

## ZIMBABWE ELECTION SUPPORT NETWORK



### **Priority Areas for Electoral Reforms in View of Impending By- Elections and Constitutional Referendum**

The Zimbabwe Election Support Network has proposed a series of further reforms to the electoral laws of Zimbabwe. However while all of these changes should be put in place prior to the holding of impending by-elections and the constitutional referendum, time may not allow passage of some of these reforms. Accordingly, this paper seeks to prioritize the reforms that should be adopted, firstly for the by-elections and secondly for the constitutional referendum.

#### **PRIORITY AREAS BEFORE BY-ELECTIONS**

A year after signing of GPA, vacancies for elected parliamentary seats are still to be filled, Parliament on one hand claiming that they promptly notified the President's Office about the existence of vacancies in the membership of the Houses of Assembly and Senate while ZEC on the other hand claims that there is no money to hold by-elections and even suggesting that by-elections cannot be held until new ZEC is in place. This is despite the fact that section 39 [2] of the Electoral Act explicitly states that the President and the Commission has to be notified [in writing] by the President of the Senate or the Speaker of the House of Assembly once a vacancy exists in the membership of either the House of Assembly or Senate. On receiving this notification, the President is obliged [within a period of fourteen days] to publish a notice in the *Gazette* ordering a new election to fill the vacancy.

#### **Essential Prerequisites**

For electoral reforms to take hold, certain essential prerequisites must be in place, among which are the need for a complete change in political mindset; the need for a strong, independent ZEC manned by non partisan management staff; the need for drastic overhaul of all laws such as POSA and AIPPA which curtail freedom of assembly, association, speech and media freedom; and, the need to ensure impartiality in the enforcement of law by the police.

Electoral experiences strongly suggest that legal reforms alone without political will to enforce them are not enough as they are at high risk of being flouted with impunity. For instance while comprehensive provisions on intimidatory practices cover all forms of violence and intimidation, these have been rendered ineffectual by partisan police force who fail to enforce them to protect party supporters from one party against violence

by members of another party. Provisions on fair media coverage of elections are only effective if ZEC monitors properly the media and takes action to put stop to breaches.

#### Free Political Environment-Freedom to Campaign

The political environment before, during and after voting must allow political parties to campaign freely and voters to freely express their electoral choices without intimidation and reprisals. There is need to amend POSA to ensure that unreasonable restrictions on political campaigning are removed. The police must apply law properly and impartially. Previous elections such as the 2008 re-run of the Presidential elections witnessed considerable levels of violence and intimidation. When entire party structures are focused on a single by-election, the risk of even more violence and intimidation is likely to be high. ZEC should therefore carefully monitor the situation on the ground before and after elections and where instances of violence and intimidation are reported, should do all in its power to put a stop to such practices.

#### Party Election Agents

During the 2008 elections, violence was directed against agents particularly agents of candidates representing the MDC. To avoid a replay of these political malpractices, ZESN recommends that the names and addresses of chief election agents and ordinary party agents should no longer be published and that party election agents must not be prevented from witnessing polling process.

#### New Zimbabwe Electoral Commission

Since ZEC is a critical body that is constitutionally mandated to ensure that elections are free, fair, transparent, and in accordance with the law, urgent priority should be given to the establishment of a new Commission.

#### ZEC Commissioners

With new Commissioners to be appointed in due course under constitutional amendment 19, it is imperative that the public have confidence that these new Commissioners will perform their duties conscientiously, independently and without political bias. While Constitutional Amendment number 19 has changed somewhat the composition and method for appointing Electoral Commissioners, ZESN feels that the manner in which the chairperson is appointed is not satisfactory. ZESN recommends further changes to method of appointment of Commissions such as removing discretion of President to select Commissioners after Parliamentary Committee has chosen most suitable candidates. There is also need to comply with constitutional provisions that clearly stipulate that Commissioners cannot be members of political parties, that they must relinquish political membership without delay when appointed, and, that they must be non partisan.

#### ZEC Staff

Before by-elections are held, the incoming Electoral Commission should address the issue of their senior management staff, especially that of the Chief Elections Officer who is the most important employee of the Electoral Commission. ZEC staff must be seen to be scrupulously impartial and apolitical in the performance of their duties. There is widespread perception that there has been politicization and militarization of key staff position and that the senior managers are politically biased. The new Commission must move in to replace discredited managerial staff members with new staff that will carry out their duties independently and without political bias. The Commission can obtain staff for its activities during an election from the public service, such as teachers, the health service and the statutory bodies and councils who should operate in various capacities such as presiding officers at polling stations. Only limited numbers of

police officers should be used for security at polling stations and these officers must not be located inside polling stations.

#### Electoral Roll

The accuracy and integrity of voters' roll is an essential component of free and fair elections. ZESN has repeatedly pointed out that the current electoral roll is highly inaccurate and needs complete overhaul before next general elections. Claims of duplicate entries, voters enrolled in wrong constituencies, eligible voters being left off, and, dead persons remaining on roll- continue to be reported. Ideally, an audit of constituency roll should be conducted and anomalies rectified before by-election.

#### Voter Registration

Presently ZEC supervises electoral processes while voter registration is done by the Registrar General. ZESN recommends that the function of voter registration be removed from the Registrar-General's Office and taken over by the Electoral Commission using staff appointed by the Electoral Commission.

#### Ballot Papers

The Electoral Act must be changed to require the Electoral Commission to disclose promptly the number of ballot papers printed for an election and to disclose other such information, for example the number of ballot-boxes issued to each polling station.

#### Availability of Electoral Rolls

In last election, electronic roll was made available to political parties but at considerable cost and not in computer searchable format. ZESN recommends that they be in computer searchable format. ZESN also recommends that roll must be available both in electronic and printed form and be made available free of charge to polling agents, observers and political parties.

#### Counting and Tabulation of Results

Counting and tabulation of results must be properly done within the provisions of the Electoral Act. The counting and collation processes should be done in the presence of candidates or their polling agents. After counting of the votes and posting of results outside polling stations, results must be sent to the Ward Collation Centre where they are collated and verified. The collated results should be posted outside the Ward Centers. These results should be immediately transmitted to the constituency elections officer for collation and verification who will declare the results and post them outside the Constituency Collation Centre. These processes must be done efficiently and expeditiously after polling has taken place with no unreasonable delay in announcing the results. Any recounts of votes should only take place after the announcement of the results.

#### Observers

Independent observation of elections is vital part of fair electoral process as it lends credibility to the process. Existing law relating to observers is highly restrictive and should be reformed before by-elections are held. Local and international observers should be free to observe all by-elections, should be free to observe during the lead up period to the referendum, should be free to observe the voting process and the collation and announcement of results and the period following the announcement of results. The accreditation of observers should fall under the management and control of ZEC. There is also need to remove veto power of Justice and Foreign Ministers to exclude persons or organizations government does not want to observe elections.

### Diaspora Vote

It is not practically possible to allow people who are outside the country to cast ballots in by-elections. Apart from logistical difficulties, it is difficult to see on what basis such persons could be allocated to constituencies, except by providing that they are deemed to be registered in the constituencies in which they were last resident.

### Critical Importance of Media Coverage

Ideally the whole media arena should be opened up so that there can be media diversity in both print and broadcasting prior to by-elections. The ZBC should also be transformed from a highly partisan broadcaster into a genuinely public broadcaster that will cover elections on a fair and balanced basis. The repressive media laws that exist currently must be completely overhauled. In the meantime the Electoral Commission must use the legal powers already incorporated into the Electoral Act to ensure fair coverage of elections and avoidance of hate speech. The Electoral Commission must be pro-active in monitoring the media and ensuring that they abide by the legislation in the lead up to the various by-elections that are due to take place. This should be done in conjunction with the Zimbabwe Media Commission established under Constitutional Amendment No 19.

### Regulatory Powers of the Electoral Commission

The regulatory powers of the Electoral Commission in respect of elections should be more limited and specific. The regulations that ZEC is empowered to make should not be subject to approval by the Justice Minister. The President should not be able to use the Presidential Powers (Temporary Measures) Act to change any of the electoral rules.

### Police Presence

Police must not be deployed inside polling stations. Voters in need of assistance should be helped by relative or friend. Police officers should not be present.

## PRIORITY AREAS ON THE CONSTITUTIONAL REFERENDUM

In this section ZESN prioritizes critical reforms that should be made before the holding of a referendum in order to ensure that the referendum is perceived to be free and fair and that the published result accurately reflects the electoral will of the people of Zimbabwe. Certain changes to the Referendums Act will also be made.

### The Constitutional Reform Programme

Article 6 of the Global Political Agreement provides the process and timetable for the drawing up of a draft new Constitution for Zimbabwe and the submission of the Constitution to a referendum at which Zimbabweans voters will decide whether to approve or not approve this draft.

### Role and Functions of Parliament on draft Constitution

Before the referendum is held the draft must first be submitted to the Second All Stakeholders Conference where the draft will be debated and decisions made on whether the draft properly reflects what the people said they wanted in the Constitution during the outreach program. Thereafter the draft Constitution and accompanying Report is to be debated within Parliament for up to one month. However, it is not clear what Parliament's role and functions are when it debates the draft Constitution. Will the Parliament be at liberty to amend the provisions of the draft or will it simply debate whether the draft reflects what is contained in

the Report. However the draft is in effect draft legislation and under the Constitution the legislative authority lies with Parliament any legislation brought before it. Also worrying is that the process is running behind schedule as the timetable envisages that the draft Constitution would be put to a referendum around July 2010.

#### Constitutional right to free and fair referendum

Paragraph 23A [1][c] of the Constitutional Amendment 19 provides that every citizen is entitled to free and fair referendums whenever they are called in terms of the Constitution or an Act of Parliament. ZESN recommends that relevant electoral reforms be put in place prior to the referendum and that there be a proper legal framework for the holding of the referendum.

#### Place where to vote?

While in Presidential and parliamentary elections, voters were required to vote in wards in which they are registered as voters, section 11 of the Referendum Act seems to require people to vote in the constituencies in which they are registered or are entitled to be registered. For the upcoming referendum it would seem that serious consideration should be given to changing the law to allow people to vote at any polling station throughout the country on the basis of their National Identity Cards rather than in constituencies on the basis of proof of registration as voters.

#### Who can vote?

Any person who satisfies the presiding officer of polling station that he or she is 18 or above and is eligible to be registered as a voter on voters' roll is entitled to vote at a referendum. The decision should be made on the basis of the possession of a National Identity Card [either the metal or plastic disc or the provisional green form] that establishes that the person is a citizen who is over 18.

#### Observers

Independent observation of elections is critical to the holding of a referendum to assess public opinion. Given the heated debate over the process leading to the compilation of the draft constitution and what is likely to be heavily divided opinion over the acceptability of the draft, it is imperative that the referendum process be subjected to thorough independent observation. Local and international observers should be allowed freely to monitor the pre-during and post referendum environment period. Present unreasonable restrictions on observers should be removed before the referendum.

#### Persons conducting the referendum

Comments made above on the need to replace partisan senior staff of the Electoral Commission apply equally in relation to the referendum.

#### Counting and tabulation of results

The process of counting and tabulation of the results must be done efficiently and expeditiously and the results must be announced as quickly as possible.

#### Violence and Intimidation

Given the politically polarized debate over the new Constitution and the heavy pushing of the Kariba draft, there is a distinct possibility of violence and intimidation arising. The comments above on the need for the Electoral Commission to take a firm stance in trying to stop any such activity apply equally here.

#### Voter information and voter education prior to referendum

For voters to decide whether or not they will vote in favor of the draft new Constitution, they obviously need to be aware of the contents of the draft. Simplified written materials encapsulating the essential features of the draft should be circulated for scrutiny throughout the country. There is also need to ensure that the coverage given by the media to the constitutional debate is fair and balanced. Civic organizations must be allowed to circulate information to the public on the constitutional outreach program, the important aspects of constitutional reform, and the voting process in the referendum.

#### Ballot papers and ballot boxes

Comments made above on disclosing the number of ballot papers printed for an election and to disclose other such information, for example, the number of ballot-boxes issued to each polling station apply to the referendum.

#### Regulatory powers of the Electoral Commission

The power of the Electoral Commission to make regulations in respect of the referendum should be more limited and be made more specific and the regulations that they are still empowered to make should not be subject to approval by the Justice Minister. The President should not be able to use the Presidential Powers [Temporary Measures] Act to change any of the electoral rules.

#### Zimbabweans outside country

The new Zimbabwean constitution should have a buy in from as many Zimbabweans as possible and therefore Zimbabweans outside the country should be encouraged to vote in the referendum by facilitating voting by them. There are strong arguments in favor of setting up a reliable, tamper proof system to allow Zimbabwean citizens who are externally resident to vote in the referendum outside the country if they are unable to return to the country to vote. It is also in violation of section 23A of Constitution not to establish system to allow citizens outside to vote.

### CONCLUSION

It remains to be seen whether the new Electoral Commission will be composed in such a manner that it properly performs its duty of ensuring that elections are free and fair. If it is, then a lot of what has been said above may fall into place. But ZESN should continue to push as hard as possible for the implementation of reforms that will help to ensure that by-elections, the referendum and ultimately that the next general election will be as free and fair as possible. there cannot be free and fair elections if political participants treat elections as a form of mortal combat in which you can use any tactics whatsoever to ensure victory.