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**Report of the South African Parliamentary Observer Mission
Zimbabwe Presidential Elections
9 - 11 March 2002**

March 19, 2002

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Preface

This report has been compiled in accordance with the requirements of the Observer Mission sent by the Parliament of the Republic of South Africa to observe the Presidential election in Zimbabwe.

The report is divided into six sections. The first is the introduction. The second deals with the pre-election period. The third section deals with logistical preparedness. The fourth section is an analysis of the environment in which the election was held. The fifth section deals with polling and counting. Lastly the sixth section of the report gives the conclusion of the South African Parliamentary Observer Mission on the Zimbabwe Presidential elections.

Section I: Introduction

Background

The 3rd Zimbabwean Presidential election was held on 9 and 10 March 2002. An invitation was issued to the Government of the Republic of South Africa to send observers to witness the people of Zimbabwe exercising their sovereign right freely to elect a President of their choice. This invitation was extended to Parliament.

The Parliament of the Republic of South Africa established a 20-member South African Parliamentary Observer Mission (SAPOM). The SAPOM arrived in Harare, Zimbabwe, on Friday, 22 February 2002.

Mandate

With the background of understanding the challenges of ensuring stability and promoting democracy in the continent of Africa in particular, the SAPOM, together with other international observer missions, went to Zimbabwe to contribute to the promotion of an atmosphere within which the people of Zimbabwe could exercise their democratic right to vote without fear or intimidation.

The mandate of the SAPOM was drawn from a resolution of the House on 14 February 2002, in which the House

resolved:

- a. to send a multiparty parliamentary delegation to observe these elections;
- b. that the terms of reference of the delegation are to observe the election campaign in the run-up to the election, the casting of votes during the elections and subsequently the counting of votes; and
- c. that the delegation must, after the completion of its mission, present a full report to the House

The role and function of observers

Pre-election Observation

In the days prior to polling day, observers will:

- a. Familiarise themselves with their geographical area of responsibility
- b. Meet officials of the Electoral Supervisory Commission (ESC) of Zimbabwe at headquarter, district, constituency and polling station level
- c. Meet political party representatives and NGOs at headquarter, district and constituency level
- d. Familiarise themselves with the electoral rules and regulations
- e. Observe the final stages of campaigning and consider:
 - The freeness and fairness of the political environment
 - Whether political parties have unrestrained access to voters
 - The role of the media in the campaign
 - Whether the rules regulating campaigning are being adhered to by parties and/or enforced by the ESC
 - Whether there have been incidents of electoral conflict
 - The manner in which they have been dealt with
- f. Assess whether polling stations are:
 - Sufficient in number in relation to voters
 - Easily accessible
 - Easily identifiable
 - Free from campaigning material inside and within the prescribed parameters of the station

Election Day

The observers will:

- a. Observe and verify the voting process, especially the compliance with the procedures established in the Electoral Act
- b. Observe and verify the operations determining the election results.

Modus operandi

The SAPOM identified areas which were closely contested by political parties and those that had a potential conflict. The country was then divided into manageable areas to which teams of two or three people were allocated. The provinces to which the teams were sent to operate were: Bulawayo; Harare; Manicaland; Mashonaland East, Central and West; Masvingo; Matebeleland North and South; Midlands.

The period of operation was divided into three phases. In the first phase from 25 February to 3 March, team

were required to visit the provinces. The main task was to observe political activities and establish contacts with the local stakeholders.

Members were encouraged to collect as much information as possible and link up with other observer missions. Information was sent to the operation centre in Harare on a daily basis. There it was collated and analysed by a team of five, headed by a Member of Parliament. Raw data was kept for future reference.

During the second phase from 4 to 7 March, members returned to Harare. The main aim was to compare notes and interact with various stakeholders. The group assembled to share experiences on provincial activities.

The following stakeholders were met:

Government

Electoral Supervisory Commission

Political parties

MDC, ZANU-PF and NAGG

Independents contesting elections

Paul Siwela

Nongovernmental organisations and civil organisations

Zimbabwe Election Support Network, National Constitutional Assembly, Zimbabwe Council of Churches, Commercial Farmers' Union, Amani Trust, Victims of Organised Violence and Torture, Zimbabwe Rights, Zimbabwe Lawyers for Human Rights

Academics

Dr Ebbo Mandaza and Dr Makumbe

During this phase consensus was obtained on the framework of the report.

The third phase involved going back to the provinces from 7 to 12 March. This phase was to cover the final stages of electioneering, polling and counting. Areas of common interest to all teams were identified and a resolution was adopted to finalise the report on 18 March 2002 at 10:00 at Parliament.

Section II: Pre-election Period

During this phase there were a number of issues that the SAPOM had to look into to satisfy itself that an environment for free and fair elections existed.

Constitutional and legal framework

Firstly reference was made to the Constitution, the Electoral Act, the Public Order and Security Act and the General Laws Amendment Act to check whether the legal provisions were adhered to.

a. *Chapter IV, Part I, of the Constitution of Zimbabwe provides for the existence of the President, qualifications and election of the President.*

This provision has been adhered to. Zimbabwe has a President and the elections were held because the six term had lapsed.

b. *Chapter V, Part 6 (58)(3), provides for the qualifications and the disqualifications for registration as a voter and for voting at elections as prescribed in Schedule 3 and subject thereto by the Electoral Law.*

There are three laws that relate to elections and voting which have been operational from 1986. The first law drew much attention, deals with dual citizenship of Zimbabweans. This law requires the people of Zimbabwe have only Zimbabwean citizenship.

The number of people who have dual citizenship and were affected was estimated at 96 000. Notices were sent to them notifying them that their Zimbabwean citizenship would be taken away from them. These people would retain their permanent resident status.

There is an unspecified number of people who had objected to their removal from the voters' roll. The failure of the court to rule on this matter until the polling day would make this category ineligible to vote. It is important to note that this category of citizens was allowed to vote in the 2000 Parliamentary elections.

The General Laws Amendment Act (GLAA), which was passed in January 2002, forbids anyone who has not been in the country for 12 months continuously to vote during Presidential elections.

c. *According to the Electoral Act of Zimbabwe, the Registrar General is required by law to announce polling stations seven days before polling day.*

This requirement was not met. Polling stations were announced in less than 72 hours before polling.

d. *Public Order and Security Act*

This Act was struck down by the court, but reintroduced through s158 and included the following:

- The police can refuse permission for rallies
- It is an offence to criticise the President
- Failure to produce identity documents at rallies can lead to arrest

e. *Electoral Act - section 158 (1&2)*

This section gives the President extraordinary powers to strike down any court ruling and to make laws and regulations. This is viewed to be against international norms and standards.

Election campaign

The Electoral Act provides that during the build-up to elections, the electorate has to have opportunity to list all campaigners. It is also required that candidates should have equal access to the electorate.

This requirement had not been fully realised. The main political parties showed intolerance towards each other. The language used at rallies and press conferences was inciting and instigated violence.

Delimitation of electoral constituencies

Chapter V, Part 6 (60), of the Constitution of Zimbabwe provides for the delimitation of constituencies. This implies that Zimbabwe will be divided into electoral constituencies. The Constitution requires that Zimbabwe be divided into 120 common roll constituencies.

This requirement was met. Zimbabwe is divided into one hundred and twenty (120) common roll constituencies.

Nomination and registration of candidates

There are 11 political parties in the country. The following three parties contested the Presidential election: Zimbabwe African National Union-Patriotic Front (ZANU-PF), Movement for Democratic Change (MDC) and National Alliance for Good Governance (NAGG). The candidates were Robert Gabriel Mugabe, Morgan Tsvangirai and Shakespeare Maya respectively. The two independents were Paul Siwela and Tarugarira W Kumbula.

Voter education

Monitors appointed by the ESC conducted voter education. During the 2000 Parliamentary elections, NGOs conducted voter education were alleged to have been partisan. In these elections, NGOs were required to conduct voter education. Foreign funding was also banned.

Registration and voters' roll

Part VI of the Electoral Act provides for the registration of voters.

This requirement was met according to a report received from the Registrar General. The registration, according to the laws of Zimbabwe, is an ongoing process which could continue even on polling days. However, a cut-date is set in terms of the law for the purpose of the elections.

The voter's roll was printed on 7 March 2002, but was not made available for inspection by the public, although Part IV, sections 17 and 18, of the Act respectively provide for the voter's roll to be kept by the constituency registrars and to be open for inspection and for printing thereof.

The ESC supervises the registration of voters, conducts elections and carries out and supervises voter education.

On 27 January 2002 the number of registered voters on the inspected voters' roll, as declared by the Registrar General, who carries the overall responsibility for the administration of elections, was 5 600 000. This number compared with the 2000 general elections, represents an increase of 400 000.

On Wednesday, 6 March 2002, the SAPOM met with the Registrar General of Zimbabwe to find out whether the registration of voters and the compilation of a supplementary voters' roll had taken place. The Registrar General was not able to indicate a total number of registered voters. This caused a great deal of confusion amongst observers about the preparedness for the elections.

Electoral staff and polling agents

Electoral staff and polling agents, in general, were very cooperative. The effort they put in to ensure that the election process continued is commendable.

Isolated incidents of noncooperation by electoral staff were reported. In some cases polling agents were alleged to have campaigned for their political parties close to the voting stations and, in some cases, inside the voting stations.

At the end of the first day of voting an official undertaking was issued for an increase in capacity and staff numbers. This undertaking was not implemented in full, especially in Harare and Chitungwiza.

On the third day of elections in Harare, some of the infrared mechanisms were manned by the police. This resulted in some voters being turned away and some alleged to have ink on their hands. Some voters were arrested and in some cases polling agents were abducted.

The monitors and observer missions

i. Monitors

Part III (14B) of the Electoral Act provides for the existence of monitors who, among other things, are to monitor the conduct of the polling and counting at any polling station and counting centre respectively for the purposes of the Act.

detecting any irregularity in the conduct of the poll or the counting of the votes.

The General Laws Amendment Act requires also that election monitors be drawn from the people employed in the civil service.

Section 158 includes the Army in the definition of civil service, consequent of which Army personnel was used as monitors.

It was reported that 20 000 monitors, the majority of whom were teachers, were trained. This number had a women component of sixty per cent (60%) in urban and forty per cent (40%) in rural areas. Four monitors were deployed per constituency and four per polling station to monitor the pre-election period and polling respectively.

A report has been received from the Office of the Registrar General that local monitors were employed to perform the duties of monitors, as stipulated in the Electoral Act of Zimbabwe. The monitors, who were drawn from the Public Service, were appointed, accredited and deployed at each polling station.

It was confirmed that it was communicated to the monitors that they had been vested with executive powers to undertake corrective measures at any stage of the electoral process.

ii. Observer missions

Part III (14C) of the Electoral Act provides for the existence of Election Observers from inside and outside Zimbabwe.

Heads of State, national Parliaments, international organisations, electoral commissions, international nongovernmental organisations and Zimbabwe civil society sent representatives who formed part of the observer missions. The SAPOM formed part of the African collective under the banner of the OAU.

By 8 March 2002, a total of 566 international observers had been accredited. Local observers accredited by date were 23. In addition, the Zimbabwe Election Support Network (ZESN) submitted an application for 12 500 local observers to be accredited. Initially only 650 ZESN observers were accredited and later an additional 3 500.

The SAPOM met with different groups of eminent persons from various international observer missions. Because of the size of our delegation, we ensured cooperation and sharing of information with other observer missions to maximise our information base amongst international observers.

It must also be noted that some of the observer missions went beyond their mandate by intervening in situations where they had no mandate to do so.

It was reported that some representatives of observer missions were attacked. Our mission observed one such incident.

Security situation

There were "no-go" areas and strongholds for particular political parties. This was a strategy to instill fear in the electorate. It was "known" who to vote for in a particular area.

There were wide-spread allegations of violence, some of which could not be verified. It was reported that ZANU-PF was using youth who were part of the government-sponsored youth programme to intimidate people. Allegations of militia intimidating people were also reported. Camps where the militia were based were identified and visited. The MDC youth were also reported to have been involved in acts of violence.

In some instances there were allegations that the police was involved in cover-ups and participated in the activities of the militia.

Displaced people

There were allegations of people being displaced owing to intimidation and violence, especially in the farm areas.

Media and media coverage

In terms of the Electoral Act, impartial and equitable access to public media and advertising institutions should be observed during campaigning.

This condition was not met. The Zimbabwean media is highly polarised. The private and public media are divided between the MDC and ZANU-PF respectively. Even the distribution of newspapers is divided along party-stronghold lines. The smaller political parties and independents fighting for the Presidency did not receive coverage, both in the print and electronic media. The time and space allocated to them was insignificant. The Zimbabwe public print and electronic media were biased towards ZANU-PF.

The "partisan" nature of the international print and electronic media further contributed to the tensions surrounding the elections.

Code of conduct

Meetings to discuss the election code of conduct were convened and all political parties and independents contesting in the elections were invited to participate. Eventually an election code of conduct was agreed upon and duly signed on 8 March 2002. Considering that polls were due to take place on 9 March 2002, the signing of the Code of Conduct at that time was, by all standards, unacceptable.

Section III: Logistical Preparedness

Polling stations

It was reported by the Registrar General that there were 4 548 polling stations in the country. Compared to 1 2000 general elections, in the 2002 Presidential elections the polling stations were increased by 644.

The increase in polling stations was more in the rural areas than in the urban areas. The rationale was that people in the rural areas had to walk long distances before reaching the nearest polling station. In Harare, where there was a tripartite election, the decrease in polling stations affected the speed at which the long queues of voters could be processed.

In Harare, Chitungwiza and Marondera there was an undertaking to increase the number of personnel. It was observed that there was an uneven increase in staff members at polling stations.

The ESC announced that 120 computers had been allocated to areas which had tripartite elections. These were to be used to assist in the verification of names. However, our observation was that there were no computers at most of the polling stations in Harare and Chitungwiza.

There were 120 command centres, one in each constituency.

Communication

The election process was spoiled, amongst other things, by low-level standards of communication. The communication strategy did not fit the challenge posed by the elections. There was a failure promptly to communicate decisions that had been taken. This led to anxiety and despair amongst political parties and candidates.

Owing to the poor communication strategy, perceptions and rumours became the guiding force of political action. This resulted in unnecessary anxiety amongst the electorate. Statements to the media by international observers worsened this situation.

Section IV: Situational Analysis

International

The environment within which the Zimbabwe elections took place was marred by developments in respect of recently introduced internal policies. These include the land policy and the policy on citizenship.

The 2000 referendum results on changing the constitution drew much attention from the international community.

It is worthwhile to note that Zimbabwe is a signatory to the protocols of the following bodies: OAU, SADC and Commonwealth. The Presidential elections attracted a great deal of international attention, which contributed to the internal tension, *inter alia* utterances by some Heads of Government, in particular Prime Minister Tony Moyo to the effect that if the MDC leader lost the election, they would not regard the election as free and fair.

Zimbabwe

- Urban vs Rural

The Zimbabwe political divide is along urban and rural lines. The MDC and ZANU-PF command followings in urban and rural areas respectively. The leaders of these parties demonstrated this during the campaign. As a result, there are pockets of areas which are "no-go" areas for one political party or another. This situation exacerbated tensions and promoted intimidation amongst the population.

- Provinces

There are eight administrative provinces, but for the purposes of elections there are 10 administrative provinces. Zimbabwe is characterised by a high level of polarisation. Intolerance, in varying degrees, is the norm.

The law and the rule of law

It should be noted that the run-up to the elections was characterised by legal battles that resulted in the High Court declaring the General Laws Amendment Act unconstitutional. The passing of the Electoral Amendment Regulations on 1 March 2002 followed this declaration. The legal wrangle between the MDC and government significantly contributed to the confusion that prevailed during the polls.

The absence of a uniform interpretation of the law exacerbated the already tense situation. There was a tendency on the part of the government to manipulate the existing laws to the advantage of the ruling party. The Public Order and Security Act infringed the electorate's freedom of association.

Section V: Polling and Counting

Polling

The dates 9 and 10 March 2002 were proclaimed as the days on which voting for the President of Zimbabwe was to take place. The opening and closing times were set at 07:00 and 19:00 respectively. On the first day of polling the opening was reported to have been on schedule in all centres.

During the mid-morning reports were received that in the urban areas, especially in Harare, the voting process was very slow. Towards mid-afternoon there was anxiety amongst the voters about the possibility that they would not be able to vote, especially in Harare and Chitungwiza. The Office of the Registrar General considered extending the voting time beyond 19:00. At about 18:00 an assurance was communicated that voters who were already in the queues would be processed. It was reported that voting carried on until the early hours of the morning. It was also clear that there was an uneven implementation of this undertaking by the Registrar General.

On the second day, the voter turnout proved to be beyond expectations. By late afternoon, it was clear that another extension would be necessary. The MDC applied to the High Court for an extension of the voting period by a day. The court ruled in favour of the applicants. When the Minister of Justice and the Registrar General announced their intention to oppose the court ruling, this created a great deal of confusion and uncertainty the following day.

On the third day, 11 March 2002, it was reported that not all polling stations were on schedule at opening time. There was confusion as to whether the stations would open. Enquiries showed that this was due to poor communication of the court's decision to extend voting by a day.

While isolated cases of intimidation were reported, the polling was quiet and peaceful on the whole. The principle of the secret ballot was observed.

Ink

The ink used to mark the hands of voters was easily transferable through hand contact. Many people were accused of committing electoral fraud, because when the infrared light was shone on their hands, it indicated

they had ink on their hands. This led to unnecessary arrests.

Counting

There were 120 counting centres, one for each constituency. The counting started on 11 March 2002 owing to the High Court ruling, extending the polling period by one day for the whole country. It was our observation that this ruling was only implemented in only one province, namely Harare.

No disturbances were reported when the counting started. An increased visible presence of riot police and army was noticed at this stage. A considerable degree of tension among the population of Zimbabwe was evident.

Voting results (as at 13 March)

TOTAL VOTES:	3,1 million
ROBERT GABRIEL MUGABE:	1 634 382 (53%)
MORGAN TSVANGIRAI	1 170 590 (38%)
OTHER CANDIDATES	295 028 (9%)

Section VI: Conclusion

In conclusion, the SAPOM, noting that over 3,1 million people cast their vote in the Presidential elections, recognises that this substantially represents the will of the Zimbabwean people.

The SAPOM, given the conditions described above and the polarisation that exists in the country, urges all Zimbabweans to work together towards national unity and reconciliation of the people of Zimbabwe.

It will, therefore, be appropriate to pronounce the 2002 Presidential elections as a credible expression of the will of the people.

We note that there was also a minority view, as follows:

The minority parties, represented by the DP, IFP, NNP, ACDP, UCDP and PAC, and after carefully considering the facts in the report, came to the conclusion that they could not endorse the elections as being genuinely free and fair, for the following reasons:

- The existence of "no-go" areas disadvantaged many thousands of voters from exercising their democratic rights.
- Wide-spread allegations of acts of violence intimidated large sections of the population and denied them their basic human rights.
- Allegations that the police were guilty of gross dereliction of duty by acting in a partisan manner.
- The legal-constitutional framework gave the ruling party an unfair advantage and placed constraints on the voting process that led to some voters being disenfranchised.
- Section 158 of the Electoral Act gave the President of Zimbabwe extraordinary powers (see Appendix A)
- Failure to announce polling stations and to make the voters' roll a public document seven days before polling day, contravened the Electoral Act
- Failure to gazette the extension of the voter registration contravened the Electoral Act (see point 10 of the Appendix)
- The constitution of Zimbabwe makes provision for freedom of speech, movement and association. These rights were severely compromised by sections of the Electoral Act, the General Laws Amendment Act and the Public Order Security Act.
- Opposition parties were effectively denied access to public media.
- The last-minute amendments to the Electoral Act created confusion in the minds of the electorate.
- The reduction of polling stations in urban areas such as Harare and Chitungwiza created unacceptable conditions and denied a significant number of people the right to vote.

All the above resulted in a situation in which it is not possible to describe the elections as being free and fair representing the will of the people.

APPENDIX

LEGAL CONSTRAINTS

1. In more than 10 cases by the Court, Government used section 158, subsections 1 and 2, of the Electoral Act to strike down the Court's decision, eg militarising the election by broadening the provision in the Electoral Act with regard to civil servants to include army personnel under the definition of a state employee.
2. Change the Electoral Act to the extent that election monitors were drawn only from the ranks of state employees, from the Army, Education and Home Affairs, and thus excluded civil society.
3. Only the Electoral Supervisory Commission was allowed to do voter education. All NGOs and Civil Society organisations were banned from voter education. Together with this, NGOs were banned from receiving foreign funding to do voter education.
4. Only army and foreign office personnel were allowed to use postal votes. Any other citizen outside the country and these categories were not allowed postal votes.
5. Disenfranchise voters by demanding proof of residency through the presentation of water, electricity and rent bills upon request.
6. Drastically reducing the number of polling stations in urban areas, but on the other hand greatly increasing the number of polling stations in the rural areas and also greatly increased mobile polling stations to 1 200.
7. Constituency voting only allowed. MDC challenged but lost. People were displaced through political violence and as a result thousands of people, including black commercial farm workers, could not vote.
8. Simultaneous casting of Municipal, Provincial and President votes in Harare caused a slowdown of the electoral process, leading to a court application by the MDC to extend voting by another day.
9. The amended electoral law gave wide powers to the Registrar General to amend the voters' roll without consultation, resulting in voters being struck from the voters' roll without proper reason.
10. Government extended cut-off date for voter registration from 26 January to 3 March 2002 without informing all parties. This was procedurally wrong, because Government did not gazette the extension. Section 158 was invoked to make these changes legal.
11. Local observers were reduced from the normal 12 500 positions to only 625 and they were not allowed inside the voting stations. They were confined to 100 metres away from polling stations.
12. Public Order Security Act was struck down by the court, but reintroduced through section 158 and it included:
 - police can refuse permission for rallies,
 - it's an offence to criticise the President, despite him being a candidate, but he may criticise other candidates,
 - failure to produce ID documents at rallies could lead to arrest and a criminal offence.

What is section 158, subsections 1 and 2, of the Electoral Act?

It came from pre-1979 "Smith regime" legislation, giving the President extraordinary powers to strike down a court ruling and to make laws and regulations. The universally accepted norm is that it is unconstitutional for anyone else except Parliament to make laws. Parliaments throughout the world do not delegate their role to anyone, including the President, to make laws.

Section 158 gives the Zimbabwean President the power to validate any law or regulation that he deems fit.