



Promoting Democratic Elections in Zimbabwe

## ANALYSIS OF THE ELECTORAL AMENDMENT ACT OF 28 MAY 2018 AND OUTSTANDING REFORMS AHEAD OF THE 30 JULY 2018 ELECTIONS

The 2013 Constitution provides for the overall framework for the conduct of elections in Zimbabwe, which must be managed by an independent Zimbabwe Election Commission that is subject to the Constitution and the other laws. The Constitution also provides for political rights – the right to vote and the right to be voted into office. Since adoption of the Constitution in 2013, Zimbabwe Election Support Network (ZESN) and Zimbabwe Lawyers for Human Rights (ZLHR), have been calling for alignment of the Electoral Act to the Constitution. In some instances, ZESN and ZLHR have also been calling on the implementation of provisions of the Constitution as non-alignment must not undermine implementation as some provisions can just be implemented without waiting for alignment as the Constitution is the highest (supreme) law of Zimbabwe.

Responses by government to calls for alignment have been piecemeal through a number of Acts that include;

1. Electoral Amendment Act, 2014
2. General Laws Amendment Act, 2016
3. Electoral Amendment Act, 2018
4. Judicial Laws, Ease of Settling Commercial and other Disputes

On 28 May 2018, another Electoral Amendment Act was passed and the 2018 Election date was announced thereafter. Consequently, as a result of the announcement of the Election day as 30 July 2018, any amendments to the Electoral Act that happen after the proclamation do not apply to the 2018 elections, but other future elections.

The Electoral Amendment Act as passed on 28 May amends some sections and repeals some sections in the Electoral Act. However, the Electoral Act as amended does not fully address the concerns raised by ZLHR and ZESN in previous analyses of the Electoral Act. The Electoral Act now removes the requirement for an electoral officer to witness how a visually impaired person votes, establishes the Electoral Court as a specialised division of the High Court and sets out a new and detailed Electoral Code of

Conduct for political parties, candidates and other interested stakeholders. Importantly, the Electoral Act now criminalises threatening statements by intimidators that they can discover how a voter cast his or her ballot and this is important in light of the noting of serial numbers by perpetrators as a means to intimidate the electorate. It revokes section 40F of the Electoral Act which requires all foreign contributions for the purpose of voter education to be channelled through ZEC and abolishes the use of voter registration certificates (registration slips) where a person's name does not appear on a voters' roll. There are a number of outstanding issues impacting the independence of ZEC, the right to vote, procurement and printing of ballot papers remains shrouded /in secrecy and there are no provisions directing the separation of election residue to enable petitioners to obtain a recount for a specified election. Another notable omission is the absence of a framework to guide the operations and accreditation of long term observers.

The table below also highlights outstanding areas of reform (in blue) following the 28 May 2018 amendments.

Issue <i>Provision in Constitution</i>	Provision in Act	Summary of Provisions	Comment
<b>Definition of terms</b>	Section 4	Amended the interpretation section of the Electoral Act by adding new terms and clarifying others.  New terms defined under this section include, 'election petition,' 'gender,' 'gender equality,' and registration office. Clause 2 also defines the Electoral Court and a general election.	<ul style="list-style-type: none"> <li>• By definitively stating that the Electoral Court is a division of the High Court, this section harmonises provisions of the Electoral Act with the Judicial Laws, Ease of Settling Commercial and Other Disputes Act, and clarifies the question of appointment of Judges to the Electoral Court. Inclusion of and definition of the terms 'gender' and gender equality is also a commendable development, given the responsibility of all state agencies to promote full gender balance and the participation of women in all spheres of Zimbabwean society on the basis of equality with men.</li> <li>• <b>What remains outstanding is clarifying the scope of the Electoral Court's subject matter jurisdiction, whether the court will deal only with election petitions or any other election related matters whenever they arise at any period in the electoral cycle.</b></li> </ul>
<b>Gender</b>  <i>Section 17(1)(a) state must promote full participation of women</i>	Section 5 & 11	Adds additional functions for ZEC to ensure that there is 'gender mainstreaming, and gender equality' in electoral processes. ZEC must also enhance gender equality on top of ensuring independence, impartiality and professionalism of Commissioners and agents of the Commission.	<ul style="list-style-type: none"> <li>• These provisions are commendable as ZEC must also ensure that gender is mainstreamed in its work as well as ensuring fuller participation of everyone regardless of gender. It is hoped that this will enable women to fully participate in all activities carried out by ZEC in fulfilment of its mandate.</li> </ul>
<b>Voter registration &amp; Voters Roll</b>  <i>Section 239 (c,d&amp;e) functions of ZEC include to</i>	Section 18	The Minister is now required to obtain the approval of ZEC and consult the former RGV before making regulations.  The Minister must get approval from ZEC and consult the former Registrar General of Voters (RGV) on how to deal with	<ul style="list-style-type: none"> <li>• This provision maintains the role of the Minister in the introduction of regulations on voter registration, sharing of information etc. <b>ZEC must be left to enact its own regulations without the consent or approval of the Minister or the former RGV. Such involvement amounts to interference with the mandate of a constitutional body. These powers are not supported by any constitutional</b></li> </ul>

<p><i>register voters, compile voters roll and register, ensure proper custody and maintenance of voters roll and register</i></p>		<p>confidential information that the former RGV has, or how to resolve any discrepancies between the records of the former RGV and those of the Commission and mandatory automatic and electronic voter registration</p>	<p>provision and are clearly unconstitutional</p> <ul style="list-style-type: none"> <li>• The minister and the RGV should have no role in the management of elections. What would be sensible and in accordance with the law, is to give the law-making powers, in terms of regulations and rules, to ZEC itself as the only constitutionally mandated body to conduct elections</li> <li>• The RGV still has a say on the information that he has on registered voters although he does not take part in this process anymore. RGV must have handed over any information and material to ZEC in as much as it is needed to create a comprehensive voter register. Section 239(c), (d) and (e) unambiguously provide that the functions of ZEC include voter registration, the compilation of voters' rolls and registers and the proper custody and maintenance of voters' rolls and registers. There is no further role for the former RGV and none for the Minister of Justice, Legal and Parliamentary Affairs.</li> </ul>
<p><b>Voter registration &amp; Voters Roll</b></p> <p><i>Section 239(c,d&amp;e) functions of ZEC include to register voters, compile voters roll and register, ensure proper custody and maintenance of voters roll and register</i></p>	<p>Section 20 &amp; 21</p>	<p>Updates provisions on the keeping of voters rolls by ZEC, inspection by the public and obliges ZEC to keep and maintain voters' roll in printed and electronic form for each polling area.</p> <p>ZEC <u>may</u> prepare and maintain a consolidated national voters' roll and a consolidated voters' roll for each constituency or ward although these will not be used for polling.</p> <p>Provides for the inspection of voters' rolls and provision of copies and amends section 21 of the Electoral Act by outlining the method for inspection and provision of the voters roll, including the consolidated roll to any person who requests it, upon payment of the prescribed fee.</p>	<ul style="list-style-type: none"> <li>• ZEC has an obligation to keep and maintain in printed and electronic format a voters' roll for each polling station. Concerns have been raised in the past that ZEC did not provide an electronic copy of the voters' roll that was searchable. It is hoped that Commission will stick to the letter of the law and ensure that the electronic version will be searchable.</li> <li>• Whilst it is not mandatory for ZEC to prepare and maintain a consolidated national, or consolidated constituency or ward voters' roll. This provision is dangerous, as ZEC has an option and may decide not to produce the national, constituency or ward voters' roll. There is a potential conflict within this amendment as ZEC may prepare and maintain consolidated national, constituency or ward voters roll which it has to provide for inspection. It must be compulsory for ZEC to produce these voters' roll as these will be relevant for some stakeholders such as candidates who would need to have consolidated rolls, not just polling station voters' rolls.</li> </ul>
	<p>Section 23</p>	<p>Increases residence qualification of voters from a continuous period of 12 months to a continuous period of 18 months before a potential voter may be removed from the roll for that constituency.</p>	<ul style="list-style-type: none"> <li>• The non-repeal of this section still means that Zimbabwean citizens based abroad cannot return to participate in electoral processes if they have been residing out of their constituencies for a continuous period of 18 months, unless they are entitled to postal votes by virtue of being on government service.</li> <li>• It also means that anyone in prison cannot vote if they are away from their constituency for 18 months and their name is removed from the voters roll.</li> <li>• This section must be repealed to ensure that every citizen who registers vote to be afforded the opportunity to register regardless of whether they have been resident in the constituency of a prescribed period of time. ZLHR and</li> </ul>

			ZESN maintain that the political rights of all Zimbabweans provided in section 67(3) of the Constitution should be protected and that in its current form, section 23 of the Electoral Act is unconstitutional. Provisions allowing those living abroad to register to vote must be included and this can start with them being allowed to vote for the Presidential candidate.
	Sections 24 & 25	Presently, sections 24(1) and 25(1) of the Electoral Act require a claimant for registration presents themselves at the appropriate voter registration office and complete a claim form and may request the assistance of a voter registration officer. The amendments make it clear that a potential voter may register at any voter registration centre anywhere in the country other than in their own constituency and then seek a transfer which is done when the voter registration officer is satisfied that they are entitled. Candidates can also seek transfer to stand for election in other constituencies but must seek approval from ZEC.	<ul style="list-style-type: none"> <li>This section incorporates provisions of Statutory Instrument 85 of 2017</li> </ul>
	Section 26A	Substitutes section 26A with a new section that requires claims for voter registration and transfer of voter registration to be lodged no later than the second day following the publication of the election proclamation.	<ul style="list-style-type: none"> <li>This section shortens the period for registration after proclamation to 2 days instead of the 12 days, but if voter registration is conducted continuously, as it should this should not be fatal to citizens' political rights and as long as voter registration is conducted transparently.</li> </ul>
<b>Voter registration &amp; Voters Roll</b>  <i>Section 239(c,d&amp;e) functions of ZEC include to register voters, compile voters roll and register, ensure proper custody and maintenance of voters roll and register</i>	Section 32 & 35	Repeals section 32 and replaced it with wording providing for the removal of duplicates (if one is registered more than once) and empowers ZEC to de-duplicate the voters' roll by removing duplicate or multiple names of a vote who appears more than once. No notice is required to be given, to affected person. The affected person may appeal to a designated magistrate of the province.	<ul style="list-style-type: none"> <li>Given the historical state of the voters' roll in previous election cycles, it is important for ZEC to be able to de-duplicate the roll so as to guard against electoral fraud. However, the stipulation that no notice has to be given is contrary to the tenets of administrative justice as a voter should have the opportunity to make representations before his/her name is removed from the roll, and not after. Though there is an option of appealing to a designated magistrate of the province, depending on timing it may be too late to get the name enlisted back on the voters roll.</li> </ul>
	Section 36A	Repeals provision which provided that under section 36A of the Electoral Act, a person who has previously registered to vote is excused from having to fill in a claim form, being only required to produce proof of identity to the voter registration officer.	<ul style="list-style-type: none"> <li>This is necessary for the creation and consolidation of a new voters roll for Zimbabwe to prevent voters' names being carried over from the old roll. The BVR system will go a long way in addressing the problems associated with the old voters roll including duplications, and dead voters.</li> </ul>
	Sections 114(3), 115(3), 116(1), 116(2), 117(1-3),	Refers to a Registrar-General of voters (new role of ZEC as provided in 2013 amendment)	<ul style="list-style-type: none"> <li>For clarity, it will be better if the term Registrar-General of Voters is completely removed from the Electoral Act and substituted by ZEC voter registration officers. This reference to a former Registrar-General of Voters, and a Registrar General of Voters causes confusion.</li> </ul>

	188(1)193(a)		
<b>Preparation for Elections</b>  <i>Section 239(a&amp;b) to prepare for elections of the president, parliament, provincial and metropolitan councils, local authorities....to ensure conducted freely, fairly, transparently and in accordance with the law</i>	Section 22A	Enables ZEC establish two or more independent polling stations to serve the same polling station area, and to split the voters' roll for that area between such polling stations, if ZEC finds that the estimated number of voters to be served by any polling station exceeds the number determined by it to be manageable.	<ul style="list-style-type: none"> <li>The section brings a measure of opaqueness to the voting process as there is no guidance as to what should be considered 'manageable' by the Commission.</li> <li>This section can make it difficult for stakeholders to properly plan in advance where they wish to deploy observers or polling agents, and it is not clear at what stage ZEC can decide to create more polling stations to serve the main polling station, and whether this will be sufficiently publicised. <i>There is need to ensure that the establishment of additional polling stations does not affect proper planning and prejudice activities of other stakeholders involved in elections.</i></li> </ul>
	Section required	There is no provision for ZEC to provide an election timetable ahead of any election	<ul style="list-style-type: none"> <li>This section must provide the timeline within which ZEC must provide its timetable for election, with relevant information such as the date by when the timetable must be gazetted, cut-off date within which voters' roll must be provided etc.</li> </ul>
	Section required	No provision in Electoral Act on provincial councils.	<ul style="list-style-type: none"> <li>The electoral law must make provision for the provincial councils and election of chairpersons for the provincial council as provided in section 268 of the Constitution that provides for devolution of power.</li> </ul>
<b>Delimitation</b>  <i>Section 239(f) Role of ZEC to delimit constituencies Section 157 &amp; 161 ZEC to periodically delimit constituencies &amp; wards once every ten years soon as possible after census</i>	Section 37B	Removes President from the delimitation of constituencies processes and repeals the whole section.	<ul style="list-style-type: none"> <li>This consolidates the independence of the ZEC. Bringing provisions of the Act in conformity with section 239(f) of the Constitution which makes the delimitation of constituencies the role of ZEC.</li> </ul>
	Section required	Act does not elaborate on delimitation process	<ul style="list-style-type: none"> <li>ZESN and ZLHR recommend that constituency boundary delimitations provisions become elaborate to ensure that seat allocations enable voters to be represented in the legislature in roughly equal population ratios.</li> <li>There is need to provide clear procedures and timelines to dispute the delimitation process through the Electoral Court.</li> </ul>

<p><i>Section 155(2)(c)</i> Reasonable access to all materials and information to participate effectively</p>	<p>Section required</p>	<p>Act does not provide for access to maps following delimitation</p>	<ul style="list-style-type: none"> <li>• Maps for delimited boundaries must be available for inspection at ZEC offices. Ability to inspect maps showing the boundaries of constituencies after publication of notice in government gazette, including district boundaries advances section 155(2)(c), being reasonable access to all material and information to participate effectively. This new provision must be inserted.</li> </ul>
<p><b>Voter Education</b></p> <p><i>Section 239(f) ZEC to conduct and supervise voter education</i></p>	<p>Section 40B</p>	<p>Now requires that voter education be conducted in an accurate, gender sensitive manner and unbiased manner, with due regard to the updated electoral Code of Conduct for political parties and candidates prescribed in the Fourth Schedule.</p>	<ul style="list-style-type: none"> <li>• The mainstreaming of gender by the Commission in its work is commendable and will go a long way in fostering the participation of women. However, it is crucial for the Commission to factor in other special interest groups such as the disabled in the provision of voter education material.</li> </ul>
	<p>Section 40F</p>	<p>Repeals section 40F which required all foreign contributions for the purpose of voter education to be channelled through ZEC.</p>	<ul style="list-style-type: none"> <li>• This is progressive as it will open up the possibility of more civil society organisations collaborating and complementing ZEC in conducting voter education.</li> </ul>
	<p>Section 40C(1)(h)</p> <p>Section 40C(3)(c)</p>	<p>Voter education must be funded solely by local contributions or donations, if foreign funding, then this must be channelled through ZEC for onward allocation.</p> <p>Criminalises the conducting of voter education as part of a course in law or civics.</p>	<ul style="list-style-type: none"> <li>• This provision must be repealed as it is not justifiable in a democratic society that is upholding the right to freedom of association, expression etc. It is more absurd as ZEC is not obliged to set up a proper structure for management of these funds.</li> <li>• Again this is not justifiable, given the inclusion of political rights in the Constitution and whole chapter of elections, this section must be repealed. Instead a new section that clearly defines what voter education is, taking into account other constitutional provisions must be included.</li> <li>• There is no section that obliges ZEC to ensure that its voter education is accessible to everyone in form and content, such as sign language, other national languages and be simple.</li> <li>• Must ensure that voter education is a continuous process throughout the electoral cycle.</li> </ul>
<p><b>Election observation</b></p> <p><i>Section 239(j) of accredit observers of elections and referendums</i></p>	<p>Section 40G</p>	<p>This extends the function of election observers to include furnishing ZEC with a comprehensive review of the election taking into account all relevant circumstances, including factors that have a bearing on gender equality and elections.</p>	<ul style="list-style-type: none"> <li>• This is also commendable, but should go beyond gender as discussed above.</li> </ul>
	<p>Section 40H</p>	<p>Addition of a representative from the Minister responsible for women's affairs, gender or community development to the Observers Accreditation Committee.</p>	<ul style="list-style-type: none"> <li>• Section 239(i) of the Constitution empowers ZEC to accredit observers of elections and referendums. This section does not outline a role for the Executive as represented by the various ministries outlined in section 40H of the Electoral Act and is unconstitutional in its current form. ZEC must include a gender expert that is independent of the executive in its</li> </ul>

			Accreditation Committee.
	Section 40K	Provides for the election observer status of the Zimbabwe Human Rights Commission (ZHRC) as represented by its commissioners or employees is given. ZHRC provides draft report on any election or electoral related process that it observes to ZEC first and must consider the comments that may be made by ZEC on the draft.	<ul style="list-style-type: none"> <li>This is progressive as ZEC is mandated to accredit any employee or commissioner of ZHRC who wishes to observe an election or electoral process. Given the wide mandate of the ZHRC this provision could greatly improve transparency of elections and by ensuring that the ZHRC is able to conduct its operations unhindered, however, <a href="#">the requirement that a draft report be provided to ZEC which makes comments that must be considered erodes the independence of ZHRC.</a></li> </ul>
	Section 40H	Observers Accreditation Committee still includes employees within the executive arm of government	<ul style="list-style-type: none"> <li>ZEC has function of accrediting observers (section 239). Those disqualified from being appointed to ZEC is clear in terms of section 240 of the Constitution, with members and employees of statutory body, councils and government controlled entities not eligible. Provisions of section 40H must be repealed so that no one who is disqualified from being part of ZEC is part of the Accreditation Committee.</li> </ul>
	Section 40I	Accreditation of Observers is decentralised to provinces, provides who applications are received and passed on to accreditation committee, the Minister of Foreign Affairs can invite foreign observers	<ul style="list-style-type: none"> <li>While accreditation is decentralised to the provinces, there is no clear timelines for Chief Elections Officers to communicate with Observers Accreditation Committee and the applicants.</li> <li>They must be clear short timeframes of communication between the date of receiving the application and communicating the outcome.</li> <li>ZEC has function of accrediting observers; it must therefore call for all applications. Minister of Foreign Affairs, an employee of a statutory body and interested party in elections must not invite have leeway to invite certain individuals to observe the elections. Accreditation Committee must be composed of personnel from ZEC with no politicians for it to be independent as envisaged in section 235 of the Constitution on independence of Commissions – specifically that they are not subject to direction or control of anyone.</li> <li>The law must explicitly provide for long term observation by domestic and international observers.</li> <li>In addition the law must waiver accreditation fees particularly for local observers as the case in other jurisdictions in the region.</li> </ul>
<b>Representation of persons with disabilities</b>	Section 45	Requires that the two candidates to represent persons with disability must consist of a woman and a man.	<ul style="list-style-type: none"> <li>Ensure that the needs of women with disabilities will be represented in the Senate.</li> </ul>
<i>Section 155 (2) State must take appropriate measures</i>	7 <sup>th</sup> Schedule	Election of Senators to represent persons with disabilities	<ul style="list-style-type: none"> <li>The majority of the board members are appointed by the Minister and there is too much executive control in the composition of the Board that is supposed to sit as the Electoral College.</li> </ul>



<i>to facilitate voting by people with disabilities and special needs</i>			<ul style="list-style-type: none"> <li>This provision ensures that nomination for people with disabilities office is exclusionary as others who are not registered in such organisations are not able to nominate, this violates the right to freedom of association stipulated in section 58 of the Constitution.</li> </ul>
<b>Ballot papers</b> <i>Section 239(g) design, print and distribute ballot papers</i>	Section 52A	Requires ZEC to ensure that the number of ballot papers printed for any election does not exceed by more than 10% the number of registered voters eligible to vote in the election.	<ul style="list-style-type: none"> <li>This is a progressive as it conforms to best practices. In addition in the interests of transparency this section should be expanded to include the need for a bidding process for the printing of ballot papers to ensure that all interested parties are satisfied as to the integrity of the process.</li> </ul>
	Section 126	Removes requirement that ZEC must remove the name of a deceased or withdrawn candidate from a ballot paper after it has been printed.	<ul style="list-style-type: none"> <li>While it may not be possible to remove the name of a deceased candidate from the ballot paper, all reasonable steps must be taken to ensure that voters in the area concerned are made aware of the death of a candidate.</li> </ul>
<b>Voting</b> <i>Section 156 Conduct of elections and referendums</i>	Section 56	<p>Removes the proviso that if the name of the voter did not appear on the ward voters roll he or she shall be entitled to vote upon production of a voters registration certificate issued to him or her; and proof of identity.</p> <p>It also further provides that voters can decline to vote in a particular election where two or more elections are being conducted at the same time.</p>	<ul style="list-style-type: none"> <li>This removal of the provision that voters whose names did not appear on the voters roll could use voter registration slips or identity cards to vote is necessary given the many instances in which they were used to vote multiple times in the 2013 elections.</li> <li>There is scope for voters to pick and choose which elections to participate in where there are 2 or more being conducted simultaneously is also a welcome development, provided that there are sufficient safeguards to ensure that the declined ballot papers are accounted for.</li> </ul>
	Section 56(1a)	States that every voter is entitled to vote for a constituency representative or councillor at the polling station he/she is registered at a by-election	<ul style="list-style-type: none"> <li>Clarifies that voting during by elections will be done at polling station where one is registered.</li> </ul>
	Section 56(3)	Provides that (unless directed by ZEC) the presiding officer shall require an applicant for a ballot paper to produce his or her voters registration certificate or proof of identity and if the voter's name appears on the ward voters roll and it is clear that they have not voted, they are given ballot papers and the elections officer may mark their certificate or identity card accordingly	<ul style="list-style-type: none"> <li>This provision may be a safeguard to prevent double voting. <i>However it may cause challenges if election officers insist on inspecting a voter registration certificate as some voters may have lost these.</i></li> </ul>
	Section 59	Removes requirement for an electoral officer to witness how a visually impaired person votes.	<ul style="list-style-type: none"> <li>This will assist in protecting the secrecy of the vote for blind voters. <i>However, it would be more desirable to provide template ballots or tactile ballots which blind voters can use to vote by themselves, unassisted in line with the progressive realisation of the rights of the disabled in section 83 of the Constitution.</i></li> </ul>
	Section required	To provide for voting of people in prison on voting day.	<ul style="list-style-type: none"> <li>There must be provision for voting for people in prison as provided in other countries. Prisoners must at the very least be allowed to vote for</li> </ul>



			candidates in the National Assembly and for the President.
	Section required	To reinstate the special vote which can be for people with a physical infirmity, disability or pregnancy, absence from voting district while serving as an election officer, on duty as a member of the security services.	<ul style="list-style-type: none"> <li>This will allow those who will be conducting elections, those who are not able to go to their polling stations because of physical condition to vote. The votes will then be sent to the respective polling stations on election day for counting.</li> </ul>
<b>Electoral malpractices</b>	Section 133A	This expands the scope of punishable "intimidation" by 'threatening statements by alleged intimidators that they can discover how a voter cast his or her ballot.' If convicted of this offence, a perpetrator is liable to a fine level ten (\$700) or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.	This is a progressive addition given the widespread reports of intimidation of potential voters in the previous elections and the BVR exercise where political party actors were recording serial numbers of voter registration certificates on the pretext that they will be able to determine how a voter has cast their vote. The criminalisation of this practice should act as a deterrent for future offenders.
<b>Access to media</b>	Section 160J	Amends section 160J "Conduct of news media during election period" by activating the provisions which mandate news media to ensure equitable coverage in an election period to any specified date on or after the beginning of the period of six months before the end of the five-year term of Parliament as specified in section 143 of the Constitution.	The extension of the 'election period' is crucial to curb partisan news coverage as it will assist in equitable coverage of all the players and not give the one candidate an advantage over another.
<b>Conflict Management</b>	Section 160A	Empowers ZEC to activate the Act's provisions on the setting up of the National Multiparty Liaison Committee and the media monitoring of elections before rather than after the proclamation of an election, provided that the period shall commence as soon as possible after the closure of nominations in an election (or, in the case of a national multiparty liaison committee, from such date as the Commission may designate, after consultation with the Minister, being any date on or after the beginning of the period of six months before the end of the five-year term of Parliament as specified in section 143 of the Constitution.	This provision is crucial for conflict management and will assist in creating a more peaceful environment through the early activation of the National Multiparty Liaison Committee. <i>It would be more desirable to have the Multi-Party Liaison Committee set up much earlier</i>
<b>Election dispute resolution</b>	Section 121	Provides that the Electoral Court is a division of the High Court	This is in line with the Judicial Laws, Ease of Settling Commercial and Other Disputes Act. <i>However, the temporal (time frame) and subject matter jurisdiction of the court needs to be clarified. It has to be clear what cases the Electoral Court will deal with and whether these cases can be heard throughout the electoral cycle.</i>
<i>Section 155(2)(e) ensure timely resolution of election disputes</i>	Section 163	Provides that assessors of the Electoral Court and the panel of names from which they are drawn must be equally representative of women and men.	This is commendable and in line with the gender mainstreaming provisions now contained in the Act.

<i>Section 93 challenge to presidential petition</i>	Section 171	Enables the Electoral Court to take oral evidence in connection with an election petition before it.	This is an important clarification given that the definition section had defined an election petition as an 'application' in terms of which courts typically do not permit the hearing of oral evidence and instead resolve disputes on the papers. The express mention of oral evidence will ensure election petitions are not dismissed simply because there are disputes of fact.
	Section 171(9)	Inserted provision that the provision of security of costs and power to condone late filing is that applicable to other applications in the High Court	This brings clarity on how best litigants and lawyers can deal with filing petitions late. It is hoped that the security of costs will be determined in the same manner as other High Court applications and will not be too high.
	Section 172	The effect of this amendment (among other things) will be that every election petition shall be determined within 6 months from the date of filing and every appeal therefrom will be determined within 3 months from the date of the lodging of the appeal. Previously appeals had to be determined within 3 months.  Further the Chief Justice/ Judge President or the presiding Judge are empowered to give directions as to the filing of documents in a manner that will ensure that the time limits are met.	The expeditious resolution of election disputes is crucial to the electoral process and these provisions are key in this regard. <i>However the new section must have restated that the interests of justice should always be paramount where directions are given by Judges so as not to unduly prejudice the litigants.</i>
	Section 70(3)	<i>Gives the chief election officer power to destroy all documents relating to the constituency within 14 days if no election petition is filed, and keep the material for 6 months if a petition is filed</i>	<ul style="list-style-type: none"> <li>• There is a conflict between section 70 and the amended section 171(19), which now allows for applications for condonation of late filing. A litigant may file an application for condonation, and find that the election documents have been destroyed.</li> <li>• There is need to increase the duration within which all material may be kept to six months regardless of whether a petition has been filed as in other jurisdictions.</li> <li>• ZEC must be compelled to keep the election residue separate for the different elections: president, national assembly and councillors. This will eliminate the prohibition of opening ballot boxes containing election residue from all the different seats as has been the case in the past.</li> </ul>
	Section 166	<i>Provisions on who may file and who may be a party to an election petition being the candidate, who can be the President, member of parliament, or councillor.</i>	<ul style="list-style-type: none"> <li>• Provision shields ZEC from being accountable in courts for the negative role it plays in elections despite the fact that the petition can rest on bad management of election by ZEC, which issue can only be answered by ZEC. ZEC must be cited as respondent in election petitions.</li> <li>• Need to review election court rules to become updated and enhance access to justice as they are overly technical.</li> </ul>
	Section 166	Defines respondent as "President, a member of Parliament or councillor whose election or qualification for holding the office is	<ul style="list-style-type: none"> <li>• There is need to remove President as respondent in the definition section as all the provisions on PART XIII of the Electoral Act, do not provide for election</li> </ul>

		complained of in an election petition”	petitions filed to challenge presidential results as this is not dealt with in terms of section 93 of the Constitution.
<b>Complaints to ZEC</b>  <i>Section 239(k) receive and consider complaints from the public</i>	Section 190	Repeals the current procedure for claims to the Commission and makes fuller provisions in connection with the making of complaints to ZEC. These complaints must be made on affidavit within 48 hours of the conduct complained of. Upon receiving a complaint, ZEC can issue directions to the constituency registrar or the RGV to take appropriate remedial action where it is justified to do so.	<ul style="list-style-type: none"> <li>• The continued reference to the RGV is concerning and unwarranted as his role in the electoral process ended with the promulgation of the 2013 Constitution.</li> <li>• <b>Importantly, the section does not provide a time frame within which ZEC has to respond to a complaint, or even that it has to respond at all, as it appears that it only has to act in ‘justified circumstances’. This should be corrected.</b></li> </ul>
<b>Access to media</b>  <i>Section 155(2)(d) ensure that all political parties in election or referendum have fair and equal access to electronic and print media both public and private</i>	Section required	No provisions on how ZEC will deal with issues of fair and equal access to media of political parties	<ul style="list-style-type: none"> <li>• Include provisions creating a monitoring mechanism, and penalties for media houses that fail to comply with these provisions</li> <li>• <b>Must also include provisions to prevent hate speech</b></li> </ul>
<b>Code of Conduct</b>  <i>Section 155(1)(d) Elections must be free from violence and other electoral malpractices</i>	Fourth Schedule	Replaces the Fourth Schedule to the principal Act. It gives effect to interparty consultations that resulted in a new electoral code of conduct for political parties, candidates and other interested stakeholders. Conduct during polling period, announcement of election results, respect for women, compliance with the Code by political parties, participation in multi-party liaison committees, and enforcement of the Electoral Act and other relevant legislation	<ul style="list-style-type: none"> <li>• The Code of Conduct is more comprehensive and if implemented will create a culture of mutual respect and tolerance amongst political parties. It provides for how women who are participating in elections must be treated. It contains a sanctions mechanism through the resolution of disputes within multiparty liaison committees, the sanctions in the Electoral Act including fines, imprisonment, fines as well as disqualification from voting or filling a public office.</li> <li>• The Code of Conduct also outlines the duty of political parties, the Zimbabwe Electoral Commission and other stakeholders to collaborate with law enforcement and judicial authorities, including the Zimbabwe Republic Police, the National Prosecuting Authority and the Courts, in preventing and sanctioning offenses in the electoral process and these are great strides in ensuring respect for the rule of law during elections.</li> </ul>
<b>Independence of ZEC</b>  <i>Section 235, independence of commissions</i>	6 <sup>th</sup> Schedule	Terms and conditions of Commissioners are set by the President	<ul style="list-style-type: none"> <li>• No checks on powers of the President of fixing terms and conditions unilaterally. An Independent Commission must be set up that determines conditions of service and provides guidance on remuneration to President which guidance must be taken so that ZEC is independent (section 235 of Constitution)</li> <li>• Although report on findings of a tribunal set up to remove a Commissioner must be placed before Parliament, Parliament does not have any input in the final decision.</li> </ul>

	Section 7	Procedure of Commission	<ul style="list-style-type: none"> <li>ZEC's discretion to adopt and adapt procedures promotes efficiency and independence, this must be qualified for such discretion to guarantee transparency as stipulated in section of 239(a) of the Constitution</li> </ul>
	Minor Amendments	Other minor and consequential amendments to the Electoral Act, including the removal of the last remaining references to the abolished posts "constituency registrars" and 'voter registration officers' It will also remove the role of ZHRC from membership of the provincial liaison committees that had been set up under the Act to monitor and take action on politically-motivated violence or intimidation. This role will be assumed by the police liaison officer alone.	<ul style="list-style-type: none"> <li>It is important to ensure that all references to the abolished post of Registrar General of Voters are also deleted from the Act as there is no further role for this office in terms of the 2013 Constitution.</li> </ul>

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