

# ZIMBABWE ELECTION SUPPORT NETWORK

## POSITION PAPER

### Diaspora Voting

#### Key words:

Diaspora Voting: For the purposes of this topic, diaspora voting means procedures which enable some or all electors of a country who are temporarily or permanently abroad to exercise their voting rights from outside the country. The term used throughout the topic area is 'diaspora voting'. Expressions such 'absent voting', 'absentee voting' or 'out-of-country voting' which are commonly found mean the same thing.

#### Introduction

The United Nations estimates there are close to 68.5 million people around the world have been forced from home by wars, economic hardships at home or work-related movements<sup>1</sup>.

The world is now witnessing the highest levels of displacement on record. In Zimbabwe, whilst official figures are not readily available, it is estimated that close to three million Zimbabweans reside outside the country. Past elections have disenfranchised significant proportions of these eligible voting population outside the country.

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Participation in elections for those in the diaspora is limited to a small section of the diaspora community thus excluding the larger population outside the country from participating in elections of their country.

The laws providing for diaspora voting has limited the category of Zimbabweans based abroad who can cast their ballots from outside the country especially by operation of sections 12 and 13 of the Electoral Act which provide for the instances in which postal votes are permissible.

Over the past two decades the increase in the total number of the Zimbabweans abroad has given legitimacy to demands for greater political rights and representation.

This paper explores the role of Zimbabwean diasporas in elections and unpacks the bottlenecks in the legal system that precludes Zimbabweans in the diaspora from participating in elections of their country.

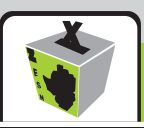
An analysis of the political context in general and to diaspora voting in particular is undertaken. The paper will examine the legal framework providing for or providing against diaspora voting and will proffer possible interventions to address this.

A mixed model of diaspora voting, personal and postal voting, is proposed to derive as much benefit from each model as possible and to ensure as much coverage of countries Zimbabwe diasporas are found as possible.

**The paper will examine the legal framework providing for or providing against diaspora voting and will proffer possible interventions to address this.**

It will conclude by noting that several processes must be in place to ensure implementation of diaspora voting including amendments to legal provisions that mitigate against diaspora voting as well as building trust in the electoral processes of the country in general and specific to diaspora voting.

<sup>1</sup> Electoral Commission. (2019). Enrol and Vote from Overseas. [online] Available at: <https://www.elections.org.nz/voters/get-ready-enrol-and-vote/enrol-and-vote-overseas> [Accessed 10 May 2019].



## Historical background to diaspora voting

The first use of external voting appears to have been put in place by the Roman emperor Augustus, who is said to have invented a new kind of suffrage under which the members of the local senate in 28 newly established colonies cast votes for candidates for the city offices of Rome and sent them under seal to Rome for the day of the elections—an act which was undoubtedly based on political rather than democratic motives<sup>2</sup>.

In more recent times, the earliest known use of external voting took place in 1862, when Wisconsin became the first of several United States of America states which enacted provisions to allow absentee voting by soldiers fighting in the Union army during the Civil War<sup>3</sup>.

Over the years several countries that have extended the right to vote for the diasporas include the United Kingdom which introduced external voting for members of the army fighting in the first world war in 1918 through proxy voting. France on the other hand introduced external voting in 1924 to cater to a different constituency: French administrators posted to the occupied Rhineland were enabled to vote by post. World War II (1939-45) produced further momentum for external voting by active servicemen<sup>4</sup>.

As demands for increased participation by diasporas in the governance of their countries of origin increased external voting was gradually extended to cover non-military personnel serving abroad in several countries. In the United States of America (USA), for example, the registration provision for voters outside the country became mandatory for states in 1975<sup>5</sup>. These demands have considerably grown world over as diasporas seek greater participation in the political affairs of their country.

The calls are driven, in most cases, by political considerations as the vast majority of those in the diaspora moved out of their countries due to political differences with those in power seek to influence who governs their country of origin. Often this category of diasporas drives the calls for external voting. Other considerations include drives by governments seeking diaspora integration to harness political support of the diasporas and especially in increasing remittances to their countries of origin.

However, there has been pushback on the participation of diasporas in elections of their countries by some governments. According to Østegaard-Nielsen, states are interested in controlling or even suppressing political dissent and in mobilizing support.

To authoritarian countries, expatriates can be viewed as unwelcome promoters of democratization. To regimes liable to criticism, constraints upon the voice of expatriates reduce pressures to reform.

Political parties and organized factions in the home country are aware of the potential political power of migrants and desire to secure political and financial support from communities abroad. Where such support is forthcoming, the parties tend to endorse pressure for expanded rights; where such support is not forthcoming, they instead promote contraction.

The fear of fraud in the operation of external voting provisions has sometimes been used to deny the right to vote for the diasporas. The last two decades has seen several African countries embracing the voting rights of their diasporas albeit with limitations to specific elections especially presidential elections.

Only some thirty African countries grant the right to vote to their nationals abroad, out of a total of 115 countries that apply the principle around the world<sup>6</sup>. In the region the right to vote for the diasporas has been extended to citizens of South Africa, Mozambique, Namibia, Botswana whilst countries such Zimbabwe and Angola have limited provisions on who should vote. Zambia only provides voting rights to those on official duty inside the country and those on official duties outside the country must travel back home to vote and so does everyone outside the country interested in voting.

In Zimbabwe the number of citizens leaving the country for the diaspora has increased over the last two decades due to several factors among them economic hardships that has forced many Zimbabweans to look for greener pastures outside the country's borders. It is however difficult to pin down the number of those outside the country. The push factors have been political and economic.

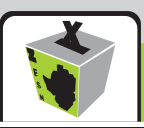
<sup>2</sup>Anon, (2010). [ebook] Available at: <http://aceproject.org/ace-en/topics/va/introduction/context-of-voting-from-abroad> [Accessed 16 May 2019].

<sup>3</sup>Ibid

<sup>4</sup>Ibid

<sup>5</sup>Anon, (2010). [ebook] Available at: <http://aceproject.org/ace-en/topics/va/introduction/context-of-voting-from-abroad> [Accessed 16 May 2019].

<sup>6</sup>Anon, (2015). [ebook] Available at: <http://www.osiwa.org/wp-content/uploads/2015/05/The-African-diaspora-and-the-electoral-process.pdf> [Accessed 11 May 2019].



There are political refugees who fled violence and persecution, but many are economic migrants who escaped poverty and unemployment while others simply found better opportunities outside Zimbabwe.

So broad are the estimates that even the International Organisation for Migration (IOM) office in Harare says that 500 000 to four million Zimbabweans are abroad. But with no reliable statistics, the organisation acknowledges that this has placed a strain on its work to catalogue the number of Zimbabweans living in the diaspora<sup>7</sup>.

There are no accurate estimates on the numbers of documented and undocumented or illegal migrants living abroad. For example, a report published on the website of Short Wave Radio Africa stated that "it is believed" there are "between two and three million Zimbabweans living and working" in South Africa. Citing interviews conducted by the Inter Press Service (IPS) news agency, the report also stated that the numbers of Zimbabwean nationals crossing the border have almost doubled since July 2008 when the country held elections<sup>7</sup>.

However, tacit agreement among nongovernmental organisations is that the Zimbabwe diaspora is spread out mainly in South Africa, Botswana, the United Kingdom, Canada, the United States, New Zealand and Australia. South Africa is estimated to have the bulk of Zimbabwe's diaspora community, with an estimated two million to three million Zimbabwean nationals living in that country.

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Despite the huge numbers of Zimbabweans in the diaspora there are no provisions at law that extends voting rights to the rest of the diasporas besides those that are provided for at law. Past elections have disenfranchised significant proportions of this eligible voting population outside the country.

Political contention has been a major factor, opposition parties backed diaspora voting legislation as they believed those in the diaspora were likely to support them, while the ruling party, for years, opposed it for fear that diasporas will vote for the opposition.

International electoral standards and recent practice do not provide clear or consistent guidance on the implementation of diaspora voting and this has provided cover for those opposing diaspora voting. Reasons cited for not implementing diaspora voting in the past include the prohibitive cost and logistics of running the diaspora voting.

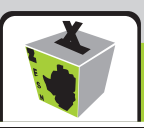
The sanctions imposed on the country have also been cited as another impediment towards enfranchising the diaspora community, parties complain that sanctions prevent them from travelling to countries diasporas stay in order to campaign.

This disenfranchisement seemed to have served the interests of political actors and political considerations were at centre of disenfranchising the Zimbabwe diasporas. This will continue as long as no concerted efforts are made at ensuring the diasporas' full participation in elections of the country.

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<sup>7</sup>Anon, (2019). [ebook] Available at: <https://mg.co.za/article/2013-04-19-millions-of-zimbabweans-abroad> [Accessed 11 May 2019].

<sup>8</sup>Anon, (2019). [ebook] Available at: <https://africacheck.org/reports/how-many-zimbabweans-live-in-south-africa-the-numbers-are-unreliable/> [Accessed 11 May 2019].



## Motivation for Diaspora Voting

The country has, however, seen an appetite towards diaspora inclusion in elections growing partly as a result of pressure building from the recommendations of observer missions to the July 2018 harmonised elections. The Zimbabwe Election Support Network (ZESN), in its final election report, recommended the country, "should institute mechanisms in the electoral laws that ensure that the right to vote is extended to all citizens including those imprisoned and, in the diaspora,".

The SADC Electoral Observation Mission (SEOM) election report recommended that, "consideration should be given to permit voting by Zimbabweans in the diaspora." The Commonwealth also weighed in on the diaspora voting by recommending, "the inclusion of the diaspora in the voting process will be a positive development taking into consideration that the constitution stipulates that all Zimbabweans have a right to vote." Following the harmonised elections, the President appointed an inter-ministerial committee on electoral reforms to look at these and other recommendations arising from the harmonised elections.

Diaspora enfranchisement in Zimbabwe is also partly driven by what scholars are coining "neighbourly emulation" in the adoption of electoral standards, procedures, and mechanisms for diaspora voting. Countries around Zimbabwe such as South Africa, Botswana, Namibia and Mozambique have extended voting to their diasporas. Anca Turcu and R. Urbatsch in *Diffusion of Diaspora Enfranchisement Norms: A Multinational Study using proportional hazard models*, finds that a neighbour's recent enactment of overseas voting nearly doubles countries' likelihood of also making the franchise accessible to their own expatriate citizens<sup>9</sup>.

The desire to be seen as taking on board regional standards on elections has also driven the agenda for diaspora voting in Zimbabwe. The SADC Principles and Guidelines Governing Democratic Elections encourages regular reviews of the participation of citizens in the diaspora in national elections.

Economic considerations are also feeding into the narrative on diaspora voting. Economic or strategic contributions diasporas can make are now driving the discussions around diaspora inclusion in elections.

In 2018 Zimbabweans abroad remitted close to USD1.9 billion which makes up 9.6% of the GDP of the country<sup>10</sup>. These are remittance that are coming in through formal channels and this figure could be higher than this given the number of undocumented Zimbabweans in other countries. Zimbabweans abroad can produce or encourage remittances, foreign direct investment, and alliances which the current government is desperate for hence the drive to encourage their participation in political processes of the country including elections.

Alongside remittances, the Zimbabwean government hopes to extract other benefits from its diasporas. Zimbabweans abroad are well-positioned to lobby their hosts on behalf of Zimbabwe's country interests. The country is emerging from self-imposed isolation from the international community and is interested in expanding its transnational ties. This has seen the government engaging diasporas on a regular basis and making promises to give them access to voting rights. Addressing Zimbabweans in New York, United States ahead of the United Nations General Assembly, President Mnangagwa said "*he agrees with the principle of diasporas voting, even though it could not be implemented in the July 30, 2018 harmonised election.*"<sup>11</sup>

The emergence of dual citizenship, as provided for in Section 42 of the Zimbabwe Constitution has also given impetus to the drive towards the demand for diaspora inclusion in the political process of the country including diaspora voting. As a result, the Zimbabwe diasporas have increased their lobbying of the government to extend voting rights to them<sup>12</sup>.

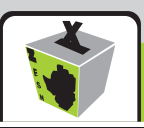
Several court petitions have been filed with the constitutional court demanding the right to vote be extended to the diasporas, the latest being Gabriel Shumba and others Vs Ministry of Justice Legal and Parliamentary Affairs and others CCZ 4/18). It is a fact the number of Zimbabweans in the diaspora has increased considerable over the last two decades. The quantitative increase in the total size of the Zimbabwean population abroad has given legitimacy to demands for greater political rights and representation among the Zimbabwe diasporas. Therefore, standards and laws are required in order to delegitimize and prevent exclusion of diasporas in the political affairs of their country including participation in elections.

<sup>9</sup> Anon, (2019). [ebook] Available at: [https://www.knomad.org/sites/default/files/201904/MigrationandDevelopmentBrief\\_31\\_0.pdf](https://www.knomad.org/sites/default/files/201904/MigrationandDevelopmentBrief_31_0.pdf) [Accessed 13 May 2019].

<sup>10</sup> Anon, (2019). [ebook] Available at: [https://www.knomad.org/sites/default/files/201904/MigrationandDevelopmentBrief\\_31\\_0.pdf](https://www.knomad.org/sites/default/files/201904/MigrationandDevelopmentBrief_31_0.pdf) [Accessed 13 May 2019].

<sup>11</sup> <https://www.africanews.com/2018/09/25/mnangagwa-to-consider-voting-rights-for-zimbabweans-in-diaspora/> [Accessed 13 May 2019].

<sup>12</sup> Gabriel Shumba and others Vs Ministry of Justice Legal and Parliamentary Affairs and others CCZ 4/18). [2019].



## Diaspora and Voting Rights in Democracies

The right to participate in the political processes of one's country regardless of one's status is a right that is protected and promoted in different regional and international instruments. In most cases, it's a right that is enshrined in a country's constitution albeit the fact that it may not be explicitly stated. This is the issue that proponents of diaspora voting inside and outside the country are grappling with, what defines a diaspora and why should rights be extended to citizens living outside the country?

### **Article 21 of the 1948 Universal Declaration of Human Rights (UDHR), states that:**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### **Article 25 of the 1976 International Covenant on Civil and Political Rights (ICCPR), states:**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

1. To take part in the conduct of public affairs, directly or through freely chosen representatives;
2. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free will of the electors...

Specific and speaking to the status of the diasporas Article 2 of the ICCPR, prohibits governments from discriminating in the protection of rights based upon race, colour, sex, language, religion, or other status. This includes non-discrimination in the participation of the political processes of a country to include participation in elections regardless of one's status as rights are to be equally enjoyed by each segment of a country's population. **As Article 2(1) of the ICCPR states:**

1. "Each state party to the present covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant."

This non-discrimination principle serves to guarantee the right of political participation to specific groups regardless of their status. Several regional human rights instruments also establish the democratic entitlement. On the African continent, the African Charter on Human and Peoples' Rights concluded in 1981, in Article 13 of the Charter, provides for a participation clause that opens up in a manner similar to Article 25 of the ICCPR and Article 21 of the Universal Declaration. However, Article 13 of the African Charter lacks an operationalisation of participation in the field of elections.

### **ARTICLE 13, African Charter on Human and Peoples' Rights (1981)**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law

### **On the hand the African Charter on Democracy, Elections and Governance in Article 8 provides that:**

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.

Specific to the southern Africa region the SADC Principles and Guidelines Governing Democratic Elections in Article 4 (4.1.8) encourages regular reviews of participation of citizens in the diaspora in national elections. Despite the foregoing several countries, Zimbabwe included, still deny many of their diasporas the right to participate in elections of their respective home countries. Most of these countries are state parties to these regional and international agreements and has a legal duty under international law to implement these standards at municipal level. The Vienna Convention on The Law of Treaties (1969) states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith."



## The Legal Framework for Diaspora Voting in Zimbabwe

The Constitution of Zimbabwe forms the foundation upon which the electoral framework for Zimbabwe is premised. It provides for fundamental freedoms of assembly, association, expression, and media. Section 67 of the Constitution provides for free and fair elections, free political choices, free and peaceful campaigns, participation in peaceful political activity, and form, join and participate in the activities of a political party or organisation of choice.

Section 155 of the Constitution provides for elections which must; be peaceful, free and fair; conducted by secret ballot; based on universal adult suffrage and equality of the votes; and free from violence and other electoral malpractices.

The Electoral Act (Chapter 2:13) provides the basis upon which the electoral operations and elections are conducted. Other laws relating to elections in Zimbabwe, include the Political Parties (Finances) Act (Chapter 2:06), Public Order Security Act (POSA), Access to Information Protection of Privacy Act (AIPPA), electoral regulations, among others. The Constitution, in section 67 (3) (a), provides for every Zimbabwean citizen who is of or over eighteen years old the right to vote in all elections and referendums and to do so in secret.

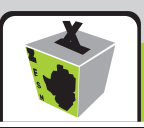
This is operationalised in the Electoral Act [Chp 2:13] and subsequent regulations that give effect to the constitutional provisions. The Electoral Act, however, does not have specific provisions on the right to vote for all Zimbabweans in the diaspora serve for those on official government business.

This is brought into effect by operation of sections 72 and 73 of the Electoral Act, meaning the laws of Zimbabwe do provide for diaspora voting since 1980 but only to those who are absent from Zimbabwe while in the service of the government, such as diplomats, civil servants, and members of the armed forces and police. This is viewed as discriminatory and in violation of section 56 (1), (3) and (4) of the constitution.

It is clear, despite positive provisions in the constitution, the legal framework contains several gaps and has not been fully aligned to the Constitution, for example the right to vote especially for Zimbabweans in the diaspora is not explicitly provided for in the constitution. Section 67 (1) of the constitution provides that every Zimbabwean has the right to vote and this is taken to mean every Zimbabwean regardless of status has the right to vote by proponents of the diaspora vote. Similarly, section 155 sets out the principles of the electoral system and the responsibilities that goes with it. However, there has been pushback on the participation of diasporas in elections of their countries by some governments.

- (1). Elections, which must be held regularly, and referendums, to which this Constitution applies must be:
    - (c) based on universal adult suffrage and equality of votes;
    - (2). The State must take all appropriate measures, including legislative measures, to ensure that effect is given to the principles set out in subsection (1) and, in particular must:
      - (b) ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to cast a vote, and must facilitate voting by persons with disabilities or special needs;
- Proponents of diaspora voting take these constitutional provisions to mean, regardless of where one is domiciled, all citizens of Zimbabwe who are of the age 18 years and above have a right to participate in elections. This is taken to mean any legislation that provides otherwise is ultra-vires the constitution which is the supreme law of the country.

This is premised on the notion that section 23 of the Electoral Act is in violation of section 67 of the constitution in that it imposes resident requirements and takes away the right to vote for the diasporas. Section 23 of the Electoral Act provides that " subject to the constitution and this Act in order to have requisite residence qualifications to be registered as a voter in a particular constituency a claimant must be resident in that constituency at the date of his or her claim" This is an additional requirement to the contents for eligibility as set out in para 1 (1) of the 4th schedule of the constitution. However, the question of whether the Constitution allows for diaspora vote or not has been dealt with in the Gabriel Shumba and others Vs Ministry of Justice Legal and Parliamentary Affairs and others CCZ 4/18).



In the case, the bench ruled that the right to participate in elections by the diaspora is not taken away by subsequent legislation but rather the constitution which prescribes that, "The electoral Law may prescribe additional residential requirements to ensure that voters are registered on the most appropriate voters roll, but as such requirements must be consistent with this constitution in particular with s 67".

This view is also made in the *Bukaibenyu* case (supra) where MALABA DCJ (then) said this in relation to Zimbabwe's electoral system, "Under the Zimbabwean electoral system, a voter votes not only as a citizen of this country but also to protect his rights and interest as a resident of the constituency in which he/she is registered" This takes away the argument that the resident requirement to register to vote infringes the constitutional right for one to vote in elections regardless of where one is domiciled. The challenge appears to be at two levels, the constitution which takes away, in the 4th schedule, the right it provides for in s 67 of the constitution and the electoral laws that are not aligned to s 67 of the constitution thus falling foul to the supreme law of the land.

Effectively what the judgement states, "...is that there is no legislative framework set in law for diaspora vote". The constitution of the country as it stands today does not allow for the setting of constituencies outside those prescribed in schedule 4, that is 210 constituencies. The constitution provides for constituency-based voting as provided for in Section 124 and section 161 refers to election boundaries into which the country is divided. This precludes the setting of constituencies to give effect to diaspora voting outside the country as this will be in violation of section 124 of the constitution.

This provision is viewed by proponents of the diaspora vote as restricting the participation of those in the diaspora in elections in violation of the constitutional provisions set out in section 67 and section 155 of the constitution of Zimbabwe. They are viewed as imposing unjustifiable and unconstitutional limitations on the right to vote for the diasporas. The right to vote is a fundamental democratic right and a law limiting that right is not justifiable in a democratic society. The South African Constitutional Court in the case of *Richter v The Minister for Home Affairs and Others* (with the *Democratic Alliance and Others Intervening*, and with *Afriforum and Another as Amici Curiae*) [2009] ZACC 3, ruled:

A citizen must be prepared to take reasonable steps to exercise the right to vote. For instance, he or she must be prepared to travel to a polling station and stand in a long queue. However, the burden imposed on voters must be reasonable and must not prevent a voter who is prepared to take those reasonable steps from exercising his or her vote.

If a statutory provision prevents a voter from voting despite the voter's taking reasonable steps to do so, the provision infringes the right to vote enshrined in section 19 of the South African Constitution and imposes a restriction which is not reasonably justifiable in a democratic society.

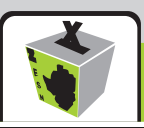
To require registered voters who are living outside the country to return to the country to vote imposes an unreasonable obligation on them.

If this reasoning is to be followed, then the state has an obligation to put in place mechanisms in every country where there are Zimbabwean citizens to enable them to cast their ballot in those countries. It is clear from the foregoing and the conclusion reached by the Constitutional Court in *Gabriel Shumba and others Vs Ministry of Justice Legal and Parliamentary Affairs and others* CCZ 4/18) that several processes must occur before the diasporas can vote in elections. This will include amending several provisions of the Constitution and putting in place administrative provisions to allow for diaspora voting.

Some of the provisions in the Constitution hamstring citizens in the diaspora's participation in elections. These can only be addressed in the context of lobbying the Legislature to amend the constitution to allow for diaspora voting. This will entail amending the 4th Schedule to remove the restrictive residents' requirements to allow for diasporas to register to voter. Depending on the model of diaspora voting implemented and if it envisages creation of a diaspora constituencies then Section 124 of the constitution must be amended.

External voting is seldom provided for explicitly in constitutions. Notable exceptions include Portugal (article 172 of the constitution) and Spain (article 68/5 of the constitution). Most countries enable external voting through general provisions in their electoral laws. Additional regulations on its implementation are also often set out by legislatures or electoral commissions<sup>13</sup>.

<sup>13</sup>Anon, (2019). [ebook] Available at: [http://aceproject.org/ace-en/topics/va/legal-framework/the-concept-and-provisions-of-external-voting/mobile\\_browsing/onePag](http://aceproject.org/ace-en/topics/va/legal-framework/the-concept-and-provisions-of-external-voting/mobile_browsing/onePag) [Accessed 14 May 2019].



## Implementing diaspora Voting: The models

Several models of diaspora voting are in place the world over. There is no one size fit all model as models adopted by countries depending on several reasons. The political context of the country and the type of the electoral system, in most cases, determine the model of diaspora voting. The electoral system, to a large extent, determines the type of elections that diasporas can participate in. An understanding of the electoral system will assist in recommending a diaspora model most suited for the country. Currently Zimbabweans are eligible to vote in the following elections, albeit restrictions on who can participate in the external elections:

- legislative elections;
- presidential elections;
- local government elections;
- referendums

The harmonised elections in Zimbabwe are for the direct election of the President, 210 members of the National Assembly and local councillors. The presidential election is conducted under a majority run-off system, a candidate is elected if she/he wins more than half of the votes in the single national constituency.

In the event that none of the candidates garner more than half the votes a runoff the two candidates with the highest votes will square off in a runoff election not less than 28 and not more than 42 days after the polling day (the paper will discuss the implications of this on diaspora votes in detail).

The Constitution provides for a joint plurality party-list system for the parliamentary and provincial/metropolitan council elections. The election of 210 National Assembly members is on the basis of the FPTP system, while 60 National Assembly seats for women (six from each of the 10 provinces), 60 of the 80 Senate seats, and the 100 directly elected provincial council seats, are elected through a proportional representation party-list system, all linked to the same ballot. The senatorial party-list system for 60 Senators, places female and male candidates alternately, and the list is headed by a female candidate. While the law provides for independent candidates, they cannot contest under the political party-list system. A total of 18 of the 80 Senate seats are indirectly elected Chiefs. Further, the 2013 Constitution introduced two Senators representing persons with disabilities elected by an electoral college (see section on Persons with Disability). Councillors of local authorities are also elected based on FPTP, representing local wards.

The Constitution stipulates that for electoral purposes, the State is divided into 10 provincial constituencies, 210 National Assembly constituencies and as many wards as the number of members to be elected to the local authorities concerned. Given the foregoing it is imperative to understand that whatever model the diaspora voting takes it must be designed to this electoral system. The constitution will need to be amended, however, to accommodate the diaspora voting as discussed earlier. Based on the electoral system there are four models that the country can adopt for diaspora voting. In 83 countries around the world that offer diaspora voting only one voting method is available to the external voter. Of these, 54 countries opt to use conventional personal voting at a polling station that is specially set up, for example, at a diplomatic mission or other designated place. This is by far the most common procedure for external voting. Twenty-five countries use postal voting only. Voting by proxy is the sole voting method in four countries. In the remaining 27 cases, a mix of two or more voting methods are in place, including the exceptional use of voting by fax and e-voting<sup>14</sup>.

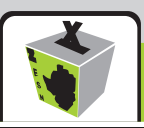
The paper discusses in detail each model, offering its pros and cons and making recommendations on models most suited for the country. As outlined, there are different types of Zimbabweans abroad, those displaced, those seeking employment opportunities and the professional abroad especially those on national duty. Given the foregoing whatever model preferred for diaspora voting it should allow for equal suffrage for all Zimbabwe regardless of their status. It is therefore imperative that in general the procedures for voting from abroad are equivalent to those that apply within the national territory.

Whatever model chosen for diaspora voting it has implications on how it can allow for access to voting facilities for eligible diasporas. There is need to consider the geographical distribution of the voters. Consideration on the model is also informed, to a large extent, by the voting population in the country. Polling stations cannot be set up where the numbers of expected diaspora voters is low and does not justify the setting up of the polling stations. Mozambique, for example, only sets up polling station after several considerations have been taken into account including the voting population in the country. Whatever model chosen it must guarantee the freeness, fairness, credibility, the transparency of external voting procedures, and the freedom and fairness of party competition<sup>15</sup>.

<sup>14</sup> Anon, (2019). [ebook] Available at: <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf> [Accessed 13 May

<sup>15</sup> Ibid 2019].





## Personal voting.

For this model a voter must go to a specific place, mostly the embassy, and cast his/her vote in person. In most cases this can be a diplomatic mission, or a polling place specially set up abroad. This is the model most widely used for casting diaspora votes. Ballots are dispatched to the designated polling stations, in most cases, the embassy and registered voters will cast their vote. The votes will be sent back to the country to be added to the specific election and constituency or ward. If Zimbabwe opts for this model, it has its pros and cons. The advantage of the model is that the voter votes in person thus enhancing the integrity of the election. It ensures the secrecy of the vote, and that the voter's choice is guaranteed to end up on the ballot paper. Personal voting better fulfils the principles and imperatives of security, confidentiality and reliability in the casting and transmission of the vote, but its coverage of the potential electorate can be far more limited than that of postal voting<sup>16</sup>.

The main advantage of voting in diplomatic missions is that there is a highly transparent electoral process, supervised by diplomatic staff. However, the staff must be perceived to be impartial, independent and unbiased. Moreover, in some countries, getting to the nearest embassy or consulate may be a problem, especially for citizens of those states that have few diplomatic missions in foreign countries or in countries where the infrastructure is poor. Oversight issues also need to be considered with voting abroad. It's difficult and almost impossible to observe voting at foreign missions. Zimbabwe has a constituency based electoral system and ward-based elections for local government. Section 23 of the Electoral Act provides, "subject to the constitution and this Act in order to have requisite residence qualifications to be registered as a voter in a particular constituency a claimant must be resident in that constituency at the date of his or her claim". This is further entrenched in the 4th schedule of the constitution that provides for the resident's requirements and as well designating the electoral system as constituency based.

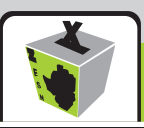
This requirement makes it difficult for diasporas to register to vote given they are not ordinarily resident in the constituencies and wards they leave and do not have proof of residence. If the country opts for this model of external voting the logistics of determining how many ballot papers to dispatch to each country and for which election are cumbersome and open to errors thus compromising the integrity of the elections. Ballots will not be same country wide and the Electoral Commission must establish how many of the ballot papers to dispatch to each country and for what election.

The logistics challenges can be further compounded if there is a second round of voting in the event that none of the presidential candidates in a presidential election gunner 50 + 1% of the votes. South Africa uses the same model, but their electoral system makes the process simple. Voters vote for a political party, not individuals.

The political party that gets a share of seats in Parliament in direct proportion to the number of votes it got in the election. Each party then decides on members to fill the seats it has won. The advantage is that the ballots are the same making it easy for logistical distribution of the ballots for diaspora voting. If a voter is a registered voter and either live abroad or will be abroad on election day in South Africa and has a valid South African ID as well as a valid South African passport (valid temporary passports are also accepted), they are eligible to vote abroad. However, they must submit a VEC10 (this is a form that South Africans abroad wishing to vote will have to submit to the IEC to tell them that they plan to vote overseas and at which voting station they plan to vote) during the period specified in the election timetable (15 days from the date on which the election is proclaimed) notifying IEC of one's intention to vote abroad. Voter registration requirements are not as stringent as in Zimbabwe and those abroad can register abroad to vote. Proof of residents is not a requirement, only proof of citizenship. On election day South Africans abroad present themselves at the polling station, usually the embassy or High Commission with their identity book to vote. Polling stations do not necessarily have to be embassies. Not all countries have embassies in each and every country. In most cases, the number of polling stations set up outside the country is depended upon the number of registered voters in the country as well as the cost and logistical implications. Botswana, Mozambique, Australia, South Africa, the UK, the USA have had more than one polling station in a country, the additional polling stations have been in cities and in institutions other than the official diplomatic missions .

After voting the voter place and seal the ballot in an unmarked envelope which in turn is placed in another envelope marked with the voter's name, ID number and the name of the mission where one voted. The use of two envelopes is to ensure the secrecy of the ballot (the outer envelope is discarded before counting). Election officials take the envelope and place it in a secure ballot box for special votes. The voter's name is marked off the voters' roll for the mission to indicate that one has cast a special vote. These are dispatched to the country and assigned to the correct province and type of election to be tabulated in conjunction with national votes from the national elections.

<sup>16</sup> Ibid  
<sup>17</sup> Anon, (2019). [ebook] Available at: <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf> [Accessed 13 May 2019].



## Postal voting.

For this type of external voting the voter fills out the ballot paper at a place he or she chooses, and the vote is then transmitted by ordinary post, courier or diplomatic pouch to the home country.

Sometimes witnesses are required to confirm the identity of the voter and witness that he or she has filled in the ballot paper freely and without interference. Twenty-five countries use postal voting only the world over<sup>18</sup> and it's among the popular model for external voting.

Zimbabwe uses this model of external voting but restricted to persons on duty in the service of the Government outside Zimbabwe or outside Zimbabwe as the spouse of a person referred to above and so unable to vote at a polling station in the constituency in terms of Section 72 of the Electoral Act. The model is no different from models of a similar nature used elsewhere.

**Twenty-five countries use postal voting only the world over and it's among the popular model for external voting.**

The voter applies to the Chief Elections Officer (CEO) for a postal ballot paper. The application should be accompanied by a letter from the head of Zimbabwe's Embassy or diplomatic or consular mission in the foreign state where the applicant is employed stating the capacity in which the applicant is employed by the Government.

This is sent to the CEO and the application covers all elections if they are running concurrently, (Presidential, legislative and local government). If the Commission is satisfied, regarding an application received not later than noon on the fourteenth day after nomination day in the election, that the applicant is entitled to a postal vote, the CEO will issue a postal ballot.

Where more than one election is to be held concurrently in a constituency, the Chief Elections Officer may enclose in a single envelope all the postal ballot papers for which the applicant has applied together with the appropriate number of smaller envelopes.

On voting the applicant cast the ballot for the preferred candidate and then place the marked ballot paper in the unmarked envelope this is then placed in the bigger envelope with the details of the elections type and constituency. This is addressed and send to CEO not later than noon on the fourteenth day before polling day or the first polling day, as the case may be, in the election. Upon receipt of a covering envelope the CEO shall open it and dispatch the enclosed ballot paper envelope, unopened, to the constituency elections officer for the constituency indicated on the back of the envelope. There is provision in the Act that allows for the observation of this process. They are then sent to the presiding officer of the polling station marked at back of envelope. These are then counted together with other national or constituency ballots.

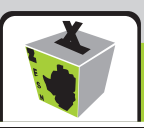
The electoral authorities in Zimbabwe seem to have taken great care to ensure the transparency, credibility and security of the postal voting process through the provisions described above. Postal voting has the advantage that it can be practised from most countries in the world. It cuts on cost of having personal in each country to oversee the administration of the voting process. It can be an efficient and low-cost method if the postal services operate well, efficiently and safely. However, postal services which do not live up to these standards can do damage to the electoral process for external voters<sup>19</sup>. Postal voting in Zimbabwe, as it relates to diplomats, has been practised over a number of elections and the electoral authorities has had ample time to perfect it.

**Postal voting has the advantage that it can be practised from most countries in the world.**

This model is not as difficult as using the personal voting mechanism but has its challenges. Packaging and dispatching of the correct ballots can be cumbersome and prone to errors thus eroding confidence in the electoral process. The period required to get the ballots out to the countries can be limited especially if a country has unreliable postal services. The ballots can only be sent out after the nomination has been closed and the ballots printed.

<sup>18</sup>Ibid

<sup>19</sup>Ibid



Again, the ballots must reach the country from diaspora in time to be counted with the rest of the ballots. If received after election day this may result in contestants querying the credibility of the process especially in tight elections. Just like the personal voting, postal voting can also be challenging in the event of a runoff as the time to prepare for the postal voting is short and can only commence after the results of the first round has been declared and the two contesting candidates known.

Whilst postal voting in Zimbabwe for diplomats in previous elections did not seem problematic, probably

because of less scrutiny on it, it has been mired in controversy when combined with in-country postal voting. In the 2018 harmonised elections suspicions arose during the postal voting process as widespread allegations of police officers being required to vote in front of their superiors and in what appeared to be polling station within cantonment areas<sup>20</sup>.

The inability of the ZEC to fully inform stakeholders and parties about how, where and when postal voting and sorting would be managed caused apprehension and criticism of postal voting<sup>21</sup>.

## The proxy voting

A citizen living or staying abroad may be able to vote by choosing a proxy who casts the vote for the voter at a polling place in the home country, or abroad. The model operates on the same principle as the normal in-country voting operates. The voter is issued with a ballot through a selected colleague who votes on his/her behalf. This is the least used model of external voting on its own and is usually undertaken in combination with either postal or personal voting. It remains cheaper when compared to postal and personal voting but has its own challenges.

The UK apply this model of voting and its restricted to anyone who is registered and can apply for a proxy vote. A voter can apply for a proxy vote in the UK if unable to go to the polling station for one particular election, for example, if away on holiday, or have a physical condition that means he/she cannot go to the polling station on election day or employment taken a voter away from voting. In order to enjoy this type of diaspora voting in the UK a voter must be a British citizen living overseas or a crown servant or a member of Her Majesty's Armed Forces

The person appointed as proxy can only act as proxy if he/she is 18 years old or over (at Scottish Parliamentary and local government elections only this is 16 or over) and they are (or will be) registered for that election or referendum. A person cannot be a proxy for more than two people at any one election or referendum, unless they are a close relative.

A proxy can be a close relative and up to two other people. The appointee will give the proxy the preference they want to vote for.

The proxy should cast the vote at the polling station of the person appointing him/her to vote on their behalf, if one is unable then the proxy can apply for a postal vote on behalf of the appointee.

The challenge with proxy voting is its questioned credibility, there is no guarantee that the vote cast by the proxy and thus possibly even the result of the election reflects the will of the original voter. A proxy could use this procedure to obtain an additional vote and thus infringe the principle of equal suffrage<sup>22</sup>. All votes cast in an uncontrolled environment raise important and controversial issues regarding the secrecy and security of the vote<sup>23</sup>.

Given the challenges with assisted voting in Zimbabwe this will not be ideal. Assisted voting in Zimbabwe, whilst not defined as proxy vote, has had its challenges in the past, it has been alleged that voters were shepherded to vote for candidates not of their choice.

If this was happening in controlled environments it's difficult to see how this process will be ringfenced to avoid forced voting of proxies. It might be open to manipulation.

<sup>20</sup> Anon, (2019). ZESN report on the 30th July 2018 Harmonised Elections.

<sup>21</sup> Anon, (2019). EU EOM Zimbabwe Harmonised Elections 2018 Final Report.

<sup>22</sup> Anon, (2019). [ebook] Available at: <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf> [Accessed 13 May 2019].

<sup>23</sup> Ibid



## Electronic voting

This is a new phenomenon that has been piloted in a few countries especially for out of country voting. There are several variations to this model, the voter may use the internet, telephones or a mobile phone to cast his or her vote. This type of electronic voting is most often referred to as remote electronic voting, or e-voting.

There are different variations to this model of external voting, the most common being e-voting over the internet mostly using a personal computer (PC) with an internet connection. This is referred to as 'remote e-voting' the voter casts his or her vote at any place outside the polling station, it could be in the comfort of his/her home. There are different ways in which electronic means can be used to facilitate external voting. The most challenging would be to allow voters who are abroad to transmit a vote using electronic means, for example, casting a vote at a PC and transmitting it to the electronic ballot box over the Internet<sup>24</sup>.

**This is referred to as 'remote e-voting' the voter casts his or her vote at any place outside the polling station, it could be in the comfort of his/her home.**

It's not a very popular model of external voting and few countries use this model but its gaining support among several EMBs especially for in-country voting. Namibia and Democratic Republic of Congo (DRC) have piloted, with success e-voting for internal elections.

Australia uses this model and electors abroad can fax to enrol to vote, apply to become an external voter, enrol as an external voter or apply for a postal vote. New Zealand on the other hand voters can download the ballot paper and supporting documentation over the internet. Only overseas electors can download the ballot paper. Completed ballot papers can be returned by fax or ordinary post. Only voters abroad can fax their ballot papers; if a ballot paper is faxed from within New Zealand, the vote will not be counted<sup>25</sup>.

External e-voting has its advantages and disadvantages, it reduces the financial cost needed to operate polling stations abroad and the associated cost of mailing ballots in the event the country is using postal voting. It has also offered greater convenience (one can vote in the comfort of his/her home) and in turn boast political participation and voter turnout. The downside are the security risks associated with it. E-voting is susceptible to a range of threats such as hacking, technical glitches, voter impersonation and even system failure. There still exists a psychological bias against internet e-voting when it comes to trust and there is the digital divide among citizens that this type of voting had to contend with. Not all external voters have access to facilities for e-voting and this may in turn disenfranchise them.

**It has also offered greater convenience (one can vote in the comfort of his/her home) and in turn boast political participation and voter turnout.**

## Operationalising diaspora voting: the case for Zimbabwe

It's given that at some point Zimbabwe must implement diaspora voting and this paper has examined some of the models for diaspora voting available.

The model of diaspora voting the country chooses is dependent on several factors being in place. There must be the political will to extend voting to citizens beyond the borders of Zimbabwe.

It is however clear no model of external voting is perfect, and the country must look at a model/s that best suits its political context and at the same time enfranchising as many Zimbabweans abroad as possible.

Whilst acknowledging the challenges related to the cost and the logistics associated with diaspora voting consideration must be given to the all-important principal of universal suffrage and the right of all Zimbabweans, regardless of their situation, to participate in the political processes of their country through elections.

The model of diaspora voting the country can opt for is dependent on several factors being in place. The legal framework must be supportive of the model and the logistical and administrative infrastructure must be in place to support the model.

<sup>24</sup> Ibid

<sup>25</sup> Electoral Commission. (2019). Enrol and Vote from Overseas. [online] Available at: <https://www.elections.org.nz/voters/get-ready-enrol-and-vote/enrol-and-vote-overseas> [Accessed 19 May 2019].



As discussed above, there is no one model that is perfect and as such this paper recommends a mixed model, personal and postal voting, to derive as much benefit from each model. Zimbabwe is already implementing postal voting although its restricted to diplomats abroad. The legal framework is already in place and as discussed in in this paper it does meet international and regional standards governing the conduct of voting.

The electoral authorities in Zimbabwe seem to have taken great care to ensure the transparency, credibility and security of the postal voting process through the provisions of strict voting guidelines that guarantees the secrecy and credibility of the vote. The only challenge, as seen in past elections, is the application of the legal guidelines. Postal voting can be combined with personal voting especially in countries were Zimbabwe has a large population base such as South Africa and England.

Zimbabwean embassies and other secure venues in these countries can operate as polling stations on the polling day. Whilst personal voting can be restricted to countries with large diaspora voters postal voting can be used to reach out to diasporas in countries where the population is small and were the setting up of polling stations for personal voting will not justify the cost.

This does not necessarily imply that the voter has the option of choosing freely the procedure he or she finds most comfortable or suitable; different methods may be available to external voters depending on where in the world they reside and what the reliable voting channels are from that location. Twenty-seven (27) countries in the world have a mixed system using two or more different voting procedures for diaspora voting. Several things must happen if diaspora voting is to be implemented in Zimbabwe:

## The legal provisions influencing introduction of diaspora voting

Currently Zimbabweans abroad are unable to vote mostly as a result of the legal bottlenecks that restrict their right to vote. The legal requirements that require Zimbabweans to provide proof of residents in Zimbabwe in order to register to vote should be amended. The country should amend the voter registration requirements as set out in the in s 23 of the Electoral Act and the 4th schedule of the constitution to allow for diaspora electors to register in constituencies of their choice without the resident requirements.

This should be accompanied by stringent proof of citizen requirements. In the case of South Africa, citizens who live abroad present themselves in person at their nearest South African mission in order to register as voters.

They only require their South African identity document as well as a valid South African passport. No proof of residence is required for one to be registered as voter.

## Administrative Considerations

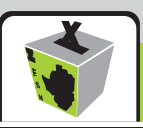
One reason that has been posited by the authorities in Zimbabwe to justify why voting rights are not extended to the diasporas is the logistical challenges related to implementing diaspora voting in an electoral system obtaining in Zimbabwe.

One option is to restrict diaspora voting to presidential and parliamentary elections to get around the logistical nightmares of getting the correct ballots for a specific election to the diasporas. For example, South Africa restricts external voting for municipal elections. Some countries which hold both legislative and presidential elections do not allow external voting for both. For example, Afghanistan applied external voting for its presidential elections in 2004, but it was not applied for the legislative elections in 2005. Azerbaijan allows external voting for legislative elections only, even though the president is directly elected<sup>26</sup>.

Other options to address the challenges associated with logistics related to getting the correct ballots to the diasporas include the creation of external constituencies for the diasporas. Mozambique for example has two single-member constituencies, for Africa and the rest of the world. Ballots are the same for each external voting making is logistically easy to get the correct ballots to the correct country.

The constitution adopted by Cape Verde in 1992 provided for the creation of three districts abroad, with two representatives elected to the National Assembly in each of them one district for voters residing in Africa, another for those residing in the Americas, and another for those living in Europe and the rest of the world. These are options the country can explore as it seeks to extend the voting rights to its diasporas.

<sup>26</sup> Anon, (2019). [ebook] Available at: <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf> [Accessed 13 May 2019].



## Transparency and Credibility

In sum if Zimbabwe is to implement diaspora voting it must ensure that it is conducted in such a way as to meet the requirements of security, transparency and secrecy. It is also desirable that as far as possible all diaspora voters have the same opportunity to vote. The country should put in place mechanisms that address challenges related to geographical location of voters, security in transporting ballot papers, the high costs of external voting and other administrative issues.

Accompanying this planning for diaspora voting processes must consider issues of preventing double voting, such as voters casting a vote both from their home country and from abroad. The country should ensure that diaspora voting, if adopted, is conducted in such a way as to meet the requirements of security, transparency and secrecy. It is also desirable that as far as possible all diaspora voters have the same opportunity to vote.

## Involvement and expectations of stakeholders

It is critical to involve key stakeholders in the design and implementation of diaspora voting models. This creates ownership of whatever framework that is developed and builds confidence in it. If stakeholders are not involved at all in the design of the diaspora voting models they can rightly point to their unfamiliarity with the system. Such claims and concerns can increase suspicions as to the credibility of the voting model, and it is challenging to explain a system and obtain stakeholders' buy-in further down the road. Stakeholders to include are the following:

- political parties and candidates. They should be involved in the design of the system and should sign off on a system the country finally settles for. In addition, they must be able to monitor the voting at diaspora level.

- civil society organizations. They are usually active in the area of voter education, to explain to citizens how diaspora voting works, and in monitoring by observing the implementation of diaspora voting;
- the media, because representatives from the sector help inform the electorate how and why diaspora voting works, thereby fostering transparency and credibility; and
- the judiciary, because it is involved in managing electoral disputes arising from design and implementation of diaspora voting.

## Political considerations

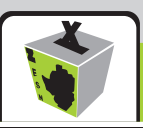
Additionally, there is need to demystify the notion that diaspora voting will only benefit a certain category of political parties and approach it from the view that it's a universal right for every Zimbabwean to participate in elections of the country regardless of their situation and where they are domiciled.

Impediments that precludes other political parties from canvassing votes in certain countries should be addressed. The country should take steps to address the issues that led to the restrictions being imposed in the first place.

## Confidence building measures and voter education.

Add to this, Zimbabwean elections have trust issues that should be addressed before implementation of diaspora voting can commence. Past models of diaspora voting have been mired in controversies. There is need to put in place strong confidence measures to ensure acceptance of diaspora voting.

In addition, there will be need to carry out voter education not only to educate the diaspora on how it works and encourage them to participate but also to inform the voters in-country of how it works and how



## Timeframes for implementation of Diaspora voting

The implementation of diaspora voting can be gradual and can be rolled out in phases. In order to arrive at a model that seats with the electoral system and well as ensuring that there is wide coverage of the voting process there is need to undertake a mapping of where the voting diasporas are located. A complete diaspora mapping has to be done in order to determine the number of Zimbabweans in each country.

This will assist in determining the type of voting methodology to use. The government can work with institutions such as IOM that have conducted similar mapping exercises before and have the networks and infrastructure to do so. If diaspora voting is to be implemented for the 2023 election the process must commence now in terms of putting in place the legal framework to allow for diaspora voting.

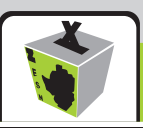
## Conclusion

In sum it is clear from the foregoing that there is appetite for diaspora voting that is shared by key stakeholders in the electoral processes in Zimbabwe. It is also acknowledged that voting is a universal right that should not be infringed upon and should be exercised by all Zimbabweans regardless of their status.

However, the legal framework as provided for currently by the constitution and the subsequent electoral registration does not support this. There is need to align the legal framework with provisions provided for at international level to allow for inclusive rights to voting including the rights of the diasporas to participate in elections of their country.

There are different models that can be applied to give effect to this, and this paper recommends that Zimbabwe considers a mixed model of personal and postal voting for the diasporas. A mixed model for diaspora voting is proposed to derive as much benefit from each model as possible and to ensure coverage of countries with Zimbabwe diasporas is guaranteed.

However, whatever model is finally settled for it must be supported by an effective legal framework, must meet the requirements of security, transparency and secrecy, should involve key electoral stakeholders in its design and should have the confidence of the electorate both at national and diaspora level.



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