

**IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE**

CASE NO. /18

In the matter between:

VALERIE INGHAM-THORPE

1st APPLICANT

FIRINNE TRUST operating as VERITAS

2nd APPLICANT

And

ZIMBABWE ELECTORAL COMMISSION

1st RESPONDENT

ATTORNEY-GENERAL OF ZIMBABWE

2nd RESPONDENT

FOUNDING AFFIDAVIT OF VALERIE INGHAM-THORPE

GENERAL

I, **VALERIE INGHAM-THORPE**, hereby make oath and state the following:

1. The facts which I state in this affidavit are within my personal knowledge and are true and correct, to the best of my recollection. Where I make averments on the law, I do so on the advice of my legal practitioners, which advice I embrace.
2. I am an adult female residing at 25 Canterbury Road, Avondale, Harare. I am the First Applicant in the present matter. I am a citizen of Zimbabwe and a registered voter. I depose to this affidavit on my own behalf and also on behalf of the Second Applicant, of which I

am the Executive Director. I am authorized to depose to this affidavit on behalf of all the trustees for the time being of the Second Applicant as well as on behalf of its beneficiaries. I have attached a resolution of the Second Applicant's Board of Trustees as **Annexure "A"**.

3. The Second Applicant is **FIRINNE TRUST**, operating under the name **VERITAS**, that is, the trustees for the time being of the trust who wish to bring this application in the name of the trust, as per Order 2A, Rule 8 of the High Court Rules, 1971. It is trust that works in the field of human rights and the general promotion of the rule of law and constitutionalism in Zimbabwe.
4. The address for service for the Applicants in this matter is care of **MTETWA & NYAMBIRAI LEGAL PRACTITIONERS**, 2 Meredith Drive, Eastlea, Harare.
5. The First Respondent is the **ZIMBABWE ELECTORAL COMMISSION**, a body corporate that is established in terms of Part II of the Electoral Act [*Chapter 2:13*]. In terms of section 4A (1) of the Electoral Act [*Chapter 2:13*] as read with section 319 of the Constitution of Zimbabwe, the Respondent may be sued in its own name, and may perform all acts that bodies corporate may by law perform. The address of service for the Respondent is No. 1 Nelson Mandela Avenue, Harare.

6. The Second Respondent is the **ATTORNEY-GENERAL OF ZIMBABWE N.O** cited herein in his capacity as the chief legal advisor to the Government of Zimbabwe and its representative in constitutional matters. His address for service is New Government Complex, Corner Fourth Street and Central Avenue, Harare.

NATURE OF APPLICATION

7. This is an application for a declaratory order in the terms set out in the draft order, particularly that in terms of section 156 (a) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act the First Respondent has an obligation to conduct an election transparently and in terms of section 3 (2) (g) and section 233 (d) of the Constitution which require the First Respondent to promote transparency in all its operations.

8. In terms of the above provisions that relate to transparency, the Applicants will seek a declaratory order that the First Respondent has a legal duty to make available for public scrutiny all its standard operating procedures, processes, policies and internal manuals which relate to the conduct of elections before the 2018 elections; the names and roles of certain personnel involved in the administration of the election; the criteria by which it assesses the

fairness of electoral coverage by broadcasters, print publishers and public broadcasters for the purposes of Part XXIB of the Electoral Act [*Chapter 2:13*].

9. The principles of transparency upon which the present application is based also transcend domestic law, as they also find prominence in international law. Particularly, the SADC Principles and Guidelines Governing Democratic Elections provide for electoral transparency, and which are binding on Zimbabwe as a SADC member state by virtue of Guideline 3.1.1 of those principles, as well as the African Charter on Democracy, Elections and Governance.

10. I must state that the Constitution of Zimbabwe also recognises international law as an interpretational and substantive guide. From an interpretational perspective, the present application will invite the court to interpret the Constitution and the Electoral Act with due regard to the SADC Principles and Guidelines Governing Democratic Elections and the African Charter on Democracy, Elections and Governance. From a substantive perspective, the Applicants will invite the court to draw on the substantive guidelines and other international law norms which relate to electoral transparency.

11. From the provisions detailed above, and particularly relating to transparency, I contend that the First Respondent has a legal duty

to ensure that electoral systems are transparent; through developing and publishing systems and procedures that voters can understand, and to give candidates and voters access to information to enable them to cross-check electoral procedures, processes and results and that the instructions and training given to electoral officers is in accordance with electoral law. There is also a need for transparency with regard to the personnel who play a role in the administration of the election. Additionally, there is a need to publish the principles upon which the First Respondent will measure the fairness of electoral media coverage, considering that the media is a key component of a free, fair and transparent election. I will deal with the substantive issues in relation to the requirements of the application in detail below.

THE ISSUE OF LOCUS STANDI

12. The present application has been brought by myself as a registered voter and by the trustees for the time being of the Firinne Trust operating as Veritas, in its own name, as provided for under Order 2A Rule 8 of the High Court Rules. There can be no doubt that both I and the trustees of the Second Applicant have legal rights and obligations, which may validly be vindicated in the courts. There

can also be no doubt that the trustees may seek to vindicate the rights of the beneficiaries of the trust, to whom they owe various obligations in fulfilment of the objectives of the trust. In that respect, I would contend that the trustees may properly bring the present application in the name of the trust, and that they have legal standing to bring the present application for the Second Applicant.

THE REQUIREMENTS OF A DECLARATORY ORDER

13. I am advised that in terms of section 14 of the High Court Act, the High Court can issue a declaratory order, provided that the accepted requirements of the grant of such an order are established. In this respect, I am advised that the requirements for a declaratory order are that the applicant must be 1) an interested party in the sense of having a direct and substantial interest in the subject matter and 2) the interest must concern an existing, future or contingent right. I will address these requirements as they relate to the present application in detail below.

14. From a general perspective, I contend that the both I and the Second Applicant have a direct and substantial interest in ensuring that the laws of Zimbabwe are observed, and particularly that the right to a free and fair election as guaranteed by 67 (1) (a) of the Constitution is observed. I am a registered voter and the trustees,

as well as most of the beneficiaries of the trust, are registered voters who have a direct interest in the proper conduct of an election in Zimbabwe. Furthermore, the Applicants also have an interest in ensuring that the First Respondent fulfils its function to ensure that an election is conducted efficiently, freely, fairly and transparently. On that premise, there can be no doubt that the Applicants have met the requirement that it must have a direct and substantial interest for the purposes of the declaratory order sought.

THE APPLICANTS ARE INTERESTED PARTIES

15. I contend that the Applicants are interested parties in that both I and the Second Applicant have a direct and substantial interest in ensuring that the First Respondent adheres to its constitutional duty to deliver a free, fair and transparent election. I am advised that a direct and substantial interest means a real, and not imagined interest, which is not too remote as to be capable of being genuinely protected by law. Further, I am advised that the interest should be one that might result in prejudice to the Applicants if it is not protected.

16. In the present case, I have a direct and substantial interest that my right to a free, fair and transparent election is respected, protected, promoted and fulfilled. I will suffer prejudice if my political

rights are infringed. Additionally, it is clear that Second Applicant works in the field of human rights and legislative monitoring, providing its beneficiaries with information on the laws and regulations of Zimbabwe. In this regard, the trustees, and all the beneficiaries, have a direct and substantial interest in a transparent election and that the First Respondent's operations are transparent, as mandated by section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act. This interest is neither imaginary nor too remote to be capable of protection through the law.

17. Further, the Applicants have an interest in ensuring that the First Respondent adheres to its obligations under Part XXIB of the Electoral Act [*Chapter 2:13*] to monitor the media during and after an election. Like all citizens, I and the trustees of the Second Applicant, as well as the beneficiaries, have a direct interest in ensuring that the media provides equal, measured and unbiased coverage of the electoral process. The First Respondent has a legal duty to protect that right and therefore the Applicants have an interest in knowing how the First Respondent will discharge that legal duty. In that regard, I contend that the Applicants have an interest in ensuring that the First Respondent publishes the guidelines and criteria upon which broadcasters and publishers will

be monitored during and after the election period. For all the reasons above, I contend that the Applicants are interested parties within the context of the requirements for a declaratory order, and may properly bring the present application.

THE APPLICANTS' INTEREST IS BASED ON THE RIGHT TO A FREE AND FAIR ELECTION IN TERMS OF SECTION 67 OF THE CONSTITUTION

18. Having established that the Applicants have a direct and substantial interest in the matter, I further contend that the Applicants' interest arises from the right to a free and fair elections as guaranteed through section 67 (1) (a) of the Constitution. This is a constitutional right which is guaranteed to every Zimbabwean citizen, including myself and the trustees of the Second Applicant as well as its beneficiaries.

19. I further contend that transparency in the processes and personnel of the First Respondent in conducting an election is a key safeguard to the realisation of the right to a free and fair election under the Constitution. Without such information, the right to a free and fair election as guaranteed by the Constitution would be meaningless. In that respect, the Applicants' interest in the orders sought is clearly based on rights which are guaranteed in the

Constitution for myself, for the trustees of the Second Applicant and to all its beneficiaries, which rights are worthy of recognition and protection. I would therefore contend that the present application also meets the second requirement for the granting of a *declaratur*.

20. Having generally established that the Applicants have a direct and substantial interest and that the Applicants' interest is based on a constitutionally protected right, I will proceed to address the substantive aspects of the present application in detail below.

PROVISION OF STANDARD OPERATING PROCEDURES, PROCESSES, POLICIES, INTERNAL MANUALS, AND OTHER INFORMATION WHICH RELATES TO THE CONDUCT OF ELECTIONS

21. I contend that the Constitution provides that an election must be free, fair and transparent. This is captured in section 156 (a) and section 239 (a) of the Constitution which provides that an election must be free, fair and transparent. This position is also reiterated in the Electoral Act, which stipulates transparency as a key principle for free and fair elections. Additionally, section 3 (2) (g) of the Constitution states that transparency is a founding principle of good governance which binds the State and all institutions of government including the First Respondent. Section 233 (d) of the Constitution

states that the First Respondent has a duty to promote transparency and accountability in public institutions.

22. Transparency as a principle of free and fair elections also appears in various international instruments, such as the SADC Principles on Democratic Elections, which is binding on Zimbabwe as a member state of SADC, as well as the African Charter on Democracy, Elections and Governance, which was recently signed by Zimbabwe. All these legal norms present transparency as a key aspect of free and fair elections. In addition, section

23. In respect of the present application, I contend that the First Respondent has a legal duty, being the body created to carry out the functions in section 239 (a) of the Constitution of Zimbabwe, to ensure that the election is conducted transparently and to ensure that the public is kept informed of all matters relating to the work of the First Respondent and the electoral process. This duty, I would contend, means that the First Respondent must disclose the manner under which it will conduct its various functions under the Electoral Act, in the form of all standard operating procedures and internal policies and manuals that relate to the administration of the election.

24. Importantly, transparency must relate to the entire electoral process, including registration, delimitation, nomination, polling and

publication of the results of the elections. All these stages require standard operating procedures and policies which must be published and understood by the public and the public must be able to see that these processes are in conformity with the constitution and electoral law.

25. Therefore, the Applicants will move for a declaratory order that in terms of section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act the First Respondent has a legal duty to disclose all of its standard operating procedures, processes, policies and internal manuals which relate to the conduct of elections and make them available for public scrutiny at least three months before the election.

26. In addition to the general declaratory order, we will deal separately below with specific disclosures relating the various aspects of the work of the First Respondent which require attention in the interest of electoral transparency.

Publication of the names and designations of persons seconded from the Civil Service to the First Respondent during an election

27. The Electoral Act provides in section 10 that the at the request of the First Respondent, the chairpersons of the Public Service

Commission and the Health Services Board established by the Health Services Act [*Chapter 15:16*] (No. 20 of 2004) and the responsible authority of any statutory body or council shall second to it such persons in the employment of the State, the statutory body or the local authority as are necessary to hold such offices and perform such functions as the First Respondent may direct during an election. The Electoral Act also provides that the First Respondent shall select, screen and train all persons seconded to it. In respect of persons being seconded from the Public Service or other statutory bodies, I contend that in the interest of transparency, the First Respondent must publish the names of such persons as soon as they have been seconded, and must also stipulate the guidelines which will be used to select and screen such persons.

28. There is no doubt that the Applicants, as well as the public, have an interest in knowing the names and selection criteria for persons who will be tasked with working for the First Respondent during an election, including during registration of voters. I contend that the constitutional requirement that elections must be conducted transparently should be interpreted to mean that the First Respondent must disclose the selection criteria and names of persons who have been seconded to the First Respondent to perform its functions during an election.

29. In respect of the foregoing, the Applicants will move for a declaratory order that in terms of section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act, the First Respondent has a duty to publish the criteria for screening and selecting persons seconded to the First Respondent during an election, and for other electoral processes such as registration of voters, and to publish the names of such persons once they have been selected as well as the government department from which they were seconded and their role in the electoral process.

30. I further contend that the reference to the Public Service Commission in section 10 of the Electoral Act must be construed as a reference to the Civil Service Commission in terms of section 202 of the Constitution of Zimbabwe read together with paragraph 11(1)(e) of the Sixth Schedule to the Constitution of Zimbabwe. Therefore, section 10 of the Electoral Act does not provide for the secondment of members of the Security Services, which fall under their own separate commissions.

31. Therefore, the Applicants will move for a declaratory order that members of the Security Services may not be seconded to the First Respondent in terms of section 10 of the Electoral Act or any other provision.

Publication of the names and designations of persons to whom the First Respondent delegates voter registration functions and other declarations thereto

32. I contend that voter registration is a key component of the electoral process. In that regard, I must refer to section 18 (3) (a),(b) and (c) of the Electoral Act which provides that the First Respondent may delegate any of its voter registration functions in terms of the Electoral Act to a member of the Civil Service. In certain circumstances, the consent of the Civil Service Commission is required.
33. It is essential for the transparency of the election that the public is aware of persons who have been tasked with conducting a key electoral process such as voter registration, especially if they are not in the employment of the First Respondent. Where the Civil Service exerts a level of control over the process of delegation, it is also in the interest of the public to know when members of the Civil Service have not been granted the consent to assume roles for the First Respondent.
34. Therefore, the Applicants will seek a declaratory order to the effect that the First Respondent has a legal duty to publish the names, designations and government departments of persons to

whom voter registrations functions have been delegated as well as the names, designations and government departments of any members of the Civil Service for whom consent was not granted.

35. It is also essential for the integrity and transparency of the election that the First Respondent retains direction and control over the voter registration exercise even when it delegates or directs members of the Civil Service to conduct voter registration on its behalf.

36. Therefore, the Applicants will move for a declaratory order that the First Respondent must retain direction and control over any member of the Civil Service to whom it delegates its voter registration functions.

Production and publication of a manual for persons who act as election officers during an election

37. The Electoral Act provides that persons may be seconded from the Public Service or statutory bodies to work for the First Respondent during an election. It is beyond debate that such persons are otherwise unfamiliar with the conduct of an election, and would most likely require extensive education on how they ought to conduct themselves during an election. In the interest of giving the critical principle of transparency some meaning, I contend

that it is important for the First Respondent to prepare and publish a manual for such persons, in order to allow them to efficiently conduct the election as required by section 239 (a) of the Constitution. Without such a manual, and without its publication for public scrutiny, the election can never be efficient or transparent as required by the Constitution and the public cannot know whether the election is being conducted in accordance with electoral law.

38. In that regard, the Applicants will move for a declaratory order that there is a legal duty on the First Respondent to produce and publish such a manual to ensure that the election is conducted in an efficient and transparent manner as required by the Constitution.

Prompt publication of names of persons who have been removed from the voters roll, and the reasons for such removal

39. The Electoral Act provides that the First Respondent may remove persons from a voters roll by reason of disqualification or death. In this regard, and by virtue of the provisions of section 156 (a) and section 239 (a) of the Constitution which all provide for transparency in the electoral process, I contend that the First Respondent has a legal duty to publish the names of any such persons who might have been removed from the voters roll, and the reasons for their removal.

40. Whilst the Electoral Act only provides that the First Respondent must give any person notice, and publish such notice, relating to persons which it intends to remove from the roll, it does not provide for publication of a complete list of persons who would have been removed from the voters roll. In this regard, there is obviously a need for the public to be made aware of such removal, in the interest of transparency in the voters roll.
41. For this reason, the Applicants will move for a declaratory order that in terms of sections 156 (a) and 239 (a) of the Constitution, the First Respondent has the legal duty to publish the names of persons removed from the voters roll and the reasons for such removal.
42. There have been instances in the past where persons have turned up on polling day, only to find that their names do not appear on the voters roll. In this regard, it is important in the interest of transparency that the First Respondent publishes lists of persons whose names have been removed from the voters roll as soon as they have been removed.

Publication of standard operating procedures for compilation, collating and transmission of results in terms of section 37C of the Electoral Act

43. The Electoral Act provides for the compilation, transmission and collation of results from every polling station within a ward to various centres depending on whether the returns are for local authority, national assembly or the presidential election. Whilst the Act provides where any returns must be transmitted to, and specifically provides for personal transmission in the case of a polling station to a ward centre, there is no such specific provision for transmission from the ward centre to the constituency centre. The Act merely places an obligation on the wards election officer to cause to be transmitted the returns, without specifying the mode of transmission.
44. In that respect, it is clear that the Act does not stipulate the actual procedures through which ward election officers are expected to transmit the results to constituency centres. This also applies to transmission to provincial command centre and the national command centre. There is obviously no clarity on the mode of transmission of the returns, specifically whether the transmission will be electronic or personal. All these are issues for which the First Respondent must publish standard operating procedures, in line

with the requirements of section 156 (a) and section 239 (a) of the Constitution which provide for transparency in the electoral process.

45. In that respect, the Applicants will move for a declaratory order that in terms of section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act, there is a legal duty on the First Respondent to publish the standard operating procedures relating to compilation, collation and transmission of results from polling stations.

Publication of standard operating procedures for the sealing of ballot boxes, voters rolls, and others papers

46. The Electoral Act provides at section 64 that after counting is completed, the presiding officer shall close and seal the aperture in the ballot box, and make up into separate sealed packets several other papers. However, the Act is vague in some respects and does not specify in what manner the voters roll should be sealed. The practice in the past has been to seal the voters roll in the Presidential ballot box. This has, in the past, caused problems for candidates contesting for other seats besides the President who wish to bring an electoral petition after the election and need access to the voters roll to do so. Such candidates have been denied access to the voters roll on the basis that they are not challenging the presidential

election. These issues could be resolved by the First Respondent publishing standard operating procedures relating to the sealing of electoral papers which clarify the proper procedure and ensure that voters rolls, ballot papers, tallies of votes and other electoral papers are sealed in such a way that they may be made available for checking for the purposes of electoral challenges.

47. In that respect, the Applicants will move for a declaratory order that in terms of section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act, there is a legal duty on the First Respondent to publish the standard operating procedures relating to the sealing and storage of voters rolls, ballot papers, tallies of votes and other electoral papers, which also ensure that such electoral papers are available for checking for the purposes of electoral challenges in terms of the electoral law.

Publication of information on voter education exercises to carried out by the First Respondent

48. I contend that the First Respondent has a duty to provide adequate, accurate and unbiased voter education in terms of the Electoral Act. Specifically, the Electoral Act provides that the First

Respondent, not later than one week after the publication of a proclamation or notice fixing the dates of an election, the First Respondent shall begin a programme of voter education directed at the electorate in the election. In this respect, I contend that the First Respondent, in the interest of transparency, ought to publish a programme on the intended voter education exercises it intends to carry out, including the geographic locations in which such exercises will be carried out.

49. The provision of information on intended voter education exercises would ensure that the public is kept aware of the work of the First Respondent in conducting the election, and in ensuring that the Applicants, its beneficiaries and all other voters are aware of any voter education exercises that will be carried out in their area. Considering that there are limitations on provision of voter education by other entities that are not accredited by the First Respondent, the public will heavily rely on the voter education to be provided by the First Respondent, making it critical for the First Respondent to publish information of its intended voter education exercise. On the basis of the above, the Applicants will move for a declaratory order that the First Respondent has a legal duty to publish information relating to its intended voter education exercise.

Identification of chief election agents and election agents as submitted by candidates

50. The Electoral Act provides that a candidate may appoint a chief elections agent, who may in turn appoint election agents. These names of such persons must be presented to the First Respondent before, on or after nomination day but not later than seven days before polling day. There is no doubt that election agents are key individuals in relation to the transparency of an election, such that the Applicants, the Second Applicant's beneficiaries and every voter must be kept aware of the persons who are election agents on Election Day.

51. In the interest of transparency, I contend that the First Respondent is under an obligation to ensure that all election agents are clearly identifiable on Election Day. In that light, the Applicants will move for an order that in terms of sections 156 (a) and section 239 (a) of the Constitution, the First Respondent has a legal duty ensure that election agents are identifiable on Election Day by way of providing lanyard identity (ID) cards to election agents to be worn on Election Day.

Publication of names and roles of employees and organs of State that provide assistance to the First Respondent in terms of that section and other declarations thereto

52. Section 10A(3) of the Electoral Act states that the State and any person, body, organ, agency or institution, belonging to or employed by the State, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission. For the sake of transparency, it is essential that it is made publically known which persons, bodies, organs, agencies or institutions belonging to or employed by the State will provide assistance to the First Respondent in terms of this provision and what the nature of that assistance will be.

53. Therefore, the Applicants will seek a declaratory order that the First Respondent has a legal duty to disclose to the public any person, body, organ, agency or institution, belonging to or employed by the State, who provides assistance to the Commission in order to protect its independence, integrity and dignity as well as the precise nature of the assistance.

54. The purpose of this provision is clearly for the sole purpose to protecting the First Respondent's independence, integrity and

dignity and nothing else. Therefore, assistance provided to the First Respondent in terms of this provision may only be for that purpose and not for any other purpose. The delegation of logistical or other functions that are directly related to the discharge of the First Respondent's mandate to administer the elections cannot be said to be directed at protecting the First Respondent's independence, integrity or dignity. If anything, the involvement of other organs of State in administering of the elections, outside of the provisions that specifically provide for how that may be done, would have the opposite effect of undermining the First Respondent's independence, integrity and dignity. Therefore, I aver that section 10A(3) cannot be used as a legal mechanism by which the First Respondent can delegate its logistical responsibilities or any of its functions of administering the election to other organs of State. Any such delegation of the First Respondent's mandate to administer the election or secondment of employees of the State to assist the First Respondent with the discharge of its mandate must be done in terms of the provisions of the Electoral Act that explicitly provide for that.

55. Therefore, the Applicants will move for a declaratory order that the First Respondent may not delegate any of its functions regarding

the logistics or any other aspect of its mandate to administer elections by way of section 10A(3) of the Electoral Act.

Declaration on the legality of the National Logistics Committee and publication of membership, mandate, and operating procedures of the National Logistics Committee

56. It is clear from the First Respondent's report on the 2013 harmonised elections that the National Logistics Committee (NLC) played a central role in the management of that election. An extract of the report is attached hereto as **Annexure "B"**. The full report will be made available if need be. The report states at page 36:

“Because of the magnitude of the task of resource mobilization, the Commission relied on assistance from other state institutions that came together to set up a National Logistics Committee (NLC) which met regularly to coordinate mobilization of all the above resource requirements and also to supervise similar structures at provincial and district levels.”

57. The report does not state precisely what roles the NLC played in the management of the election but it acknowledges that the First Respondent could not have delivered on its mandate without the support of the NLC, at both institutional and individual level.

58. The report states that the NLC comprised of “high level management” from various government Ministries and that assistance was also provided by, among others, the uniformed forces of the Zimbabwe Republic Police, the Air Force of Zimbabwe and the Zimbabwe Defence Forces.

59. I contend that there is no legal basis for the First Respondent’s delegation of the logistical aspects of the management of the electoral process to the NLC or any other organs of State.

60. I contend further that where staff are seconded to the First Respondent from the Civil Service during the election period it must be done in terms of section 10 of the Electoral Act, which requires that all staff are under the direction and control of the First Respondent. This is essential for ensuring transparency and accountability during the election period. However, it does not seem that the members of the NLC are under the direction and control of the First Respondent, especially since the NLC consists of high level management from other State organs rendering meaningful submission to the direction and control of the Respondent unlikely.

61. I further contend that there is no legal basis for the involvement of the uniformed forces in the logistical management of the electoral process since section 10 of the Electoral Act only

provides for members of the Civil Service Commission and the Health Services Board to be seconded to the Respondent.

62. Additionally, the actual membership of the NLC at the national level and at provincial and district level remains obscure; the NLC's role and mandate from the First Respondent is unclear and its operations and accountability to the First Respondent remain opaque. Since the NLC is clearly central to the administration of the election it is essential that there is transparency around these issues.

63. Therefore, the Applicants will move for a declaratory order that in terms of section 3 (2) (g), section 156 (a) section 233 (d) and section 239 (a) of the Constitution of Zimbabwe and section 3 of the Electoral Act, as read with section 10 of the Electoral Act, the First Respondent may not delegate any of its mandate to the NLC unless all members of the NLC have been seconded to the First Respondent in terms of section 10 and are under its direction and control; that members of the Security Services may not be seconded to the Respondent or be involved in the administration of the election; that there is a legal duty on the First Respondent to publish in advance of the election the names, roles and government departments of all personnel that make up the NLC, or any other

State organ that provides assistance to the Respondent; that there is a legal duty on the First Respondent to publish in advance of the election a clear explanation of the legal and institutional mandate of the NLC including details about its role in every aspect of the administration of the election and how the First Respondent will maintain oversight, direction and control over the NLC; that there is a legal duty on the Respondent to publish all standard operating procedures, processes, policies and internal manuals that relate to the NLC.

Publication of guidelines on how the commission will assess the fairness of electoral media coverage

64. In terms of the Part XXIB of the Electoral Act, the First Respondent has a duty to monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of the Electoral Act. This is obviously an important function of the First Respondent which speaks to transparency of the election process. Whilst the Electoral Act only stipulates that the First Respondent has a role to monitor the Zimbabwean media, there is not much clarity on how the First Respondent should go

about doing so. In that respect, there is obviously a need for the First Respondent to publish the criteria and processes which it will put in place in order to perform its function of monitoring the Zimbabwean media during an election period. In that respect, the Applicant will move for a declaratory order that the First Respondent has a legal duty to produce and publish its criteria for monitoring media houses, in the interest of transparency in the electoral process as provided for under sections 156 (a) and 239 (a) of the Constitution.

65. **WHEREFORE**, and on the basis of the above, the Applicants will move for the declaratory orders as set out in the draft order, together with costs of suit.

SIGNED IN HARARE ON THE OF APRIL 2018

Signed:

VALERIE INGHAM-THORPE

Before me:

COMMISSIONER OF OATHS