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Theft by Numbers ZEC's Role in the 2008 Elections

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Introduction

Prior to the setting up of the Zimbabwe Electoral Commission (ZEC), most of the work of refining the voters roll and monitoring elections was undertaken by the now defunct Electoral Supervisory Commission (ESC). The five members of the ESC were all appointed by the President, which clearly affected its objectivity. In a critical study of the 1995 Parliamentary Elections in Zimbabwe, John Makumbe and Daniel Compagnon¹ identify the following as some of the major weaknesses of the ESC:

- The appointment of all the commissioners by the President, who is himself a member of one of the contesting political parties in an election, effectively erodes the ESC's impartiality in the management of the electoral process;²
- Dismissal of commissioners from the ESC was vested only in the President;³
- The Constitution of Zimbabwe did not extend any executive powers to the ESC, and this effectively made it impotent, and it became '...a mere consultative and weak body';⁴
- For the most part, virtually all members of the ESC were prominent ZANU(PF) members.

Demands by opposition political parties and civil society organizations for the reform of the electoral law, and the government's purported attempt to comply with the SADC Principles and Guidelines Governing Democratic Elections, eventually resulted in the creation of the ZEC as a parallel elec-

1 Makumbe, John and Daniel Compagnon (2000) *Behind the Smokescreen: The 1995 General Elections in Zimbabwe*. University of Zimbabwe Publications, Harare, p. 340.

2 As Section 61 of the Constitution then provided.

3 As Section 9 of the Electoral Act Chapter 2:13 then provided.

4 Makumbe and Compagnon, p. 13.

toral body in 2005.⁵ The purpose of this chapter is to critically examine the role that the ZEC played in the harmonised elections of 2008. We proceed from the basic premise that the ZEC is not an effective and autonomous electoral body. Institutionally weak and politically partisan, it effectively seeks to promote and protect the interests of ZANU(PF). The ZEC's role in the so-called harmonized elections of 2008 essentially amounted to theft by numbers as the institution sought to defy the winds of democratic change that were blowing throughout Zimbabwe.

Methodological note

This chapter is largely reflective in its approach. Media reports, interviews with key informants and direct access to a few members of the ZEC – who agreed to participate on condition of anonymity⁶ – have informed our analysis and conclusions.

Institutional characteristics of the ZEC

According to the ZEC website, the commission was established by Section 61 of the Constitution of Zimbabwe through the promulgation of Constitutional Amendment Act No 17, (Act 5 of 2005), which defines its membership, the appointment of members, and its functions. The ZEC is constituted of seven members appointed by the President, three of whom must be women.⁷ The tenure of office for the commissioners is five years.⁸ (This is significant in that if, for example, the next elections are held within two or three years, they will be presided over by the same commissioners who oversaw the 2008 polls.) The chairperson is appointed after consultation with the Judicial Service Commission, while the other six commissioners are appointed from a list of nominees submitted by the Parliamentary Committee on Standing Rules and Orders. The day-to-day operations of the ZEC fall under the direction of the Chief Elections Officer, who is constitutionally the head of the secretariat,⁹ a very small,

5 The Zimbabwe Electoral Commission Act, Act 22 of 2004, Chapter 2:12. Since the Electoral Supervisory Commission was established by virtue of the constitution, a constitutional amendment was thus required (see immediately below) to avoid the duplication of electoral administrative bodies and replace the ESC. There was thus considerable confusion over the functions of each for purposes of the 2005 election.

6 It is well known that ZANU(PF) does not take kindly to negative exposure of its political activities by persons who are otherwise considered to be beneficiaries of the regime's benevolence, however defined.

7 Section 61(10)(a) and (b) of the Constitution.

8 Schedule One paragraph 1(1) of the Amended Zimbabwe Electoral Commission Act, Chapter 2:12.

9 Section 11 of the Act.

limited entity when compared to the scale of ZEC's task. Such an inadequate administrative structure has resulted in serious inadequacies on the part of the ZEC. These have attracted strong criticism, primarily from opposition political parties.

Functions

The Constitution of Zimbabwe (61(4)) outlines the following as the main functions of the ZEC:

- To prepare for, conduct and supervise all elections and referenda.
- To ensure that those elections and referenda are conducted efficiently, freely, fairly, transparently and in accordance with the law.
- To direct and control the registration of voters by the authority charged with that responsibility under the Act of Parliament.
- To compile voters rolls and registers.
- To ensure the proper custody and maintenance of voters rolls and registers.
- To design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres.
- To accredit observers and journalists for elections and referendums in accordance with an Act of Parliament.
- To conduct voter education.
- To supervise the registration of voters by the authority charged with that responsibility under the Electoral Law.
- To give instructions to the Registrar General of Voters in regard to the exercise of his functions under the Electoral Law or any other law.
- To demarcate electoral boundaries.
- To give instructions to any other persons in the employment of the state or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of elections or referenda.
- To keep the public informed on the delimitation of constituencies and other electoral boundaries; the location of polling stations and when they open for inspection; political parties and candidates contesting every election or supporting or opposing any question put to a referendum.
- To exercise any other functions that may be conferred or imposed on the commission by the Electoral Act or any other enactment.

The numerous problems encountered by opposition political parties and their candidates during the 2008 harmonised elections reveal that the ZEC did not execute its duties to the standards required. We shall now briefly discuss some of the findings of this study in relation to selected functions of the ZEC.

Operational ineptitude of the ZEC

In terms of resources and capacity, the ZEC is institutionally incapable of performing such an enormous task as the preparation of the voting register.¹⁰ During the run-up to the 2008 harmonized elections, there were numerous complaints from political parties regarding the accuracy of the register. Indeed, the ZEC itself admitted that the voters roll used in the 29 March, 2008 poll was ‘...in shambles’. This confirmed opposition parties’ accusations that the roll was ‘a mess’, according to media reports. Although the chairman of the ZEC admitted to the deplorable nature of the voters roll, he nonetheless argued that it was still one of the most credible in the world. In fact, the voter register was actually prepared by the Registrar-General – purportedly under the supervision of the ZEC. Some opposition political parties claimed to have unearthed around 8,000 ‘ghost voters’ listed on the roll in just one undeveloped stand near Hatcliffe. Indeed, an interesting feature of the register is the claim by the ZEC that 5,934,768 people had registered to vote in the harmonised elections.¹¹ With an estimated population of 13 million, this would represent 45 per cent of the total, approximately 50 per cent of whom would be children or under voting age. This must also be read in the context of the HIV/AIDS pandemic, and the fact that some three million Zimbabweans are estimated to have left the country in the past ten years. It soon became clear that the ZEC had actively inflated the number of registered voters, particularly in rural areas, the alleged stronghold of ZANU(PF). Indeed, the figures that later obtained at the polls were a far cry from the purported 5,9 million voters. The ZEC’s own website indicates that a total of 2,49 million valid votes were cast during the harmonised elections.¹² It is obvious that during the run-up to the polls the ZEC was playing a numbers’ game aimed at ensuring Mugabe’s and ZANU(PF)’s victory. This theft by numbers was, however, thwarted or overwhelmed by the level of support received by Morgan Tsvangirai and his MDC; the rigging that the ZEC may have engaged in was not successful in giving Mugabe and ZANU(PF) an electoral victory.

The ZEC was further accused of failing to ensure that all political parties and registered candidates would be accorded adequate and equitable coverage by the public media.¹³ State-owned and -controlled media are

10 Since its formation, the ESC had never been able to maintain a valid voter register. There are numerous complaints about deceased people and people who have long since migrated from Zimbabwe appearing on the register.

11 *The Herald*, 13 March 2008.

12 Zimbabwe Electoral Commission. Harare, 2008. <http://www.zimbabweelectoralcommission.org/>

13 *The Herald*, 4 March 2008.

notorious for shunning opposition political parties and their activities, while providing ZANU(PF) with ample coverage during elections.¹⁴ In its self-defence, the ZEC accused political parties of manhandling media personnel when they tried to cover certain rallies.¹⁵ In practice, the ZEC simply does not have the power to enforce its own regulations regarding fair media coverage in an election or referendum, a fact that emphasizes its lack of institutional autonomy. State-owned media houses will always comply with the political preferences of ZANU(PF) rather than with issues of fairness. The ZEC cannot ensure a level playing field; even had they the will to do so, they do not have the capacity. In conclusion, the ZEC was not able to ensure that the harmonised elections were conducted ‘...efficiently, freely, fairly, transparently and in accordance with the law’.

With regard to conducting voter education, the Zimbabwe Electoral Commission Act (section 15(1)) empowers the ZEC to license civic organizations wishing to participate in this exercise.¹⁶ The ZEC is itself far too small and under-resourced to undertake any meaningful voter education. During the 2008 elections, it placed several advertisements in the media as a way of fulfilling this responsibility; they were seriously limited in terms of their content and outreach, since only a fraction of the population has access to mainstream media facilities. Some advertisements urged people to inspect the voter register but without indicating where this could be done. Others urged people to register to vote, long after the deadline for doing so had passed. Furthermore, some advertisements incorrectly stated what documentation had to be produced before voting (see Chapter 3). Meantime, the ZEC insisted that any civic groups undertaking voter education without its approval would be deemed to have breached the law.¹⁷ (This provision of the ZEC Act may actually be unconstitutional since it is not consistent with clause 20 of the Constitution of Zimbabwe, which provides for freedom of expression.)

The Zimbabwe Election Support Network (ZESN), for example, was barred from conducting voter education by the ZEC, which alleged that it had not been licensed to do so.¹⁸ The Mugabe regime has never been comfortable with progressive civil society organizations when it comes to voter education. Civic groups have generally been accused of aiding opposition political parties while negating ZANU(PF)’s achievements in liberating the country from colonialism. The civic education provision of the ZEC Act was designed to ensure that the content of programmes would not challenge whatever the ruling ZANU(PF) party preferred or even desired.

Because of its limited capacity, the ZEC needed to recruit election offic-

¹⁴ Makumbe, John, ‘Zimbabwe’s Hijacked Election’, *Journal of Democracy*, Vol. 13, No. 4, October 2002, pp. 87-101.

¹⁵ *The Herald*, 4 March 2008.

¹⁶ *The Chronicle*, 28 February 2008.

¹⁷ Under Section 15 of the Act.

¹⁸ *The Standard*, 17 February 2008.

ials from public institutions. Whereas previously teachers were recruited as electoral officers, the catchment was considerably expanded during the 2008 harmonized elections to include public servants from parastatals, statutory bodies and local authorities.¹⁹ Although more electoral officers were needed, there was obvious fear in the ruling party that some would sabotage ZANU(PF)'s performance in the contest, while favouring the MDC. Indeed, many schoolteachers had been victimized ahead of the presidential election run-off on 27 June by militia and war veterans for this supposed reason.²⁰ Ironically, following the publication of the parliamentary and senatorial election results, several ZEC officials were arrested for alleged electoral fraud, and were said to have prejudiced Robert Mugabe, the ZANU(PF) presidential candidate.²¹ The majority of the arrested ZEC officials were not teachers. Charges levelled against them, however, included:

- Tampering with election results and prejudicing ZANU(PF) presidential candidate of 4,993 votes.
- Fraud or criminal abuse of duty as public officers.
- Prejudicing Mugabe of 1,392 votes, and a further 773 votes.
- Manipulation of votes to prejudice Mugabe of 1,000 and 1,828 votes.
- Accepting bribes to 'doctor' election results during the counting of votes to prejudice ZANU(PF).
- Conniving with the opposition to manipulate election results in favour of the MDC.
- Influencing voters to vote for the opposition.²²

Needless to say, most of the arrested officials were acquitted since the state found it difficult to prove that they had deliberately committed these offences. Only four were convicted and fined.²³ What is of interest is that in the past, when Mugabe and his ZANU(PF) were winning elections, no ZEC or ESC officials were ever suspected of electoral fraud or arrested. The ruling party's defeat in the parliamentary and presidential elections struck a raw nerve, and ZEC officials were made scapegoats. Indeed, ZANU(PF) turned upon anyone who could be held responsible; ZEC officials were soft targets against whom the former ruling party could vent its political fury. ZANU(PF) could not accept that the MDC was as popular with the voters as the election results indicated. The ZEC did nothing to assist its own hapless electoral officials.

Perhaps the most disturbing story in this respect concerns the late Ignatius Mushangwe, a senior ZEC official who went missing during the run-up

¹⁹ *The Herald*, 23 February 2008.

²⁰ Human Rights NGO Forum, June 2008.

²¹ *The Herald*, 8 April 2008.

²² *Ibid.*, and 24 April 2008.

²³ *The Herald*, 11 April 2008.

to the violent presidential run-off.²⁴ Mushangwe had apparently attended a heated meeting of the multi-party liaison committee²⁵ in Harare on 10 June 2008:

...a source who attended the... meeting said... Mushangwe had clashed with senior security officers after he told the meeting that ZEC would only issue out postal ballots to [police] officers who would be on duty. The following week when the committee met, Mushangwe was not present. Other members asked about his whereabouts but one official told the meeting ... 'You won't see him again.'²⁶

Some five months later, his body was found in a mortuary in Norton. It is widely believed that he had been murdered by state security officials for insisting that the regulations for running the harmonized elections and postal ballots be scrupulously followed.²⁷ The ZEC failed to condemn this brutal act. By pretending that nothing untoward had happened when its own official was assassinated for simply following electoral laws and procedures, it wantonly undermined its own credibility.

Further, the allegations levelled against ZEC officials, whether imagined or real, indicate that it is institutionally incapable of instilling in its officials any sense of ethical conduct in the execution of their duties. The electoral management process designed and followed by the ZEC gives excessive discretion to electoral officials, thereby creating a working environment highly conducive to the commission of electoral fraud and other criminal offences. The fact that most of the ZEC electoral officials were merely hired hands meant that their commitment to the organization and its reputation was questionable. Their recruitment and training did not adequately equip them to resist temptation to act in an unethical manner. More important, is the fact that ZANU(PF) has, over the years, created an electoral culture that thrives on fraud and corruption. Every electoral official is therefore suspected of manipulating the process in favour of whichever political party or candidate they may support. Perhaps the fact that the majority of Zimbabweans were desperate for change and for the defeat of ZANU(PF) also contributed to the alleged proliferation of cases of electoral fraud during the harmonized elections of 2008 in Zimbabwe.²⁸

One of the key functions of the ZEC is that of accrediting election observers and journalists. In order to get accredited, foreign journalists were required to pay in foreign currency. Those from media houses within Africa were asked to pay US\$100 each while those who worked

²⁴ *The Standard*, 19-25 October 2008.

²⁵ A committee set up by the ZEC during the campaign period to discuss issues raised by political parties and contestants with regard to the electoral process.

²⁶ *The Standard*, 19-25 October 2008.

²⁷ *Ibid.*

²⁸ The MDC filed a total of 35 petitions, while ZANU(PF) filed 38 cases where they sought the intervention and investigation of the Electoral Court in order to determine the accuracy of the published results.

for non-African media houses were asked to pay US\$300.²⁹ Further, foreign observers and journalists were required to bring with them a letter of invitation from the Ministry of Foreign Affairs. In addition, the journalists had to be accredited with the Media and Information Commission (MIC). These controls provided both a way for the government to make money and a means of controlling, if not manipulating, foreign opinion on the electoral process. In other words, the regime was determined to ensure that observers and journalists from countries considered hostile to the ZANU(PF) government would not be accredited.

During the presidential run-off election on 27 June, the ZEC claimed that there was a high turnout of voters throughout the country, especially in rural areas. This claim was manifestly false, as observers pointed out that most polling stations were practically empty throughout polling day.³⁰ Here again, the ZEC was attempting to play a fraudulent numbers' game, i.e. suggesting that Mugabe had suddenly become very popular with the voters at the expense of Tsvangirai. Few voters were foolish enough to believe the ZEC's stories and figures and the official results of the presidential run-off election were dismissed both in Zimbabwe and throughout the southern African region.

Political violence

One of the key functions of the ZEC is, 'To give instructions to any other persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of elections or referendum.'³¹ It is our submission that given the widespread violence that engulfed the nation before the presidential election run-off (see Chapter 5), the ZEC failed to perform this critical function. Not once did it issue a statement or release an advertisement condemning political violence or decrying the likely impact of violence on the conduct of free and fair elections. The reason for this is not at all difficult to ascertain. As has already been stated, the composition of the ZEC and the appointment of its members by President Mugabe are partisan. For the ZEC to condemn political violence would be to criticize the political party on whom it depends for its existence. There is ample evidence that most incidents of violence were committed by elements within ZANU(PF). As the Zimbabwe Human Rights NGO Forum noted:

The information and evidence that is in possession of the Human Rights Forum points to a situation of an organized and well-orchestrated plan of action to

²⁹ *The Herald*, 3 March 2008.

³⁰ Tsvangirai's withdrawal acted as a major disincentive for people to go and vote, both in urban and rural areas.

³¹ Government of Zimbabwe, 1980.

annihilate the MDC party structures countrywide and to instil fear in the electorate before the 27 June Run-off.

These characteristics were noted in an alert produced by the Human Rights Forum soon after the 29 March elections when the violence escalated. The Human Rights Forum maintains that after careful analysis of the reports to the end of the month of April, the situation remains unchanged. The characteristics of the violence remain as follows:

- All reports show that the violence has been disproportionately one-sided, and against the MDC and other groups not supporting ZANU PF;
- All reports show that the violence attributed to ZANU PF is different from the violence attributed to the other groups, both in the scale and in the nature;
- The violence attributed to ZANU PF shows evidence of systematic torture, abductions, disappearance, summary executions and extra-judicial killings, and this is very rarely the case with violence attributed to other groups such as the MDC;
- The systematic torture shows a strong association with officials of the State – members of parliament, the police, the CIO, and other officials – as well as an association with groups closely affiliated to the ZANU PF political party – ‘war veterans’, youth militia, ZANU PF youth, ZANU PF supporters, ZANU PF party officials, etc;
- The evidence shows there are plausible allegations of the involvement of senior party and government leaders, and there are many statements from victims implicating such persons;
- There is no, or very little, evidence of any attempt by the executive or organs of the State to pro-actively deal with the violence;
- The evidence suggests, to the contrary, that there are an enormous number of examples of hate speech, and encouragement to violence and lawlessness by virtually all members of the executive, the parliament, the party, and the supporters of the ZANU PF party.³²

The ZEC’s failure to condemn political violence constitutes a serious dereliction of duty. Instead of condemning violence as not conducive to free and fair elections, the Commission rejected Morgan Tsvangirai’s withdrawal from the June run-off arguing that his notification had come too late.³³ This view was consistent with what Mugabe and ZANU(PF) wanted, since the President faced a rather embarrassing situation of participating in a one-horse race as a result of his opponent’s withdrawal.³⁴ ZEC’s autonomy was severely undermined by its own inaction regarding the widespread violence during the run-up to the run-off presidential election, and its standing was undermined by a bias that was transparent for all to see.

³² Zimbabwe Human Rights NGO Forum, June 2008, p. 4.

³³ The Electoral Act is silent on when a withdrawal from a run-off election is permissible.

³⁴ This was disclosed by a state agent whose identity cannot be divulged for personal safety reasons.

Delayed results

Legislation provides for the release of election results by the ZEC officials as soon as they become available. However, it carefully stage-managed the announcement of parliamentary and senatorial results for the 29 March poll. Both senatorial and parliamentary results were announced in such a way that the MDC and ZANU(PF) were always at par in terms of the seats that each had won. This went on for some 24 hours and only ended when they could no longer hide the fact that the MDC had defeated ZANU(PF) at the parliamentary level. To this day it is not clear why the ZEC engaged in such a futile exercise. It may be true that it was an attempt to manage possible outbreaks of violence; or they may simply have wanted keep the nation guessing for as long as possible while they waited for further instructions on how to proceed. It is also possible that the process, prolonged over two days, enabled the ZEC to buy more time to manipulate the numbers pertaining to those seats where ZANU(PF) had lost to MDC candidates.

Perhaps the most glaring example of the ZEC's ineptitude was demonstrated when the commission failed to release the results of the presidential election for five weeks after polling day. The *Zimbabwe Independent* reported that the results were withheld on the instructions of Mugabe:

Staring defeat in the face after week-end polls, President Robert Mugabe has gone on the offensive, directing the Zimbabwe Electoral Commission (ZEC) to delay the result in order to manage a political crisis triggered by his defeat. Sources said the delay was part of government's crisis management plan following clear indications that Mugabe had lost the election to Morgan Tsvangirai of the Movement for Democratic Change (MDC)... Mugabe is said to have ordered the withholding of the results to buy time to manage his defeat and allow the three weeks for the run-off to elapse, creating new circumstances for him to try to survive.³⁵

That the ZEC complied with such blatant manipulation of the electoral process is adequate testimony that it was at the beck and call of the President. A ZEC official is reported to have admitted that they had been told to hold onto the numbers as Mugabe was attempting '...to manage a potentially volatile situation'.³⁶ As it was, it provided just another instance of the Commission's credibility being undermined by its own actions. It was clear to most analysts that Mugabe was deliberately extending his term of office by taking advantage of selected provisions of the Constitution of Zimbabwe or other pieces of legislation. Derek Matyszak writes:

The first mechanism by which Mugabe extended his term of office was by a protracted delay in announcing the results. A president remains in office after

³⁵ *Zimbabwe Independent*, 4 April 2008.

³⁶ *Ibid.*

an election until the entry into office of the next elected president. The person is duly elected on the day a winner of the poll is declared, and after taking the oath of office, and must assume office within 48 hours of being declared duly elected. A delay in announcing the result effectively suspends these provisions. In the event, it delayed the run-off.³⁷

Two tactics were deployed to this end. The ZEC disingenuously announced that with over 9,000 polling stations, the task of collating the figures was a difficult and time-consuming exercise and that results were still awaited. This explanation was inherently implausible. The procedure for the counting of the vote, the announcement of the results and the time-frame for the process is reasonably straightforward and is set out in the Second Schedule and sections 61 to 67 and 112 of the Electoral Act.

Further, the ZEC did not comply with its own procedures for handling election results, and for their conveyance from ward level to the so-called National Command Centre. For example, unlike in previous elections, the ballot papers for all candidates were counted at the polling stations and the results posted outside for all to see. Indeed, it was this practice that enabled the MDC to total the results and claim victory for Tsvangirai well ahead of the publication of the official results. Subsequently, however, the violation of procedures by the ZEC indicated a desperate attempt to safeguard a possible defeat of Mugabe and ZANU(PF). In a detailed analysis of the delay in announcing the presidential results, Matyszak makes the following specific observations:

ZEC did not comply with the procedures it had itself spelt out. 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. 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 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

³⁷ Matyszak, Derek, *An Inconvenient Truth Parts I and II*, Research and Advocacy Unit, Harare, 2008.

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.³⁸

A week after the polls, lawyers representing the MDC filed a High Court application seeking to compel the ZEC to announce the presidential election results.³⁹ The lawyers pointed out that the Commission must have received the results of the presidential race at the same time that it had received the results of the House of Assembly and senatorial elections.

Therefore, the ZEC's failure to release the presidential results was deliberate and aimed at appeasing certain specific quarters in the political arena. The same sentiments were echoed by a group of eighteen civil society organizations, which appealed to both the Southern African Development Community (SADC) and the African Union (AU) to intervene.⁴⁰ But the ZEC was not disconcerted by any of these moves, and the presidential election results were held in abeyance for five weeks, to the amazement of both regional and international election observers. In fact, the Commission challenged the urgency of the MDC application, but the High Court ruled in favour of the latter.⁴¹ The lawyer handling the opposition political party's case argued that because the ZEC had deliberately failed to act reasonably '...it must be ordered to act. The applicants have the legitimate expectation to have results announced expeditiously.'⁴²

Rather than announce the presidential election results, the ZEC proceeded to make use of the MDC's application as an excuse for refusing to comment on their status. They argued that the announcement of these results was now a legal matter before the courts, and that they therefore could not divulge any information until the court had reached a verdict.⁴³ This arrangement suited ZANU(PF), which was desperately trying to buy time in order to devise ways of salvaging whatever 'political dignity' it could, after it became clear that both the party and Mugabe had been defeated by the MDC in the 29 March polls. In other words, the ZEC was once again working in concert with ZANU(PF) to thwart the people's democratic choice. Given all the above it is ridiculous for the ZEC to claim to be a neutral or non-partisan electoral management body.

When the results of the presidential contest were finally announced, they reflected that the MDC's Morgan Tsvangirai had won 1,195,562 votes (47.9%) while Robert Mugabe of ZANU(PF) had received 1,079,730 votes (43.2%).⁴⁴ Since neither of the candidates had apparently won the requisite

38 Ibid.

39 *Zimbabwe Independent*, 4 April 2008.

40 Ibid.

41 *The Herald*, 9 April 2008.

42 Ibid.

43 Ibid. 11 April 2008.

44 Ibid. 3 May 2008.

50 per cent of votes plus one or more, it became necessary to conduct a run-off election (see, however, the views expressed by Greg Linington on this point in Chapter 6). ZANU(PF) readily accepted the results, clearly indicating that a way had been found to give Mugabe a second chance.⁴⁵ There is, however, considerable suspicion that the ZEC had deliberately participated in the manipulation of the results – probably by reducing Tsvangirai’s winning margin to a level below 50 per cent of the valid votes, in order to justify a second round of voting. Indeed, while accepting the announced results on behalf of Mugabe, Emmerson Mnangagwa, a senior member of ZANU(PF), indicated that his party did not believe the results represented the genuine expression of the will of the Zimbabwean people. He also elaborately spelt out what can only be argued to be some of the major weaknesses of the Commission in its management of the electoral process. Mnangagwa stated:

Given the many anomalies, malpractices, deflation of figures of ZANU(PF) candidates as information was transmitted upwards, inflation of figures relating to opposition candidates as information was transmitted to higher command levels, multiple voting and people who are not on the voters roll being allowed to vote, persons on the voters roll being turned away and not allowed to vote, and irregularities in the manner that handicapped persons were assisted to vote.⁴⁶

Of course, some of these are baseless allegations since none of them were ever proved to have been committed in order to ensure Tsvangirai’s victory over Mugabe, though they are tactics surely used by ZANU(PF). So it is an irony that this was the first time that ZANU(PF) had ever raised a complaint against the ZEC or its predecessor, the ESC. It is our contention that it was a case of sour grapes. Mugabe had lost the election to Tsvangirai and attempted to prepare a plausible explanation for what would appear to be a sudden shift in voter preference for the run-off. Indeed, in previous elections, numerous complaints had been levelled against the ZEC and the ESC in relation to virtually all of the alleged anomalies listed above. It is our submission that as currently structured and constituted, the Commission is a long way from eliminating this type of fraud, nor do they want to do so if it will advantage ZANU(PF). Moreover, the speed – two days – with which the ZEC was able to release the results of the presidential run-off election that Mugabe ‘won’, compared to the five weeks of the 29 March poll, gave away its deliberate collaboration in theft by numbers with Mugabe and his losing political party.

Finally, legislation requires that a recount of the ballots be conducted within 48 hours of the announcement of the results, providing that a petition to this effect has been submitted by one of the contestants. The various re-counts that the ZEC undertook were carried out long after the stipulated period. Matyszak puts it more succinctly:

⁴⁵ Ibid.

⁴⁶ Ibid.

The ZEC initiated recount was thus clearly unlawful. Combined with the judgment of Uchena J., the effect was to delay the release of the result of the presidential election until 2nd May, 2008, and effectively to extend Mugabe's term of office.⁴⁷

The recounts, however, failed to result in any changes to the initial results of the presidential election. It was clearly a futile exercise carried out at ZANU(PF)'s request – or orders – in a desperate attempt to forge a Mugabe win, or minimize the margin by which Tsvangirai had defeated him. This theft by numbers had reached a level that was clearly embarrassing for both Mugabe himself and for the ZEC. The manner in which the ZEC was used as a blunt instrument to defy the winds of democratic change in Zimbabwe is remarkable.

Conclusion

The creation of the ZEC was controversial from the outset since the MDC had vehemently disagreed with the procedures for the appointment of the commissioners. The fact that President Mugabe appointed all the commissioners from the list submitted by the parliamentary committee, albeit some of them after consulting with the Judiciary Services Commission, essentially meant that the electoral commission was inclined to function in a manner partisan to ZANU(PF). The ZEC's handling of the 2008 harmonised elections provides ample evidence of this thesis. Indeed, the commission went so far as to violate laid-down laws, as well as its own procedures, in order to comply with the dictates of a defeated presidential candidate, Robert Mugabe. This chapter has outlined the various ways in which the ZEC engaged in a partisan manner in a futile attempt to thwart the people's choice of a democratically elected leader. There is ample evidence that ZANU(PF) desperately needed the co-operation of the ZEC in order to win the seats it 'won'. The ZEC was apparently willing to be so used, and thus became the key instrument in defying the winds of change in Zimbabwe. We submit here that as presently structured and staffed, the ZEC cannot effectively claim to be a credible and autonomous electoral supervisory and management body. Serious revisions need to be made to existing legislation if the ZEC is to manage free and fair elections in the future.

⁴⁷ Matyszak, *ibid*.