the democratic elections that took place in the SADC region in 2002. Two SADC countries, Zimbabwe and Lesotho, organised multiparty elections in 2002. Zambia is also included because its 2001 election results were announced at the beginning of 2002. President Levy Mwanawasa was sworn in on 2 January 2002.

All three elections attracted international interest and publicity. In the case of Zambia, attention was focused on President Chiluba's attempt to secure a third term in office despite resistance from the citizens. In Zimbabwe, international coverage was linked to the agrarian reforms taking place to address land inequality, which for years had been skewed in favour of the white minority,² and the real possibility that for the first time Zanu–PF might lose its control of government to a relatively new opposition party, the Movement for Democratic Change (MDC). In Lesotho, everybody was interested to see if the changes introduced to the electoral system would bring peace to a country which has a history of contested elections.

In all three countries the people expressed a strong inclination for, and belief in, multiparty democracy. What is now needed is a leadership that embraces multiparty co-operation and the participation of civil society in building a foundation to improve governance.

The elections in SADC countries are organised according to the law of each country. The constitution and the electoral act of each stipulates how the election should be held and who should organise it, from the delimitation of constituencies and the registration of voters to the actual supervision of elections. All SADC Electoral Commissions are members of the SADC Electoral Commissions Forum (ECF), which has its own Norms and Standards for conducting elections. Yet it appears that the SADC governments have not tried to harmonise SADC Norms and Standards with their national laws.

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² Electoral Supervisory Commission, Pre-election briefing for observers, 9–10 March 2002 Elections.

The three elections cannot be discussed in isolation from what happened during the pre-election period in each country. The pre-election period in Zambia and Zimbabwe presented similar characteristics in that the constitutional and electoral frameworks in both countries were being contested. In Zambia opposition parties and civil society groups joined forces to stop President Frederick Chiluba's attempt to change the constitution to allow him to stand for a third term.

The 2002 presidential elections in Zimbabwe were tied up with all that had occurred in the 1999 referendum on the new constitution and the 2002 parliamentary elections. The tone was set for a confrontation between the two political parties — Zanu–PF and the MDC. The proposed constitution of 1999 was rejected by referendum. This rejection did not mean that the constitution was not good: it simply represented the growing unpopularity at that time of Zanu–PF and the president.

A closer look at the proposed Zimbabwean 2000 constitution, despite its awarding strong executive powers to the president, shows that it was not a pro-Zanu–PF constitution. The 'no' vote was simply a rejection of the strong presence of Zanu–PF's hand in the drafting of the new document.³ The 'no' vote surprised Zanu–PF, and forced the ruling party to assess its popularity. It was clear from the referendum result that Zanu–PF could not take the Zimbabwean people's support for granted.

The reaction from Zanu–PF was unambiguous. It needed to strengthen and reaffirm its dominance of Zimbabwean politics. At that time it was difficult to find a replacement for President Mugabe. At the same time, the Movement for Democratic Change (MDC) had emerged as a credible opposition party. More important, the arrival of the war veterans on the political scene gave Zanu–PF the strength it needed to reposition itself. Throughout the electoral process President Mugabe used the land issue as political leverage to induce the electorate to vote for Zanu–PF. Yet Zanu–PF did not seem confident of winning the election. The government introduced new laws and amendments to the Electoral Act, which were seen as attempts to improve Zanu–PF's chances of winning.

The 2002 elections in Lesotho were organised against the background of the chaotic elections of 1998, which had caused a popular revolt that required military intervention from SADC. In the aftermath, Lesotho's political parties agreed to organise fresh elections after a 5-year transitional period. During this period external actors, including the Electoral Institute of Southern Africa (EISA), the United Nations Development Programme (UNDP) and the Commonwealth pushed for consensus-building mechanisms and a more inclusive electoral system.

³ There was no consensus in 2000 on how the Constitutional Commission was to be constituted. The government carried its position.

Two major issues were raised: the need to create both a reformed electoral system and a suitable voter registration method.

The major difference between the elections in Lesotho and those in Zambia and Zimbabwe was that in the Lesotho elections all the stakeholders, especially political parties, reached consensus on all major issues beforehand. These included electoral laws, the electoral system, and the code of conduct. The Lesotho elections were characterised by transparency at each step of the electoral process. Political parties and candidates were given the opportunity to attend meetings with the Independent Electoral Commission (IEC) regularly and to discuss and agree on how to proceed in relevant matters. The establishment of the mixed member proportional (MMP) electoral system was also seen as crucial to the success of the elections. (This electoral system is designed in such a way that out of the 120 seats in the National Assembly, 80 are filled through the first-past-the-post system. The remaining 40 seats are used to compensate the 'best losers' who have won fewer seats in the constituency vote, on a pro rata basis.)

Both Zambia and Zimbabwe went into their elections with serious constitution and legal problems. In the case of Zambia, there were inconsistencies, gaps, and potential conflicts within its legislative framework which had not yet been addressed. There was significant pressure both from political parties and from within civil society organisations for a major review of the constitution in order to strengthen the democratic foundations of the country⁴ before going to the polls. Although they succeeded in preventing Chiluba from standing for a third term, they failed to introduce changes to the constitution and the electoral law.

Zimbabwe was faced with an even greater challenge — a constitutional vacuum in the country. The current constitution, despite having undergone numerous amendments, still reflects the decisions made at the Lancaster negotiations in 1980. Under this constitution, the Electoral Act spreads the responsibility for running the elections across four different bodies: The Delimitation Commission, the Electoral Supervisory Commission (ESC), the Registrar-General (RG) and the National Elections Directorate. The independence of these bodies has been questioned on many occasions. It is clear from the way members are appointed and their location within the state apparatus that there is cause for concern. Both the Election Directorate and the RG form part of the public service.⁵ The working relations between the four bodies are very confusing. The ESC is the only one referred to in the constitution of

⁴ The OASIS Forum proposed that there should be a National Convention, to take place within 90 days of the election, to deal with such constitutional issues.

⁵ Electoral Act Part IV, section 15 (1)

Zimbabwe, but it is also the least powerful of the four. (The RG and Election Directorate are provided for in the Electoral Act.) While the mandate of each body is well defined in both the constitution and the Electoral Act, the chain of command is not clear, especially the relation between the RG and the ESC. For example in the 2002 elections, the RG refused to provide information on the number of ballot books printed to the ESC, arguing that the information was classified. Yet the constitution as the supreme law of the country has given the power to supervise elections to the ESC. The refusal of the RG to provide information that would have allowed the ESC to perform its duty created suspicions that the entire electoral process had been subverted.

Clear similarities between Zimbabwe and Zambia could also be found in the manner in which the public media behaved and in the use of public resources. The print and electronic media in both countries were dominated by the government-owned press, which strongly supported the ruling parties in their editorial policy, features and news coverage. Opposition parties complained of the policy and practice of the media as the public broadcaster in both countries is the primary source of information for most citizens, especially those in the rural areas. Public broadcasters were tightly controlled by the two governments, and, according to observers, failed to provide balanced coverage as required by the electoral regulations. In Zambia, for example, the then minister of information, Vernon Mwaanga, dismissed the board of the Zambia National Broadcasting Corporation (ZNBC) only a few months before the election.⁶ As a result, the national radio network was put under the direct control of his ministry.⁷ This action placed the professional broadcasters in an extremely difficult position.⁸ Andrew Moyse states that in Zimbabwe, because the public media are run from the Ministry of Information, one does not need to be smart to understand that they have been used for propaganda purposes throughout the election period. The

⁶ Interview with Ben Kangwa, ZNBC.

⁷ According to *Today*, 30, 12–18 December 2001, President Chiluba instructed the government-controlled media to ensure that all political stories and programmes were censored before being aired on radio or television, or published in the government-owned newspapers. On the basis of reports from within the ZNBC, *Today* claims that censorship had increased from all angles and that members of staff had to deal with continual visits by the minister.

⁸ The ZNBC has its own guidelines on how to handle election campaigns: 'ZNBC has, time and again, been accused of not giving balanced coverage of political parties in news and current affairs programmes during election campaigns . . . In principle, ZNBC should give equal coverage to all the major political parties taking part in any election in Zambia. All things being equal, ZNBC undertakes to maintain balance, over the period of any political campaign, in its recorded actuality of political speeches and in videotape and study contributions from politicians.' The guidelines also emphasise that Controllers should 'ensure that producers have access' to all the guidelines issued by the Electoral Commission. *Producers Guidelines*, ZNBC, 1999 edition, Lusaka.

professionalism of the Zimbabwean public media has been tampered with. 'They have all lost their soul. They are chosen only if they toe the government line.'⁹

Zambia's and Zimbabwe's elections, however, differed on the administration and management fronts. The Electoral Commission of Zambia (ECZ) demonstrated a willingness to be transparent, despite interference in its activities and decision-making from the executive. Relatively good communications existed between the ECZ and political parties. The electoral process encouraged strong participation from civil society in voter education and election observation and monitoring (under its supervision). In Zimbabwe, there was a total absence of communication between Zanu-PF and the MDC. No attempt was made by the ESC to create a platform to reconcile the two political parties or to create a tolerant atmosphere before the polls opened. It is impossible to have an election free from violence when political parties consider each other more as enemies than as political opponents.

In Zimbabwe, the election administration was deeply flawed by serious mistrust between the different structures involved in the organisation of the elections. The electoral authorities failed to release both a list of polling stations for two constituencies and the relevant voters' roll so that the voters could know the ward in which they were supposed to cast their vote for the mayor or the councillors. Before and during the presidential election, confusion reigned over the application of the country's electoral law. Voter education in Zimbabwe had previously been undertaken by civic organisations in conjunction with the ESC. In the 2002 election all that changed. Voter education was the sole responsibility of the ESC, which, critics say, had neither the will nor the capacity to undertake genuine voter education. The ESC also failed in its duty to inform the Zimbabwean voters of the many changes which had been introduced into the electoral process. For example, the confusion related to the voting in Harare and Chitungwiza made additional information necessary for the voters. This was not supplied. In general the whole voter education system was flawed.

The Zimbabwean government, in many instances, ignored court decisions. For example, the court opposed the linking of the presidential election with the mayoral and council elections in Harare and Chitungwiza respectively. However, the government overlooked the court order and held these elections simultaneously.¹⁰ The Supreme Court

⁹ Interview with Andrew Moyse, Zimbabwe Media Monitoring Project, 2002.

¹⁰ One reason for holding these elections together was that Zanu-PF had already lost three major mayoral elections. It did not want to have the mayoral elections before the presidential elections. A loss could have had a serious impact on Zanu-PF's chances of winning the presidential elections. Despite the lack of success of similar elections in Zambia, the government went ahead with tripartite elections.

ruling also nullified the General Laws Amendment Act, which was unconstitutionally passed by parliament after its initial defeat in the House in January 2002. The minister of justice used his powers under the Electoral Act to bypass the court decision and introduce some amendments.

In general, voter registration constituted the most confusing aspect of the 2002 Zimbabwean presidential election. The registration process was conducted under conditions of disorganisation and secrecy, which left many voters uncertain whether they were on the voters' roll or not. As a result of this confusion, the right to vote was denied to many Zimbabweans. Critics say that the Ministry of Home Affairs in conjunction with the Registrar-General's office were engaged in the illegal and unconstitutional deprivation of the right to vote in the presidential election.¹¹ There were also people who were removed from the voters' roll on the grounds that their surnames suggested that they came from Malawi, Mozambique or Zambia. The amendments to the Citizenship Act barred from voting people who had changed their citizenship. This was done so as to disenfranchise white voters and black Zimbabweans from neighbouring countries, assumed to be MDC supporters. The registration process was not friendly to citizens.¹²

In Zambia, voters were given sufficient time to verify their names on the voters' roll. Political parties, however, expressed concern about the registration of voters. They complained that, given the Electoral Commission's lack of resources, the registration started too late and ended too early to allow many voters to register.¹³ They also complained that insufficient effort had been made to publicise the registration process.¹⁴ Concerns were also expressed about the complexity of the registration process and, in particular, the difficulties caused for voters by their having to visit the registration centres twice — first to register, and second to collect their registration cards. This was a particular burden for rural people living some distance from the centres.

While the Zimbabwean government and the president, in most instances, acted within the law of the country, the rationale of many of the changes created the impression that the ruling party was trying to rig the elections. Similarly, in Zambia, the opposition parties and civil society bodies were angry because the president had, in their view, used his prerogatives to secure his party advantage at the expense of the

¹¹ Political Violence Report, 1–16 February 2002, produced by the Zimbabwe Human Rights NGOs Forum, 19 February 2002.

¹² Interview with Paul Themba Nyathi, in charge of the MDC election campaign.

¹³ It was suggested that the registration process should be delayed because the Ministry of Finance refused to release the necessary funds.

¹⁴ Interview with Chishala C. Kateka, Treasurer, Heritage Party.

democratic rights of ordinary citizens.¹⁵ The late December date meant that the election took place at the height of the rainy season and during the holiday period. This made it more likely that many people, especially those living in the rural areas, would find it difficult if not impossible to gain access to the polling stations. Others, especially those in institutions of higher learning, were likely to be away from their voting wards at that time and would, therefore, be unable to vote.¹⁶ Luckily, the rains did not cause any major disruption of the elections, and many students remained on campus so as to cast their votes.

The participation of international observer missions remains a very sensitive issue in the SADC region. In Zambia, despite tensions between the ECZ and the international observers, they were generally welcomed by the political parties, and worked closely with the domestic observers. Their coverage of the polling and the count, although never total (given the large number of polling stations), played an important role in encouraging both voters and domestic observers. It also helped to keep the electoral officials on their toes. Furthermore, international observers usually manage to cover enough stations to provide a statistical sample strong enough to support their conclusions on the validity of the balloting and counting processes. In Zimbabwe, on the other hand, the relationship between the ruling party and Western observer missions was made extremely problematic because the Mugabe government considered these missions as interfering in Zimbabwe's internal affairs. Tension existed even between government and local monitors, who were accused of being supporters of the opposition.

One major difference between the election in Zimbabwe and those in Zambia and Lesotho was the level of violence and intimidation in the former. The Lesotho 2002 elections still stand out as by far the most peaceful elections ever held in a SADC country. Despite sporadic intimidation in the early stages of the campaign in Zambia, the electoral process was free from violence. In Zimbabwe, however, the campaign was marked by the use of brute force and intimidation. Observers attributed violent acts to both parties but stressed that most of such actions had

¹⁵ This concern was also shared by the SADC observer mission, which expressed regret at 'the timing of the tripartite elections in Zambia. We note that as the day fell during the festive and comparatively rainy season, some voters may have been disenfranchised. The Mission is of the view that elections should ideally be held during a period most convenient to the electorate.' *Interim Statement*, SADC Parliamentary Forum Election Observation Mission on the Zambia Presidential, Parliamentary & Local Government Elections, January 2002.

¹⁶ The Oasis Forum, which combines the Law Association, the major church bodies, and the NGO Co-ordinating Committee (NGOCC), issued a statement to the press on the election date which concluded 'that many citizens will be disenfranchised...and consequently the legitimacy of the elections will seriously risk being undermined.' Press release, Oasis Forum, Lusaka.

been orchestrated by Zanu–PF supporters against MDC supporters.¹⁷ The Human Rights Forum noted that political intimidation involved ‘torture, cruel, inhuman and degrading treatment’.¹⁸ The operations used for coercion were so sophisticated that it was difficult to explain the reasons for the violence and to identify the perpetrators. The existence of ‘no go’ areas meant that the opposition parties, especially the MDC, were denied the opportunity to campaign freely in all parts of the country. This was to the disadvantage of the MDC, since its message could not reach all the voters.

One common factor in all three countries was that their citizens went to the polling stations in a time of serious economic difficulty. The challenge now for each government, whether it won the elections freely and fairly or not, is to fight poverty.

Conclusion

The 2002 multiparty elections in SADC constitute a turning point for each of the three countries concerned. In Zimbabwe, despite the political uncertainty, there is a need to find a credible way of managing the elections. Because of the strong presence of opposition in parliament, there is a chance that calls to review the constitution will be heard. As I have pointed out, at present Zimbabwe has constitutional contradictions. Although the current constitution has been amended many times, it still reflects the Lancaster House arrangements, which are not appropriate to present day circumstances. People are generally not happy with the current constitution, and recognise the need for a people’s constitution that has an independent electoral commission to supervise the elections, as is the case in other SADC countries.

Namibia and South Africa provide good examples for the region. Although their histories are similar to Zimbabwe’s, and they have achieved their independence recently, they have successfully put in place transparent electoral laws and structures. The politicians of Zimbabwe and Zambia can learn from these two countries.¹⁹ The challenge for Lesotho is to continue to manage peaceful elections and thereby to silence those critics who believe that the Basotho are not able, by themselves, to respect their national laws without external intervention.

¹⁷ Gula Ndebele, the Chairman of the ESC, said on a television programme (8 March 2000) that they had received reports of intimidation and violence from the two major parties (Zanu–PF and the MDC), with more acts of violence attributable to Zanu–PF.

¹⁸ Political Violence Report, *op. cit.*

¹⁹ *Ibid.*