

Zimbabwe United Nations Universal Periodic Review, 2011

Stakeholders report submitted by

**Zimbabwe Election Support Network
(14 March 2011)**

Elections – The Right to participate genuine periodic elections (ICCPR/ UDHR)

Against the backdrop of flawed elections since 2000, Zimbabwe Election Support Network (ZESN) continues to highlight issues for reform by the Zimbabwe government to ensure full enjoyment of the right to participation.¹ The absence of an enabling environment to hold free and fair elections resulted in the conduct of flawed elections in the June 2008 Presidential runoff. The outcome was heavily contested and this resulted in the formation of an Inclusive Government in February 2009 following the signing of a political agreement by the three main political parties in the country in September 2008. In this report ZESN identifies the gaps in terms of the legislative and administrative framework that have inhibited the conduct of genuine, credible democratic elections in the country and makes recommendations on reforms that must be urgently addressed if the country is to hold future free and fair elections.

1. Establishment of an Independent and autonomous Electoral Commission

Sound election administration is critical in ensuring confidence in the conduct of elections. Thus the Constitution needs to clearly provide the framework for the Election Management Body's functions, capacity and autonomy. These functions should be holistic, giving it the sole mandate and responsibility of running elections, they should include all aspects of election administration including delimitation, nomination, voter education, voter registration, and inspection processes particularly raised concerns. They should also cover regulation of the media and political party funding. Processes should ensure that the public and the legislature are given adequate time to debate and engage.

Commissioners should be appointed through an open process that includes public nominations which Parliament through the Standing Rules and Orders Committee shortlists on the basis of qualifications and integrity before ceremonial appointment by the President.

There is need for Zimbabwe to address the staffing of its Electoral Commission as there is widespread perception that there has been politicization and militarization of key staff position and that the senior managers are politically biased. The new Commission must move

¹ Zimbabwe Election Support Network, **Report on the Zimbabwe 29 March Harmonised elections and 27 June Presidential Run-off**, 2008

in to replace discredited managerial staff members with new staff that will carry out their duties independently and without political bias

2. Independent Electoral Court

The Constitutional and legislative framework for elections provides the regulatory environment in which elections take place. Transparent and effective conflict resolution and management mechanisms are essential. In Zimbabwe, the judiciary is the primary mechanism for dispute resolution. It is critically important that the judicial officers (be they judges or magistrates) are independent, impartial and objective and that they are able to adjudicate fairly and efficiently, given the pressures and demands of the electoral period.

Currently the judges of the Electoral Court are seconded during election periods from the High Court, in accordance with the legislated nomination and appointment. It is recommended that an Electoral Court with permanent status, staffing and resources be established in Zimbabwe.

3. An Electoral Code of Conduct

The ability to campaign without fear of violence is a basic political right that requires vigilance and commitment on the part of the parties, their supporters, the security forces and the EMB. The development of a legally enforceable Code of Conduct is one means of contributing to the development of free and fair electoral practices. This code of conduct should prohibit and prescribe certain forms of behaviour on the part of government, the EMB, political parties, their supporters and the media. Issues which should be covered include but are not limited to:

- Parties may not use language or act in such a way that may provoke violence, or the intimidation of candidates, members of parties, representatives or supporters of parties, candidates or voters.
- Parties may not publish false or defamatory allegations in connection with an election in respect of a party, its candidates;
- No person may remove conceal or destroy any voting or election material;
- No one may offer an inducement to join or not join a party, to attend or not attend a public meeting, rally, demonstration, or public political event, to vote or not vote in a particular way;
- No one may carry or display weapons at a political meeting;
- No one may unreasonably prevent access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support.

4. Political Finance

The financing of political parties is generally considered to be one of the critical factors for the success of multiparty democracy. In Zimbabwe, the Political Parties (Finances) Act [Chapter 2:11] of 2001 prohibits foreign donations to political parties or individual

candidates. The Act further provides for State funding of political parties. The management of political parties in Zimbabwe, especially during election periods, is an expensive affair. The current threshold for accessing public funding in Zimbabwe only benefits large parties such as ZANU (PF) and the MDC, to the exclusion of smaller political parties. Recommendations include:

- Management of public finance to political parties should be the mandate of the Electoral Commission.
- Reasonable limits must be placed on donations to political parties.
- Political parties must be required to present to an independent electoral commission and subject to oversight by Parliament, annual audited accounts in respect of funds received from the State.
- The Minister of Justice should not be involved in determining who qualifies for public funding and in allocating the funds to political parties because there is a clear conflict of interest and lack of transparency and accountability.
- Lastly, it is necessary to review the current threshold for qualification for public funding.

5. Electoral System

Post election conflicts currently bedevilling Zimbabwe have generated fundamental questions about the extent to which the First-Past-the-Post electoral system is still relevant in Zimbabwe. The interim period should be viewed as an opportunity to search for electoral frameworks that accommodate both the losing and winning political parties in government. Contemporary Zimbabwe also needs an electoral system (Hybrid Model) that is sensitive to issues of gender disparity in key positions of political authority and minority populations.

6. Diaspora Vote

Taking into account the extensive migration of Zimbabweans for various economic and political reasons, the issue of the right of Zimbabweans in the Diaspora to vote is pertinent. Zimbabweans in the Diaspora should be entitled to vote. However, appropriate mechanisms must put in place to ensure the transparency and integrity of the vote.

7. Voting for Differently Disabled

In the case of the disabled, there is urgent need for voter registration methods, voter education strategies and Election Day mechanisms that ameliorate the different types of challenges this special group of people encounters. For example voter education, election campaign and polling materials are not tailor-made for people with visual disabilities. Very few, if any, attempts have been made to ensure that such special needs are catered for in all election administration processes including the production of Braille ballot papers and polling station access.

It is also important that the whole electoral process is receptive to people with special needs. People living with disabilities should be able to participate in elections as voters, candidates and election administrators.

8. Special Voting mechanisms

Voting is every citizen's right. No eligible national citizen should be deprived of registration or the right to vote as a result of being homeless, ill, out of the country, in prison, etc. Yet, under Zimbabwe's electoral laws only citizens outside their home constituencies on official national duty can cast postal votes, a requirement that is widely viewed as disenfranchising more than three million Zimbabweans living abroad. Concerted effort should be taken to correct this constitutional anomaly. Transparency in the conduct of the current postal voting mechanisms is also critical as it is not open to any scrutiny, and continues to be challenged as open to manipulations. Allegations that security forces using this system are not able to cast secret ballots, and cast further votes on elections continue to be made in each election.

Special voting procedures must be put in place to allow every Zimbabwean in whatever circumstances to exercise his right to franchise. Procedural options which the Zimbabwe government should be urged to consider include:

- Advance voting for election administration staff, election observers and security forces.
- Out-of-country voting where citizens in the diaspora are entitled to cast their ballots at special polling stations at the country's embassy or by post.

9. Voters Roll

The accuracy and integrity of the voters' roll is an essential component of democratic elections. The current electoral roll is highly inaccurate and needs complete overhaul before next general elections. Claims of duplicate entries, voters enrolled in wrong constituencies, eligible voters being left off, and, underage and deceased persons on the roll continue to be verifiably reported.² Ideally, an audit of constituency roll should be conducted and anomalies rectified before the next election is held.

The Government of Zimbabwe and the Election Commission should look at the following key areas of the voters roll:

- Draw up a new voters' roll in Zimbabwe that will go a long way in improving the accuracy, completeness and transparency of the voters' roll. The process should be transparent and inclusive to ensure that all eligible persons are registered;
- Increase transparency of the voter registration processes such as deletion from the voters' roll as the process is currently out of public scrutiny and the criteria for deletion is left to the discretion of the Constituency-Registrars;
- The voters' roll should be accessible and readily available for inspection to the public to increase transparency and confidence in the voters' roll.

Results Announcement

Counting and tabulation of results must be properly done within the provisions of the Electoral Act. The counting, collation and verification processes should be done in the presence of candidates or their polling agents at all levels beginning with the polling station.

² For example, Zimbabwe Election Support Network, **Voters Roll Observation Report**, 2010

These processes must be done efficiently and expeditiously after polling has taken place with no unreasonable delay in announcing the results.

Security of Electoral Officials

In the previous elections (2008), electoral officials were victimised and one was killed³ (Ignatius Mushangwe) and some were arrested. The fear instilled by such actions would inappropriately contribute to unprofessional conduct by ZEC officials compromising their impartiality. All Electoral officials need assurance from the government and all its departments that they are guaranteed of their security before, during and after an election.

³ The Herald 04/10/2008 **ZEC Officials appear in Court**

The Herald 04/08/2008 **ZEC Officials arrested**

Zimonline **Voting Officials Arrested in police crackdown**

Nehanda Radio 2008 **Polling Director found dead**