

REPORT ON THE 2002 PRESIDENTIAL ELECTIONS OF ZIMBABWE

TABLE OF CONTENTS

INTRODUCTION AND TERMS OF REFERENCE

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK GOVERNING ELECTIONS

- CITIZENSHIP QUALIFICATION
- RESIDENCE QUALIFICATION
- REGISTRATION OF VOTERS AND VOTERS ROLLS
- POLLING AGENTS AND MONITORS
- OBSERVERS
- VOTER EDUCATION
- POSTAL VOTES
- CONDUCT OF ELECTIONS ON POLLING DAYS
- CONVEYANCE OF BALLOT BOXES AFTER VOTING
- COUNTING AND DETERMINATION OF RESULT
- SECTION 158(2) OF THE ELETORAL ACT [CHAPTER2:01]
- LEGAL RECOURSE AFTER POLLING DAYS

PRE-ELECTION ENVIRONMENT

- ELECTION CAMPAIGNS
- VIOLENCE AND INTIMIDATION
- ALLEGATIONS OF A PLOT TO 'ELIMINATE' THE INCUMBENT
- MEDIA COVERAGE-DOMESTIC
- PRINTED MEDIA
- DOMESTIC ELECTRONIC MEDIA
- MEDIA COVERAGE-EXTERNAL
- VOTER EDUCATION
- ECONOMIC AND SOCIAL CONDITIONS
- PRESENCE OF SADC, AFRICAN UNION, COMMONWEALTH AND EU
OBSERVERS

POLLING DAYS AND COUNTING

- PROCEDURE AT AND CONDUCT OF POLLS
- CONVEYANCE OF BALLOT BOXES
- COUNTING

ELECTION RESULT

PRINCIPAL OBSERVATIONS AND QUALIFICATIONS AND CONCLUSION

INTRODUCTION AND TERMS OF REFERENCE

1. The Judicial Observer Mission ("JOM") to the Zimbabwe presidential elections, 2002("the elections") was appointed by President Thabo Mbeki on Monday 12th February 2002. JOM is made up of Justice Dikgang Moseneke of the High Court, Pretoria and Justice Sisi Khampepe of High Court, Johannesburg.
2. The President has also appointed a 50 person strong multi-party SA Observer Mission ("SAOM") to the elections, under the leadership of Ambassador SM Motsuenyane. President Mbeki established SAOM at the invitation of President Mugabe of Zimbabwe.
3. The terms of reference of JOM are to observe and report to the President of South Africa on whether in the period before, during and shortly after the elections:
 - the Constitution, electoral laws and any other laws of Zimbabwe relevant to the elections ("the legislative framework") can ensure credible or substantially free and fair elections; and
 - the elections have been conducted in substantial compliance with the legislative framework.
4. In pursuit of its mandate, JOM:
 - Studied and broadly reviewed the electoral legislative framework including the laws listed in Schedule A hereto;
 - held discussions on the scope and proper interpretation of the legislative framework with the Chief Justice Godfrey Chidyausiku of the Supreme Court, Judge President P.Gware and other judges of the High Court, Minister of Justice, Legal and Parliamentary Affairs, Mr Patrick Chinamasa, the Attorney General Mr. A.R. Chigovera (who in terms of the Constitution is the ("principal legal advisor to the Government"), the Registrar-General of Elections Mr. T.T. Mudede (the most senior State official who by law is entrusted with the conduct and management of elections) and the President and vice-president of the Law Society of Zimbabwe representing both advocates and attorneys;
 - studied consolidated daily occurrence reports of SAOM filed by its observers deployed in various provinces of Zimbabwe;
 - read reports of SAOM on electoral issues of concern to Zimbabwean NGOS, civic and religious bodies, human rights and election support groups and representatives of key political parties, namely Zanu-PF and MDC;
 - held discussions with high ranking officers of the Zimbabwe Republic Police ("ZRP") in some of the provinces;

- attended several election rallies or gatherings held by presidential candidates President RG Mugabe and Mr. Morgan Tsvangirai, respectively
- visited offices of a few provincial registrars-general;
- attended a briefing and information session on the planned conduct of elections addressed by the Electoral Supervisory Commission ("ESC"), the Chief Electoral Officer and his staff, and
- observed voting at several polling stations and counting of votes at counting centers in Harare.

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK GOVERNING ELECTIONS

5. The Legislative framework of Zimbabwe is found principally in the Constitution of Zimbabwe, 1979 ("the Constitution"), inclusive of amendments up to 1996, the Electoral Act, 1992 (as amended up to 2002) ["the Act"] read together with Electoral Regulations 1991 as amended up to 2002. ("the regulations"). These laws must be read with due regard to judicial pronouncements of the High Court and the Supreme Court of Zimbabwe.
6. Between 1987 and 1990 the Zimbabwean parliament amended in great measure the Westminster style constitution, which was inherited from the Lancaster House agreement. The special roll reserved for white voters only was abolished in favour of a common roll based on universal suffrage in 120 single member constituencies. Of the remainder of the 150 members of parliament, 12 are appointed directly by the President, 8 members of parliament are provincial governors effectively appointed by the president. Indirectly elected chiefs fill the remaining 10 seats. Ordinarily parliament has a five-year term. The President enjoys a renewable six-year term of office. Within 90 days of the end of the term, a president is elected separately by all voters on a common voters roll. The first elected executive president assumed office in 1987.
7. The administration of elections occurs through four constitutional or legislative authorities, namely the **Delimitation Commission**, the **Electoral Supervisory Commission ("ESC")**, the **Election Directorate** and the **Registrar-General of Elections**.
8. The constitution provides for the establishment of a Delimitation Commission chaired by the Chief Justice with powers to determine the limits of the 120 constituencies.
9. The president appoints members of the ESC after consultation with the Judicial Service Commission and the Speaker of Parliament. Public officers, members of parliament and of local authorities are not eligible for appointment to the ESC. The primary function of the ESC is to supervise the registration of voters and the conduct of elections. The constitution confers independence on the ESC but not the right to an operational budget from the fiscus. Additionally, the ESC has the power to train and appoint election supervisors, monitors and international and local observers and to provide voter education

10. The Act establishes the Election Directorate with the responsibility of co-ordinating the activities of ministries and government departments in regard to all matters connected to elections. The Registrar - General is a member of the Election Directorate and the most senior state official with executive powers related to elections. He exercises vast statutory powers and functions germane to elections under the direction and recommendations of the Election Directorate. He is also obliged to furnish reports on voter registration and conduct of elections as may be required by the ESC.

Voter Qualification

11. Sec. 28(2) of the Constitution provides that "voters registered on the common roll" shall elect the President. "Common roll" is not defined in the Constitution or in the Electoral Act. Paragraph 3 of Schedule 3 of the Constitution entitles a person to be registered on the "common roll" if that person has attained 18 years of age and is a citizen or "since 31 December 1985 has been regarded by virtue of a written law as permanently resident in Zimbabwe". The Citizenship Act, 1984 allowed Zimbabweans holding dual citizenship until 31 December 1986 to relinquish their Zimbabwean or any other nationality or citizenship. The Registrar-General bears the statutory duty to compile and maintain the voters roll. The Registrar-General has the attitude that any person who has lost citizenship by electing to be a citizen of another country or by failing to renounce his or her other nationality would not be entitled to remain on the voters roll. Such loss of citizenship would result in the loss of permanent residence even if such a person has been permanently resident in the country on or before 31 December 1986. Consequently, such a person may not rely on de facto permanent residence to qualify for registration on the voters roll.
12. A few weeks before the poll of 9th and 10th March 2002, the Registrar-General sent notices to Zimbabweans holding British and other passports advising them that they were not entitled to be registered or remain as voters, since they were neither citizens nor permanently resident in Zimbabwe. The Registrar-General estimated that 4,000 people would be affected by such notices. However, human rights, civic and election support groups estimate the number of British/ Zimbabwean dual passport holders who are likely to be disenfranchised to be approximately 86 000.
13. During December 2001, one of the presidential candidates, Mr. Morgan Tsvangarai, brought an urgent applications before the High Court [**Morgan Tsvangarai vs Registrar-General and others; Morgan Tsvangarai vs. Registrar-General of Births and Deaths and 10 others (HC) Case Nos HC 11843/ 01 & HC 12015/ 01**]. In January 2002, he obtained an order that the Registrar General shall ensure that there is in place a common voters roll. The roll shall contain names of persons who have attained 18 years of age, are citizens of Zimbabwe or who since 1985 have been regarded as permanent residents in the country and who meet the residential requirements of any particular constituency. The Registrar-General was also ordered to restore to the voters roll all voters who were on the roll or eligible but were refused to be on the roll. The Registrar- General appealed to the Supreme Court against this decision and order. The appeal against this decision of the High Court remained pending in the Supreme Court (the highest court of appeals in Zimbabwe) until two days before the first polling day. The

Supreme Court held, by a four to one majority vote, that a person who was a citizen as of 31 December 1985 has lost his or her right to vote upon ceasing to be a citizen by operation of the law, namely paragraph 3(3)(a) of the Third Schedule of the Constitution. The Supreme Court further held that where the loss of citizenship is common cause, the consequent loss of the right to vote occurs by operation of law and is irreversible. Consequently, neither the Registrar-General nor anybody else has a discretion to alter such change of status. The provision of section 25 of the Act, which provides for a notice procedure to persons liable to be removed from the roll, is thus superfluous. "The law has taken its course, the voter has lost his or her right to vote by operation of the law and the loss cannot be revived in any way". [Registrar - General of Elections & others vs Morgan Tsvangirai - (SC) Appeal No 30/ 2002]

14. This Supreme Court decision brings to rest a long drawn legal contestation on the authoritative interpretation of the scope of the franchise conferred by the Constitution. The practical implication of the decision is that any person who has lost his or her citizenship on any ground whatsoever must cease to be on the common roll and therefore cannot vote in this or any other elections.
15. It is highly regrettable that legal certainty on this crucial voter qualification affecting the legal status of a sizable number of permanent residents was gained so late in the day. This class of voters were told that they could not participate in these elections literally a few days before polling. Equally disconcerting is the consideration that the affected voters were allowed to vote in the 2000 parliamentary general elections, several years after they lost (as the Supreme Court has now found) their right to vote. This class of voters may have validly acquired a legitimate expectation to remain on the voters roll. It remains to be added that ordinarily a process to disenfranchise a voter is a matter of such grave legal import that it should not leave the affected voter with a compromised or limited opportunity or time to challenge the intended change of status. The exact number of this category of disenfranchised voters is unknown. As earlier intimated between 4 000 – 96 000. The Electoral Act (Modification) Notice 2002 of 3 March issued by the President authorises the Registrar-General to compile a list of all such disqualified persons to vote. Any person whose name appears on the list shall not be entitled to vote. The Notice enjoins polling officers not to allow any person whose name appears on the list to vote. It is well known that by virtue of these provisions scores of voters were turned away from the polling stations on 9th and 10th March 2002.

Residence Qualifications

16. The General Laws Amendment Act (Act 2 Of 2002) amending, inter alia, the Electoral Act came into force on 14 February 2002. It inserted a residential qualification for a voter at the point of registration as a voter [Section 20 (1)] and at the point of casting the vote [Section 20(4)], even if the voter is already registered on the roll. Moreover, once on the roll, a voter shall not be entitled to remain on the roll if, for a continuous period of 12 months he or she has ceased to reside in the constituency. Further, the Registrar –General may demand from any registered voter, proof of residence.
17. It is contended that these provisions have potentially disenfranchised a citizen who:

- had for 12 months continuously resided outside Zimbabwe;
 - was unable to prove residence continuously for 12 months in the constituency of voting, and
 - may have been displaced from his or her place of residence since registration as a voter in a particular constituency due to any reason including pre election violence.
18. Election support and civic groups estimate the number of voters affected by these new residential qualifications from half a million to 2 million voters. The Minister of Justice informed us that the Government had no record or statistics of the number of citizens who may fall foul of these voting qualifications.
19. However, the General Laws Amendment Act, 2002 did not hold sway for long. On 27 February 2002, in the matter of **Biti and the Movement for Democratic Change vs Minister of Justice, Legal and Parliamentary Affairs**. [Case No CA 46/02] the Supreme Court held, by a majority of four to one, that the General Laws Amendment Act was not lawfully enacted by Parliament and that it is consequently illegal and of no force or effect. The remarkable events surrounding the 'fast track' passage of this piece of legislation are meticulously recorded by Ebrahim, JA in the majority judgment. In order to keep this report within limit, we chose not to give an account of these events.
20. The residence requirements described above have ceased to be of legal significance in these elections. The elections were conducted on a constituency basis and every voter was obliged to cast his or her vote within the constituency of residence. [See in this regard the judgment of Chidyausiku, CJ in **Registrar-General of Elections & Others vs. Morgan Tsvangirai** (supra)]. What was different was that the Registrar-General could no longer remove from or prevent the enrollment of a citizen on the voters roll solely on account of the 'continuous residence' requirement. In theory that prevented the disenfranchisement of many Zimbabwean citizens who found themselves, for good, bad or no reason, resident outside their country or constituency. The nagging question is to what extent did this late striking down by the Supreme Court of the residence requirement stand in the way of registration of potential voters. Even more important, how many voters were unable to vote on account of firstly, the belated insertion of the residence requirement and last minute termination of this voter qualification.

Registration of Voters and Voters Roll

21. Paragraph 3 of the Third Schedule of the Constitution stipulates that subject to such residence qualifications as may be prescribed in the Act, every Zimbabwean citizen who has attained the age of 18 years or who since 31 December 1985 has been resident in Zimbabwe shall be entitled to be registered on the voters roll. The Act enjoins the Registrar-General or a constituency registrar to register any person who wishes to be registered as a voter on the voters roll of a particular constituency, and issue to such a person the prescribed voter's registration card. The voters roll for every constituency shall be open for inspection by the public, free of charge, at the offices of the constituency registrar during office hours. A person inspecting a voters roll may without charge make a copy thereof in part or whole.
22. Section 94 of the Act prescribes that within a stipulate period before elections the Registrar General shall announce in the *Gazette* a day on which the voters roll for that election shall be

regarded as closed for purposes of accepting registration of voters who may vote for that election. Such a closure date for this election was notified as the 26 January 2002. In breach of the law, [the Registrar-General] continued to register voters amid protests by election support groups, the media and opposition parties. Moreover no public notice was given that any person who wishes to register may do so. On 3 March 2002 the President issued the Electoral Act (Modification) Notice, 2002 in terms of Section 158 of the Act. in order to cure this illegality. This Notice declared voters registered between the 27 January and 3 March 2002 to be eligible to vote in this election. Even after the 3 March there were persistent reports of voter registration. Opposition parties claim that their supporters who tried to register after both these cut off dates were turned away.

23. Despite the law no final voters rolls were available to the public or party polling agents or observer missions up to virtually the point of voting. Most rights related to accessibility accuracy and transparency of the voters rolls, in our view, were honoured in the breach. In part, this led to the application before the High Court for a *mandamus* to make available the voters roll. [Morgan Tsvangirai vs. Registrar General case no 12092/01]

Monitors

24. During the 2000 general elections, the ESC appointed monitors from various sections of citizens of Zimbabwe. However the General Laws Amendment Act, 2002 had restricted the appointment, accreditation and deployment of monitors to members of the Public Service. No person was allowed to act as a monitor unless he or she was appointed as prescribed. On the other hand, The Electoral Regulations [as amended 7 February 2002] provide that only 2 monitors may be present within a polling station and four within a counting station. It must be added that observers and polling agents of candidates are permitted to be present in each polling station and counting centers.
25. Within 2 days of the striking down of the General Laws Amendment Act by the Supreme Court, the Minister of Justice, Legal and Parliamentary Affairs, issued the Electoral (Amendment) Regulations, 2002 (in terms of section 157 of the Act). The new Regulations reinstated the provisions of the struck down legislation in respect of accreditation or appointment of observers, monitors, inclusive of the limitation that monitors may be appointed only from the ranks of members of the public service.
26. The concern widely raised is that monitors should be drawn from the broad citizenry since the impartiality of members of the public service is at best suspect. The Minister of Justice readily conceded that the reason for limiting monitors to the public service is political, motivated by the "partisan" nature of civil society in Zimbabwe. At its recent briefing to observers, the ESC sought to justify the re-enactment of the restriction on the ground that by the time the law was struck down public officials had been already appointed as monitors. Here below we deal with the performance of monitors on polling and counting days.

Voter Education

27. During the 2000 general elections, there was no regulatory prohibition against provision of voter education by anybody not licensed to do so. The new sec 14D of the Act provided that

no person other than the ESC or a person appointed or authorised by it, or a political party or a person authorized may provide voter education. Only the ESC may receive foreign donations or contributions for purposes of voter education.

Postal Votes

28. Section 61(2) of the Electoral Act as amended by Act 2 of 2002 permits only army personnel and diplomatic officers in service of the State and their spouses outside the country to be eligible for voting by post. Various electoral officers on duty on polling days may also vote by post. It is argued that in order to give effect to Sec 28 (2) of the Constitution, a certain limited class of registered voters, must be extended to all registered voters who have reason to believe that they will be outside their constituencies on polling days. The Minister of Justice explains that economic and logistical reasons dictate that postal votes be restricted to a bare minimum of absentee classes of voters. Even though the Supreme Court had declared the offending amendments invalid, the President reinstated the provisions limiting voting by post by issuing the Electoral Act (Modification) Notice 2002 on 3 March 2002.

Conduct of Elections on Polling Days

29. The legislative framework on the conduct of elections on polling days is perhaps the most detailed, practically logical and replete with procedural safeguards. That, in our view, explains why no court challenge or other forms of criticism have been directed at these rules. In fact, if the polling stations legislative rules were followed meticulously there would be no room for electoral impropriety. More over the system is rendered fully transparent by the uninterrupted right of presence of polling agents of contestants, monitors and observers up to the point the result is finally determined. The opposition parties have decried the low number of foreign and local observers who were accredited. They contend that there being over 4 800 polling stations, the transparency objectives of the Act have been rendered nugatory. Moreover, only monitors can be present at every polling station. However, their impartiality is questionable.

Conveyance of Ballot Boxes after Voting

30. Paragraph 16A(2) of the Electoral Regulations provides that monitors and polling agents of contestants shall be permitted to inspect any vehicle transporting ballot boxes from the polling station to the counting center. The ballot boxes will be conveyed by the police on their vehicles. In a Ministerial regulation that came into effect on 22 February it was announced that one monitor and one polling agent per candidate are permitted to ride on the vehicle conveying ballot boxes. The criticism around conveyance of ballot boxes after voting appears to have been resolved satisfactorily. In addition polling agents and monitors are allowed to stay over night in the room or place where the ballot boxes are held until counting of votes starts.

Counting and Determination of Result

31. Section 101 of the Act determines that where there are two or more validly nominated candidates for President the poll shall be taken in each constituency and the candidate who receives a majority of the total number of valid votes cast, shall become president. The

counting shall occur manually at one center for each constituency presided over by the constituency registrar and in accordance with elaborate rules in Part XVI of the Act. Once the vote cast verification has been validly completed. Each presiding officer of a polling station becomes one of the counting officers of the constituency. The Registrar-General explained that the constituency results would be transmitted to the provincial command center, which will collate the provincial results and will then forward these to the national command center in Harare, from where periodic announcements of the constituency vote tally will be made, followed by the final result

Sections 158 (2) of the Electoral Act

32. Sec 158 (1) of the Act empowers the President, notwithstanding any other provision of the Act, to make a statutory instrument he or she considers necessary or desirable to ensure that any election is conducted properly and efficiently and to deal with any matter or situation arising out of or resulting from the election. Under Sec 158 (2) the statutory instrument may provide for, *inter alia*,

- suspending or amending any provision of the Act or any other law insofar as it applies to any election;
- validating anything done in connection with or arising out of or resulting from any election in contravention of any provision of the Act or any other law and
- empowering any person to make orders or give any directions in relation to any matter connected with, or arising out of or resulting from any election.

Contravention of any such statutory instrument attracts criminal sanction.

33 After the 2000 general elections, the opposition party brought petitions in the High Court to set aside the election outcome of three constituencies on account of voting irregularities. Before the High Court could decide the petitions, the President invoked Sec 158(2) by issuing a statutory instrument to validate the irregularities raised in the post election petitions. The Supreme Court set aside the statutory instrument as unconstitutional.

34. On 26 January 2002, in the matter of **Registrar of Elections vs Combined Harare Residents Association and ANO (HC) Case No. HH 27/2002**, Chinhengo J issued a provisional order that the Registrar of Elections publish notices for nomination of candidates for election of councillors and mayors of Harare and for holding of the election on 11 February 2002 as ordered by the Supreme Court in case no. SC 348/2001. The order was not complied with. In response to the court order the President relying on Sec 158 (2) issued a statutory instrument – Electoral Act (Modification) (Postponement of Harare City Council Elections) Notice 2002-- which determined 9th and 10th March as the date on which the elections will be held.

35. Chinhengo, J held that a court order was not “any other law” and that 158(2) did not authorise the President to alter or countermand a court order. The court held that the relevant Notice was *ultra vires* the provision of Sec 158(2)(a) and thus of no legal force or effect. The Registrar-General remained in contempt. Instead, the Registrar-General brought urgent Chamber appeal proceeding before the Chief Justice, Chidyausiku. The Chief Justice found that the provisional

order was “in fact and in effect final” and directed that application for leave to appeal be heard by the High Court urgently. The High Court refused leave.

36. The Supreme Court granted the Registrar-General leave to appeal on 8th February 2002. By a majority of four to one, the Supreme Court decided that the provisional order which sought to enforce the Supreme Court order that mayoral elections in Harare be held on 11 February 2002, be set aside.
37. The effect of the latter decision by the Supreme Court was that the Presidential Notice under Sec 158 fixing ninth and 10 March 2002, and which was declared invalid by the High Court, remained operative and that the Supreme Court order fixing 11 February 2002 as the election date was rendered inoperative. The mayoral elections and election of councillors in Harare were held on ninth and 10 March in conjunction with presidential elections.
1. A more recent exercise of the powers under 158 (2) was the promulgation of the Electoral Act (Modification) Notice 2002. This Notice re-introduced certain of the provisions which were struck down by the Supreme Court on 27 February 2002 in **Biti and The Movement for Democratic Change vs Minister of Justice, Legal and Parliamentary Affairs (supra)**.

Legal Recourse after Polling Day

39. Sec. 78 of the Act, makes it clear that after the polling days the Registrar-General is obliged to keep in safe custody for a prescribed period all election documents in sealed packets. Such election documents shall include counted and rejected ballot papers, counterfoils of used and spoilt ballot papers, postal ballot papers and declarations of identity. No person shall open the sealed packets containing elections documents save by order of the High Court. The Act makes provision for petitioning the High Court in order to question the election and its outcome.

PRE-ELECTION ENVIRONMENT

Election Campaigns

Background

40. Parliamentary elections of June 2000 marked a turning point in the politics of Zimbabwe. It confirmed the MDC as the first effective opposition to ZANU PF's 20-year rule over Zimbabwe. In these elections, MDC achieved major political strides securing 57 of the 120 seats in the National Assembly whilst ZANU PF won these elections by a marginal victory of only 51.7%. In 1980, Zimbabwe achieved independence after obtaining a convincing 63% victory over Ian Smith's Rhodesian Front.
41. ZANU PF maintained its political dominance in subsequent elections held in 1985, 1990 and 96 respectively. Only a significantly reduced electorate participated in the electoral process. For instance, whereas in 1980 84% of the electorate voted the figure in 1985 was 75%, 1990, 48% and in 1996 26.5%

42. Notably, in the 1996 presidential elections, ZANU PF obtained an overwhelming vote of 93%. The 51.7% result of the 2000 elections demonstrated ZANU PF's drastic political decline, was a significant shock, and proved that ZANU PF was losing its political grip on the electorate. It is against this background that the ruling ZANU PF led by President Robert Gabriel Mugabe and MDC led by Mr Morgan Tsvangirai, conducted a fiercely and robustly contested election. There were officially five (5) candidates, namely President Robert Mugabe for ZANU PF, Mr Morgan Tsvangirai for MDC, Dr Shakespeare Maya of the National Alliance of Good Governance (NAGG), and Independents Messrs Paul Siwela and Wilson Khumbula who were in terms of section 95-97 of the Act validly nominated for election to the office of President.
43. The nature of the campaign conducted by each contesting candidate was inevitably determined by the availability of campaign funds. In terms of the provisions of the Political Parties Finance Act, only ZANU PF & MDC were eligible for public funds, as both organizations had previously crossed the required threshold of 5% of the national electoral in the 2000 general elections. In addition, President Mugabe had access to state resources such as the presidential helicopter, security personnel, and state owned media, which he was entitled to enjoy by virtue of his office as President *cum* contender. In as much as he was entitled to the resources, his utilization thereof was perceived as disadvantaging to other contenders, particularly the MDC. On the other hand, MDC received substantial funds from within its membership and other international donors because of which it was able to conduct an effective campaign for the Presidency. We are drawing attention to these facts only to illustrate the role funding plays in the determination of political campaigns in a democracy.
44. According to the Zimbabwe Broadcasting Corporation (ZBC), the other contesting candidates principally relied on a door-to-door campaign whilst President Mugabe and Mr Tsvangirai organized big rallies, which were well attended and covered the entire country.
45. President Mugabe's campaign slogan was "Zimbabwe will never be a colony again". The campaign itself primarily focused on the land issue, which he arguably still found possession in the hands of mainly white farmers. He promised an accelerated land distribution programme and other measures to improve the country's declining economy. He derided Mr Tsvangirai as a stooge of the British Government and invited the nation to rise against the British colonialism.
46. Mr Tsvangirai's campaign slogan was "Its time for change". His campaign focused on the country's serious economic decline characterized by a high unemployment rate, serious food shortages and advocated for an orderly land reform programme. He blamed President Mugabe for failing the Zimbabweans in his execution of the mandate, which had resulted in a declined economy. The two candidates proved quite popular with the electorate, gaining massive attendance at their rallies. According to both the Herald and the Daily News each of the candidates were able to draw over 10 000 supporters per rally.
47. MDC complained that the policing authority were interfering with their election campaign through the partisan application of the Public Order and Security Act which came into operation on the 10 January 2002. This Act requires that a four days notice be given to police before the

holding of any meeting, rally or public gathering. This Act also empowers the police to refuse permission for the holding of a meeting or rally or public gathering if they believe on reasonable grounds, that it would lead to public disorder. On 26 February 2002 Mr Tsvangirai stated that about 79 MDC rallies had been disrupted or cancelled by the police and that ZANU PF had not been visited by the law.

48. The Commissioner of Police continuously denied these allegations and maintained that the police were impartial in their policing functions. When we raised MDC's concerns with both Minister Chinamasa and the Attorney General, Mr. C Chigovera, they disclaimed any partisan treatment on the part of the police.
49. The reports of both printed and electronic state owned media, stated that President Mugabe addressed a total of fifty (50) rallies whilst Tsvangirai addressed about seventeen (17). The JOM was only able to attend six (6) rallies, which were addressed by these candidates. All the rallies were well attended, peaceful, and orderly and without major incident that was witnessed by the Observer Mission.
50. Although this Act came into operation a few weeks before the poll, there was no documented observation by the South African Observer Mission (SAOM) that the policing authority was able to achieve the stated objective of the Public Order and Security Act' being to deal effectively with political violence. The Attorney General's office did not have any figures of persons prosecuted in terms of the Act to enable us to make an informed view in this regard. The Act also renders any person at a political rally or meeting liable to arrest upon failure to produce his or her identity document on demand by a police officer. In our view, this Act has a potential of encroaching upon the constitutional rights of citizens in respect of assembly, association, movement and speech. This Act does not encourage an environment conducive to free campaigning. The introduction of the Act so shortly before elections has raised legal eyebrows over its necessity and the lawgiver's motivation.

Violence and Intimidation

51. It is common cause that the pre-election environment was encumbered with violence intimidation and harassment principally perpetrated by the supporters of ZANU PF and MDC, which encroached on the rights of both parties to campaign freely countrywide. MDC accused ZANU PF of conducting a systemic campaign of violence and intimidation of its members. It alleged that to this end, in December 2001, ZANU PF established youth militias who had conducted untold acts of terror against its supporters. The militias comprised predominantly unemployed youths who received military training from ZANU PF. The alleged stated objective of their establishment was to accelerate the violence and intimidation of MDC supporters. It alleged that the violence perpetrated by the militias included disappearances, killings, torture and assaults, destruction of property. During the 24 months before the conduct of poll, the number of MDC supporters allegedly killed in this violence was estimated at about 107.
52. It was further alleged that these militias had sealed off many rural areas as no go areas greatly curtailing MDC's rights to effectively campaign in these areas for the impending presidential

elections. As a result, many MDC supporters had fled their homes and sought refuge in far away places. MDC was very anxious that these displaced persons might lose their right to vote because of the residence requirement in the Act. The police were alleged to have either participated in acts of violence with the militias in support of ZANU PF or had done so by omission in that no effective policing had been given in the so called ZANU PF strongholds. They were alleged to have displayed blatant bias against MDC supporters in order to advance the dominance of ZANU PF.

53. On the other hand, ZANU PF also alleged that MDC was involved in a litany of acts of violence, intimidation and harassment of their members, particularly in urban areas. They accused MDC of killings, abduction and torture of multitude of their supporters. The media gave extensive coverage of these allegations by either side. The state owned media blamed MDC for violence whilst the independent printed media and the SABC sought to attach blame for violence and intimidation squarely on the shoulders of ZANU PF.
54. Whilst on an observation visit to Hwange in Matebeleland North, JOM received a report from MDC supporters that militias were camping in some schools at night in the area (presumably to intimidate MDC supporters not to attend poll). JOM immediately raised the matter with the policing authority. Pursuant to JOM's intervention, the police took urgent steps in our presence, and the militias were removed from the school. We are only referring to this incident to illustrate the difficulty attendant to allegations of partisan policing in relation to political violence.

Allegations of a plot to 'Eliminate the Incumbent'

55. Approximately two weeks before the polls, ZANU PF accused Mr Tsvangirai of having plotted with foreigners to eliminate President Mugabe. These allegations were widely publicized in both printed and electronic media.
56. Shortly thereafter, Mr. Tsvangirai was arrested and later charged with treason. The world waited with abated breath for his incarceration during the election campaign, as treason is a very serious offence punishable by a long term of imprisonment in Zimbabwe. He was however released on his own cognisance and proceeded with his campaign. ZANU PF widely publicized this allegation in the media. This allegation proliferated an already politically tense environment. Importantly, although the government claimed that it knew of the alleged plot as early as October 2001, it only disclosed it a few weeks before the elections were conducted. The timing of this accusation was perceived by some as a calculated political move by ZANU PF to discredit Tsvangirai and to derail the campaign of the MDC. In fact, for sometime thereafter ZBC showed in a serial form a video recording of the alleged assassination plot.
57. On the third day of polling, the police arrested MDC's G. Secretary Welshman Ncube as a co-perpetrator in the alleged assassination plot and released him on bail of R100 000,00. The timing of his arrest by Government during a sensitive voting period was questioned and was perceived by others as an added political move to sow seeds of distrust amongst MDC supporters and remove any supporter confidence in MDC.

Media Coverage – Domestic

58. During the pre-election campaign, MDC accused ZANU of failing to provide equal access to the publicly owned media to all the contesting candidates, but itself. In this regard, it is instructive to note that Government owns and controls all public broadcasting by radio and television through the Zimbabwe broadcasting Corporation. Furthermore, the Government owns the following printed media, **Herald Chronicle** and **Sunday Mail**.
59. MDC accused the Government of not promoting any of the candidates in their media and averred that ZANU PF had an unequal and advantaging access to the state owned printed media. Whilst it is true that the state owned printed media almost exclusively promoted ZANU PF it deserves to be mentioned that MDC received extensive favourable coverage for its election campaign from nine newspapers, namely: **Daily News**, **Daily Gazette**, **the Standard**, **Gweru Times**, **Masvingo Times**, **Manica Post**, **Sunday Standard** and **the Worker**.
60. The issue of violence and intimidation as well as the alleged plot to kill the President by Mr Tsvangirai became the pivotal points of coverage by the local media and took center stage as electioneering issues by the contesting candidates. By and large, the local newspapers were extremely polarized in their reporting of pre-election issues.
61. All advertisements flighted by the respective media houses only promoted the campaigns of the two key candidates. The independent media also carried advertisements advising MDC supporters to tune to radio for further MDC campaigns. The respective media houses only obliquely referred to the remaining candidates.
62. As far as we have observed, there were no attempts by the Government to limit the reporting of the independent newspapers. Both the State owned and independent newspapers reporting of the election campaign was very robust and critical. Whilst Government may have denied all the contesting candidates equal access to the public media, MDC as a political contender received considerable coverage from the independent newspapers and other media through which it was able to propagate its election campaign.
63. It is well accepted that radio is traditionally the best means of communication in black communities in rural areas. ZBC controls four radio stations. It is inescapable that over these radio stations, ZANU PF's election campaign received more prominence than campaigns of the other political parties

Domestic Electronic Media

64. The state owned electronic media, Zimbabwe Broadcasting Corporation was, in our view, selective in its coverage of a large part of the election campaigns. It did not grant equal access to other candidates and considerably promoted the campaign of ZANU PF. It failed to provide a well-balanced election campaign coverage and further failed to promote informed political debate. However, a week before the poll was conducted ZBC corrected its inadvertence and

provided an estimated 30 minute controlled interview to each of the five candidates. For all its initial frailties, it made a belated attempt to remedy its initial inadvertence. What begs the question is how helpful was this belated television access to the election campaign of the MDC. It may be contended that the candidate interview offered by the ZBC were controlled, in that the interviewer directed the issues for debate. We are nevertheless, satisfied that towards the end of each programme, all the candidates were given adequate opportunity, to articulate their election campaign positions.

Media Coverage - External

65. During the pre-election period, the external electronic media such as CNN, BBC, and SABC focused attention primarily on pre-election violence and intimidation, which they attributed to ZANU PF. They highlighted their displeasure at the manner in which the President was dealing with the Land Distribution Programme, which targeted white owned commercial farms. They expressed concern regarding the absence of the rule of law and the country's economic decline under the helm of the incumbent President. They questioned the veracity of the alleged assassination plot by Tsvangirai. These television networks decried the systemic violations of human rights allegedly committed by ZANU PF against MDC supporters.
66. British Prime Minister Tony Blair publicly implored the Commonwealth countries to impose sanctions against Zimbabwe and called upon the Zimbabwean electorate to support Mr Tsvangirai at the polls. It is instructive to note that while the external media and some leaders of CHOGM called upon the Zimbabwean electorate to vote for Tsvangirai at the polls, in the same breath, they denounced the same electoral process as being extremely flawed and not capable of delivering a credible and legitimate election result. This dualistic or ambivalent stance suggested that the fairness, transparency and legitimacy of the result of the electoral process were dependent upon the identity of the successful candidate. That approach implicitly advocated for a subjective and unequal standard in the adjudication of the electoral process.

Voter Education

67. The Electoral Supervisory Commission (ESC), which is empowered to supervise the conduct of the election and enjoined to provide voter education admitted to having provided such education at an advanced stage of the pre-election period. Members of civil society expressed their concern that this might be prejudicial to the proper exercise of the right to vote.

We do not agree with these concerns though we comprehend the reasons advanced in support thereof. In our view, common sense would dictate that an electorate with such high levels of literacy, coupled with the invaluable experience gained through five different general elections held in the country so far, should stand them in good stead. Confirmation of this observation is contained in the survey conducted at the request of the MDC and published in the Daily News on 5 March 2002. The survey concurred that the Zimbabwean electorate understood and believed in the secrecy of its vote. In any event, from our observation of the voting by the electorate we are fortified in our view that the lack of provision of voter education was not an impediment.

Economic and Social Conditions

68. Zimbabwe is currently experiencing grave economic and social hardships characterized by an unemployment rate of 60%, massive business closures or downsizing. It is estimated that over the last 12 months, about 500 businesses have closed and thousands of people have lost their jobs. Formal sector employment has drastically fallen to its lowest since the early 1990's. Tourism, which was once a flourishing industry, has seriously declined. There are serious shortages of basic commodities such as petrol, fish oil, maize and sugar. Prices of goods are astronomical, so is inflation. Expectedly, the value of the currency has declined sharply. The health delivery system has almost disintegrated.
69. Although Zimbabwe has been independent for almost 20 years, its society is still deeply divided by economic inequalities. Thus in traditionally African areas, there are very long queues where people wait for long hours for the purchase of basic commodities. The well heeled seem to be coping.

Presence of SADC, African Union, Commonwealth and EU Observers

70. The Minister of Foreign Affairs only invited as foreign observers, foreign governments, organisations and eminent persons considered friendly to Zimbabwe. These included, *inter alia*, SADC, African Union, The Commonwealth, and selected countries in Europe, Japan and countries in the Carribeans and in Southern Africa. It is common cause that observers from the European Union withdrew their participation because the Government of Zimbabwe refused to accredit as an observer, Mr. Peter Schori, the EU observer mission leader.

Various newspapers reported that political violence and intimidation had declined with the arrival of observer missions. Various NGO's and a wide range of persons have recounted to SAOM and to us the ameliorated pre-election conditions, since the presence of foreign observers.

POLLING DAYS AND COUNTING

First Day of Polling

71. There was a huge turnout of voters nationwide. The Registrar-General confirmed that by the 26 January 2002 about 5.6 million voters had been registered compared to 5.2million that were registered for the 2002 elections. There is no data indicating in what proportion this 7.5% increase of voters could be ascribed to rural as against urban voters. The Electoral Act (Modification) Notice of 3 March 2002 validated the extended voter registration period during 27 January to 3 March 2002. Approximately 20 000 00 additional voters were registered bringing the total number of registered voters to 5 8 million. As of 8 March 2002, both the Election Directorate and the ESC could not confirm a precise number of registered voters.
72. According to the Chief Executive Officer of the ESC, 4 548 polling stations were established during the 2002 elections as opposed to 3 904 established for the 2000 elections. In Harare and Chitungwiza there were concurrent elections for the presidential mayoral and council elections. The holding of the mayoral and council elections on the same day as the presidential elections

was caused by ZANU PF's failure to comply with a High Court ruling that the mayoral and council elections be held on 11 February 2002. Subsequently, the Supreme Court set aside the High Court ruling.

73. A week before the conduct of poll, the Registrar General announced his decision to reduce the polling stations in the urban areas whilst increasing them in the rural areas. The reason advanced for the increase of stations in the rural areas was to save voters there from having to walk long distances. It is common cause that ZANU PF finds majority support in rural areas whilst MDC finds majority support in the urban areas. It was therefore not surprising when MDC contended that this was a political strategy calculated to deprive their members of the adequate opportunity to cast their votes in the critical presidential elections.
74. There were no supplementary rolls at many polling stations, particularly in traditionally black areas. Subsequently voters who did not appear on the main constituency voter's rolls could not cast their votes timeously and were directed to return the following day. On the second day, the supplementary rolls were still unavailable in some areas. Those voters were only permitted to vote upon production of a registration receipt. The Presiding Officers kept a separate register of these voters. The nagging question is how many voters did not return to the polling station on the subsequent voting days because they were not allowed to cast their vote because of the unavailability of the supplementary voters roll.
75. There was an unreasonable voter inconvenience and delay. It was caused by the reduction of the polling stations in constituencies where there were also municipal and council elections. In Chitungwiza the number of polling stations used in 2002 elections were reduced by 30% compared to the 2000 elections. There were no mobile units to cater for the physically incapacitated, advanced age, ill health, blindness or otherwise. Many polling stations in Harare remained opened until the following day. Voting in most urban areas nationwide was slow. In predominantly black residential areas, voting was characterized by very long meandering queues. The queues stretched to distances of about 5kms per polling station. In Harare Central voters who had joined the queue as early as 05h00 were only able to cast their vote at about 15h00.
76. In Chitungwiza, a predominantly urban black area, a significant number of voters waited for over 10 hours in queues before being informed by polling officers that they were in the wrong wards. They then had to commence the long queuing process at another polling station. These delays and inconveniences caused great displeasure with voters who attributed this mismanagement to Government's deliberate tactic to create impediments aimed at denying them an opportunity to cast their vote
77. Because of the fact that many polling stations still had long queues by 19h00, Registrar General extended the voting time nation wide. Because of this extension, many stations in Harare and Chitungwiza did not close and worked overnight in order to attend to those who were already in the queue by 7p.m. This proved to be a daunting task. Many polling stations closed for only a few hours the next day to allow very tired public service polling officials a brief opportunity to change their clothes. Otherwise the queues were reduced albeit not substantially.

Second Day

77. Many Voters remained in the queue until the break of dawn the following morning. They continued to remain in the queue for long hours even on the second day before being attended to. The second day was again distinguished by very long queues in Harare and Chitungwiza. When we visited Warren Park Polling Station in Harare at about 20h30, the queues were still very long. The polling staff was exhausted as they had worked for two days without adequate relief staff. Upon enquiring, we were told that additional polling staff could not be used because there were no additional voters rolls.
78. That evening MDC launched an urgent application in the High Court an order extending voting period. to 11 March 17, 2002. An order was granted extending voting nationwide to the 11 March 2002.

Third Day

79. Not all polling stations countrywide were opened in compliance with the Court order. In Harare, some polling stations were not opened timeously, in compliance with the court order. The presiding officers advised us that they did not commence with the voting because they had not been authorized by the Registrar-General to do so. A few polling stations that opened did so only for a brief moment. This situation was however corrected. Polling stations that were opened remained open until 7 pm, when the Registrar General declared the stations officially closed for polling. Many voters complained that the polling officials had deliberately and significantly slowed down the voting process to prejudice intending voters.
80. Complaints aside, what is disturbing is that many stations did not open at all in blatant breach of the court order. The Government had expressed its discontent about the order and had said that it would comply with it although under protest. Minister of Justice Legal and Parliamentary Chinamasa publicly explained the Governments failure to comply with the Court order. He contended that when the order was granted, the administrative staff manning the stations had already left making it difficult for Government to give instructions to polling officials in compliance with the court order.
81. During the third voting day, MDC launched an urgent application for a further extension of voting. The Judge President Garwe dismissed, the application on the ground that the Court did not have jurisdiction to extend any voting period, as this was the prerogative of the Registrar-General in terms of the Act.
82. On the whole, save for the above, all steps necessary for the proper conduct of the poll as required by electoral legislation were observed. Polling materials remained in plentiful supply for the duration of the three days of voting. Polling agents were permitted to remain at their designated stations to safeguard the ballot boxes. The presiding officers properly assisted the physically incapacitated or illiterate voters as prescribed. Secrecy of the ballot was respected.

Counting

83. After polling, ballot boxes were conveyed on police vehicles to counting stations. There were 120 counting stations, that is one in every constituency. A command centre was in operation in every provincial district. The final collation of results from the constituency counting centres, were submitted to the national command centre in Harare. At each counting centre, international and local observers, election monitors and party polling agents were allowed to remain in attendance from the beginning of the verification process up to the end of the counting and the final determination of the constituency result.

From our and other observer missions no material breaches of the counting procedures and rules of result determination were reported

ELECTION RESULT

NATIONAL ELECTION RESULTS FOR ZIMBABWE PRESIDENTIAL ELECTIONS 2002						
2000 General Election			2002 Presidential Elections			
Party	Votes	% Votes	Candidate	Party	Votes	% Votes
ZANU PF	1 203 263	48,32	Robert Mugabe	ZANU PF	1 686 212	56,2
MDC	1 171 656	47,05	Morgan Tsvangarai	MDC	1 258 401	42,0
Other	115 277	4,65	Wilson Khumbula	ZANA	31 368	1,0
			Shakespeare Maya	MAGG	11 906	0,4
			Paul Siwela	Ind	11 671	0,4
Total Valid Votes		2 190 295			2 968 756	

PRINCIPAL OBSERVATIONS, QUALIFICATIONS AND CONCLUSION

84. In the preceding sections, we presented, *albeit* in broad-brush strokes, the laws of elections of Zimbabwe and how the courts of law have come to terms with litigation related to elections. We have also drawn attention to the role of state institutions and the Executive arm of Government in the pre-election period. We have described the pre-election environment within the country and reported on our observations on polling days and on the counting of votes. We have included a text of the final election result. We now turn to make principal observations, evaluation of and conclusions on the manner in which the elections were conducted. We also set out such qualifications to our observations as may be justified.

85. Jorgen Elklit and Paule Svensson (both world renowned social scientists and experts on elections) have developed a set of standards free and fair elections. In their article, "*What makes elections free and fair*" (*The Journal of Democracy*, Vol. 8, No. 3 July 1997), they

propose applicable criteria to the respective periods before polling day, on polling day, during counting and after polling day. The learned writers come to the conclusion that the standards for free and fair elections should be tested against specific criteria at each stage of the process. The stages start with the period before polling day up to the period shortly after the election result. The criteria distinguishes the test of "free-ness" on the one side from the test of "fair-ness" on the other. Generally speaking, the word "free" relates to the freedom or options or absence of impediments, voters, individually or collectively enjoy in relation to the electoral process. The word "fair" relates to whether the environment and systems within which elections are prepared for, and conducted and concluded are equitable. The detailed criteria supported by the learned writers are set out here below. We are in respectful agreement with the criteria or standards developed by the learned writers.

INTERNATIONAL STANDARDS FOR FREE AND FAIR ELECTIONS			
BEFORE POLLING DAY		ON POLLING DAY	
FREE (Relates to Individual or Group)	FAIR (Relates to environment)	FREE	FAIR
Freedom of movement	A transparent electoral process.	Opportunity to participate in the election. Legal possibilities of complaint	Access to all polling stations for accredited representatives of the political parties, local monitors and international election observers.
Freedom of speech (for candidates, the media, voters and others).	An election act and an electoral system that grants no special privileges to any political party or social group.		Polling stations should be easily accessible to the electorate.
Freedom of assembly	Absence of impediments to inclusion in the voters roll.		Secrecy of the ballot.
Freedom from fear in connection with the election and the electoral campaign.	Impartial treatment of candidates by the police, the army, the courts of law and the Electoral Commission.		Absence of intimidation of voters.
Absence of impediments to standing for election (for both political parties and independent candidates).	Equal opportunities for political parties and independent candidates to stand for election. Impartial voter education programmes.		Effective design of ballot papers
Equal and universal suffrage.	Equal access to public media.		Proper ballot boxes.
Freedom of choice (i.e. no bribery, corruption etc.)	Impartial allotment of public funds to political parties.		Impartial assistance to voters (if necessary) for example disabled and illiterate.
	No misuse of government facilities for campaign purposes.		Proper precautionary measures when transporting election materials.
	Polling stations identified and voters informed in good time.		Impartial protection of polling stations.

INTERNATIONAL STANDARDS FOR FREE AND FAIR ELECTIONS			
DURING THE COUNT		AFTER POLLING DAY	
FREE	FAIR	FREE	FAIR
Legal possibilities of complaint.	<p>Proper counting procedures.</p> <p>All parties represented in counting stations signed off on vote tallies.</p> <p>Adequate security and secrecy provided.</p>	<p>Legal possibilities of complaint.</p>	<p>Official and expeditious announcement of election results.</p> <p>Impartial treatment of any election complaints.</p> <p>Impartial reports on the election results by the media.</p> <p>Acceptance of the election result by everyone involved.</p>

86. The elections in Zimbabwe, more than anything else, have been characterised by a very high level of polarisation between the two of the five presidential candidates, Robert Mugabe and Morgan Tsvangirai and between members of their respective political parties, ZANU-PF and MDC. The origin of their respective political parties, their political outlook, election manifestos, slogans and culture diverge fundamentally.
87. Intimidation and violence in certain geographical areas of Zimbabwe were the hallmark of the pre-election period. At least 107 people whose names, places of residence and dates of death have been published, were reported killed in politically related attacks between March 2000 to March 2002. Although the police were extremely reluctant to provide any statistics, by far the majority of these victims are said to be members or supporters of the MDC. Some ZANU-PF supporters are said to have been victims of assault and intimidation by MDC members or supporters.
88. It is common cause that ZANU-PF has established a military trained youth group also known as youth militia. Reports by our and other observer missions show that this youth militia have been the primary perpetrators of violence and intimidation against members and supporters of the MDC or sections of the population which appear not to be supportive of ZANU-PF.
89. In varying degrees, this election related violence and threats of violence, arson and hostage taking have curtailed freedom of movement, freedom of speech, freedom of assembly and of association of voters. As would be expected, the violence and intimidation must have engendered fear in connection with the electoral process. In certain areas, freedom of choice must have been compromised.
90. In the lead up to presidential elections the electoral laws of Zimbabwe were drastically amended and manipulated by executive decrees, in a manner which resulted in
 - unavailability of the main and supplementary voters rolls to the public and to opposition party agents,
 - significant impediments to inclusion in the voters roll,
 - lack of transparency in respect of compilation of the voters roll,
 - uncertainty over applicable voter qualifications,
 - belated disenfranchisement of a material number of persons who were previously on the voters roll,
 - conferring wide powers to the Registrar-General and constituency registrars to alter the voters roll and remove voters from the roll,
 - registering voters beyond legally permissible cut-off dates without permitting and announcing general access by the public to such extended voter registration,
 - prohibiting the provision of voter education by any body or group other than groups designated or approved by the ESC, and
 - drawing election supervisors and monitors from the ranks of public servants to the exclusion of the broad citizenry.

91. Final voters rolls and information on polling station were not available timeously.
92. There was no equal or equitable access to publicly owned and funded media.
93. The Executive Government disregarded the rule of law by either failing to give effect to decisions of both the High Court and the Supreme Court or by introducing statutory instruments or regulations, which altered, reversed or undermined court decisions.
94. The treatment of supporters of each of the two main candidates by the police appears to be partial.
95. The number of polling stations in urban constituencies and particularly in Harare and Chitungwiza were substantially reduced. This reduction severely curtailed the access of voters to polling stations. On the third day of polling, not all voters who wished to cast their vote had a reasonable opportunity to do so. The number of voters who were prevented from voting could not be ascertained.
96. It should however, be recorded that in all other constituencies polling stations were easily accessible to the electorate. The secrecy of the ballot was generally observed. Requirements such as effective design of ballot papers, ballot boxes, impartial assistance to voters, if necessary, transporting of election materials and protection of polling stations were adequately accomplished. Consequently, in our view, save for the districts of Harare and Chitungwiza, on polling days the conduct of elections was accomplished in a satisfactory manner.
97. We observed no material counting irregularities. If any existed, they were not drawn to our attention or reported on.
98. It was principally the pre-polling, legal and other environment, which informed our assessment of the conduct of elections. We recognise that opposition parties fully participated in the electoral process up to the end. We acknowledge that on polling days no significant irregularities, save in Harare and Chitungwiza occurred. The counting of votes was completed regularly and timeously. Notably, the polling occurred peacefully.
99. However, having regard to all the circumstances, and in particular the cumulative substantial departures from international standards of free and fair elections found in Zimbabwe during the pre-election period, these elections, in our view, cannot be considered to be free and fair.

SISI KHAMPEPE
JUDGE OF THE HIGH COURT

27

DIKGANG MOSENEKE
JUDGE OF THE HIGH COURT