



Is Zimbabwe Ready for 2018 Elections? - Key Indicators for Election Preparedness

Policy Brief - February 2018

Introduction

Elections are a fundamental tenet of democracy and good governance. Implementation of elections in accordance and adherence to international best practice is critical because elections fulfil the requirements of the social contract. The social contract allows for citizens to freely and clearly articulate their choice for government. This can only be guaranteed when conditions for freedom of expression, choice, movement and association exist without hindrance or stifling. Ahead of the 2018 elections it is necessary to assess whether the political environment is conducive for the signing of the social contract. Is the Zimbabwe Electoral Commission (ZEC) in a position to deliver free, fair and credible elections in 2018? Do eligible voters have the capacity to exercise their right? This brief seeks to answer these questions and offer recommendations to cover existing gaps.

Background

The 2013 harmonised elections were conducted amidst several challenges including: the unavailability of the voters' roll, administrative challenges regarding special voting, political intolerance, hate speech, inadequate funding, excessive ballot papers, restricted access to public media by the opposition, limited voter education and voter registration. Common Market for East and Southern Africa (COMESA), Southern Africa Development Community (SADC), and the African Union (AU) regional observer missions reports note these challenges. From 2013 onwards, the Zimbabwe Electoral Commission (ZEC) and the Government of Zimbabwe attempted to address the provision of electronic copies of the voters' roll during by-elections, introduction of polling station based voter registration and voting. In addition, to implement Section 133 of the Electoral Act, the Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Republic Police (ZRP) and the Judicial Services Commission (JSC) established presence in by-election sites to curb and investigate election related intimidation and violence cases.

As the country moves towards harmonized elections in six months, it is important to assess the pre-election period of the electoral cycle and pre-requisites that must be undertaken ahead of the election.

Conditions for Free, Fair and Credible Elections?

Electoral reform processes require holistic implementation for establishment of necessary conditions. The environmental, legislative and administrative frameworks should be addressed to promote credible electoral processes.

Outstanding Reform Issues

Issue	State of preparedness	Tentative deadline for reform
Alignment of laws →Independence of ZEC →Right to vote for all Zimbabweans (diaspora, prisoners and the hospitalised) →voter education to include other stakeholders →Establishment of the Electoral Court	Low	March 2018
Political environment →Role of traditional leaders in electoral processes →Equal access to media →Role of security sector in electoral processes →Implementation of Section 133 of Electoral Act	Low	April 2018
Administration →Operational plan →Human and financial resources (recruitment, training, budgeting) →Corporate governance →Ballot printing, procurement, results transmission procedures →Stakeholder acceptance and consultation →Regulations for voters' roll inspection and polling	Low	March 2018
Preparedness for elections	Low	June 2018

Outstanding issues narrative

1. The Legislative Framework

The legal framework relates to legislation and policy that governs the electoral framework. This includes the Constitution of Zimbabwe, the Electoral Act and other legislation on the administration of electoral processes. The legislative framework must provide clear guidelines on the conduct of elections. In addition, the legislative framework should be aligned and admissible in the courts of law. The law must allow for the exercise of bill of rights without conflict.

The European Court for Human Rights(ECtHR) Guidelines for Reviewing a Legal Framework for Elections, 2013 state that key electoral law provisions, such as those related to candidacy and mandate allocation, "must be circumscribed, with sufficient precision, by the provisions

of domestic law” in order “to guarantee a fair and objective decision and prevent any abuse of power on the part of the relevant [state] authority.”¹

Laws pending Alignment or Reform

1. Enabling law on diaspora vote - Section 67 of the Constitution of Zimbabwe provides the right to vote to all Zimbabweans regardless of their location.
2. Law on the enforceability of the Code of Conduct for Political Parties and Candidates.
3. Law on the role of traditional leaders in electoral processes and governance.
4. Law on voter education that allows for continuous voter education and civic education by ZEC and other stakeholders.
5. Laws inhibiting ZEC independence, i.e., Section 192(6), 9, 12.
6. Laws on access to justice through the Electoral Court, Section 160 of the Electoral Act. Section 183 of the Constitution of Zimbabwe demands the court to be an independent court.

2. The environmental framework

The political environment refers to a conducive operating space for the Election Management Body (EMB), political parties, candidates and citizens in general. The political environment should guarantee fundamental freedoms, intimidation and violence should be absent.

The state-society relations

Freedom of movement is essential to cultivating a neutral political environment. The November 2017 military intervention in Zimbabwe has created questions on whether freedom of movement and association can be guaranteed. State-society relations continue to be complicated and filled with uncertainty. The presence of the military in civilian life limits the freedoms of citizens. The State has not guaranteed citizens that the military will refrain from interfering in civilian affairs before, during and after the harmonised elections. As a result, political environment for free, fair and credible elections is compromised.

Equal Access to Media

An independent, impartial media that affords equal access to all political parties and candidates is necessary for a free and fair election. Six months before the anticipated election, the state media continues to show bias on behalf of the ruling party.

Curb intimidation of citizens by traditional leaders

Traditional leaders are the governing authorities in rural communities. However, traditional leaders have abused their authority and reports of intimidation have been recorded. ZEC, the Zimbabwe Human Rights Commission and Zimbabwe Republic Police have taken little action to curb the intimidation. Chapter 15 of the Constitution of Zimbabwe states that Chiefs should not be involved in political affairs or operate in a partisan manner.

¹ Guidelines for Reviewing a Legal Framework for Elections, 2013, <http://www.osce.org/odihr/elections/104573?download=true>

3. The administrative framework

State of preparedness - interrogating the actual versus the target

ZEC has a 5 year strategic plan which details objectives, targets, gaps and opportunities. ZEC's strategic plan (2016- 2020 notes several objectives, including;

- ✓ To move from 20% to 80% of fully resourced offices (staff, vehicles, equipment and housing) by 2020;
- ✓ To move from 30% to 60% mobilisation of financial resources requirements by 2020;
- ✓ To be 100% compliant to the cooperate governance framework by 2020;
- ✓ To increase stakeholder acceptance level by 35% by December 2020;
- ✓ To move from 50% to 75% compliance in all electoral processes by 2020; and,
- ✓ To advocate for the adoption of at least 50% legislative reforms by December 2020.

As the 2018 elections approach, questions arise regarding the extent to which ZEC has achieved the objectives defined in the strategic plan. ZEC has failed to adequately plan for factors influencing the electoral environment. Section 155(1) mandates the State to ensure elections are peaceful, free and fair. To this end, ZEC must create and advocate for a conducive electoral environment. Fundamentally, ZEC must establish benchmarks for peaceful elections which will assist in holding the state accountable.

Strategic Plan	Progress and Gaps
Human and financial resources	<ul style="list-style-type: none"> • ZEC recruited permanent staff for all districts and the headquarters including some key positions. ZEC recruited for the Directors of Voter Education and Voter Registration, Chief Elections Officer and Provincial and District Election Officers. • ZEC also recruited voter registration and voter education staff on a temporary basis for the duration of the implementation of BVR. • ZEC continues to be supported financially by the Government of Zimbabwe mainly. In 2017, ZEC attracted support from UNDP, IFES and EISA among others, for technical assistance and procurement. • Government has budgeted 132.2 million USD for the 2018 harmonised elections. However, ZEC had budgeted for 274 million for the elections in 2018.
Corporate governance	<ul style="list-style-type: none"> • Procurement, including that of BVR kits and AFIS, is conducted by the state procurement board. This may compromise ZEC independence and effectively corporate governance.
Stakeholder acceptance	<ul style="list-style-type: none"> • Stakeholder acceptance continues to grow. ZEC established platforms for engagement with political parties, civil society organisations and media to consult on electoral processes. Due to the platforms being initiated and led by ZEC, there was limited demand driven consultation and stakeholder buy in. Consequently, the platforms were halted due to challenges consulting political parties.

Compliance in electoral processes	<ul style="list-style-type: none"> • ZEC lacks a road map to elections as of January 2018. This makes it difficult to track compliance. With regards to the electoral cycle and the legislative framework, ZEC has complied with implementation of voter registration, voter education, recruitment of staff and procurement of necessary equipment.
Legislative reforms	<ul style="list-style-type: none"> • ZEC has a law initiation role in legislative reforms through Section 157 (4) of the Constitution of Zimbabwe. • ZEC advised former President RG Mugabe to proclaim new voter registration in September 2014. • ZEC did not formally respond to Parliament of Zimbabwe regarding the petition by the ERC on electoral reforms. • ZEC has not proactively sought or advocated for legislative changes. ZEC has adopted a passive approach of implementing law. Examples include the law on “aliens”, diaspora vote.

Policy Recommendations

1. Alignment of the Electoral Act to the Constitution of Zimbabwe.
2. Level the environmental playing field to allow all political parties and candidates to access media and campaign freely.
3. Improve the administrative framework through adherence to international election management principles.

Conclusion

A myriad of outstanding issues require urgent attention ahead of the harmonised election in 2018. The brief outlines outstanding legislative, administrative and environmental issues. Failure to address these issues ahead of the elections has the effect of rendering the election unconstitutional. Urgent understanding of these indicators will allow for ZEC and election stakeholders to enhance preparedness.

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