

AN ASSESSMENT OF CHAPTER 12
INSTITUTIONS' ROLE DURING THE 2018
HARMONISED ELECTION PROCESSES AND
THEIR CONTRIBUTION TO THE ELECTORAL
REFORM AGENDA

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INTRODUCTION

- Overview of the mandate of Independent Commissions
- Assessment of their role during 2018 elections
 - i. promotional mandate
 - ii. Protective mandate

NB: The Forum has done a scientific assessment but the presentation will draw from the feedback received from engaging with the IC and general observations from monitoring the work of IC.

- Opportunities contributing to the electoral reform agenda.

OVERVIEW OF THE MANDATE OF INDEPENDENT COMMISSIONS

Overall objective

- Chapter 12 of the Constitution - ZEC, ZHRC, GC, NPRC, MC
- Section 233 – Objectives of IC
 - a. to support and entrench human rights and democracy
 - b. to protect the sovereignty and interest of the people
 - c. to promote constitutionalism
 - d. to promote transparency and accountability in public institutions
 - e. to secure the observance of democratic values and principles by the state and all institutions and agencies of government, and government controlled entities
 - c. to ensure that injustices are remedied.

Observations:

- ❖ all 5 IC have a role in elections to the extent it relates to the specific functions of each Commission
- ❖ The mandate is both promotional and protective.
- ❖ The articulation of the election reform agenda must be within this context of their broad objectives - broader than just inputting into the substantive aspect of the electoral laws but also other complimentary processes that helps in strengthening the enforcement of the electoral systems.

Focus will be mainly on three commissions that the Forum has interacted with during 2018 harmonized elections.

OVERVIEW OF THE MANDATE OF ZHRC

Promotional mandate

- Section 243 (1) (a) – (c) of the Constitution.
- ❖ Promote awareness of and respect for human rights and freedoms, protection and development of human rights and freedoms, monitor, assess and ensure observance of human rights and freedoms.
- These functions are inclusive of the right to free and fair elections as provided for in the Constitution and the Electoral Act.
- The ZHRC was very active in the monitoring of the 2018 elections including the BVR process with the aim of contributing to the promotion of an environment conducive to conducting free, fair, transparent and credible elections

OVERVIEW OF THE MANDATE OF ZHRC CONT.

Promotional mandate

- Specific interventions
- The Election Strategy to guide the work of the Commission during the whole electoral cycle – input from various stakeholders ; ZEC, Government Ministries and Departments, Political Parties, CSOs and National Human Rights Institutions (NHRIs) from within the SADC region. The main goal was “To contribute to the promotion and enforcement of fundamental human rights and freedoms during the electoral process for free, fair and credible elections”.
- Electoral awareness campaigns - “My Vote, My Right, My Choice”
- took part in the review of the Electoral Amendment Bill before it was passed into law one of its key issues of concern related to the composition of the Special Investigation Committees which were supposed to be made up of ZHRC, ZRP and Political Parties its effect on compromising the independence of the Commission – was eventually addressed in the electoral amendment Act.
- Another sticky issue not successfully addressed relate to the commission’s role to monitor and not observe elections - Electoral act as amended still view the role of the Commission as observation
- Election monitoring - deployed 23 teams across the 10 Provinces of Zimbabwe to monitor the elections,
- Also monitored primary elections of political parties to ensure compliance by the political parties with the respective party regulations and generally accepted democratic standards and practices.

OVERVIEW OF THE MANDATE OF THE ZHRC

Promotional mandate

- Reports and findings
- ❖ ZHRC final Report on 2018 Harmonised elections – Concluded that while the elections could be characterised as most peaceful since 2000, there were challenges in fulfilling the right to vote as provided in the constitution.
- ❖ Statement condemning violence
- ❖ Statement on the 2018 harmonised elections and the post election environment in Zimbabwe
- ❖ Preliminary post election Report 2018
- ❖ Pre-election statement.

General findings - A number of electoral malpractices – threats and intimidation, partisan food distribution, use of hate speech, political violence, role of traditional leadership and the security services.

OVERVIEW OF THE MANDATE OF THE ZHRC

Protection mandate

- Sections 243 (1) (d) – (i) and section 4 of the ZHRC Act - stipulate the protective functions also inclusive of the right to free and fair elections as provided for in the Constitution and the Electoral Act.
- Minimal traction during 2018 elections.
- Commission reported that it received and investigated complaints of human rights violations relating to elections.
 - ❖ 77 cases pre- elections - most of which were referred to the police.
 - ❖ 28 post-elections
- Some of the outcomes

OVERVIEW OF THE MANDATE OF THE ZHRC

Protection mandate

Some of the outcomes

- ❖ Investigative report on discrimination on the basis of political affiliation, Kadoma – food aid and agricultural input 2018
- ❖ Investigative report on Chitungwiza political violence 2018
- ❖ Investigative report on the BVR slips - on forceful collection of serial numbers from community members in Marondera Rural, in Bocha Marange and Mutasa 2018
- ❖ Investigative report on the participation of school children at political rallies 2017

Challenges

- Non Compliance.
- Effective remedies or redress to victims

OVERVIEW OF THE MANDATE OF THE ZHRC

Protection mandate

Unexplored opportunities

- Section 243 (1) (g) and (h) of the Constitution and Section 4 (d), 14 (2), (3) and (4) – mandates the Commission to ensure effective remedies for the victims. This include directing the Commissioner General of the police to investigate cases of suspected criminal violations of human rights and fundamental freedoms and report back on such investigations;
- Mandated to also refer cases to the courts for appropriate remedies see section 14 (2)(c) - UN Res 48/134 of 1994 provides that NHRIs have the “power to refer findings to a court of law or specialized tribunal for adjudication”
- It is also mandated to bring up cases before the courts either in its own name or on behalf of any complainant/s - Sections 15 of the ZHRC Act.
- The investigative powers are broad – does not require a complainant, Commissions can investigate on its own initiative - only limited prescription (3yrs) provided the matter is not pending before the courts of law – this does not include a COI- such that nothing prevents the Commission from investigating the post elections violence.

OVERVIEW OF THE MANDATE OF THE NPRC

election mandate

- Sections 252 (d), (g), (h), (i) of the Constitution provides for the functions of the NPRC that relate to elections, ie facilitate dialogue among political parties, development of early warning mechanism; conflict prevention; and mediation.

Interventions

- **Political Parties And Candidates Pledge For Peaceful, Free, Fair And Credible Elections**
- **Zimbabwe Peace caravan-** a commitment towards peaceful co-existence, mutual respect and tolerance before, during and after the elections. Areas covered were Masvingo; Chiredzi; Beitbridge; Gwanda; Bulawayo; Tsholotsho; Lupane; Redcliff; Gweru; Mt. Darwin; Bindura; Mutoko; Chitungwiza; Marondera; Buhera; Mutare; and Harare.
- Not much around mediation and early warning.

OVERVIEW OF THE MANDATE OF THE GC

Election mandate

- Sections 246 of the Constitution provides for the functions of the GC that relate to elections, ie ensuring relating to gender equality in line with the constitution, receive and consider complaints and to take action, recommend prosecution for violation of rights relating to gender; and secure appropriate redress.

Interventions

- Promotion – awareness raising on women's participation.
- Protection – enforcing women's rights to participation in the elections processes – The GC has not done much around this.

- **OPPORTUNITIES CONTRIBUTING TO THE ELECTORAL REFORM AGENDA.**

- All have Mandate to recommend and input into the electoral reform agenda.
- ZHRC reports findings and recommendation are explicit- formulates a very good basis for electoral reform.

Priority areas, in addition to substantive electoral reform. Some of the key areas are:

- ❖ Alignment of all laws with the Constitution, especially the repressive laws such as POSA, AIPPA, Broadcasting Act etc.
- ❖ Establishment of the Section 210 independent complaints mechanisms – violations by security service
- ❖ Integrity and Ethics Committee Section 287 – oversight on the work of the traditional leadership

NB: The reform must be comprehensive beyond just legal, but also institutional reform as well.