

# *ZIMBABWE ELECTION SUPPORT NETWORK*



## *Review of the Electoral (Voter Registration) Regulations*

*2017*

## **Introduction**

Prior to the promulgation of SI 85 of 2017 on 21 July 2017, the Zimbabwe Electoral Commission (ZEC) had shared with stakeholders the draft Electoral (Voter Registration) Regulations, 2017, in accordance with Section 192 of the Electoral Act [Chapter 2:13], for input and feedback before finalisation. ZESN submitted written submissions and made oral representations to ZEC with a view to strengthen the proposed regulations in accordance with the electoral principles in the Constitution together with the parent Act, the Electoral Act. As mentioned above ZEC has since promulgated the Electoral (Voter Registration) Regulations, 2017 via Statutory Instrument 87 of 2017. These regulations have been enacted after consultations with ZESN and other stakeholders.

The review below is therefore juxtaposing the content of the promulgated regulations against the draft regulations, in light of the submissions made to ZEC by ZESN. More specifically the review analyses the extent to which written recommendations made by ZESN have been incorporated into the promulgated regulations. In the same vein the review also evaluates the extent to which the regulations address the key issues relating to voter registration, as envisaged by the letter and spirit of the Constitution. It must be recalled that the regulations serve the purpose of giving effect to the parent Act, The Electoral Act and the Constitution by setting out a more detailed legislative framework that guarantees the holding of a free, fair and credible election.

## Analysis of the Regulations

| Sections of SI 85 of 2017 | Summary of provisions  | ZESN analysis and recommendation  |
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| Section 1                 | This section is the title section which gives name to the regulations as :<br>Electoral (Voter Registration) Regulations, 2017   |   |
| Section 2                 | Section two is the interpretation clause defining a number of the unique terms that are used in the regulations. It largely replicates section 2 of the draft regulations. Of note is the addition of definitions of the following terms:<br>“residence affidavit”<br>“residence document” | <p>Most definitions have been retained as they were in the first draft with a few more terms now defined which is progressive. There is the crucial addition of the definition of the term ‘residence document’ which provides for a number of documents that can be produced as proof of residents. These documents are set out in Section 5(1) of the regulation and this is further commented on, below.</p> <p>Of concern is that ZESN had specifically urged ZEC to outline the specific features that would constitute ‘biometric features’. This has not been heeded and thus ZESN urges the Commission to specifically provide for that, for the avoidance of doubt.</p> <p>ZESN had also recommended that the term ‘disability’ be specifically defined. The recommendation was for the definition to follow the broader one in the Disabled Persons Act, The Constitution and international normative standards. This has not been heeded.</p> <p>The regulations have surprisingly removed any reference to the term physical disabilities, a departure from the draft regulations that provided for consideration of persons with disabilities. This is as surprising as it is retrogressive.</p> <p>The Commission is urged to revisit this issue and ensure a voter registration process that is sensitive to and acknowledges rights of persons living with disabilities by specifically providing a definition and ensuring they are catered for in the registration process.</p> |

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| Section 3 | The section highlights the forms to be used for registration, transfer, objections and complaints related to voter registration.   | <p>ZESN had pointed out that the VR1 and VR2 forms were blank in the draft regulations and needed to be populated. This has since been regularised.</p> <p>In accordance with recommendations made by ZESN, the forms also now make provisions for and anticipate registration of voters with disabilities.</p> <p>The regulations also now make provisions for the issuance of a voters' registration certificate in accordance with Sec 26 of the Electoral Act as recommended by ZESN. The regulations should clearly specify in what form the registration certificate will be issued.</p> <p>However, ZESN recommends that the registration slips contain enhanced security features to deter possibilities of the fraudulent use of registrations slips.</p>  |
| Section 4 | This section reproduces the previous section in the draft regulations and specifies the documents that have to be produced to prove a potential voter's identity.                            | As previously pointed out, the provision is consistent with the principal Act and the Constitution.   |
| Section 5 | This Section provides for the requirements of residence in order for one to be registered as a voter. The person who seeks to be registered should provide proof of his residential address. | The provision seeks to give effect to Section 23 of the Electoral Act and Section 2 of the fourth schedule to the Constitution. There is a notable departure from the equivalent section in the draft regulations. These regulations delete the reference to the word 'affirm' and substituted by a new section that now requires a potential voter to provide some form of proof of residence. It must be pointed out that the new section is restrictive in this sense, compared to section 5 of the draft regulations which merely required a potential voter to affirm his/her residential address before a voter registration officer. Section 5(1) lists at least eleven documents that may be accepted as proof. On the face of, the listed documents seem wide and broad enough to guarantee that any potential voter would be able to register. In circumstances where the potential voter cannot produce any of the eleven documents s/he can still file an affidavit |

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|           |   | <p>confirming residence. This provision, as presently formulated, seem not to still address initial concerns raised by ZESN relating to the potential disenfranchisement of potential voters based on registration requirements.</p> <p>The regulations however seem to shut the door on the diaspora vote as a person outside the country would need to return and physically present themselves before a voter registration officer in order to appear on the voters' roll. It is ZESN's view that the Constitution envisages the Diaspora vote and accordingly the regulations must create a framework for the voter registration of those outside the country and not necessarily working for government.</p>  |
| Section 6 | <p>The previous section 6 in the draft regulations has been largely replaced and reworded by the section 6 of these regulations. The section now states that that, for the purposes of voter registration, every provincial and district office of the Commission shall be a registration office.</p> | <p>A number of issues that were captured in the draft regulations have been done away with. Of particular note, was provision that related to the framework and structure of the polling stations and polling areas. The spirit of the provision was to give effect to the new system of polling station based voting. Section 6 of the draft regulations specifically provided for the setting up of a polling station that would cater for a maximum number of 1500 persons who would constitute the polling area. ZESN had observed that this provision was, in principle a good one. It however recommended that the maximum threshold of number of voters to be serviced by the polling station be one thousand, in accordance with regional and international standards.</p> <p>The promulgated regulations have removed any reference to this issue. This is of serious concern as the issue of setting up of polling stations in a particular polling area is critical to the holding of free and fair elections. It needs to be well addressed by the regulations to give clarity and direction to all interested stakeholders. ZESN recommends that ZEC revisits this issue in the regulations and specifically provided for it.</p> <p>The concept of polling streams which ZESN had raised concern has been removed as recommended by ZESN.</p> <p>The error in drafting- the repetition of Section 6(2) in the draft regulations - has been corrected as suggested by ZESN.</p> |

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|           |   | <p>There is concern on the language that makes it discretionary for the Commission to set up mobile registration centres. The language of Section 6(2) needs to be peremptory in relation to the provision of mobile registration centres, given the long distances most people living in rural areas need to travel to access the ZEC provincial and district offices.</p>  |
| Section 7 | <p>This section sets out the procedure for registration as a voter.</p>   | <p>This provision sets out the framework of registration of a claimant as a voter. The provision adds a new requirement of taking a photograph of the claimant. This is in accordance with ZESN recommendations.</p> <p>The provision however fails to specify the biometric features that will be relied upon by the Commission for registration of potential voter. As previously recommended these biometric features should be specified from the outset for the avoidance of doubt.</p> <p>Despite the ZESN recommendations the regulations do not make provisions for the rights of prisoners to register to vote. The Commission should also make mobile voters' registrations units available for prisoners, given that the constitutional right to vote is guaranteed to every citizen.</p>   |
| Section 8 | <p>This section vests the registration officer with authority over a polling centre. It substitutes section 11 of the draft regulations</p> | <p>In principle, this section is progressive to the extent it gives authority to the registration officer control of persons in premises used for registration of voters. However, the section does not address the concern previously raised against section 11(2) of the draft regulations where a registration officer can allow persons, authorised in writing by the CEO to enter and remain in the premises? The suspicion remains of persons who may come to registration centres and interfere with the authority of the registration authority. The Commission should reconsider this position.</p> <p>The regulations also introduce, for the first time, a criminal penalty for a person who "disobeys an instruction of the registration officer." In terms of Section 8(2) of the regulations such a person may be liable to a fine not exceeding level ten or imprisonment of up to one year or both. The fine appears to be rather excessive.</p> |

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| Section 9  | Section 9 of the regulations replaces section 14 of the draft regulations. The provision sets out the information to be contained in the voters' roll in respect of every voter.   | <p>In some respects Section 9 improves on the previous section 14 of the draft regulations. It incorporates some of the recommendations suggested by ZESN. Firstly the requirement of a photograph as a distinctive feature has now been added as recommended by ZESN. Secondly the provision on objection of registration of a voter that was contained in section 13(2) that ZESN had questioned has now been removed.</p> <p>However in some respects the regulations have ignored some of the recommendations and taken a step back. The recommendation to add the middle name of the voter has been ignored. The provision for noting any disability of a voter, where relevant, which was entrenched in section 13(1) (c) has been removed. ZESN calls upon ZEC to rectify these provisions as they are clearly retrogressive.</p> |
| Section 10 | The section provides for the inspection of the voters' roll by the public at the Commission's offices as well as the establishment of the mobile centres for inspection of the voters' roll. The section regurgitates what was section 14 of the draft regulations | <p>The Commission ignored the two specific recommendations that were made by ZESN. Firstly ZESN called upon the Commission to make provisions for the use of technologically advanced methods to access the voters' roll such as online access. Secondly ZESN recommended that the then Section 14(2) that mirrors section 10(2) of the regulations be couched in more peremptory language instead of the current language that suggests the use of mobile inspection centres as optional.</p> <p>The recommendations are therefore repeated and should be reconsidered in the regulations.</p>  |
| Section 11 | This section deals with the process of certification of the voters' roll by the Chief Elections Officer  | <p>This provision is progressive to the extent it ensures that an official voters' roll that will be used for an election is certified as such before the actual election. Interested parties would be able to know the voters' roll upon which the election will be based upon.</p> <p>However, of concern is the sharp departure of the provisions of these regulations from what was set out in sections 20 and 21 of the draft regulations. The draft regulations contained specific progressive provisions that placed an obligation on the CEO to deal with removal of duplications and also clean the voters' roll of persons that may have</p>   |

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|            |   | <p>passed on but still appeared on the roll. Any reference to de-duplication and cleaning of the voters' roll has now been removed from the gazetted regulations in what is clearly a retrogressive step.</p> <p>Given the challenges around the accuracy of the voters' roll already observed in the just-held by-elections, it is critical that provisions relating to the de-duplication processes be restored in the regulations clearly setting out the obligation of the Commission to guarantee an accurate voters' roll.</p>  |
| Section 12 | <p>This section prescribes the costs for purchasing the voters roll, maps for polling area, ward or constituency.</p> | <p>Despite a previous recommendation to reduce the prescribed costs for the voters' roll, maps for polling areas, wards or constituencies, the regulations have largely retained the figures as they were in the draft regulations. The major concern remains the pricing regime set out in the regulations which is clearly exorbitant. Public information should be easily and readily accessible in term of Section 62 of the Constitution.</p> <p>As previously pointed out, the enactment of prohibitive charges is clearly against the spirit of the Constitution, especially where this relates to access to information related to key national process such as a general election.</p> <p>It is recommended that the prescribed fees in Section 12 be revised downwards.</p> <p>Another issue of concern is the provision in Section 12 that anyone seeking to have access to the voters' roll and electoral maps should apply to the Chief Elections Officer who is based at the ZEC headquarters in Harare. This seems to suggest centralisation of the whole process of access to information which would be cumbersome and against the spirit of the Constitution. It is suggested that the request be decentralised to the provincial and district offices of the Commission.</p> |

## Gaps in the regulations

Some issues that have been raised by ZESN have been entirely ignored in these promulgations. These issues (set out below) should be considered:

- The Electoral Regulations should provide for ZEC to collect and analyse baseline data that informs how many voters the Commission will be targeting for the voter registration processes. This information should be availed to electoral stakeholders as it is critical.
- The Regulations should specify the steps for the voter registration exercise including key processes such as the Biometric Voter Registration (BVR) equipment tendering and procurement. Procurement is one of the most critical steps in BVR deployment therefore the Regulations should ensure that adequate time is allocated for it and that the process is open to a public tender process and public scrutiny of the decision-making process and engagement of the service provider.
- The Regulations should provide for the need for ZEC to conduct comprehensive stakeholder consultations with political parties, the media and CSOs on pertinent information on the BVR system such as feasibility and administrative procedures to enhance accountability, confidence and trust.
- The Regulations should ensure that readable, analyzable and up to date election information is availed at the finest possible level of detail such as copies of voters' rolls at the polling station level. The provision of analyzable electoral information at the granular level is essential for promoting transparency and accountability.
- The Regulations should include provisions that allow for the inclusion of young voters who will turn 18 in 2018
- The Regulations should provide for the training of registration staff on all processes, procedures and laws pertaining to the compilation of the voters' rolls before and during the voter registration process.
- Provisions should be made in the Regulations with regards to the establishment of voter registration centres specifying the general locations where registration centres shall be established and not established e.g. army barracks or chiefs' homesteads. Citing of registration centers should be in consultation with electoral stakeholders such as electoral contestants.
- The procedures for voter registration inside the voter registration centres must be clearly spelt out in the Regulations. For instance the BVR kits and other equipment that will be used during registration should be clearly identified.

- ZEC should consider adding to the regulations, provisions for the display of the provisional and final updated voters' rolls outside of registration centers and polling stations.
- The Regulations should list persons allowed to be in the registration centres during the registration centres e.g. voter registration officers, members of the Commission, voter registration political party agents, duly accredited observers and media practitioners.
- The Electoral Regulations should clearly specify whether citizens with national identity documents with the classification 'alien' will be eligible to register.
- The Regulation should unpack the Section 67 (3) of the Constitution which provides for the right to vote by all eligible Zimbabweans. They should provide for how all classes of registered voters should cast their vote including those not in their constituencies.
- Mechanisms should be provided for in the Regulations to ensure that prisoners, those in hospitals especially hospital staff, nurses and doctors, police, election officials and others who will be on duty on Election Day can exercise their right to vote.
- The Regulations should specify how individuals who are privy to postal voting will be registered as voters.
- The Regulations should clearly specify the role of ICTs in the voter registration process and data security mechanisms to ensure the privacy of personal information.
- The Regulations should provide mechanisms for the electorate to check their registration status e.g. through the integration of SMS systems into the voters' roll to enable citizens to verify their registration status via SMS or secure web based applications.
- In order to instill trust in the process the Regulations should stipulate penalties for offences by voter registration staff relating to visibility, forgery, falsification and fraudulent destruction of voter registration materials e.g. Voter registration kits, computers or any other equipment.
- In addition, issues of forced entries, possession of forged or false documents or refusal to leave premises when required, intimidation, violence and threats to eligible voters should all be addressed in the Regulations with specified punitive measures.
- The Regulations should provide for clear roles of political party agents and observers for each registration centre within the polling district for the purpose of enhancing transparency, trust, confidence and accountability in the process.

- The regulations should have provisions binding ZEC to facilitate the observation of key electoral processes such as the tendering and procurement processes, training of registration staff, setting up of registration centres and other key electoral processes.
- To enhance confidence and trust the Regulations should provide for mechanisms that ensure access to all pertinent data that allows observers and agents to make fair assessments of the process such as data entry, processing and management.
- Regulations should provide the specific timeframe within which political parties can access the provisional and the final voters' roll at all levels. The voters' roll should be made available at least three months before the election to allow for verification and audits.
- The criteria used in the polling station mapping exercise should be clearly outlined to facilitate transparency of the process and to ensure that voters do not have to walk or travel long distances to access voter registration centres and polling stations.