



ZIMBABWE ELECTION
SUPPORT NETWORK

FACTSHEET

FOSTERING ELECTORAL JUSTICE IN ZIMBABWE: FACTS & PATHWAYS

Introduction

Electoral justice, involves the means and mechanisms available in a specific country for ensuring that each action, procedure and decision related to the electoral process complies with the legal framework; protecting or restoring electoral rights; and giving people who believe their electoral rights have been violated the ability to file a challenge, have their case heard and receive a ruling. This fact sheet presents a cluster of issues and relevant recommendations emanating from final reports by Zimbabwe Electoral Support Network (ZESN) as well as other international election observation missions deployed during the 2018 harmonized elections in Zimbabwe. Where deemed useful, the factsheet draws on continental and regional good practices that may imbue the electoral reform pathways regarding fostering electoral justice in Zimbabwe. For purposes of intended good, electoral justice should be mainstreamed through the electoral cycle.

Facts and pathways for electoral justice in Zimbabwe

Fundamental rights and freedoms: protecting or restoring electoral rights

Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA) were instrumentalised in some cases during the elections period in contravention of sections 61 and 62 of the Constitution of Zimbabwe. Therefore, these pieces of legislation became prejudicial in the exercise of fundamental rights and freedoms. It therefore important to repeal provisions of laws that impede freedoms (expression, assembly, media freedoms and access to information) protected by the Constitution, such as those contained in the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA). Specifically, the POSA should be amended to guarantee that if it is invoked it must be ensured that legitimate political freedoms are not denied and that powers afforded to security forces are limited to reasonable and proportionate measures respecting human rights.

The Government of Zimbabwe (GoZ) has signed international and regional treaties, for example the ICCPR and the ACHPR. The Constitution also guarantees the right to vote. Nevertheless, not all Zimbabweans enjoy that right as the Electoral Act (Chapter 2:13) does not have provisions that extend the right to vote to all eligible Zimbabweans. This exclusion includes prisoners and the diaspora. Consideration should be given to permit enfranchisement of Zimbabweans in the diaspora as well as prisoners. Zimbabwe could draw on good practices from South Africa and Cape Verde which have remarkable experience in diaspora and prisoners voting.



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Statutory institutions of electoral justice

There is a perception of partiality of the electoral court in administration of electoral justice due to their mode of appointment and funding of the judicial service commission. In order to address any perceptions of partiality, consideration should be given to amending the Constitution to ensure that the appointments of the judiciary and its funding are free from political influence. Zimbabwe could draw on the good practice in South Africa which safeguards judicial independence as Judges in the various courts are appointed by the President in consultation with the Judicial Service Commission, the leaders of parties represented in National Assembly, and, where relevant, the President of the Constitutional Court.

Timeframe for execution of electoral justice

Mindful of the axiom that “justice delayed is justice denied”, execution of electoral justice should essentially have time frames. As a notable gap, it is important to establish reasonable and appropriate time limits in the legal framework for the proceedings, hearing and determination of pre-election applications filed at the High and the Electoral Courts, in order for matters to be completed and court decisions rendered well in advance of Election Day. In addition, the law should set a timeframe for the finalization of petitions filed with the court on electoral issues, particularly for the National Assembly and local government elections. Zimbabwe could draw on the Kenyan legal framework based on the new Constitution adopted in 2010 which defines time-limits for adjudication of petitions for each election.

Access to electoral justice

In order to increase citizen access to electoral justice, which currently has some limitations, it is proffered that provisions be incorporated for an administrative complaint mechanism within ZEC which will enable voters to seek protection of their rights. In the same vein, access to electoral justice should be strengthened to enable citizens and civil society organizations to file petitions with the ZEC challenging the results of the elections and administrative complaints beyond voter registration issues, in accordance with regional and international conventions on citizens' right to effective remedy.

Alternative dispute resolution mechanisms

The Constitution of Zimbabwe provides for the establishment of alternative dispute resolution (ADR) mechanisms in the form of Multi-Party Liaison Committees (MPLCs). These structures are only established on or after the beginning of the period of six months before the end of the five-year term of Parliament as specified in section 143 of the Constitution). The timing is not in sync with the rest of the electoral process and it impedes this alternative dispute resolution mechanism the capacity to deal with election-related disputes throughout the electoral cycle. It is recommended that the MPLCs should be made a permanent feature in Zimbabwe's electoral processes through introducing provisions to the Electoral Act to institutionalize the MPLCs as forums for dialogue and dispute resolution among and between political parties and the ZEC. South Africa which is closed to Zimbabwe offers a best practice in this regard where the MPLC is operational in-between the elections and jointly deals with issues of reform with the electoral commission well ahead of election time. The few electoral disputes in South Africa are partly attributed to this constructive dialogue mechanism.

In addition, due to the peculiar nature of violations which may be carried out by security services within the electoral cycle, it is recommended that provisions for an Independent Complaints Mechanism as enshrined in the Constitution be activated to allow citizens to have a pathway for recourse if affected by the unprofessional conduct of the security services. Zimbabwe could draw experience and lessons-learned from the Independent Policing Oversight Authority (IPOA) provides for civilian oversight over the work of the police in Kenya.

Conclusion

Electoral justice in Zimbabwe has to be conceived within the electoral cycle continuum in order to be respond to the international and regional norms and obligations to which the country has committed itself to. This begins with safeguarding the fundamental rights and freedoms pertaining on electoral participation, strengthening of institutional mechanisms tasked with execution of electoral justice as well as the process for administration of electoral justice. Access to electoral justice by expanding and strengthening access to institutions and processes of justice is also indispensable for effective electoral justice system in Zimbabwe.

References

- International IDEA (2010), Electoral Justice: An Overview of the International IDEA Handbook*
ZESN Report on the 30 July 2018 Harmonized Elections
IRI/NDI EOM Final Report of the 30 July 2018 Harmonized Elections in Zimbabwe; EU Final Report for the 30 July 2018 Harmonized Elections in Zimbabwe
ZESN Report on the 30 July 2018 Harmonized Elections
SADC Election Observation Mission Preliminary Statement of the Report of the 30 July 2018 Harmonized Elections in Zimbabwe; ZESN Report on the 30 July 2018 Harmonized Elections
ZESN Report on the 30 July 2018 Harmonized Elections
Commonwealth Observer Group election observation mission report of the 30 July 2018 Harmonised Elections in Zimbabwe
Constitutional Court of South Africa. <https://www.concourt.org.za/index.php/judges/how-judges-are-appointed> accessed on 20 October 2019
EU Final Report for the 30 July 2018 Harmonized Elections in Zimbabwe
ZESN Report on the 30 July 2018 Harmonized Elections
EU Final Report for the 30 July 2018 Harmonized Elections in Zimbabwe
- IRI/NDI EOM Final Report of the 30 July 2018 Harmonized Elections in Zimbabwe*
ZESN Report on the 30 July 2018 Harmonized Elections