



PRELIMINARY STATEMENT

BY

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REPUBLIC OF ZAMBIA**

AND

**HEAD OF THE SADC ELECTORAL OBSERVATION MISSION
(SEOM)**

TO

THE 2023 HARMONISED ELECTIONS IN

THE REPUBLIC OF ZIMBABWE

HELD ON

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1. INTRODUCTION

On behalf of the Southern African Development Community(SADC), it is my distinct honour to welcome you all to this important event where I will present the SADC Electoral Observation Mission (SEOM)'s Preliminary Statement on the conduct of the 2023 Harmonised Elections in the Republic of Zimbabwe.

The elections were observed in line with the *revised SADC Principles and Guidelines Governing Democratic Elections (2021)* and the relevant laws of the Republic of Zimbabwe.

I was appointed as the Head of the SADC Electoral Observation Mission to the Republic of Zimbabwe by His Excellency Hakainde Hichilema, President of the Republic of Zambia, in his capacity as the Chairperson of the SADC Organ on Politics, Defence and Security Cooperation. I maintained close collaboration with members of the Organ Troika, currently comprised of the Republics of Zambia and Namibia and the United Republic of Tanzania, regarding the Harmonised Elections in Zimbabwe.

The SEOM also benefitted from the Pre-election Goodwill Assessment Report of, and advice from the SADC Electoral Advisory Council (SEAC).

The SADC Electoral Observation Mission comprised 68 observers, 50 were deployed to the ten provinces of Zimbabwe, and the rest were based at the SEOM headquarters here in the Rainbow Towers Hotel.

Our observers were deployed to Harare, Bulawayo, Masvingo, Matabeleland North, Matabeleland South, Midlands, Manicaland, Mashonaland East, Mashonaland Central and Mashonaland West.

During the pre-election phase, the Mission consulted key stakeholders such as the Zimbabwe Electoral Commission (ZEC), key Government Agencies, leaders of political parties, representatives of faith-based organizations, media, Civil Society Organisations, and the Heads of International Election Observation Missions.

This Preliminary Statement covers the Mission's observations of the pre-election period and voting day activities. The Mission's final report will cover, in more detail, the observations of the pre-election, election and post-election phases, and is aimed at supporting and strengthening the democratic electoral processes in the Republic of Zimbabwe as a SADC Member State.

2. SUMMARY OF FINDINGS

Your Excellencies, Ladies and Gentlemen

I now wish to share the summary of the Mission's key findings:

(a) Political and Security Environment

After consulting widely with stakeholders, the consensus was that the country was generally calm and peaceful.

(b) Constitutional and legal framework for the elections

The Mission noted that the 23 August 2023 Harmonized Elections in Zimbabwe were regulated by the Constitution of the Republic of Zimbabwe and the Electoral Act [2:13]. According to Section 158 (1)(a) of the Constitution of Zimbabwe of 2013, General Elections should take place not more than thirty days before the expiry of the five year period specified in Section 143 of the Constitution. The Mission noted that this section applies to the duration and dissolution of Parliament, and stipulates that Parliament is elected for a five year period which commences from the date the President-elect is sworn in and assumes office.

The Mission further noted that Section 144 of the Constitution requires the President, by proclamation call, to set a date for a General Election after consultation with the Zimbabwe Electoral Commission. Pursuant to this provision, His Excellency Emmerson Dambudzo Mnangagwa, on 31 May 2023 issued a proclamation fixing the 23 August 2023 as the date for Presidential, Parliamentary, and Local Government Elections, referred to as the Harmonised Elections. The Mission was informed that a further proclamation was issued rendering 24 August 2023 as a polling day because of the delays experienced at certain polling stations. Furthermore, President Mnangagwa also proclaimed 2 October 2023 for the run-off election to the office of president if such a poll becomes necessary.

The Mission noted that this Proclamation was in line with Paragraph 4.1.3 SADC Principles and Guidelines Governing the Democratic Elections, which requires that the date or period of elections is prescribed by law.

(c) Election management

The Mission noted that the Elections in Zimbabwe are managed by the ZEC which is one of the five Chapter 12 (of the Constitution) commissions, that is, independent commissions whose purpose is to support democracy in Zimbabwe. In terms of section 235 of the Constitution, the *Commissions must act in accordance with the Constitution; and they must exercise their functions without fear, favour or prejudice.*

(d) Delimitation of constituencies

The mission was informed that the delimitation exercise that was conducted in 2022 by the ZEC was marred with controversy. In one way or another, concerned stakeholders claimed that the report that ZEC submitted failed to observe the constitutional requirements for such an exercise, and that there were also divisions amongst serving commissioners of the ZEC regarding the veracity of the report. The main allegations made against the report was that it constituted gerrymandering, and that it failed to observe the correct methodology for calculating the 20% variance constitutional rule with respect to minimum and maximum sizes of the 210 electoral constituencies. The courts dismissed legal challenges brought against the Delimitation Report of 2022. The Mission, however noted that there remain questions regarding the delimitation exercise for the following reasons:

- (i) In its Delimitation Report of 2022, the ZEC rightly states that, “the Constitution recognises the impracticability of having equal number of voters in each constituency by allowing the Commission to depart from this requirement within a stipulated margin. In this case, the Constitution in section 161(6)

stipulates that“no constituency may have more than 20% more or fewer registered voters than other such constituencies”. The constitution in section 161(6)a-f also lists factors that need to be considered when delimiting since they are important during the exercise.” However, the ZEC goes on to also state that, “Based on the provision of section 161(6) the Zimbabwe Electoral Commission then calculated the 20% deviation from the national average voter registration expected in each constituency which was 27 640. This yielded a deviation of **5,528** voters. Since the average number of registered voters was regarded as a stable benchmark against which delimitation of constituencies was conducted, the deviation figure was added to the national average to determine the maximum number of registered voters that a constituency delimited would contain i.e., 33 168.”

- (ii) The Mission noted that the use of the **average** number of voters per constituency is inconsistent with the provision of section 161(6) of the new Constitution that was adopted in 2013. The word “average” appears in section 61A(6) of the old Constitution of Zimbabwe, under which it was permissible to calculate the minimum and maximum permissible number of voter per constituency by using the national average as the baseline. The word “average” does not exist in section 161(6) of the new Constitution, which deals with the same subject matter. The difference between section 61A(6) and section 161(6) of the old and the new constitutions, respectively is far from being merely technical.
- (iii) In the new Constitution, and in the context of section 161(6), the maximum deviation is 20% of the voters registered in the constituencies. The new Constitution uses actual constituency by constituency registered voter population, not the national average number of constituency voter population, to calculate the permissible deviation from the requirement that constituencies must have an equal number of voters. Mathematically, the two methods produce very different results and affect the equality of the vote concerning the elections to parliament. On the other hand, since the country votes as a single constituency in the presidential election, the difference in the methods has no particular impact on the equality of the vote in that election. It was, therefore not unexpected that ZEC would receive substantial criticism on this aspect of its latest Delimitation Report.

(e) The voters roll

Some stakeholders decried the delay in releasing the voters roll in a searchable and analyzable format as prescribed by the Electoral Act. Some stakeholders expressed displeasure that the delay in releasing the voters roll resulted in missed opportunities for them to audit the voters roll and therefore give the public confidence about the veracity of the voters roll. According to the ZEC, there was however, an opportunity that was provided for interested parties to inspect the voter roll as provided by the Electoral Act.

In this regard, the Mission took note of section 62 of the Constitution. This section provides that every Zimbabwean citizen has the right to access any information held by the state or by any institution or agency of government at every level in so far as the information is required in the public interest.

The mission also noted that in terms of section 21 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 voters roll, including a consolidated roll referred to in section 20(4a), either in printed or in electronic form as the person may request.”*

Access to the voters roll is also premised on the constitutional requirement that the ZEC must deliver fair elections. In the exercise of this function, the Constitution requires the ZEC to ensure that those *elections are conducted efficiently, freely, fairly, transparently and in accordance with the law*. Following consultations with the ZEC, the mission was informed of: *“The conflict created by the introduction of the Cyber and Data Protection Act which enjoins all institutions and agencies to protect the privacy of information entrusted to them vis the provisions of section 21 of the Electoral Act where the voters roll although containing the personal information of voters (i.e. names, date of birth, ID Number, Address, Sex) is a public document open to inspection by the public. Such conflict has resulted in there being litigation around the voters roll as aforementioned, where in one case an Applicant does not want his information public and in yet another the Applicant seeks an order directing that the voters roll be availed.”*

The Mission acknowledged the concerns the ZEC raised above regarding difficulties related to releasing electronic versions of the voters roll. However, the mission also noted that the law gives the Commission discretion to impose reasonable conditions to prevent the voters roll from being used for commercial or other purposes unconnected with an election. In particular, the mission noted that section 21 of the Electoral Act provides that:

“(7) Where a voters roll is provided in electronic form in terms of subsection (3), (4) or (6), its format shall be such as allows its contents to be searched and analysed:

Provided that—

- (i) the roll may be formatted so as to prevent its being altered or otherwise tampered with;*
- (ii) **the Commission may impose reasonable conditions on the provision of the roll to prevent it from being used for commercial or other purposes unconnected with an election.***

Apart from the above safeguard measure against the abuse of the voters roll, there is also room to note that as a constitutional body, the ZEC is obliged to give effect to the constitution as the supreme law, in this regard, the requirement for transparent and fair elections, instead of relying on legislation (the Cyber and Data Protection Act) that negates the specific requirement. In addition to the fees levied for access to the printed voters roll, the mission notes that the above scenario is restrictive regarding access to the voters' roll by interested persons, including political parties.

(f) Freedom of assembly

The Mission noted the controversy emanating from the Maintenance of Peace and Order Act (MOPA), which sets out a process for notifying the Zimbabwe Republic of Police of the intention to hold a campaign activity. In this respect, there were stakeholder concerns about the right to freedom of assembly for election campaign purposes, whereupon the CCC reported that their rallies were being subjected to unreasonable cancellation by the Zimbabwe Republic Police. We also noted reports that there was inconsistent application

of the notice period for election campaign gatherings, with certain political parties stating that the ZRP required a seven-day notice instead of the three-day notice that is applicable during election periods in accordance with section 7(1)(b)(ii) of the Maintenance of Peace and Order Act.

(g) Freedom of expression

The Mission received concerns from several stakeholders that the recent amendment to the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (No. 23 of 2004), which amendment is commonly referred to as the Patriot Act has resulted in a severe restriction of the freedom of expression which is guaranteed by section 61(1) of the Constitution. The Patriot Act creates the offence of “Wilfully injuring the sovereignty and national interest of Zimbabwe”. Stakeholders were particularly concerned that this offence is vague, too general, and it criminalises “*any communication between two or more persons, whether happening in person or virtually or by a combination of both, which involves, or is facilitated or convened by, a foreign government or any of its agents, proxies or entities.*” Of note was also the concern that even the consultations between these stakeholders and international observation missions could fall afoul of this law.

The Mission noted that the Patriot Act is incompatible with the spirit of section 61(1) of the Constitution, and paragraph 4.1.2 of the SADC Principles and Guidelines Governing Democratic Elections, which requires Member States to uphold, amongst others, the freedom of expression.

(h) Nomination of candidates and nomination fees

The Mission noted the unprecedented amount of litigation surrounding the elections, amongst others, concerning the nomination process of candidates. In this respect, we further noted the protest and litigation of Mr. Saviour Kasukuwere, who believes that he was unfairly disqualified as a presidential candidate; however the courts dismissed this particular complaint.

The Mission further noted stakeholder concerns that nomination fees for a person to stand for election have become too high and, therefore restrictive to political participation. In June, the government, through the Statutory Instrument 144 of 2022, increased the presidential nomination fee from 1,000 to 20,000 U.S. dollars. Nomination fees for a constituency election increased from 50 to 1,000 U.S. dollars. These amounts were also cited as unduly restrictive to less well-off members of the community such as women who lack the means. In this context, we also take note of the significance of paragraph 4.1.7 of the SADC Principles and Guidelines, which requires Member States to guarantee an environment of open contest with no undue exclusion and restrictions on anyone eligible and qualified to stand as a candidate in any election.

(i) Participation of women as candidates

Stakeholders that also included political parties acknowledged the significance of section 80 of the Constitution and the SADC Protocol on Gender and Development, which require that women be given equal opportunities as men in political, social and economic activities. Despite the innovations that Zimbabwe has made, such as the provision of the

30% female quota in respect of councillors for local authorities, the Mission noted that a lot more still needs to be done to achieve gender parity in contested/elected political positions. In this regard, our Mission was advised that in 2023 fewer women actually succeeded at their parties' primary elections, and effectively less women stood for the National Assembly, whilst only one woman stood for the presidency. Amongst others, this could also be attributed to the high nomination fees.

(j) Independence of the Judiciary

In view of their significance in the event of legal challenges in the context of the electoral process, some stakeholders expressed the view that the Government compromises the judiciary. A key justification for this perception was information received from these stakeholders that the judiciary recently received large financial and material incentives, which the stakeholders viewed as an attempt by the Government to buy the loyalty and allegiance of the judiciary.

(k) Alleged intimidation of voters

The Mission was informed that the rural vote may be compromised by alleged intimidation attributed to a group called Forever Associates Zimbabwe (FAZ), which is said to be a quasi-security intelligence organisation. The group was said to have been deployed to wards and around 36,000 villages. The allegations were that people were intimidated to vote in a particular manner and were warned that it would be easy to determine who voted against certain parties.

(l) Postal voting controversy

There was considerable concern from the opposition that postal voting by the officers of the Zimbabwe Republic Police was compromised by the alleged coerced voting. There were allegations that police officers undertaking postal voting were coerced to vote in a particular way in the presence of their supervisors, thus compromising the secrecy of the vote.

(m) Coverage of the elections by State-owned Media

It was the contention of several stakeholders that the State-owned media houses remain biased against the opposition political parties and candidates. While the Mission noted some improvement compared to the 2018 electoral processes, we also noted that the content of the public broadcaster and the State-owned newspapers were in favour of one political party, contrary to the relevant provisions of the Constitution, the Electoral Act, and the Revised SADC Principles and Guidelines Governing Democratic Elections, which requires State-owned media to be impartial.

3. OBSERVATIONS ON ELECTION DAYS (23-24 AUGUST 2023)

On the Election Days, the SADC Electoral Observation Mission observed the voting process in 10 Provinces of the Republic of Zimbabwe. The deployed observer teams covered 172 polling stations in their respective areas. The political contestants have continued to call for peace during this election period and after. The SEOM observed the following critical aspects at the 172 polling stations that we visited:

- (a) The environment at the polling stations was relatively calm and peaceful.
- (b) Several voters expressed concern due to a lack of, or late arrival of ballot papers and poor administration at some polling stations. However, voters remained patient to exercise their constitutional right to vote.
- (c) Professional and attentive police presence enhanced the overall peace and secure environment in all the polling stations observed.
- (d) 64% of the voting stations observed opened on time, 36% did not open on time for the 07:00am stipulated opening time. Some polling stations opened more than 12 hours after the stipulated time. The reason provided by ZEC for this unprecedented development was the unavailability of ballot papers, particularly for the local authority elections, and also due to previous litigation. This challenge was, however, specific to Harare and Bulawayo Provinces. Due to the delays, some voters left without casting their votes, while others remained in the lengthy queues throughout the day and night. By 06:00am on 24 August 2023, some voters in these two provinces had still not voted. Consequently, these delays also had a knock-on effect as they dissuaded voters from voting in the first place. Against this observation, we further note as follows:
 - i. Section 52(1) of the Electoral Act provides that for any election, the ZEC shall ensure that every constituency elections officer is provided with polling booths or voting compartments and ballot boxes and shall provide papers, including ballot papers.
 - ii. Before election day, ZEC had assured our Mission and other stakeholders that all necessary voting materials, including ballot papers, were available and ready for use. This communication was made in the context of section 52A(2) of the Electoral Act which requires ZEC to provide information on the number of ballot papers and publication of details regarding them. Based on these two considerations, the subsequent information from ZEC that they did not have adequate ballot papers has the unfortunate effect of creating doubts about the credibility of this electoral process.
- (e) The voters roll was unavailable at 1% of the polling stations observed and was therefore not displayed outside the polling stations for the convenience of the voters and verification by party/candidates agents.

- (f) During the voting period, and at 26% of the polling stations observed, not all voters who turned out could vote. The reasons advanced for this included:
 - i. Voters were identified, but their names were not found on the voters' roll;
 - ii. It was not possible to establish the voter's identity;
 - iii. Voters were at the wrong polling station; and
 - iv. Voters did not have a national identity card or passport, or due to the absence of an official witness confirming an elector's identity.
- (g) 8% of the polling stations observed were not accessible to voters living with disabilities.
- (h) At 50% of the polling stations, voters living with disabilities, the elderly, and pregnant women were not given priority to vote.
- (i) In 3% of polling stations observed, indelible ink was not checked on the voters before allowing them to cast their vote.
- (j) At 97% of the polling stations observed, voting was free from irregularities.
- (k) Voting proceeded in an orderly manner at 95% of the polling stations observed.
- (l) Ballot boxes did not remain locked and/or sealed at 2% of the polling stations.
- (m) As a result of the excessive delays in the opening of polling stations in Harare and Bulawayo provinces, at least 36% of the voting stations observed did not close at the scheduled closing time of 1900hrs, while some had not even opened by that time. It was announced that voting would be extended to proceed into 24 August 2023 to compensate for the late opening.
- (n) In previous stakeholder consultations, a shadowy organisation called Forever Associates Zimbabwe was accused of conducting a country-wide exercise of electoral intimidation. Our observers confirmed the existence of this group as its officials or agents were easily identifiable at some polling stations as they were dressed in regalia emblazoned with the FAZ name and were accredited local observers. These, and other unidentified persons who were not polling officials were also observed taking down the voters' names before they cast their votes. In some areas, voters were intimidated by the actions of these individuals.
- (o) The Mission observed the closing and vote counting processes. A proper analysis of these two processes shall be provided in the final SEOM Report.

4. Recommended improvements in the electoral process

At this juncture, allow me to recall that the SEOM is continuing the process of electoral observation in the post-election phase. As such, the Mission will not be rendering comprehensive recommendations and detailed qualifications of the election at this stage.

However, the Mission has observed the following areas of the electoral process and system that relevant stakeholders may wish to consider improving:

- (i) **Access to the voters roll:** In order to improve perceptions amongst the public, political parties and candidates, ZEC is advised to strictly follow the provisions of the Constitution on transparency, access to information, and timeously avail the voters roll in accordance with the stipulations under the Electoral Act.
- (ii) **Nomination fees:** In order to enhance the openness and inclusivity of the political process, ZEC is urged to engage with all key stakeholders in the process of revising nomination fees for candidates and attempt to benchmark the revised fees in the context of the SADC region and Zimbabwe's economic realities.
- (iii) **State-owned media coverage:** The relevant media regulatory authorities are urged to ensure the implementation of measures that require impartiality in the coverage of political events by State-owned media.
- (iv) **Voting materials:** ZEC is urged to strengthen transparency in the procurement process , and delivery of all voting materials, including ballot papers, and put in place a monitoring system that includes the participation and verification by electoral stakeholders. In addition, there is need for the Electoral Act to be revised to put in place clear timeframes within which these processes should be completed.
- (v) **Participation of women:** Effective and practical measures should now be put in place at the earliest sitting of the next parliament to enhance the equal participation of women as candidates in electoral processes.

5. CONCLUSION

In conclusion, the Mission observed that the pre-election and voting phases, on 23-24 August 2023 Harmonised Elections were peaceful, and calm. However, for reasons outlined above, the Mission noted that some aspects of the Harmonised Elections, fell short of the requirements of the Constitution of Zimbabwe, the Electoral Act, and the SADC Principles and Guidelines Governing Democratic Elections (2021).

The Mission commends the people of Zimbabwe for maintaining a peaceful political environment during the pre-election period, and on voting day. The Mission will release its final report after the validation and proclamation of final results, as provided for in the *SADC Principles and Guidelines Governing Democratic Elections*.

The final report will be shared with the ZEC and all stakeholders.

In terms of the *SADC Principles and Guidelines Governing Democratic Elections*, our long term observers will remain on the ground to continue with the post-election observation until the 1st of September 2023. The SEAC shall return at an appropriate time, to undertake a post-election review to determine the extent to which the recommendations of SEOM have been

implemented and the nature of support, if any, that the Member State holding elections may require from the SADC region, to implement those proposals.

In the event of any electoral disputes, the Mission appeals to all contestants to channel their concerns through established legal procedures and processes. The Mission urges all political parties and the people of Zimbabwe, and all other stakeholders to allow the ZEC to announce the final results as legally mandated.