



# FACT SHEET

## ELECTORAL LEGAL FRAMEWORK IN ZIMBABWE

### *Background information*

In the past many complaints have been made about the way in which elections have been conducted and there has been increasing pressure to implement significant reforms to the electoral framework to ensure the electoral processes are not manipulated and abused and to ensure that there are genuinely free and fair elections. Proposed reforms include measures:

- to enhance the independence and impartiality of the electoral management body;
- to facilitate unimpeded peaceful political campaigning in the lead up to elections;
- to enforce the obligation of the public media to provide fair and balanced coverage of election contestants;
- to disallow unconstitutional partisan involvement of traditional leaders and security sector personnel in elections;
- to effectively prevent vote buying and intimidation of voters;
- to ensure expeditious and impartial settlement of election disputes;

This fact sheet sets out the constitutional requirements for free and fair election

### *Electoral Rights*

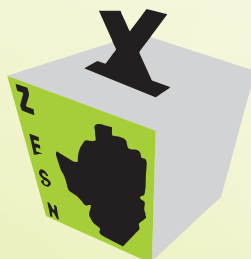
The most important provisions in the Constitution of Zimbabwe on electoral rights are these: Elections must be “peaceful, free and fair”, and “free from violence and other electoral malpractices.” [section 155(1)]

#### *Section 155(2) obliges the State to ensure that:*

- all eligible citizens are registered to vote;
- every citizen who is eligible to vote has an opportunity to cast a vote and must facilitate voting by persons with disabilities or special needs
- all political parties and candidates contesting an election have reasonable access to all material and information necessary for them to participate effectively;
- all political parties and candidates contesting an election are provided with fair and equal access to electronic and print media, both public and private; and
- there is the timely resolution of electoral disputes.

#### *Section 156 obliges the Zimbabwe Electoral Commission to ensure that:*

- whatever voting method is used, it is simple, accurate, verifiable, secure and transparent;



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- the results of the election or referendum are announced as soon as possible after the close of the polls; and
- appropriate systems and mechanisms are put in place—
- to eliminate electoral violence and other electoral malpractices; and
- to ensure the safekeeping of electoral materials.

***Section 157 provides:***

- No amendments may be made to the Electoral Law, or to any subsidiary legislation made under that law, unless the Zimbabwe Electoral Commission has been consulted and any recommendations made by the Commission have been duly considered.
- (5) After an election has been called, no change to the Electoral Law or to any other law relating to elections has effect for the purpose of that election.

Section 239 provides that the Zimbabwe Electoral Commission must prepare for, conduct and supervise elections and must ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law.

## ***Key reforms to legal and institutional framework for elections in Zimbabwe***

### ***Political campaigning***

It is essential that political parties and independent candidates are able to organize and campaign freely and that laws such as the Maintenance of Peace and Order Act (MOPOL) are not applied on a politically partisan basis or so as to impose unreasonable restrictions on political campaigning. The giving of notice to the police about impending rallies is to enable the police to provide security at rallies and to prevent disruption of rallies by members of other political parties. The police must not prohibit rallies for insupportable reasons, such as that the notice of a rally has not provided sufficient details rather than simply requiring the convener to provide supplementary information.

### ***Equitable access to public media***

All political parties and candidates must be afforded their constitutional right to fair access to the public media, taking full account of the recent High Court ruling that ZBC and Zimpapers failed to provide a fair opportunity for the presentation of divergent views and opinions during the 2018 elections. The existing Code of Conduct of Political Parties, Candidates and Other Stakeholders in this regards must be properly applied and enforced by ZEC and the legislation governing the ZBC must make it clear that it must provide fair and balanced coverage to all political parties that are contesting the election. The repealed ZBC Act had provisions relating to a code of conduct which included the requirement for fair and balanced coverage of public

### ***Independence of ZEC***

All provisions that detract from the Constitutional provisions on the independence of ZEC should be removed such as that the Minister must approve ZEC regulations.

### ***Complaints mechanism***

There should be legislative provisions establishing a proper mechanism for ZEC to receive and deal expeditiously with complaints.

### ***Electoral malpractices***

The provisions in the Electoral Act relating to electoral malpractices must be strengthened and then vigorously applied to deal with all instances of vote buying and of political intimidation by way of threats of violence or threats to withhold food and development aid and other forms assistance. The Constitution requires that traditional leaders remain politically neutral (s 282(2)) and chiefs who pressure people to vote for a particular political party are violating both the Constitution and the electoral law. There must also be provisions to prohibit the ruling party from making use of State facilities and resources for its election campaign.

### ***Codes of conduct to ensure political neutrality***

The Electoral Act must provide enforceable Codes of Conduct to ensure the political neutrality in the electoral process by:

- Traditional leaders
- security force personnel; and
- public servants and public officers involved in the administration of elections

### ***The right to vote***

The Constitution grants every Zimbabwean the right to vote. This right must extend to voting by Zimbabweans living outside the country by postal voting and voting by persons in prison and medical staff who will be on duty when voting takes place. Instead of the current opaque system of postal voting for security force personnel who will be deployed outside their constituencies on voting day, a transparent and observable system of special voting must be provided for in the electoral framework

### ***Election observation***

ZEC should have the sole responsibility for inviting observers to observe elections and the Election Observation Committee should be comprised of ZEC commissioners only.

### ***Voters roll***

The voter registration process must ensure that all eligible voters have a proper opportunity to register as voters.

Access to the final voters' roll must be guaranteed for all contestants within a specific time-frame.

Copies of the roll must be availed to party agents at polling stations.

The law must provide for the publication of the de-duplication process to enhance transparency.

### ***Voters Education***

Unduly restrictive provisions on voter education by civil society organizations should be revised.

### ***Domestication of African Charter Democracy, Elections and Governance***

Having become a party to the African Charter on Democracy, Elections and Governance, Zimbabwe should now incorporate the provisions of the Charter into domestic law.