

Electoral Reform Proposals

Zimbabwe Election Support Network

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Following the re-enactment of the Electoral Act, 2004 and the enactment of the Zimbabwe Electoral Commission Act, 2004 and the Constitution of Zimbabwe Amendment Act, 2005, which together in varying degrees, implemented some of the proposals put forward by ZESN in 2003/2004, the following represents the outstanding aspects of the ZESN proposals which it continues to recommend. They are grouped in accordance with whether the proposals are mainly constitutional, institutional (i.e. relating to the establishment of an elections body) or pertaining to general electoral procedures and practices.

A. Constitutional Amendments

The amendments to the Constitution were to pave the way for the establishment of an independent electoral management body, with many other changes aimed at creating an inclusive and transparent electoral process.

1. Establishment of the Zimbabwe Electoral Commission (ZEC)

An electoral management body known as the Zimbabwe Electoral Commission has now been established under the Constitution providing for matters covering its composition, appointment of its members, its status and functions. However, not adopted amongst the ZESN recommendations on these aspects of the Commission are the following matters, which ZESN recommends:

Composition

That, apart from the chairman of the commission, 2 other members of the commission should be legally qualified.

Appointment

That:

- The Chairman be appointed by the President from 2 nominations, one being a woman, of the Law Society of Zimbabwe;
- That 4, 2 being women, must be nominations approved by a 2/3 majority of the House of Assembly from nominations called from the public;
- Two must be nominations by civil society (NANGO); and
- The Commissioners hold office for a period of 6 years.

Status

That ZEC be answerable to Parliament only, apart from being subject only to the Constitution.

Functions

That ZEC's functions should include the following:

- The registration of voters;
- Delimitation of constituencies;
- Registration of political parties;
- Formulation and implementation of codes of conduct for political parties, the media, monitors and observers and staff of the Commission;
- Give directions to members of the Police for the maintenance of law and order in electoral matters;
- Manage access by political parties to the public media.

In line with the SADC Principles and Guidelines Governing Democratic Elections, ZESN continues to call for the ZEC to be endowed with **full and sole** responsibility for all aspects of election management in Zimbabwe. ZESN also urges government to ensure that ZEC is adequately resourced to carry out its functions.

2. The Declaration of Rights

In order to strengthen the rights of citizens, ZESN recommends:

- That the Declaration of Rights be amended to ensure that women do not continue to be marginalized;
- That political rights be part of the guaranteed rights of a citizen to secure every citizen's right to vote and to do so in secret, to participate freely and in peace, in political and civic activities and to stand for public office.

These rights must be secured as their recognition reflects a respect for the importance of every individual citizen and that sections of the population should not remain excluded from key institutions that make decisions affecting their lives.

3. Parliament

That:

- The Constitution be amended to provide for the election of some of the members of Parliament on a constituency basis and others on a system of proportional representation based on the total votes cast for each party in all the constituencies.
- The system be further elaborated under the Electoral Act;
- The Constitution be amended to remove membership of Parliament through appointments by the President or through provincial governorship.

These recommendations are aimed at enhancing inclusivity in the electoral system in Zimbabwe so that the voice of the citizens supporting any losing candidate(s)/party(ies) in any constituency is not totally ignored.

B. The Zimbabwe Electoral Commission Act (ZEC Act)

The government has enacted the ZEC Act, which has introduced some progressive reform to Zimbabwe's electoral process. However ZESN continues to call for further reform and makes the following recommendations:

1. Conditions of office

That the terms and conditions of office be set by a parliamentary committee set up to deal with all matters concerning the Commission. This is to shield the Commission from the influence of the Executive by placing this responsibility in the body of elected representatives, which should keep a more balanced check on it.

2. Removal from office

That:

- In all cases, Commissioners be removed from office following an inquiry and confirmation of the removal by 2/3 majority of Parliament;
- That vacancies on the Commission must be filled within three months of their occurrence.

3. Functions of Commission

In further elaboration of the functions of the Commission, that the Commission also be responsible for:

(a) Ensuring observance of the law and the upholding of the principles laid down by the Commission and the electoral law;

(b) Disbursing public funds due to political parties;

(c) Determining the roles and conduct of the Police, the media and political parties and candidates' access thereto, civic organizations, contesting candidates, political parties, observers and monitors;

(d) The expeditious attendance to complaints and settlement of electoral disputes and for that purpose to set up electoral tribunals to deal with any such disputes;

(e) To determine the rules and procedures for the speedy determination of electoral petitions and other matters by the Electoral and other courts.

4. Powers of Commission

That the Commission's powers to give instructions to persons in the employment of the State include powers to secure compliance with electoral laws by such persons including judicial officers and members of the Police Force and that non-compliance may lead to discharge from service of the State.

5. Delimitation of Constituencies

That, in its delimitation function, deliberation on the final delimitation report before its publication by the Commission be by Parliament and not the President, in line with the recommendation for a Commission answerable to Parliament not to the Executive.

6. Remuneration and allowances of Commissioners

That the remuneration and allowances of Commissioners be fixed by the President on the recommendation of Parliament in consultation with the Minister responsible for finance.

7. Directions to Commission

That Parliament be given the power, by a resolution of two-thirds majority of its membership, to direct the Commission to carry out any duty which is imposed upon it by the Constitution and any other law.

8. Chief elections officer and staff of Commission

That:

- The conditions of service of staff of the Commission be set by the Commission in consultation with a parliamentary committee;
- The present staff of the Registrar General who the Commission considers appropriate be transferred to the staff of the Commission.

9. Regulations

That the regulations made by the Commission be subject to the approval of Parliament and not the Minister.

10. Assets

That, in addition to the transfer of staff, any assets of the Registrar General pertaining to the registration of voters, compilation of voter's rolls and the conduct of elections also be transferred to the Commission.

C. The Electoral Act, 2004

Changes brought about by the Electoral Act, 2004 are wide-ranging. Some were necessitated by the introduction of ZEC whilst others stemmed from concerns that the entire electoral process was riddled with practices, which did not lend themselves to the conduct of free and fair elections.

Not all of ZESN's recommendations for the changes to the electoral process were adopted in the re-enacted Electoral Act. In order to continue to create public confidence in the electoral process, ZESN recommends that a number of shortcomings, which impact negatively on fairness and transparency, be addressed. ZESN therefore continues to recommend:

1. Appointment of members of Commission

That the procedure to be followed in the nomination of members for appointment to the Commission be set out in the Electoral Act. Nominations should be invited from members of the public at a public nomination court presided over by the Speaker who must present the nominations to a committee of Parliament to shortlist persons to be approved by a two-thirds majority before a recommendation for appointment is made to the President. Rules for the procedure to be followed in this process will be made by the Standing Orders and Rules Committee of Parliament.

2. Voters' roll

That:

- Each constituency registrar and presiding officer be obliged to maintain up-to-date and accurate voters rolls for their constituencies;
- In addition to rolls being available for inspection free of charge by members of political parties and members of the public in printed form, they must also be available in electronic form.
- On polling day copies of the voters roll should also be available for party agents and observers

3. Polling stations

That the Commission ensure that there are adequate fixed polling stations and limit the use of mobile stations as they are open to possible abuse or fraud. Further they are not open to monitoring and observation. If used at all, should be in exceptional circumstances approved by the Commission and there should be a definite timetable as to the places they will be stationed on polling days. It is vital that these provisions be legislated for as opposed to administrative.

4. Members of Parliament

That:

- There be two categories of Parliamentarians who will be elected by the electorate. These are the constituency members of Parliament and the members elected under a system of proportional representation (the non-constituency members of parliament);
- The appointment of members of Parliament by the President is eliminated.

5. Threshold for proportional representation seats

That the system of proportional representation be part of the system in filling Parliament as it is fairer and leads to broader representation based on the share of the vote by the respective political parties. This allows diverse voices to be represented in Parliament. However, it is recommended that a threshold of 3% of the total votes cast be set before a party or a combination of parties qualify for seats in Parliament. This is necessary to avoid a situation where numerous very small political parties are represented in Parliament, which would lead to a fragmentation of Parliament. Proportional representation would lead to the inclusion in Parliament of parties that command a reasonable amount of electoral support.

6. The system of voting

That a voter should be required to cast a single vote to elect both constituency and non-constituency members of Parliament. Within their constituencies, voters would vote for candidates of their own choice. The votes for the candidates that are sponsored by political parties would then be pooled to determine the proportional allocation of seats to members in accordance with party lists presented during the nomination period. The votes in a constituency would determine the constituency member of Parliament. The votes in all constituencies would determine the number that will be elected as non-constituency members for each contesting party on a fixed party list system.

7. Members of the Senate

That proportional representation be the basis of the election of the 50 Provincial members of the Senate; and further that instead of the appointment by the President of some members of the Senate, that there be a number of Senators indirectly appointed to the Senate by the House of Assembly to represent certain special interest groups. The procedure for the election of the Senators should be set out in the Electoral Act and could follow the general principles proposed for the appointment of Commissioners.

8. Postal voting

That, given the fact that an increasing number of Zimbabweans continues to seek work outside the country, it is imperative that they be afforded the opportunity to vote by postal ballot. The numbers are so large that it is recommended that the right to vote be extended to them. Current provisions of the Electoral Act have drastically curtailed the right of those outside the country to vote by post.

Because postal voting is open to manipulation and abuse, that there be stringent safeguards in place to ensure that this does not occur. The Commission must ensure that proper safeguards are in place. ZESN also recommends that postal voting be open to observation by both domestic and international observers in order to increase transparency and enhance trust in the outcome of this process.

Special safeguards are necessary in respect of postal voting by soldiers and police officers to ensure that the commanding officers are not able to dictate or influence the way in which they voted.

9. Ballot boxes

That ballot boxes be to increase security and transparency around ballot boxes. ZESN recommends that the use of translucent ballot boxes be legislated as opposed to merely administrative.

10. Observers

That a broad cross section of local and international observers be accredited to observe elections.

That the primary responsibility for appointing should lie with the Commission but in respect of foreign observers, this should be done in consultation with the Ministry of Foreign Affairs. That the observers advisory committee be made up of two members of the Commission, three persons drawn from civic society and a representative of the Ministry of Foreign Affairs as opposed to a committee dominated by members of the Government as the law currently provides.

11. Monitors

That independent monitors drawn from civil society be appointed to monitor the administration of the election by members of staff of the Commission and that an accreditation advisory committee consisting of two Commissioners and three civic society members should assist the Commission identifying suitable persons to act as monitors.

12. Conflict management

That Electoral Tribunals be set up to attend to any matters where mediation and conciliation have failed.

13. Electoral offences

That electoral offences be recast in simpler languages. In addition, that electoral offences be regrouped into intimidatory practices (presently termed "undue influence"), corrupt practices

and illegal practices. The terms “intimidation/intimidatory” are used to underscore the fact that these offences involved the use of violence and other forms of unacceptable pressure. That intimidation also be redefined and widened to include not only physical violence but also:

- Psychological pressure and threats to withhold humanitarian assistance;
- Compelling a person to vote for a particular political party or candidate;
- Compelling a person to disclose how he/she has voted;
- Using intimidation as a reprisal for having voted for a particular political party;
- Using intimidation to prevent or obstruct a political party or a candidate from campaigning in an area prior to an election.

That corrupt practices should include a wide variety of situations of bribery and corruption, including using promises of food or humanitarian aid to influence voters.

That, if, during an election campaign, an allegation is made that a candidate or his or her agent committed an electoral offence which is considered serious, after proper inquiry and after hearing from the person alleged to have committed the practice, the Commission may order the disqualification from that election of that candidate.

14. Postponement of elections

That the Commission be empowered to order the postponement of elections throughout the country or in a particular constituency where it has reasonable grounds to believe, by reason of widespread actual or threatened intimidation or violence throughout the country or in the particular constituency, it is unlikely that a free and fair election can be held throughout the country or in the constituency concerned.

15. Election petitions

That the electoral court be empowered to declare the election of a candidate in a particular constituency void and order the holding of a fresh election if:

- The candidate was not qualified or was disqualified; or
- The candidate or agent were involved in any electoral offences and it is likely that the outcome of the election in question would have been different had these offences not been committed or the offences are considered to be sufficiently serious to justify the setting aside of an election.

That the Electoral Court be able to set aside the entire election (in respect of all seats) only on the basis of the commission of electoral offences party officials or members, if the petitioner establishes beyond reasonable doubt that the outcome of the election result would have been different had these offences not been committed.

16. Regulatory power

That the regulations made by the Commission be exercised subject to the approval of Parliament where all parties will have a say on matters.

17. Guidelines to political parties

That the Commission be empowered to create guidelines for the conduct of internal elections for the selection and ordering of candidates on party lists for Parliamentary seats in order to encourage political parties to hold free and fair democratic primary elections. This seeks to exclude the imposition of candidates on the members of the party or to autocratically decide upon the ordering of members on the party list for non-constituency members.

18. General

ZESN also proposes that the tripartite elections to be held for electing members of the House of Assembly, Senate as well as President. In view of the economic problems facing the

country and the huge costs involved in conducting an election, holding simultaneous polls would significantly ease constraints on the public purse. It would also enable the optimal use of resources to achieve the best results, i.e. a well funded and administered election.

Conclusion

All the proposals are aimed at achieving the following:

- A transparent process of delimitation of constituencies;
- A transparent and accountable voter registration system;
- The production in advance of elections of accurate constituency and national voters rolls that are accessible to all;
- A regulated election campaign process with uniform standards applying to all political parties;
- Equal access by all parties and candidates to all public media;
- The freedom of the independent media, both print and electronic, to cover elections;
- Impartial monitoring and observation of elections and participation of civic organizations in these processes;
- Uniform media standards in elections coverage that will ensure fair and balanced coverage;
- The transparent conduct and management of the entire electoral process;
- Electoral officers who are independent of any particular candidate or political party;
- A ballot verification process that is transparent;
- The creation of an atmosphere in which persons can campaign and vote freely without threats or intimidation from members of political parties or police, army or intelligence personnel or members of irregular forces;
- Professional, non-partisan enforcement of the law by the Police;
- Respect for the rule of law;
- Adequate and impartial voter education, with involvement of civic organizations;
- The use of voting mechanisms which guarantee transparency and accountability, with voting papers that cannot be tampered with and appropriate ballot boxes which can be properly monitored to exclude interference with them;
- The elimination of the unfair use of legislative power to change election laws prior to the elections;
- An effective system for the resolution of electoral disputes.

Promoting democratic elections in Zimbabwe

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