



The Inconvenient Truth

A complete guide to the delay in releasing the results of Zimbabwe's presidential poll.

Prepared by Derek Matyszak of the Research and Advocacy Unit, Zimbabwe.

SIT^o – States in Transition Observatory

21 April 2008

<http://WWW.IDASA.ORG.ZA> • REG NO: 198700079/08

CAPE TOWN DEMOCRACY CENTRE
6 SPIN STREET • CHURCH SQUARE • CAPE TOWN 8001
PO BOX 1739 • CAPE TOWN 8000 • SOUTH AFRICA
TEL + 27 (021) 467-5600 • FAX +27 (021) 461-2589
e-mail: INFO@IDASACT.ORG.ZA

KUTLWANONG DEMOCRACY CENTRE
CNR VISAGIE & PRINSLOO STREETS • PRETORIA 0001
PO BOX 56950 • ARCADIA 0007 • SOUTH AFRICA
TEL + (012) 392-0500 • FAX +27 (012) 320-2414
e-mail: INFO@IDASA.ORG.ZA

OFFICERS AND BOARD OF DIRECTORS AVAILABLE ON REQUEST
IDASA IS AN INDEPENDENT NON-PROFIT PUBLIC INTEREST ORGANISATION PROMOTING DEMOCRACY

Introduction.

The media and several political analysts seem to be confused as what precisely ought to have happened after people went to the polls in Zimbabwe on March 29th 2008 to vote in four "harmonised" elections – those for Local Government, the House of Assembly, the Senate and the President. This confusion could have been avoided by ignoring what ZANU PF and ZEC (Zimbabwe Electoral Commission) spin doctors said after the initial results began to reveal that the opposition had won the elections, and looking to see what the Electoral Act ("the Act") prescribed. For example, when the results were not announced within a few days of the election, ZANU PF spokesperson Bright Matonga informed the media that this was normal as ZEC had six days within which to announce the result. The international media immediately accepted this statement at face value and the six day deadline was repeated as a fact in numerous broadcasts. After the six days had come and gone without the announcement of the presidential result, this "time limit" was quietly forgotten. Presumably the international media was too embarrassed at having been so easily duped, to remind Matonga subsequently of his earlier statement. In fact, as will be seen below, the time for announcing the results is not six days or any explicitly prescribed number of days.

However, Section 110(3) of the Act does provide that if no candidate receives an absolute majority in the presidential election, a run off between the two frontrunners must be held "within 21 days of **the previous election**". It has been suggested that this means 21 days from the declaration of the result. This is not the case. If the legislature had meant 21 days from "the declaration of the result" it would have said so. Elsewhere, it managed to use the phrase within 48 hours of "the declaration of the result" for purposes of the president elect's assumption of office. And it could have used this phrase if this is what was intended for the commencement of the 21 day period. It did not. "Election" cannot refer to the day the President is declared elected as in the case of a run off this will not have happened. It can only mean polling day. ZEC itself, in an announcement from its public relations office, accepting the need for a run off if none of the candidates achieved an absolute majority, stated that the 21 days runs from polling day.

By delaying the announcement of the result of the presidential poll by over 21 days there cannot be compliance with the 21 day requirement, which will expire on the 19th April, 2008, the day upon which ZEC has declared it will conduct a recount. This "difficulty is likely to be resolved either by ZEC ignoring its previous announcement and holding that the phrase "previous election" means the announcement of the result (contrary to the plain language of the Act) or through Mugabe controversially (and probably unconstitutionally)¹ exercising his power under the Presidential Powers (Temporary Measures) Act which

¹ ¹ "Prior to the Elections in 2005 Mugabe sought to appease SADC by introducing a new Electoral Act which paid passing regard to the SADC Protocol on Democratic Elections adopted by SADC in Mauritius in August 2004. The new Electoral Act did not repeat section 158 of the old Act (Chapter 2:01) which gave Mugabe a broad power to amend the Electoral Act and make regulations for the conduct of elections. It is obviously inappropriate that the president be empowered to make the rules for an election in which he

allows him to amend and enact legislation. He may thus purport to amend the 21 days to a period he finds amenable.

A second point of confusion that has arisen due to several articles in the media, is the legitimacy of the continued exercise of power by the President and his Ministers during the hiatus while the presidential results are announced. The President is reported to have "dissolved" his cabinet at the same time as parliament before the elections and it has thus been suggested that Ministers cannot continue to exercise their executive duties and privileges. This is not the case. In fact, a position as a member of Cabinet is different from a Ministerial appointment. In terms of section 31E(c) of the Constitution, Ministers remain in office until the assumption of office of the new President. It is also a misapprehension that a Minister must be a Member of Parliament. The requirement under section 31(E)(2) is that no person shall hold office as Vice-President, Minister or Deputy Minister for **longer than three months** unless he is a member of Parliament. However, after Parliament is dissolved, he may continue to hold such office without being a Member of Parliament until Parliament first meets after the dissolution. The President need not convene parliament for six months after its dissolution. The President remains in office until the assumption of office of the President Elect in term of section 29 of the constitution. The current anomaly of continued governance by those who do not have a democratic mandate has been caused by the actions of ZEC and is itself a further factor which suggests the illegitimacy of ZEC's actions (discussed below) and that they violate the Electoral Act.

The Vote Counting Procedure and Related Processes

The procedure for the counting of the vote, the announcement of the results and the time frame for the process, obfuscated by ZEC, is reasonably straight forward and is set out in the Second Schedule and sections 61 to 67 and 112 of the Electoral Act. ZEC itself published an advertisement setting out the procedure to be adopted. The procedure indicated by ZEC is largely correct and is as follows.

himself is a contestant. However, the Presidential Powers (Temporary Measures) Act (Chapter 10:20) gives the President a general power to bring into effect overriding regulations in any urgent matter other than issues of finance. Measures enacted by the President in this way must be laid before parliament within eight days of the next session of parliament, when they may be adopted, amended or rejected. Since parliament, by not repeating an equivalent of section 158 of the old Electoral Act in the new, obviously intended that that the president should not be able to amend the Electoral Act, it is debatable whether he may lawfully achieve the same thing through the Presidential Powers (Temporary Measures) Act. However, shortly before the March 2008 elections the president ignored this legal nicety and the egregiousness of making rules for an election in which he is a contestant, and used his presidential powers to re-introduce a provision allowing police officers into polling stations - despite the fact that this provision had been removed but two months previously as part of an agreement between the MDC and ZANU PF during the SADC mandated negotiations between the two parties. Mugabe has thus indicated that he has no qualms in using his presidential powers in this manner. Furthermore, in extending the 21 days in this manner, Mugabe would effectively be extending his constitutionally prescribed term of office which ought clearly to be beyond his powers. "

The process for the counting of the votes begins "**immediately** after the close of the poll" (section 61). The candidate or their polling agents may be present at the counting of the votes.

After the counting is completed the presiding officer shall "**without delay**" (section 64) and in the presence of the candidates or polling agents:

- a) record the number of votes for each candidate in each of the four elections on the polling station returns;
- b) display the completed polling station returns to each candidate or his or her polling agent and invite them to sign the same;
- c) affix copies of the returns to the outside of the polling station;
- d) send the returns, certified by the polling officer to the Ward Collation Centre.

Accordingly, though no specific time is stipulated, the steps outlined above must take place without delay.

At the Ward Collation Centre the polling station returns are collated and verified in the presence of the candidates or their polling agents. ZEC has mystified the "verification" process as one of several varying excuses given for the delay in releasing the results. Verification is the simple process set out in section 65(2) of the Electoral Act and refers to the fact that the presiding officer must display each polling-station return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each polling station return. Nothing more and nothing less. The idea is that the election agents can "verify" that the figures on the returns received match those on the returns at the polling station whence they came –which have already been verified by the polling agents there. The presiding officer then repeats the steps set out in a) to c) above. Accordingly, returns displaying the results of all four elections up to the level of that Ward are displayed outside the Ward Collation Centre. The presiding officer declares the winner of the most votes in the council poll duly elected. "**Immediately**" after posting the results outside the polling station the presiding officer must transmit the returns to the constituency elections officer, who will declare the House of Assembly results.

The process is repeated by the constituency elections officer "on receipt of the polling station returns". The only part of the process where a time is not stipulated is that requiring the constituency elections officer to give reasonable notice to the candidates of the time and place for the collation and verification of the returns. Since there is nothing to be done prior to the verification and collation of the returns, it is implicit that the notice period is no longer than that required to give the candidates sufficient notice and time to be at the venue, a matter of hours, not days. This point was accepted by Justice Uchena in a recent court application discussed below. The Ward Collation Centre polling station returns are then

“verified” and collated in the manner stated. As indicated, the verification process does not involve a check on the veracity of the count at the polling stations, as ZEC and ZANU PF have sought to imply, but is merely a means by which the candidates may confirm that the figures received and displayed at the constituency center are the same as the ones transmitted from the Ward Collation Centres. The constituency elections officer is then required to **“forthwith”** declare the candidate with the most votes duly elected to the House of Assembly. The results for all the elections are posted outside the Constituency Collation Centre, including the results for the concluded count pertaining to the local government elections.

There is some slight confusion with the next step. ZEC indicated, on the basis of section 65(5), that the procedure to be followed is that the constituency returns are then sent to the Senatorial Constituency Collation Centre and the process of verification, collation, declaration of the result and posting of the results repeated. The returns are then sent to the National Command Centre for the determination of the presidential result. However, section 65(5) only indicates that returns relating to the senatorial election should be transmitted **“as soon as may be”** to the Senatorial Election Officers. The Second Schedule to the Act sets out special procedures in relation to a presidential election. It appears that, due to legislative oversight, the Second Schedule has not been amended to accord with various amendments made to the body of the Act. Be this as it may, reading the body of the Act with the Second Schedule it is clear that a Constituency Elections Officer, after completing the processes required at constituency level, is required to **“forthwith”** dispatch the returns to the Chief Elections Officer at the National Collation Centre.

Accordingly, the difference with the procedure set out by ZEC is that these returns reach the National Collation Centre via the Senatorial Collation Centre, rather than directly from the Constituency Election Officers as required by the Second Schedule. The difference for the chronology should be one of hours, not days.

In either case, according to the Second Schedule **“on receipt of the constituency returns”**, the Chief Elections Officer dispatches “reasonable” notice in writing to the candidates of the time and place for the verification and collation of the results. Once again, since there is nothing required of the Chief Elections Officer prior to giving such notice, and by the use of the word “time” rather than “date” it is implicit that the notice period will be a matter of hours rather than days. When the number of votes in the **constituency** returns have been added together the Chief Elections Officer shall **“forthwith”** declare the person with the greatest number of votes as the winner. This declaration must be read subject to section 110(3) which requires that the winner must obtain an absolute majority (i.e. 50% of the total votes cast, plus one vote) failing which there will be a run off of the two candidates with the highest number of votes. The run off must take place with 21 days of **“the previous election”**. Where there is

an outright winner, the person is declared duly elected as President with effect from the "day of such declaration". The President elect assumes office immediately upon taking the oath of office, which takes no later than 48 hours after the declaration of election to office.

The Time Limits

From the procedures outlined above it is clear that there is no six day or any other time limited stipulated in the Electoral Act. However, it is clear that the legislation contemplates an unbroken and fluid sequence with each step taking place "immediately", "forthwith", "without delay", "on receipt of" or "as soon as may be" after the other. The process thus must only take so long as is required to complete each of the prescribed steps. A look at the figures around the voting process gives a rough indication of reasonable time frames. ZEC stated that by polling day there were 5.9 million registered voters. Of these 2 388 381 turned out to cast their votes (just over 40%) at roughly 9 000 polling stations country wide. This makes for 265 voters per polling station. However, polling stations were more heavily concentrated in the rural areas, often by a factor of 2:1. Even so this would make for 530 an average of voters per polling station in an urban area. The maximum voter turn out was 58% but this was in a rural constituency. With 9000 polling stations for 210 constituencies, this makes for an average of 43 polling stations per constituency, somewhat less in the urban areas and somewhat more in the rural areas. There are 1958 Wards, 210 House of Assembly Constituencies and 60 Senatorial Constituencies.

One can now put these figures into the voting procedure outlined above. The average polling station would have between 265 and 530 ballots to count in four elections – the average maximum thus being 2 120 ballots in each polling station. The counting process should have been completed within a few hours, and most polling stations had indeed finished the count and completion of the returns by the early hours of Sunday morning at the latest. The 43 polling stations in each constituency should have sent their returns immediately to the Ward Collation Centres, nine or ten per constituency, meaning that each Ward Collation Centre would receive returns for the four elections from four or five polling stations. Accordingly, once the counting process is complete, the work of those tasked with collation at the succeeding levels is not particularly onerous. The Ward Collation Centres would thus receive 16 to 20 returns to verify and collate. The process should not have taken much longer than an hour. Each Constituency Elections Officer would have received the result of the Local Government Election and the returns for the remaining three elections from the nine or ten Ward Collation Centres giving them 27 or 30 returns to verify and collate, of which only nine would relate to the House of Assembly Election. The Chief Elections Officer would receive the results of the Local Government Election, the result of the House of Assembly Election and 210 returns from the Presidential Election giving him 210 returns to collate. The result could be compared with the 60 returns from Senatorial Election officer, though the Act requires that the collation be done from the

constituency returns. Once again the verification and collation of the 210 constituency returns ought not to have taken more than a few hours. The result should then have been announced immediately. Accordingly, the results for all four polls should have been known late on Sunday night. And reports suggest that they were, but not released. As stated by Justice Uchena in the application discussed below:

The work to be done by the Chief Elections Officer is made simpler by the counting and collation done at polling stations and constituency levels. All he has to do is verify and display the constituency returns and add the figures thereon to identify the winning candidate who he should forthwith declare the President of Zimbabwe (at page 11 of MDC and Morgan Tsvangirai v the Chairperson of ZEC and the Chief Elections Officer E/P 24/08)

What Happened in Practice and the Explanations Proffered.

ZEC did not comply with the procedures it had itself spelt out, particularly, as is now notorious in relation to the announcement of the results, prompting a court application by the MDC. Firstly, ZEC arrogated to itself the right to announce the results for the Houses of Parliament, despite the fact that the Constituency Elections Officers had announced the results forthwith as required at constituency level many days before the results were announced by the National Command Centre and all that was required was for these results to be made more widely known. This was the first of a sequence of events which put the partiality of ZEC (and the state owned media) in relation to the whole process beyond doubt. When ZEC was challenged on this point in the MDC's court application, the Chairperson of ZEC conceded that the results are announced at constituency level and that ZEC was merely assisting the nation by revealing the results nationally. The manner in which it did so again revealed its partisan nature. The results were released painfully slowly and initially for the House of Assembly only, at the rate of about 40 a day. Furthermore, the manner in which they were released was both curious and revealing. The results were released as if ZEC were dealing a pack of cards to the two parties, adopting a one each approach. Hence, at the end of each broadcast there was a rough parity of seats won between the two parties. In order to accomplish this, ZEC must have had the results of all constituencies to know that the process could be continued until all results had been disclosed. Yet ZEC sought to explain the delay by maintaining that results were still awaited from far flung polling stations. In view of the "one each approach" this explanation was already implausible, but rendered more so by the fact that the results released bore no relation to their distance from the command centre. Results from outlying rural areas were given well in advance of results for constituencies in Harare. Given that the National Command Centre must have had all the House of Assembly results in order to release them in this manner, the presidential returns must also have been received and the Chief Elections Officer was obliged to proceed as described above. He did not.

It is clear that the process was deliberately delayed in order to avoid disclosure of the result of the presidential poll. After the explanation that results were still awaited from far flung areas was no longer sustainable, ZEC then said it was unable to release the presidential poll result until the senate result had been released. This explanation had no legal basis and the MDC filed an urgent application for the release of the results on the 6th April, having first attempted to do so on the 5th April, 2008. There is no requirement that the Chief Elections Officer await the Command Centre's disclosure of senatorial results (which should have been declared by the senatorial elections officer in any event) before releasing the presidential result. When this explanation could also no longer be sustained, the results of the senate poll having been eked out by ZEC, a report appeared in the state owned Sunday Mail of the 6th April, 2008, that ZANU PF had reported irregularities affecting the count in four constituencies. The complaints were reported as being follows:

1. "In Ward 25 of Mberengwa South, Mr. Tsvangirai is said to have garnered 98 votes instead of 116. A total of 8 533 votes were recorded against Cde Mugabe's name. The figure should have been 9001, thereby showing a difference of 448 votes. Dr. Simba Makoni total in the same constituency was recorded as 3 191 instead of 1 191".
2. "In Mberengwa East, the subtotal was recorded as 2 718 instead of 2 618". [What the subtotal refers to is not stated]
3. "In Mberengwa North, according to the party it was discovered that Dr. Makoni's ballots were recorded as 564 instead of 568, while Mr. Tsvangirai's were captured as 2 153 instead of 2 146."
4. "In Mberengwa West, Mr Tsvangirai was said to have received 77 ballots instead of 189"

The report went onto allege that ZEC was obliged to order a recount as ZANU PF had written to ZEC stating that "ZEC may be faced with a serious, profound and far-reaching case of miscounting".

On the same day, the 6th April, 2008 the head of ZEC Justice George Chiweshe attested to an affidavit opposing the immediate release of the results in response to the MDC's urgent application. In this affidavit he claimed that ZEC was not in possession of the presidential results as the polling station returns had not been collated. He asserted that the polling station returns are submitted as "raw data" ignoring ZEC's own pronouncement that the constituency summations of the ward returns would be sent to the National Collation Centre. He denied that there was any time limit for the release of the result or even that there was any requirement that the presidential results "be immediately submitted to the National Collation Centre", despite the fact that the Second Schedule requires their transmission to the National Collation Centre "forthwith".

More tellingly, Chiweshe attached to his court papers what he averred was a statement he had prepared which would be released to the nation explaining the reason for the delay in releasing the presidential result. The statement echoed the report in the Sunday Mail. Chiweshe pointed out that in terms of section 67A(1) of the Act that:

“Within 48 hours after a constituency elections officer has declared a candidate to be duly elected in terms of section 66(1) any political party or candidate that contested the election in the ward or constituency concerned may request the Commission to conduct a recount of the votes in one or more of the **polling stations** in the ward or constituency.”

This section applies, with appropriate changes to the presidential poll. ZEC must act on the request if there are reasonable grounds for believing that an alleged miscount of the vote occurred, and that if it did occur, it could affect the results of the election. Chiweshe averred, like the Sunday Mail, that several such requests for a recount had been received. Significantly, he did not disclose how many or when they had been received. He stated that the “complaints” were currently being considered by ZEC, and that this was the reason for the delay in releasing the presidential result.

However, legal argument advanced during the application would have convinced Mr. Chiweshe that this excuse for not releasing the result did not pass muster. Firstly, it appeared that the complaints had been made well after the 48 hour period – hence Chiweshe’s failure to indicate in his affidavit the date upon which the “complaints” had been received as would be expected and normal. Secondly, the complaint may only be made **after** a candidate has been declared duly elected, when the presidential candidate patently had not been so declared. Thirdly, the miscount must be significant enough to effect the result. If the state owned Sunday Mail accurately captured the complaints, it will be noted that rather oddly, two of the alleged miscounts were in the ZANU PF candidate’s **favour** and involved a paltry 102 and 18 votes. A further two involved a prejudice to ZANU PF of four and seven votes to Makoni and Tsvangirai respectively. The only two complaints of any possible significance were an alleged misallocation of 488 votes for Mugabe and an alleged overstatement of 2000 votes for Makoni (without any corresponding allegation that these votes ought to have been allocated to another candidate).

Clearly, this would not suffice as an excuse for not releasing the result. Although Chiweshe had not contended as much in his affidavit, his lawyer advanced section 67(A)(4) as an excuse for not releasing the results. Justice Uchena accepted this section as a valid basis to delaying the results effectively accepting evidence “from the bar” which had not been averred by Chiweshe. The subsection provides:

The Commission may on its own initiative order a recount of votes in any polling stations if it considers there are reasonable grounds for believing that the votes were miscounted and that, if they were, the miscount **would have affected** the result of the election.

It is probably due to misparagraghing on the part of the drafts person that the requirements of 48 hours and the declaration of the candidate seem not to apply to subsection 67A(4), when they apply to the preceding subsections. Accordingly, Justice Uchena felt able to hold that this provision allowed ZEC the discretion to order a recount and that there were no time provisions to be followed in this regard. Chiweshe thus did not publish the statement to the nation on the reasons for the delay attached to his court papers based on section 67A(1) as he had claimed he would do. Instead he published notice GN 58A/2008 dated Saturday 12th April which appeared in the State owned Herald newspaper, on the 15th April purporting to order a recount "in respect of the Presidential, House of Assembly, Senatorial and local authority elections" at **all** polling stations that were counted at the scheduled constituency centres". A schedule of some 23 constituencies then follows. The notice is remarkable. It suggests, using the average of 43 polling stations per constituency (and since the constituencies are all rural, the number would be somewhat more) that Chiweshe has received credible complaints of miscounts or reasonable grounds to believe the same at over 989 polling stations, all of which complaints are neatly confined to 23 constituencies rather than scattered throughout the 210 constituencies.

Considering excuse 67A(4) .

The alleged suspicion of the miscounts must have been raised immediately otherwise it does not serve to explain why, in the hiatus between receiving the constituency returns, and the suspicion of the miscount, the presidential result was not announced.

Seven days passed before ZEC's lawyer not (ZEC itself) first raised section 67A(4) as an excuse for not releasing the results during legal argument. There are several reasons for believing that section 67A(4) does not allow Chiweshe to delay the announcement of the presidential result by deploying this procedure, and that this excuse likewise does not pass muster.

Firstly, the tenor of the section suggests that 67A(4) can only be deployed within the 48 hour period and after the announcement of the result. Support for this, and as an independent indication, is the tense used in 67A(4). The section is to be used only if the miscount "would have affected the result." The use of the words "would have" rather than "will" or "would" suggests that the result has been disclosed. In ZEC's published notice concerning the miscount follows the section fairly closely until coming to the crucial

words which it alters to “the miscount **would** affect the result of this election”, dropping the stipulated “would have”.

Secondly, as indicated at the outset section 110(3) provides that if no candidate receives an absolute majority a run off between the two frontrunners must be held “within 21 days of **the previous election**”. Thus it is implicit that the Act does not allow ZEC to delay the announcement of the result for any period, let alone 21 days or more as is the case, and whether acting under 67(A)(4) or otherwise.

Thirdly, common sense suggests that the legislature would not have intended to give ZEC the power to delay the assumption of an office as important as the President while it, engages in a forensic examination of the ballot, as protracted and extensive as it, in its sole discretion, determines. The delay by ZEC has created the anomaly, which could not have been intended by the legislature, of continued governance by the President and by Ministers who have lost their parliament seats and thus their democratic mandate.

Fourthly, from the notice published by ZEC, the miscounts relate to the parliamentary **and** presidential elections. It is implausible that complaints relating to the presidential count should be confined neatly to all polling stations within specific House of Assembly constituencies, and that miscounts in relation to the presidential poll occurred in exactly the same polling stations where there was a miscount in relation to a House of Assembly seat. The House of Assembly count should have no bearing on the presidential count, and thus should not be a ground to delay the release of the latter. It should be noted that the notice published in the Herald also states that after the recount the constituency elections officer shall act in terms of section 67 to communicate the names of the persons duly elected to the Chief Elections Officer and Clerk of Parliament. In so doing section 66(4) which stipulates that the previous declaration by the constituency election officer of the winner is **final** and may only be reversed on petition to the Electoral Court is ignored. The procedure for resolving a dispute of a House of Assembly seat, by way of petition, should not have any impact on the presidential count and there is no need to delay the result on this basis. A clear intention of the recount is to unlawfully attempt to reverse the “final” declarations of duly elected House of Assembly candidates in select constituencies. Annexure A shows the constituencies and relative votes of the parties.

Finally, it should be noted that a comparison of the House of Assembly and Senate results suggests that Tsvangirai won at least between 48.55% and 50.76% of the vote, with Mugabe trailing at around at most 42%. (see *Zimbabwe Elections 2008: Examining The Popular and Presidential Choice - Hiding or Run Off?*). There thus are realistically only two possible outcomes of the presidential poll, Tsvangirai winning with an absolute majority or Tsvangirai winning with a simple majority. For ZEC to act under 67(A)(4)

there is the additional requirement that the miscount must be thought to be significant enough to effect the result of the poll. Accordingly, ZEC must reasonably believe the miscount significant enough to take Tsvangirai below the threshold required for an absolute majority. Since 1% of the poll is some 23 883 votes, ZEC must "reasonably" believe either a substantial number of miscounted votes or Tsvangirai's total must be almost exactly 50% for the miscount to make any difference.

In the conduct of its duties, ZEC is not to be subject to the direction or control of any authority - section 61(5) of the constitution. However, the government has firm control over its composition. ZEC consists of a Chair and seven other Commissioners. The President appoints the Chair after consultation with the Judicial Services Commission, while the seven other Commissioners are also appointed by the President from a list of nine nominees submitted by the Parliamentary Committee on Standing Rules and Orders which was dominated by ZANU PF members. The personnel comprising ZEC remains unchanged from the discredited 2005 elections (save for the secondment of two additional members from the now defunct Electoral Supervisory Commission) and Justice George Chiweshe, perceived as displaying bias towards the ruling party in previous elections, remains as its chairperson.² Justice Chiweshe joined the bench in 2001 following a purge of "reactionary judges" by the government. He is a former judge advocate responsible for military tribunals in the Zimbabwe National Army (ZNA), a veteran of the liberation struggle and was awarded a farm under Zimbabwe's land redistribution policy.

Conclusion

It requires considerable talent to suppress the scepticism which ZEC's shifting, shifty vacillating, implausible and illegitimate excuses for the delay in releasing the presidential results evokes. Only South African President, Thabo Mbeki appears to be sufficiently gifted in this regard. Other SADC leaders had a good attempt. The Communiqué issued by SADC after an emergency meeting on 13th April, 2008 included the following points:

The Summit urged the electoral authorities in Zimbabwe that verification and release of results are expeditiously done in accordance with the due process of law.

² ZEC comprises Judge George Chiweshe (Chair), Mrs. Sarah Kachingwe, Mrs. Vivian Ncube, Prof. George Kahari, Rev. Jonathan Siyachitema all members of ZEC in 2005 with the addition of Joyce Kazembe and Theophilus Gambe formerly members of the redundant Electoral Supervisory Commission.

The statement was piously made notwithstanding the fact that, as indicated above, at the time of the pronouncement by SADC the "due process of the law" had already been violated more times than the Sabine women and required release of the results nearly two weeks previously.

*The Summit commended the people of Zimbabwe for the peaceful and orderly manner in which they conducted themselves before, during and **after** the elections.*

SADC observers left before the announcement of the results and were not present to witness the vicious retributive campaign unleashed by ZANU PF in the rural areas in the wake of their defeat – a campaign which includes multiple assaults, torture, arson and murder. At the time of writing the death toll is currently at four and rising. When it has risen to a sufficient level for Mugabe and his military service chiefs to deem the rural electoral terrain suitable and the voter numbers massaged to allow for a presidential run off, ZEC will release the results and a date convenient to ZANU PF set for the run off. Having bludgeoned his way to victory, Mugabe will then appoint a few venal MDC MP's as Ministers. This will help him secure the House of Assembly majority which may need to be obtained by topping up in this fashion, even after ZEC's unlawful "unfinalising" of the already declared House of Assembly seats through the "recount". Elected as President and with his parliamentary majority restored, all will be as before the elections – save that with the amount of money printed to administer two electoral periods and buy votes, inflation may reach 500 000% (sic) a little earlier than anticipated. Never mind. This means that the foreign currency accessed by Mugabe and his military cronies from the Reserve Bank at the official rate of 30 000:1 United States dollar, when the black market rate is 60 000 000 (sic):1, will seem that much cheaper. Crisis, what crisis?

16/04/08.

Source www.kubatana.net.

	MDC AM	MDC MT	ZANU PF		DIFFERE NCE		% poll where known
Bikita West		7048	7029		19		
Chimanimani West		8558	7107		1451		
Mutare West		7597	7577	536	20		49.26%
Gokwe-Kabuyuni		7234	7156		78		49.86%
Mberengwa North		2352	9722		7370		
Mberengwa South	885	1309	8291		6982		
Mberengwa West	315	2912	5508		2596		
Mberengwa East	616	1251	7292		6041		
Chiredzi North		2679	18413	336	15734		58.03%
Gutu North		5045	4343		702		
Gutu South	1570	5757	3559		2198		
Gutu Central		6398	4767		1631		45.30%
Masvingo West		4513	4122	1053	391		43.66%
Masvingo Central		4905	4793	870	112		41.72%
Zaka West		4734	4030	663	704		42.97%
Bulilima East	3180	2181	3104		76		23.61%
Goromonzi West		5931	6193		-262		
Zvimba North	944	1701	6784		5083		35.60%
Lupane East	5424	1352	3368		4072		40.11%
Silobela	Cand1 679 Cand2 642	4624	4137	1462	487		
Buhera South		8833	7613		1220		56.38%
Zhombe	2289	5445	5122		323		40.55%

Notes:

1. The implication in the ZECs notice is that ballots from 43 polling stations per constituency will be recounted at a single counting centre. The possibility for confusion is that much greater, and it may be difficult to match any uncounted ballots that are subsequently "found" or find their way into the piles of ballots from different constituencies against ballot counterfoils or recorded ballot numbers.
2. It will be noted that the constituencies selected, with a few exceptions, show either very marginal victories for the MDC or very large victories for ZANU PF. The reader may draw his or her own conclusions from this. As mentioned in the text, section 66(4) does not allow a constituency election officer's declaration to be reversed other than by way of petition. ZEC's notice suggests that this provision will be violated.
3. It is implausible that there are reasonable grounds to suspect a miscount in the presidential election in precisely those constituencies where the MDC's victory for the House of Assembly seat is marginal.

The views expressed in this report do not necessarily represent the views of IDASA