

ZIMBABWE ELECTION SUPPORT NETWORK



Summary Review of Zimbabwe's Electoral Amendment Bill, 2011

The Parliament of Zimbabwe is attempting to make changes to the Electoral Act (Chapter 2:13). The Electoral Amendment Bill, 2011, currently before Parliament, seeks to make several changes to the existing law with a view to promoting free and fair elections. This document by ZESN seeks to explain the changes that have been proposed and make recommendations on how to improve the legal framework for elections in Zimbabwe.

The following highlights the key changes that have been proposed and how they can be improved.

Voter Registration and the Voters' Roll

The Commission must make available to the public searchable printed and electronic voters rolls. There is an option to create a completely new voters roll. For proof of identity and residence, the Commission has flexibility to require any acceptable means. Unlike other countries in the region such as Mozambique, the law does not mandate the Commission to register voters based abroad (Diaspora). A matter of concern is that responsibility for the voters roll continues to be shared between the Commission and the Registrar General's Office, which dilutes accountability. The Commission should be given sole and exclusive responsibility for registration of voters and the maintenance of the voters roll.

Polling Station-Based Voters' Roll

There is provision for the introduction of polling-station-based voters' rolls so that voters can only vote in the polling station at which they are registered. This system will prevent double-voting and 'bussing in' of voters from other constituencies. However, it may also expose voters to pre-election displacement and post-election retribution since it will be easier to identify voting patterns in small localized communities.

Removal of Deceased or Absent Voters

Relatives of deceased or absent voters will be able to cause the removals of their names from the voters roll. It is recommended that incentives be put in place – such as assisted burials used in a similar campaign in Mozambique where voters have informed electoral authorities of the death of their relatives. Also, there could be synchronization with other offices such as the Births and Deaths Registration Office so that whenever a person dies, information is sent through to the Commission so that the name of the deceased is deleted from the roll.

Declaration of Presidential Results

The results of the Presidential elections must be announced forthwith and not more than five (5) days after the last polling date. Where a vote recount is demanded, it must be done within the same five (5) days. The periods run

concurrently, which might cause problems, therefore, it is recommended that the vote recount period be calculated from the day on which the Commission starts the recount. Currently, the Bill states that the vote recount results can be announced within five (5) days after the “completion” of the vote recount, a position that cannot be justified for any reason. It is recommended that the five day period be replaced by a requirement to announce the recount result forthwith or otherwise within 24 hours.

Setting Election Dates

The Bill retains the old position where the President has the power to set election dates. However, as the person occupying Presidential Office is also often a contestant in an election, it would be preferable if the setting of election dates were the responsibility of the Commission, guided by the Constitution. The Constitution would specify the intervals for all elections, giving a period within which the election must be set by the Commission, e.g. that the Presidential Election must be held in the first two weeks of March after every 5 years since the last Presidential election.

Presidential Run-Off Election

Where there is a tie in the run-off election, the Bill requires that the election of the President be decided by an electoral college of MPs in Parliament. It is recommended that this requirement be changed so that the power be retained in the hands of the voters rather than Parliament. So if there is a tie, a new election must be held until a clear winner is found. If the present system of the electoral college is retained, there must at least be a requirement that MPs be sworn-in within a specific period after their election and that this will not be dependent on the holding of the Presidential run-off election.

Accreditation of Observers

The Commission will, through the Observers Accreditation Committee (OAC) have responsibility for accrediting election observers. The problem, however, is that the OAC is dominated by political appointees which could compromise its independence. There is also no expeditious mechanism for appeals should the OAC recommend refusal of accreditation to specific observers. First, the political appointees to the OAC must be limited or otherwise diluted by greater presence of Commission members or appointees. Second, would-be observers who have been refused accreditation must be given full reasons for refusal and must be allowed to make representations to the Commission as to why the OAC’s recommendations should be disregarded.

Political Violence and Intimidation

The Bill sets out special mechanisms for preventing or handling cases of political violence and intimidation. However, there is need to guard against selective application of the law and to ensure that cases are dealt with on the basis of urgency so that the public can observe the operation of the law in real terms. It should also be recognized that intimidation can be psychological and through public statements that are designed to influence the outcome of elections. There must be specific prohibitions of public statements by senior state officials who are not contesting elections where such statements are made with the intention to or reckless as to whether they would influence the outcome of an election.

Dispute Resolution

The Electoral Court is given wider jurisdiction to deal with election-related matters. However, it is likely as in previous cases that judges will be transferred from the High Court. It is recommended that the judges be drawn from the pool of retired judges who have less workload so that they can deal exclusively with matters pertaining to the court. There must also be a requirement that matters before the electoral court be dealt with on the basis of urgency to expedite the outcome of dispute resolution. Similarly, this provision of urgency in electoral matters must extend to appeals from the Electoral Court to the Supreme Court. The same rule must apply to constitutional challenges relating to elections that may be brought before the Supreme Court. This is because in the past petitions or appeals have taken inordinate amounts of time.

Illiterate or Handicapped Voters

The Bill upholds the choice of voters to select persons who may assist them to vote, which is a departure from the previous position where the police had powers to provide such assistance. Although it is a welcome change, there remains the risk that “assistants” may impose themselves on illiterate and handicapped voters. Consideration should be given to permitting illiterate voters to vote using the thumb as they can easily identify the party of candidate of their choice by pictures of candidates or party symbols. Also, the use of Braille technology should be explored to enable visually-handicapped voters to vote without assistance or interference.

Police Officers Role

will be specifically prohibited from interfering with the electoral process at polling stations. They are not allowed to enter polling stations unless they are called upon to do so by the elections officer and they have to submit to his or her command. To be effective however, there must be specific and severe sanctions for breaching these prohibitions. Police must also be specifically prohibited from making public statements or any conduct that may influence the outcome of any election.

Postal Voting

This is currently restricted to persons who are out of the country on government business. This is too restrictive as it excludes those who may be outside the country on commercial or any other business. It should be more open so that the facility is available to persons who can show legitimate proof that they cannot otherwise be available on polling days. The sick, elderly and immobile who cannot travel to polling stations should also be able to use postal voting in-country. It is important however to use tamper-proof technology to prevent the risk of manipulation.

Special Voting

There is provision for special voting by members of the security forces, election officers and observers who will be involved in the election process. It is recommended that along with postal voting, this be extended to the elderly, the sick or otherwise immobile so that they are able to exercise their right to vote before the busy polling dates.

Media Coverage

There is a requirement for fair media coverage across all political parties and candidates by the public broadcaster and other media. Nevertheless, it should be made clear what constitutes fair coverage so that coverage that is overly negative, unduly critical or otherwise biased should not be regarded as fair coverage. Also, there must be clear and specific sanctions against media companies for breaching these rules. This could include suspension of broadcasting licenses for specified periods. These powers must be exercised by the Commission.

Disclosure of Ballot Paper Information

Whilst the provision requiring disclosure of information regarding ballot papers – where printed, number printed and distributed, etc - is an important step, it must state clearly when and where the disclosures will be made. Presently it simply requires that disclosures be made 'without delay' and make no reference to the location. There must be clear guidance in the law on the timing and location of the disclosures. It is recommended that a specific time-period be stated, for example, that the disclosures should be made not more than fourteen (14) days before the election and also that the location of the disclosures must be specified as the constituency, provincial election centres or the National Command centre.

Posting Returns on Election Centres

Whilst there are provisions requiring the polling returns be given to parties and candidates and also that they be posted outside the election centres, they appear scattered and there is need for one consolidated provision which deals with this important aspect of transparency.

Pre-Emption of Results

The Bill prohibits the pre-emption of results so that only the Commission can make the announcement. It must be clear that the Commission Chairperson or other delegated person has the powers to make the announcement and the best solution against any possible pre-emption of results is to ensure the announcement of the results promptly and without delays that might give rise to speculation.

Voter Education

The Commission will be the 'gate keeper' and monitor in respect of persons who wish to provide voter education to voters. It will also have control over the receipt of foreign funding to persons wishing to provide voter education. However it is necessary to clarify the nature and extent of its powers in respect of whether it can refuse such funding and whether it has the discretion to distribute whatever funding it receives for voter education even where it has been applied for by organization.

Commission Independence

The Bill retains provisions of the Zimbabwe Electoral Commission Act on the Commission's powers and governance arrangements. As the independence of the Commission is a critical factor in ensuring the realisation of free and fair elections, provision must be made so that it draws its financial resources from the Consolidated Revenue Fund and that it must be in control of its own budget. The Commission must also report to Parliament and not to government ministers. In terms of status, as the ultimate referee in national elections, it is important to recognise that the Commission occupies similar roles to key arms of the state such as the judiciary. Its independence and impartiality are therefore matters of utmost importance. It is necessary also to prevent any potential conflict between the Chairperson of the Commission and the Chief Elections Officer who performs the executive functions on behalf of the Commission. The law must set the powers of the Commission and allow any delegations to other persons without necessarily specifying specific powers to any other officer or person.

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