

INDEPENDENCE OF THE ZIMBABWE ELECTORAL COMMISSION

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The independence of the Zimbabwe Electoral Commission (hereafter, "the Commission") is a critical issue in the management and conduct of elections. It has the role of the umpire in the elections and for that reason must exercise its powers fairly and impartially treating each contestant equally and without fear or favour. Unfortunately, the Commission and its predecessor, the Electoral Supervisory Commission have been blighted by criticism of bias towards the ruling party.

The performance of the Commission in the 2008 in particular left much to be desired given the inordinate delays in releasing the Presidential elections results and its recognition of the result of what was essentially a sham June Presidential Run-off elections notwithstanding the allegations of extreme violence in the lead up to that election. Critics of the Commission's performance argue that the reason for its biased and compromised performance is that it was essentially held captive by the ruling party.

For example, through the President, the ruling party had the power to appoint Commissioners and the government controlled the Commission's financial resources. Its normal functions, like voter registration, were also outsourced to other bodies such as the Registrar-General's Office, also severely criticised for its bias towards the ruling party. Politicians also had powers to control certain procedures such as the accreditation of election observers which meant contestants in an election had the power to choose monitors that suited their agenda. This, among other weaknesses, exposed the Commission and left it at the mercy of politicians who could easily manipulate it.

A key weakness is that the status of the body that runs elections has never been given due respect and recognition. This is a body that is responsible for the most important political process in a country. As such it must be recognised as having the same or similar status to arms of the state such as the judiciary. Indeed, the independence of the Commission is as vital as the independence of the judiciary and similar principles and rules applicable to a judiciary should be imported, with necessary modifications, to apply to the Commission.

A starting point is that the Commission must be given exclusive control of the electoral process so that there is no dilution of its authority.

- ***ZESN therefore recommends that the Commission must be given full control of the registration of voters and the maintenance of the voters' roll. This should not be shared with the Registrar-General's Office.***
- ***Second, on the accreditation of voters, political interference must be minimised by giving full control to the Commission as the gatekeeper of the election observers' accreditation process and the object of ministers to observers should not be given special status. Contestants in elections should never be given the liberty to choose who monitors their performance. This must be the exclusive power of the referee, in this case the Commission.***

The appointment of Commissioners (and their removal from office) are critical factors in the determining the independence of the Commission. Prior to the current inclusive government that emerged from the political negotiations, there was excessive control of the process by the President and the ruling party. Although the President was required to consult the Judicial Services Commission in appointing the Chairman of the Commission, there was no obligation for him to comply with the advice of the Commission. He was only required to report to the

Senate if his appointment was contrary to the advice of the JSC but there was nothing that the Senate was empowered to do upon receiving the report. It was therefore a useless procedure, especially if the Senate is dominated by the President's party. In any event the JSC members were themselves Presidential appointees. This meant the President had excessive and uninhibited power in the appointment process.

There is now a requirement to consult not only the JSC but also the Parliamentary Committee on Standing Rules and Orders (CSRO) which is comprised of MPs from different parties thus guaranteeing a voice to parties beyond the ruling party. The other Commissioners are also drawn from a list submitted by the CSRO which as long as it remains constituted by MPs from more than one party, will at least guarantee some diversity in the Commissioners who are appointed.

- ***ZESN recommendation is that the appointment process be further strengthened by ensuring that the President appoints the Chairman not simply "after consultation with" the JSC and the CSRO as is the current case but "on the advice of" with the implication that he may not disregard the advice of those bodies.***

However, a critical element for the independence of the Commission is its funding and financial resources. Recent reports have demonstrated that the Commission remains severely underfunded. It is disconcerting to note that the body responsible for most important political process in the country has to depend on the benevolence of external donors. Since the Commissioners were appointed almost two years ago, they have not been given official vehicles to perform their work whereas government ministers have just recently got delivery of the latest brand of the luxurious Land Rover Discovery 4 vehicles – apparently, the fourth official vehicle per minister costing around \$60,000 each. Quite apart from the profligacy and culture of conspicuous consumption, it demonstrates a serious lack of priorities. You would expect especially the MDC part of the government which is in an unhappy relationship because of flawed elections managed by an under-resourced and compromised Commission would be doing more and screaming more about funding the Commission instead of accepting state largesse but they seem to be losing touch with realities and justifying lack of prioritisation.

The Commission needs money to perform its job efficiently. It has to develop a professional culture over time. It doesn't work to simply pour money into its coffers just before elections. The opportunity presented by the GNU to create institutional structures such as the Commission with a proper institutional culture of professionalism, integrity and fairness is sadly being wasted. It needs a well-trained and competent staff deployed across the country. There can be excellent legal provisions referring to its independence but unless it is given resources in real terms, the Commission will remain hamstrung.

- ***ZESN recommends upholding the spirit of independence of the Commission as contained in the legal provisions by providing regular and adequate funding to enable it to fulfil its mandate. Access to financial resources must be guaranteed and the Commission must have clear control of its budget.***

ZESN reiterates the fact that the independence of the Commission is the most important factor in facilitating the holding of a free and fair election. As the ultimate referee of elections it must not only have powers to set rules, manage elections exclusively without interference or direction from any other person but it must be financially self-sufficient and autonomous. As discussed in this paper, the Commission must be given full control of elections, including setting the dates of

elections – a power that is currently vested in the President even when he is also a contestant.

It must be a priority of the state to ensure that the Commission is fully funded in order to carry out its activities. Resort to foreign sources must only be a fall back option otherwise that also impacts on the Commission's independence. It is therefore regrettable that almost two years after appointment of the current Commission it still has to plead for funding whilst members of the executive are engaging in flagrant profligacy.

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