

An Analysis of the General Laws Amendment Act (2016)



Zimbabwe Election Support Network

August,
2016

Executive Summary

The General Laws Amendment Act (GLAA) was gazetted and became part of the laws of the land on 1 July 2016. The GLAA took an omnibus approach to amend and attempt to align 126 Acts with the Constitution. Prior to GLAA's enactment and passage in parliament, the Zimbabwe Election Support Network (ZESN) had made submissions specific to the portions relating to the amendment of the Electoral Act. It is those amendments through GLAA that now form part of Zimbabwean law that are subject of this analysis. The analysis focusses on the extent to which the latest amendments address the concerns around the electoral law, and in particular the extent to which these amendments give effect to the letter and spirit of the Constitution.

In Summary ZESN makes the following observations and conclusion:

- The current Electoral Laws still require comprehensive amendments. ZESN has previously pointed out that there is need for a comprehensive process of amending all the Electoral Laws and bring them into conformity with the Constitution as well as regional guidelines on good governance and elections. The piecemeal approach adopted in the GLAA is consistent with the objectionable approaches that have been adopted in the past of amending parts of the sum total to the Electoral laws. To date, the Electoral Act has been amended more than eleven times. Sadly this has been done with no due consideration to submissions by stakeholders and resultantly, there are still several provisions that have not been addressed that require attention if the Act is to be in line with the Constitution and regional and international standards. The suggested amendments are covered in previous ZESN policy positions that have been shared with government stakeholders.
- It was always going to be difficult for government to comprehensively address the substantive amendments to the Electoral Act via a general amendment bill which focussed on at least 126 other laws. It was important that the Electoral Act be given specific attention so that the culture of piecemeal legislative amendments is avoided and the electoral laws are made clear, simple and certain for all stakeholders before another election. That opportunity, so far, has not been taken. When the previous amendment (Act 6 of 2014) was brought before parliament for debate, the sponsoring Minister acknowledged that the Bill was inadequate and he promised to revisit the Electoral Act with a view to make more comprehensive reviews to the Act. Unfortunately that opportunity has been missed as

GLAA has failed to do justice to several concerns that have been raised by ZESN in previous position papers on electoral law in line with the Constitution.

- The most worrying issue is that GLAA, in a number of ways misaligns, the subsidiary law with the Constitution and in some respects actually undermines the letter and spirit of the constitution. For example while the Constitution requires that the Zimbabwe Electoral Commission (ZEC) be fully responsible for the registration of voters and maintenance of the voters' roll, the amendments seem to revive the role of the Registrar of Voters- an office that should be abolished and have no further business concerning the running of the election
- Several provisions of the amendment seem to give the Commission leeway to delegate a number of its functions to other offices in a way clearly not contemplated by the constitution. As matters stand the Act not only fails to align the principal Act with the Constitution but seems to introduce provisions that further undermine the intention of the legislature when the constitution was crafted.
- The delegation and sharing of this responsibility with the Registrar General and the minister clearly undermines ZEC's independence and effectiveness,
- The constitutionality of GLAA to the extent it provides for a role to the minister in some of the electoral functions is highly questionable. The amendment provides for how the Minister may come up with regulations on a number of issues that would be within the domain of the Commission. This does not seem to have been the intended interpretation of the constitutional provisions. The provisions are tantamount to Executive interference and the Minister is both referee and player in the elections.
- ZESN recommends that Parliament should instead have that oversight role so that the independence of ZEC is not undermined. In addition Section 19 of the Electoral Act has been amended to provide for the creation of voter registration officers and voter registration offices a move that is commendable given ZEC's new role in voter registration. However the Act should specify that voter registration be a continuous process and the maintenance of voters' rolls be done in the spirit of transparency credibility and integrity.
- The GLAA also provides that voter education materials be submitted 28 days to ZEC before their intended use. It is not clear whether organisations such as civic society organisations can now design their own materials. However the 28 days period is too long as it limits the time voter education can be provided.
- The amendments to the Act fail again to protect voters' rights, for example by enabling Zimbabweans in the diaspora, those hospitalised, the elderly and those in places of detention to be able to vote.

- The Amendments fail to address the issue of judges sitting in the Electoral Court in the wake of Section 83 of the Constitution that prohibits judges from sitting in more than one court.
- In addition, other outstanding issues remain, that include confirmation of ZEC’s responsibility to delimit constituencies and ward boundaries in terms of Sections 160 and 161 of the Constitution.

In summary the GLAA fails once again to ZESN concerns in previous policy papers. ZESN reemphasises the need for holistic not piecemeal reforms, type of voter registration methodology should be provided for in the Electoral Act, voter education provisions should be relaxed, independence of ZEC should not be curtailed. The amendments to the Act fail to adequately harmonise the Constitution of Zimbabwe with the enabling Act. More still needs to be done if the country is to have a comprehensive legislative framework that resonates with the letter and spirit of the Constitution

Below is a commentary on specific provisions of the GLAA relating to the Electoral Act requiring specific comments and analysis:

Sections of Part VI of the GLAA relating to the Electoral Act	Summarised provisions of GLAA	ZESN analysis and comment
Section 1	(a) This section introduces a definition for the word, “absence” used in the context of the absence of the Chairperson of the Commission. In terms of the section absence will include absence occasioned by the vacation of the Office of the Chairperson.	This provision seeks to ensure continuity by expanding the definition of the term, ‘absence.’ The amendment is progressive as it ensures that there is continuity of electoral processes even when the chairperson is unavailable. It allows for the deputy chairperson or another Commissioner to take over the roles of the chairperson in his/her absence
	(b) The section repeals definitions of "constituency registrar" and "registration office" and substitutes with "registration office" means any office of a voter registration officer or office designated by the Commission as a place where persons may register as voters; "voter registration officer" means a person who is appointed in	The repeal of the definitions to the terms “constituency registrar” and “registration office” and the new definitions is consistent with the constitutional provisions under Section 239 of the Constitution which now vests the election-related process in the office of the Commission. Previously Section 19 of the Electoral Act allowed for members of the civil service to act as constituency registrars under the supervision of the Registrar-General of

	terms of section 19(1) to be a voter registration officer, and includes any person assisting the Commission in that capacity	Voters. This amendment aligns the Act with the Constitution by the deletion of offices that are not envisaged by the Constitution
	(c) Substitutes the term, "district special voting officer" with "district elections officer".	Because the special vote provisions have been repealed, the reference to a "district special officer" becomes redundant hence the deletion of the term
	(d) Repeals the definition of "Registrar-General of Voters".	This is consistent with Section 239 of the Constitution that gives the Commission the sole mandate to manage elections.
Section 2	The section repeals paragraph (d) of Section 10 of the Principal Act that relates to staff seconded to work on special voting	Because the special vote provisions have been repealed this definition had become redundant hence its repeal
Section 3	<ul style="list-style-type: none"> - This Section repeals the entirety of sections 18 and 19 of the principal Act and introduces new provisions and definitions which purportedly seek to bestow ZEC with the sole mandate of electoral management, in line with the Constitution. - The amendment introduces, rather unusually, a definition of the term, "former Registrar-General of Voters", in reference to the Registrar General of Voters appointed in terms of section 18 of the Principal Act before its substitution by the current section through the General Laws Amendment Act, 2016; - The Amendment also defines the terms, "Registrar - General of Births and Deaths", and the "Registrar-General of Citizenship" and the "Registrar-General of National Registration - Section 3 also purportedly confers on the Zimbabwe Electoral Commission, the functions of the registration of voters and abolishes the office of the Registrar-General of voters. - The Section gives a substantial role to the office of the former Registrar-General of Voters, in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General and Registrar-General of National Registration. This is 	<ul style="list-style-type: none"> - The repeal of the former section 18 and 19 of the Electoral Act is probably the most substantive amendment made by the General Law Amendment Act to the Electoral Act to purportedly bring it in line with the provisions of the constitution. - Firstly the amendments effectively abolish the office of the Registrar-General of Voters that was mainly responsible for registering persons and compiling the voters roll. - Secondly the amendment specifically gives effect to Section 239(c), (d) and (e) of the new Constitution by transferring to the Zimbabwe Electoral Commission the responsibility for registering voters, compiling voters' rolls and registers and ensuring the proper custody and maintenance of Voters' rolls and Registers. In this sense, the amendment is commendable as it is in conformity with the letter and spirit of the constitution. - However a closer scrutiny of the wording of the amendments shows that the amendment does not adequately and fully comply with the constitutional provisions. The Amendment seems to still retain a role for the abolished office of the registrar general, which is referred to as the former Registrar General of Voters. - Particularly worrying is the proviso to Section 3(2) of Part VI of the Amendment which provides that, "Provided that, consistently with section 239(j) of the Constitution, the Commission may give such instructions to the former Registrar-General of Voters, in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-

	<p>done, it is explained, “to ensure that their respective databases, as they relate to the eligibility or potential eligibility of voters, are in harmony with each other.”</p> <ul style="list-style-type: none"> - The section also provides that, “The Commission and the former Registrar-General of Voters in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General of National Registration, have a duty to cooperate with each other to ensure that their respective databases, as they relate to the eligibility or potential eligibility of voters, are in harmony with each other. 	<p>General of Citizenship and the Registrar-General of National Registration, as will ensure the efficient, free, fair, proper and transparent conduct of any election or referendum.” This provision is troubling as it clearly brings back the RGV through the backdoor—an office that has been abolished by this particular amendment. Its retention even in a qualified role is astounding, given the troubled history of the RGV’s office and the role it has played in overseeing disputed elections in the past decade. Even more crucially the import of the amendment is to bring back institutions that have clearly been made redundant by the constitution. The amendment restores the very mischief the Constitution sought to address.</p> <ul style="list-style-type: none"> - The thread of the worrying provisions of the amendment continues through section of 4 of part VI of which seems to put a constitutionally entrenched body at the same level with the office of the Registrar General. The section puts a burden on the Commission by providing that, “The Commission and the former RGV..... have a duty to cooperate with each other” in relation to the eligibility of voters. The RGV’s office has clearly been brought back through the back door. It is quite clear that the Constitution sees no role for the office of the RGV in election management bodies. The amendments to the electoral Act are, with respect, unconstitutional and should be repealed to the extent articulated above.
Section 3	<p>The new section 18(5) of the Electoral Act gives the Minister power to make regulations, after consultation with the Commission and the former Registrar-General of Voters, The regulations may provide for the following:</p> <ul style="list-style-type: none"> (a) the manner of dealing with any confidential information in the custody of the former Registrar-General of Voters and the conditions under which it may be shared with the Commission; and (b) the resolution of any discrepancies between the records 	<p>This amendment is troubling in a number of ways:</p> <ul style="list-style-type: none"> - Firstly such an intrusive power into information regarding the voters rolls amounts to interference with the mandate of a constitutionally mandated body. These powers are not supported by any constitutional provision and are clearly unconstitutional - Secondly, from the reading of the provision the minister is given a free reign to come up with the regulations without taking into consideration of the views of the Commission, as confirmed by the

	<p>of the former Registrar-General of Voters and those of the Commission; and</p> <p>(c) the resolution of any disputes whatsoever that may arise between the Commission and the former Registrar-General of Voters; and</p> <p>(d) Mandatory automatic and electronic voter registration.</p>	<p>use of the words, “after consultation.” This is bizarre considering that the regulations may affect the operations of ZEC, which is supposed to be an independent, impartial body. The minister is not, and is invariably a political contestant during an election period. The Act cannot introduce provisions that potentially undermine the independence, impartiality and effectiveness of the Commission</p> <ul style="list-style-type: none"> - Thirdly the retention of the role of the RGV is worrying. As already pointed out above, there is no place for the RGV under the current constitutional dispensation - 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
Section 3	<p>The amendment to section 19 of the Principal Act clearly spells out that voter registration shall be conducted by the Commission through its voter registration officers (who shall be employees of the Commission and who may be appointed to this office conjunctively with any other office as an electoral officer) or any persons whom the Commission may from time to time appoint to assist in voter registration.</p>	<p>There seems to be a drafting error as the amendment introduces a new Section 19 to the Principal Act but without indicating that it is repealing the old section 19. A reading of the Amendment suggests that Section 19 in the Amendment Act should replace the one in the Principal Act. The new Section 19 reflects the letter and spirit of Section 239 of the Constitution as it makes it clear that voters’ registration is to be Conducted by the Commission through its voter registration officers. This is progressive and reflects the spirit of the Constitution. The concern here is that the provision allows for the Commission to, ‘appoint persons from time to time to assist in voter registration.’ It may have been desirable to indicate certain requirements for such persons in order to ensure that they are persons who can impartially discharge such duties to the threshold set by the Constitution .For example it would be undesirable to appoint persons who are in the security sector for these purposes, given their tainted role in previous election processes.</p>
	<p>4. In section 20 a new paragraph (a) substitutes the current Section 20(2)(a) to read as follows: "(a) the voter's first and last names, date of birth, national registration number and sex;</p>	<p>The slight change is the addition of sex to the disaggregated data. This is a useful data component to collect in order to analyse the voters’ roll pattern from a gender lens.</p>
Section 6	<ul style="list-style-type: none"> - This Section repeals section 26 of the Principal Act and introduces a new section that sets out information that 	<ul style="list-style-type: none"> - The new section 26 gives greater detail in relation to the information on the voters’ registration certificate. This

	<p>should be captured, in greater details, in relation to voters' registration certificate. The voters registration certificate should specify the following information-</p> <p>(a) the voter's last name, date of birth, national registration number and sex; and</p> <p>(b) the ward, constituency, district, province and, in the case of polling station specific registration, the polling station in or for which the voter is registered.</p> <ul style="list-style-type: none"> - On the transfer of the registration of a voter in terms of section 25 the voter shall be issued with a voters registration certificate by the voter registration officer of the constituency to which he or she has been transferred." 	<p>seems progressive as it ensures that there is authenticity in the documents that are held by a potential voter and plugs gaps of persons having documents that are not genuine.</p> <ul style="list-style-type: none"> - This same rationale applies with the requirement for a person to secure a registration certificate from the registration officer of the constituency the person has been transferred to. The procedure enhances transparency. 	
Section 7	<p>The Section amends section 40C that relates to, "Voter education by persons other than the Commission or political parties" by the repeal of paragraphs (i) and (j) and the substitution of-</p> <p>"(i) the voter education materials used by the person and the course or programme of instruction in accordance with which the voter education is conducted are adequate, current, correct and not misleading or biased in favour of any political party; and</p> <p>(j) the voter education materials used by the person and the course or programme of instruction in accordance with which the voter education is conducted are furnished to the Commission for its scrutiny no later than twenty-eight days before they are intended to be used; and</p> <p>(k) no fee or charge is levied for the provision of voter education or voter education materials."</p>	<ul style="list-style-type: none"> - The amendment to section 40C (1)(i) adds the words, 'current' and 'correct'. The words are open to various interpretation. What is meant by current? This provision may be used to disqualify various voter education material on the basis that it is not current. - The provision that such voter education material should be submitted for scrutiny opens further challenges of material being held at the Commission with no approval being given, or approval denied on flimsy grounds by the Commission 	
Section 8	<p>This Section amends the Principal Act In section 51 relating to Polling stations by the repeal of subsection (1) and the substitution of-</p> <p>"(1) Subject to this section, the Commission shall in each constituency establish, at such convenient places as it may determine as many polling stations as it may consider to be</p>	<ul style="list-style-type: none"> - This provisions is consistent with the principles set out in the Constitution that bestows the election management process with the Commission. - It is commendable that the decisions of the Commission must take into account submissions from political parties contesting the election concerned and the representations made on the issue of 	

	<p>necessary for the purposes of conveniently taking a poll of the voters of that constituency: Provided that the Commission-</p> <ul style="list-style-type: none"> (i) shall establish a sufficient number of polling stations in each ward of the constituency concerned; (ii) shall receive from political parties contesting the election concerned any representations on the issue of the location of polling stations in any constituency, and may give directions on this matter to any provincial elections officer, district elections officer or constituency elections officer on the basis of such representations."; 	<p>the location of polling stations in any constituency. The Commission should give directions on the matter based upon such representations made.</p> <ul style="list-style-type: none"> - This is consistent with Section 155 and 156 of the Constitution that entrench principles of transparency, credibility, fairness and impartiality
Section 9	<p>The Section repeal section 52 of the Principal Act. The new provision places an obligation on the Commission to ensure that every constituency elections officer is provided with polling booths or voting compartments and ballot boxes, and shall provide papers, including ballot papers, instruments for marking ballot papers with the official mark, seals and other necessary things to conduct an election properly and in accordance with the Constitution</p>	<p>The new Section 52 contains stronger language placing a direct obligation on the Commission to ensure that all material related to the effective and efficient conduct of an election is available and adequate and that there are enough resources to ensure the election is held smoothly. This is consistent with Section 155 and Section 156 of the Constitution that outline the principles of an effective electoral system.</p>
Section 10	<p>This section amends Section 72 of the principal Act and clarifies on who may vote by post. The Act now clearly limits this to the following categories:</p> <ul style="list-style-type: none"> (a) on duty as members of the disciplined office (b) On duty as an electoral officer (c) On Government duty outside Zimbabwe (d) Outside Zimbabwe as the spouse of a person on Government duty 	<p>This provision clarifies the class of persons who may vote by post. What is apparent is that only those on government duty inside or outside Zimbabwe and the spouses of those serving in government outside Zimbabwe may vote via postal votes. The main challenge with this provision is that several classes of voters are now excluded from voting if they are not able to be in their constituency during the voting period. These include children of those on government duty outside the country and Diasporans, who are not serving in government. It is not clear why other Zimbabweans who are not necessarily employed by the state but are outside the country should not be able to vote. The distinction seems to be discriminatory and in violation of Constitution. It is therefore suggested that this group of persons be considered for participation in elections in Zimbabwe. The persons negatively affected by this</p>

		provision includes the infirm, the elderly and those incarcerated. These should be considered for future amendments to the Act	
Section 11	This section amends section 93 of the Principal Act, in relation to roving political party agents, by the deletion of "shall have the authority to enter and move through a polling station" and the substitution of "shall, without interfering in or disrupting the conduct of the poll at the polling station, have the authority to enter and move through a polling station".	The addition of the words, "without interfering in or disrupting the conduct of the poll," is open to various interpretations. Whilst the amendment seeks to impose a duty upon roving political party election agents not to disrupt polling in the exercise of their powers and privileges to enter any polling station it may be used to stifle an agent from legitimately engaging with the polling officers on issues requiring attention .The amendment appears retrogressive and in conflict with Section 155 of the Constitution that provides for transparency in electoral processes.	
Section 12	The Section amends section 110 of the Principal Act in relation to the determination and declaration of result of election to office of President. It now provides that, In accordance with section 94 of the Constitution, a person elected as President assumes office when he or she takes, before the Chief Justice or the next most senior judge available, the oath of President in the form set out in the Third Schedule to the Constitution."	This amendment is progressive as it clarifies the previous provision which was open to various interpretations on how and when the President assumes office after an election.	
Section 13	The Section amends section 173 of the principal Act in relation to the procedure where the Electoral Court reports cases of corrupt practices or illegal practices by the deletion of "Attorney-General" and the substitution of "Prosecutor-General".	This provision amendment was necessitated by the introduction of the National Prosecution Authority headed by the Prosecutor General (PG) as provided for by Section 258 and Section 259 of the Constitution. The PG is now responsible for all prosecutions whilst a separate office of the Attorney General was established via Section 114 with the responsibility of acting as the principal legal adviser to the government. This amendment bring the Electoral Act in line with the Constitution	