

ZIMBABWE ELECTORAL LEGISLATION : CHECK LIST AGAINST THE SADC PRINCIPLES GOVERNING DEMOCRATIC ELECTIONS

SADC Standard	Statute in Breach	Policy in Breach	Remedy for Breach of law	Remedy for Breach of policy	Progress
Clause 2 PRINCIPLES FOR CONDUCTING DEMOCRATIC ELECTIONS SADC Member States to adhere to the following principles:					
2.1.1. Full participation of citizens in the political process	Public Order and Security Act (POSA) s 24 – requiring notice of intention to hold a public gathering POSA. s. 25 – regulation of public gatherings. Note - any appeal against a police banning order is to the Minister of Home Affairs – an	POSA s 24 – the common police practice of interpreting this provision to mean that no gathering, including closed private party planning meetings, can take place without police permission, wrongly extending the application of this law POSA. s. 25 – regulation of public gatherings, exacerbated by tendency to impose onerous and unreasonable directions	Repeal the section Repeal the section	While the section remains in force interpret it restrictively – ie against any extension of police powers While the section remains in force interpret it restrictively	NIL NIL

	interested party POSA. s 26 – power to ban public gatherings	POSA s. 26 – power to ban public gatherings, exacerbated by police policy of giving free reign to ZANU (PF) meetings and banning opposition meetings on the flimsiest of pretexts, or for reasons outside the specified grounds.	Repeal the section	While the section remains in force interpret it restrictively against the abrogation of the constitutional rights of citizens	NIL
2.1.2. Freedom of association	POSA. ss. 24, 25 and 26 as above Non Governmental Organisations (NGO) Bill which requires NGOs to register with NGO Council under ZANU (PF) control (s.9) and imposes penalties for non-compliance - in breach of s 21 of Constitution which recognizes freedom of association	Police practice as above in respect of POSA ss 24, 25 and 26	Repeal POSA Do not enact NGO Bill. Reinstate old Private Voluntary Organisation Act	While the Act remains in force interpret it restrictively	NIL
2.1.3. Political tolerance	Access to Information and Protection of Privacy Act (AIPPA) – effectively excludes any robust expression of view point contrary to that of ZANU (PF) by a system of registering mass media services and accrediting journalists by a Media and Information Commission appointed and	Policy that denies registration and accreditation to the independent media and journalists	Repeal AIPPA	Apply even-handed policy to pro-ZANU (PF) and pro-opposition media houses and journalists. Allow the Daily News and Tribune newspapers to re-	NIL

	controlled by the Executive – imposing severe sentences on those who do not comply	Immunity from prosecution afforded to those who harass and intimidate the opposition		open Cease selective enforcement of the criminal law	
2.1.4. Regular intervals for elections	NIL	NIL	NIL	NIL	N/A
2.1.5. Equal access to state media for all political parties	The Broadcasting Services Act s. 4 places control of appointments to the all-powerful Broadcasting Authority of Zimbabwe Board in the hands of the President and his minister. Effectively this gives total control of the state media and the power to grant or refuse broadcasting licenses to ZANU (PF) There are no independent TV or radio stations in Zimbabwe as a result of this Act	The opposition has been refused access to the state media consistently at all times, and independent media groups have been refused broadcasting licenses.	Amend s. 4 of the Act to constitute the Board from genuinely independent and professional members	Change the policy that excludes the opposition from the airwaves Allow the establishment of independent TV and radio stations	NIL
2.1.6. Equal opportunity to exercise the right to vote and be voted for	The restriction of postal ballots under s. 71 of the Electoral Act to members of the armed forces, diplomats (and spouses) effectively disenfranchises millions of Zimbabwean citizens living abroad.	The practice of requiring members of the armed forces serving abroad to vote in the presence of their commanding officers mitigates strongly against the right to make a free choice in the election	Repeal the Section and permit citizens living abroad to exercise their constitutional right to vote in national elections	Change the practice to ensure that all postal ballots are carried out in conditions that ensure secrecy	NIL

	NGO Act s. 17 which prohibits foreign funding of NGOs concerned with issues of governance – ie including promotion and protection of human rights - effectively restricts citizens from receiving advice or assistance in order to know or exercise the right to vote and be voted for. Part IV of the Zimbabwe Electoral Commission (ZEC) Act prohibits all independent voter education The effect of s 17 as read with s 51 of the Electoral Act is to empower the military to decide the number and location of polling stations	The number and location of polling stations has a bearing on the voters' ability to exercise the right to vote freely. In the 2002 election very few polling stations were sited in urban areas, causing long queues and preventing hundreds of thousands from voting. In the rural areas the location of some polling stations (eg close to militia camps), was intimidating to opposition supporters. Giving authority to the military to make these decisions will only exacerbate this problem	Repeal the section Repeal Part IV of the Act Repeal s 17 of the Act	Give responsibility for deciding the number and location of polling stations to professional, non-partisan individuals and make them accountable to the electorate	NIL NIL
2.1.7. Independence of Judiciary & impartiality of electoral institutions	The mode of appointment of Supreme Court and High Court Judges under the Constitution (s. 84) makes them susceptible	The policy of awarding valuable farms from the fast-track land resettlement programme to senior members	Repeal the provisions relating to appointment, and enact legislation to	Reverse the policy of giving valuable hand-outs to judicial and	NIL

	to political pressure through the all-powerful office of the President. The appointment of members to the Electoral Supervisory Commission (ESC) under s. 61 of the Constitution, of the Delimitation Commission under s. 59 of the Constitution, of the Zimbabwe Electoral Commission (ZEC), and of the Registrar-General are all done effectively by the President - thus compromising the independence and impartiality of all Zimbabwe's electoral bodies. The Electoral Act s 17 provides for the secondment of staff to supervise and run elections from the Defence Forces, the Police Service and the Prison Service. This seriously jeopardizes the integrity of the whole electoral process	of the Judiciary, civil servants, military personnel and officers of the ESC and ZEC severely compromises their independence. (The lack of independence and impartiality of the Judiciary was clearly demonstrated by the unreasonable delays in hearing election challenges for the 2000 parliamentary elections and 2002 presidential election). The Defence Forces, Police Service and Prison Service have been strongly politicized over the last 4 years, with the result that they no longer enjoy the respect or confidence of voters. Hence they cannot now be seen as impartial arbiters in the electoral process	ensure the genuine independence of all judicial and electoral officers Repeal s. 17 and provide non-partisan electoral officers	electoral officers End the policy of politicization and build a truly professional service	NIL
2.1.8. Voter education	NGO Act s 17 – which prohibits foreign funding of NGOs in respect of “issues of governance” will remove funds previously available for voter	Even before the NGO Act comes into force the police are already harassing and intimidating qualified professionals who seek to	Repeal the Section	Cease obstructing voter education by those quailed and experienced to provide it	NIL

	education, eg. through Zimbabwe Election Support Network (ZESN) Part IV of the ZEC Act prohibits all independent voter education	provide voter education	Repeal Part IV of the ZEC Act		
2.1.9. Acceptance and respect of valid election results by political parties		Through the lawless acts of the youth militia and other state agents ZANU (PF) has encouraged the growth of a culture of violence and intolerance which mitigate against the acceptance of valid election results		End the policy of political control through lawlessness and violence Also end the policy of impunity for unlawful acts perpetrated against the opposition	NIL
2.1.10 Challenge of election results as per law of the land	The Electoral Court established by s 158 of the Electoral Act to hear and determine election petitions and consider electoral offences, is not independent of the Executive. (The power to appoint judges to this Court being given to the Chief Justice whose judicial independence is suspect)	The inordinate delays of the Judiciary in processing election challenges under the 2000 parliamentary elections and 2002 presidential elections were in breach of the spirit and letter of Zimbabwe's election laws, and called further into question the Judiciary's impartiality	Repeal this Section and make provision for a truly independent Court to determine election challenges and adjudicate on electoral offences.	Judges appointed to act promptly, efficiently and without bias	NIL
Clause 4 GUIDELINES FOR THE OBSERVATION OF					

ELECTIONS SADC Member States to be guided by the following guidelines:					
4.1.1 Constitutional and legal guarantees of freedom and rights of citizens	POSA s. 15 – publishing or communicating false statement prejudicial to the State – contrary to the freedom of expression ... New provisions in the Criminal Law (Codification and Reform) Bill which impose a 20 year term of imprisonment for making a false statement POSA s. 16 – making abusive statement, even if true, about the President a criminal offence – contrary to freedom of expression protected by s 20 of the Constitution POSA. ss 24, 25 and 26 – concerning notification, regulation and banning of public gatherings, infringing many rights protected by the Constitution	Policy of illegal arrests/ imprisonment of those making statements that cause embarrassment to ZANU (PF) whether statement true or false In practice the police tend to give the widest possible interpretation to these provisions, thereby extending their already considerable powers and further infringing	Repeal the section Repeal the section Repeal the section Repeal the sections	While the section remains in force apply it impartially and only with respect to false statements that are genuinely prejudicial to the State rather than embarrassing to ZANU (PF) While these sections remain in force, they should be interpreted restrictively	NIL NIL NIL NIL

		civil liberties			
4.1.2 Conducive environment for free, fair and peaceful elections	POSA. sections 15 (publishing false statements prejudicial to the State) 24 (notification of public gatherings) 25 (regulation of public gatherings and 26 (banning of public gatherings)		Repeal the sections	While the sections remain in force interpret them restrictively	NIL
	AIPPA effectively provides ZANU (PF) with the means to eliminate a free press. At the same time ZANU (PF) dominate the state media, achieving a massive and unfair advantage over the opposition	The independent press have been subjected to massive intimidation, and the country's only independent and largest circulation daily paper, the Daily News, has been threatened, bombed and finally closed	Repeal the Act	Reverse the policy of trying to silence the independent media	NIL
4.1.3 Nondiscrimination in voters' registration	The appointment of members to the Electoral Supervisory Commission, the Chairperson of the Zimbabwe Electoral Commission, members of the Delimitation Commission and the Registrar-General of Voters are all effectively done by the President and thus partisan, giving voters grave cause for concern re an impartial registration process	By his own admission the Registrar-General is partisan, being a member of, and compliant to, ZANU (PF). All previous voter registration exercises under his supervision have been seriously flawed.	Amend the electoral Acts to provide for the appointment of non-partisan electoral officers	Replace the Registrar-General with a non-partisan appointee	NIL
		Voters have been arbitrarily removed. Thousands of dead people's names are still on the voters' roll. It is harder to register in urban areas than it is in rural areas. In rural areas in order to register opposition supporters must have the		Remove the discriminatory restrictions to register. Compile a new voters' roll in a non-partisan and	NIL

		support of traditional leaders, who are now paid by the government		credible way	
4.1.4 Existence of updated and accessible voters' roll	Section 21 of the Electoral Act only allows a printed (interpreted by the Supreme Court as a paper, not electronic) copy of the voters' roll despite the fact it is available in electronic format	The voters' roll is neither updated nor accessible to voters. Experience in the 2000 and 2002 elections revealed that the roll used by the Registrar-General is seriously inaccurate and corrupted The Registrar-General has consistently refused to provide the opposition with an updated electronic version which would enable them to check its accuracy in an efficient manner. It costs Z\$ 12 million for each copy of the voters' roll and is an enormous volume of paper, making it effectively inaccessible	Amend the section to oblige the Registrar-General to provide all parties with an electronic copy of the voters' roll	Appoint non-partisan electoral officers in whom voters can have confidence Allow all parties to have access to electronic computer copies of the voters' roll	NIL NIL
4.1.5 Timeous announcement of election date	NIL	NIL	NIL	NIL	N/A
4.1.6 Any funding of political parties to be transparent and based on agreed threshold as per law of the land	Political Parties (Finance) Act s 14 - prohibits foreign funding for political parties and candidates.	Because of the partisan nature of the Attorney General and the Police any breach of the Act by ZANU (PF) is not investigated or exposed	Repeal the Section in so far as it prohibits funding by Zimbabweans in the Diaspora	Enforce a clear distinction between the State and ZANU (PF) in relation to the use of State resources	NIL

	The prohibition of foreign funding per se is not objectionable but “foreign funding” includes the prohibition of funding by non-resident Zimbabwean citizens, in violation of section 21 of the Zimbabwean Constitution.	Furthermore, the prohibition of foreign funding is more of a disadvantage to the opposition than to ZANU (PF) since the latter uses State resources such as the State media, transport & communications freely for campaigning purposes Corrupt use by ZANU (PF) of its powers of patronage secures it an unfair advantage in obtaining funds	Impose an effective and enforceable requirement for disclosure of funding on all parties	Take strong and effective measures against patronage and corruption	
4.1.7 Polling stations to be in neutral places	The Electoral Act s 51 requires only that polling stations be established at “convenient” places, determined solely by constituency election officers, and even permits a polling station outside the boundaries of the constituency Given that section 17 of the Electoral Act allows the military to be constituency election officers the siting of polling stations may be made by the military.	Experience has shown in the 2000 and 2002 elections that polling stations are often set up in locations in which the opposition are exposed to serious danger of intimidation and violence, and voters do not feel free to vote for the party of their choice The military are so closely identified with ZANU (PF) that they are not regarded as impartial	To comply with the SADC standard care should be taken to site polling stations in neutral venues – in particular away from militia camps, police stations and army barracks Repeal section 17	Take effective measures to restore voter confidence in the integrity of the electoral process	NIL
4.1.8 Counting of the votes at polling stations	Section 83 of the Electoral Act gives electoral officers (who may be soldiers appointed in				NIL

	terms of s 17) the power to exclude party representatives from polling stations for even trivial breaches of a code of conduct. Section 84 of the Act allows votes to be counted in the absence of party representatives. The combined effect of this is to give the military power to exclude opposition representatives, monitors and observers and then to proceed with the count	In the 2002 election many opposition party representatives were effectively prevented from being present at the count	Repeal section 84		
4.1.9 Mechanism to assist planning and deployment of observation missions	NIL	NIL	NIL	NIL	N/A
4.1.10 SADC observation missions to be deployed at least two weeks before voting day	NIL	NIL	NIL	NIL	N/A
Clause 7 RESPONSIBILITIES OF MEMBER STATES HOLDING ELECTIONS					

7.1 Take necessary measures to ensure scrupulous implementation of above principles – as per constitutional processes of the country					
7.2 Establish where none exist appropriate institutions where issues such as codes of conduct, citizenship, residency ... and compilation of voters' registers, would be addressed	Zimbabwe does not have any such “appropriate institutions”. No consultation took place outside ZANU (PF) on any such issues. The Zimbabwe Electoral Commission Bill received an adverse report from the Parliamentary Legal Committee but their objections were over-ridden		Government should seek a consensus on the “appropriate institutions”		NIL
7.3 Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections	(1) Section 61 of the Constitution establishes the Electoral Supervisory Commission (ESC) as the supreme Electoral body. It is entirely appointed by the President without any input from or say given to the opposition parties or civic society. (2) Section 59 of the	Again the experience of the 2000 and 2002 Polls – under the same Registrar-General and similar electoral bodies – proved that they are not impartial, competent or ultimately accountable to the voters. In fact they have shown gross bias in favour of ZANU (PF)	Repeal the amend the relevant sections of the Constitution, Electoral Act, and ZEC Act to comply with SADC standards		NIL

	Constitution gives the President absolute discretion to choose the members of the Delimitation Commission without any say given to opposition parties or civic society. (3) Section 18 of the Electoral Act creates a Registrar-General of Voters who is a civil servant effectively appointed by the President (4) Section 3 of the ZEC Act allows the President to appoint its Chairperson in his absolute discretion, again without any input from opposition parties or civic society. While the opposition has some input on the selection of the remaining 4 members, the ZEC is a body subservient to the ESC in terms of section 61 (6) of the Constitution (5) Section 14 of the Electoral Act creates an “Observers’ Accreditation Committee” whose members are the				
--	---	--	--	--	--

	Chairperson of the ESC, appointed by the President, and 4 other persons nominated by the Office of the President and the Ministers of Justice, Foreign Affairs and Information. This committee, an entirely partisan body, is given absolute discretion as to who can observe an election In summary none of Zimbabwe's electoral bodies are impartial, all-inclusive or accountable.				
7.4 Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression and campaigning as well as access to the media on behalf of all stakeholders, during electoral processes as under 2.1.5.	Human and civil liberties are severely infringed by: ZEC POSA AIPPA NGO Act referred to above The opposition have been and are still denied access to the State media, and the independent media has been closed down in terms of these laws. Voter education by civil society is effectively banned by the ZEC Act	In addition to the statutory infringements of civil liberties the opposition has to contend with the abuse of legal process by the police eg false charges illegal arrest and imprisonment and the selective application of the law against their members and supporters. The right for the opposition to campaign is severely limited by the presence of militia and other lawless elements, plus the regular banning of their meetings by the police.	Repeal those laws that are unconstitutional or infringe human and civil liberties It is ironic that ZANU (PF) have introduced recently a range of laws, ostensibly to comply with SADC standards, but which in fact make Zimbabwe even further in breach of SADC principles	The politicization of the police should be reversed, and a new policy of political tolerance, respect for all, and observance of the law inculcated in a professional force	NIL

	Section 142 of the Electoral Act requires the name and address of the printer of all posters, pamphlets and other documents used in campaigning to be recorded on the face of the document. Section 150 of the Act makes it an offence to place any bill, poster or other document on any building, wall etc without the consent of the owner/occupier	Whilst in a normal environment this would not be sinister in the context of the harassment and violence suffered by the opposition over the past five years, these provisions are very intimidating	Repeal section 142 Repeal section 150		
7.5 Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or other illegal practices throughout the whole electoral process ...	The NGO Act which requires registration under a Council effectively under the dominance of ZANU (PF), will lead to the closure of those NGOs concerned with human rights abuses, which in the past have been the most effective in exposing fraud, rigging and other illegal practices. S 17 of the Act which prohibits foreign funding of any such organizations is a further measure which will make the exposure of electoral fraud more difficult in the future AIPPA represents a major blow to the free press, and by the same token removes one of the	The existence of the youth militia and other violent elements which enjoy the support and protection of ZANU (PF) militates strongly in favour of fraud, rigging, intimidation and violence	Do not enact the NGO Bill Repeal AIPPA	Disband the youth militia, and remove the (unofficial) immunity from prosecution afforded to violent and lawless elements at the instigation of ZANU (PF) Allow the Daily News and Tribune newspapers to reopen	NIL NIL

	most effective deterrents to fraud, rigging and electoral mal-practice Sections 84 and 83 of the Electoral Act which allow counting to take place in the absence of party representatives opens the door to vote rigging		Repeal the sections		
7.6 Ensure the availability of adequate logistics and resources for carrying out democratic elections		The government has repeatedly rejected offers of logistical support from international bodies (including the UN ?) towards the holding of democratic elections		Reverse this policy and cooperate with all those seeking to ensure a democratic election	NIL
7.7 Ensure that adequate security is provided to all parties participating in the elections		To date lawless elements in ZANU (PF) and their agents, including the militias, and State security agents, have rendered certain constituencies no-go areas for the opposition. Members of the opposition are repeatedly subjected to violence and abuse, while those responsible are not brought to justice		Introduce effective and impartial policing of all areas. Also end the selective application of the criminal law against those who perpetrate violence	NIL
7.8 Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of	There is no provision in the new Electoral Act enabling this	To date government has done nothing to facilitate the deployment of representatives of the opposition at polling and counting stations. On the contrary it has seriously obstructed the opposition in	Amend the Electoral Act to facilitate this obligation	Reverse this policy, and open up polling and counting stations to representatives of all parties and to a credible	NIL

political parties and individual candidates at polling and counting stations and by accrediting national and/or other observers/monitors		deploying representatives as required. Government policy is also against the deployment of observers and monitors except those deemed to be sympathetic to the ruling party		international cross-section of observers and monitors	
7.9 Encourage the participation of women, disabled and youth in all aspects of the electoral process as per the national laws	Sections 59 and 60 of the Electoral Act give the presiding officers, who can be members of the military in terms of s 52 (2) (b), the power to assist and mark the ballot on behalf of illiterate or incapacitated voters. A police officer must also be present	The military and the police are not regarded as impartial and therefore voter secrecy for disabled people is severely compromised	Amend the Electoral Act to allow a person nominated by the illiterate or disabled voter to assist him or her to vote		NIL
7.10 Issuing invitation ... to SADC 90 days before the voting day in order to allow an adequate preparation for the deployment of the Electoral Observation Mission		If the parliamentary elections take place in March 2005 as stated by the Executive, they are already in breach of this 90 day provision		Issue an invitation to SADC publicly and forthwith	NIL
7.11 Ensure freedom of movement of the members of the SADC Election Observers	NIL	NIL	NIL	NIL	N/A
7.12 Accreditation of the members of the SADC Election Observation Mission on a non-	In direct breach of this requirement section 14 of the Electoral Act gives the "Observers" Accreditation		Repeal section 14		NIL

discriminatory basis	Committee” absolute power to exclude individuals from within SADC or elsewhere				
(Clauses 7.13 to 7.19 concern the duties of the host government to the SADC Election Observation Mission to facilitate its work)					
KEY TO ACTS OF PARLIAMENT CITED ABOVE AIPPA NGO Act POSA ZEC ACT	<u>Full Title</u> Access to Information and Protection of Privacy Act (No 5 of 2002) Non Governmental Organizations Act (still to be signed into law and gazetted) Public Order and Security Act (No 1 of 2002) Zimbabwe Electoral Commission Act (no 22 of 2004)	The full text of these and other relevant Acts may be seen on the following websites: SOKWANELE www.sokwanele.com ZWNEWS: www.zwnews.com (In the case of the NGO Act which is yet to be signed into law, the Electoral & Zimbabwe Electoral Commission Acts, a definitive version of which are still awaited, these will be posted to the websites as soon as available)			

This document produced by **SOKWANELE ZVAKWANA – ENOUGH IS ENOUGH**

A VOICE FOR THE TRUTH

A VOICE FOR FREEDOM AND DEMOCRACY

A VOICE FOR JUSTICE AND PEACE

A VOICE FOR NON-VIOLENT CHANGE

January 2005