
Broaden and Secure Postal and Special Voting

By Zimbabwe Election Support Network (ZESN)

There are ways to vote for persons who cannot be present personally in their constituencies and wards on the designated voting days. The more traditional way is Postal Voting and the second is Special Voting. This article analyses both and makes recommendations for *broader use to increase access to eligible voters and greater security to prevent manipulation of these forms of voting.*

Simplification of Procedure

The amendment will restrict postal voting to people (and their spouses) who are outside Zimbabwe on Government business. One development is that the new changes simplify what were previously elongated and bureaucratic procedures for postal voting. The process was also opaque, which made it susceptible to rigging. A significant development is that electronic communication is now permitted to facilitate authorisation for postal voting.

As with all electronic communications, however, security mechanisms are necessary to reduce the risk of abuse and manipulation. It is a requirement to use official electronic mail addresses, authentication by the sender's electronic signature. The email must also be printed in hard copy. Rather than leave it open to interpretation however, is necessary to provide a legislative definition of what constitutes an "official electronic mail address" for the avoidance of doubt.

All postal voting applications must be chronologically recorded. The Chief Elections Officer must keep a list of all postal ballot papers issued and relevant details of the person to whom they were issued. All of this must be made available for free public inspection which should enhance transparency. The voters' roll for each constituency should record clearly that specified individual voters have been allowed to use postal voting. Such persons, once they have voted using postal or special voting should be recorded in such a manner that they cannot vote again in their wards.

Too Restricted

Whilst the simplification of the special procedure will help to expedite the process, it is apparent that both postal and special voting remain too restricted in scope and reach. For example, there are persons who may genuinely be out of the country on non-government business – such as on temporary business, working or seeking medical treatment. Zimbabwe has thousands of persons who work for international organisations – as contracted staff of both inter-governmental and non-governmental organisations - without necessary being designated as being "on government business".

The problems with the restriction are evident where business persons accompany government on a trade mission for example to China. Unless the businesspersons are designated as being outside the country "on government business" they will be unable to use postal voting whilst their government counterparts can.

In addition, there are now literally millions of Zimbabweans living abroad but may be eligible to vote. All these persons are denied the vote simply because they cannot be physically present in the constituencies on polling day. If there were no restrictions, the registered voters in the Diaspora would potentially be able to vote in this way.

There has been much clamour for the so-called Diaspora vote in recent years. It has already been noted in previous articles how Zimbabwe lags behind other countries in the region such as South Africa and Mozambique which permit Diaspora voting and in the case of Mozambique, have taken active steps to register voters in the Diaspora to ensure that they exercise their right to vote. Zimbabwe needs to adopt a similarly open approach to ensure it has a truly representative government.

ZESN acknowledges that there are risks involved in broadening the postal voting facility but rather than close the door completely, the solution would be to introduce secure mechanisms to ensure that votes are authentic and immune to tampering.

Voting By Soldiers

It is also noted that special voting is restricted to electoral officers and members of the "disciplined forces" who are responsible for performing security duties during election days. This refers to members of the Police and Defence Forces who will perform duties during polling days. Accredited election observers will also be eligible to apply for special voting. The applicants must demonstrate that they will be away from their constituencies on electoral duty. Special voting will take place in advance of the main election at special polling stations that are designated by the Commission and will be open to observation by accredited observers. Voting at these special polling stations will be conducted over two days in order to minimise disruption to security duties.

ZESN notes that voting by members of the defence forces and the police has always been contentious because it has traditionally been shrouded in secrecy and there have been allegations that junior members who constitute the majority of these forces are commanded to vote in specific ways. Voting in barracks is itself very contentious as it is not a suitable venue for the expression of free will. The lack of proper observation of such voting processes has also been criticised in the past. To the extent that the designation of district voting centres for such special voting will be done by the Commission, this is a useful development.

No Voting in Barracks

In particular, voting must not be conducted in barracks or police stations. The process must be subject to the same scrutiny by electoral officials, election agents and observers as voting at ordinary polling stations on polling days. It is important that members of the forces vote in peace and with knowledge that they are not required to follow the orders of their superiors. Transparent voting procedures and scrutiny of the process are therefore important supporting mechanisms.

Extend to the elderly, disabled, etc

The only other point is that the special voting procedure, like postal voting, is too restricted to specific categories. It could easily be used to cover vulnerable groups such as the elderly or persons who may be too ill or unwell to attend at polling stations during polling days. In fact both postal and special voting could be used to facilitate voting by persons with disabilities who would otherwise struggle to compete with others on polling days. It is a fact that the long distances and limited means of transportation in rural areas in particular make it extremely difficult for the elderly and sick to exercise their voting rights.

State must be Pro-Active

It has been recognised by the courts in other countries in the region, such as South Africa where the Constitutional Court held that the right to vote is one that requires the state to take a pro-active approach that enables voters to fully enjoy its existence. It is arguable that where it is impossible or difficult for persons to enjoy that right, this could be a violation of individuals' political rights as guaranteed under Section 23A of the Constitution.

It is recommended that just as the state has made special procedures for those who cannot be physically present on government business, it must also account for the voting rights of those who cannot be present by reason of old age, disability or general infirmity. At present the voting procedures which effectively limit the participation of the aged could be seen as discriminatory on the grounds of ageism and therefore potentially in violation of the Constitution. It is recommended that special and postal voting procedures be set out at law to enable the elderly, disabled and ill to exercise their voting rights.

In conclusion:

- ZESN urges the extension of postal voting and special voting to cover other persons who are eligible to vote but are not presently within the categories stated in the law. It is recommended that as a security measure, tamper proof envelopes should be used in postal voting to prevent fraudulent activity.
- Further to the recommendation on Diaspora voting, ZESN urges a reconsideration of postal voting to allow Zimbabweans in the Diaspora who are eligible to vote to use it.
- ZESN recommends that consistent with the recognition of the right to vote in the Constitution, the state must take a pro-active approach that enables voters to fully exercise their right to vote regardless of their location and physical or mental condition.
- It is reasoned that just as the state has made special procedures for those who cannot be physically present on government business or because of duties on polling days it must also account for the voting rights of those who cannot be present for any other legitimate reason including but not limited to old age, physical incapacity or generally ill-health.
- Special and postal voting should be extended, there is also need for security mechanisms to prevent manipulation and rigging. There is need to exercise extra vigilance in the election observation process.

Send comments and feedback to: info@zesn.org.zw or zesn@africaonline.co.zw