

ZIMBABWE ELECTION SUPPORT NETWORK



A COMMENT ON THE ZIMBABWE ELECTORAL COMMISSION (ZEC) REPORT ON THE 2008 GENERAL ELECTIONS 29 MAY 2009

PREAMBLE

The Zimbabwe Electoral Commission (ZEC) released its report on the 2008 General Elections. The Zimbabwe Election Support Network (ZESN) received this document with much anticipation.

The Zimbabwe Election Support Network (ZESN) is a coalition of 30 non-governmental organisations formed in 2000 to co-ordinate civil society activities pertaining to elections. The Network was involved in the observation of the 2008 elections with the deployment of long term observers to 210 constituencies from December 2007. This was followed by the accreditation and deployment of over 8000 observers for the observation on Election Day. ZESN therefore systematically scrutinized and interrogated all electoral related issues during the election period. The Network also submitted a report to ZEC outlining its findings.

ZEC REPORT

The ZEC report prepared in accordance with section 12 of the Zimbabwe Electoral Commission Act [Chapter 2:12], outlines the activities of the Commission and other stakeholders before, during and after the elections. The report covers the detailed aspects of election management dwelling much on the legal provisions and a few challenges encountered. The ZEC report was circulated relatively late given the fact that the election was concluded in July, 2008.

ZEC over saw the preparation and conduct of various processes from voter registration to delimitation, inspection of voter's roll, set up of polling stations, accreditation of observers and journalists, postal balloting, polling verification, counting and tabulation of votes including the recount of 23 constituencies in the first election. A multi-party liaison committee was established to deal with electoral disputes. According to the police, the campaign period prior to the run off election was generally peaceful save for some parts of Mashonaland Central and East provinces where incidents of interparty violence were reported. The Commission also reported that it rejected the MDC-T presidential candidate's attempt to withdraw from the election as being out of time. It however does not address the reasons put forward for the withdrawal.

In respect of the 2008 harmonized elections and the presidential run-off election, it is the view of the Electoral Commission despite numerous logistical and financial challenges, it discharged its constitutional mandate to the best of its ability. An inclusive and transparent election programme was guaranteed through consultation and collaboration with stakeholders in the preparations and conduct of polling processes. The Commission is therefore satisfied that it conducted both elections "efficiently, freely, fairly, transparently and in accordance with the law".

ZESN OBSERVATION FINDINGS

While there was improvements over past elections (for example less incidents of overt violence), the pre-election environment continues to fall short of the minimum conditions outlined in the *SADC Principles and Guidelines Governing Democratic Elections*. In particular, concern remains about the lack of political tolerance, limited access to state media, and use of state resources. These problems provide an unfair advantage for the ruling party of the day.

ZESN was encouraged that amendments were made to the Electoral Act and other relevant pieces of legislation such as the Public Order and Security Act (POSA), Access to Information and Protection of Privacy Act (AIPPA) and the Broadcasting Act. However, ZESN is concerned that these reforms were piecemeal rather than comprehensive and that they were enacted without opportunities for citizens' input. Further, on the eve of the election some of the reforms were negated by presidential proclamation. For example, the reform to require police officers to be stationed 100 metres from polling stations was reversed and again police officers were to be located inside polling stations leading to concerns about the secrecy of the vote.

Election day processes took place largely without serious problems. However, serious concerns were noted about the result's management process, particularly the recounting of ballots and inordinate delay in the announcement of the presidential results in the March election.

The run up to the second round of the Presidential election was so fraught with politically motivated violence and intimidation that 27 June poll cannot be deemed reflective of the will of the people of Zimbabwe.

Through the election observation process, ZESN managed to collect vital information that is already in the public domain. This paper seeks to interrogate issues and findings raised by ZEC in comparison to the Networks' own election observation findings, as well as highlighting areas for reform. It is critical to highlight this forms part of organization's mandate which seeks to complement the important work of the Electoral Commission through constructive criticism and engagement. It is in this light that ZESN makes the comparative analysis below:

ISSUES	ZIMBABWE ELECTION (ZEC)	COMMISSION	ZIMBABWE ELECTION SUPPORT NETWORK (ZESN)
Legal Framework • The Constitution of Zimbabwe • The Zimbabwe Election Commission Act	The report outlined the legislative provisions relating to the appointment and composition, functions and funding of the Commission, as well as		There existed restrictive legislation that has an impact on the electoral process such as AIPPA, POSA and the BSA that prevented the conduct of credible elections.

• The Electoral Act • Statutory Instruments	electoral systems used for parliamentary and presidential elections Electoral reforms enacted through Constitution of Zimbabwe Amendment Act No 18 and Electoral Laws Amendment Act No.17 were also highlighted. These included reduction of presidential term, changes to method of filling vacancy of post of president, harmonization of presidential, parliamentary and local authority elections, constitution of the House of Assembly and Senate, assumption by Commission of role of delimitation of electoral boundaries and monitoring of news media during election period.	There existed contradictions between Section 110 of the Electoral Act and the Second Schedule of the same act resulting in uncertainty during the pre-election period especially when the ZEC Chairperson refused to provide legal clarification at a Stakeholders' meeting on the 18th March 2008. Changes were made to the electoral legislation through the Presidential Powers Temporary Measures Act with the knowledge of the Commission. These changes related to the role of police in polling stations on Election Day and reversed reforms made in Electoral Laws Amendment Act No.17.	There existed contradictions between Section 110 of the Electoral Act and the Second Schedule of the same act resulting in uncertainty during the pre-election period especially when the ZEC Chairperson refused to provide legal clarification at a Stakeholders' meeting on the 18th March 2008. Changes were made to the electoral legislation through the Presidential Powers Temporary Measures Act with the knowledge of the Commission. These changes related to the role of police in polling stations on Election Day and reversed reforms made in Electoral Laws Amendment Act No.17.
Political Environment	According to the police the pre-election period remained generally peaceful. According to the police, the campaign period prior to the run-off was generally peaceful, save for some parts of Mashonaland Central and some parts of Mashonaland East where some instances of interparty violence were reported.	ZESN notes with concern that in its entire report, ZEC devotes no more than a few lines to the assessment of the environment in which the elections were held.	ZESN notes with concern that in its entire report, ZEC devotes no more than a few lines to the assessment of the environment in which the elections were held.
The socio-economic environment	The elections were held under difficult conditions due to economic hardships which impacted negatively on the electorate and on the operations of the Commission.	Threats were issued and publicized by the heads of the armed forces that they would not salute a president with no war credentials. Other heads of the forces openly said they supported one political party. After the March election, one of the contestants to the Run-off changed their political tone to that of war and political cleansing.	Threats were issued and publicized by the heads of the armed forces that they would not salute a president with no war credentials. Other heads of the forces openly said they supported one political party. After the March election, one of the contestants to the Run-off changed their political tone to that of war and political cleansing.

		Suspected supporters of one of the contestants were abducted, tortured, raped and some were even killed. In the extreme cases reported, identity cards were confiscated; livestock and property looted or burnt together with homesteads, food stocks and fields were harvested after victims had fled.(documented evidence of acts of violence is already in the public domain) ZEC totally ignores the fact that a number of international observers from the continent and the region in particular decided to pull out of observing the Presidential Run-off. Some of the acts of violence were reported by the international media when supporters of one of the contestants were attacked when they tried to congregate in the capital city a few days before June 29 2008. ZESN lost one of its observers to politically motivated violence while several hundreds of observers were displaced owing to violence in one province alone.
Voter Registration	Process went well starting from the 18th of June to August 2007 and a mop up exercise was conducted from the 26th of October to the 15th of November 2007.	ZEC was not fully in charge of the registration process. There was not enough publicity on the process prompting the Commission to succumb to stakeholders demand for a mop up exercise. Names of deceased persons remained on the roll and ZEC should have carried an extensive overhaul of the voters' roll ahead of the election. Reports were received of continued voter registration after the end of the process in Mashonaland provinces but only for one political party. Up until the 18th of March 2008 neither ZEC nor the Registrar of Voters were in a position to state the final number of registered voters for

			the 2008 elections. (Closure of the registration exercise was on the 13 th of February 2008)
Delimitation of electoral boundaries	Process was undertaken from the 5 th of December 2007 and completed on the 10 th of January 2008.		There were contradictions between the numbers in the Delimitation Report and those in the voter registration exercise. There were concerns of potential rural overrepresentation due to constituency boundaries.
Proclamation of Elections	The President proclaimed the date of the election on the 21 st January 2008 together with those for the sitting of the nomination court and the inspection of the voter's roll.		It is undemocratic for an election candidate to set dates for the same election that they will contest as it give an unfair advantage in terms of control over the election calendar. A more palatable approach would be for the electoral calendar to be clearly spelt out in the legislative framework, and for the responsibility for setting election dates to lie solely with the Electoral Commission.
Voter Education	Voter education was conducted at various stages of the election process. At the last stage, the Commission deployed 4 educators per ward.		Voter educators in some of the wards were partisan in their conduct. Voter education activities were inadequate. A survey carried out in some of the wards indicated that no voter education took place at all in some rural and remote areas.
Nomination of Candidates	Nomination of candidates went as planned with candidates successfully submitting their forms.		There were reports of potential candidates allegedly being barred from accessing the nomination centres. Some of the centers were reported to have been barricaded by youth militia and in the extreme cases it was further alleged that potential candidates either had their papers stolen or were abducted only to be released after the closure of the nomination court.
Security	The ZRP was visibly present in all the constituencies during the election period.		There were countless reports of alleged state sponsored acts of violence throughout the country with victims that reported cases of violence being locked up by the police and being exposed to violence in police detention.
The Media	Overall, the media found it challenging to comply with the regulations and in		There was evident lack of press freedom and an independent media.

	the main, editorial policies influenced the content of their publications on electoral issues There was a noticeable change in the trend of the reporting by the media between March and June 2008.	There was rampant use of hate language by the state media, both electronic and print in the June 2008 election. There were reports of denials by the state media to flight adverts of one of the contestants in the Presidential Run-off. There was a systematic targeting of civic groups such as ZESN involved in elections with negative publicity clearly calculated and intended to malign reputation ahead of any assessment which may be made. This was particularly prevalent in the state print media.
Accreditation of Observers	Accreditation commenced in February 2008 and a total of 8211 domestic observers were accredited, 251 foreign, 650 local journalists and 48 foreign journalists. For the June election, 1099 local observers, 599 foreign and 326 journalists were accredited.	ZEC was not totally in control of the accreditation process as the Commission had to wait for the Ministry of Justice and the Ministry of Foreign Affairs to invite observers for accreditation hence the delays. The centralization of the accreditation process made the exercise inhibitive in terms of logistics. Accreditation started too close to the election and this did not allow more observers to be accredited. ZEC does not explain the drastic decline in the number of observers during the Presidential Run-off. (from 8211 in March to only 1099) For the Presidential run-off invitations to observe were received only a week before election day making it impossible for observers to be mobilized to travel for accreditation at the two centres. There seemed to have been a deliberate attempt to cut down the number of observers from domestic groups by the Ministry of Justice and the explanation given was unconvincing considering the provisions of the law says and precedent considering the numbers accredited for the first election.
Polling Stations	In consultation with relevant stakeholders, 9111 polling stations were established and published in the media	More polling stations were placed in rural areas considered to enjoy a huge support base for one of the contestants.

	as required by law. A full list of the stations was made available in soft copy.	On polling day, some polling stations that had not been announced appeared in certain areas, again considered to be strongholds for one of the contestants.
Polling Postal Ballots	The Commission received 4350 applications for postal ballots from ZRP for the March election and 3889 were awarded ballot papers. In the June election the Commission received 48410 applications for postal ballots from diplomatic missions, members of the disciplined forces, and ZEC staff of which 33382 were successfully processed.	ZEC made no attempt to explain the increase in the number of applications of postal ballots during the June election. The secrecy of the postal voting was reportedly compromised and video footage of such compromise was made public and yet no explanations are given by ZEC. Further there is no mention of any efforts by the Commission to investigate these allegations, nor recommendations for reform of the manner in which postal ballots are administered. There exists no oversight by ZEC over the postal voting process. Voting in the barracks is reported to have been conducted by uniformed forces and not ZEC. There are apparently no measures against double voting on election day. (Persons could vote using postal ballots and then cast their ballots again on election day) There were no special provisions for the bedridden or handicapped to enable them to access the polls.
Voting	The process went largely well with only one ward failing to conduct voting owing to a lack of ballot papers. A by-election will be conducted in due course.	Incidences of intimidation were reported at almost all polling stations throughout the country during the June Presidential Run-off and rural constituencies were the worst affected. There were reports of people going to the wrong polling stations after the delimitation process had moved some boundaries. Incidences of observers being denied access to polling stations were reported in Makonde constituency. Most polling stations managed to open on time and in most of the cases all voting materials were available in the majority of the

Verification, Counting and Collation of Results	Verification and counting processes was administered at polling station level in the presence of candidates or their election agents and observers. Verification and collation took place after presiding officers had submitted their polling returns to the ward. The Commission completed the verification of Presidential results on the 1st of May 2008.	stations. There were noted inconsistencies in the application of the legal requirement to post results outside polling stations and constituency centers. As by 1 April 2008, results in Zimbabwe North, Zimbabwe West and Makonde constituencies had not been posted outside as per legal requirements. Recounts While ZESN acknowledges that some inconsistencies between the results at the time of the election and the recount were exposed throughout the 23 constituencies, it is our considered view that the majority of such inconsistencies are largely a result of human error. It is clear that ZEC made an attempt to meticulously carry out this process. However, some of the issues which cast aspersions on the integrity, independence and professionalism of the Commission and its staff included the chain of custody of ballot boxes after March 29th 2008. This is validated by the missing seals and locks and damaged boxes observed during the recount. Further, there was the issue of who was the complainant and on what grounds were the recounts ordered. No specific explanation or evidence has been given for the affected 23 constituencies. In its report the Commission merely states that recounts were requested and granted without given a further details. This should have been directly addressed as there was contradictory communication to the public, and the Commission was quoted as stating that it had ordered recounts of its own accord. This came after some candidates who were alleged to have lodged complaints, denied having done so.
Results Management	The Chief Election Officer, as the Returning Officer for the Presidential election had previously agreed that each party would collate its figures and converge later to compare. However if differences were to emerge, the Chief Elections Officer and the representatives of the candidates	There was complete information black-out on Presidential results for five weeks yet previous elections had results being announced within twenty four hours after the closing of polls. The National Command Centre was quickly disbanded with no explanation and it was not made public where activities around verification or results were being conducted.

	would proceed to look into where differences lay.	
Announcement of Results	The Chief Election Officer made public announcements of the House of Assembly and Senate constituency results beginning on the 1st of April 2008 through to the 10th of April 2008. The causes in the delays in announcing the Presidential results were 1. The need to go back to source documents to verify the result from provincial and other collation centers. 2. Logistical challenges. 3. The Recount Exercise	Information pertaining to the ground upon which the vote recount was ordered was sketchy as well as conflicting. The question was whether these complaints were lodged within the confines of Section 67A of the Electoral Act which state that a written request should be submitted within 48hrs of the declaration of a candidate as duly elected. (Presidential Recounts were conducted before any candidate had been duly declared as elected) The withholding of results by ZEC can be directly linked to the increase in tension in Zimbabwe and the subsequent exacerbation of the reign of terror in the rural and later, urban areas of the country.
Complaints and Appeals Mechanisms	The MDC T petitioned the High Court to stop the Commission from conducting the recounts and to compel it to announce the results of the March 2008 Presidential election. Over 100 petitions challenging the March 2008 results were filed with the Election Court citing the Commission as a party. The matters were dismissed after the Commission raised a preliminary point of misjoinder. Justin Chiota and Daniel Shumba made constitutional applications in which they sought a declaration that their papers were improperly rejected by the nomination court. The Supreme Court ruled in their favour.	The courts did not make timely rulings on a number of issues namely, denying jurisdiction over the issue of the voters' roll, delays in the bail hearing of MDC T MPs and their Secretary General and the failure to make a ruling on the production of ZEC results of the election. There is further lack of a comprehensive complaints and appeals procedure by ZEC. The multi-party liaison committees were largely ineffective. Political parties failed to follow procedure when they filed petitions with the electoral court resulting in the dismissal of all court petitions from both ZANU PF and MDC T.

	Justin Chiota and Daniel Shumba lodged another constitutional application with the Supreme Court to have the March 2008 presidential election set aside on the basis of the declaratory order they had obtained. The application is still pending before the same court. 131 electoral officials were arrested across the provinces on allegations of electoral fraud during the March 2008 elections.	
Post election Environment	The ZEC report makes no reference to the post election period.	The election results were contested and a negotiated settlement to bring about an inclusive government was reached.
Stakeholder concerns	Mobile voter registration was biased in favour of rural areas. There were less mobile registration teams in the urban areas than rural areas because of the proximity of the urban electorate to the normal registration facilities. Generally, voter registration and the inspection of the voters' roll are continuous exercises in Zimbabwe. Any person wishing to register as a voter or to inspect the voters' roll is free to approach the offices of the Registrar-General of Voters during working hours. It has become practice that whenever there is going to be a general election, the office of the Registrar-General of Voters conducts nationwide outreach registration and inspection of the voters' roll exercises.	There is a real need for the Commission to take proactively and undertake voter registration in an inclusive manner to ensure citizen's full enjoyment of the right to vote. The process should be brought within the easy reach of every citizen including alternative methods such as postal and electronic means. ZESN encourages the full use of ICT to facilitate this and other processes. ZESN continues to propose the total removal of the function of the Registrar General of voters'. Contrary to the present scenario, ZEC should be solely responsible for the process of voter registration. It is ZESN's considered view that the issue of the voter's roll continues to be a bone of contention in each successive election. It would be prudent to undertake a comprehensive overhaul of the roll, including the issuing of voter registration certificates or cards. It is also important for various options to be considered such as automatic registration.

	Some applicants were denied registration. The process of voter registration is subject to the specifications outlined in the Constitution of Zimbabwe and the Electoral Act [Chapter 2:13]. In terms of the law, only citizens are allowed to register as voters subject to meeting the requisite residential qualifications. The law provides for recourse to the courts of law for aggrieved persons. There were ghost voters on the voters' roll. In terms of the law, deceased persons can only be removed from the voters' roll upon the notification of a death of a person being made to the office of the Registrar-General. Therefore, as long as a person's death is not reported and registered, his or her name shall not be removed from the voters' roll. In any event, the law allows any person to take written notes of any anomalies on the voters' roll, thereby providing the public an opportunity to bring the anomalies to the attention of the Commission. Moreover, in terms of Section 28 of the Electoral Act, a voter may object to the retention of any name on the voters' roll. There were more polling stations allocated to rural than urban areas. There were more polling stations in the rural areas in order to reduce the	In addressing these concerns, there is no evidence of the Commission's use of statistics, if any, gathered during the process of registration. This would have demonstrated that ZEC is seeking solutions to these problems. Some obvious questions have not been attended to. What were the reasons to denial of registration? Is there any spatial distribution trends emerging? How can voter and civic education be used to address these problems? It is important to reemphasize the right of citizens to vote and responsibility of the Commission, supported by the state to make registration a deliverable as part of its mandate. Even the most rudimentary analysis of the voters' roll by various stakeholders shows that it requires cleaning up like all databases. Evidence shows that even the basic removal of persons has not been undertaken. Efforts should be made by the Commission to scientifically test the accuracy of the roll for itself. Again this requires the Commission to be proactive. The Commission has made no effort to demonstrate how the number and distribution of polling stations was arrived at including considerations such as population distribution and density. The issue of complaints regarding the location of some polling stations is also not addressed.
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	walking distance in view of the scattered nature of the settlements. On the other hand, the Commission established multiple polling stations in some urban centres to cater for the higher population densities. The electorate was intimidated by the presence of police officers at polling stations during voting. In terms of the law, the police do not play an active role in the voting process except when called upon to witness electoral officers assisting a voter or to maintain law and order.	The role of the police and security agents needs to be examined in the broader political context where service chiefs demonstrate partisan loyalties, politicization of security forces and the lack of confidence and fear which characterize their relationship with the public. This was the primary driving force behind the reforms put forward in the Electoral Laws Amendment Act No 17, before their summary reversal. Fear cannot be measured, neither should it be dismissed as the Commission has done. In the Zimbabwean context, the role of the police should be kept at the barest minimum required for the maintenance of order.
	The Commission failed to manage the allocation of airtime to contesting parties and candidates by the public broadcaster. The Commission does not manage the allocation of airtime to contesting parties by the public broadcaster; it monitors and may intervene if a formal complaint is lodged by an aggrieved party. Some voter educators deployed by the Commission were partisan. The Commission received such reports but was unable to verify them. That notwithstanding, the Commission does not condone such behavior. Any proven cases will be dealt with.	It is imperative that the Commission takes a leading role in ensuring equitable access to the media by all contestants. The essence of its monitoring role is to ensure just this. Creativity is required with the ambit of the existing law, not wait for complaints. Stakeholders further look to the Commission to assess the media access and coverage as contributory factors to the credibility of the electoral process. ZEC should have monitoring mechanisms in place to ensure the rights of the electorate are protected. The Commission should adopt a robust and proactive approach to protection of voters' rights. The general manner in which the Commission's report has addressed stakeholder concerns appears to be cursory, dismissive and insincere.

	In some constituencies, elderly voters were denied the right to vote. The Commission received such reports but was unable to verify them.	
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CONCLUSION

In conclusion, it is noted that there are specific issues which were problematic with regards to the administration of the 2008 elections. In addition, without the requisite implementation of constitutional and electoral framework, and the creation of an atmosphere in which persons can campaign and vote freely, Zimbabwe will continue to miss the mark in ensuring that the result of its elections is indisputably free, fair and democratically expressive of the will of the people. In doing so it is important that failures of the past are admitted and critiqued and subsequently used as the foundation for reform processes. The ZEC report in many respects fails to give adequate explanation and clarification in order to instill confidence in the manner in which the Commission managed various aspects of the electoral process. It also cursorily deals with numerous important aspects, particularly in the post election period and run up to the presidential run-off period. The Commission's assessment narrowly focuses predominantly on administrative aspects, yet other issues impact on the credibility of an election. Of specific concern is its treatment of the politically motivated post election violence and the impact on the election and citizen's ability to participate.

ZESN remains committed to values that ensure that citizens freely participate in elections in an informed manner and in a free political environment. The Network urges all stakeholders to work together towards the implementation of constitutional, legislative and other reforms to ensure participatory and people-driven democratic processes in the governance of the country; the security of citizens, their enjoyment of freedoms of movement, assembly and association and the existence of a political and social environment that is conducive to holding free and fair elections. ZESN particularly calls on the Electoral Commission to spearhead issues of electoral reform in an inclusive and consultative manner and positively contribute to the deepening of democracy in Zimbabwe.

About ZESN

The Zimbabwe Election Support Network (ZESN) is a coalition of 30 non-governmental organisations formed in 2000 to co-ordinate activities pertaining to elections. The major focus of the Network is to promote democratic processes in general and free and fair elections in particular. It was also established to standardize the NGOs election related activities and

methodology as well as to ensure wider geographical coverage and co-ordination of activities. The broad aim of the Network is therefore to enhance the election process in Zimbabwe in order to promote democracy and good governance in general as well as free and fair elections in particular whilst adhering to internationally acceptable standards.

PROMOTING DEMOCRATIC ELECTIONS IN ZIMBABWE

FOR COMMENTS AND FURTHER DETAILS CONTACT

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ANNEXURE I: ZIMBABWE ELECTORAL COMMISSION

RECOMMENDATIONS: AN EXTRACT FROM ZEC REPORT ON THE 2008 GENERAL ELECTIONS

1. FUNDING

Observation

While the Commission acknowledges that funding for both elections was adequate, it was seldom provided directly to it in advance as requested, to allow efficient application.

Recommendation

Adequate funding should be availed directly to the Commission, timeously and in full to allow efficient application. In addition, the Commission should also be adequately capacitated to build a reserve of election materials and stationery to reduce pressure on the fiscus during elections.

2. TRANSPORT AND FUEL

Observation

A number of the vehicles supplied to the Commission by the CMED were not mechanically sound, resulting in some polling stations sharing vehicles. To compound the situation, the supply of fuel was erratic.

Recommendation

Sufficient and mechanically sound vehicles as well as independent fuel storage facilities need to be afforded to the Commission to minimize disruptions to its activities.

3. CLOSURE OF THE VOTERS ROLL

Observation

The law provides that voters' rolls shall be closed for purposes of voting at any presidential or general election of members of Parliament and local authority councilors 24 hours before nomination day. This is difficult to apply in practice as the law is not clear on how the 24 hours from nomination day should be calculated.

Recommendation

The legislature should consider amending the law to provide that the voters' roll be closed after close of business, the day before nomination day and dispense with the vision of hours.

4. PERIOD BETWEEN SITTING OF NOMINATION COURTS AND ELECTIONS

Observation

The period between the sitting of the nomination courts and the actual polling is sometimes so tight that this invariably impacts negatively on the efficient design, printing and distribution of ballot papers and the processing of the postal ballots.

Recommendation

The Commission recommends a longer period, preferably 70 (seventy) days between the sitting of nomination courts and an election. This will allow effective and efficient procurement and distribution of election materials in general and ballot papers in particular.

5. MONITORING OF MEDIA COVERAGE OF ELECTIONS

Observation

There was little time between the enactment of the piece of legislation that bestowed media monitoring responsibility on the Commission to allow for the establishment and implementation of a well thought out mechanism to effectively manage the function, let alone to develop a good working relationship with media houses.

Recommendation

The Commission needs to develop and nurture a better working relationship with the media. The Commission should be empowered to control and direct media houses during election periods. This is the practice in the Seychelles and other jurisdictions.

6. POSTAL BALLOTS

Observation

There were unsubstantiated allegations by some stakeholders of lack of transparency in the processing of postal ballots. In particular, it was alleged that security forces were told who to vote for by their superiors.

Recommendation

The legislature may consider amending the law to introduce "early voting" for security forces as is done in other countries in the region. This means that this class of voters will vote in the usual manner on a earlier date than the rest of the electorate.

Alternatively, the legislature may consider transferring powers given to commanding officers by the Act to ZEC officials in the processing of postal ballots.

7. ASSISTED VOTERS

Observation

The law provides that voters who require assistance should only be assisted by the Presiding officer in the presence of electoral officers on duty. Following an outcry by this class of voters, the provision was amended through the Presidential Powers Temporary Measures (Amendment of Electoral Act) (No.3) Regulations 2008 published in Statutory Instrument 96/2008 so as to allow the voters to be assisted by the presiding officer in the presence of persons of their own choice. In terms of these regulations, this amendment was only effective for six months.

Recommendation

Amendment should be given permanent effect by entrenching it into the Electoral Act.

8. TURNED AWAY VOTERS**Observation**

Some voters were turned away for either failing to produce acceptable identity documents or non-appearance in the ward voters' roll.

Recommendation

Political parties are encouraged to complement the Commission's efforts in voter education. The electorate should inspect the voters' roll, not only towards election time, but throughout the year, at the respective registration offices of the Registrar General of Voters.

VERIFICATION, COLLATION AND ANNOUNCEMENT OF RESULTS**Observation**

Prior to the announcement of results for the March 2008 presidential election, the MDC-T announced a set of results, alleging that its presidential candidate had obtained a majority of votes cast and declared him the President-elect. This threw aspersions on and drew unwarranted criticism to the Commission for allegedly delaying announcements of 29 March 2008 presidential election results.

Recommendation

Political parties, candidates and other stakeholders should desist from announcing results of elections: this is the sole responsibility of the Commission. Further, such conduct may lead to civil strife.

ANNEXURE II: ZIMBABWE ELECTION SUPPORT NETWORK (ZESN): ELECTORAL REFORM PROPOSALS

ELECTORAL ARCHITECTURE

1. Legal Framework

Some amendments were made to the Electoral Act in the prior to March 2008 e.g. requiring posting of election results outside polling stations and constituency tabulation centers and other relevant pieces of legislation such as POSA, AIPPA and the Broadcasting Act. However these reforms were piecemeal in nature. Furthermore, there was a reversal to some of the reforms made on the eve of the 29 March election, without the knowledge of the Electoral Commission, through a presidential proclamation, for instance the requirement that police officers to be stationed 300 metres from polling stations.

Recommendations

- ZESN continues to recommend a comprehensive reform process with significant citizen's input.
- Removal of Presidential Powers [Temporary Measures] legislation in relation to elections

2. Election System

While Zimbabwe continues to conduct its elections within the Westminster system of first past the post [FPTP] based on the "winner-take-all" model, the unfolding political and leadership challenges in Zimbabwe can hardly be solved through such winner-take-all, zero sum frameworks. Besides being exclusionary, they generate tension in an environment already pregnant with tension and agitation..

Recommendations

The solution to the political stalemate in Zimbabwe lies in an electoral paradigmatic shift to more inclusive, accommodating, win-win electoral systems based on proportional representation and mixed electoral systems

3. Election Administration

Sound election administration is critical in building political party confidence in the conduct of elections. The delays that accompanied the release of election results, especially presidential results, do not reflect positively on ZEC's election management capacity and autonomy. Its management of the delimitation, nomination, voter education, voter registration and inspection processes particularly raised concern. Information on the delimitation exercise was not adequately provided. For example the public and parliamentarians were not given adequate time to debate and make inputs in the exercise. Delays in the delimitation of boundaries [constituencies and wards] saw voter registration and inspections and setting of the nomination date being done before the finalization of the delimitation exercise. To increase transparency of the process, it is recommended that the law should require the Commission to disclose the total number of ballots printed for each election.

Recommendations

- Commissioners could be appointed through an open process that includes public nominations which Parliament through the Standing Rules and Orders Committee shortlists on the basis of qualifications and integrity before final appointment by the President.
- Independent, adequate and qualified personnel.
- Ensure the independence and efficiency of the body, including financial autonomy.
- Increased accountability of the Commission. For instance, Commissioners could each be given areas of responsibility to enhance accountability. The law could require the commissioners to divide among themselves responsibility for the commission's different activities so that each commissioner would be responsible for a particular activity and, in this way, promote equal participation by all commissioners. An alternative way of distributing functions between commissioners would be to give each commissioner the responsibility for a particular province.
- Method of appointment should ensure the impartiality, all-inclusiveness, competence and accountability of the body. the participation of opposition parties and key stakeholders. The selection process of commissioners should be transparent and engender confidence in all stakeholders. These selection processes should also ensure that gender, special needs groups and youth participation or representation is achieved.

ELECTORAL OPERATIONS

1. Voter Registration and Inspection of the Voters' Roll

The requirement that voters should produce "any satisfactory documentary evidence reasonably proving where they live" proved in effect to be a restrictive requirement. The voter registration exercise was also hampered by a number of logistical problems such as inadequate time allocation, inadequate resources, insufficient and incorrect information was provided to citizens about the registration process, that little time was allocated for the inspection of the voters' roll, that in some cases, upon registration, some potential voters were not provided with registration slips. Also in some cases conflicting information was provided on documents required to enable one to register as a voter.

Recommendations

- Voter registration should be approached as an ongoing process.
- Stringent requirements which discourage and disable people from registering as voters should be done away with.
- The voter registration exercise should be sufficiently publicized to ensure that every citizen who desires to participate in elections is able to do so.
- Adequate resources [time, human and financial] should be allocated towards the voter registration exercise to enable ZEC to undertake its voter registration mandates.

- The number of polling stations in urban areas should be increased to allow for adequate and equitable access to the polls.
- ZEC should ensure that all voters registered during the inspection period as well as during the mobile voter registration exercises are urgently issued with voter registration certificates so that they are not disenfranchised.
- There should be a complete transfer of the management of the electoral process including preparing of the voters' roll to ZEC. This should not only be in the law but also in practice.
- The election management body should then play a more proactive role to ensure that every eligible voter is registered.

2. Voter Education

To strengthen the voter education exercise, it is recommended that:

- ZEC avail adequate resources for voter education.
- Adequate monitoring mechanisms should be put in place to ensure that voter education is conducted in a uniform, professional and non-partisan manner.
- A comprehensive voter education and information exercise should be conducted in order to reduce cases of voters going to wrong polling stations or wards on voting day.
- ZEC should work with civic groups to ensure national coverage with adequate voter education.

3. Delimitation

While a new delimitation exercise was conducted in advance of the 29 March 2008 election, there was insufficient time for people to participate in the process. A preliminary delimitation report was not tabled as envisioned in the law, to provide an opportunity for formal input by the political parties. The final delimitation report was tabled in parliament very late in the electoral process. This left little time to educate the public on changes to ward and constituency [house of assembly and senate] boundaries. It also caused confusion for the nomination process within political parties, in some cases forcing re-runs of some primaries. Parliamentarians were not given adequate opportunity to debate the delimitation report and make any recommendations for changes to the setting of constituency boundaries. Failure to allow this debate and to hear the recommendations of the parliamentarians flies in the face of the letter and spirit of the constitutional provisions. In future, the Zimbabwe Electoral Commission, which is now responsible for delimiting constituencies and other electoral boundaries, must be obliged to give public notice before embarking on a delimitation exercise and "so far as is practicable within the time available", entertain representations from political parties and other interested parties who are likely to be affected by its decisions, stick to universal principles of representatives, equal voting strength and serviceability, independence and professionalism.

4. Nominations

To strengthen nomination processes and practices, it is recommended that:

- The provisions of the law, which allow filing of papers before nomination day, should be used.
- Adequate funding should be allocated to the Electoral Commission to ensure efficient management of nomination processes.
- ZEC should ensure that citizens receive relevant education of the electoral process to enable them to exercise rights such as standing for election. Adequate information should be disseminated on the requirements of candidates for all contested seats, and this should be done in time to reduce rejection of nomination papers.

Other recommendations include the timeous availability of information on ward and constituency boundaries so that nominees are identified from the correct wards and constituencies. Adequate dissemination of voter information so that prospective candidates know the actual venues of the nomination courts. Uniform, collective and timeous announcement of nominated candidates to avoid speculative reporting by the media and other stakeholders.

5. Access to State Media

It is recommended that:

- More broadcasters [independent radio and television stations] should be licensed.
- Public broadcasters should be obliged to "afford all political parties and independent candidates such free access to their broadcasting services as may be prescribed" in the law.
- The regulations must provide for the total time allocated to each political party or candidate, the duration of each broadcast by the party or candidate, and the times when the areas to which such broadcasts are to be transmitted.
- ZEC should be more proactive in its monitoring of broadcasters during the election period to ensure that they observe these provisions.
- Media should be barred from publishing language encouraging racial, ethnic or religious prejudice or hatred or inciting violence or likely to lead to undue public contempt towards any political party, candidate or class of persons in Zimbabwe.

6. Postal Voting

Postal voting in Zimbabwe has also remained controversial, shrouded in secrecy, inaccessible to observers, riddled with allegations of intimidation, malpractice and non-transparency. In the runoff, members of the security forces such as police, the army and prison officers reportedly voted in the presence, and under the directions of commanding officers who instructed their juniors to vote for the ZANU PF candidate or risk losing their jobs. This practice constitutes a banal breach to the basic principles that underpin electoral practices. It is strongly recommended that the doctrine of secrecy as well as transparency that is applied to other electoral processes must also apply to postal voting.

7. Conflict Management

In future, to enable the Electoral Court to resolve disputes expeditiously before elections take place, there is need for competent, effective, independent and impartial judiciary and electoral institutions. There is also need to complement the judges of the Electoral Court with staff, equipment and adequate resources. The jurisdiction of the Electoral Court should be broadened, for example the resolution of disputes occurring prior to the election.

ELECTORAL STAKEHOLDERS

1. Political Parties

It is recommended that:

- Political parties must walk the talk of political tolerance. The message of zero tolerance to political violence must cascade from the top leadership structures to the grassroots,
- All political parties, the electronic and print media must be barred from using/publishing any form of inflammatory language and hate speech.
- Political parties should be compelled to practice effective internal democracy to reduce or avoid intra-party violence
- Acceptable conduct should be agreed in a legally enforceable code of conduct for political parties. The enforcement of offences should be vigorous and penalties should be prohibitive such as disqualification of candidates or huge fines. This would ensure that parties abstain from vote buying or any other dishonest or unethical election campaign conduct.

2. Election Observation

To improve election observation, it is recommended that:

- ZEC should have the decisive say on which observers to invite and accredit without any ministerial veto power as is currently the case,
- Accreditation should be decentralized
- Devise an easier way of accreditation
- ZEC must also accredit sufficient numbers of local and international observers to allow comprehensive observation of elections.
- The security of independent and domestic election observers must be guaranteed.

3. NGOs and Human Rights Defenders

Human Rights NGOs also bore the brunt of retributive violence. There was widespread harassment of observers, human rights lawyers, journalists and others who were thought to be either sympathetic to the opposition or did not give adequate coverage to the ruling party. Civil society and the work they do should be accorded more respect as it is important for democratic principles to take root in Zimbabwe. Attacks on civil society organizations in Zimbabwe should be condemned as they are a violation of the right of Zimbabweans to have a voice.

4. Security Forces

It is therefore recommended that mechanisms be put in place to ensure that security forces conduct themselves in a professional and non-partisan manner. Although the presence of police officers at polling stations is necessary to maintain order, such deployment should not be done in such a way that could lead to the intimidation e.g. if large numbers of police or when they assist voters.

5. Traditional Leaders

The role of traditional leadership in the politics of Zimbabwe remains a highly contested terrain. It is therefore recommended that traditional leaders remain apolitical and should embrace all their subjects regardless of their political persuasion.

6. External /Diaspora Voters

It is recommended that the Electoral Commission be given the power to establish a system that allows Zimbabweans living outside the country [diaspora] to vote by post if they are unable to return to Zimbabwe to cast their votes.

7. Assisted Voters

It is recommended that only a trusted friend or relative of the voter's choice be allowed to render assistance in order to safeguard the secrecy of their ballot and avoid intimidation.

CONCLUSION

The period under the Global Political Agreement gives Zimbabwe a unique opportunity to effectively deal with electoral reform and ensure a conducive environment and conditions that guarantee respect for the will of the people before the next election.