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**Enhancing Citizen Voices and participation in electoral policy:  
A compendium of ERC research publications 2015**



## Abstract

*The ERC, a think tank and advocacy institution on elections and democracy in Zimbabwe, with a vision to see a Zimbabwe with transparent, credible and inclusive democratic and electoral processes at all tiers of society, in 2015 produced several research publications which have been compiled into one reading. This is in a bid to contribute to knowledge production on election and democratic processes in Zimbabwe. The compendium of ERC research publications seeks to put in one, 2015 publications for easier access, compact preservation of knowledge and reference source. The compendium has distinct topics ranging from dealing with citizen voices and participation, electoral reform and recommendations thereof, talking points on democratic processes to lessons learnt from neighboring elections.*

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*Advocacy interventions and policy engagement require critical understanding and thought of issues on the ground. The ERC takes pride in being grounded in research to inform advocacy and policy engagement. It is now trite, in development advocacy, to base interventions on evidence. Gone are the times when programming was conceived and conceptualized in offices without proper input of concerned communities, without any reliable evidence as proffered by recipients' of interventions. Rather, the notion of amplification of citizen voices takes center stage and in essence these voices must not be imagined, but be real and resonating with community priorities, needs and capacities.*

*This compendium, is evidence of the ERC's intention to ground itself in issues that affect the ordinary citizen. It is citizen voices amplified and packaged for policy influence and engagement. The first chapter opens with a brief on *The Missing Link: Citizen voices*, which unpacks the continued sidelining of citizens in decision making. The second brief under the same chapter then zeros down to explaining this sidelining as caused by an elite political culture prevailing in Zimbabwe. The second chapter, narrows down to electoral reform issues in particular voter registration, ZEC role and independence and voter education. These issues, while not exhaustive are on top of the citizens' reform agenda.*

*Chapter three follows up on talking points on electoral democracy. The issue of voter registration is given more attention in an article termed; *In Search of Clarity*. The other article looks into ZEC election administration costs and gives a comparison with countries in the region. It emerges that Zimbabwean elections are way above the regional average. The third article was a follow up process on nomination process and highlights how it is highly compromised as evidenced by the 10<sup>th</sup> of June by election nominations. The last topic in the third chapter is an analysis of the proposed amendments to the electoral law. The analysis clearly shows that the proposed amendments were a smokescreen with little but cosmetic changes.*

*The last chapter takes a closer look at elections in the region and draws lessons from them. All papers in the chapter therefore give recommendations to improvement of the Zimbabwean elections. The chapter has three papers drawn from the Namibian election which had the innovation of electronic voting, the Lesotho early election supervised by SADC and the Zambian presidential by-election.*

*It is the ERC's wish that the reader finds this compendium useful and beneficial to adding to their knowledge and may act as a reference point in some instances.*

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## Chapter I: Amplifying Citizen Voices

### The Missing Link to reform: Citizen Voices

#### Introduction

Reform by its nature in Africa always seems to be top down, elite and legalistic. Electoral reform seems to be even more alien to popular review, urgency and scrutiny. Zimbabwe is a case in point. Since the adoption of the Constitution in 2013, Zimbabwe has slowly introduced reforms that ensure constitutionality of legal statutes, implementation and practice. The input of citizens to this process leaves a lot to be desired. Consultations are done in a piecemeal manner, leading to half-baked pieces of legislation that do not resonate with the aspirations and desires of citizens. Countable election and democracy related CSOs have engaged in citizen capacity building activities in selected districts in Zimbabwe. This has been aimed at building a responsible citizen who questions elected officials and demands accountability in between elections. These initiatives have been premised on the fact that motivating and encouraging people to vote alone only feeds into an elitist, non-participatory democracy that is open to manipulation and disregard by the elected officials. Electoral reform must be well informed and participatory so as to impact on all levels, that is, environmental, administrative and legislative. The environmental side of reform requires complete buy in of citizens and politicians alike. It heavily feeds into re-alignment of political culture which is currently elitist and devoid of participation and consultation. Equally, administrative and legislative reform must also be anchored on consultation and input from key stakeholders with citizen links.

The rationale behind the call for increased citizen voices in policy making is premised on the realization that when expectations of citizens evolve faster than the institutions and vice versa, a democratic deficit is created. The Zimbabwe scenario is a case in point where there is in-equilibrium balance of expectations. In the end they are usually skewed to the elite powerful elements of our society.

#### Creating platforms for citizen engagement

Citizen engagement in electoral policy making has been piecemeal. The institutions created for this purpose seem to serve the executive arm of government at the expense of the people. Majority of laws in Zimbabwe are made by the executive and given to Parliament to debate and mostly rubberstamp. Representative democracy entails laws made through representation and in this case Parliament should initiate the bulk of Zimbabwean laws. Parliament is given powers of enactment by the Constitution of Zimbabwe, Section 131 (1) and (3). Section 134(a) further states that;

*“Parliament’s primary law-making power must not be delegated;”*

The executive arm seems to have little regard for people-centered policies. Decisions made by this arm of government are partisan and lack consultative processes. In fact, decisions shaping the country’s future are made at ruling party level even to the shock and detriment of party members. While, understandable that a ruling party will see most of its manifesto mutate into government policies, it is prudent to have citizen input, debates and correction of these policies before they are rubberstamped in Parliament. This necessitates a Parliament that is not simply whipped into accepting Bills, but one that consults on Bills received, and or even amends. Opposition political parties are no better in this regard. They find themselves forced to oppose everything that is proposed by ruling parties without the necessary consultation. Citizens are only engaged

during the election period. Their reasons for only engaging citizens during elections vary from lack of resources, no engagement strategies, and a high belief in rallies as a method of engagement.

The culture of engagement, either top down or bottom up evades our body politic. The Election Resource Centre (ERC)<sup>1</sup> has previously called for a renewed political culture of consultation and participation. An elitist culture dominates policy making in the country with ZANU PF being the dominant player. Citizen voices are muffled in policy making. There is no respect for the social contract that is supposed to bind government and the citizens.

Zimbabwe is well populated with civic organizations that register to work with citizens in different interest areas. Civil society is a watchdog of state actions and acts as a conduit in the transmission of civic voices to government. They are further expected to play a role in civic education that empowers citizens to claim their voice in governance issues. However, their voice has sometimes not been given an ear by the government. Civil society is suppressed by repressive laws such as the Public Order Security Act (POSA). The cooperation between government and civic society needs to be enhanced so as to ensure maximization of citizen voices. The relationship should lean more towards cooperation as opposed to one of antagonism that largely prevails currently. At the same time, civic organizations must ensure that their work is evidence based and that there is true citizen voice representation to guarantee their buy in when pushing government action.

### Re-inventing Parliamentary citizen engagement

Parliament must also play a pivotal role in engaging and even amplifying citizen voices. As a separate arm of government they must not be seen to be part of the executive. Rather, they should push government to accept the people's views, which they apparently represent. This is well enshrined in the Constitution in Sections 139 (f) and 141 (a) (b) and (c). In particular, Section 141 (a) and (b) states that Parliament must;

141 (a) "Facilitate public involvement in its legislative and other processes and in the processes of its committees;"

141 (b) "Ensure that interested parties are consulted about Bills being considered by Parliament, unless such consultation is inappropriate or impracticable;"

The challenge faced in the Zimbabwean case is one of polarization and towing of party lines by Members of Parliament. It is more important for Members of Parliament to have a common voice representing their whipped party positions than to represent the interests of their varying and heterogeneous constituencies. This makes debate dull, unresponsive to the needs of the people and party aligned. This can only alienate the citizen and drown their voice. It leaves little room for Parliamentarians to exercise independence and enact laws emerging from the people.

Public hearings are supposed to be a permanent feature of Parliament consultative processes with citizens. This allows the public to freely engage with their representatives at a national level, to engage policies as interrogated by Parliament and to be aware of issues under debate. However, while this situation is guaranteed by the Constitution it has been sometimes ignored. Mandelbaum (2011)<sup>2</sup> validates this argument, stating that, "...moreover, effective Parliaments can facilitate the development of political parties. In theory, Parliaments

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<sup>1</sup> ERC, 2014, Dealing with political culture as part of the electoral reform agenda in Zimbabwe, ERC Research and Publications <https://erczim.org/?p=2300>

<sup>2</sup> Mandelbaum A, 2011, Strengthening parliamentary accountability, citizen engagement and access to information: A Global survey of Parliamentary Monitoring Organizations , National Democratic Institute and World Bank institute

are forums in which citizen preferences are aggregated by political parties and expressed as public policies. How Parliaments function influences the quality of citizen influence on decision making.”

This calls for increased or more effective Parliamentary Monitoring Organizations (PMOs). In Zimbabwe, one such organization exists, i.e. the Southern Africa Parliamentary Support Trust (SAPST). According to Mandelbaum (2011) “Parliamentary Monitoring Organizations (PMOs) monitor and assess the functioning of Parliaments or their individual members, often seeking to facilitate and promote public knowledge of, and participation in parliamentary processes. Over 190 of these organizations monitor more than 80 national Parliaments worldwide.” Whether this is being effectively done in Zimbabwe, remains questionable as citizens are continuously marginalised. While commendable, the capacity of one PMO to push Parliament to engage citizens must be augmented by either pushing Parliament to engage or by creating more PMOs to capacitate and collaborate with Parliament.

### **Of rallies and mob psychology**

Citizen engagement in Zimbabwe tends to take the route of rallies. It smacks of a feedback mechanism but falls far short as it always ends up becoming an insult trading, individual behavior critique of leadership and praise singing. Citizens are always shortchanged and always left at the deep end of policy engagement, let alone knowledge sharing. Opposition political parties make little effort to engage with citizens at community level, in small numbers and for specific policy interactions. Engagements are always about populist and public showoff. These come in the form of donations, winning celebrations or meet the people tours. Proper engagement of citizens about governance questions are never or are hardly put on the agenda. Citizens are viewed as layman who do not or cannot contribute to the great questions of the day. They are only good as recipients of “goodies” from their well-wishing party leadership or members of Parliament.

Political parties must ensure consistent and meaningful citizen engagement. While rallies remain a major part of political campaigning, they should equate to policy consultation and engagement. Citizens on the other hand must begin to demand to have meaningful platforms for engaging their representatives. Civil society must help in creating these platforms and amplifying citizen voices. Parliamentarians must be forced by statute to engage their constituencies in given time frames not to disappear soon after being elected in office. There must be monitoring of what parliamentarians say in Parliament with methods devised of how this will be relayed back to constituencies.

### **Towards building a responsible citizen**

Citizen voices are a critical cog in the running of a nation. Anything short of that is a primitive dictatorship that deserves no place in the 21<sup>st</sup> century. Recommendations proposed towards building a responsible citizen are as follows;

- Political parties must seize the rally approach to engaging citizens in between elections. There must be fruitful and meaningful engagement of the citizens for policy making.
- Civil society must create more deliberative platforms to empower citizens to demand inclusivity in policy making.
- Parliament must engage citizens more. Parliamentarians must place the people first, not the party.
- More PMOs should be created and capacitated towards pressuring, collaborating and monitoring Parliament citizen engagement and information sharing.

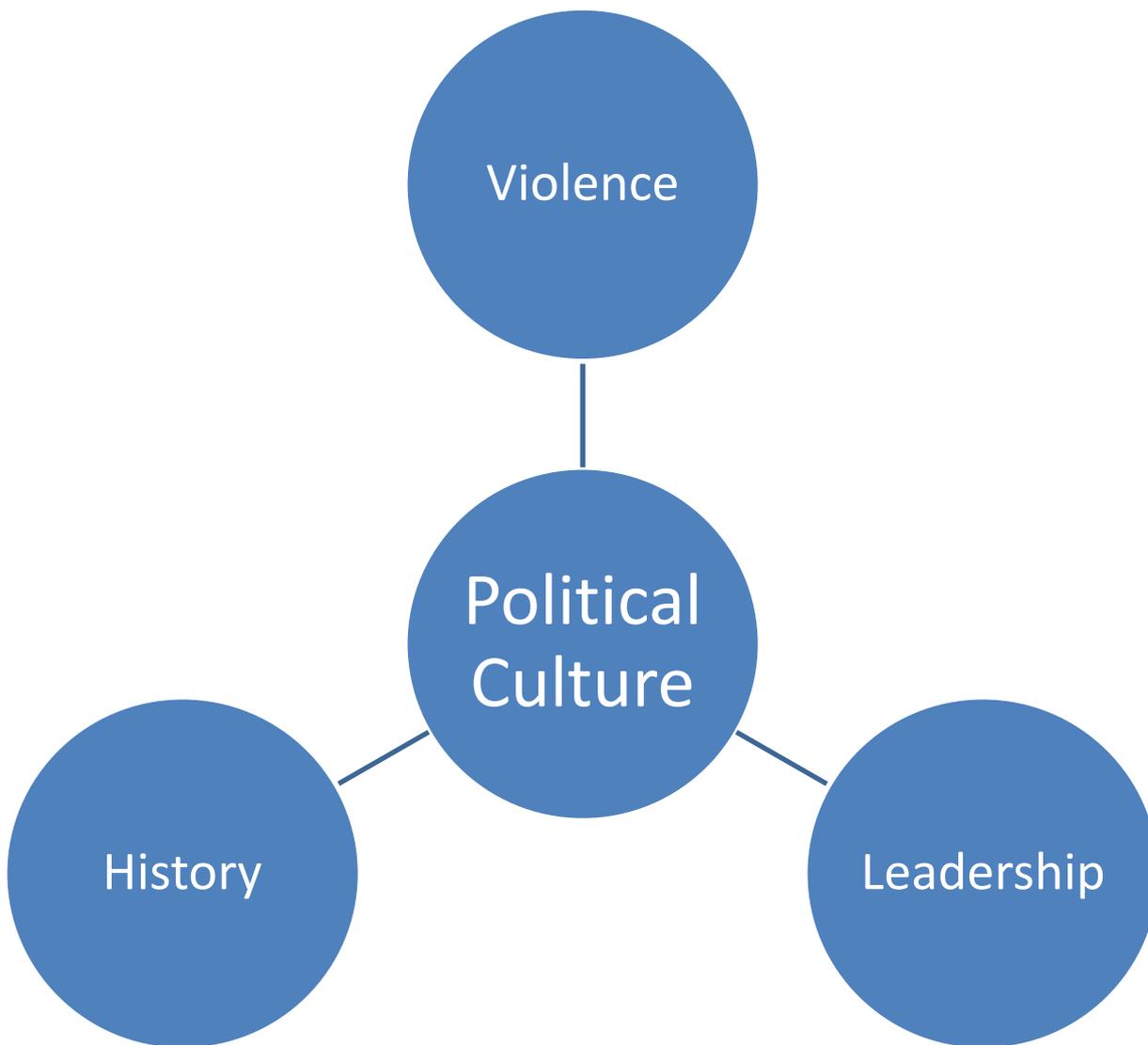
# Dealing With Political Culture as Part of The Electoral Reform Agenda In Zimbabwe

## Introduction

Zimbabwe is undergoing law alignment after the passing of the new Constitution in May 2013. The Electoral Act arising after the signing of the Electoral Amendment Bill by the President and gazetted on the 22nd of 3 August 2014 is of great importance to Zimbabweans. Parliament was actively involved in speedy transmission of this Bill and rightly so. However, the participation of citizens in the law making process has only been limited to their representatives in Parliament. Public hearings held subsequent to the enacting of the law were largely ignored in the final document. This has an adverse effect on political socialization and culture of citizens as the country endeavors to enrich its democratic status. This paper seeks to unpack the ongoing electoral reform debate in Zimbabwe, through debunking provisions of the new Electoral Act, understanding the challenges faced prior to its amendment and critically questioning the role of citizens in the reform process. It is fundamental to ensure citizens' interest in the electoral reform process as it has a great impact on their future. Furthermore, citizen participation in national processes ensures ownership and improved understanding particularly in democratic processes. This in turn contributes highly to change in political socialization and culture from a dormant one to a more participatory and free one. The political culture in Zimbabwe is thus given considered scrutiny in a bid to understand if it has a bearing on the ongoing electoral reform process.

## Political Culture

Civic voices handout (2011) defines political culture as consisting of “people’s shared, learned beliefs about their political system and their role within that system. Political culture influences the way people see their political world. Political culture consists of people’s shared, learned beliefs about their political system and their role within that system.” Gabriel Almond and Sydney Verba identified five important dimensions of political culture as; • a sense of national identity, • attitudes toward one’s self as a participant in political life, • attitudes toward one’s fellow citizens, • attitudes and expectations regarding governmental output and performance, and • attitudes toward and knowledge about the political process of decision making.



Political culture is a product of history. It is shaped by events that a nation goes through and these play a pivotal role in solidifying certain attitudes, behavioral traits, hostilities, perceptions and aspiration moods that have an impact on pro-activity in governance issues. According to Ndlovu-Gatsheni (2002), “Zimbabwe’s political culture is largely a product of four main influences: the pre-colonial, the colonial, the armed liberation struggle, and ZANU-PF rule.” Gatsheni further states that, “...the armed phase of the struggle for Zimbabwe added some negative tendencies to the whole nationalist movement. African nationalism itself as a social movement was basically hegemonic and intolerant of diversity, internal and external criticism and dissent.” Post-colonial Zimbabwe, if anything, perpetuated the intolerance. Gatsheni Political Culture Violence History Leadership reiterates that, “the post-colonial Zimbabwean state failed dismally to make a break with the tradition of nationalist authoritarianism and guerrilla violence as well as colonial settler repression. The ruling party itself, having been a militarized liberation movement, failed to de-militarize itself, not only in practice, but also in attitude and style of management of civil institutions and the state at large. The new government readily assumed the salient colonial and military oriented structures left by the retreating Rhodesian settler state, with serious implications for democracy, human rights and human security.” According to Chikerema and Chikanda

(2014), “Zimbabwe presents an interesting dimension in the study of the development of political culture. Many scholars, notably Makumbe (2002), Kurebwa (2001), Tarugarira (2008), Mandaza (2005) have classified Zimbabwe as a country with an unpunitive culture of intolerance to democracy”. This culture is embedded in the country leadership and liberation movement. It is a top-down culture of violence and impunity that is unfortunately manifesting within the citizenry. The situation is perfected by a well-choreographed citizen indoctrination process hinged on patriotism and fear to reverse the gains of the liberation struggle. In present day, after the repossession of land and indigenization mantra, it is premised on protecting the gains as achieved by the ZANU PF. According to Onslow (2011), “This construction of history tapped existing grievances and beliefs. It resonated in strong feelings about colonialism and perceptions of Western hypocrisy about human rights. Inequality of land ownership was key to ‘the story’ – land hunger and dispossession was plain for all to see – which strengthened the plausibility of the narrative. And this made ‘patriotic history’ very difficult to challenge.” It is therefore not only unpatriotic to challenge ZANU PF, but treasonous and a betrayal of fallen heroes of our nation who died in the quest to liberate the country. Our political culture is therefore shaped by fear. It is directed towards being unquestioning and static. It is designed to make the citizens feel powerless and incapable of waging any real challenge to the status quo.

### **The Effect of Violence on Political Culture**

The culture of impunity and disregard for democratic discourse has largely been backed by phases of violence and intimidation to remind citizens where exactly power lies. According to Sachikonye (2002), an explanation has been proffered to explain the continuity in the political culture of repression which relies on coercion and violence rather than peaceful resolution of differences and contestation. It is that intense colonial repression and war ruled out: “open, democratic practice and tolerance and alternative views. It fostered what could be termed a ‘culture of authoritarianism’ that was certainly compatible with state socialist ideology of nationalist leaders at the time, as well as a ‘traditionalist’ discourse which stressed strong leadership and unquestioning loyalty.... Violence in post-independence Zimbabwe was the consequence of a strong state, itself in many ways a direct Rhodesian inheritance, and a particular interpretation of nationalism (Alexander, McGregor & Ranger 2000). The period 2000-2014 has been aptly summed by Huntington in Chikerema and Chakunda (2014) “Huntington propounded an interesting thesis that in societies where political participation is high, yet the process of institutionalization is low and weak there is bound to be political instability or what he termed 6 political decay. For him political decay is in large part a product of rapid social change and rapid mobilization of new groups into politics coupled with the slow development of political institutions” “Due to this disequilibrium between institutionalization and participation, instability and political violence is therefore a dominant feature in Zimbabwe’s political system. According to the Huntingtonian thesis the current problem of political instability and violence in Southern Africa in general and Zimbabwe in particular can better be explicated by low levels of institutionalization and marked in the main by rigidity, simplicity, subordination and fragmented state institution under conditions of highly political mobilization and participation of citizen.” Analysing the reasons for the current trajectory the country is taking, Bratton and Masunungure (2011) argued among other reasons that, “the political culture of militarized elite, which was forged in the crucible of a national liberation war, led rulers to feel entitled, not only to rule Zimbabwe in perpetuity, but to seize the nation’s wealth as they saw fit.”

Zimbabwe has undergone serious political, economic and social changes over the last decade beginning 2000. Politically, the formation of the Movement for Democratic Change (MDC) in 1999 was a watershed event as it announced the stiffest competition to the Zimbabwe African National Union-Patriotic Front (ZANU PF) hegemony. It further heralded political instability, competition, and increased violence. Economically, it saw the imposition of economic and travel sanctions, the implosion of the economy with initial signs having been noted in 1995, and isolation. Unemployment, industrial closures, food shortages and general poverty became the order of the day. Socially, it led to increased erosion of the family fabric, increased individualism, crime, and polarization. It meant the devaluation of social capital as the population struggled with economic and political problems bedeviling the nation. The emergency of the MDC and the ensuing increase in political competition exposed our electoral deficiencies as ZANU PF struggled to keep its hold on power. Violence became the order of elections. Although not new, violence took an elevated position as a way of solving political differences. International intervention led to increased isolation of Zimbabwe on the basis of the unfolding human rights abuses. Subsequently regional intervention brought about dialogue, leading to the formation of a Government of National Unity (GNU) in 2009 following another failed election a year earlier. According to Sachikonye, the late 1990s' debate about constitutional reform was sparked by what was viewed as arbitrary amendments to the Lancaster House Constitution for the purpose of concentration of power in the presidency. These changes, arbitrary or otherwise were forms of electoral reform especially in instances where such changes had a bearing in how elections would be conducted. In terms of the amendments to the Constitution with implications on the electoral process he argues that, "the most far-reaching was the 1987 amendment which created the executive presidency. Yet there was no participatory process encouraged in this substantial amending of the Constitution." The call for a new people driven constitution saw the formation of the National Constitutional Assembly (NCA) in 1997 with the agenda of pushing for constitutional reforms particularly reducing the powers of the Executive. This again was the initial advocacy drive towards electoral reform. The government responded by establishing the Constitutional Commission which sought people's views and created a draft Constitution. The Constitutional Commission Draft Constitution was rejected in a referendum at the instigation of the NCA and its allies, particularly the farmers in 2000. Reform thereof continued to take the form of amendments and with limited opposition in Parliament, the governing party determined what would be amended and how it would be amended. Amendment 18 (2007) to the Lancaster Constitution sticks out as the final and influential law change that had far reaching changes (both positive and negative) to the Zimbabwean electoral playing field. However Zimbabweans in general and politicians in particular only realized the implications of the Amendment during and after the Harmonized Elections of March 2008. Continued pressure finally led to the COPAC process in 2009 under the GNU. Although the "people driven" nature of the constitution making process remains questionable, the new Constitution came into effect in May 2013. The arbitrary amendments to the Lancaster House Constitution alerted civil society to an unabashed ruling class looking to increasingly concentrate power in a political party. It is always envisaged in a participatory political culture that civil society takes the lead in alerting the citizenry to issues of importance and immediate concern particularly in the democracy and governance discourse. Continued poor performance by opposition parties in elections influenced, one way or the other by various factors, has contributed to the declining levels of citizen participation. The results of civic participation especially around governance and elections seem difficult to see. Civil society is subdued, poorly resourced and largely agenda less. ZANU-PF, even in the face of economic decline and intra-party implosion, continues to enjoy uncontested legitimacy. The current politically driven realignments of laws to the Constitution are a major tell to this effect. Consultations and hearings, although limited, were held in as far as the Electoral Amendment Bill was concerned. High on citizens' expectations was that the Electoral Act would clearly articulate and address issues around voter registration, voter education, the right to vote and special votes. However, the subsequent Electoral Amendment

Bill signed by the President in August 2014 does not address any of those issues. The culture of disregard of citizen input in democracy and governance processes and impunity continues to haunt the country in the face of expected reforms. The state seems bent on achieving political gains at the expense of consideration of public input. ERC, 2014, a report on public hearings for the Electoral Amendment Bill.

### **Other Examples of Disregard of Public Input In Reform Process**

Since the colonial era, citizens have not been given priority in issues of governance. A culture of autocracy has been perpetuated at alarming levels by the ruling ZANU-PF. Signs of a leadership that takes advantage of a static population, to cow them into submission and unquestioning dormant state. Sachikonye notes that ruling elite would not stop at anything to concentrate power in the executive. He states that “government approached the matter of democracy reform in a haphazard and political manner.” A total of 15 amendments to the Lancaster House Constitution had been made to the Constitution by 2000 with most of them aimed at centralizing power within a powerful presidency. Amongst some of the far reaching amendments were the following: • The repeal of dual citizenship in 1983, • Award of powers to the President to appoint members of the Judicial Services Commission, the Electoral Supervisory Commission (ESC) and the Attorney-General in 1984, • The abolition of the Senate and the creation of a 150-seat Parliament of which 30 seats were appointed by the President in 1989, and • The compulsory acquisition of land for resettlement in 1990. In particular, the President’s powers of patronage and autocracy were enhanced with the provision to appoint up to 30 Members of Parliament.

### **When Government Has Sought Public Input in the Reform Process**

Zimbabwe has in the past, on intermittent occasions, afforded its citizens opportunity to participate in legislative and governance issues. Several case studies can be noted but a few are mentioned here. 1. In the late 1980s the Zimbabwe Parliament organized a series of provincial workshops throughout the country around the topic of regional planning. By including Members of Parliament (MPs), civil servants, and non-governmental organizations in the workshops, MPs not only felt better prepared for debate on the issue but also had vital opportunities to interact with civil servants charged with implementing programs in the field. In 1998, under pressure from the National Constitutional Assembly (NCA), the government established the constitutional commission to carry out an outreach program to collect views of the population and come up with a draft Constitution. In 2008, under the GNU, the government carried out another outreach process to gather people’s views and come up with a draft Constitution. (Kabasa 1990).

## CITIZEN PARTICIPATION IN ELECTORAL REFORM

Electoral reform after the 2013 Harmonized Elections seems to have taken the form that the amendments took during the Lancaster House Constitution era. They are not people driven or inspired. Parliament has been reduced to a convenient vehicle of translating party policies into national programmes. With the whipping system employed extensively and in a context of the ongoing factional fights in the governing party, robust interrogation and debate on policies, especially those with a democracy and governance bearing, has been effectively killed. In the law making process of reform, the citizen's voice has been mortgaged to political gladiators who either by circumstance or design, is unwilling to consult the voice holders. A key aspect necessary to enhance electoral reforms is that the legislature ought to take into account public or citizen participation and this right to participate is recognized in the Constitution (Section 141). Public participation encourages a sense of responsibility and ownership. When people take an active part in policy formulation, the planning and/or implementation of programs or projects, they consider such policies, programs and projects to be collectively their own, and therefore the public takes pride in such initiatives and take responsibility which leads to the sustainability of such initiatives. The concept of public participation in Government processes has been institutionalized and legislated in most democracies and is generally recognized as a constitutional right. In Zimbabwe, the concept has been legislated but not necessarily institutionalized. This marks the story of Zimbabwean reform agenda, purely ceremonial, cosmetic and academic, never practiced.

### As A Constitutional Right

As already noted earlier, the Constitution of Zimbabwe under Section 141 recognizes public participation in the law making process to the extent that it is "fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom".

### From A Regional Perspective

The SADC Principles and Guidelines Governing the Conduct of Elections begins in its introduction by stating that; "SADC region has made significant strides in the consolidation of the citizens' participation on decision-making processes and consolidation of democratic practice and institutions. The 3 Section 141 (c) 10 constitutions of all SADC Member States enshrine the principles of equal opportunities and full participation of the citizens in the political process." Although it is arguable whether this is in fact the case, the point is that at regional level citizen participation is recognized as essential to democratic and electoral processes.

### The Current Dilemma

The new Electoral Law is at loggerheads with the Constitution and is a recipe for unending court challenges. This argument is beyond dispute. However, it remains crucial to point out that while realigning the Electoral Act with the new Constitution is a priority, adequate focus should be placed on going beyond just alignment but to include areas of concern around elections as noted by various observer groups, domestic and regional, areas of contestation in the previous polls and a deliberate effort at improving transparency, integrity and inclusivity in electoral processes. Furthermore, for electoral reform to be exhaustive, the intensity given to the legislative process in terms of the process of making laws relating to elections and the specific contents, should be replicated in building the necessary political culture that allows for effective citizen participation especially considering the fact that a change in laws does not necessarily translate into change in practice. Consequently, electoral reforms can never be fully realized if they are conducted in isolation. It is crucial to approach electoral reforms as part of the broader political reforms.

## What to Do???

1. There is need to amend the standing rules and orders to allow for more robust citizen involvement in Parliament. The current standing rules and orders limit public access contrary to the provisions of the Constitution; they do not compel Parliament to include public input into the final hearings; and the petition process can only be done through a Member of Parliament which makes it political and limits direct participation of citizens.
2. There is need for enhanced clarity on laws as the alignment process proceeds. The findings of this paper point to an elite political culture with a passion for interpreting laws to suit their personal and party needs. It is therefore prudent to clarify laws to the furthest limit hence leaving little room for manipulation.
3. The media needs to be further opened up to allow for community radio and multiple players in the mass media. This enhances the voices of the citizens in particular the minority. Media plays a critical role in the democratization of political culture.
4. Strengthening civil society and political parties for enhanced civic and political education and participation- civil society and political parties play a fundamental role in political socialization which in turn influences political culture. They further play a pivotal role in building the capacity of citizens to demand and exercise their rights.
5. There is need to increase research to enhance evidence based advocacy which resonates with the needs and aspirations of the citizens. Their participation in the research and the product thereof enables them to be alert on issues that affect them and to take the necessary action.

## Chapter II: Towards Electoral Reform

### Architects of Electoral Reform: A briefing on the role of Zimbabwe EMB in electoral reform

#### Key issues

- What are the priorities for electoral reform in Zimbabwe?
- Who initiates the reform process in Zimbabwe?
- Challenges for electoral reform in Zimbabwe
- The role of ZEC in electoral reform in Zimbabwe
- International best practice
- Recommendations

#### Background

Electoral reform in Zimbabwe since the July 31, 2013 harmonized elections has been piecemeal, half-hearted and overly simplistic. Piecemeal in that it has not been implemented fully exactly two years after the Constitution was adopted and elections were conducted. It has been half-hearted because there seems to be little political will to push reform, particularly on the electoral and political environment. Lastly, it has been simplistic as there seems to be slow and cosmetic legislative movement in re-aligning laws to the new Constitution without paying due attention to implementation and enforcement mechanisms.

Rather, electoral reform must be holistic, whole hearted and comprehensive. It must be implemented on three fundamental fronts; legislative, environmental and administrative. Holistic electoral reform refers to reform that covers legislative, environmental and administrative issues. Whole hearted reform refers to full implementation not smoke screening the reform agenda. It follows then, that whole hearted reform requires cohesion, stakeholder engagement and consultation, political will and appropriate rule of law anchored by checks and balances of the state system. This will make reform comprehensive. The Electoral Management Body (EMB), the Parliament of Zimbabwe, the Ministry of Justice, Legal and Parliamentary affairs and civil society all have a role to play in ensuring comprehensive electoral reform.

Pursuant to the ideals of inclusivity, information accessibility, irreversibility and comprehensiveness, the ERC seeks to feed into the electoral reform agenda. The electoral reform agenda must take a front row in the democratization process of any nation. The role of the Election Management Body (EMB) in this agenda has been subsided for several reasons. Among them; the Constitution does not give a clear mandate to the body to initiate or play a role in the legislative reform agenda of the country, the Electoral Act also does not provide for such a mandate; there are no provisions for the EMB to make statutory regulations that are binding legally and finally, the EMB is somewhat reliant on the executive for funding and the making of laws governing elections in Zimbabwe.

The legal framework has left a lot of room for political actors (in the executive of government and political parties) to initiate electoral laws and to push for reform. This has made the laws politically subservient. Moreover, political will becomes a vital cog in implementation of reform. In a society where one party dominates the political field, reform sometimes takes the back seat. While, political will remains a fundamental element in any reform process, it must never be allowed to hold public and democratic will at ransom. Instead, the EMB must be given enough space and role to initiate electoral reform in consultation with stakeholders.

## Introduction

The electoral reform agenda comprises of changes to the administrative, environmental and legislative frameworks. It must be thorough and comprehensive. A focus on any one of the three thematic areas will necessarily render the process halfhearted. This brief will analyze what exactly the electoral reform process entails in Zimbabwe in a bid to streamline the role of the EMB. This will be done by citing priority areas for reform and possible hindrances to reform. Fundamentally, the brief will zero in on the role envisaged for the EMB in electoral reform, the limitations faced and the recommendations for enhancing this capacity. International best practice, with regional case studies of South Africa and Sierra Leone will form part of the critical analysis and will essentially inform the recommendations thereof.

## The road to reform

Electoral reform in Zimbabwe has come a long way. From independence, “the Registrar-General of Elections was actually the key player in the electoral process. A public servant, he was responsible for almost the entire electoral process from the registration of voters and provision of electoral staff to the declaration of election results and the custody of election materials (Zimbabwe Government, 1996). These extensive functions made the Registrar-General very central, and therefore powerful, in the entire electoral process.”<sup>1</sup> Sachikonye. In 1990, an elections directorate was created and was manned by public service commission employees. According to Sachikonye<sup>3</sup> “It coordinated the activities of ministries and departments in electoral matters, gave instructions and made recommendations to the Registrar-General in regard to the exercise of his functions under the Electoral Act. The establishment of the Election Directorate increased the number of players in the electoral process thereby splitting the responsibility further. The independence of the Election Directorate, by virtue of being part of state structures, was suspect.”

Initial changes were recorded in 1987 as Zimbabwe sought to deal with the proportional seats allocated to the white minority as part of independence negotiations. In the same year the country introduced the post of Executive President, two Vice Presidents and increased the term of the President to 6 years. This was followed by the scrapping of senate in 1989. Specific to electoral reform, Sections, 59, 60 and 61, these provisions dealt with the Delimitation Commission, delimitation of constituencies and Electoral Supervisory Commission respectively. The import of their changes was to remove the need of approval to simply consultation of Chief Justice or Judicial Services Commission when appointing the above mentioned commissions. This effectively eroded the necessary checks on presidential powers with relation to elections.

In 1997, there was pressure from the National Constitutional assembly (NCA) for a new Constitution. The government reacted by establishing a Constitutional Commission (CC) which established a draft constitution. This was rejected in a referendum. Further attempts to electoral reform, were seen in 2005 when senate was brought back. Prior, Parliament had passed the Political Parties (Finances) Act (2001), the Electoral Act (2004) and the Zimbabwe Electoral Commission Act (2004). In 2008, there were changes to the Electoral Act allowing for a presidential winner to have at least 51% of the vote in order to be declared winner and making provisions for a run-off. These were among more legislative changes. By 2008, 19 amendments had been made to the Constitution, with a large number affecting elections. In the period 2009-2013, Zimbabwe went through a process of writing a new Constitution. This was adopted in April 2013. However, the electoral framework it provided could not be used as the election was due. Presidential powers were called in to fill the gap and these regulations were used to conduct the elections on July 31, 2013. Beyond 2013, there have been attempts to

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<sup>3</sup> Sachikonye L, 2011, Zimbabwe’s Constitution-Making and Electoral Reform Processes: challenges and opportunities, Makerere University presentation <http://www.cmi.no/file/?1324>

reform through aligning the laws to the new Constitution. The pace has been slow and the changes have left a lot to be desired.

## **Is reform necessary?**

The need for electoral reform is more urgent than ever. As the country moves towards 2018 harmonized elections, several fundamental changes are still required. As already highlighted these are legislative, environmental and administrative. Reform so far has largely taken the legislative route. The ERC contends that there is more reform needed on the environment and administration. Below are some of the priorities for electoral reform in Zimbabwe.

## **Priorities for Electoral reform in Zimbabwe**

### **The environment**

The electoral environment has played a fundamental role in undermining the credibility, freeness and fairness of elections in Zimbabwe since independence. A culture of violence, intimidation, gerrymandering and unfairness dominates the environment. Violence and intimidation have been present during elections beginning 1980. In recent years, 2008 run-off presidential elections proved to be most violent.

The role of chiefs and other traditional leaders has undermined the credibility of elections. It has undermined the Code of Conduct for political parties and candidates. Voters, particularly rural, are intimidated through traditional leaders who are instructed by ruling party bigwigs to ensure their villagers vote in a certain way. Villagers are threatened with all sorts of retribution ranging from being chased away from the village to not getting drought relief earmarked for their communities.

Vote buying has also been prevalent in the electoral environment of Zimbabwe. Politicians entice and bribe voters through several means including grading of roads, giving out agricultural inputs and food just before elections.

### **The legal framework**

The legal framework for elections in Zimbabwe has managed to attract much of the attention of policy makers. However, it still falls short of required international standards. The introduction of the Zimbabwe Electoral Commission (ZEC) in 2004 marked a great step in the positive direction of establishing an independent body to run elections. However, the composition of the Election Management Body (EMB) was severely questioned in particular, staffing of former and serving military members. The 2008 election was a major dent in the professional record of ZEC. It took the EMB a month to release results of the elections.

Basing on the SADC guidelines for free and fair elections leaves our framework weak as the guidelines are due for amendment themselves.

### **The administrative**

There have been important changes to the administrative nature of elections in Zimbabwe particularly beginning with the establishment of ZEC in 2004. This signified a step towards an independent EMB. The reconfiguration of the body in 2009 further enhanced its independence and credibility. However, more still needs to be done particularly on improving its independence and renewing tainted senior staff in ranks. Some of the legislative challenges will be discussed as the brief interrogates the role of the EMB. Essentially, they point to the capacity of the EMB to make fundamental input to electoral reform in the country.

## The role of the EMB in electoral reform

The Election Management Body (EMB) in Zimbabwe, the Zimbabwe Election Commission (ZEC) has limited powers for initiating reform particularly the environment and legislative framework. Section 238 of the Constitution of Zimbabwe provides for the establishment of ZEC. Section 192 of the Electoral Act provides regulatory powers of the Commission. These remain largely administrative. Section 192 (6) of the same Act further requires them to get approval from the Minister before the regulations can have effect. Section 12 of the Electoral Act, requires ZEC to get ministerial approval before accepting any donation. Section 192(6) and Section 12 have direct effect on the independence of the body. This defies Section 235 of the Constitution of Zimbabwe which asserts the independence of the independent commissions.

This has meant that ZEC has little room to push to act independently, let alone push for or initiate electoral reform. The Electoral Commissions Forum of SADC<sup>4</sup> countries states the following; independence of action, impartiality, integrity, transparency, financial probity, accountability, professionalism, service mindedness, equality of access, and sustainability as principles and guidelines on the independence of EMBs in the SADC region. Therefore, given the limitations of Section 192 (6) and Section 12 of the Electoral Act, ZEC's capacity to play its role effectively is undermined.

It is the position of this paper that ZEC must strive to effectively play its role even under strenuous circumstances through positive interpretation of some legislation. Section 157 (4) of the Constitution states that;

“No amendments may be made to the Electoral Law, or to any subsidiary legislation made under that law, unless the Zimbabwe Electoral Commission has been consulted and any recommendations made by the commission have been duly considered.”

This section provides for the consultation of ZEC with regards to Electoral Law amendments. It therefore allows ZEC to input into legislative electoral reform upon consultation. While commendable, this provision only makes ZEC a subsidiary to electoral reform agenda. Furthermore, it leaves room for the disregard of ZEC input. The due consideration of their input does not make their input compulsory. Essentially, their input might be ignored. However, one might view this section to effectively leave room for ZEC to initiate laws for the consideration of Parliament. It is however, not succinctly so. The innovation of ZEC is called into action if this section is to be used from such an angle.

Effectively, there is little room for ZEC to initiate legal reform. ZEC remains subservient to the executive and Parliament in as far as legal reform is concerned. As shall be shown in the next section, this role is limiting if compared with other regional best practices. It is important that the Constitution allows for independence of ZEC and improves their power to push for legal reform.

Administratively, ZEC is allowed by Section 192 of the Electoral Act to make regulations governing their administration of elections. Firstly, this is limited by the fact that they are only making regulations as governed by laws they had no input in. Secondly, by the fact that they still need the approval of the Minister of Justice, Legal and Parliamentary Affairs. This seriously questions the independence of the body. While there is room to be innovative under Section 192, the ministerial oversight dampens any hope of this happening.

The environmental election framework needs even more work. The input of ZEC to improving the environment is not succinctly provided for. While the Fourth Schedule of the Electoral Act attempts to shape electoral behavior of actors, it is hardly enforceable by ZEC. The Code of Conduct for Political Parties and Candidates

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<sup>4</sup> ECF of SADC countries, 2007, principles and guidelines on the independence of EMBs in the SADC region.

is a good example of how ZEC can impact the electoral environment if there was a framework for them to enforce the code. For example, in recent by-elections, particularly in rural areas such as Chirumanzu-Zibagwe, Hurungwe West and Tsholotsho North, cases of intimidation, violence, vote buying and abuse of office by traditional leaders were well documented. The EMB did little, if anything, to reprimand political actors, their parties or traditional leaders. Moreover, had they reprimanded them without change, they would need to rely on other state forces for implementation. In Hurungwe West, ZEC called on the Zimbabwe Human Rights Commission (ZHRC) and the police to investigate without any immediate action to force perpetrators to change or stop. The ZHRC published its findings detailing electoral malpractice in Hurungwe West. However, there is no framework for ZEC to act on the findings.

## International Best Practice; the case of South Africa and Sierra Leone

### South Africa

The South African case has a wide range of examples of how the Independent Electoral Commission (IEC) instituted several legal electoral reforms especially towards enfranchisement of the Diaspora and prisoners. According to Bakken<sup>5</sup> (2015) the IEC of South Africa had followed up the Constitutional Court ruling on the “Richter case,” allowing for those in the Diaspora and registered to vote to exercise their right by pushing for legal changes that allowed them to register those in the Diaspora to vote. This saw the revision of the Electoral Act 1973 allowing for;

“The right to register and vote for South Africans living abroad; and the right to register and vote for citizens serving prison sentences.”

While not all proposals by the IEC are agreed on, they are at least considered and debated by Parliament. Some proposals, for example on e-voting, electoral system reform and party finances have been debated and put on hold or rejected. Furthermore, reform issues are heavily consulted upon with all stakeholders particularly political parties. This allows for robust discussions on continuously improving administrative, environmental and legislative reform issues.

The Electoral Commission Act 51 of 1996 (j) empowers the Commission to “continuously review electoral legislation and proposed electoral legislation, and...make recommendations in connection therewith.” Outside legal framework, the IEC in its vision for 2018, challenges itself to “continuously improving the legislative framework.” The proactive nature of the IEC makes it ideal for electoral reform agenda to succeed.

### Sierra Leone

The West African country is a young democracy emerging out of a civil war. Its National Election Commission (NEC) has made significant strides in pushing for electoral reform, albeit, exponentially. According to Conteh et al (2015)<sup>6</sup>, the NEC is given powers to make regulations by statutory instrument through Section 33 of the Constitution and Section 166 of the Public Election Act 2012. Unlike in Zimbabwe, where the Minister will have to approve, in Sierra Leone they have to be “published in the Gazette” and “laid before Parliament” and “shall come into force at the expiration of a period of twenty-one days of being so laid...”

Legal reform instituted in Sierra Leone since 2005 was initiated by the NEC in consultation with the Law Reform Commission (LRC), Office of Attorney General and Minister of Justice and the Law Officers

<sup>5</sup> Bakken M, 2015, South Africa: The role of the EMB in Electoral Reform, [www.aceproject.org](http://www.aceproject.org)

<sup>6</sup> Conteh M et al, 2015, Sierra Leone: The Role of the EMB in Electoral Reform, [www.aceproject.org](http://www.aceproject.org)

Department. In this case, while consultation with the executive remains necessary, initiation of laws can also begin with the NEC.

Consultation has proved to be important in the reform agenda of Sierra Leone. Stakeholders including civil society, political parties, parliament and the executive are consulted.

### *Recommendations*

- *ZEC must be proactive and start initiating electoral reform by utilizing Section 157 (4) of the Constitution.*
- *The Parliament of Zimbabwe must make legislative changes to allow for ZEC to have more powers to initiate reform.*
- *The independence of ZEC must be unequivocally ascertained by removing clauses that require ZEC to be supervised by the Minister of Justice, Legal and Parliamentary Affairs.*
- *ZEC must be allowed to fundraise on its own to expedite the implementation of agreed reforms while strengthening their independence.*

### **Conclusion**

The independence of ZEC, legislative freedom to initiate laws and reform, fundraising autonomy and pro-activity are fundamental in making the EMB an important player in electoral reform.

## Voter education in Zimbabwe- towards achieving full freedom of expression

### Introduction

Public confidence in electoral processes is fundamental to the credibility of elections. A myriad of processes must precede any elections for this confidence to be achieved. Confidence in the processes ensures buy in and informed participation. Voter education forms the cog of building this public confidence in electoral processes anywhere in the world. While many other processes such as voter registration, stakeholder engagement, legislation, inspection and delimitation among others aid to build confidence whilst voter education facilitates understanding of all the processes. Voter education according to the NDI<sup>7</sup> (1999) is the “process by which citizens are educated on how to register and vote, develop a sense of civic duty to participate in the electoral process and learn to respect the outcome of legitimate elections.” Principles of voter education include comprehensiveness, integrity, inclusiveness, accessibility, transparency, credibility and security. These principles ensure that the voter education provided is adequate, objective, appropriate, unbiased and comprehensive. Principles of voter education are established by the legal framework and practice. Hence it is important that the legal framework enshrines these principles and that practice conforms to the law.

Voter education in Zimbabwe has not come without its shortcomings. Several challenges, chief among them the restrictive nature of the process have made the process limited, narrow and not attractive to young people. The law governing voter education in Zimbabwe does not allow for continuous voter education, provision of voter education by other persons other than the commission and restricted voter education material. These restrictions as provided for in the Electoral Act Section 40B, C, D, E and F make voter education inaccessible and limited thereby reducing public confidence, knowledge and understanding of electoral processes in Zimbabwe. More importantly, they are unconstitutional as they are against Section 61 of the Constitution guaranteeing freedom of expression.

This brief seeks to unpack voter education in Zimbabwe, how it limits public confidence, knowledge and information. This is done through an analysis of the voter education provisions, previous reports from Parliament on the process and previous court rulings on the subject. Fundamentally, the paper will proffer policy recommendations to make the process comprehensive, inclusive and adequate to bring public confidence and knowledge of electoral processes in Zimbabwe.

### The necessity of voter education

Voter education is a cross cutting process in the electoral process. It facilitates knowledge on “the eligibility to vote, where and how to register as a voter, where to check/inspect the voters’ roll to ensure that your name is present, the type of elections and election date, how to vote, who the candidates are and how to lodge dissatisfactions.” Dewa and Muchemwa (2014)<sup>8</sup>. According to Jennings (1999)<sup>9</sup>, “voters must be convinced

<sup>7</sup> NDI in Jennings K, 1999, The Role of Electoral Management Bodies In Supporting Voter Education: Lessons Learned and Challenges, “Education For Participation”, National Democratic Institute (NDI), Mexico

<sup>8</sup> Dewa D and Muchemwa T, 2014, The Voter Education “Ghost” in Zimbabwean Harmonised Elections of 2008 and 2013: What can be done? Case of Midlands, Gweru District, International Journal of Research in Humanities and Social Studies, [www.ijrhss.org](http://www.ijrhss.org)

<sup>9</sup> Jennings K, 1999, The Role of Electoral Management Bodies In Supporting Voter Education: Lessons Learned and Challenges, “Education For Participation”, National Democratic Institute (NDI), Mexico

that voting will make a difference, and voters must have confidence in the integrity of the electoral process. Building public confidence in the electoral process requires that voters hear the voices they trust and respect from civil society...it is simply not enough that governmental authorities and electoral management bodies conduct voter education, as important as such efforts are to genuine elections.” Jennings points to trust as important in provision of voter education. Not everyone can conduct voter education, but not everyone can trust one source of voter education. In Zimbabwe, where polarization is rife, there is need for a plethora of voices to be heard in voter education so as to attract confidence in electoral processes.

Furthermore, voter education improves decision making for citizens as they will be in a position to make informed choices and to understand their rights and responsibilities as would be informed by their choices. Additionally, citizens begin to understand their political system and how voting is important in setting up these systems and the inhabitants of offices. Voter education is also important for conflict resolution as more political and electoral myths are demystified and clarified allowing for sharing of responsibility with citizens. Fundamentally, informed participation is increased leading to less spoilt votes and logistical problems during elections.

### **The law on voter education**

The Constitution of Zimbabwe Section 239 (h) provides for the Zimbabwe Electoral Commission (ZEC) to conduct and supervise voter education. Section 40B of the Electoral Act (2:13) mandates ZEC to provide voter education. It further mandates it in subsection 40B (1) (b) to ensure that voter education provided by other persons is adequate and not misleading or biased in favour of any political party. Section 40C provides for a specific provision of voter education by persons other than the Commission or political parties. It sets parameters under which such persons or trusts can operate in providing voter education. Restrictions on how and who provides voter education are further stipulated in Section 40C (2) which states that;

The commission shall in writing require any person, other than a political party, providing or proposing to provide voter education, to—

- (a) Furnish the commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
- (b) furnish the commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education
- (c) disclose the manner and sources of funding of its proposed voter education activities; and
- (d) satisfy the Commission that he is not otherwise disqualified in terms of subsection (1) from providing voter education.

Section 40C (3) criminalises any voter education outside the above stipulated restrictions and conditions.

The Act also provides for compulsory voter education by the commission in Section 40D “not later than one week after the publication of a proclamation or notice in terms of Section 38 or 39 fixing the dates of an election...” This means that ZEC only concentrates on voter education a few weeks before an election. This does not give adequate time to inculcate knowledge that builds confidence and reduces the shortcomings associated with lack knowledge such as spoilt votes, voters going to wrongs wards (polling stations), assisted voting and denial to exercise vote among others.

### **When politics diminish public confidence**

Public confidence in electoral processes certainly hinges on open and comprehensive voter education efforts. Where politics seems to drive electoral processes, confidence diminishes even further. Citizens need to be reassured that while interlinked, politics and elections have a natural, not man made influence on each other. According to Jennings (1999);

“...even in countries where transition toward a fully democratic process has developed relatively smoothly, building and maintaining public confidence in the electoral process is a principle challenge. This is a central challenge for voter education efforts. It is not enough for voters to learn where, when and how to vote. Voters must be convinced that voting will make a difference, and voters must have confidence in the integrity

of the electoral process. Building public confidence in the electoral process requires that voters hear the voices they trust and respect from civil society...”

The role of political parties, more so, that of ruling parties must be limited in influencing electoral process. More importantly the role the executive in formulating legislation must be put in check with the role being reserved more for the parliament and rightfully so. Additionally, parliament must respect their own internal checks and balances to ensure the input of the portfolio committees is taken seriously. The situation where the party whipping system takes precedence over representation and constitutionality is untenable and unsustainable for democracy.

### Political culture in Zimbabwe

Voter education legislation has been criticized as restrictive since the creation of the Zimbabwe Electoral Commission. An adverse report during the debate of the ZEC bill in 2004 by the portfolio committee on Justice Parliamentary and Legal Affairs gives great insight into the little consideration given to public and parliamentary input. The committee gave a negative report on the voter education provisions of the proposed law citing Section 11 and 12. A look at the current provisions of the Electoral Act 2013 Section 40C shows that little if anything was changed.

What parliamentarians refused in 2004	What is currently in the Electoral Act
<p>3 <i>CLAUSE 11(3) OF THE BILL</i></p> <p>3.1 <i>Clause 11(3) of the Bill imposes criminal liability on any person, other than a political party, who having the authority to conduct voter education in terms of clause 11(1) or proposes to conduct voter education, fails to comply with a requirement by the commission to do any of the following:</i></p> <p>a. <i>furnish the commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted;</i></p> <p>b. <i>furnish the commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education</i></p> <p>c. <i>disclose the manner and sources of funding of its proposed voter education activities; and</i></p> <p>d. <i>satisfy the Commission that he is not otherwise disqualified in terms of subsection (1) from providing voter education</i></p>	<p>40C (2) <i>of the Electoral Act</i></p> <p>(a) <i>Furnish the commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter educations will be conducted; and</i></p> <p>(b) <i>furnish the commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education</i></p> <p>(c) <i>disclose the manner and sources of funding of its proposed voter education activities; and</i></p> <p>(d) <i>satisfy the Commission that he is not otherwise disqualified in terms of subsection (1) from providing voter education</i></p>

The provision of voter education must be viewed as an exercise of the right of freedom of expression. This was contained in the adverse report on the ZEC Bill in 2004. Section 6.1 of the report stated that; “the provision of voter education involves holding opinions, receiving and imparting ideas and information. It therefore involves the exercise of the freedom of expression.” The parliamentarians followed it up by stating in 6.2, 6.3 and 6.4 that;

*“The provisions of clauses 11 and 12 of the Bill limit the free conduct of voter education by providing numerous restrictions in paragraphs (a) to (g) of clause 11(1), creating a criminal offence for non-compliance with certain orders of the commission in section 11(3) and by prohibiting foreign donations which would make it possible for people to fund and therefore conduct voter education...the provisions of clauses 11(1) 11(3) and 12 must therefore be tested against the principles of permissible derogations provided for in section 20 (2) of the Constitution...In other words, Mr Speaker, the limitations to the right of freedom of expression that are provided for in clauses 11 and 12 of the Bill can only be constitutional if it can be shown that these limitations are necessary:*

*(1) In the interests of defence, public safety, public order, the economic interests of the State, public morality or public health.*

*(2) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings; preventing the disclosure of information received in confidence; maintaining the authority and independence of the courts or tribunals or parliament; regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless, broadcasting or television or creating or regulating any monopoly in these fields; in the case of correspondence preventing the unlawful dispatch therewith of other matter.*

*(3) For imposing restrictions upon public officers.*

Essentially, similar clauses have been maintained without taking into consideration the fundamental freedoms as restricted by such. Whereas in 2004 these sections conflicted with Section 20 of the Lancaster House Constitution, Section 40C (3) is unconstitutional and violates Section 61 of the Constitution of Zimbabwe.

*Mr. Speaker Sir, as stated earlier in this report, there are important policy considerations (which I shall not repeat), which warrant the regulation of voter education. These important policy considerations do justify limiting to some extent the right of freedom of expression*

### **Moving forward –Policy recommendations**

- (a) Open up voter education to broader civil society with adequate but not overbearing oversight*
- (b) Monitor voter education provided through spot checks, providing voter education guidelines*
- (c) Provide for continuous voter education in Zimbabwe*
- (d) Review the law to allow more players to conduct voter education*
- (e) Voter education to be extended to those in tertiary institutions*

- (f) *The ZEC should be adequately resourced to ensure that the voter education provided conforms to the principles of inclusivity, transparency, comprehensiveness and integrity. This is a constitutional obligation which the Executive must adhere to.*
- (g) *The ZEC should consider revision of the voter education curriculum and methodology, to reach youth, women and the disabled who are marginalised. The use of appropriate technology and social media would go a long way in improving the voter education provided. For blind people they could introduce braille, sign language interpreters for the deaf and hard of hearing and inclusion of disabled peer educators.*
- (h) *Political parties, government and other stakeholders should ensure that the operating environment is conducive for credible elections, to buttress the efforts of the ZEC in voter education.*
- (i) *Constitutionalism will go a long way in empowering people about their rights.*

## Conclusion

Voter education is a vital element in the electoral process. It facilitates public confidence, knowledge and information among citizens. It is also the embodiment of freedom of expression as guaranteed in the Bill of Rights. Limiting its provision is tantamount to violating the Constitution. The legislation must therefore be reviewed to ensure voter education is open to all Zimbabweans, continuous and meaningful to all generations of the Zimbabwean society.

# National Voter Registration Briefing

## Key issues

- **What are the central concepts that guide policy on voter registration?**
- **What were the major survey findings on the state of voter registration?**
- **What, then, are the immediate policy recommendations?**
- **What practical challenges could derail or discredit electoral reform?**

## Background

This policy brief intends to inform and advise the Zimbabwe Electoral Commission (ZEC), Ministry of Justice, Legal and Parliamentary Affairs, Parliament, Political Parties and other key stakeholders on fundamental considerations for a transparent voter registration process that enhances inclusive accessibility, integrity, information credibility, insulation from external influence and irreversibility. These are key guiding principles for voter registration drawn from a larger pool of Integrity, Inclusiveness, Comprehensiveness, Accuracy, Accessibility, An informed Public, Transparency, Security, Information Privacy, Accountability, Credibility, Stakeholder participation and Cost effectiveness. It is primarily based on an empirical survey conducted by Election Resource Centre (ERC) in conjunction with the Mass Public Opinion Institute (MPOI), with input from ZEC and civic society organisations working on elections, on the state of voter registration and elections-related issues in Zimbabwe held from 20 February to April 2015. This was a nationally representative survey (sample size = 1200). The survey focused on; awareness about voter registration issues in Zimbabwe, status of voter registration, preferred mode of voter registration, ease or difficulty of voter registration, motive for

registration, perceptions on state of the voters' roll, participation and interest in elections, access to election related information, awareness of and trust in ZEC, awareness of electronic voting and other relevant issues. The survey was complemented by two stakeholder consultative meetings held in Bulawayo and Harare on 21 and 27 May 2015 respectively. The next section explains the central concepts that guide the ERC's policy thinking.

1.1 Table 1: Definition of key concepts

Term	Definition
1) Information	Refers to the extent to which access to adequate, accurate, comprehensive, credible and accessible plural sources of information on voter registration is available.
2) Integrity	Refers to the professionalism, transparency, independence and competence of voter registration institutions. Thus rules, regulations and procedures must be easily accessible, enforceable, be adhered to in the whole voter registration process without exception.
3) Insulation (Security)	Refers to the way the process must be insulated from outside pressure, undue influence, intimidation, threats, coercion and bribery. The voter register must also be accurate, secure and not tampered with.
4) Inclusive Accessibility	Refers to the extent to which the process makes it as easy as possible for every citizen to register to vote. All citizens have equal right to participation without any hindrances, legal or practical to universal suffrage.
5) Irreversibility	Once registered, voters must not be removed from the voters roll, except where there is proof required for removal from voters' roll on death or absence as in Section 36 B of the Zimbabwe Electoral Act.

## Introduction

The study provided a solid baseline for stakeholders to engage on voter registration and election related issues in Zimbabwe. A number of positive issues can be distilled from the study and some of these are: the majority of respondents are aware of where to vote, how to vote and registration requirements. Most adult Zimbabweans are registered as voters and possess requisite documents for voter registration. The study shows that a plurality prefers to be registered through voter registration mobile units. Further, the majority want voter registration to remain voluntary; they also prefer the process to be continuous instead of having it taking place just before an election. A small but significant proportion of the adult population has been assisted to vote in the past and this assistance has mainly been provided by ZEC officials and election observers.

On the low side is that a significant number of respondents believed that the voters' roll has duplicate/multiple entries, ineligible voters and that it is prone to unauthorized alterations. With regards to voters' roll inspection; only a small proportion has inspected it since July 2013. A majority of the adult respondents said it is interested

in elections, has participated in elections in the past and have no major qualms about police presence at polling stations. However, less than half of the respondents trust ZEC, the organization mandated to run elections in this country which brings in the question of integrity. A plurality said their main source of election-related information is community meetings. In addition, voter educators from ZEC do not appear in the top five sources of some information on elections. More darkly, 72% of the young population (18-25) is not registered to vote. The next section provides highlights of the major findings from the survey.

## Major Findings

- *A large majority of respondents (82%) know where to register to vote. 78% claimed to be conversant with registration processes and the majority of the respondents were aware of registration requirements.*
- *75% of respondents were registered as voters. Within this configuration, more rural respondents (77%) are registered as voters compared to their urban counterparts (69%). Slightly more men (77%) are registered than women (73%).*
- *40% of respondents have registered to vote through the mobile voter registration units whereas exactly a third (33%) has registered through visiting the registration centres. Consequently, almost 3 out of 5 adult respondents (57%) said they prefer to register via mobile registration units.*
- *More than six in ten respondents (61%) were of the thinking that voter registration should be a continuous process compared to 34% who preferred it to take place only just before an election.*
- *Only a minority (8%) have inspected the voters' roll since the July 2013 General Elections.*
- *80% of the respondents want voter registration to remain voluntary.*
- *40% were of the opinion that the voters' roll is not free from duplicate and multiple entries. Only 29% of the respondents said that it was 'to a large extent free' from multiple and duplicate entries. The plurality of respondents (31%) could not make an opinion on the subject.*
- *A combined total of 46% of respondents believed that the voters' roll was 'to a small extent' and 'not at all free' from ineligible voters. Only 26% of the respondents said that it was 'to a large extent free'. 29% reserved their opinion on the issue.*
- *A significant total of 33% said that voter registration information was 'not at all secure' or 'somewhat insecure' to prevent unauthorised access.*
- *24% (that is about 1 in 5 participants) said voter registration information was 'somewhat insecure' and 'not at all secure' to protect against unauthorised alteration and disclosure.*
- *An overwhelming 92% of respondents indicated that they are aware of the requirements that are needed for voter registration. 28% said that it was 'somewhat difficult' or 'very difficult' to get voter registration documents. More urban respondents (70%) compared to rural respondents (65%) said that it is 'somewhat easy' or 'very easy' to get the required voter registration requirements.*
- *A combined total of 48% trusts ZEC 'somewhat' or 'a lot'. However, roughly 39% of Zimbabweans indicated that they did not have enough information to comment.*
- *Results of the survey show that the majority of respondents (73%) have participated in elections at some point in the past. However, the level of participation differs with variables such as place of residence, gender, province and level of education. Only a small gender difference exists between male respondents (76%) and female (73%) who have participated in elections. A significant rural/urban divide exists on this matter: more rural dwellers (78%) have participated in elections compared to 69% of the urban respondents.*
- *A plurality of the adult population (43%) indicated that it is 'very interested' in elections and another 37% said it is somewhat interested. A total of 21% said they are either 'not very interested' or 'not at all interested' in elections.*
- *A plurality (25%) said their main source of election-related information is community meetings, followed by state-owned radio stations (12%). Voter educators from Civil Society Organizations*

*(CSOs), religious leaders or gatherings' contributions in election related information are insignificant as they approached 0%.*

- *Voter educators from ZEC do not appear in the top five sources of information on elections.*
- *81% of the respondents professed ignorance on electronic voting. Awareness of electronic voting rises with an increase in one's level of education. More urban respondents (20%) propose that Zimbabwe should adopt electronic voting compared to rural respondents (7%).*
- *60% of respondents felt 'very secure' with the presence of the police at the polling station. More people from the rural areas (63%) said that they felt 'very secure' compared to 57% from the urban areas.*
- *The survey shows that the majority of the Zimbabwean adults (69%) have never been assisted to vote. Only 5% have been aided to vote and these have been assisted by ZEC officials and election observers.*

The next section builds on the findings to structure priority policy areas;

## Policy Recommendations

### Integrity

- a) ZEC must immediately exercise in full its functions as prescribed in the Constitution subject to necessary changes in the Electoral Act to register voters, compile the voters' rolls and maintain custody over the voters' roll
- b) In order to improve TRUST, which is below 50%, ZEC must ensure that its Commissioners are professional at all times during their tenure and that they keep subordinated to Section 236 of the Zimbabwe Constitution which emphasize that *they must not act in a partisan manner, further the interests of any political party or cause, prejudice the lawful interests of a party or violate the fundamental rights or freedoms of any person and that they must not be members of any political party.* This will go a long way in building TRUST between the citizens and the Commission.

### Inclusive accessibility

- a) ZEC must increase mobile voter registration facilities as provided for in Section 17 A (2) (a) of the Electoral Act as this is a preferred mode of registration with easy access. More specifically, ZEC can adopt the concept of voter registration weekends whereby designated periods around the country are put in place for intense voter registration as practised in South Africa.<sup>10</sup>
- b) ZEC must broaden its medium of communication on voter education to include social media. Internet, social media and mobile phone applications are popular medium of communication especially among the urban youths (18-25).
- c) ZEC needs a special voter education program for the youth who are between 18-25 years as 72% of this group is not registered to vote
- d) There is need for a gender sensitive voter registration model

### Information

- a) ZEC must intensify continuous voter education to become a competitive source of information. It is the legal function of ZEC to provide adequate, accurate and unbiased programmes of instructions on electoral law and procedure aimed at citizens generally.<sup>11</sup>
- b) Voter education must be opened up to more stakeholders without undue restrictions so as to increase credible sources of voter information.
- c) ZEC must utilise community meeting platforms for voter education. This in light of the fact that community meetings were cited as the dominant source of information on electoral matters.
- d) Voter education must be broadened to ensure that it clearly covers voter mobilisation that is encourage people not only to register but to go and vote. There is a huge discrepancy between the high Voting Age

<sup>10</sup> For previous successful implementation see, The African Union Election Observation Mission to the 7 May 2014 National and Provincial Elections in the Republic of South Africa

<sup>11</sup> Section 40 A and 40B of the Electoral Act

Population (VAP) and those who actually go and vote. Education must also include procedures and importance of voter inspection in line with Section 21 of the Electoral Act.

## Insulation

- a) ZEC must adopt a medium technology assisted/driven voter registration model resulting in a biometric voters' roll<sup>12</sup> in order to insulate against multiple voting – de-duplication, voter impersonation-adjudication and possible ballot stuffing.<sup>13</sup> This will automatically mean that the voter registration slips as provided for in the Electoral Act, fall away.
- b) ZEC must proactively promote a salubrious environment for voter registration insulated from undue influence.

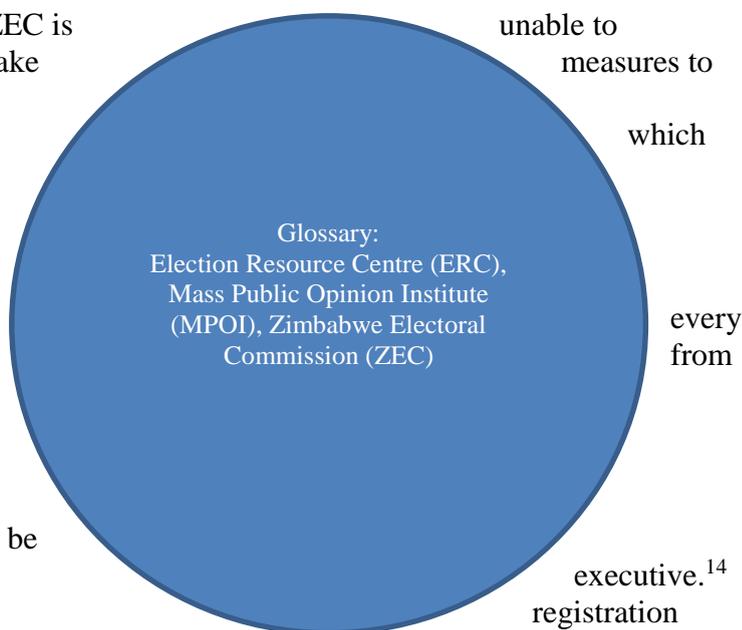
## Irreversibility

- a) ZEC must ensure proper custody and maintenance of the voters' roll and registers so that no one can tamper with the voters' roll. This will protect against unauthorised access, alteration and disclosure.

It is also important to note that a synthesis of the stakeholder meetings point to ten possible dangers that can derail and discredit the reform process. It is therefore important for policy makers to know such as listed below and safeguard against them.

## Possible dangers

1. *Partisan vetting* and appointment of ZEC Secretariat and partners to work with.
2. Lack of *political will* by political actors to acknowledge that urgent electoral reforms are needed ahead of the 2018 General Elections
3. Drafting of a *weak legislation* that does not concisely capture the spirit of the Constitution to give independence to the Commission and to ensure free, fair, transparent and credible electoral process
4. *Marginal role of women*
5. *Dominance of impunity*. A situation where ZEC is unable to investigate violations of electoral laws and take measures to ensure prosecution
6. *A rural bias* in the voter registration process which might be misconstrued as a bias to implement voter education and registration programs in strongholds of some political parties
7. *Weak consultation* with all stakeholders at every stage of the voter registration process, from the planning to the product level.
8. *Limited financial resources* for effective election management by ZEC
9. *Executive dominance* contrary to the Constitution which stipulates that ZEC must be accountable to parliament and not to the executive.<sup>14</sup>
10. *Undue influence* by local elites in the voter registration process



<sup>12</sup> Note that the views in this section are extrapolated from a previous CiCZ publication in conjunction with ERC. See CiCZ, 2015: The Disjuncture between Policy and Practice in Zambia and Zimbabwe: Bridging the Zambezi River on Democratic Election Management, ERC, CiCZ, Harare, Zimbabwe

<sup>13</sup> Biometric Technology De-Briefing By P.Zamchiya 13 May 2015, Harare, Zimbabwe

<sup>14</sup> See section 235 of the Constitution.

## Conclusion

Whereas the survey largely portrays a positive picture on the national situation on voter registration there are a number of issues that need to be improved for a more efficient and transparent system. ZEC must ensure that it becomes a competitive source of adequate, credible and accessible information on elections. More needs to be done in terms of making Zimbabweans know about voter inspection. In order to improve trust levels, ZEC must improve its integrity through professionalism, efficiency and fairness in the conduct of its business. Thus rules, regulations and procedures must be easily accessible, enforceable and be adhered to in the whole voter registration process without exception. The voters' roll and voter register must be kept secure to protect against unauthorized access, alteration and disclosure. The registers must also be in a biometric form to guard against impersonation. ZEC must also ensure that the voter registration process is insulated from external undue influence. Efforts must also be made to improve accessibility for all citizens especially women. In this regard, voter registration weekends whereby designated periods around the country are set for mobile units can go a long way in improving accessibility for all. Also of importance is to ensure that once registered, voters cannot be removed from the voters' roll, except where there is proof required for removal from voters roll on death or absence as in Section 36 B of the Electoral Act. It is also very important for ZEC and other stakeholders to safeguard against the possible dangers raised by various stakeholders above and to find ways of detecting and resolving such potential challenges early.

## Chapter III: In Search of Clarity; talking points on electoral issues

### Cost per Voter: Analysis of election costs in Zimbabwe

#### Introduction

The Zimbabwe Electoral Commission (ZEC) chairperson Justice Rita Makarau recently announced that they require 2 million American dollars to run an election per constituency. Media has been awash with projections of what ZEC needs for the coming 18 by elections to be held on 15 April and 10 June 2015 respectively. How ZEC explains that figure as realistic and cost efficient is for them to answer. The ERC has done an analysis of the figures beginning July 2013 when the country used a minimum of USD 132 million to hold harmonized elections, to present using the 2 million figure as given by Justice Rita Makarau. The think tank went further to compare with regional costs of voting.

#### Cost Allocation matrix- ZEC must give more details

Election administrative costs are both fixed and variable costs. Variable costs are the ones which change and vary depending on share of integrity and core costs. Among variable costs are costs of voter registration, boundary delimitation, the voting operation, counting and transmission of results, dispute adjudication and voter education and information.

ZEC's figures include personnel costs and operational costs, variable and fixed costs, integrity and core costs. The ERC implores upon ZEC to share more details on how they are allocating costs. It is essential to pay attention to best practice on allocations. In 2013, security was allocated 29% of the budget. This can be adjusted to reflect elections held in a peaceful country. Police must deploy on their own, while ZEC only pays for few police officers at polling areas.

	Registered	2013-Cost of	Reg	2015 -Cost of	Cost of	
		Running		Running	Election/Voter	
Constituency	2013	Election/Const	2015	Election/const	2013	2015
Dangamvura-Chikanga	40,095	628,571	40,095	2,000,000	16	50
Dzivarasekwa	24,205	628,571	24,205	2,000,000	26	83
Harare East	35,650	628,571	35,650	2,000,000	18	56
Headlands	31,252	628,571	31,252	2,000,000	20	64
Highfield West	22,844	628,571	22,844	2,000,000	28	88
Hurungwe West	26,987	628,571	26,987	2,000,000	23	74
Kuwadzana	23,881	628,571	23,881	2,000,000	26	84
Lobengula	25,858	628,571	25,858	2,000,000	24	77
Luveve	28,546	628,571	28,546	2,000,000	22	70
Makokoba	28,837	628,571	28,837	2,000,000	22	69
Mbizo	21,118	628,571	21,118	2,000,000	30	95
Pelandaba						
Mpopoma	26,970	628,571	26,970	2,000,000	23	74
Pumula	26,666	628,571	26,666	2,000,000	24	75
Tsholotsho						
North	29,027	628,571	29,027	2,000,000	22	69
Kambuzuma	23,730	628,571	23,730	2,000,000	26	84

<b>TOTAL</b>	<b>415,666</b>	<b>9,428,565</b>	<b>415,666</b>	<b>30,000,000</b>	<b>349</b>	<b>1,112</b>
Chirumanzu						
Zibagwe		628,571	35,819	1,070,000		56
Mt Darwin						
West	35,254	628,571	36,631	1,070,000	57	55

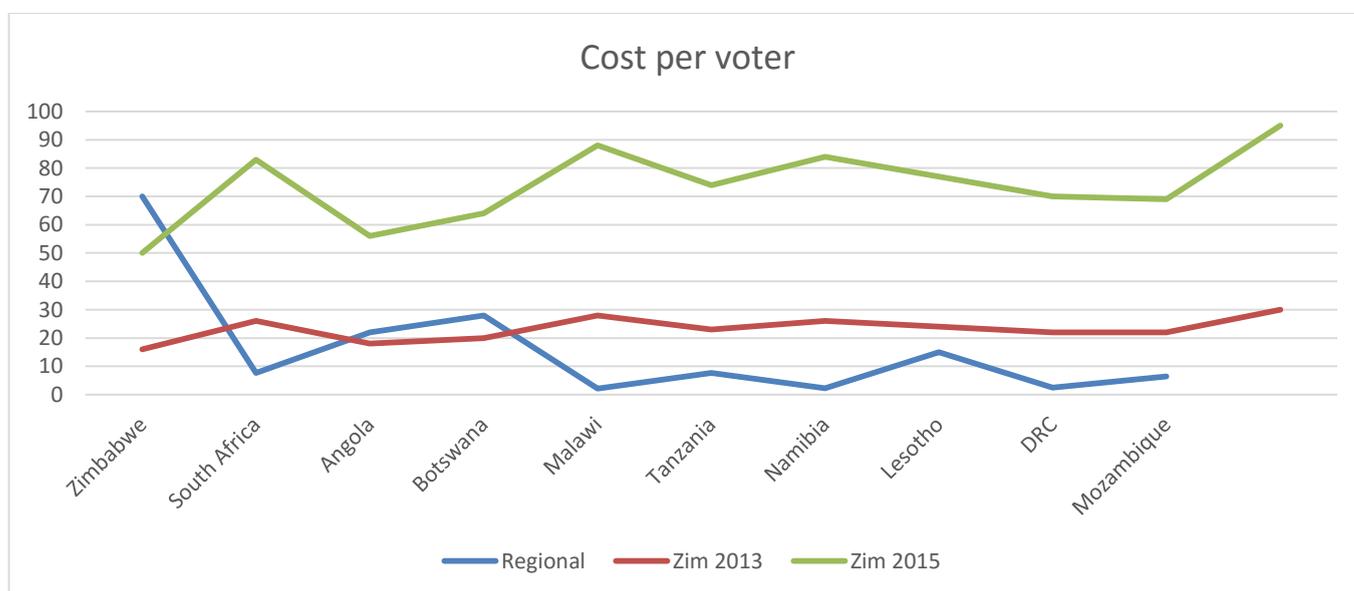
## Understanding the figures

The 2013 harmonized election was run on a minimum budget of USD132 477 million. When divided by 210 constituencies the figure is USD628, 571 per constituency. This constituency figure is then divided by the number of registered voters to find the cost of an election per voter. The same is done using the 2million per constituency figure.

## A very expensive vote

The 2013 harmonized vote averages USD22 per voter. While on the high side, it is quite consistent with the regional figures. The regional highest is Angola costing USD28 per voter as of 2010. When using the 2million figure per constituency, the cost per voter balloons to an average of USD70 per voter. It also means the total cost of running an election in Zimbabwe goes up to 420,000,000. How it becomes more expensive to run a house of assembly election alone as compared to the harmonized election remains mysterious. It will cost the Mbizo voter USD95 for the coming by-election.

At the rate with which the country is going into by-elections, are voters aware of the price paid for their vote?



## Of experiments and off the cuff figures?

ZEC has been engaged in pilot voter registration and is intending to spread the “pilot” nationwide. This perpetrates experimental exercises of constitutional mandates. The ERC is worried if the 2 million figure is real or an estimation gone wild.

## Regional Election Costs

Country	Election	Total cost	Per voter
Angola	1992	US\$100 million	US\$22
Botswana	2006	±\$500 million	±US\$27.9
	1994	US\$1 million	US\$2.7
DRC	2005	US\$546 million	US\$2.5
Lesotho	2002	US\$13.5 million	US\$15
	1998	\$6 million	US\$6.9
Malawi	1994	US\$8 million	US\$2.1
Mauritius	2005	US\$10.0 million	US\$ 11.0
	1995	US\$3.8 million	US\$ 5.6
Mozambique	2004	US\$21.5 million	US\$6.46
	1994	US\$64.5 million	US\$10.2
Namibia	1999	US\$0.98-1.15 million	US\$1.8-2.2
	1994	US\$1.46 million	US\$3
Seychelles	1998	US\$276 626	US\$5.8
South Africa	2004	US\$122 million	US\$7.8
	1999	US\$117 million	US\$7.3
	1994	US\$265 million	US\$13.5
Tanzania	2000	US\$49.6 million	US\$7.66
	1995	US\$38 million	US\$7.88

Source: [www.content.eisa.org.za/old-page/cost/elections](http://www.content.eisa.org.za/old-page/cost/elections)

## Recommendations

1. ZEC must ensure transparency and clarity on election costs.
2. Election costs must be reasonable and reflect international best practice
3. ZEC must consider new methods of election management which are cost effective. These include biometric voter registration among others.

## In Search of Clarity: Tracking Zimbabwe's Pilot Voter Registration Exercise 2015

### Introduction

The Zimbabwe Election Commission (ZEC) instituted a pilot voter registration exercise for the Chirumanzu-Zibagwe, Mt Darwin West constituencies and Chinhoyi Ward 15 Council by-elections. This came after a call by the Election Resource Centre (ERC) not to disenfranchise prospective voters by holding by-elections without registering voters who may have either turned 18 years since the last election or who may have relocated from where they were registered.

The ERC, therefore, set out to understand and track how the process was conducted, who conducted the process and whether it sufficiently achieved required results and if the new process, under fresh management from ZEC would respond to previously noted challenges associated both with the voter registration process and the voters' roll. The think tank and advocacy institution further set out to understand whether the time frame afforded for the process was adequate, the registration model used and whether enough publicity was carried out in the affected wards and constituencies ahead of the actual registration process. The Constitution of Zimbabwe Section 239 bestows the function of voter registration to ZEC.



Voters queuing to cast their vote: File Photo

### A History of Clarion calls: Background

The ERC has, since the inception of the new Constitution, called for ZEC to quickly and completely assume its constitutionally mandated duties, in particular voter registration. In December 2013, after the harmonized elections, the ERC implored upon Parliament not to pass the proposed Electoral Amendment Bill citing the fact that it remained inconsistent with the new Constitution. ZEC dismissed this call declaring the ERC constitutional and electoral ignorant. During the consultation stage for the Electoral Amendment Bill, the ERC continued to question ZEC's lack of action in proactively demanding alignment of the Electoral Act that would have enabled it to fully assume its constitutional mandate, particularly around voter registration. Sadly the Electoral Amendment Bill was passed by Parliament on 20th of August 2014 without consideration of stakeholders' input coming from Public Hearings, which Parliament and in particular, the Ministry of Justice, Legal and Parliamentary Affairs had been reluctant to conduct had it not been for the ERC, the Zimbabwe Human Rights Association and the Women in Politics Support Unit petitioning Parliament to hold the hearings.

After the passing of the Electoral Amendment Bill and it being signed into law, without any changes to who would conduct the voter registration process, the ERC still maintained that there was need for a realignment of the Electoral Act to enable ZEC to conduct this process.



Former Reserve Bank of Zimbabwe Governor, Dr. Gideon Gono: File Photo

In an about u-turn, ZEC, in September 2013 turned down a notification to accept Dr. Gideon Gono as the ZANU PF proportional representation nominee to replace Kumbirayi Kangai as a Senator for Manicaland based on ZEC's incapacity to transfer Dr. Gono's vote from Harare to Manicaland owing to the absence of an enabling provision in the Electoral Act which made reference to the Registrar of Voters being in charge of voter registration. ZEC argued that the fact that Dr. Gono's vote had been transferred after the 2013 election by the Registrar of Voters rendered such actions null and void according to provisions of the new Constitution.

Surprisingly, after conducting a total of 16 local authority by-elections between 2013 and 2014 without registering voters and supposedly using the July 2013 voters' register, ZEC informed stakeholders that it would undertake a pilot voter registration process in two constituencies scheduled to hold by-elections on the 27<sup>th</sup> of March 2015. Notification of the exercise was done through a press statement and print media updates.

This pilot exercise was consequently held between the 26<sup>th</sup> of January and the 10<sup>th</sup> of February 2015 with an updated voters' roll being ready for distribution to stakeholders in whatever format, as stated by the ZEC Chairperson during her presentation to the Parliamentary Committee on Justice, Legal and Parliamentary Affairs on the 16<sup>th</sup> of February.

### **Interrogating the pilot registration process**

The pilot voter registration process went ahead in two constituencies and one ward with a total of 139 registration centres being set up to facilitate the registration process. A further 865 electoral officers including 131 presiding officers and 26 ward election officers were recruited to manage the exercise.

There are three basic systems of voter registration that are in existence and used all over the world. Fortunately and of relevance to Zimbabwe, countries in the SADC region actually use at least two of the three following systems;

1. Periodic lists
2. Continuous register
3. Civil register

Zimbabwe currently uses the continuous register which is the roll that ZEC is supposed to have inherited from the Registrar of Voters. Continuous registers mean that voter registration is a continuous process with closure of the roll happening before the next election. Given the new mandate given to ZEC by the new Constitution, questions have been raised around what type of a voter register Zimbabwe will have. Either of the following two could happen:

- A new voters' roll that is compiled by ZEC without any reference to the disputed so called "Mudede" voters' roll, or
- A cleaned up and updated "Mudede" roll now fully controlled by ZEC

ZEC reportedly asserted that Zimbabwe would have a new voters' roll by 2018 and the pilot registration process would result in the affected constituencies and ward having new rolls. What is lacking in the assertion is the definition of new. Clearly an updated and cleaned up version of the "Mudede" roll could be defined as new in much the same way that a fresh compilation of voters' details will result in a new roll.

However, the fact that the pilot exercise only involved, as advertised, registration of voters and not re-registration of voters coupled with the encouragement that already registered voters would be allowed to also inspect the voters' roll means that there is a high inclination, at least in the pilot phase, to come up with a "new" roll which is basically an updated and possibly cleaned up version of the "Mudede" voters' roll. Had ZEC

notified stakeholders of a re-registration exercise in the pilot area, it would have then pointed to a new voters' roll all together with no reference or association to the old voters' roll.

Ambiguity associated with the voter registration process makes any attempt to track election processes difficult. The issue of clarity is a vital cog if the credibility of future elections is to be secured. Ambiguity breeds speculation, feeds mistrusts and gives space for loss of public confidence in the processes at hand leading to general apathy.

## **Principles for Voter Registration – ERC Observations**

Whenever voter registration is conducted, regardless of the system of registration that will have been adopted, certain principles have to be adhered to. These principles, in the case of Zimbabwe also reinforce Constitutional provisions relating to the manner in which elections should be held. Chapter 239 of the Constitution, under the functions of the Zimbabwe Electoral Commission, (a), the ZEC must ensure that elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law. This provision does not exclusively deal with “elections” as the polling day process but supposes elections as all elements found in the election cycle including processes such as the registration of voters.

Considering that voter registration is the process by which potential voters' identities are verified by entering their names and other details on a voters' list, principles of fairness, comprehensiveness and inclusivity must be observed. For eligible voters to participate in the voter registration process efforts should be made by the state to raise awareness on the process. Furthermore, the process of registration should be simple enough to allow every eligible voters, regardless of literacy levels, to register to vote.

In the interrogation of the pilot voter registration process, the ERC focused on the following principles;

1. Fairness
2. Comprehensiveness
3. Inclusivity

### **Fairness**

Measured against fairness, the pilot voter registration process did not, from an administrative point of view, violate the principle. There were no reports of preferential registration of voters in the pilot registration sites. In the past, the ERC has received reports of registration of voters based on lists submitted by political parties without individuals submitting themselves in person before the registration officials.

Another practice which was also reported during previous registration drives that would violate the principle of fairness was the selective application of the provision of proof of residence with allegations that some eligible voters were not being asked to produce this proof before registration based on their political

affiliation. Some of these noted shortcomings made previous voter registration drives by the Registrar of Voters quite controversial and aided in the questioning of the ultimate voters' roll used during polling.

Apart from limited information relating to the pilot registration process which may have improved had the Election Management Body embarked on a timely and exhaustive voter education drive ahead of the actual registration process, the pilot project did not record an intentional administrative attempt at being biased towards one political interest against another.

## **Comprehensiveness**

Comprehensiveness measures the ability of the registration process to capture all eligible voters. There is an argument that the acceptable rate of registration outside jurisdictions that subscribe to compulsory voting, should be above 80%. In Zimbabwe, in the absence of a credible voters' roll, the rate of registration is estimated to be fewer than 60%. South Africa, during its 2014 elections, recorded a rate of registration that was above 70% and this rate indicates the capacity of a country's voter registration system to capture eligible voters. Comprehensiveness is often affected by both environmental and regulatory features. In the past, voter registration has always been a victim of political intolerance, intimidation and violence with reports of some eligible voters being barred from accessing voter registration centres. Similarly, politically motivated violence which has often resulted in the displacement of some communities has also negatively affected the capacity of a registration process to be comprehensive.

## **Regulate to enfranchise not disenfranchise**

On the regulatory front, comprehensiveness of a registration process can be affected by the administrative conduct of the Election Management Body. Regulations are often used to operationalize that which the law would have prescribed. Around voter registration, the ZEC comes up with measures that promote efficiency of their work. In the past, voter registration has been hampered by restrictive provisions both at the Electoral Act level and at the regulations front. The demand for proof of residence as a pre-requisite for registration has disenfranchised a significant proportion of Zimbabweans in both the urban and rural setting. The ERC is on record raising this concern with specific attention on the youth voter.

## **Proof of residence, what for?**

Comprehensiveness of voter registration, as observed in the just ended pilot voter registration by ZEC remained greatly compromised by the maintenance of strict requests for proof of residence. On engaging eligible voters who did not even attempt to register after turning 18 years between 2013 and January 2015, the majority of respondents in both Mt Darwin and Chirumanzu-Zibagwe indicated that they did not have the patience to entice their local traditional leaders to furnish them with proof of residence. Several countries in the SADC region do not demand eligible voters to provide proof of residence when registering to vote. Given that voting will be polling station specific, it is outrageous to imagine a serious voter opting to register in an area away from

their home. Ultimately, the ERC contents that no limitations should be imposed on access to register to vote and demand for proof of residence is one restriction that ZEC should reconsider.

### **12 days, not enough**

Comprehensiveness was also affected by the limited time allowed for the exercise. 12 days remain inadequate for eligible voters to turn out to register especially in the absence of a massive awareness programme accompanying the exercise. Information around the voter registration exercise was disseminated by word of mouth through schools with students being encouraged to tell their parents and relations that the facility to register had been opened and where it would take place. An extensive use of the public media to advertise the process prior to its commencement would have gone a long way in reaching out to more eligible voters. Such awareness would have improved the comprehensiveness of the pilot registration process.

### **Inclusivity**

Voter registration, while being one of the key functions of ZEC, should be conducted in an inclusive manner. Inclusive in the sense of allowing all stakeholders to understand the process, to fully engage with it and to allow for the review of the process every step of the way. It is commendable that ZEC in 2014, invested resources in engaging election stakeholders on their proposed voter registration model. It should further be applauded that the Election Management Body has been engaging with questions around their managed processes in an open and timely fashion.

However, there remains room for ZEC to further entrench inclusivity as a principle for registration beyond just engaging in consultative meetings. During the pilot voter registration process, ZEC did not invite observers or political parties to actually track the process. Such an invitation to stakeholders comes highly recommended in the spirit of inclusivity in the registration of voters.

The more stakeholders are engaged and involved in a voter registration process, the more acceptable the process will be particularly in the Zimbabwean context where voter registration and the voters' roll have remained at the centre of the question of credibility of our elections.

### **Voter Registration Procedure – ERC Observations**

The ERC gathered that there was not much difference in the manner of registration of voters save for the new face behind the process, ZEC. There was nothing new introduced that would suggest some change in the capturing of voters' details. Eligible voters were asked the same questions as Mudede's office has always done while the demand for proof of residence was maintained. Eligible voters were still asked to bring their national registration documents and aliens were reportedly turned away, regardless of the new provisions that enfranchise so called aliens.

Given the previous experience with voter registration under the Registrar of Voters, the ERC is aware that this pilot phase of the voter registration process should provide lessons for ZEC in terms of how voters' details will be captured and verified. One such lesson should be around how details of voters should be captured. Given

the fact that previously used voters' rolls have been criticized for either having duplicate voters, some missing details such as the sex or address of voters or voters that are deceased, there is room for ZEC beyond the pilot project to consider capturing more voter details beyond the name, surname, identification number, sex, date of birth and block number. There is a real opportunity for Zimbabwe to at least adopt entry level capturing of biometric data such as the voters' picture. Such an introduction would allow for improved verification of voters at the inspection level and during polling. This will go a long way in increasing the credibility of Zimbabwe's future elections.

### **Information Technology in Voter Registration – ERC Observations**

ZEC appeared reluctant and deliberately tied to the question of resources, to adopt the use of information technology in registering voters during the pilot voter registration process. The capturing of voters was manual and not computerized at the setting up of registration centres. Such manual capturing of voters will go a long way in speeding up the capturing of voters' details on site and updating details in the event of voters transferring their vote. The manual capturing of voters' details allows human error and possible tempering of the details captured when a data clerk puts information down. Using information technology would also assist in the inspection of the register by improving efficiency which is what would be expected given the reported state of the voters' roll that ZEC is assuming from the Registrar of Voters.

### **Going forward**

Moving forward, the ERC awaits to hear from ZEC the conclusion of the pilot voter registration exercise. ZEC should alert the nation as to how many new registrants the exercise captured, whose staff actually carried out the process and how they collaborated with the Registrar General's office. The nation awaits to hear whether the process was successful and the way forward regarding the voter registration model as presented to stakeholders in April 2014. Moreover, as stakeholders consulted then, the ERC would like to know if the issues raised then were considered in the pilot exercise. In particular, the ERC is keen to get answers to the following questions;

- Is the new voter registration model a distinct exercise to the one conducted by the Registrar of Voters' office?
- What is the legal standing of the 16 by elections held between 2013 and 2014 given that there was no voter registration as ZEC reneged on its constitutional duty?
- What mechanisms have been put in place to address the shortcomings of the previous registration model? (proof of residence, aliens etc.)
- Is ZEC coming up with a new voter's roll or a cleaned up version of the old one?

## General Laws Amendment Bill 2015: Re-Alignments As Zimbabwe Remains Thirsty For Genuine Electoral Reforms

### Introduction

The Ministry of Justice, Legal and Parliamentary Affairs in May 2015 gazzetted the General Laws Amendment Bill (H.B.3, 2015)<sup>i</sup> which seeks to introduce before Parliament a raft of laws from across a battery of Acts and Statutes targeted at re-aligning such laws to the new constitutional dispensation. The new omnibus of laws also contains proposals to amend the Electoral Act (2.13) largely in relation to administrative responsibilities over voter registration. The proposed amendment goes further to make minor changes to postal voting, voter education, special voting and roving agents.

Clearly, the Bill mainly focuses on enabling the Zimbabwe Electoral Commission (ZEC) to assume full authority over the process of registering voters and proper custody over its product-the voters roll. This could have been an attempt to address the existing inconsistencies between the Electoral Act and the Constitution of Zimbabwe especially with regards to voter registration.

While this exercise of re-alignment is acknowledged, this paper argues that Zimbabwe must depart from the mode of quantitative re-alignments of electoral laws to quality oriented electoral reforms. It remains absurd to continuously change laws without significant improvements on recorded factors that limit the quality of our democracy.

### WHAT THE BILL PROPOSES....

- ✓ Bestows the function of registering voters and custody of the voters' roll upon the ZEC while maintaining the need for coordination and cooperation with the Registrar General in the discharge of this function.
- ✓ Repeals the definition of the Registrar General of Voters whose office will be abolished.
- ✓ Removes redundant references to special voting, while entrenching and expanding postal voting.
- ✓ Confers on ZEC the former functions of the Registrar General of Voters, through placing such responsibility on the Chief Elections Officer.
- ✓ Sets out the need for cooperation between the Registrar General and ZEC in ensuring harmony between civil and voter registration databases.
- ✓ Updates all references from the Registrar General of Voters to the Commission as demanded by the Constitution of Zimbabwe.
- ✓ Imposes duty on roving agents not to disrupt polling in the exercise of their duties.
- ✓ Reinstates the use of postal voting to those who will be doing election related work on polling day, while confirming the abolishment of special voting.
- ✓ Puts a deadline of 28 days for independent voter educators to submit their proposed materials for voter education to ZEC for approval.
- ✓ Maintains the use of voter registration certificates while placing additional information to be captured on the registration slip to include province, constituency, ward or polling station name where applicable.

### THE SILVER LINING...

- The proposed amendment puts a framework for ZEC to discharge its new mandate over voter registration which enables the Commission to establish permanent structures for registering voters nationwide and to function smoothly and continuously.
- The Bill confirms the willingness by government to make the country's electoral laws conform to the Constitution.

While the proposed amendments enable ZEC to function smoothly, it is worrying that the Bill only attempts to re-align laws with no attention being given towards democratizing some of the electoral provisions in the Electoral Act. As indicated below, Zimbabwe remains enmeshed in an unfortunate situation where electoral changes happen without attention to our qualitative pursuit of a democratic society. The country continuously re-aligns without reforming the electoral architecture as learnt from previous electoral processes. Similar to electoral amendments which were adopted in May 2014, the current raft of changes fail to address the fundamental challenges which for long have had debilitating effects on the credibility of elections and the ultimate quality of democracy in Zimbabwe. Maintaining the old electoral regime, albeit under a new Electoral Act is akin to perpetuating the dark cloud that for long has been inimical to desired electoral credibility. **Indeed it is impossible to consider these changes as electoral reforms.** Outlined below are reasons why Zimbabwe remains miles away from tangible reforms which aim at improving the quality and credibility of elections.

- It maintains the same model and framework for voter registration at a time when ZEC openly declared their adoption of a new model which *inter alia* might entail the use of biometric systems. It remains critical for the election management body to have room to decide, in consultation with stakeholders, models that respond to emerging challenges in our elections as a growing democracy.
- Retains the Registrar General as a significant player in voter registration through insistence on the need for cooperation between ZEC and the registrar of births, deaths and marriages. Item 4 of the Bill states that *“The Commission and the former Registrar General of Voters, in his or her capacity as the Registrar General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General of National Registration, have a duty to cooperate with each other to ensure that their respective databases, as they relate to the eligibility or potential eligibility of voters, are in harmony with each other”*. The Bill further gives room to the Commission to *“direct the Chief Elections Officer, a voter registration officer, the former Registrar-General of Voters or any members of the Civil Service to assume and exercise any function .....vested in a constituency registrar”*. These clauses hint to a potential resurgence of the former Registrar-General of Voters in a renewed capacity but with possible duties on voter registration as he used to discharge before the new constitution. While there is nothing fundamentally wrong with administrative cooperation between the electoral management body and Tobaiwa Mudede’s civil registry functions, the re-emergence of the former Registrar General of Voters might send tremors amongst election stakeholders and give renewed rise to suspicion that the voters roll might again be subject to manipulation as has been alleged before. However from an administrative end, it could be plausible that the Registrar General of Voters might be anointed to continue playing a part in the registration of voters on the basis of his existing wide network of offices, voter registration equipment and registration personnel across the country. If the Registrar General is to assist in voter registration it becomes necessary to put in place administrative safeguards that would ensure ZEC’s control over the function. Sadly, the very fact that ZEC is left to rely on other state agencies, without giving the Commission adequate resources to perform its duties reflects the election authorities’ diminished administrative independence.
- The Bill retains the continued use of voter registration slips despite the wide condemnation that followed their abuse in July 2013 as well as during the by-elections which followed. While the Bill proposes capture of additional information like province, constituency, ward and polling station, it is important to acknowledge that the real problem surrounding voter registration slips has not been addressed. In fact the Bill evades the task of putting mechanisms that can possibly curb the rampant abuse of voter registration certificates by unscrupulous election contestants who reportedly used them to aide multiple voting or voting by people who were not registered voters. Essentially it was easy to manipulate the voter registration certificates because they were easy to reproduce and did not contain any security features. Commendably, and as witnessed during the Chirumanzu- Zibagwe and Mt Darwin by-elections ZEC introduced some security features to curtail forgery and attendant abuse of

the voter registration slips. Be that as it may, it remains incumbent upon ZEC to institute a provision for rigorous verification of voters using registration certificates in the Electoral Act, for instance a two-step verification to curb possible abuse.

- The Bill perpetuates the marginalization of civic groups and other independent voter educators from complementing ZEC in offering voter education. While it places a deadline for submission of voter education, which is noble, the Bill avoids opening up space for independent actors to provide voter education in a long term approach which is ideal for a country that uses a continuous voter registration model. The changes proposed on voter education remain inconsequential because they continue to limit provision of voter education to within a shorter period of time and mainly by ZEC itself which is on record of being perennially constrained in terms of resources to mount mass-oriented and far reaching voter education to prospective voters in Zimbabwe in a continuous manner. Furthermore the proposed amendments make no attempts to amend the Electoral Act (section 40C) whose restrictions on provision of voter education potentially violates the constitution of Zimbabwe.<sup>ii</sup>
- The Bill reinstates postal voting system to those on election duty on polling days. However it lacks in terms of putting a framework for a transparent, open and accountable postal voting process. In previous elections, postal voting had been shrouded in secrecy and inaccessible from scrutiny by other electoral stakeholders. This gave rise to suspicion that the process was a loophole through which electoral outcomes were manipulated. If we are to focus on qualitative reforms beyond mere realignment, special voting is more progressive than the reintroduced and difficult to observe postal voting whose secrecy cannot be guaranteed. Seriously it is a bad precedent for Zimbabwe to shift from an internationally acclaimed manner of voting (special voting) in favour postal voting which has proven to be undesirable and is being abandoned by most electoral democracies.
- The Bill also perpetuates the uncomfortable role played by the Minister of Justice, Legal and Parliamentary Affairs in controlling ZEC administrative decisions. Through Item 5 of the amendment, the Minister retains powers to prescribe how ZEC could cooperate with the Registrar of Voters in execution of its duties. This gives unwarranted executive interference in the operations of a supposedly independent electoral commission. ZEC`s administrative independence is clearly put into question and it exposes the Commission to manipulation by the executive especially in the realm of a situation where the Minister concerned is usually an interested party as either a candidate or senior leader of a political party during elections. It is imperative for our electoral laws to entrench the independence of ZEC through removing executive function in the operations of ZEC. The role of the Ministry of Justice on how ZEC operates must not curtail the independence of ZEC in carrying out its constitutional mandate. ZEC should be accountable to Parliament and not to the executive who are an interested party in electoral processes.

## **TOWARD ELECTORAL PARADISE FOR ZIMBABWE**

While the apparent constitutional re-alignment was long overdue, the manner in which the country approaches electoral changes remains haphazard and worrisome in that there is evidently little focus on strengthening our laws that they could result in elections marked by admirable credibility and high democratic quality. Indeed since July 2013 Zimbabwe can quantitatively count the number of changes effected on the electoral laws, but improvement on the quality of democracy during the same period is not discernible.

There appears little if any consultation with ZEC in coming up with amendments to the Electoral Act meaning that the Executive is not consulting the Election Management Body as required by the Constitution of Zimbabwe section 157(4). In the spirit of reform, any changes to the Electoral Act must ideally be managed by ZEC as is the case in Zambia and other celebrated democracies.

It remains compelling for change in approach from electoral re-alignment to electoral reform where the focus will be on improving the credibility of elections and the resultant quality of democracy.

# Nominators and Their Nominees at the Nomination Court: A Review of the Nomination Process for the 10 June 2015 By-Elections

## Introduction

The 16th April 2015 witnessed the nomination court sitting at four designated places across the country to receive nominations from prospective candidates in the 14 national assembly constituencies left vacant following the dismissal of former MDC-T legislators from parliament. Prior to the nomination event, a presidential proclamation was issued as required by the Electoral Act (Chapter 2:13) through which the President also fixed 10 June 2015 as the polling day for filling the arisen vacancies. The process was mainly characterized by aspiring candidates submitting their documents to the nomination court officials for vetting and authentication before being declared duly nominated or rejected if the requirements are not met. The court sittings is regulated to commence at 10am and expected to end at 4pm. No submissions done after the prescribed time of 4pm are accepted. However the law allows for candidates to submit their nomination papers before the Nomination Court sits. Following the rigorous examination of the papers lodged, the nomination officer closes the process by declaring both successful and unsuccessful applicants. In situations where only one candidate gets nominated in an electoral district, that aspiring candidate shall be declared duly elected and no polling shall take place in that ward or constituency.

## Nomination Court Schedule -16 April 2015

Table 1. Schedule for Nominations

Venue	Constituencies
Rotten Row Magistrate`s Court	1. Kambuzuma 2. Dzivarasekwa 3. Kuwadzana 4. Harare East 5. Highfield West 6. Glen View South
Mutare Magistrate`s Courts	1. Danganvura/Chikanga
Gweru Magistrate`s Courts	1. Mbizo
Tredgold Magistrate`s Courts	1. Tsholotsho North 2. Pumula 3. Luveve 4. Makokoba 5. Pelandaba/Mpopoma 6. Lobengula

## Key Observations:

- i. **Nomination fees** were pegged at \$50, 00 and a notable number of prospective candidates struggled to raise the needed money.
- ii. The nomination officer at the nomination court in Harare riled a number of prospective candidates and their nominators **as she constantly engaged on her phone** in public glare calling or receiving calls from unknown people. This gave rise to suspicion that she wasn't entirely responsible for her decisions, but maybe she received orders from certain unknown centers of power.
- iii. **The nomination process was generally slow and lethargic** in Harare with clear indication that most candidates lacked full knowledge on how to encounter the process.
- iv. There was **suspicious close interaction between the nomination court officials and the ZANU-PF top hierarchy** especially their Harare Provincial chairman Goodwills Masimirembwa.
- v. **"Incognito party candidates"**- In both MDC-T and MDC Renewal there emerged individuals who defied their party's decision not to contest in by-elections through filing their papers as independent candidates. One of the so called "independent candidates" for Glen View South even went further by trying to adopt

names and symbols with close resemblance to the MDC e.g. *Chinja Independent, MDC Independent*. This was however rejected by ZEC. However as largely anticipated no candidate made attempts to file nomination papers on the tickets of MDC Renewal, MDC Ncube or MDC Tsvangirai consistent to the unison amongst the parties to boycott all elections pending effective reforms.

- vi. **Internal party fissures within ZANU PF** were exposed as witnessed by double aspiring candidates in Harare East. There were also reports of ZANU PF aligned Independent candidates who successfully filed their paper due to the fact that they were aggrieved by the dramatic expulsions from the party and the subsequent manipulation of primary elections leading to the nomination day.
- vii. **Albert Mhlanga “in the area”**- The expelled former legislator for Pumula successfully filed his nomination papers as an independent. He was amongst the 21 axed former MDC-T parliamentarians. His decision to contest might be indicative of his belief that he still enjoys popular support in the area regardless of party affinities. If he succeeds it will indeed vindicate the position that probably the MDC-T decision wasn't popular with the masses. It will also prove the notion that at times the electorate vote for personalities and their merit as opposed to their political parties.
- viii. There was also an interesting **re-emergence of some parties** who usually laid dormant in such electoral events like Mavambo/Kusile/Dawn ,Free Zimbabwe , Dare etc

## Candidates Duly Nominated

### 1.1. Glen View South

Reginald Musika	( Dare)
Steven Sibanda	( Mavambo/ Kusile/ Dawn)
Judith Mpambgwa	( Freedom Front Party)
Edwin Sithole	(NCA)
Moses Nkomo	( Transform Zimbabwe)
Pius Madzinga	(ZANU-PF)
Tafirenyika Chipato	(Independent)
Michael Chivandire	(Independent)
Mavis Musunami	(Independent)
Donald Chimhatira	( Independent)
Donald Chirunga	( Independent)

### 1.2. Harare East

Farai Kuvheya	(Independent)
Zechariah Misheck Mushawatu	( Independent)
Dore Dole	( Transform Zimbabwe)
Mavis Gumbo	(ZANU PF)

### 1.3. Kuwadzana

Joelson Mugari	( African Democratic Party)
Michale Mandikonza	(Freedom Front Party)
Peter Svinurai	(Free Zimbabwe Congress)
Milton Makuwa	( Mavambo'kusile/Dawn)
Takudzwa Tabvurai	(National constitutional Assembly)
Josam Chimblalanga	( Proprogressive Democrates of Zimbabwe)
Jemelia Chuma	(Progressive & Innovative Movement of Zim)
Simon Msandu	(Transform Zimbabwe )
Betty Nhambu	(ZANU PF)
Boniface Gwishiri	(Independent)
Zanondenga Endai Mugomeza	(Independent)

### 1.4. Highfield

- Brian Shamhu (Dare)
- Shadreck Nyanganya (Freedom Front Party)
- Weston Saruwaka (Mavambo/Kuseli/ Dawn)
- Godfrey Jena (Progressive Democrats of Zimbabwe)
- Onita Jena (Progressive and Innovative Movement of Zim)
- Kudakwashe Makuwe (Transform Zimbabwe)
- Psychology Maziwisa (Zanu Pf)
- Emmanuel Tafadzwa Dzumbunu (Independent)
- Pswasirayi Tashinga Tungamirai Chadamoyo (Independent)

### 1.5. Dzivarasekwa

- Happison Chikova (African Democratic Party)
- Washington Madure Madure (Dare)
- Enock Mafigu (Mavambo (National Constitutional Assembly)
- Cosmas Benjamin (Progressive Democratic of Zimbabwe)
- Ngonidzashe Chandiwana Shiri (Transform Zimbabwe)
- Omega Hungwe (Zanu PF)
- Tonderai Hemani Karimakwenda (Independent)
- Saul Tore (Independent)

### 1.6. Kambuzuma

- Rongerai Tapoka (Freedom Front Party)
- Obey Chiwara (Mavambo/Kusile/Dawn)
- Nyasha Solomon Makwati (Progressive Democrats of Zimbabwe)
- John Elfigio Muzhahzhe (Transform Zimbabwe)
- Tinashe Maduza (Zanu Pf)
- Tapera David Mabuwa (Independent)
- Tendai Morris Makoni (Independent)

### 1.7. Tsholotsho

- |                         |             |
|-------------------------|-------------|
| Professor Jonathan Moyo | ZANU PF     |
| Busani Ncube            | Independent |
| Getrude Sibanda         | Independent |

### 1.8. Makokoba

- |                              |                     |
|------------------------------|---------------------|
| Retired Colonel Tshinga Dube | ZANU PF             |
| Jonathan Ndlovu              | ZAPU                |
| Wilson Harry Peter           | Mavambo/Kusile/Dawn |
| Joan Dhlodhlo                | Independent         |
| Sibangilizwe Msipa           | Independent         |
| Sehlelo Nkomo                | Independent         |

### 1.9. Luveve

- |                     |                     |
|---------------------|---------------------|
| Ntandoyenkosi Mlilo | ZANU PF             |
| Fanuel Tshuma       | Transform Zimbabwe\ |
| Morgan Ntuli        | NCA                 |
| Thembelihle Sibanda | Independent         |

Mkhukuli Nyathi	Independent
Willias Dube	Independent

#### 1.10. Lobengula

Maideyi Mpala	ZANU PF
Leonard Mhike	Transform Zimbabwe
Casper Sibanda	ZAPU
Jane Mbewe	Freedom Front Party
Njabuliso Mguni	Independent

#### 1.11. Mpopo-Pelandaba

Joseph Tshuma	ZANU PF
Strike Mkandla	ZAPU
Andrea Banda	Transform Zimbabwe
Sokaya Mabhena	NCA
Joshua Mlambo	Independent
Tsibo Mkwena	Independent
Vusumusi Mabhikwa	Independent

#### 1.12. Pumula

Godfrey Malaba	ZANU PF
Jackson Lunga	NCA
Ntandoyenkosi Ndlovu	Transform Zimbabwe
Zakhele Mpofu	Independent
Misheck Ncube	Independent
Albert Mhlanga	Independent
Morrison Maluso	Independent

#### 1.13. Mbizo

Innocent Madziva	Transform Zimbabwe
Vongai Mpereri	ZANU PF
Onesimo Tafirei Zhavairo	Independent

#### 1.14. Dangamvura-Chikanaga

Fungamai Maire	MKD
Ruramai Musiiwa	NCA
Maxwell Teedza	Transform Zimbabwe
Gashirai Puwayi	Freedom Front Party
Esau Mupfumi	ZANU PF
James Mundenda	Independent
Richard Chengetai Kadzere	Independent
Kuziwa Maundike	Independent

### Rejected Nominations

While about 102 aspiring candidates were duly nominated there remained about 5 prospective candidates in Harare whose papers were invariably rejected. Table 2, below gives the details;

**Table 2. Analysis of rejected nominations**

Name	Party	Reason for Rejection
Lloyd Kunaka	Freedom Front Party	Candidate had no nominators
Mukupe Tererai	ZANU PF	Candidate name withdrawn by his party during nomination court sitting. Eventually replaced by Mavis Gumbo, who had lost during primary elections
Mr Mukwekwezeke	MKD	Nominators were not found in voters roll
Chiwonya Benevolio	Freedom Front	Could not get the required 5 nominators
Mr Davies	Independent	Aspiring candidate not registered voter

## Conclusion

The process of nominating candidates proceeded in a generally calm, peaceful manner with no reported incidences of disruptions nor violence. However the election authorities remain obliged to strengthen their information sharing mechanism to enable aspiring candidates to approach nomination processes in full knowledge of the requirements. Clearly most candidates showed appalling lack of knowledge.

## Chapter IV: Learning from Neighbors

Africa's virgin gateway to e-voting: whither Zimbabwe?<sup>15</sup>

Special Namibia Elections Brief 29 November 2014.

### KEY QUESTIONS

1. How did Namibia conduct Africa's first Electronic Voting system?
2. What were the practices, challenges and successes?
3. Can Zimbabwe adopt a similar e-voting system?
4. If so, what needs to be done to ensure credibility and integrity?

### Background

Following a number of disputed elections since 2000, Zimbabweans are in constant search of a voting system that can improve voter registration, voter identification, voting and vote counting in order to improve the integrity, credibility, acceptability and legitimacy of election processes. Can electronic voting be a durable solution to Zimbabwe's tainted electoral process? If yes, what process can be followed before the next general election in 2018? If not, why? This paper adds to national debate using evidence from Africa's first electronic voting adopted by Namibia in the Presidential and National Assembly elections held on 28 November 2014. In particular, the brief explains and analyzes e-voting and recommends a possible path for Zimbabwe.

### Introduction

Namibia held Africa's first electronic voting on 28 November 2014 in a peaceful political environment. Sixteen political parties contested to fill 96 seats in the National Assembly and 9 candidates for President. There were 1 241 194 registered voters. It was fascinating that 45.5% of the electorate that is 564 706 out of 1241 194 registered voters were those born after 1982. Within this configuration, 264 982 voters were born after Namibia's independence on 21 March 1990<sup>16</sup>. This meant that young people were going to be key to the outcome of the election. The election was run by the Electoral Commission of Namibia (ECN). There were 1 255 fixed polling stations and 2 711 mobile ones<sup>17</sup>. Preliminary results showed that the ruling SWAPO was going to win the elections with more than two thirds majority thus extending its 24 year rule.<sup>18</sup>

<sup>15</sup> Note that the paper is based on a 2 day field observation in Namibia by a team of two people under the auspices of the Crisis in Zimbabwe Coalition and Election Resource Centre. Given this short engagement with the process, the paper is thus meant to generate debate, with no intentions of being conclusive.

<sup>16</sup> Data compiled from various Electoral Commission of Namibia Reports, 2014

<sup>17</sup> The A-Z of elections in 2014, The Namibian, 26 November 2014

<sup>18</sup> Observations from results posted outside polling stations

Another significant feature is that the election signified a transition from the incumbent President Hifikepunye Pohamba to Dr Hage Geingob which can be a subject for another paper. Below is a campaign poster for Namibia's President in waiting.



**Campaign poster for SWAPO candidate** - Source: Crisis in Zimbabwe Coalition; Election Resource Centre (ERC), Katima Mulilo, 28 November 2014

### How did the system work?

In this election, Namibia dealt away with the paper trail. Voters found a grey electronic device, the Electronic Voting Machine (EVM), with pictures and logos of the candidates and parties with a green button next to each one. The voter had to press buttons in order to vote. A voter would first press the green button corresponding to a candidate or party of choice then press the red button to confirm the vote<sup>19</sup>. A beep sound from the EVM signaled to the voter that the vote had been recorded. If a voter made a mistake and pressed the green button next to a 'wrong' candidate or party, there was a chance to correct the mistake by pressing the green button again to release that choice and start again. However, if the red button was pressed the vote could not be changed<sup>20</sup>. In this era, a pencil drawn x would no longer mark a voter's support.

The table below attempts to summarize the changes from the old to the new system.

**Table 1: New wine in new skins**

Old system	New system
ECN polling official issued a ballot paper to the voter	Polling official pressed the green button on the EVM control unit for the ballot to appear.
Voter marked the ballot paper or made a cross (X).	Voter pressed the green button corresponding to the party or candidate of choice

<sup>19</sup> The A-Z of elections in 2014, The Namibian, 26 November 2014.

<sup>20</sup> Discussions with key informants, Zambezi Protea Hotel, Katima Mulilo, Namibia, 28 November 2014.

Voter put the marked ballot in a ballot box, thus casting a vote

Voter pressed the red button to confirm the vote, thus casting a vote.

## What are the advantages of the new system?

Based on our discussions with key informants, review of media, civil society and government reports the following seven were the main advantages cited.

- EVMs make voting easier and more efficient
- EVMs are more cost effective saving on financial resources, paper and time. For example, Paul Isaak the ECN's elections director explained that printing ballots cost USD 1.81 million but with the EVM only USD 181,000 was spent on such paper<sup>21</sup>.
- EVMs are easy and simple to use. Even the illiterate could use them. One would need to press two buttons to vote.
- EVMs allow for instant election results
- EVMs do not provide for spoiled ballot papers
- The blind and visually impaired could vote without assistance. A Braille signage was installed on the EVM
- EVMs are tamper proof

Despite the advantages cited above, there were also fears raised from various stakeholders as articulated below.

## What were the fears?

There were fears that the EVM could be used for voter fraud without use of verifiable paper trail. In fact, there was an application at the High court on the eve of the elections to have the Presidential and National Assembly elections postponed to February 2015. The application was brought by August Maletzky, the African Labour and Human Rights Centre, the Rally for Democracy and Progress (RDP) and the Workers Revolutionary Party<sup>22</sup>. However, Judge Miller dismissed the application in its entirety mainly because there was no evidence to back the vote fraud fears<sup>23</sup>. For now we interrogate some of the fears, challenges and discuss the possible remedies. Let us emphasize that though the fears were quite reasonable, it was the lack of convincing evidence that undermines the weight of the allegations.



Figure 2: Voters queue

Source: Crisis in Zimbabwe Coalition; Election Resource Centre, Kati- ma Mulilo, 28 November 2014

<sup>21</sup>Wendell Roelf, Windhoek (Reuters), 28 November 2014

<sup>22</sup>Judge Dismisses Election Challenge, New Era, 27 November 2014.

<sup>23</sup>Elections Verdict Today, The Namibian Sun, 26 November 2014

First, there was fear that without a verifiable paper trail it was going to be difficult to conduct a recount in the case of a dispute. However, according to experts on the EVM, in case of a dispute the control unity can be connected to a printer and the votes are printed out.<sup>24</sup> In addition, the court can order the data to be retrieved in case of a dispute and allow for verification and re-counting.

Second, there were fears of ballot stuffing. In order to mitigate for this, a pre-poll test was conducted an hour before the election in the presence of observers, election agents and accredited media to ensure that the EVM showed zero votes before the actual polling in order to eliminate possibilities of ballot stuffing.

Third, critics argued that the EVM system provided an opportunity for double voting. The ECN used hand held voter verification n devices at all polling stations to verify and authenticate all voters before they voted<sup>25</sup>. The polling officers also used ultraviolet light to detect any traces of the indelible ink by the ultraviolet light controller.

Fourth, critics alleged that the EVM could be tampered with and allow for vote rigging. There were fears around the security system. The arguments in court by Sisa Namandje who represented the state and the Election Watch provided a compelling argument as to why it was impossible to tamper with the EVM. We are not entirely ruling out the possibility of tampering but based on the evidence available to date, there has not been compelling arguments to counter this. The gist of the argument is reproduced in the table below.

### Why one cannot tamper with EVM?



<sup>24</sup>Election Watch. Namibia, Issue No.10. 2014.

<sup>25</sup>Discussions with key informants, Zambezi Protea Hotel, Katima Mulilo, Namibia, 28 November 2014. Also see, Easier Access for Blind Vote, The Namibian, 26 November 2014.

**Figure 3: One of the EVMs used in Namibia**

**Source:** Crisis in Zimbabwe Coalition; Election Resource Centre, Katima Mulilo, 28 November 2014

*The EVM is a stand-alone machine of two inter-connected components. It cannot be accessed via any other means and it does not transmit any signal or connect to any type of network. The system software that operates the EVM is stored on a chip which is Read only Memory (ROM) which is hardwired on the motherboard at manufacturing and is done in a fully automated plant. No one, not even the manufacturer can change or tamper with the system after manufacturing.*

### **Techno-glitches**

However, the EVM system was not without flaws in the actual implementation. Preliminary observations showed some glitches associated with human, operational and technological errors as confirmed by ECN<sup>26</sup>. The question is whether such glitches were serious enough to discredit e voting as a system for Namibia and possibly for Africa? In our view and based on the evidence at hand, the scale of technological glitches was not big enough to outrightly discredit the entire e-voting system as sensationalized by some candidates and members of the media. We acknowledge and outline some of the glitches below.

A few polling officers had difficulty in operating voter verification devices. Some of the machines were freezing and others were broken<sup>27</sup>. Some of the verification scanners were down and it took hours to have them repaired by the technical team. For example, SWAPO's Presidential candidate found the scanners were not working at Katutura community hall<sup>28</sup>. Another major challenge was with the operation of the EVMs. There were incidences of both polling officers and voters pressing wrong buttons on the EVM<sup>29</sup>. This was due to limited training and voter education. Some of the buttons on the EVMs were masked yet the rule was that they were supposed to be unmasked. Time setting of the EVMs was difficult for operators in the pre-poll test and some did not reset the machines after the pre-poll test<sup>30</sup>. In some cases, the EVM was not making a beep sound to confirm the vote. The DTA presidential candidate McHenry Venaani experienced this and was not sure whether his vote was counted or not<sup>31</sup>. However, the ECN had a team of technical and support field staff that tried to assist.

The human, operational and technological errors discussed above resulted in some problems. For example, the EVM was meant to make voting faster and reduce queues. Even though this was the case in some areas that we observed in the Zambezi region, this was not the trend nationally.

There were long queues in other parts of the country, stretching to hundreds of meters even after 9pm. The voting time was 7 am to 9pm but those in the queue after 9 pm were allowed to vote. One

<sup>26</sup>See Election Watch. Namibia, Issue No.10. 2014.

<sup>27</sup>ECN Press Release on Progress of the Polling Process, 29 November 2014

<sup>28</sup>Namibian elections results expected on Sunday, SABC, 29 November 2014

<sup>29</sup>Stuttering start to electronic voting, The Namibian, 29 November 2014

<sup>30</sup>Stuttering start to electronic voting, The Namibian, 29 November 2014

<sup>31</sup>Stuttering start to electronic voting, The Namibian, 29 November 2014

could see queues in the early hours of Saturday morning. It led to frustration among voters and to some parties to entirely discredit the e-voting system and seek to delegitimize the election. Nevertheless, whilst acknowledging the problems the evidence to date such Namibia passed the line and lessons for improvement can be drawn for other African countries.

## **Back to Zimbabwe**

Given the Namibian experiences, advantages and fears, any consideration of adopting electronic voting for Zimbabwe should follow a careful path. This is because of the specificities of Zimbabwe which include a history of election manipulation, tampering with the voters roll and voting system, ballot stuffing, vote fraud, politicized election commission and volatile fragile politics. In lieu of the context, we recommend the following steps to the path of electronic voting<sup>32</sup>.

## **Zimbabwe Path to E-Voting**

- *The initiation, planning and development of e-voting must include all stakeholders that is all political parties, civil society organisations, observers and election commission. There must be consensus to enhance legitimacy and avoid opposition from stakeholders*
- *A team of professionals with expertise on e-voting must conduct a study and submit a report to all the key stakeholders cited above on whether it is worthy using e-voting in Zimbabwe's context*
- *If the report is positive, there must be consensus by all stakeholders on who should be contracted to manufacture the electronic voting machines and the security system to be set*
- *E-voting must be used on by elections in the run up to the 2018 general elections as a pilot*
- *Polling officials must get adequate training on how to administer E-voting*
- *The citizens must be educated adequately on how E-voting works and be prepared mentally and physically*

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<sup>32</sup>Observation, NBC television, 28 November 2014

# The Disjuncture between Policy and Practice in Zambia and Zimbabwe: Bridging the Zambezi River on Democratic Election Management

## KEY ISSUES

- How did the Electoral Commission of Zambia (ECZ) manage the 2015 Presidential By- election?
- What were the distinctive policies and practices between ECZ and the Zimbabwe Electoral Commission (ZEC)?
- What lessons, if any, can be drawn in order to strengthen ZEC's democratic practices in election management?



## Background

Zimbabwe has held a series of disputed elections since 2000 with the outcomes triggering a national crisis at some historical juncture. At the centre of the electoral disputes have been the professionalism, impartiality and competence of the Zimbabwe Electoral Commission (ZEC). Ideally, for elections to be considered democratic, Election Management Bodies (EMBs) must be seen to autonomously uphold and enforce rules and procedures fairly. Thus rules, regulations and procedures must be easily accessible, enforceable, be adhered to in the whole election process without exception.<sup>1</sup> Those in charge of management of elections must demonstrate that they equally treat the contesting candidates and their supporters. Democratic elections should therefore take place within the confines of an autonomous, non-partisan and independent EMB that enjoy the confidence of the citizenry and the contesting parties.<sup>2</sup> Given this realization ZEC was given a new mandate by the Zimbabwe Constitution

to prepare for, conduct and supervise elections to ensure they are free, efficient, fair and transparent.<sup>3</sup> The new legal mandate bestowed on ZEC provides an opportunity to ensure Zimbabwe hold credible elections that are accepted by winners and losers.

However, across the Zambezi River, the Electoral Commission of Zambia (ECZ) has been hailed for holding free, fair and credible elections with a Constitution that is arguably not as democratic as Zimbabwe's new Constitution. In the latest Presidential by-Election held on the 20<sup>th</sup> of January 2015, most reports issued by independent observers applauded the ECZ for having largely organized an orderly election process while noting some minor challenges for further improvement.<sup>4</sup> This new wave of electoral democracy in Southern Africa being spearheaded by South Africa, Zambia and Botswana provides an opportunity to draw lessons for the ZEC. This is even so important because EMBs in these countries have managed elections that have resulted in the peaceful transfer of state power from one political party to another. Zambia is a particularly interesting case study because it held its Presidential by-elections on 20 January 2015 in a peaceful and relatively democratic manner and this was the sixth time Zambia has had a democratic transition from one President to another in the post-colonial era.<sup>5</sup> However, our interest is not on the transitional politics in this paper but on distinctive features that enabled ECZ to manage an election that led to convergence between local and international players in its credibility.<sup>6</sup>

Our argument is that the differentiating factor in the ability to prepare, conduct and supervise democratic elections hinges on the distance between *policy* and *practice* in the electoral polity. The more the EMB adheres to policy in practice the more likely the chances of running a credible election. We thus look at the electoral process in practice.

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<sup>1</sup> J Elklit, Op cit

<sup>2</sup> Countering Electoral Manipulation: Strengthening Zimbabwe's Chain of Democratic Choice, Crisis in Zimbabwe Coalition, Harare, 2013

<sup>3</sup> Constitution of Zimbabwe Amendment (No 20) Act 2013, see Section 239.

<sup>4</sup>(SADC) Electoral Observation Mission (SEOM) Preliminary Statement, Lusaka, 22 January 2015, African Union (AU) Election Observation Mission (AUEOM) Statement, Lusaka, January, 2015

<sup>5</sup> Crisis-ERC, 2015, As went the Institutions so went the transition, lessons for Zimbabwe from Zambia's 2015 Presidential Election, 2015

<sup>6</sup> For interest in transitional politics see: Crisis-ERC, 2015, As went the Institutions so went the transition, lessons for Zimbabwe from Zambia's 2015 Presidential Election, 2015

## Introduction

Zambia's Presidential by-election held on 20 January 2015 was prepared, conducted and supervised by the ECZ in a manner that resulted in an election that was 'peaceful, transparent, credible, free, and fair, thus reflecting the will of the people of Zambia in accordance with the National Laws and the SADC Principles and Guidelines Governing Democratic Elections'.<sup>7</sup> The Electoral Commission of Zambia was established in 1996 in accordance with Article 76 of the Zambian Constitution.<sup>8</sup> Zambia has an Electoral Commission Act which outlines the setup and functions of the Commission. The Commission has a Chairperson and not more than four members appointed by the President subject to ratification by the National Assembly. Members of the Commission serve for a term not exceeding seven years and they are supported by a Secretariat team which they appoint, headed by a Director. It is essential to note that the size of the ECZ is smaller than that of the ZEC which currently has a Chairperson, a Vice Chairperson and eight Commissioners.<sup>9</sup> The Electoral Acts of both countries more or less share similarities with very little exceptions hence making practice of essence. In the Zimbabwean case, Parliament nominates and the President ratifies. The rules and laws of appointments in both countries largely epitomize regional and international practice. The Electoral Commission of Zambia has the following functions, which are largely similar to those of their Zimbabwean counterparts which are; delimitation of constituency and ward boundaries; registration of voters; conduct of all national elections; provision of voter education and establishment of a Dispute Resolution Platform.<sup>10</sup> Of essence here is how did the Commission operate or run the election?

## Distinctive Features in Policy and Practice

### *Accreditation of Monitors and Observers*

Zambia allowed both election monitors and observers, with the former being local civic society groups with the function of 'information gathering, examination and evaluation of the electoral process', with the added responsibility of bringing to the attention of the polling officials at all levels any discrepancies noted in the same.<sup>11</sup> On the other hand, observers in Zambia were individuals or groups drawn from the international community with the task of information gathering, making an informed judgment about the credibility, legitimacy and transparency of the election process without the benefit of raising any irregularities with the election officials save for putting such in writing and submitting to the ECZ.<sup>12</sup> Zimbabwean polls used to allow monitors in the early 2000s, a practice which has since been scrapped leaving only observers. Current provisions for electoral observation are very restrictive and give Zimbabweans little room to intervene when the election process goes wrong right before their very eyes.

It was remarkable to note that the Electoral Commission in Zambia may accredit observers and monitors without a fee and the media is not charged for accreditation.<sup>13</sup> This practice indicates a willingness by the ECZ to be scrutinized by both local and international observers. In Zimbabwe observers had to pay an accreditation fee and it would be revealing to track how the money charged and collected was used seeing that ZEC, in its 2013 Harmonized Election Report notes that the entire election was funded by the Government of Zimbabwe through nine disbursements between the 6<sup>th</sup> of May and the 30<sup>th</sup> of July 2013.

<sup>14</sup>A total of 14 952 domestic observers and 574 local journalists

<sup>7</sup> (SADC) Electoral Observation Mission (SEOM) Preliminary Statement, Lusaka, 22 January 2015.

<sup>8</sup> The Constitution of Zambia Act

<sup>9</sup> Section 238, Constitution of Zimbabwe Amendment (No 20) Act 2013

<sup>10</sup> Section 239, Constitution of Zimbabwe Amendment (No 20) Act 2013 and The Electoral Act of Zambia of 2006

<sup>11</sup> Section 75 and 76 of The Electoral Act of Zambia of 2006

<sup>12</sup> Section 75 and 76 of The Electoral Act of Zambia of 2006

<sup>13</sup> Section 75 (3) of The Electoral Act of Zambia of 2006

<sup>14</sup> Zimbabwe Election Commission (ZEC) 2013, Report of the 2013 General Elections

together with 1 308 international observers and 177 international journalists were accredited to observe Zimbabwe's 2013 poll with each group being charged US\$10, US\$100, between US\$30 and US\$50 depending on being regional or international and US\$300 respectively.<sup>15</sup>

## Registration, voters' roll and polling process

The ECZ managed to exercise its constitutional and policy mandate by exercising its role to register voters, compile voters' roll and maintain custody over the voters roll. Whilst this policy position is provided for in Section 39 of Zimbabwe's Constitution it has not been applied in recent by-elections. ZEC is not yet in custody of the voters' roll. However, it must be noted that in securing election material, the ECZ did not go to tender owing to time limitations and this contributed towards speculation around the possibility of manipulation in terms of the number of material actually produced and from whom the material was sourced. In the Zimbabwean case the media reported allegations of malpractice by ZEC in the procurement of election related material in the 2013 general election and this adversely affected public confidence in the body's capacity to hold a credible, transparent, free and fair election.

Nevertheless, given the independence of the ECZ they introduced greater levels of transparency in voting by allowing all observers and party agents to have copies of the voters' roll.<sup>16</sup> In addition, the ECZ has adopted a low level technology system which has resulted in a biometric voters' roll that contains pictures of registered voters. From our personal observations this aided transparency in the voting process and worked to minimize chances of double voting. As we observed, during voting, polling officials would announce a voters' name and the page on which the voters' name could be found in the voters' roll allowing comprehensive verification of the person claiming the vote before issuing him with a ballot.<sup>17</sup> This was in line with the general principles of democratic elections which provide that voting methods must be simple, accurate, verifiable, secure and transparent.<sup>18</sup> In the absence of a proper verification system anchored on a biometric system Zimbabwe witnessed multiple illegal voting during the 2013 general elections which was exacerbated by the use of the voting slip.<sup>19</sup> Paradoxically the amended Electoral Act now legalizes the use of registration slips in elections.

In the transmission of election results, the ECZ faced challenges around acceptance of the electronic model. In other African countries there has been growing skepticism around this practice with opposition political parties alleging that the system was prone to manipulation of the final results. In Zimbabwe, the position of opposition political parties and civil society lean toward the use of ICTs in election processes to minimize human error and sponsored manipulation. However, the position of ZEC on the same remains vague despite successful elections in the region managed through the use of ICTs as in Namibia.<sup>20</sup>

## Professionalism of Commissioners and Secretariat

Another pertinent observation is that the Commissioners and members of the ECZ Secretariat who were in charge of the management of elections demonstrated high degrees of professionalism and impartiality. In a way they enjoyed greater levels of confidence of the citizenry and the contesting parties.<sup>21</sup> This was in line with Zambia's Electoral Act which emphasized the need for non-

<sup>15</sup> Various media reports and conversations with Zimbabwe observers during the 2013 General Elections

<sup>16</sup> Discussions with key informants, Lusaka, Zambia, 19 January 2015

<sup>17</sup> Observations in the polling station, Lusaka, 20 January 2015

<sup>18</sup> Buhera North South constituency database

<sup>19</sup> P.Zamchiya.2013. Zimbabwe's undemocratic 2013 Harmonised Elections: the evidence, working paper, University of Oxford

<sup>20</sup> See ERC and Crisis Coalition Namibia Policy Brief 2014, Africa's gateway to Virgin-Voting: Whither Zimbabwe?

<sup>21</sup> Countering Electoral Manipulation: Strengthening Zimbabwe's Chain of Democratic Choice, Crisis in Zimbabwe Coalition, Harare, 20

partisanship and professionalism in the conduct of the Commissioners and polling officers. However, in Zimbabwe evidence suggests that the Zimbabwe Electoral Commission officers were partisan and compromised during the July 2013 general elections. The military, traditional leaders, Zimbabwe African National Union Patriotic Front (ZANU PF) local leaders, ZANU PF activists and close relatives to ZANU PF candidates were said to be polling officers. This was against ZEC's pronounced values of professionalism, transparency, impartiality, commitment and independence. This compromised the integrity of the 2013 general election and resulted in it being largely democratic. To illustrate, in Magunje constituency, our interviews indicate that army personnel were deployed as polling officers namely- Kamunhenga, Guzha, Maruma, Nyamhongo, Matare, Mazungu, Mbende, and Mabhena and were possibly more.<sup>22</sup> Other CSO reports indicate that this was replicated throughout the country.<sup>23</sup> Some of the ZEC Commissioners did not conduct themselves according to the dictates of the Constitution as they gave statements that were widely interpreted as in support of the ruling ZANU PF.

### *Beyond Tradition: CSO in PVT*

The role of civil society during the election process in Zambia ranged from promoting citizen participation in electoral processes, educating voters to monitoring the pre-election period and the election-day which in a way is similar to the practice in Zimbabwe. For a more detailed discussion of the role of civil society, one can refer to our earlier publication on the electoral politics of Zambia.<sup>24</sup> Election stakeholders, including political parties and civil society organisations in Zambia, acknowledged that the ECZ inclusively engaged with all stakeholders equally, a phenomenon that is slowly growing in the Zimbabwean case.

Consequently, one distinctive feature was the growing trust in collaboration between ECZ and civil society. Despite the fact that the ECZ refused to recognize the PVT in the 2011 polls, they reached an agreement with stakeholders to conduct a Parallel Vote Tabulation (PVT) process. In particular, the ECZ fully endorsed the holding of a PVT process by the Christian Churches Monitoring Group in an unprecedented move. The PVT sought to verify officially announced election results based on statistical principles and information technology. This mode of verification of official results, which is growing in acceptance across the world assists in engendering stakeholder and public confidence in the election process if the results from the PVT are consistent with official results from the EMB. In cases where they are not, the PVT can actually result in a contest of electoral outcomes at best and election conflict at worst.

### *Funding*

Not all was rosy in the Zambian elections as lessons can be drawn from the good and the bad. Pre- election reports on the Zambian Presidential by-election of 2015 raised one of the major challenges faced as that of limited resources. Limited funding resulted in the ECZ failing to conduct voter registration ahead of the election. While it is acknowledged that the Zambian Electoral Act prescribes continuous voter registration, this could not be undertaken ahead of the January 20<sup>th</sup> 2015 poll. Nevertheless, despite limited support from government, as we have argued elsewhere, Zambia has maintained good relations with other countries. As a result there was financial assistance to the ECZ so that the institution could independently exercise its democratic roles and responsibilities. For example Britain donated GBP 1.3 million and German put in K35.5 million.<sup>25</sup> Thin financial resources have choked many EMBs in poor countries and hampered their ability to exercise their democratic roles and this excuse has been given by ZEC in previous elections. The most

<sup>22</sup> Magunje constituency database

<sup>23</sup> For more evidence see, P.Zamchiya. 2013. Zimbabwe's undemocratic 2013 Harmonised Elections: the evidence, working paper, University of Oxford.

<sup>24</sup> Crisis-ERC, As went the Institutions so went the transition, lessons for Zimbabwe from Zambia's 2015 Presidential Election, 2015

<sup>25</sup> The Daily Mail, Germany donates K35.5 million, 24 December 2014.

important thing is that the donors placed their money on strengthening institutions and not in interfering with the internal politics to predetermine the electoral outcome.

ZEC could learn from the ECZ and explore ways in which development support can be received to complement government grants to ensure that elections are fully funded. The ZEC report of the 2013 elections indicates that while a budget of US\$132 477 495 was approved by government for elections, a deficit of US\$4 260 819 arising from special voting, operational costs, infrastructure rehabilitation, voter registration and referendum debtors was incurred.<sup>26</sup> Support from development partners could be channeled without subverting the will of the people and interfering in internal political practice.

### *When nature pours...*

The heavy and incessant rains during the months of December 2014 and January 2015 in Zambia made access to some marginalized communities impossible. In fact the ECZ had to relocate some polling stations a few days before polling day and this had an impact on voter turnout.<sup>27</sup> Owing to the bad weather witnessed throughout Zambia, flooding made it difficult to transport voting materials by road and air and the ECZ had to resort to using boats and ox drawn carts which affected delivery time and polling had to be postponed in more than 50 polling stations. Challenges associated with weather also had an impact on the transmission of election results which subsequently affected the official announcement of results.<sup>28</sup> While the ECZ had committed to announcing results as soon as they had been received from the Constituency tallying centres, this practice had to be suspended after only 14 constituencies because voting was still going on in over 50 polling stations.<sup>29</sup> While the affected polling stations were less than 1% of the countries' total number of polling stations, continuing to announce results would have compromised the equality of the vote especially considering that this was a tightly contested Presidential election.

### *Bridging the gap between Policy and Practice*

*ZEC must conduct an audit of its current secretariat* in the next six months in order to strengthen the competency and impartiality of the EMB. Based on the results of a professional audit, ZEC should proceed to retain or employ a new secretariat (such powers are provided in Section 234 of the Zimbabwe Constitution) that is competent and knowledgeable about election management and upholds the principles of public administration for a high standard of impartial and professional performance. This will go a long way in improving the impartiality of the body as the secretariat in Zambia was largely professional and impartial in the execution of its duties.

*ZEC must develop an annual compliance monitoring and evaluation system for its Commissioners* during their 6 year service term so that they keep subordinated to Section 236 of the Zimbabwe Constitution which emphasize that they must not act in a partisan manner, further the interests of any political party or cause, prejudice the lawful interests of a party or violate the fundamental rights or freedoms of any person and that they must not be members of any political party. This will ensure continuous compliance with the Constitution and a fair basis for a possible execution of Section 237 which outlines the removal from office of Commissioners. Creating truly independent commissioners who meet and uphold the constitutional requirements in section 235-237 of the Zimbabwe constitution will go a long way in improving election management.

*ZEC must continually monitor the performance of its leadership and produce annual public reports.* The monitoring must also be based on continuous display of good public leadership in line with

<sup>26</sup> Zimbabwe Election Commission (ZEC) 2013, Report of the 2013 General Elections

<sup>27</sup> Based on media analysis and official communication from ECZ, 19-22 January 2015

<sup>28</sup> Statement by ECZ Chairperson, witnessed on Zambia National Broadcasting Corporation, 22 January 2015

<sup>29</sup> Statement by ECZ Chairperson, witnessed on Zambia National Broadcasting Corporation, 22 January 2015

Section 196 (1a-2d) of the Zimbabwe Constitution. These include objectivity and impartiality in decision making; honesty in the execution of public duties; accountability to the public for decisions and actions; and discipline and commitment in the service of the people.

*ZEC should engage the Zimbabwe government to invest more in mobilizing resources for elections and in particular for the Treasury to set aside a specific quota for election management every annual budget starting with the 2016 budget rather than wait for the five year electoral cycle. This will allow long term tracking of any possible financial resource gap. In addition, ZEC must also engage the government on the need to open up to international funding meant to improve the democraticness of the electoral management body as separate to intervention in internal politics. The model used to fund The Parliamentary Select Committee (COPAC) by agencies like the United Nations Development Program (UNDP) can be a starting point.*

*ZEC must immediately demand, fully take over and exercise its functions as prescribed in the Constitution that is practice its role to register voters, compile voters' roll and maintain custody over the voters roll. Consequently a Voter Registration Model (VRM) must now be finalized with all key stakeholders involved at every stage. Our specific view is that ZEC must adopt a medium technology assisted/driven voter registration model resulting in a biometric voters' roll. In the process procurement of election materials and equipment must be above board.*

*ZEC must appoint a team of professionals with expertise on the use of technology in voting, counting and transmission of results to conduct a study and submit a public report to all the key stakeholders on which type of technology works best for the Zimbabwe context. Even though technology is not entirely immune to manipulation it can enhance transparency in managing election information if suited to local political conditions.*

*ZEC must have a comprehensive plan to deal with natural or technological disasters that might occur during voting days such as the floods witnessed in some parts of Zambia. The plan must integrate comprehensive and efficient communication strategies given the volatility of Zimbabwe's sometimes 'rumour driven' politics that can endanger the whole election process.*

*ZEC must promote the need for accreditation of both monitors and observers in line with its constitutional function which is to promote accountability and transparency in public institutions. Allowing scrutiny enhances transparency and confidence in the processes among stakeholders. It will also strengthen institutional systems and allow the democratic watchdog role by civil society.*

*ZEC must continuously engage all stakeholders like political parties, civil society organisations, think tanks, observers and other state institutions supporting democracy such as the Zimbabwe Human Rights Commission (ZHRC). There must be national consensus/convergence to enhance legitimacy and avoid opposition from stakeholders. A step further is to build strategic partnerships along the electoral cycle such as allowing CSOs like the Zimbabwe Election Support Network (ZESN) to carry out PVT.*

## **Lesotho early elections 2015; Flying through turbulence: a case where landing becomes a postponed subject**

### **Introduction**

Lesotho has had a rough electoral history. It makes a good case for study as it has been through different tiers of stability, electoral changes and regional intervention. This paper will broadly focus on the period from 1993 to present with a major focus on the recently concluded elections. These came at the backdrop of an attempted coup in August 2014, prompting the intervention of SADC and the call for elections two years ahead of schedule. The 28 February 2015 elections were conducted under largely free and fair conditions, allowing the Basotho to freely select leadership of their choice. Out of a registered 1.2million voter, 46.6% turned out to cast their vote. This paper gives a background to electoral and political issues facing the kingdom of Lesotho. It then analyses their electoral system and framework in a bid to unpack how stability continues to dodge the country. This will be related to Zimbabwean transition under the watch of SADC in a bid to analyze whether the intervention is sustainable.

### **Background: a focus on electoral history**

Upon attainment of independence in 1966, Lesotho held successful elections in 1965. They followed them up with another election in 1970. That was to be the last for 23years. One party state followed until a coup in 1986. The military takeover facilitated for elections held in 1993 facing regional pressure from SADC. Since the return of Lesotho to multi-party politics in 1993, the country has held five rounds of elections (1993, 1998, 2002, 2007 and 2012). These elections have been held under different frameworks with revealing outcomes. The first two, held under a complete First Past the Post system and government controlled election unit, brought in effective one party state with total control of the legislature and government. Further, they were condemned by the opposition as unrepresentative of the wishes of the people of Lesotho. A new system, introduced for the 2002 election, saw an increase in diversity as opposition parties were represented through a proportional selection method. However, instability continues to rock the small nation.

### **Assessing the electoral legal framework**

The elections 1993 and 1998 elections were held under the First-Past-The-Post electoral system. In a small country like Lesotho, this meant that a majority could easily be attained even when vote percentages did not reflect the same. An outcry from opposition parties ensued in both elections. The majoritarian system had arguably led to increased voter apathy. Winning parties would dominate parliament even with a 55% share of the actual vote.

A new electoral system was devised so as to ensure inclusivity and small party participation. This was the Mixed Member Proportional (MMP) system. The MMP system is a mixture of the First-Past-The-Post (FPTP) electoral system and Proportional Representation (PR) system, where the country's 120 seats are allocated along an 80:40 ratio between the FPTP and the PR components of the MMP. The system was first implemented in the 2002 elections. Kapa (2013) states that the MMP system allocates parliamentary seats based on an agreed formula (total votes/total seats = quota; total

party votes/quota = party seats), which is applied in several stages until all seats have been allocated. Since its adoption, ten parties secured parliamentary seats in the 2002 election and 12 parties in the 2007 and 2012 elections.”

This is the system that Lesotho held the current election under.



**Voters queue to cast their votes in Maseru, Lesotho, Saturday, Feb 28, 2015. (AP Photo) *The Associated Press***

### **The Election Management Body: a case of evolving credibility**

Between 1993 and 1998 the elections in Lesotho were conducted by a government department led by the Director of Elections. This meant a skewed system controlled by the ruling party. Facing stiff opposition, the government conceded to institution of a three member Independent electoral commission (IEC). The credibility of the IEC has continuously improved as elections came and went. However, they still have certain issues to smoothen up towards efficiency and effectiveness. The Coordinated Civil Society Regional Observer Mission<sup>33</sup> comprising the SADC Council of NGOs, SADC Lawyers Association (SADC-LA) and the Media Institute of Southern Africa (MISA), noted, among other issues;

- The IEC should thoroughly review and clean up the voters’ roll to ensure the credibility of elections in Lesotho; during the current election, the IEC did not register people or closed off too early. This meant disenfranchisement as the constitution calls on them to have continuous registration.

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<sup>33</sup> The Coordinated Civil Society Regional Observer Mission, **preliminary joint statement on the national assembly elections in the kingdom of Lesotho on 28 February 2015**  
A compendium of research publications ERC 2015

- The IEC should develop its own human resource capacity rather than relying on the government for staff; the commission is only independent at the top level. It however needs continuous evolving towards complete independence
- Parliament should pass a law establishing an autonomous body specifically responsible for registration of political parties. In the interim, one of the commissioners of the IEC should be tasked to deal with this issue.

### **What doesn't work? The mixed electoral system or the coalitions created thereof?**

The introduction of the MMP system brought confidence in the electoral system in Lesotho. Inclusivity had been achieved. Kapa (2013), posits that “this system has gone a long way in making Parliament more inclusive and representative, thus leading to political stability in the country.” It appears Kapa might have spoken too early. Political stability came under heavy test in August 2014 when there was an attempted coup against the coalition government of Prime Minister Thomas Thabane. It took SADC intervention to facilitate his return and call for fresh election through the Maseru Facilitation Declaration in October 2014<sup>34</sup>.

The MMP system, while appreciated as bringing inclusivity and improved participation of smaller parties, has the effect of ushering in coalition governments in multi party systems. Their working relationship in Lesotho has not been effective. This is what brought the 2014 crisis. There should be clear rules as to who forms government and how. It becomes difficult therefore, to clearly praise the MMP system in Lesotho. Rather, doing so, entails blaming the coalition system emerging from the elections in the last two elections.

The system should allow the party that has won majority in the First Past the Post framework to assume leadership of government while maintaining plurality in parliament. While plurality was achieved, stability and mature democracy might still be a far cry. Lesotho has experienced coups under different electoral systems.

The security arm of the country seems to be a constant threat to peace and stability in the country. Security sector reform in Lesotho is paramount. The Maseru Facilitation declaration cites the following as needing reform;

- Section 146 of the Constitution of the Kingdom of Lesotho, which entrusts the maintenance of internal security and the defence of Lesotho to the Defence Force, and making its Commander responsible for the Defence Force's administration and discipline;
- Section 147 of the Constitution of the Kingdom of Lesotho, which makes the Lesotho Mounted Police Force responsible for the maintenance of law and order in Lesotho and making its Commissioner responsible for the administration and discipline of the Service

### **The role of Southern African Development Community (SADC)**

The regional body has been well involved in the Lesotho problems especially beginning with the 1994 military intervention code named Operation Boleas. The intervention was led by South Africa.

<sup>34</sup> The Maseru Facilitation Declaration, Caryl Ramaphosa, 22 October 2014, <http://allafrica.com/stories/201410231898.html>  
A compendium of research publications ERC 2015

Election in 1998 also resulted in rioting. South Africa sent troops but without the sanctioning of SADC. The 2014 attempted coup also saw SADC intervening through South African facilitation under the leadership of South African Vice President Ramaphosa. The region has done way to quell down any government that is not a result of democratic elections. Their interventions in Madagascar, DRC, Zimbabwe and recently Lesotho show consistency towards achieving electoral democracy in the region.

### **A case of twins, fraternal twins**

Zimbabwe and Lesotho have both been through the tutelage of SADC after being crisis ridden. Their results speak differently but point the same direction. SADC intervention has brought stability to both countries when necessary. The long run of their interventions for sustainable democracy is still questionable. Zimbabwe seems to be regressing democratically. Lesotho has regressed on three occasions since the first intervention in 1994. This calls into question the sustainability of SADC led reform. However, it does not necessarily discredit it wholly. What remains pertinent is the ability of nations to institute local reform and see it through without regressing. It should not always begin and end with elections to select new government, but sustainable plans for institutionalization of democratic systems and transition mechanisms.

### **Conclusion**

The Lesotho election has come and gone. The results thereof might be an expression of the will of the people. They have gone through storm midair. However, it remains to be seen if they have landed. Democratic elections are a means to an end, not the end.

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<sup>i</sup> General Laws Amendment Bill (H.B.3,2015)

<sup>ii</sup> See the ConCourt case Election Resource Centre vs. Zimbabwe Electoral Commission,2014