

## **Reduce Political Interference in the Accreditation of Election Observers**

ZESN

The credibility of an election is determined not only by the propriety with which the voting process is carried out but also by the certificate of legitimacy conferred upon it by independent election observers. Recognising the critical role of observers in elections, the regional body, SADC set out elaborate principles and guidelines governing election observation and in the process created an institutional mechanism for election observation in its Member Countries.

The SADC Principles and Guidelines Governing Democratic Elections and Election Observation Missions (2004) are designed to set out minimum standards that Member Countries should ideally adhere to in the conduct of elections and election observation. The fundamental weakness of the Guidelines is that they do not have full legal force and are not mandatory. They, nevertheless, do have persuasive force within and among Member Countries.

Election observation is an important institution in any election process as it contributes towards ensuring that the election is conducted in a manner that is seen to be free and fair. The proposed Part IXB of the Electoral Act deals with the issue of accreditation of election observers.

Under the provisions, election observers are accredited by the Zimbabwe Electoral Commission (ZEC) and they are entitled to observe the whole process, including the conduct of polling, the counting, collation and verification of votes and polling station returns. They are also entitled to bring to the ZEC's attention any irregularities regarding to the electoral process.

An important principle governing the election observation process is the independence of election observers. Unless they are independent of any contesting party, the election observation process will be discredited. A key aspect that determines the independence of election observers is the manner in which they are accredited.

Under the proposed reforms, the power of accrediting observers is vested in a committee that is provided for under the law, which shall be known as the Observers' Accreditation Committee (hereafter "**the OAC**"). Although the OAC is essentially a committee of the ZEC, its composition is provided for separately under the law, an area that could cause conflicts between the ZEC and the OAC.

In terms of the proposals, the OAC vets the applications of observers and makes recommendations to the ZEC which supposedly has the ultimate decision-making

powers. It is not entirely clear why there was a need to provide for the creation of an OAC under the law. It would have been sufficient, to preserve the independence of the Commission, to merely require it to have the power to accredit election observers. The Commission would then have used its internal systems to create a committee. Creating the OAC under the law is tantamount to micromanaging the ZEC. On a point of principle, the ZEC as the electoral body should be left to create its own institutional mechanisms for among other things, election observation. As it is, this committee (OAC) that has been created is likely to compete rather than complement the ZEC particularly when one considers the composition of the OAC which is heavily political.

The composition of the OAC is that 3 members (including the Chairperson) are from the ZEC but a further four are essentially direct political nominees - one person is nominated by the Office of the President and Cabinet; one person is nominated by the Minister of Justice; one person nominated by the Minister responsible for Foreign Affairs and one person nominated by the Minister responsible for Immigration (Home Affairs). If the original aim was to reduce political interference in the accreditation process, this is not fully achieved given that political nominees from outside the Commission dominate the OAC.

Further, there is an apparent anomaly in the appointment process which is pertinent in the current political climate. It is that under the Inclusive Government arrangements, ministerial portfolios are distributed among the three main political parties. If one party holds all or most of the ministerial portfolios that have a role in the nomination of members to the accreditation committee, this will likely give that party an unfair advantage over others. In addition to the nominee of the President's Office, the other nominees are from ministries that are controlled by ZANU PF. The MDC-T only has partial influence over the Ministry of Home Affairs which controls immigration as this portfolio is currently shared between ZANU PF and the MDC-T. The other MDC has none. It is clear therefore that in practical terms, the OAC will be dominated by nominees of one political party which will also be a contestant in the elections.

- ***In these circumstances, ZESN recommends that the power to accredit election observers should be vested solely in the ZEC so that parties who could potentially be contestants in elections have no role whatsoever as this would create an unlevel playing field.***
- ***Alternatively, if there should be nominations from outside the Commission, this power should be vested in the Parliamentary Committee on Standing Rules and Orders which has equitable representation between political parties represented in Parliament.***
- ***It is also recommended that the OAC be expanded to include representatives of civil society organisations, religious groups and the professions.***

Application to the ZEC for election observer status is open to both locals and foreigners. However, there is also a facility for direct invitations by the ZEC, the Justice Minister and the Foreign Affairs Minister. Since we have already seen that the Ministries and the Commission are represented in the OAC through their nominees, it is likely that their invitees will face little, if any, problems in the process of accreditation. The same criticism above regarding the involvement of politicians in the electoral processes, especially where they are also contesting the elections applies to this point.

- ***ZESN recommends that only the ZEC as the elections regulatory body should have the power to invite applications from observers. It is recommended that the power given to the Ministers of Justice and Foreign Affairs be removed and given entirely to the ZEC.***

The major challenge in the applications will be faced by those who will have to apply without invitation. This challenge is increased by the fact that the Minister of Foreign Affairs is entitled to make objections to the accreditation of a "foreign individual or eminent person". The OAC actually required to "pay due regard to the objection" in its decision-making process. Here again we see that a Minister, who may be a contestant in the election has the power to influence the barring of foreign observers that they do not like. This power must be seen in the context that this Minister also has the added power to nominate a person to sit on the OAC. This has the potential to severely compromise the impartiality of the OAC in respect of that particular applicant against whom a Minister has objected.

- ***It is therefore, recommended that at the very minimum, where such applicant's application is being considered by the OAC, the Minister's nominee should recuse himself.***
- ***Overall, we would recommend that such interference by the politicians be removed so that the ZEC has the overall power to determine all applications. This is not to say objections cannot be made. Indeed, they can be made but there is no justifiable reason why the Minister's objection should be given any special status so as to be provided for under the law. It should be considered just like any other objection.***

The final leg of the application process is that after deliberations, the OAC is required to make recommendations on the applications to the ZEC, which will make the final decision. The ZEC must indicate in writing within 48 hours of receipt of the recommendations if it objects to any of them. However, it is unclear that the so-called 'recommendations' that the OAC gives to the ZEC is a list of observers that have been approved or whether it is a full list that also includes

rejected applicants. There is a risk that if it is only a list of successful applicants, the ZEC will not have the chance to consider whether the rejections were justified.

- ***It is recommended that there be clarity that the OAC will forward to the ZEC all applications – whether successful or rejected, together with reasons for the decision in each case, especially where there has been a rejection.***
- ***It is further recommended that in line with the Constitution and principles of natural justice, the right of rejected applicants must be protected so that the ZEC has a facility to enable each reject to challenge the recommendation of the OAC.***
- ***It must also be made clear under the law that the OAC must provide full and sufficient reasons for their decision to enable the applicant to understand why it has been rejected and to make a case for appeal if need be. The ZEC must also give the applicant adequate time to challenge the decision.***

Overall it is useful that the Commission is now at the centre of the election observer selection process. However there are still critical weaknesses, identified in this analysis. In particular, ZESN makes the following recommendations:

- ***The power to accredit election observers must be vested solely in the ZEC;***
- ***To minimise political interference in the handling of the election process, ministers and all potential election contestants must have no role whatsoever in the accreditation of election observers;***
- ***Should there be any justifiable reason for nominating members of the accrediting committee by persons outside the ZEC, this power should be vested in the Parliamentary Committee on Standing Rules and Orders which has equitable representation between political parties represented in Parliament;***
- ***If Ministerial nominees are retained, the OAC should also be expanded to include representatives of civil society organisations, religious groups and the professions.***
- ***The Commission must have exclusive powers to invite applications from potential observers, local or foreign;***
- ***There is no need to create a separate legal entity in the form of the OAC, rather, the Commission must be left to devise its own decision-making process and create its own committees for this purpose;***

- ***Persons whose applications have been rejected by a committee of the ZEC must be given adequate reasons and a facility to challenge the decision of that committee before it is adopted by the ZEC;***
- ***There is no justifiable reason to elevate the Minister's right of objection to election observers. It should be considered by the ZEC just like any other objection. If retained however, the Minister's nominee in the OAC must recuse himself from the determination of that specific application.***

It is important that these recommendations be seriously considered with a view to enhancing chances of credible elections.

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