

# ZEC & INDEPENDENCE

## **235 Independence of Commissions**

(1) The independent Commissions—

*(a)* are independent and are not subject to the direction or control of anyone;

*(b)* must act in accordance with this Constitution; and

*(c)* must exercise their functions without fear, favour or prejudice;

although they are accountable to Parliament for the efficient performance of their functions.

# THE COMPOSTION OF ZEC

- Commissioners
- CEO?
- Staff

Commissioners:

Sections 235 and 237 of the constitution.

# CHIEF ELECTIONS OFFICER?

Chief Elections Officer and other employees of Commission

9 (1) For the better exercise of its functions the Commission shall appoint a chief executive who shall be called the Chief Elections Officer.

(2) Subject to the general control of the Commission, the Chief Elections Officer shall—

- (a) manage the affairs and property of the Commission;
- (b) supervise and control the activities of the other employees of the Commission in the course of their employment;
- (c) be the accounting officer of the Commission in terms of the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009);
- (d) perform any of the functions of the Commission that the Commission may entrust or assign to him or her:

# OTHER STAFF

## CONST:

234 The independent Commissions have power to employ staff and, subject to the law, to regulate their conditions of service.

## ACT:

The Commission may make regulations governing:

192 (a1) the terms and conditions of service of the employees of the Commission, including the Chief Elections Officer;

192(6) Regulations ... shall not have effect until they have been approved by the Minister and published in the *Gazette*.

# FUNDING

- The running of harmonised elections is a complex process and the process can only be properly managed if ZEC is provided with the necessary finance well in advance of the election date and not at the last minute.
- Section 12 of the Act should include a provision that the funds referred to in the constitutional provisions referred to above are availed timeously.
- Section 305(3) of the Constitution requires that the Commission should get government funds in a separate vote by Parliament. This should be reflected in the Act.

# DONATIONS

## 12 Funds and finances of Commission

(1) The funds of the Commission shall consist of—

(2) ...

(e) donations or grants from any local or foreign source whatsoever, which have been **approved by the Minister and the Minister responsible for finance**

# ACCOUNTING

Provisions in the Schedule require the commission to submit such accounts and records to the Minister as he or she may direct; requires that the auditors appointed by the Commission are approved by the Minister; and requires the Commission to obtain from them such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient.

These provisions conflict with the requirement that ZEC is accountable to parliament and not to the Minister.

# MEETINGS

Sixth Schedule Part III section 8(1)(b)(i)

This section requires ZEC to convene meetings at the specification of the Minister and

It thus constitutes undue intrusion on the Commissions Independence.



# GENDER

## 17 Gender balance

(1) The State must promote full gender balance in Zimbabwean society, and in particular—

(a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;

(b) the State must take all measures, including legislative measures, needed to ensure that—

(i) both genders are equally represented in all institutions and agencies of government at every level; and

(ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament;

# DEPRESSING STATS

- Only 15 percent of candidates standing for directly elected parliamentary seats were women
- Women were nominated in 126 out of 210 constituencies for the National Assembly, with ZANU-PF fielding 22 female candidates and MDC Alliance fielding 18 candidates.

# MORE OF THEM

- 20 of the 47 political parties which nominated candidates did not nominate a single woman.
- The two houses of parliament have a combined membership of 350 parliamentarians. Of this figure, 116 are female, which gives women a 33.14% representation overall.
- This represents a decrease from the figure of 35% in the parliament elected in 2013. It does, however, represent a vast amelioration over the previous level of 17% which had been achieved by women in 2008.

CHANGE ELECTORAL LAW

QUOTAS FRO POLITICAL PARTIES?

# CONSTITUTIONAL PROBLEMS

## **67 Political rights**

67 (3) Subject to this Constitution, every Zimbabwean citizen who is of or over eighteen years of age has the right—

(a) ...

(b) to stand for election for public office and, if elected, to hold such office.

# CONSTITUTION CONT.

67 (1) Every Zimbabwean citizen has the right—

(b) to make political choices freely.

# GENDER EQUALITY AND ANTI-DISCRIMINATION

56 (2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

56 (3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.

# DISCRIMINATION

56 (4) A person is treated in a discriminatory manner for the purpose of subsection (3) if—

- (a) they are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or
- (b) other people are accorded directly or indirectly a privilege or advantage which they are not accorded.



# AFFIRMATIVE ACTION?

56 (6) The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and—

(a) such measures must be taken to redress circumstances of genuine need;

(b) no such measure is to be regarded as unfair for the purposes of subsection (3).

# VOTER REGISTRATION

Proof of residence?

Voters roll problems.