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## Towards Elections that Work in Zimbabwe

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## EXECUTIVE SUMMARY

This paper discusses the issue of flawed elections in Zimbabwe – where and why they have failed to meet the standards of credibility, fairness and freeness – and explores how to make them work by focusing on key issues and providing key messages for stakeholders and stockholders to engage with. The paper takes a forward-looking approach, focusing on long-term electoral contestation in the country and working within the current electoral system (as opposed to proposing a new one). The goal is to find a solution to the so called "national question" in Zimbabwe.

The problem with elections in Zimbabwe is that electoral outcomes are not reflective of the will of the people and the system that manages elections conduces to manipulation of the people's willingness, ability and capacity to vote. The ruling party ZANU PF is a classic case of a political leadership that uses elections as a device to merely legitimate their illiberal and often highly oppressive regime. Key concerns include 1) voter apathy and low participation; 2) perceptions of the electoral processes as being ineffective in manifesting voters' wishes; 3) fear, naked power politics, violence, and impunity (e.g., the architecture of violence around elections); 4) militarisation and lack of citizen confidence on the Zimbabwe Electoral Commission (ZEC); and 5) the region's continuous endorsement of fraudulent electoral processes.

The resolution of electoral issues in Zimbabwe must take into account that it is a multi-causal phenomenon, involving multiple challenges that cannot be solved by one solution. Changing systems and processes is just one step in shifting a political culture of intolerance, violence, rigging and aversion to genuine and fair electoral contestation. Elections are a multifaceted and multi-stakeholder affair, involving not just the government and civil society, but also opposition parties and other organisations. This situation in Zimbabwe is ongoing (and has been for decades), but it is important to maintain hope for change; to propose practical solutions for short-term while at the same time working on medium- and long-term solutions.

The gold standard for elections in Zimbabwe is outlined in the country's constitution, but the current political context in the country makes it difficult to achieve fair and credible elections. The paper recommends addressing issues of trust, polarisation, violence, fear, and apathy associated with elections in Zimbabwe, as well as ensuring maximum inclusion and participation and insulating institutions of the state from political party control and bias. It also suggests that legal and administrative reforms alone may not be sufficient to determine election outcomes and that the focus should be on working under the current conditions, with a long-term view in mind.

It is premature to criticize Zimbabwe's first-past-the-post electoral system as inefficient and that discussions about changing the system to proportional representation are premature and a distraction. The electoral system in Zimbabwe needs to be properly tested before any decisions are made on whether or not to change it to proportional representation or any other system. However, there are some necessary legal and administrative reforms needed to make the elections more free, fair, and credible. These include 1) reviewing the Electoral Act to ensure greater independence of ZEC; 2) making sure that the composition of the ZEC is independent; 3) allowing all eligible citizens to vote (including those in the diaspora); 4) ensuring the independence of the media; 5) undoing ZEC's statutory monopoly and control over voter education; and 6) adopting good practices from other systems that work. It is also important to guard against regressive and cosmetic reforms, such as the proposed Patriotic Bill and amendments to the Electoral Act that would bar certain individuals from running as candidates.

Attitudes and practices also need improvement. Key areas of focus include transparency, positive framing of the value of elections, building belief in the possibility of change through elections, fair access to communities, addressing the youth factor and the partisan nature of the state, raising the economic and political cost of bad elections, and developing a ready-to-deploy mechanism for the transfer of power. These changes are necessary to increase participation and ensure fair and transparent elections.

For elections to succeed in Zimbabwe, regional powers and civil society need to play a role. Regional powers should intervene in disputed elections to protect the sanctity of the vote and prevent a cycle of coups and revolution. The African Union (AU) should define election rigging as an unconstitutional manoeuvre to cling to power and improve their election monitoring efforts. Civil society should drive participation, serve as a watchdog to the electoral management body, ZEC, and conduct parallel voter tabulation. They should also hold the incumbent accountable and advance reforms needed for credible elections. Political parties are also key stakeholders in electoral contestation and must be encouraged to propose substantive and solid propositions for socio-economic turnaround, rather than driving identity politics. The Political Parties Finance Act and Electoral Act need to be revisited to restructure the nature of political party funding and the accountability mechanisms for such funding, and political party registration laws and regulations need to focus on ensuring that parties are democratic, law-abiding, and respect process.

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## INTRODUCTION, CONTEXT AND SCOPE

Elections are perhaps the most visible, eventful, and concrete expression of democracy in a democratic society.<sup>1</sup> They are the means through which the governed choose the governors. Yet, for over two decades, Zimbabwe has failed to hold elections that cleanly pass the marks of credibility, freeness, and fairness. Evidence abounds that elections are either rigged, resulting in contested outcomes, or where the opposition wins, transfer of power is elusive. This is enabled by the incumbent regime's capture of State institutions critical to election outcomes. Court decisions have failed to confer legitimacy and credibility to both process and winner. The Sabbath Call of 2019 by faith groups, which proposed suspension of electoral contestation for a period of seven years, is confirmation of a national sentiment that the environment for free, fair and credible elections does not exist in Zimbabwe.

As Zimbabwe faces yet another harmonised election (which must constitutionally occur by July 2023) the twin challenge remains: 1) how do we ensure that elections are insulated from manipulation? and 2) how do we make election outcomes reflective of the will of the people? These questions have detained many in search of a solution to what has broadly been termed the “national question” in Zimbabwe.

There are many issues with elections in Zimbabwe. This paper narrows down only to key issues, including key messages that key stakeholders and stockholders with an influence on Zimbabwean electoral processes (both at home and abroad) can engage with. The goal is to explore how to make elections work in Zimbabwe.

The premise of the paper is dealing with what we have as opposed to creating something new (e.g., working with the current electoral system as we have it, instead of proposing a new one). This is because Zimbabwe is yet to explore and experience the best of the current system, such that it is not ripe to start thinking of an alternative electoral system. The focus of the paper is also forward-looking, looking at long terms electoral contestation in the country as opposed to the proximate 2023 elections.

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## THE PROBLEM WITH ELECTIONS IN ZIMBABWE

Distilled, Zimbabwe's electoral problems are summable thus: electoral outcomes are not reflective of the will of the people and the system that manages elections conduces to manipulation of the people's ability and capacity to vote. The 5-year electoral cycle has become more of a ritual passing of what has been termed “performing democracy” and “abusive constitutionalism” – elections have become a smokescreen for democratic practice, and more pointedly, a tool to keep the incumbent regime in power “lawfully”.<sup>2</sup> The ZANU PF regime, which has governed Zimbabwe since the country's independence from British colonial rule in 1980, is a classic case of a political leadership that uses elections as a device to merely legitimate their illiberal (and often highly oppressive) regime. Key concerns regarding elections in Zimbabwe include 1) Limited participation by citizens 2) trust and confidence deficits, 3) fear, naked power politics, violence, and impunity, 4) an Elections Management Body (ZEC question) that lacks independence from the ruling party, and 5) failure by the regional leaders to exert pressure in support of democracy in Zimbabwe.<sup>3</sup>

### a. Limited participation

Voter apathy and low participation are one of the key problems with elections in Zimbabwe. The Afrobarometer Zimbabwe Round 9 Survey in 2021 found that nearly half (49.8%) of Zimbabweans would not vote and did not know (or would not say who) they would vote for. Mostly, this is argued, is because of the “fear factor”. But it is also due to the lack of political trust. It is also the case that many who are reticent hide their affiliation with the opposition. The same survey reports that even though Zimbabwe's youth represent over 60% of the population, they are less likely than their elders to be registered to vote in 2023. The middle aged 36-55 years (83%) and the elderly 56+ years (72%) are more likely to be registered to vote than the young 18-35 years (54%). Focus on electoral reforms over the last decade has shifted attention from focusing on mobilising – there is a significant depoliticised constituency of eligible voters that does not vote. Zimbabwe's youth represent over 60% of the population, they are less likely than their elders to be registered to vote in 2023. The middle aged 36-55 years (83%) and the elderly 56+ years (72%) are more likely to be registered to vote than the young 18-35 years (54%).<sup>4</sup> Focus on electoral reforms over the last decade has shifted attention from focusing on mobilising – there is a significant depoliticised constituency of eligible voters that does not vote.

Other active stumbling blocks preventing those who want to participate from participating include:

- **Diaspora vote:** there are attitudinal and political blockages which have been clothed with legalities. The incumbents believe that the estimated 3 million+ in the diaspora (unlike the official figures of the 2022 census)<sup>5</sup> are pro-opposition and will tilt the vote in favour of the opposition given that most in the diaspora are of voting age and many have an active interest to vote if given the opportunity. This attitude has been turned into law through the Constitutional Court decisions *Bukaibenyu v ZEC Chairman & Ors* (2013)<sup>6</sup> and *Shumba & 2 Ors v Minister of Justice, Legal & Parliamentary Affairs & 5 Ors* (2018)<sup>7</sup>. In the latter, the Constitutional Court wrongly and regrettably pronounced that our Constitution, as presently framed, does not allow for the diaspora vote, which is a contestable position.

- Strategic blocking: it is difficult for urban dwellers to get identity documents or register to vote. There are fewer registration centres in urban areas (outside the short-lived blitzes).
- Opportunity costs: Zimbabwe is an informal economy. Taking time to register to vote, and to go and vote, means time-out from work. Civic duty demands that people momentarily leave their sites of economic activity, but that rationalisation is defeated in a situation where hopes of change are minimal while economic survival for many depends on the daily work. Minimal hopes of change versus opportunity costs, weigh heavily in favour of avoiding the opportunity costs.

## **b. Trust and confidence deficits**

As a matter of history and psychology, electoral participation and turnout are high where there is meaningful hope and belief that change is possible through polls. This is because where independence of institutions is not guaranteed in law and practice, electoral systems are known to be in the hands of the incumbent (including the architecture of electoral dispute resolution). This is the case with Zimbabwe, where the Constitutional Court of Zimbabwe's approach to resolution of the 2018 president election dispute<sup>8</sup> was criticised by the Malawian Constitutional Court in its 2020 ruling.<sup>9</sup> The approach also departs from established practice as used by other courts including the Kenyan Supreme Court. The Constitution of Zimbabwe (No. 2) Amendment Act and events that followed – including the legal challenge to the extension of the tenure of Chief Justice Luke Malaba – solidifies this view.<sup>10</sup> Electoral outcomes have not changed since 1980 in Zimbabwe. The danger is that when citizens increasingly perceive elections to be ineffective in manifesting people's wishes, it opens room for unconstitutional change of government, which has the potential to lead to failed governance (and the risks of failed governance are too grave to ignore). In fact, this explains the November 2017 coup.

These trust deficits unfortunately, also flow as a result of the law of unintended consequences. When we communicate the opaque nature of elections in Zimbabwe and the efficacy of the rigging machinery and outline the evidence of how previous elections have failed to yield results, this makes a case for abstinence over anticipation. This is especially so when one looks at cases where the opposition has won elections but have not succeeded at transfer of power.

## **c. Fear, naked power politics, violence, impunity**

The graph of violence in Zimbabwe spikes during election cycles. Participation in mobilisation – and the act of voting – bring anxiety, fear and apprehension to many. People would rather not participate. The architecture of violence is strong and citizens are often reminded of some of the most violent episodes in our history, as well as through re-igniting the National Youth Service (popularly known as the Border Ghezi or Green Bombers) which works as a youth militia that enforces certain voting patterns. This is fuelled with impunity. To illustrate the impunity, the Motlanthe Commission of Inquiry into the 1st of August 2018 Post-Election Violence recommendations on accountability are yet to be implemented. They include 1) that the police need to urgently complete their investigations to enable the prosecution of those persons responsible for all alleged crimes committed on 1 August 2018 and 2) that those particular members of the military and the police found to have been in breach of their professional duties and discipline be identified as soon as possible for internal investigations and appropriate sanction.<sup>11</sup> Past electoral violence perpetrators linked to the ruling party, however, have been granted amnesty. The message is that if one is attacked for election related political reasons, there will be no justice.

Political lawfare has also been commonplace, where there is use of law and the law enforcement apparatus to arrest, detain, prosecute, harass and ban opposition rallies and gatherings. Laws such as the Maintenance of Peace and Order Act [Chapter 11:17] and the Criminal Law (Codification and Reform) Act [Chapter 9:23], are handy tools. This approach to politics has colonial influences as these strategies were employed against liberation functionaries.

## **d. An Elections Management Body (EMB) that lacks independence**

In its 2020-2024 Strategic Plan, the Zimbabwe Electoral Commission (ZEC) identified "lack of confidence in the independence of ZEC" as one of the country's main weaknesses.<sup>12</sup> According to the Strategic Plan, "Perception surveys point to lack of confidence of the citizens on the independence of the Commission, with half the citizens seeing ZEC as being too close to the Government". A key confidence deflector is the factual (or perceived) notion that ZEC is staffed by military personnel in key offices. ZEC Chairperson Priscilla Chigumba disclosed to the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs, in February 2018, that 15% of the 383 ZEC secretariat permanent employees had a military background, justifying this as low and that there is nothing wrong in employing persons with a military background provided that they are either retired or inactive.<sup>13</sup> In Zimbabwe, the military is often used to campaign for ZANU PF during elections. The current Chief Elections Officer Utoile Silaigwana is a former army Major who joined ZEC as a serving military officer and "has a long history of running contested elections in the country since the era of the late former President Robert Mugabe".<sup>14</sup> The Chairperson of ZEC was at one point Retired Brigadier General George Mutandwa Chiweshe, now a judge of the Supreme Court.

This is to be taken together with longstanding concerns that civic groups and opposition groups have raised in that past that there is military overreach in civilian and electoral spaces in Zimbabwe. These concerns include that the military personnel at ZEC facilitate for a parallel structure where they report directly to heads of the military service in Zimbabwe,<sup>15</sup> as well as the military actors in the ruling ZANU-PF party and in civilian government structures. Allegations have also been raised that ZEC servers are hosted by army-owned telecommunications firm Africom, an allegation to which ZEC has issued a bare denial.<sup>16</sup> Recently (on 7 July 2022) the President swore in six new ZEC commissioners, among them the daughter of the current ZANU-PF second vice president Kembo Mohadi, and spokesperson Jasper Mangwana, also a commissioner, who has public support to the current president and ruling party.

### e. Failure by regional leaders to exert pressure in support of democracy

Thus far, no regional election observation mission has outrightly declared Zimbabwean elections to not be free, fair and credible, in spite of the numerous scandals and challenges that have faced Zimbabwean polls. Southern Africa Development Community (SADC), African Union and Common Market for Eastern and Southern Africa (COMESA) observer missions consistently endorse elections. The 2020 Malawian experience (the “tippex” elections) is illustrative of how these and even international observer missions may endorse as free, fair and credible elections which are in fact fallible so as not to stand even locally.<sup>17</sup>

Many will recall the 2002 Presidential election of Zimbabwe report produced by Judges Sisi Khampepe and Dikgang Moseneke, who constituted the Judicial Observer Mission appointed and deployed by South African President Thabo Mbeki. This report was embargoed and never released until 2014, following 12 years of litigation in the South African Courts.<sup>18</sup> The report concluded that “having regard to all the circumstances, and in particular the cumulative substantial departures from international standard of free and fair elections found in Zimbabwe during the pre-election period, these elections, in our view, cannot be considered free and fair”.<sup>19</sup> According to a Daily Maverick report, “for more than 12 years, the South African government fought to keep the contents of the Khampepe Report under wraps. They ultimately failed, and the details of a damning cover-up were revealed: Zimbabwe’s 2002 elections were rigged, and South Africa knew all about it. Zimbabwe has been paying the price for this ever since”.

The Khampepe Report entirely discredited that of the 50 person-strong South African Observer Mission (SAOM), which reached a different conclusion: “[It] is the view of the SAOM that the outcome of the 2002 Zimbabwe presidential elections should be considered legitimate”. Later in 2008, following the disputed 29 March election where results took five weeks to announce, South African President Thabo Mbeki was to cause controversy by stating that “there is no crisis in Zimbabwe”, a position that his then rival Jacob Zuma contested.<sup>20</sup> At that time, Zambian President Levy Mwanawasa called an emergency meeting of SADC leaders on 12 April 2008 to discuss the post-election impasse, stating that Zimbabwe’s “deepening problems” meant that the issue needed to be “dealt with at the presidential level”.<sup>21</sup>

When the election outcome was contested in 2018, the region was muted in its response. It is likely that the regional endorsement of Zimbabwean elections will continue, unless it is confronted and regional powers are engaged and sensitised on the need to ensure that SADC Principles and Guidelines Governing Democratic Elections are followed to the letter in Zimbabwe.<sup>22</sup>

## 3

### KEY PRINCIPLES IN SEEKING SOLUTIONS TO THE PROBLEMS

Resolution of the electoral malaise in Zimbabwe must keep in mind the following principles:

- **Multi-causal phenomenon:** Zimbabwean elections are a multi-causal phenomenon. The problem of elections in Zimbabwe is one that cannot be solved by one solution. There are multiple challenges to Zimbabwean elections, and they will not be fixed by one solution such as legal reforms. There is the bigger question of political culture. Being multi-causal in nature, it means a series of interventions are required, operating at different levels and times, running contemporaneously.
- **A culture of aversion to genuine and fair electoral contestation:** in the grander scheme of things, culture trumps legal systems and administrative processes and procedures. Even if legal and administrative reforms are instituted, the political culture informing elections ultimately determine the colour of the elections. In other words, it is possible to have a solid legal framework for running elections, and an administrative system that works, but these can be subverted, and the effectiveness reduced. Changing systems and processes is but one step, a first, in shifting a political culture of intolerance, violence, rigging, and aversion to genuine and fair electoral contestation. This political culture has a net effect of subverting the will of the people.
- **A multi-stakeholder affair:** elections are a multifaceted and multi-stakeholder affair. Civil society and the main political opposition have invariably led the agenda of electoral reforms and free and fair elections in Zimbabwe. However, while still active on electoral issues, both civil society and the main opposition are currently in survival mode given the constricted political space, shrinking civic space issues, and funding deficits (see the Private Voluntary Organisations Amendment Bill, 2021). Agenda setting at the moment is thus limited. While all the conditions necessary to call for reforms are there, the circumstances alone will not activate the change sought. There is need for agency and organising, and activating the many organisations involved.
- **Crisis or status quo – is there hope for change?** The situation in Zimbabwe has been extant for decades. Is it still a crisis, or is it now the status quo? Many are beginning to believe that we are now in the latter, and that conduces to apathy and diversion of attention, even resignation. It is important to maintain hope that the situation is salvageable. Even though elections in Zimbabwe are not free, fair, nor credible, it is still possible to have an election whose outcome will substantially reflect the will of the people. Reforms will be hard to come by, but work on medium- and long-term change is possible. The section below seeks to contribute to that discussion.

## RECOMMENDATIONS TOWARDS ELECTIONS THAT WORK IN ZIMBABWE

### a. The gold standard for elections in Zimbabwe

The gold standard for elections in Zimbabwe is already set in section 67 of the Constitution of Zimbabwe ([see Annex 1](#)). Given the above and the current context in Zimbabwe, the following questions are key:

- How do we build trust and restore confidence in elections as an effective way to choose and remove leaders in Zimbabwe?
- How do we address polarity, violence, fear, resignation, and apathy associated with elections in Zimbabwe?
- How do we achieve maximum inclusion and participation, and do away with disenfranchisement?
- How do we insulate institutions of the State from political party control, bias, partisanship, and inefficiency?
- How do we guarantee the credibility, legitimacy, acceptability, and respectability of election outcomes in Zimbabwe?

That said, the thinking that only legal and administrative reforms are needed, and the almost exclusive focus on these as the panacea to Zimbabwe's electoral challenges, is flawed. Yes, reforms will take us a step closer and will provide a framework to seek enforcement and accountability. But this is just one aspect. In a highly polarised, contested, and militarised context, law-based electoral reforms alone are not enough to guarantee an environment conducive for free and fair elections. This is because 1) the law is not self-executing (its enforcement relies on personalities, attitudes, and dispositions and predispositions of those personalities) and 2) the courts, which are the last line of defence, may as well deliver victory where it is not due, as we have seen in Zimbabwe before. The practical questions then are:

- Can anyone win elections in Zimbabwe even when the incumbent government is determined to remain in power at all costs?
- What can be done to ensure that elections substantially reflect the will of the people in an environment where all protective mechanisms for a free, fair, and credible election are manipulated and skewed towards the incumbent?

These questions direct us towards working under the current conditions – looking at what is possible under the circumstances. This is out of realisation that Zimbabwe is not a normal democracy, and while the ideal to pursue – and which must be pursued to normalcy – we must be prepared to work under the current conditions. Liberty, freedom, democracy and human rights are struggles, and that reality must not be lost. It is also important to have a medium to long term view and not focus on the immediate elections.

### b. What needs to change in the electoral system?

The reality is that it is premature to attack Zimbabwe's first-past-the-post electoral system as inefficient at this stage. This is because we are yet to test the contours and horizons of that system in a functional way. Thus, discussions about whether we need to change the system to proportional representation (or any other system) are premature and for the most part, a distraction.

c. What need to change in law and administrative regulations?

Achieving meaningful substantive legal and administrative reform at this point is least likely. However, such reforms are central to bringing us closer to free, fair, and credible elections. This must thus be pursued as a medium to long-term catalogue of interventions. The message of reforms must be sustained and must be premised on tangible and practical propositions of what must change and how, so that it is not a nebulous conversation. Further, as legal and administrative reforms are unlikely to be achieved at once, advocacy for such must consider importance and priority for each. Critical reforms are as follows:

- **Review the Electoral Act [Chapter 2:13] to ensure greater independence of ZEC:** for instance, section 192(6) of the Electoral Act which required ZEC regulations to be "approved by the Minister", must be revised to remove the ministerial authorisation. In 2018 the Constitutional Court dismissed a challenge on the unconstitutionality of requiring the minister to approve regulations by ZEC in *Mavedzenge v Minister of Justice, Legal & Parliamentary Affairs & 2 Ors* (2018).<sup>23</sup> In that case, the applicant sought a declaration of constitutional invalidity on the basis that the minister's approval requirement is tantamount to ZEC being subject to his direction and control. Recently, the ZEC Chairperson was quoted speaking to journalists saying she and ZEC have no powers to make regulations, and Parliament must give ZEC the necessary powers to effectively run elections.<sup>24</sup>
- **Composition of ZEC must ensure independence:** ZEC must be demilitarised, and transparent appointments of commissioners must be made on merit, avoiding any appointment that taints the independence of ZEC in perception and/or substance.
- **Universal suffrage:** all citizens must be allowed to vote, including those in the diaspora. Because the Constitutional Court ruled in 2018 that the Constitution does not allow for the diaspora vote, this ruling can only be reversed by the Constitutional Court itself (only the Constitutional Court can reverse its own judgments). The alternative would be a Constitutional amendment to expressly allow for the diaspora vote. People with disabilities must be allowed to cast their votes in secrecy, unassisted,<sup>25</sup> and adequate facilities must be put for registration and polling nationwide to remove any barriers of access. Greater voter registration must be pursued, especially targeting new young voters.
- **Independence of the media:** past Election Observer Missions to Zimbabwe have consistently flagged media related reforms as being needed to facilitate free, fair, and credible elections. The public media for example, has been flagged for not affording equitable coverage of political parties during elections. The EU Observer Mission Report on the 2018 election concluded that while the media had operated in a generally free environment, the state media was biased towards the ruling party in violation of legal provisions which oblige them to provide fair and balanced reporting. The report concluded that "coverage of the 2018 harmonised elections reflected the extremely polarized nature of Zimbabwe's media landscape and a systematic and extreme bias in state media that consistently failed to provide fair and equitable coverage of all parties".<sup>26</sup> Related conclusions were also made in the case of *Firine Trust & others v ZBC & others HMA 23 of 2019* and the media bias of ZBC was also the subject of the Constitutional Court case of *Majome v ZBC & Ors CCZ 14 of 2016*. Equitable access to media is already guaranteed in the Constitution, but practice is doing otherwise. Reform must be in the form of actual quotas established and prescribed at law on access and coverage. Access to media and information is access to all kinds of information, reflecting the multiple perspectives of the electoral contestants.

- **Undo ZEC's statutory monopoly and control over voter education:** ZEC tightly controls who does voter registration and who does not, as the Electoral Act requires ZEC to accredit voter educating institutions and to approve material for use. In terms of the Act, the primary responsibilities for providing voter education lies with ZEC, but civil society organisations (CSOs) can provide voter education with the permission of ZEC. In conducting this education these organisations must either use voter education materials supplied by ZEC or, if they want to use their own voter education materials, these materials must be approved by ZEC. There are various other legal restrictions upon the provision of voter education by CSOs. These include that the CSO must be either registered as Private Voluntary Organisation or be registered in the Deeds Registry as a Trust. The organisation must consist wholly or mainly of Zimbabwean citizens or permanent residents, or, in the case of a trust, it must have a majority of trustees who are citizens or permanent residents. The organisation's constitution or trust deed must mandate the organisation to conduct voter education. Persons employed to conduct voter education must be citizens or permanent residents. Further, the voter education work must be funded solely by local contributions or donations, and any foreign contributions must be channelled to ZEC which may allocate such funds to the organisation. The CSO must also provide ZEC with all the names, addresses, citizenship or residence status, and qualifications of the individuals who will conduct voter education. This is a way to control information that goes out, yet civic education is the catalyst and enabler for participation.

Messaging around reforms should be driven by what is ideal and what is good practice. There must be experiential learning from other systems that work. This will include a great deal of domesticating in law and practice, the SADC Model Law on Elections, the SADC Principles and Guidelines Governing Democratic Elections, 2015, and the African Charter on Democracy, Elections and Governance (ADC).<sup>27</sup>

It is important to guard against regressive and cosmetic reforms. For instance, it has been insinuated that the proposed Patriotic Bill will disallow from electoral contestation those citizens alleged to have "invited" sanctions to Zimbabwe, and State media has in the past carried articles naming some of the current opposition leaders as having "invited" sanctions to Zimbabwe. Another set of regressive amendments would be exclusion from electoral contestation of certain politicians convicted of inviting public violence. Already, on 11 October 2022, a post-cabinet briefing reported that Cabinet had approved amendments to the Electoral Act soon to be tabled before Parliament, which, among others, will seek to bar from running individuals convicted of offences related to public violence, breach of trust, and dishonesty at least a year before the sitting of the nomination court. The concern with this is that in the political lawfare currently being experienced in Zimbabwe, the public violence group of charges in the Criminal Law (Codification and Reform) Act [Chapter 9:23] is the biggest weapon. Many opposition leaders are either on trial or awaiting trial for "supplying false information".

#### d. What needs to change in attitudes and practice?

A change in attitudes and practices is where the greater promise is, under prevailing conditions. These are the immediate points of intervention. Although conditions differ, elections in Zambia have shown that it is possible to attain state power through elections in a politically repressive system. The following are key areas of focus:

- **Transparency.** This is perhaps the most important area of focus. While there should be focus on reforming the electoral systems for greater transparency, the immediate intervention should be to demand transparency in the current system as it obtains. CSOs, citizens, citizen movements, political parties, and external stakeholders must demand transparency at any given stage, and this should include through mounting access to information requests per the Freedom of Information Act [Chapter 10:33]. Whatever is wrong with the elections should become exposed with greater transparency. Transparency will do the following: 1) expose shortcoming and gaps in the system, and these gaps and shortcomings will make an organic case for reform; 2) force some level of compliance with the legal framework; and 3) will make the case to challenge irregular process and questionable results. Voices for greater transparency at the moment are muted, with concentration on the higher prize of reforms. A strong 'Protect the Vote' campaign must be situated within this realm of transparency. This may include political party, civil society, and observer mission interventions, which may include increased vigilance at police stations and in tracking transmission of results and securing ballot boxes from manipulation. This also includes parallel voter tabulation.
- **Positive framing on value of elections.** The question is: how do we balance the need for people to know what is wrong with elections in Zimbabwe and at the same time encourage people that voting is not futile? There must be confidence building. It is important for everyone to see the positive value and impact of well-managed elections that deliver. The language of apathy and the negativity surrounding elections, for instance, must change. Part of the messaging can be to remind people of the alternative to democracy, and what it would mean. Zimbabwe is not yet a democracy where everyone understands and appreciates the value of civic duty. Most still need incentive and a push to participate in elections. This must be done. This will also help to activate a significant number of citizens who have demobilised on Zimbabwean public affairs.
- **Build belief in the possibility of change through elections.** People will only participate in elections if they believe that change is possible through elections. Otherwise, elections are viewed as futile. In Zambia and Malawi, people believed that change was possible, in spite of the many challenges and the strong abuse of incumbency to limit opportunities for opponents and to discourage citizen participation. Instilling belief in the promise of elections is especially important in Zimbabwe, given that elections (in over four decades) have yielded the same outcome.
- **Fair access to communities.** Rural areas cannot continue to be designated 'no-go-areas' for the opposition. And meetings of opposition parties should not be banned or disrupted. This includes respecting court orders that allow for such meetings to proceed. In the March 2022 by-election, the Zimbabwe Republic Police (ZRP) banned at least six CCC rallies through misreading and misapplying the Maintenance of Peace and Order Act (MPOA). When the courts ruled for many of these to continue, the police invariably defied the court order.

- **Participation and the youth factor.** Participation will not reach acceptable thresholds unless a significant part of the youth population participates. There must therefore be enabling mechanisms while marginalisation and exclusion must be addressed. The young must be located where they are and encouraged and supported to participate – including with material support and resources to enable this participation (e.g., transportation to registration centres and polling stations). Similarly, information must be taken to where the young people are. To increase participation of young people in the country's electoral processes, youth engagement (beyond social media) and reverting depoliticization, is key. Social media is important, but its value over political party machinery in Zimbabwe is over-rated and built upon numerous assumptions:<sup>28</sup> The youth that are really needed to drive change are not always found in online spaces. There is a huge constituency that is offline, that must be reached. Social media can be used to fill in the gaps, but the real work in reaching youths remains on the ground, through strong networks and structures. To revert depoliticization among young people, it is important to find ways to reduce the cost of participation – many young people are depoliticised in order to get access to economic opportunity where there are limited opportunities and patronage is a determinant to access.
- **Address the partisan nature of the State.** There is a conflation of the party constituting government, and the government. This is deliberate and consequential. Impartiality of the courts, the National Prosecuting Authority (NPA), and the Zimbabwe Republic Police (ZRP) especially must be insisted upon, in terms of standards laid down in the Constitution and in statutes. The courts in particular have been used to endorse questionable electoral outcomes and amendments to the Constitution have been effected to ensure a tight control over who gets appointed to the bench and how they behave, rendering the courts beholding to the President and the executive. This is especially important because elections in Zimbabwe have traditionally produced contested outcomes, which end up in courts for determination, especially presidential polls. The use of State institutions to support, resource, serve, save, and protect party interests must be eschewed. This should be addressed through non-partisan and meritorious appointments to bureaucratic and other government offices (as opposed to cadre deployment) and addressing patronage and corruption.
- **Raise the economic and political cost of bad elections.** Political parties, observers, and CSOs must document and spotlight issues of concern, including at the international level. With attention to Zimbabwe having long diminished, it is important to resuscitate the focus on Zimbabwe as a regional and international agenda item with clear tangible evidence of the challenges with the country's elections. Though SADC has been less than effective, it must be engaged and put on the spot. Though the AU will defer to SADC, it must still be approached (as with the UN). This helps put political pressure on the government, which does have an interest in being perceived as legitimate. On economic cost, it must start with highlighting the opportunity costs of bad elections and the political risk premium that bad elections place on Zimbabwe.
- **Transfer of power (and transitional mechanism).** The international community must be mobilised to develop a 'ready-to-deploy' mechanism and support framework to a support transfer of power (if and when results of the polls require such). This becomes the mechanism to mediate and deal with disputed election outcomes. This is an area that has received little focus on Zimbabwe on account of the country history which has a dearth of transitions. Questions in that mechanism should include security of the incoming and outgoing administrations, resourcing of the transition, mediation and guarantor mechanisms, period of transition and governance arrangement in transitional phase, transitional authority /council/committee/structure and its powers, among other considerations.

## 5

## KEY CONSIDERATIONS

**Addressing polarisation and political culture**

Polarisation is the main obstacle to a culture of good faith dialogue and engagement in Zimbabwe. It is also the biggest threat to any meaningful national dialogue. At the same time, elections are the most divisive political process which only serve to increase polarisation. The biggest outcome of a one party dominated repressive political environment in Zimbabwe is the establishment of a political culture premised on polarity, toxicity, brutality, manipulation, fear, depoliticization, and demobilisation. These are far deeper problems. As such, addressing polarisation is a key process of making electoral contestation work in Zimbabwe. This should address both underlying cultural currents and multiple smaller issues that contribute to elections being a threat and polarity multiplier.

What this means is that certain electoral interventions are temporary fixes, or shortcuts, and may not necessarily address the bigger underlying issues of political culture. For instance, registering to vote – though essential and must be encouraged – is not enough. A long-term and lasting solution in this example would be to raise the consciousness of such people who need to be told to register and go vote, to enable them to be self-motivated to register and go vote. In other words, a culture must be established such that people realise on their own the need to register to vote, the need to engage in civic duty, and the need to be an involved and participating citizenry.

Developing a functional and positive political culture is central in that democracy and must be citizen-led. Any support towards democratic consolidation and development must target citizens and the demand side of democracy.

Addressing polarity is a long-term agenda in Zimbabwe. Messages should be mounted around presenting elections as more than political power, but about the economic and social wellbeing of the country and its citizens. Messaging must be on the political economy (e.g., the value/promise of elections and electoral outcomes to the individual political economy, and to the national political economy). Framing elections in this way helps diminish the value of identify politics, which leads to polarisation. The goal is to make messaging issues-based as opposed to personality-based, allowing people to galvanise over issues of common concern as opposed to personalities. Wealth creation and an inclusive economy is generally a common frontier that can diminish polarisation and its effect, and work in this area would need to address the emergence of polarising economic outfits in Zimbabwe that are patronage based.



One way of achieving issue-based politics is to spotlight local government elections, which currently receive little attention. This is because the promise of local government has faded in Zimbabwe. The frontline political parties in Zimbabwe do not have any pronounced local government agenda. Yet, that is the level where political leadership can have visible and consequential change to people's lives in direct ways.

The youth factor also comes in. Youth have often been described as disenfranchised and self-interested; they are heavily polarised and struggle to articulate a national objective. And there is a general perception that youths are seeking personal rather than group benefits.<sup>29</sup> This explains depoliticization among young people and easy manipulation and weaponization through promise of access to resources and material gain. Re-politicisation of the youthful demographics, channelling of youthful energy towards sustainable economic livelihoods and productivity, and disabusing the youth of patronage and rent-seeking behaviour are all part of the depolarisation agenda.

## 6 KEY PLAYERS AND INTERVENTIONS

For elections to work in Zimbabwe, civic and political actors (both regional and local) are needed.

### a. Regional powers

Zimbabwe cannot continue to hold disputed elections. If this continues to happen, people will seek alternative ways to change government, and this will give rise to coups and possible revolution. This is a path to be avoided. A strong regional response to disputed elections is needed to protect the sanctity of the vote. The message for mobilisation would be 1) to prevent a cycle of coups and possible revolution and 2) avoidance of destabilising the SADC region. It is up to Zimbabweans to make a case for regional intervention. Part of the intervention should include engagement with some of the major observer missions, as observer mission reports matter and determine credibility and processes that follow after the elections. It is important for observer missions to produce useful reports that help the cause for credible elections in the country.

The AU is currently seized with the topic of unconstitutional changes of government. However, unconstitutional change of government is narrowly construed to refer to military and related violent takeovers. Other manoeuvres such as changing the constitution to allow for more time in office, and electoral rigging, are not defined an "unconstitutional change of government". Yet, the reality is that many of the practices that obtain in electoral landscapes, including Zimbabwe's, subvert the Constitution and the will of the people regarding the government they would have elected. To that end, there is a case to be made for the AU to define election rigging as an unconstitutional manoeuvre to cling to power. This would also require AU election monitoring to be more robust and scientific than it has been.

### b. Civil society

In a repressive system, opposition political parties may be unable to correct or overcome electoral malfeasance on their own.<sup>31</sup> Civil society becomes central. CSOs serve as a watchdog to ZEC, as local election observers, and conduct parallel voter tabulation. Civil society is also key to holding the incumbent to account, and for advancing reforms needed to enable credible elections to take place. To that end, the PVO Amendment Bill 2021 and its implication on the ability and capacity of CSOs to conduct their work freely and effectively, must be seen as an electoral law. This is a law designed to remove a strong pillar that works in support of sound electoral democracy. In Zambia, civil society is credited for mobilising the youth starting in 2016, to the point of overwhelming the incumbent's capacity to rig elections in 2021.

To advance the agenda of strengthening multipartyism – of slowly replacing the politics of identity with the politics of ideas and substance – civil society must play more than a technical role. In the past, for instance, civil society in Zimbabwe has been challenged for concentrating on the procedural and technical aspects of the election rather than on debating the substance of party manifestos. The role of civil society must thus be built around confronting both the technical and the substantive aspects of elections.

### c. Political parties

Political parties are key stakeholders in electoral contestation. They have been a big part of the problem and must be a big part of the solution. As with civil society, in addition to being engaged to shun violence and encourage fair contestation, political parties must be encouraged and driven towards proposing substantive and solid propositions for socio-economic turnaround (as opposed to driving identity politics).

In the 2013 election, for instance, the opposition was challenged for focusing on convincing the international community that any rigged elections would be a stolen result, rather than actually focusing on policies to put before the electorate.<sup>33</sup> Giving focus to substantive content of electoral propositions is a way to address polarity and ensure elections deliver for the people.

Because political parties are the vehicles through which political power is exercised in Zimbabwe – and through which governance is done – political party democracy and health become a sine quo non for national democracy and political health. Parties cannot be undemocratic and be expected to lead a democratic state. For instance, within the ruling party there is a culture of “endorsement” of candidates, especially the presidential candidate. Within the frontline political parties, decision-making by consultation and consensus seems limited. Process is frequently sacrificed for political expedience. Party laws and constitutions are often disregarded. Internal institutions and checks and balance mechanisms are disrespected. It is difficult for such a party and its individuals to subject themselves to national democratic processes and to respect national processes, institutions, and laws if in their parties they do not do so.

It may be true that the real transformation of Zimbabwe’s political culture, and thus electoral culture, will be determined and shaped by the state of the country’s political parties, such that it becomes necessary, important, and urgent to shift attention, resources, and time to building and strengthening political party democracy as a building block to building and strengthening national democracy.

The Political Parties (Finance) Act [*Chapter 2:11*] must be revisited to restructure the nature of political party funding and the accountability mechanisms for such funding. The Electoral Act must have provisions for political parties to ensure gender balance in candidates, among other reforms. Political party registration laws and regulations, which are likely to be passed in Zimbabwe in the short term, must focus on ensuring that parties are democratic, law-abiding, and respect process. Greater public accountability and scrutiny must be built into the above, to compel democratic and accountable practice.

## ANNEX 1: SECTIONS 67 AND 155 OF THE CONSTITUTION OF ZIMBABWE

### 67. Political rights

1. Every Zimbabwean citizen has the right-
  - a. to free, fair and regular elections for any elective public office established in terms of this Constitution or any other law; and
  - b. to make political choices freely.
2. Subject to this Constitution, every Zimbabwean citizen has the right-
  - a. to form, to join and to participate in the activities of a political party or organisation of their choice;
  - b. to campaign freely and peacefully for a political party or cause;
  - c. to participate in peaceful political activity; and
  - d. to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.
3. Subject to this Constitution, every Zimbabwean citizen who is of or over eighteen years of age has the right-
  - a. to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret; and
  - b. to stand for election for public office and, if elected, to hold such office.
4. For the purpose of promoting multi-party democracy, an Act of Parliament must provide for the funding of political parties.

### 155. Principles of electoral system

1. Elections, which must be held regularly, and referendums, to which this Constitution applies must be-
  - a. peaceful, free and fair;
  - b. conducted by secret ballot;
  - c. based on universal adult suffrage and equality of votes; and
  - d. free from violence and other electoral malpractices.
2. The State must take all appropriate measures, including legislative measures, to ensure that effect is given to the principles set out in subsection (1) and, in particular, must-
  - a. ensure that all eligible citizens, that is to say the citizens qualified under the Fourth Schedule, are registered as voters;
  - b. ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to cast a vote, and must facilitate voting by persons with disabilities or special needs;
  - c. ensure that all political parties and candidates contesting an election or participating in a referendum have reasonable access to all material and information necessary for them to participate effectively;
  - d. provide all political parties and candidates contesting an election or participating in a referendum with fair and equal access to electronic and print media, both public and private; and ensure the timely resolution of electoral disputes.

## END NOTES

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