

# ZIMBABWE ELECTION SUPPORT NETWORK (ZESN)



*Report on the  
December 19,  
2015, Nkulumane  
National  
Assembly  
By-election*

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## **Acknowledgements**

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ZESN commends the Zimbabwe Electoral Commission (ZEC) whose cooperation is indispensable to our successful election observation. The professional conduct of their polling officers is commendable. ZESN also applauds citizens of Zimbabwe for voting in a peaceful environment during this by-election.

## Acronyms

|         |  |
|---------|--|
| ACHPR   | African Charter on Human and Peoples' Rights   |
| AU      | African Union  |
| GNDEM   | The Global Network of Domestic Election Monitors                                     |
| ICCPR   | International Covenant on Civil and Political Rights                                 |
| MDC-T   | Movement for Democratic Change -Tsvangirai   |
| UDHR    | Universal Declaration of Human Rights  |
| PDZ     | Progressive Democrats of Zimbabwe  |
| PEMMO   | Principles for Election Management, Monitoring and Observation in the SADC<br>Region |
| RDZ     | Renewal Democrats of Zimbabwe  |
| ZANU-PF | Zimbabwe African National Union-Patriotic Front                                      |
| ZEC     | Zimbabwe Electoral Commission  |
| ZESN    | Zimbabwe Election Support Network  |

## 1. EXECUTIVE SUMMARY

On the 19<sup>th</sup> of December 2015, the Zimbabwe Election Support Network (ZESN) at the invitation of the Zimbabwe Electoral Commission (ZEC) observed parliamentary by-election in Nkulumane Constituency.

The seat fell vacant following the death on 5 October, 2015 of the Movement for Democratic Change-Tsvangirai (MDC-T) incumbent for Nkulumane constituency Honorable ThamsanqaMahlangu.

ZESN deployed 14 observers comprising static (polling station based observers), constituency and mobile observers to measure compliance with regards to the Constitution and electoral laws as well as to identify gaps in the electoral practice to enable informed advocacy interventions for electoral reforms. Media monitoring on reports of campaigns and other key electoral processes was done in the pre-election period in order to enrich the overall observation of the by-election.

The political environment remains heavily polarised but calm with no observable forms of intimidation and physical threats to the electorate other than defacing of contesting candidates' and voter education posters. Citizens expressed discontent with their inability to recall non-performing Members of Parliament once voted into Parliament, hence some citizens thought it better not to participate in the by-elections altogether<sup>1</sup>. ZESN reiterates calls for comprehensive electoral and political reforms to ensure that political leaders remain accountable to those that elect them.

The pre-electoral environment was characterized by peaceful campaigns by the three political parties. The parties utilised campaign platforms such as door to door meetings with the electorate, putting up of posters, and distribution of flyers with campaign messages. Zimbabwe African National Union-Patriotic Front (ZANU- PF) held at least one rally when the party launched its campaign to introduce their party's candidate. Opposition parties like Zimbabwe African National Union-Patriotic Front (ZAPU-PF) and all MDC formations did not participate in the by-elections in protest to the slow pace of electoral reforms and alignment of electoral laws to the Constitution. These sentiments are expressed in MDC formations' "No Reforms, No Elections" campaign.

ZESN collaborated with ZEC in conducting voter education for voter registration and voter education for polling in Nkulumane's wards 20, 22, and 23 respectively. The Commission's voter education program, which ZESN contributed to, seems to have paid dividends in view of the reduced number of assisted and turned away voters that were observed during the by-election.

Polling station based voter registration and inspection was peaceful. However high levels of apathy were noted as evidenced by the fact that only 13,331 registrants turned up to

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<sup>1</sup>Feedback received by ZESN voter educators from citizens in Nkulumane during the 2015 voter education exercise.

register anew compared to the 34,118 registrants which ZEC reportedly expected.<sup>2</sup> The low turnout during the registration exercise could partly be attributed to the decision by the MDC formations decision not to participate in by-elections until their demands for electoral reforms had been met by the government. Nkulumane is widely perceived as a stronghold of the opposition hence some citizens interviewed by ZESN during the pre-electoral period expressed an opinion that there were limited options of political parties to choose from.

**ZESN findings on the polling day include the following:**

ZESN observer reports show that the turnout was generally low with voters trickling in throughout the day. Most of those who turned out to vote were mostly women with a significantly low number of youths turning out to cast their votes. The low voter turnout for the Nkulumane by-election is consistent with the observed trends during all the 2014 and 2015 by-elections. These trends may be attributed to the fact that major opposition political parties have not participated in the by-elections, and also the timing of this by-election which coincides with the festive season where people travel to different holiday destinations.

ZEC registered voters in Nkulumane using the polling station based voter registration system which was recently piloted in the Marondera Central by-election. ZESN observers reported on the use of two voters' rolls namely the main polling station based voters' roll which had names of those who managed to register anew during the November 2015 registration exercise in the constituency and a supplementary polling station based voters' roll which was extracted from the 2013 ward based voters' roll. ZEC used two voters' rolls for the Nkulumane by-election. This becomes the second time that the Commission has utilized two separate voters rolls (main and supplementary rolls) under the polling station based voting system prompting some stakeholders to raise questions over ZEC preparedness to fully implement the system for the 2018 harmonized elections. ZESN reiterates its position that international best practice encourages the use of a single voters' roll in order to enhance stakeholder confidence. The main voters' roll for Nkulumane had a total of 13,331 registered voters while the supplementary voters' roll had 20,787. A comparison of the main and the supplementary voters' roll reveals that that most of the eligible voters in the constituency failed to avail themselves for the November 2015 registration.

At every polling station which ZESN observers were deployed, all three contesting political parties had agents inside the polling station. Political parties contesting in the by-election were allowed to have one agent inside the polling station and to have an additional agent stationed within the vicinity of the polling station as provided for in the legal framework (might want to cite the exact clause or law).

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<sup>2</sup>Figures provided during meeting with ZEC officials in Bulawayo.

**ZESN proffers the following recommendations:**

- i. Government should speed up alignment of electoral related laws with the Constitution to ensure the creation of a conducive electoral environment that guarantees the respect and enjoyment of universal suffrage and fundamental freedoms.
- ii. The continued use of two voters' rolls reveals the need for ZEC to come up with a more comprehensive voter registration methodology that ensures that all eligible voters are captured by the new polling station based voter registration system.
- iii. ZEC should devise voter education programmes that lure the youth and other voters in general to fully participate in electoral processes.

## **2. INTRODUCTION**

The Zimbabwe Election Support Network (ZESN) was formed in the year 2000 and is a network of 31 non-governmental organisations. The major focus of the Network is to promote democratic processes in general and free and fair elections in particular. ZESN is the secretariat of the Electoral Support Network of Southern Africa (ESN-SA) and is a member of The Global Network of Domestic Election Monitors (GNDEM).

Following the invitation by the Zimbabwe Electoral Commission (ZEC), ZESN deployed 14 observers to Nkulumane December 19, 2015 National Assembly by-elections.

The network makes use of its membership, in observing the pre-electoral period and short term observers for the polling day processes. Reports from observers form the basis of election reports, updates, statements, opinions and other advocacy initiatives for electoral reform.

ZESN is non-partisan and independent in its approach to election observation. ZESN election observation missions are guided by the Constitution of Zimbabwe, Electoral Laws of the country and a number of regional and international standards and principles, conventions and declarations which Zimbabwe is signatory to. These include the SADC Principles and Guidelines Governing Democratic Elections, the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

ZESN conducts its observation efforts in conformity with the SADC Principles and Guidelines Governing Democratic Elections, the Declaration of Global Principles for Citizen Election Observation and Monitoring which was launched at the United Nations on 03 April 2012 as well as the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO).

The organisation is also guided by the GNDEM's Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations, Code of Conduct for Non-partisan Citizen Election Observers.

## **3. BACKGROUND**

By-elections in Zimbabwe are held in terms of Section 158 (3) of the Constitution and Section 39 (2) of the Electoral Act. Accordingly, the President called for by-election to fill the National Assembly Constituency vacancy in Nkulumane. The dates were fixed through the Presidential proclamation 116 of 2015 and Statutory Instrument 11 of 2015, gazetted in an extraordinary gazette dated on the 23<sup>rd</sup> of October, but only circulated on the 30<sup>th</sup> of October 2015. The president proclaimed the 19<sup>th</sup> of December 2015 as the date for by-elections in Nkulumane constituency.

The by-election held on the 19<sup>th</sup> of December 2015, brings the total number of National Assembly by-elections held this year to 24. The following by-elections have been held this year;

| #   | Constituency        | Date               | Winning Party |
|-----|---------------------|--------------------|---------------|
| 1.  | ChirumhanzuZibagwe  | 27 March, 2015     | ZANU PF       |
| 2.  | Mt Darwin West      | 27 March, 2015     | ZANU PF       |
| 3.  | Hwedza North        | 15 May, 2015       | ZANU PF       |
| 4.  | Dzivarasekwa,       | 10 June, 2015      | ZANU PF       |
| 5.  | Glen View South,    | 10 June, 2015      | ZANU PF       |
| 6.  | Harare East         | 10 June, 2015      | ZANU PF       |
| 7.  | Highfield West      | 10 June, 2015      | ZANU PF       |
| 8.  | Kambuzuma           | 10 June, 2015      | ZANU PF       |
| 9.  | Kuwadzana           | 10 June, 2015      | ZANU PF       |
| 10. | Lobengula           | 10 June, 2015      | ZANU PF       |
| 11. | Luveve              | 10 June, 2015      | ZANU PF       |
| 12. | Makokoba            | 10 June, 2015      | ZANU PF       |
| 13. | Pelandaba-Mpopoma   | 10 June, 2015      | ZANU PF       |
| 14. | Pumula              | 10 June, 2015      | ZANU PF       |
| 15. | Headlands           | 10 June, 2015      | ZANU PF       |
| 16. | Dangamvura/Chikanga | 10 June, 2015      | ZANU PF       |
| 17. | Tsholotsho North    | 10 June, 2015      | ZANU PF       |
| 18. | Hurungwe West       | 10 June, 2015      | ZANU PF       |
| 19. | Mbizo               | 10 June, 2015      | ZANU PF       |
| 20. | Mwenezi             | No by-election     | ZANU PF       |
| 21. | Epworth             | 15 September, 2015 | ZANU PF       |
| 22. | Marondera Central   | 15 September, 2015 | ZANU PF       |
| 23. | Mbire               | 15 September, 2015 | ZANU PF       |
| 24. | Nkulumane           | 19 December, 2015  | ZANU PF       |

#### 4. LEGAL FRAMEWORK

##### ○ Legal framework for the by-election

The Legal Framework regarding the conduct of by elections is derived from the Constitution of Zimbabwe and the Electoral Act {Chapter 2:13} as amended. The by-elections for Constituencies came into effect by operation of Section 129 (k) of the Constitution which states that the seat for a National Assembly Constituency becomes vacant if the member elected to that seat ceases to represent the party under whose ticket they were elected. The MDCT Member of Parliament elected to fill the seat in the 2013 general election passed on thus necessitating the by election.

In accordance with section 39(2) of the Electoral Act, the President proclaimed the nomination and polling date for Nkulumane constituency by election. The timing for by-election is controlled by section 158 (3) of the Constitution which states that polling for by-election must take place within 90 days after the vacancy occurred. The Nkulumane by-election was therefore held within a timeframe set by the Constitution.

○ **Nomination Processes**

Provisions of the Electoral Act were followed during the nomination processes for the by-election. In terms of Section 46 (17) (c) of the Electoral Act, which states that if at the close of nomination court, more than one person has been duly nominated for an election for a constituency, a poll shall take place in accordance with this Part and Part XIII<sup>3</sup> of the Electoral Act. Accordingly, the Nomination Court for Nkulumane sat on 6 November 2015 at the Magistrate court at Tredgold Building in Bulawayo. At the close of the Nomination Court the following had successfully filed their nomination papers for the Nkulumane by-election:

| Nkulumane Constituency |                 |     |
|------------------------|-----------------|-----|
| Party Name             | Candidate       | Sex |
| ZANU PF                | Killian Sibanda | M   |
| RDZ                    | SibusisiweMpofu | F   |
| PDZ                    | NgwaloNyathi    | M   |

○ **Electoral Courts**

Electoral petitions are part of the electoral justice landscape in Zimbabwe. The Electoral Court was established in terms of Electoral Act Chapter 2:13, 161 (as amended), and has exclusive jurisdiction to hear appeals, applications and petitions in terms of this Act; and to review any decision of ZEC or any other person made or purporting to have been made under this Act. The Court’s mandate covers a wide range of potential cases, from voter registration disputes to election petitions by unsuccessful candidates.

**5. ELECTION ADMINISTRATION**

○ **Administration of the Elections**

Section 239 of the Constitution gives the ZEC, the mandate to conduct and supervise elections and election related activities. However, as in previous elections and by-elections the capacity to deliver this mandate continues to be negatively affected by the inability of Government to avail adequate resources timeously. Despite the continued resource constraints ZEC managed to complete the administrative and logistical preparations on time

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**3** Part XIII refers to preparation for and voting at poll

for the by-election such as the distribution of vital election materials and personnel in Nkulumane constituency. For instance if adequate resources were available ZEC would have doubled the number of voter educators that it deployed, raising the number from two to four per two polling areas. Each polling station would have been covered by 2 voter educators.

- **Voter Education**

Voter Education is prescribed by law in Section 239 of the Constitution which gives ZEC the primary mandate of conducting and supervising voter education. Part IXA of the Electoral Act (sections 40A to 40F) allows organisations other than ZEC to conduct Voter Education subject to the following restrictions; (a) Organisations can only engage in voter education at the invitation of the Commission. (b) Organisations are required to print and use information that is provided for by the Commission. Section 40D in particular outlines the time frames during which voter education is to be conducted by authorised persons, which is no later than a week after the proclamation of an election.

Voter education in Nkulumane Constituency was conducted in three distinct phases namely; (a) pre-nomination Voter Education, (b) Voter Education for Registration and (c) pre-polling voter education.

ZEC's road map for Nkulumane by election scheduled voter education as follows; Voter education for nomination was held from 30 October to 3 November 2015, voter education for registration 7-16 November, voter education for inspection 29 November to 3 December and pre polling voter education from 9 – 13 December 2015. ZESN was invited to participate in the Commission's voter education programme, however due to limited funding ZESN was only able to participate in two of the four voter education programs. ZESN participated in the voter education for registration and pre-polling. During these exercises ZESN deployed four voter educators to complement the work of the much larger ZEC team. The four ZESN voter educators moved in pairs but concentrated mainly on business centres, shopping complexes, small scale industries, churches, workshops, flea markets, vendors' markets, schools, garages, taxi ranks and termini, beer halls, market gardens, police camps and clinics as well as people on the streets. Both ZEC and ZESN voter educators distributed Information, Education and Communication (IEC) materials. ZESN distributed 1,700 flyers in Ndebele (900) and English (800), 1000 Posters in English and Ndebele (500 each). The ZESN team interacted and reached over 5,000 people throughout the 3 wards in a period of four days. Voter education for registration was carried out from 13 – 16 November 2015. During this period educators from both ZEC and ZESN encouraged residents to go and register at the 30 static centres that had been established in the wards by the ZEC and/or to look out for mobile registration teams that were roving from household to household in all the three wards.

## 6. VOTER REGISTRATION

### ○ Voter Registration

Section 155 (2) (a) of the Constitution provides for government to take all measures to ensure that all eligible citizens, that is to say the citizens qualified under the Fourth Schedule<sup>4</sup> of the same document, are registered as voters.

ZEC conducted polling station specific voter registration in Nkulumane Constituency from the 9 to 18 November 2015. ZEC deployed a total 120 voter registration officers, 30 static and 60 mobile registration officers to cover at least two polling station areas. The basis for this new form of voter registration is the Electoral Amendment Act, Number 3 of 2013 which, in s 42(1) obliges ZEC to carry out registration on a polling station specific basis. In accordance with its mandate under section 5(d)(iii) of the Electoral Act which obligates the Commission to keep the public informed about the location and boundaries of polling stations, ZEC announced that the 30 registration centres opened in the three wards would also serve as polling stations for the December 19 poll. The Commission also indicated that the demarcation of polling stations was done in such a manner as to have a threshold of between 800 to 1,500 registered voters per polling station. ZEC, through press releases, encouraged residents of Nkulumane constituency to come out and register anew sighting the fact that this was an attempt by the Commission to create a Polling Station based voters' roll for the Constituency.

The dates set for the registration were in accordance with Section 26A of the Electoral Act which stipulates that the 12<sup>th</sup> day after nomination day is the last day for lodging a claim for registration on or transfer of registration to a voters' roll for the purpose of voting in a pending election. Voter registration was therefore conducted in accordance with the Law.

### ○ 6.1.1 Voters' Roll Inspection

Inspection of the voters' roll was set for the 2<sup>nd</sup> to the 6<sup>th</sup> of December 2015. ZEC opened 25 static centres for the voters' roll inspection as opposed to the 30 registration centres. The reason was the closure of the <sup>5</sup>'B' polling station streams. Voters were able to inspect the voters' roll in the 25 inspection centres located throughout the constituencies. The exercise experienced very low turnout, 1 630 people inspected the roll compared to 13,331 new registrants expected during the period 9 to 18 November 2015. The process of voter inspection was orderly and well organised. ZESN urges the Government to avail adequate funding to enable ZEC to implement effective voter education programs as this will help

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<sup>4</sup>The Fourth Schedule of the Constitution contains qualifications and disqualifications for registration as a voter. A person is disqualified on grounds of mental disorder, if they are incapable of managing their own affairs or has been convicted of an electoral offence.

<sup>5</sup>B Polling station refers to the name assigned the second polling station that would be set up to cater for registered voters who excess of the 1,500 threshold.

improve the turnout of voters during the voter registration exercises, inspection and during the actual polling.

ZESN commends the Commission for putting in place mechanisms to ensure that potential voters who did not participate in the initial voter registration exercise were still able to vote if their names were in the 2013 voters' roll. ZESN however reiterates its call for the Commission to ensure that, by the date of by-elections or general elections, voters' roll to be used comply with accepted voter registration principles. ZESN urges the Commission to ensure that a single, consolidated, comprehensive, inclusive, complete and accurate voters' roll for each Constituency is available in reasonable time before the election date. The right of all adult and eligible citizens to vote in elections is one of the cornerstones of democracy. Effective voter registration exercises, and the availability of an up to date voters' rolls is key to sustaining electoral democracy.

- **Provision of the Voters' Roll**

According to Section 21 (1) of the Electoral Act, the Commission shall within a reasonable period of time provide any person who requests the voters' roll, and who pays the prescribed fee, with a copy of any ward or constituency voters' roll, either in printed or in electronic form as the person may request. The Electoral law also provides for provision of the voters' roll upon payment of a prescribed fee to every political party that intends to contest the election, and to any accredited observer who requests it, one copy of every voters' roll to be used in the election, either in printed or in electronic form as the party or observer may request. The provision of the voters' roll to stakeholders has been an issue of contention in previous elections, raising questions on its integrity and credibility. Contesting political parties reported that they received electronic copies of the voters' rolls on 15 December 2015, four days before polling day. This does not allow for contesting political parties time to assess if the voters roll meet acceptable standards such as accuracy, currency, comprehensives, among others.

## **7. ELECTION CAMPAIGNS**

The continued elections boycott by the MDC formations means that ZANU PF was the only contesting party which is currently benefiting from funding for political parties from Treasury as provided for in Section 3 (3) of the Political Parties Finances Act[Chapter 2:11]. This contributed to the creation of an uneven playing field as other parties could not compete on an equal footing resulting in the by-election being poorly contested as contesting parties were not able to mount effective election campaigns.

The need to review the current system of regulating party finances cannot be over emphasised. There is need for sustained discussion among electoral stakeholders on the appropriate mechanisms for political party financing that can help new entrants in politics to establish themselves. The new system should require appropriate disclosure, limits on expenditure and effective monitoring of party campaign finances. Democracy only thrives when the playing field, for political actors and political parties, is level and when elections are genuinely contested. Such a discussion is timely and relevant in light of the numerous

challenges that independent candidates and smaller political parties continue to face when they try to participate in political processes.

ZESN observed that campaigns for the RDZ and PDZ candidate were affected by limited resources whereas ZANU-PF campaigns were robust owing to the party and candidates' access to significantly larger amounts of resources. For instance ZANU PF held a launch rally and consecutive meetings with high profile ZANU PF leadership of the party in attendance.

Reports from ZESN observers showed that the environment was generally peaceful with no major incidences being reported. ZESN attributes this peaceful environment preceding the by-election to the low level of contestation for this by-election, as the new and poorly funded political parties were contesting against a dominant and well established political party.

## **8. GENDER AND ELECTIONS**

Zimbabwe is signatory to a number of declarations aimed at increasing women's participation in top decision making positions and the Constitution affirms women's equal participation. The active participation of women in critical processes such as elections is vital in the strengthening of democracy and human rights in Zimbabwe.

Of the candidates who successfully filed their nomination papers and contested in the by-election there were two men and one woman, signifying a 33% percent representation of women in the by-elections.

ZESN observed that ZEC made compilations of data on voters that is disaggregated by age and gender and urges the Commission to share this information with relevant stakeholders including political parties and civil society to enhance focus of programming in the promotion of women and youth's participation in electoral processes.

ZESN notes that the women's participation in elections continues to be hampered by a number of factors such as the fear of violence, intimidation, financial challenges in their bid to launch political campaigns and a number of inhibiting cultural systems.

## **9. ELECTION DAY OBSERVATIONS**

**Opening and voting Procedures:** At polling stations where ZESN observed opening, polling stations opened on time with adequate polling personnel and voting materials. According to reports by our observers they were an average of six polling officials at each polling station. ZESN observers reported that important voting procedures such as checking of names in the voters' roll, marking of fingers with indelible ink and ensuring that voters cast their ballots in secret were clearly followed.

**Political Parties' Agents:** Everywhere ZESN observers were deployed all three contesting political parties had agents inside the polling station. Political parties contesting the by-election were allowed to have one agent inside the polling station and to have an additional agent stationed within the vicinity of the polling station.

**Counting:** Counting procedures were conducted in accordance with the law with all political party agents confirming by signing the V11 forms at the end of the counting. In line with the requirements of the law the election results were posted outside all polling stations where ZESN observed.

**Turnout:** ZESN observer reports show that the turnout was generally low with voters trickling in throughout the day. Most of those who turned out to vote were mostly women with a significantly low number of youths turning out to cast their votes. The low voter turnout for the Nkulumane by-election is consistent with trend during all the 2014 and 2015 by-elections. These trends may be attributed to the fact that major opposition political parties have not participated in the by-elections, and also the timing of this by-election which coincides with the festive season where people travels to different holiday destinations. .

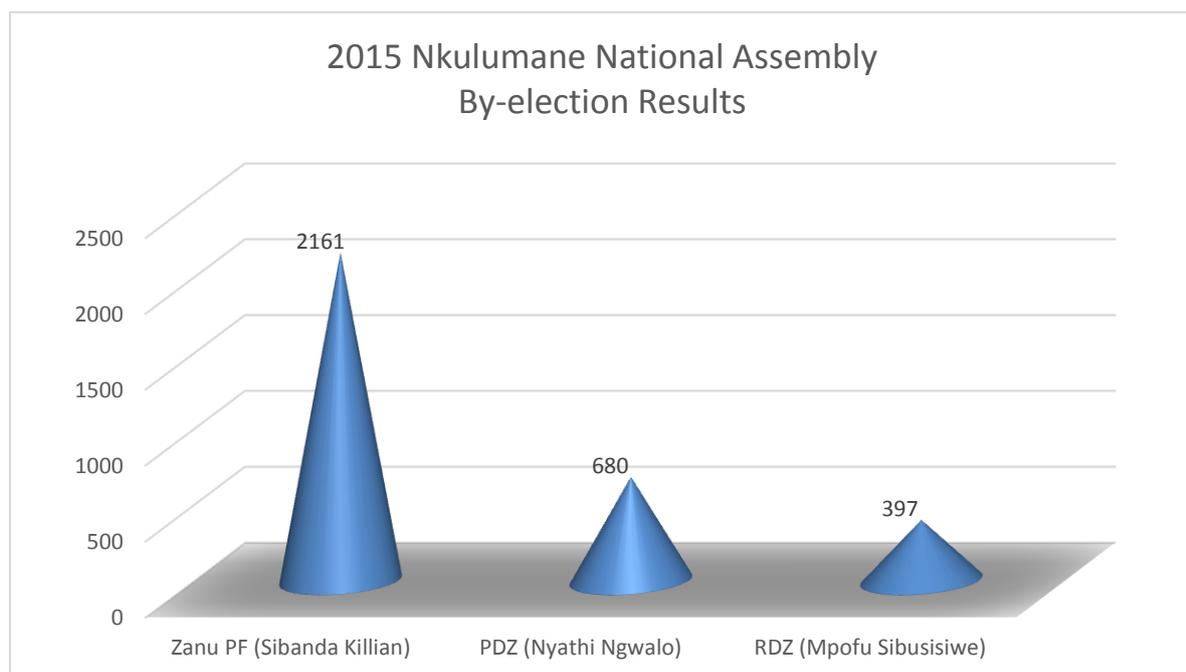
## Recommendations:

ZESN proffers the following recommendations in light the observation highlighted in this report:

- i. Government should speed up alignment of electoral related laws with the Constitution to ensure the creation of a conducive electoral environment that guarantees the respect and enjoyment of universal suffrage and fundamental freedoms.
- ii. The continued use of two voters' rolls reveals the need for ZEC to come up with a more comprehensive voter registration methodology that ensures that all eligible voters are captured by the new polling station based voter registration system.
- iii. ZEC should devise voter education programmes that lure the youth and other voters in general to fully participate in electoral processes.

## 10. ELECTION RESULTS

ZANU PF's Killian Sibanda won the 2015 Nkulumane By-election as illustrated in the graph below.



- The Nkulumane seat becomes 6<sup>th</sup> National Assembly seat which ZANU PF's has won this year.
- Over the last 15 years, including the 2013 Harmonised elections ZANU PF did not secure any National Assembly seats in Bulawayo. Hence Bulawayo metropolitan province was widely regarded as a stronghold of the opposition political party MDC and its formations.

## **11. CONCLUSION**

Although the pre-electoral period and polling day were peaceful, ZESN notes with concern the low turn-out for the Nkulumane by-elections, a trend which has persisted throughout all the 2014 and 2015 by-elections. ZESN urges the Zimbabwe Electoral Commission to continue investing in processes that allow for the development of effective civic and voter education initiatives to enhance all categories of voters' appreciation of their civic responsibility of participating in elections and electoral processes. Furthermore ZESN urges government to avail adequate and timely funding for ZEC to enable the Commission to adequately prepare for the 2018 harmonised elections, especially the development, testing and implementation of an appropriate voter registration methodology that responds to deficiencies that have been observed in the previous and current voter registration system.