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Electoral reforms?

Taking stock of observer mission findings in 2018 ahead of 2023!
Gaps, Opportunities and Key Demands





1. Introduction

Following the proclamation of by-elections by President Emmerson Mnangagwa the Citizens in Action Southern Africa undertook an initiative of taking stock of electoral reforms based on various recommendations from observer mission reports and expert analyses on the possible measures for the improvement of the electoral environment in Zimbabwe. It is the best model towards understanding evidence-based shortcomings, gaps and opportunities for electoral reform going forward. Continuous improvement of electoral processes not only reinvigorates the fluidity of everchanging societies but is a pre-requisite for growing democracies towards strengthening and buttressing citizen aspirations as expressed periodically during elections. It goes without saying, from the onset, that elections are a process, consisting of an election cycle.

Improvements to all aspects and seasons of the cycle are fundamental. This is best done by taking stock of previous electoral processes, recommendations thereof and feasibility for local circumstances. Heading towards 2023, it is fundamental for election stakeholders to have a clearer understanding of new demands for consistent and informed advocacy.

2. Recent improvements to the legal framework

Prior to the 2018 harmonized election, a myriad of changes were made to the legal framework governing elections in Zimbabwe. The 2018 Harmonized election by the Zimbabwe Electoral Commission (ZEC)¹ succinctly highlights them as,

- **Section 5** – ensuring that gender is mainstreamed into electoral processes. This amendment obligated the Commission to advocate for regulations to ensure that women have fair opportunities to campaign and register to vote and are thus protected from among other vices election-related violations. It also requires the Commission to provide adequate, accurate, gender sensitive and unbiased education.
- **Section 23** – extends the period for which a voter is absent from his or her constituency from 12 months to 18 months, the period considered when deciding whether a voter's name should be retained on or deleted from the voters' roll. Previously a voter's name could be removed from the voters roll if he or she was deemed not resident in the constituency for a continuous period of 12 months. The extension to 18 months gave voters a longer period during which they can be away from their constituency without their names being removed from the voters' roll.
- **Section 40F** – allowed foreign donations for purposes of funding voter education activities to be directly channeled to Civil Society Organizations (CSOs) as opposed to channeling them through the Commission as was the case prior to the amendment.
- **Section 22A** – authorized the Commission to establish more polling stations for an area that had a large voter population in order to speed up polling on voting day;
- **Section 32** –related to the removal of duplicates from the voters roll and allowed its alignment to processes brought about by the introduction of biometric voter registration. The amendment also outlawed persons from registering as a voter more than once on the voters roll for any polling station. This amendment authorized the Commission to remove duplicates or multiple names from the voter's roll. Thus, a voter's name appeared only once.
- **Section 126** – related to the withdrawal of a candidate after printing of the ballot paper. This addressed the cumbersome process of deletion of a candidate's name after a ballot paper had been printed. Previously, the law mandated the Commission to delete, from the ballot paper, the name of candidates who withdrew after the ballot paper had been printed. This process had logistical and financial challenges on the Commission.
- **Section 59** - was to allow the visually impaired voters to be assisted to vote by a person of their choice, without the Presiding Officer necessarily being present.
- **Section 26A** – was amended so that registration of voters closes two (2) days after Proclamation, as opposed to 12 days after sitting of Nomination Courts as was the case prior to the amendment. It therefore meant that

1. 2018 Harmonised Election Report (1).pdf

the registration of voters for the purposes of the 2018 Harmonized Elections closed on 1 June 2018. Those who registered after the cut-off date would be considered for future elections.

- **Section 52A** – was amended such that the number of ballot papers printed for any election would not exceed more than 10% of the number of registered voters eligible to vote in that election.
- **Section 133 A** – widened the definition of intimidation to include misleading another person by stating that he or she could determine or discover how they had voted.
- **Code of Conduct for Political Parties and Candidates**. This was broadened to include application to stakeholders like CSOs, civil servants, traditional leaders, and members of the security establishment. The Code also introduced the issue of setting up Multi-Party Liaison Committees at least 12 months prior to the expected date of the election, as opposed to the previous provisions where MPLC's were established after the sitting of the Nomination Courts. The Act was also amended to provide for a new section, 40K, that allows observation of elections by the Zimbabwe Human Rights Commission (ZHRC).

3. What gaps remained? Priority areas and possible quick wins as given by election observers

3.1. Election monitors addition to observers

The role of monitoring elections in Zimbabwe is primarily with ZEC. However, initial and contestable understanding of the Constitution of Zimbabwe is that it also provided for monitoring by the ZHRC. However, the new provision of in Section 40K of the Electoral Act reduces ZHRC to observers. To this effect, Section 40 (K) of the Act requires Zimbabwe Human Rights Commission observers to be accredited by the ZEC and requires the ZHRC to submit its draft report to the ZEC for comment and ZHRC “shall pay due regard to any comments the Commission may make on the draft.”

Therefore, the reallocation of observer role for ZHRC must be challenged and a demand be made for their monitoring role as initially proposed in section 133 of the Electoral Act.

3.2. Traditional leadership role in politics (ensure their independence in the conduct of their activities)

Sections 280, 281 and 282 of the Constitution provide for the establishment, status, role, principles, and functions of traditional leaders. Section 281 (2) (a) provides that traditional leaders “must not be members of any political party or in any way participate in partisan politics.” This has been upheld by the courts: Election Resource Centre v Charumbira & 2 Others ZWHHC 270. Section 287 of the Constitution also requires the establishment of an Integrity and Ethics Committee through an Act of Parliament.

This Act must provide for the establishment, membership and procedures of the Committee to develop and enforce integrity and ethical conduct on the part of traditional leaders and to deal with complaints against traditional leaders.

The Traditional Leaders Act has no provisions conforming to these constitutional requirements.

3.3. Vote buying

The Electoral Act bars the use of state resources as patronage to gain unfair advantage for the incumbent in an election. However, previous elections have witnessed the use of state resources such as government vehicles, buildings, moneys, and active involvement of government workers in campaigning for the incumbent. Food aid, agricultural inputs from the Presidential scheme and benefits from the social welfare department form basis to gain support for the ruling party. ZEC was not legally empowered to enforce the provisions within the Electoral Act.

There is need to introduce deterrent sanctions to mitigate the abuse of state resources for the incumbent to level the playing field. SADC PF Norms and Standards for Elections in the SADC Region are clear that in ‘promoting the integrity of the electoral process, parties should not use public funds in the electoral process. The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage

3.4. Active Multi Party Liaison Committees (MPLC)

The Multi Party Liaison Committees are critical to monitoring and evaluating the electoral environment. There should be insistence on their long term if not permanent sitting.

3.5. Enforcement of code of conduct

Section 157(1)(c) of the Constitution explicitly provides for a Code of Conduct for political parties, candidates, and other participants in an election. However, in practice there were no clear enforcement mechanisms in the event of violating the code of conduct. In Zambia for example, there are enforcement mechanisms that can lead to the disqualification of a candidate from participating in the election in the event of violating the code of conduct. If fairness is guaranteed, the Code must provide for deterrent provisions that can be instituted before the election and enforcing mechanisms to increase the political cost of violating the code of conduct for political parties, candidates,

and other participants.

4. Results Management system (paper trail and timing)

The Electoral Act contains several provisions relating to results management and results announcement which are not consistent with each other and cross-reference non-existent sections (section 110(3)(a) cross references a non-existent section 65(3)(i) and section 37C.) Results transmission and tabulation is not done transparently and cannot be monitored in real time. The method of results transmission and tabulation is not publicly and fully specified in advance or disclosed during the process in the Electoral Act or regulations. There are no adequate provisions for verification of the results to allow monitoring to be done confidently outside real-time. There is no clarity in the law as to whether the posting of results outside polling stations constitutes an official declaration of the results and whether the media can publish these results and keep and publish running tallies. There is no transparency as to the qualifications of those tasked with recording and tabulating results. There is no requirement that ZEC publish spreadsheets of the results of all elections down to polling station level, both for the main spreadsheets and those compiled through the double accounting system presently legislated, or for transparency and verifiability in the compilation of these spreadsheets. There is no requirement for ZEC to publish the tallies on the returns at each level of tabulation, and to do so as soon as they are calculated, to allow real-time monitoring. There is no transparency when inconsistencies in the double accounting system are detected and how they are corrected. There is no provision for an independent audit or check of the results. The Act requires results of the presidential election must be announced within five days, rather than without delay or forthwith (section 110(3)(h)). Only the result is announced. There is no requirement for ZEC to disclose logistical problems which might cause a delay in announcing the results or what is to happen if the results are not declared within five days. There is no clarity on what is meant by the “result” of an election i.e., whether it refers to the person elected, or the numbers reflected in the tallies or both.

5. Delimitation process regulations

Section 124(1)(a) provides that the National Assembly consists of 210 members elected by secret ballot from 210 constituencies into which Zimbabwe is divided by a process of delimitation. The Constitution assigns responsibility for delimitation to the ZEC (section 161(1)) and requires that this be done once every ten years and as soon as possible after a population census. If delimitation is completed less than six months before an election, the boundaries so delimited do not apply to that election. It will be very difficult if not impossible for the ZEC to comply with these parameters. The constitutional link with the census does not take account of the fact that delimitation must be done based on the registered voters (as the provision, below, requiring a parity of voters in each constituency suggests) and not the overall population determined by a census. The Constitution (section 161(6)) requires that each constituency should, as far as is possible, have an equal number of voters and there should not be more than a 20% variation in the number of registered voters in each. The 20% variance is a departure from international standards which suggest no more than 15% variance. The methodology of delimitation is not detailed in the law. The Constitution requires that the ZEC lay a preliminary delimitation report before the President who must in turn lay it before Parliament. There is no provision outlining the role of Parliament in relation to the report. The role of the President in receiving the report is not clear, but the President, independent of Parliament, may refer the report to ZEC. There are no provisions for the right to appeal the ZEC’s decision on boundaries.



6. Accreditation of Observers. Include how other Constitutional Commissions will work on elections

There is dominance (or perceived) of the executive in accreditation of observers. Section 239(i) of Constitution stipulates that ZEC has the function to ‘accredit observers of elections and referendums. In contradistinction, the Electoral Act mandates the Observers Accreditation Committee (OAC) to accredit observers. The Accreditation Committee as provided by section 40 of the Electoral Act reflects the dominance of the executive. It is composed by persons nominated from the office of the President and Cabinet, Ministry of Foreign Affairs and Ministry responsible for Migration. Section 40 (l) of the Zimbabwe Electoral Act shows that the Minister responsible for foreign Affairs can veto the accreditation of a foreign observer. Parliament must amend section 40 (l) of the Zimbabwe Electoral Act in line with the Constitution.

6.1. What new opportunities have emerged?

There are now developments since the 2018 election which allow for improvements in the electoral process if taken advantage of,

- Appointment of the Zimbabwe Media Commission (ZMC) Commissioners.

- Repealing of AIPPA; establishment of favorable laws
- Submission of CSO Model Law on elections to Parliament of Zimbabwe.
- Licensing of new TV and Community radio stations and their operationalization.
- Voter Education- funding, expanded stakeholders, procedures, and continued engagement.
- Voter Registration, access to the Rolls, open data, continuity procedures.

7. Delineating the legal, administrative, and environmental frameworks

The gaps and opportunities fall within different frameworks. Understanding the different frameworks allow for strategic targeting of advocacy and lobbying for improvements as opposed to blanket demands.

7.1. Legal Framework

Beyond a complete and comprehensive overhaul of the Electoral Act, there are a few areas left to target for reform in the legal framework.

7.2. Administrative Framework

A majority of the proposed demands are and should be targeted to ZEC as administrative measures.

7.3. Environmental Framework

Leveling the play field is largely a product of political will and must be targeted as such.

8. Hard to get, controversial at law but critical- for the long fight

8.1. Independence of Election Administration (ZEC)

8.2. Demilitarization of ZEC

8.3. Diaspora vote

In light of the above, taking note of the impending By-elections CIASA, looks forward to highly competitive, credible and peaceful By-Elections which will pass the test of integrity and adhere to the standards of international best Practices.

About CIASA

Citizen in Action Southern Africa (CIASA) is registered apolitical and citizen's rights focused organization established by a group of young human rights defenders and activists coming together to defend, promote and empower marginalized and disenfranchised community groups in its diversity to fully enjoy their rights. The organization was registered in 2020 as a Trust. The **CIASA** formation was meant to tackle important issues at a scale where it can achieve significant and measurable impacts. The **CIASA** was formed after the realization that marginalized community groups are being left behind in the empowerment, democracy, and governance; and national development discourses of several Southern African countries owing to lack of specific targeted interventions and investments for vulnerable groups particularly youth and women. The team who established **CIASA** also recognized the solidarity and movement building crisis ailing countries in addressing national crisis especially around lack of proper democratic and economic governance interventions targeting diverse youth and; women and girls in marginal setups such as hard to reach rural areas, resettlements and other economically excluded areas. **CIASA** was established immediately to provide oversight and think tanking around the welfare and rights of marginalized groups with a sole purpose of ensuring progressive realization and enjoyment of rights by all. The organization work with citizens in low living standards where social harmony for marginalized women is threatened. Access to basic social services such as water and sanitation, health and education have turned out from being a right into a privilege in both rural and urban areas. **CIASA** is therefore influencing the policies as it relates to the rights of women and girls in their diversity and advance the rights-based and pro-people approach to political, social and economic empowerment through well-thought citizens or community driven and led reforms premised under the pinnacles of transparency, accountability, democracy and good governance. The organization is there to create and facilitate space for citizens and communities to have a collective voice to challenge oppressive systems and structural barriers and in turn effectively participate in key decision-making processes across the cultural, political, social, environmental, technological and economic spectrum. **CIASA** communicates and measure its results based on its theory of change framework which seeks to defend, promote and empower citizens in all spheres of life.



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