
ZESN PRELIMINARY STATEMENT ON ZIMBABWE'S ELECTORAL AMENDMENT BILL, 2011



Press statement

Harare - July 20 2011- The Zimbabwe Election Support Network has noted the recently gazetted amendments to the Electoral laws. These reforms come against a backdrop of previously contested electoral processes in Zimbabwe with particular reference to the 2008 run-off election whose contestation led to the formation of the current political set up.

ZESN has critically assessed the draft Electoral Amendment Bill which was gazetted on Monday 27th June, 2011, commented, and suggests further improvements, summarised in this statement.

The Electoral Amendment Bill addresses a number of issues which ZESN believes are essential for the creation of a conducive environment and the levelling of the playing field for credible free and fair elections. At the same time ZESN notes that even though some of the reforms will significantly improve the current electoral legal framework, the proposed amendments do not go far enough in addressing the creation of a peaceful electoral environment.

The following are some of the important comments in relation to the proposed reforms:

Zimbabwe Electoral Commission

The Bill re-enacts provisions of the ZEC Act and provides for ancillary powers. The major test however remains on the independence of the Commission so that it can execute its mandate with efficiency. ZESN reemphasises that the test is always in the implementation of the rules and structures. Of major concern are the professional personnel, financial and resource limitations of the Commission.

Voters' Roll and Polling station-based voters' rolls

ZESN welcomes the provision for the availability of the Voters' Roll in both printed and electronic versions in searchable, analysable and tamper-proof format. ZESN is however concerned with the continuation of the shared responsibility for the registration of voters, creation and maintenance of the voters' roll between the Zimbabwe Electoral Commission and the Registrar-General's office. ZESN believes that this arrangement decreases accountability and can potentially cause inefficiency. ZESN proposes that these responsibilities must be fully given to the ZEC which has the sole mandate to run elections in the country

The Electoral Amendment Bill further makes provision for the creation of permanent polling stations and polling station-based voters' rolls. On the face of it, this reform is in line with international best practice as it

reduces risks of double-voting and promotes transparency and credibility of the electoral system. However, the environment within which elections have been held can scuttle the best laid technical aspirations. Without a permanent solution to electoral and politically motivated violence, the polling station based roll will leave communities more vulnerable to retribution and post-election violence since it will be easier upon counting to identify voting patterns down to specific polling-stations.

Voter Education

The Bill further mentions that apart from the Commission, political parties or persons authorised to assist the Commission, **any other person** satisfying the criteria set out in the Bill will be entitled to provide voter education in Zimbabwe. This is a welcome development as it extends the scope of providers of voter education making the Commission not the only primary provider legally but effectively the gatekeeper and monitor of voter education through its powers to vet and approve materials and content used by voter education providers. However, it is worrying to note that the Bill further requires any **foreign funding** for the provision of voter education to be channelled through the Commission.

It is ZESN's expectation that the Commission would use its powers and any discretion in this regard, in a manner that is fair and reasonable otherwise it would be subject to judicial review.

Election Observation and Accreditation

ZESN notes with interest a new provision in the Bill regarding both internal and external observers. The Bill proposes the establishment of an Observers' Accreditation Committee set up by the Commission. The Observers' Accreditation Committee which will be responsible for vetting the applications and making recommendations to the Commission appears to have a heavy political influence in that four out of seven members are ministerial appointees. While this can be viewed as an improvement from the former veto powers of the Ministers of Foreign Affairs and Justice and the consequent cherry-picking of observers, ZESN is still concerned that this new arrangement also compromises the independence of the Commission especially its ability to make decisions without the interference of political interests.

Political violence

Political violence has been a major dent to the electoral system in Zimbabwe with the violence that took place in 2008 drawing the ire of many observers. The Bill places responsibility on political parties and contesting candidates to ensure that politically motivated violence and intimidation are prevented. ZESN is of the view that whilst in theory the structure looks fairly robust enough to deal with a serious problem that has plagued elections in Zimbabwe over the years, the test will be in the implementation. In particular, there is need for vigilance to guard against selective application of the law.

Electoral returns

ZESN commends the mandatory requirements for the provision of electoral returns at all levels to the candidates and their political parties and that they must be posted outside the election centres, the availability of all these copies will enhance transparency as candidates and parties can use the opportunity

to perform due diligence and ensure that the correct information is being transmitted right from the polling-station to the National Command Centre.

Presidential Elections and Results

The new provisions require that presidential election results be **declared within 5 days of the last polling date**. Setting the maximum threshold is an important step as it prevents the '2008 phenomenon' when it took more than six (6) weeks to announce the Presidential election results.

Pre-Emption of Results

ZESN notes that the Bill prohibits the announcement of elections results by any person before they have been officially announced by the Commission. This is therefore designed to prevent pre-emption of official election results.

Nomination of Candidates

Regarding the Nomination of Candidates, the Bill provides a tighter requirement that seeks to ensure that a candidate is actually a true representative of a political party that he/she purports to represent in an election. ZESN welcomes this development as it will prevent situations that have happened in previous elections where a single political party was represented by more than one candidate in the same constituency. The new provision ensures that there will be specific gate-keeping procedures by political parties so that only persons that they have approved are nominated to represent them in an election.

Voting by Illiterate or Physically Handicapped

Another welcome development is the recognition and upholding of the freedom of illiterate and physically handicapped voters to be assisted by persons of their choice rather than by electoral officials or as in the past by police officers. The Bill however makes a provision for electoral officers to assist where the voter does not have relatives or other persons of their choice to assist them.

Overall, ZESN commends this provision and hopes that it will not be abused by political parties or individuals. ZESN encourages observers and electoral officials must therefore play a more vigilant role to minimise that risk if this clause passes into law as provided for in the Bill.

Postal Voting

Although this voting avenue has always been available, the new provisions simplify the procedures and in particular allow the use of electronic communications in the applications for postal voting. ZESN notes that postal voting remains restricted to persons who are outside Zimbabwe on Government business, as well as their spouses if they are also out of the country. If postal voting is available to those on government duty, it could also be available to many Zimbabweans abroad (the Diaspora) as the case with other countries in the region like Botswana, South Africa, Malawi and Namibia. However there is need for proper planning and mechanisms to be put in place to ensure openness and transparency so that this process is not manipulated at each and every stage.

Special Voting

ZESN also welcomes the new provision for a special voting procedure for members of the security forces (Police and Defence), electoral officials and accredited observers who will perform duties during elections. ZESN however suggests that polling stations for security forces should be placed in places that can be accessed by observers. In addition proper administrative measures should be put in place to ensure transparency and openness in the whole process.

Media Coverage of Elections

The Bill re-enacts parts of the Zimbabwe Electoral Commission Act (ZEC ACT) which place a mandatory requirements on public broadcasters to treat all contesting political parties fairly and equitably and in particular to give all parties contesting an election free access to their broadcasting services as prescribed. ZESN notes with concern that this mandatory obligation on the public broadcaster is of particular significance in a country where there is only one public broadcaster. The Bill further provides that adherence to the legal requirements will be monitored by the Commission with the assistance of the Zimbabwe Media Commission and the Broadcasting Services Authority. It is with great disappointment that the Bill lacks specific sanctions for breach of these rules and this must be improved.

ZESN also welcomes **other provisions such as voting processes and procedures**, separation of ballot boxes, information on ballot papers, inside polling station and outside polling station election agents that seeks to promote accuracy and promote transparency. Furthermore the Network welcomes the restriction on police officers from interfering with the electoral process at any polling station. The new provisions mention that police officers are no longer allowed to enter a polling station unless they are casting their votes or have been called upon to provide assistance in the exercise of their sole function which is to maintain order and prevent contraventions of the law to ensure a free and fair election.

ZESN commends the effort to improve the electoral processes and procedures as the country looks to holding fresh elections. However ZESN notes with serious concern that the Bill fails to satisfactorily address other fundamental issues mentioned above in particular the creation of an enabling electoral environment that ensures a peaceful and credible electoral process. Ends//

PROMOTING DEMOCRATIC ELECTIONS IN ZIMBABWE

FOR COMMENTS AND FURTHER DETAILS CONTACT

ZIMBABWE ELECTION SUPPORT NETWORK

+263 (04) 791 443, 798 193, 791 803, 250 736

zesn@africaonline.co.zw /info@zesn.org.zw or visit our website www.zesn.org.zw