



CRITIQUE - ZEC 2018 Harmonised Election Report

1. BACKGROUND

The Zimbabwe Electoral Commission has released its report on the 2018 harmonised elections which should be tabled before Parliament in terms of Section 13 of the Electoral Act. The submission, long overdue, should be within six months of the conduct of the election. ZEC has indicated that, in accordance with Section 241 of the Constitution, the report was submitted to the Minister of Justice, Legal and Parliamentary Affairs in February 2019.

Section 13 of the Electoral Act clearly stipulates that the submission of the report should be within six months of the election and must not only be to Parliament, but to the President, the President of the Senate and to candidates who contested the election. There is no indication that these election stakeholders received the report within the stipulated legal timelines.

A request for the report by the Election Resource Centre (ERC) in March 2019 was rejected on the basis that the report would only be made public once it was tabled before Parliament. There is no provision in the law that places such conditions of making an election report by a public body on a public process like elections available for public scrutiny.

That notwithstanding, the election report now awaiting tabling before parliament contains an interesting narrative of what happened in the lead up to during and just after the 2018 harmonised elections. The narrative is rich in quantitative aspects about the election processes.

2. CONTENTS OF THE REPORT

While the legal framework for elections is silent on what should be contained in an election report by an election management body, international best practice dictates that such reports should ordinarily contain the following major elements; what the law provides, what happened, the challenges encountered and successes achieved and recommendations on how to improve the quality of future elections broken down into what the election management body commits to doing and what other stakeholders will need to do. Such a presentation of the report allows for an accountable account of the election process.

3. PRESENTATION OF THE REPORT

The presentation of the 2018 harmonised election report emphasizes the quantitative aspects of the election process. The report highlights what happened in the absence of matching what happened against what should have happened. Principles for elections in Section 156 (a) of the Constitution include simple, accurate, verifiable, secure and transparent. Section 155 (1) (a) also notes that elections must be peaceful, free and fair and free from violence. These principles as they relate to the quality of elections are mentioned five times collectively. The context of mentioning the principles is in passing and in concluding remarks. Little attention is given to what ZEC did to give effect to the principles of what should be constitutional elections.

Postal Voting

More specifically, the report narrates the postal voting process indicating that there were isolated incidences which had the potential to disrupt the process. Apart from explaining the incidences, there is no attempt to test what happened with the process against what the law provides, save to say that attempts to challenge the process in the courts were dismissed. In the report, ZEC misses an opportunity to exhibit that their conduct was in full compliance with the law, if it was.

In the report, ZEC acknowledges some concerns raised by election stakeholders about the conduct of electoral processes which is positive. However, the acknowledgement is not followed by an indication of how the election management body proceeded to address the concerns in a responsive manner as expected of all public institutions in line with Section 3(2) (g) of the Constitution.

Electoral Reforms

ZEC also sums up key reforms promulgated into law two months before the election through Electoral Amendment Bill of May 2018 which are rightly celebrated. However, there is no analysis of the implication of late implementation of reforms on the conduct of the election.

Funding for Elections

In terms of funding, ZEC laments the availing of a limited budget for the conduct of election processes. Only 56% of their total budget was funded by treasury. A budget cut of 44% is quite significant and the expectation would have been that ZEC would outline which processes suffered as a result of the cuts. The report only indicates that there were no budget overruns without talking about how the quality of elections could have been affected as a result of the limited funding. Furthermore, the report indicates that additional resources were availed through treasury without mentioning how much such resources were and what the money was used for.

Results Management

On results management, the ZEC report narrates how presidential election results were transmitted from the ward to the district centre and yet the regulations provided for all results

to go through the constituency centre. While the inconsistency in the transmission of the results is noted in the report, no explanation is given on why the results used different routes from those outlined in the legal provisions.

Recruitment of Election Officials

One contentious issue among election stakeholders was recruitment of election officials. The ZEC report outlines training and deployment of officials while omitting the recruitment part of the individuals trained and deployed. In the spirit of transparency, an indication of where officials were recruited from the numbers from each sector would dispel suspicion on who administers elections in Zimbabwe.

Recommendations

The report contains good recommendations on timely disbursements of sufficient funds as requested. ZEC, however, does not recommend greater independence in managing the funds by proposing the repeal of provisions in the Electoral Act and more specifically Schedule 6 and 7 of the Act which limits financial autonomy of ZEC through Ministerial approval requirements on allowances, procurement, maintaining financial records and auditing.

On provisions of voters' rolls, the Commission appears to concede that there was no legal basis to deny access to what they call a provisional voters' roll which, worryingly, they refused to supply to ERC after a High Court order was secured to compel them to do so. The recommendation betrays the real reason for the appeal by ZEC against the judgement which was its inability to act in accordance with the law. In hindsight, ZEC had no legal argument to deny the ERC access to the provisional voters' roll in May 2018.

Regarding the accreditation of observers, ZEC recommends for more funding for observer kits in order to ensure that all observers are furnished with the same regalia. In terms of prioritization of reforms, the independence of the Accreditation Committee should have been addressed. An independent election management body should not ordinarily be comfortable with an accreditation committee whose representation is divided between the commission and members appointed by the Executive, an interested party in the election.

Given the time taken to produce the election report, more of the many observations made by accredited international and local observers and stakeholders at the election review conference organized by ZEC could have made it into the recommendations formally made by ZEC in their report.

4. KEY ISSUES NOT ADDRESSED

Role of Traditional Leaders

The report did not address issues that originated from the influence of traditional leaders in politics, ignoring recommendations from invited international observers and the law of the land. The Constitution states in Section 281 (1) that traditional leaders must not-

- (a) *be members of any political party or in any way participate in partisan politics;*
- (b) *act in a partisan manner;*
- (c) *further the interests of any political party or cause.*

Furthermore, there is a High Court Order (Case No. HC 1718/2018) that states that the partisan support of traditional leaders in politics and elections is unconstitutional. Given the high profile nature of the issue of traditional leaders in terms of creating a level playing field for the election, ZEC could have dedicated some effort towards reporting on the matter in the report.

The Electoral Environment

The Constitution of Zimbabwe Section 239 (a) (iv) and the Electoral Act state that the ZEC is mandated to deliver a free and fair electoral environment. The report does not provide material explaining what ZEC did to comply with the legislative provision for constitutional elections.

The report also failed to address the actions of the security sector on August 1, 2018 that resulted in the fatal shooting of 7 protestors, who were protesting. What steps will the Commission take in ensuring the clear defining of the role of the security sector in elections which impairs the credibility of any election?

Partisan Distribution of Presidential Schemes

The partisan distribution of aid and/or Presidential Schemes directly influences the electorate, and impairs the playing field for elections. The Electoral Act outlaws bribery or any act that unduly influences the ability to exercise one's political rights freely under Section 136 (1) (2). Government or Presidential Schemes when deployed during an election season and distributed on a partisan basis undermines the freeness and fairness of the election. Raising official observations made on a level playing field for elections would have opened the door for recommendations aimed at enforcing punitive measures in cases of violations of electoral offenses.

Postal voting

Offences in relation to postal votes are stated in the Electoral Act Section 80 (1). While the report notes some disturbances in relation to postal voting, the narrative around the process does not explore fully what should have happened against what happened.

Voter Registration

The report did not indicate what the Commission will do to address the gap between the numbers of registered voters in urban cities (where there are more potential voters) in relation to the number of BVR kits distributed.

5. CONCLUSION

The ZEC report as formally submitted to Parliament is therefore an elementary narration of the electoral process which is weak on objective analysis of the electoral process, selective in its pronouncements on legislative compliance on the administration of elections and mute on substantive recommendation for reforms which could easily improve the credibility of elections.

By limiting analysis and interpretation of electoral processes in the context of principles for elections, the report creates an impression that elections are conducted merely for purposes of holding them. Based on the recommendations made in the report, there is a real possibility that elections will continue to be conducted with limited or no reforms.

The report is therefore a missed opportunity for ZEC to secure a solid foundation of confidence among election stakeholders.

The ERC remains ready to continuously engage ZEC to improve the quality and credibility of future electoral processes in Zimbabwe.