

PARLIAMENT OF ZIMBABWE

FORM OF PETITION

**TO THE HONOURABLE THE SPEAKER AND MEMBERS OF PARLIAMENT, IN PARLIAMENT
ASSEMBLED**

THIRD SESSION – EIGHTH PARLIAMENT

PRESENTED TO PARLIAMENT ON 22 SEPTEMBER 2015

The Petition of the Undersigned:

Election Resource Centre (ERC) of 3 Tonbridge Way, Groombridge, Harare, whose members are the following:

Kucaca Phulu; Francis Muzeya; Samukeliso Khumalo; Rev. Useni Sibanda; Bishop Sebastian Bakare; Belinda Musanhu; Gertrude Chimange and Trust Maanda

The ERC, having consulted its partners in civil society, is supported in this petition by the following civil society organisations:

Veritas, Zimbabwe Democracy Institute (ZDI), Media Institute of Southern Africa (MISA), Zimbabwe National Students Union (ZINASU), Women and Law in Southern Africa (WLSA), Nhimbe Trust, South Western Region Gender Network, Women's Institute for Leadership , Plumtree Development Trust, Mission to Live Trust, Habakkuk Trust, Zimbabwe Chamber for Informal Economy Association (ZCIEA), Public Policy Research Institute of Zimbabwe (PRIZ), Makokoba Development Trust (MDT), Rural Communities Empowerment Trust (RUCET) and Abammeli Human Rights Trust.

Respectfully shows-

That Your Petitioners:

Being citizens of Zimbabwe;

And whose Funding Method is: donor funding from various organisations;

COGNISANT that the Parliament of Zimbabwe is mandated by the Constitution of Zimbabwe to, inter alia, protect the Constitution and promote democratic governance in Zimbabwe;

Parliament or the Speaker must ensure they take into account the role of the public and civil society in the legislative process relating to electoral reform, as specifically protected by the Constitution in Sections 139 (f) and 141.

CONCERNED at the processes and pace and substantive content of electoral legal reform being implemented since the promulgation of the new Constitution in May 2013;

COGNISANT of the shortcomings in the country's Electoral Law and its misalignment with the Constitution of Zimbabwe;

ALARMED by the administrative lethargy in Government and the piecemeal approach to the review of the Electoral Law;

DESIROUS of seeing electoral law reform that ensures that Zimbabwean Electoral Law conforms to international and regional standards, norms and principles:

NOW THEREFORE the petitioners beseech the Parliament of Zimbabwe to implore the Executive to uphold the Constitution by ensuring that Zimbabwe's Electoral Law is reviewed in compliance not only with their undertakings, but also with the provisions of the Constitution and that a legal framework is put in place that guarantees an undisputed electoral process.

Background

Over the years there have been piecemeal amendments to the Electoral Law, culminating in the General Laws Amendment Bill [H.B. 3, 2015] that is currently before Parliament. The General Laws Amendment Bill was, however, preceded on the 10th of April 2014 by an undertaking made before Parliament by the Hon. Vice-President Emmerson Mnangagwa, that the Executive would table a Bill containing thoroughgoing and comprehensive amendments to the Electoral Law in the following words:

. . . this [Electoral Amendment] Bill [H.B. 7, 2013] does not purport to complete the constitutional alignment process. This Bill is only preliminary to another Bill which I will soon bring before Parliament to complete all the remaining matters in the Electoral Act that require alignment with the Constitution . . . I, therefore, reiterate that this Bill marks the beginning of the constitutional alignment process with respect to the Electoral Act. I undertake to Hon. members, to complete the consultations on the outstanding alignment issues before the end of the year. (Hansard 10 April 2014, Volume 40 No. 53).

As more fully appears in the annexure to this petition, your petitioners appeal to this August House to take into account the following issues for the democratic overhaul of Zimbabwe's Electoral Law:

1. Enhancing the Independence of the Zimbabwe Electoral Commission (ZEC).
2. Reviewing all legislation that negatively impacts on the Political Environment, hence on the electoral process and its outcomes.
3. Reviewing provisions relating to Voters Registration and the Voters' Roll to ensure they enhance the credibility of Zimbabwean elections.
4. Enhancing Voter Education by creating more space for stakeholders other than ZEC.
5. Extending the franchise and the Right to Vote to all citizens of Zimbabwe, wherever they may be.
6. Reconstituting the Electoral Court in compliance with the Constitution.
7. Ensuring that the invitation of Election observers is an exclusive function of the body entrusted with the conduct of the polls.
8. Enhancing the role of ZEC in electoral boundary Delimitation.

Fuller details are annexed hereto (Annexure A).

Petitioners' Plea and Prayer:

1. All members of the Executive took the oath, and swore to uphold the Constitution. The petitioners implore them to reflect this spirit in the work that they do. The Constitution also enjoins Parliament to uphold it.
2. Parliament must insist on a comprehensive set of amendments constituting a review of the Electoral Law, as was the undertaking by the Honourable Vice President Mnangagwa in this August House in April 2014, and as outlined herein.

WHEREFORE your petitioners pray that your Honourable House will be pleased to take their case into favourable consideration, and grant such relief as it may deem fit.

AND your petitioners, as in duty bound, will ever pray.

Dated at Harare, this 22nd day of September, 2015

Substantive Content of Electoral Law:

Your petitioners appeal to this August House to take into account in detail below the issues raised above for the democratic overhaul of Zimbabwe's Electoral Law.

1. Independence of ZEC:

Section 235 of the Constitution provides for the independence of all constitutional commissions, amongst them the Zimbabwe Electoral Commission (ZEC). Your petitioners respectfully submit that, in the light of section 235 of the Constitution, section 192(6) and (12) of the Electoral Act, to the extent that it tends to undermine the guaranteed independence, is patently unconstitutional, and should be repealed from the Act.

2. Political Environment:

Your petitioner is cognisant of the fact that some of the issues relating to elections are housed outside the Electoral Law. It is critical that the 8th Parliament urgently addresses the political environment, which is critical for the conduct of the next Harmonised Elections in 2018 as a matter of urgency, to ensure that the results are not subject to contestation. This it can do by attending to the following:

- Repealing legislation that hampers free lawful political activity, such as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), and also instituting media reforms, and access to information;
- Legislating for an enforceable electoral Code of Conduct for chiefs and other traditional leaders as a schedule of the Electoral Act;
- Incorporating an electoral Code of Conduct for members of the security sector, who have been at the centre of political disputes on elections, in terms of their objectivity and neutrality;
- Ensuring that the enforcement mechanisms in respect of obligations created by law enable the ZEC to hold transgressors to account;

3. Voter Registration and the Voters' Roll:

In line with the principles underpinning voter registration, the legal framework must:

- Enhance principles of voter registration
- Ensure that voter registration is continuous
- Ensure accessibility of the process to people living with disabilities and the blind
- Outlaw the use of voter registration slips
- Guarantee readability and timely accessibility of the voters' roll. Lack of clarity in the Electoral Law on this matter has resulted in complaints by stakeholders, who must be enabled to access to the voters roll in a readable format.

- Provide for a voter registration model that promotes confidence amongst stakeholder

4. Voter Education:

Your petitioners submit that the legislative framework must provide for a voter education framework that is continuous, and provide mechanisms that give life to this principle; and must ensure that the participation of Civic Society Organisations (CSOs) is guaranteed, and not left to the discretion of the ZEC. The legal framework must ensure that such voter education and the materials are accessible to people living with disabilities including those visually impaired.

5. The Right to Vote:

While the right to vote is recognised, the Electoral Law must ensure that the right is recognised and enjoyed by Zimbabweans at home and abroad. In consequence your petitioners submit that the Electoral Law must make explicit provision for the right to vote by:

- Zimbabweans in the Diaspora
- Zimbabweans in prison
- Zimbabweans in hospital especially hospital staff, nurses and doctors who will be on duty on Election Day

6. The Electoral Court:

Your petitioners have grave reservations about the constitutional compliance of the Electoral Court as currently constituted, and submit that it be re-constituted in line with the letter and spirit of section 183 of the Constitution of Zimbabwe which states that “...a person must not be appointed as a judicial officer of more than one court”.

- The Electoral Court must also be decentralised to ensure its accessibility.

7. Election observers:

Your petitioners submit that, in keeping with the letter and spirit of ensuring the independence of the Electoral Management Body (EMB) in administering electoral matters,

- The invitation of observers must be de-linked from the Executive, in particular, the Ministry of Foreign Affairs and be the exclusive domain of the EMB, and
- The Observers Accreditation Committee established by the Electoral Act must be an independent body, in keeping with the independence of the EMB. It

therefore must have no executive appointees. The invitation of observers must be the sole responsibility of the ZEC.

8. Delimitation:

The Electoral Law must emphasise the role of the ZEC in the delimitation of constituencies, to ensure that this does not become an area for contestation in future polls. If the ZEC is to rely on figures supplied by ZIMSTAT, its independence must also be enhanced to ensure that its data is acceptable to all stakeholders.