

**A CRITICAL REVIEW AND ANALYSIS OF ZIMBABWE'S ELECTORAL
AMENDMENT BILL, 2011
BY
THE ZIMBABWE ELECTION SUPPORT NETWORK ("ZESN")**

Executive Summary

The primary object of this paper is to review and critique the Electoral Amendment Bill, 2011 (hereafter, "**the Bill**") which seeks to amend the Electoral Law (Chapter 2:13) (hereafter, "**the Law**"). The ultimate aim of these amendments is to create a level playing field for political contestants and to ensure the realisation of free and fair elections in Zimbabwe.

The reforms come against the background of seriously compromised and controversial elections held in 2008. These elections, and previous contests before them, produced contentious results. The political impasse that emerged from the controversy surrounding the 2008 elections had to be cleared by SADC-mediated negotiations, which eventually led to the formation of a government of national unity under the terms of the Global Political Agreement (hereafter "**the GPA**"). The GPA mandates the relevant parties to carry out and implement electoral reforms. It is therefore, envisaged that any new elections will be held under a new, reformed electoral regulatory framework, of which the reforms reviewed in this paper form a critical part.

The key questions focus on the nature, effect and legal significance of the reforms presented by the Bill. It is important to critically assess the strengths and weaknesses of the amendments and, where necessary, to suggest improvements. The following are the major issues covered by the Bill:

List of Major Amendments

- Voter Registration and the Voters Roll
- Polling Station Based Voters Roll
- Presidential Elections and Results
- Pre-Emption of Results
- Vote Recounts
- Voter Education
- Election Observation and Accreditation
- Nomination of Candidates
- Voting Processes and Procedures
- Voting By Illiterate or Physically Handicapped Voters
- Postal and Special Voting
- Politically Motivated Violence and Intimidation
- Media Coverage of Elections
- Electoral Court
- Delimitation of Constituencies
- Independence of the Commission

More detail on these issues is covered in this paper. However, the following summary highlights the major reforms, with brief comments on their legal significance.

ITEM	ISSUE	SUMMARY
I	VOTER REGISTRATION AND THE VOTERS ROLL	<ul style="list-style-type: none"> <li data-bbox="781 176 1341 478">➤ There will be both printed and electronic versions of voters rolls which will be publicly available and the Commission is required to ensure that they are searchable, analysable and tamper-proof. The extension of accessibility to voters rolls will enhance transparency and scrutiny to assist in ensuring free and fair electoral processes. <li data-bbox="781 510 1341 842">➤ The rules for proof of identity and residence on voter registration are relaxed so that persons seeking registration must produce documents prescribed by the Commission or can provide such proof by any other acceptable means. This will assist those who may not have prescribed documents to register if a more liberal meaning is given to what are “any other acceptable means”. <li data-bbox="781 873 1341 1171">➤ There is provision for the creation of completely new voters rolls with reasonable mechanisms to permit transfers from the old voters’ rolls as well as deletions of permanently absent or deceased voters. This option, is exercised, will be a significant improvement as it will allow for the creation of a fresher, cleaner and more accurate voters roll. <li data-bbox="781 1203 1341 1566">➤ However, the continuation of sharing responsibility for the creation and maintenance of the voters roll between the Commission and the Registrar-General’s office is unhelpful as causes inefficiencies and promotes blame-shifting between the different players. It is important that voter registration be wholly integrated in a single office and that this should ideally be the Commission, which has responsibility for the conduct of elections. <li data-bbox="781 1598 1341 1871">➤ Zimbabwe should also adopt the approach used in Mozambique where the state takes a pro-active approach towards Diaspora voting by actually taking measures to register Mozambicans resident abroad so that they can vote for the two MPs provided for by the constitution to represent the Diaspora.

<p>II</p>	<p>POLLING-STATION BASED VOTERS ROLL</p>	<ul style="list-style-type: none"> ➤ There is provision for the creation of permanent polling stations and polling-station based voters' rolls so that voters will only be permitted to vote at polling-stations at which their names appear on the voters' roll. This will be a significant departure from the current system where voters rolls are based on constituencies and wards and they can vote at any of the polling stations located in the ward. This measure will prevent such practices as double-voting and therefore promote transparency and credibility of the electoral system. ➤ Nevertheless, being a completely new system, it will be necessary to conduct extensive and effective voter education campaigns. ➤ There are potential negatives, such as that voters may be deliberately displaced from their homes so that they cannot vote outside the polling-stations and that the system could make specific communities vulnerable to post-election violence since it will be easier upon counting to identify voting patterns at specific polling-stations. Measures should be adopted to guard against both pre- and post election violence that might arise in these circumstances. ➤ Note also that this provision does not come into effect immediately but will only be brought into effect only when the Commission is satisfied that all the polling-station voters rolls are fully prepared.
<p>III</p>	<p>PRESIDENTIAL ELECTIONS</p>	<ul style="list-style-type: none"> ➤ The provisions require that presidential election results be declared within 5 days of the last polling date. Setting the maximum threshold is an important step as it prevents the '2008 phenomenon' when it took more than six (6) weeks to announce the Presidential election results. It will reduce, uncertainty and both the risk of and anxiety over potential election manipulation and rigging. It would be more preferable however if the requirement were consistently stated that they should be declared 'forthwith' so that this is the primary requirement to reflect the urgency of the situation. ➤ The provisions also clarify the issue of the Presidential run-off election,

		<p>specifying the circumstances when it will become necessary and requiring that the date of the run-off be set in advance of the first election. This will also prevent manipulation of electoral dates to suit the circumstances of any one candidate in the run-off election. However, ZESN recommends that the setting of election dates, including the run-off election, be done by the Commission and not by the President who is also a contestant in the same elections.</p> <ul style="list-style-type: none"> ➤ There are some potential problems, such as a possible power vacuum where the incumbent President comes third in the election and is not a candidate in the run-off election or where there is a tie in the run-off and Parliament must elect the President through an electoral college but parliament is not yet convened. ZESN recommends that instead of submitting the election to Parliament’s Electoral College, the law should ensure that the voting public retains their power to make that election. Therefore, where there is a tie, instead of going to the Electoral College there must be a new vote until a clear winner is found. ➤ Finally, in the computation of periods for, first the declaration of election results, second, the re-count where required and third, the declaration of the re-count result. In particular, the provision that the recount result should be declared within five days of completion of the recount is odd as it only serves to delay the declaration of results. Instead of allowing for five days AFTER the completion of the re-count to declare the result, there should be a strict requirement that the result be declared “forthwith” and no more than 24 hours after completion of the recount.
<p>IV</p>	<p>PRE-EMPTION OF RESULTS</p>	<ul style="list-style-type: none"> ➤ The amendment prohibits the announcement of elections results by any person before they have been officially announce by the Commission. This is designed to prevent pre-emption of official election results. ZESN urges the Commission to ensure that results are declared forthwith after counting and without any delays to prevent any anxieties or concerns. In

		<p>the past pre-emption of the official declaration has occurred as a direct response to failures to declare results promptly. This can be avoided by the Commission ensuring prompt declaration of results.</p>
V	VOTE RE-COUNTS	<ul style="list-style-type: none"> ➤ The provision requires that vote re-counts, which may be done at the Commission's own initiative or at the request of a contestant, must be completed within five (5) days after the last polling date, although the Electoral Court may extend this period. Disputes do occur in elections but it is necessary not to prolong the process and therefore to have measures to bring finality and setting such time-limits is important to realise this ideal.
VI	VOTER EDUCATION	<ul style="list-style-type: none"> ➤ Apart from the Commission, political parties or persons authorised to assist the Commission, any other person satisfying the criteria set out in the Bill will be entitled to provide voter education in Zimbabwe. This extends the scope of providers of voter education. Such persons must however, fulfil certain conditions, which revolved around their "Zimbabwean" character. ➤ Any foreign funding for the provision of voter education is however required to be channelled through the Commission, which also has extensive powers to control the provision of voter education through powers to vet and approve materials and content used by voter education providers as well as giving directions to cease publishing materials or alter publications used in providing voter education on grounds that they are false and misleading to voters. ➤ Therefore, all in all, Commission is not only the primary provider but legally and effectively is the gatekeeper and monitor in the provision of voter education. The expectation would be that the Commission would use its powers and any discretion in a manner that is fair and reasonable otherwise it would be subject to judicial review.
VII	ACCREDITATION OF ELECTION	<ul style="list-style-type: none"> ➤ Election (both internal and external) observers will be accredited by a

	OBSERVERS	<p>committee established by the Commission, which shall be known as the Observers' Accreditation Committee (hereafter "the OAC"). The OAC will be responsible for vetting the applications and making recommendations to the Commission. One challenge is that the composition of the Committee appears to have a heavy political influence in that four out of the seven members are ministerial appointees. This may be a concern in the next election given that the relevant ministerial portfolios are predominantly held by a single political party in the coalition.</p> <ul style="list-style-type: none"> ➤ Also of concern is the lack of a specific provision for seeking expeditious recourse for applicants who have been recommended for rejection by the OAC. Since the OAC makes recommendations to the Commission, which legally makes the final decision, there should, at the very least, be a provision in the law allowing applicants to make representations as to why the OAC's recommendation should not be adopted by the Commission. Such a right to be heard before a negative decision is made would be well in line with principles of natural justice and indeed the Constitution. ➤ Power of accrediting observers should remain with the Commission and political interference either directly, or through nominees or through the power to extend invitations must be removed.
VIII	NOMINATION OF CANDIDATES	<ul style="list-style-type: none"> ➤ There are tighter requirements to ensure that a candidate is actually a true representative of a political party that he/she purports to represent in an election. This move will prevent situations that have happened in previous elections where a single political party was represented by more than one candidate in the same constituency. The new provision ensures that there will be specific gate-keeping procedures by political parties so that only persons that they have approved are nominated to represent them in an election.
IX	VOTING PROCESSES AND PROCEDURES	<ul style="list-style-type: none"> ➤ That section requires polling day in all elections to. This Bill alters the provision for the setting of elections

		<p>dates after nomination day from the previously shorter between 28 and 50 days after nomination day to the longer between 42 and 63 days after nomination day. This extension of time between the day of calling for elections and the polling day will give more time for preparations by political parties, candidates in their campaigns and the Commission and related bodies in their fulfilment of certain legal requirements under the Act.</p>
X	SEPARATE BALLOT BOXES	<ul style="list-style-type: none"> ➤ There is clarification that where there is more than one election held at the same time there must be separate ballot boxes at every polling station for the votes cast in each of the elections. This is likely to promote accuracy and promote transparency.
XI	INFORMATION ON BALLOT PAPERS	<ul style="list-style-type: none"> ➤ Also to promote transparency, the Commission is obliged to disclose specific details about ballot papers printed for each election. Such information includes where and when the ballots are printed, their total number and the number that has been distributed to each polling station (including special polling station, where that facility applies). ➤ It is important however that the timing and location of the disclosures be clarified.
XII	ELECTION AGENTS	<ul style="list-style-type: none"> ➤ Candidates will be allowed to have one election agent in each polling station and another agent outside but within the "immediate vicinity" of the polling station ready to relieve the first one when necessary. The Commission may however, prescribe that only one election agent may be appointed to represent a political party during concurrent elections. Law enforcement agents must be educated that the other election agent is allowed to be very close to the polling station, otherwise the legislature would not have used the word "immediate" to describe the "vicinity" if it did not intend that the agent must be in close proximity with the polling station.
XIII	RESTRICTIONS ON	<ul style="list-style-type: none"> ➤ In language that is clearly mandatory,

	<p>POLICE OFFICERS</p>	<p>police officers are prohibited from interfering with the electoral process at any polling station. They are not even allowed to enter a polling station unless they are casting their votes or have been called upon to provide assistance in the exercise of their sole function which is to maintain order and prevent contraventions of the law to ensure a free and fair election.</p> <ul style="list-style-type: none"> ➤ Also important is that when inside the polling station, police officers will have to submit to the command and direction of the presiding officer. This ensures that the Commission has greater control of the voting process, undiluted by the previous roles of the police officers in which they even had the power s to assist illiterate or physically handicapped voters. ➤ Security Sector and Elections <p>An issue of serious concern that is not directly addressed by the Bill but has potential to impact significantly on elections is the role of the security forces and senior government officials such as the Attorney General who have a role in election processes. Whilst the Bill takes a positive step in removing police from direct involvement in the elections process except under the direction of the Commission, it is notable that influence of the police and other security forces can manifest at higher levels and sometimes in ways that are not directly covered by the law. For example, in previous elections, senior security officers have issued public statements to the electorate to the effect that they would only support an election result that favours certain candidates or parties to the exclusion of other contestants. It is arguable that this is tantamount to unduly influencing the election result by intimidation. This conduct should be specifically prohibited by ensuring there are clauses in the electoral laws which make it a punishable offence for senior civil servants, persons in the</p>
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		<p>employment of state institutions and senior members of the security forces to make public statements that demonstrate political bias and are designed to influence the election process. It is therefore recommended that the Bill incorporates provisions to prohibit such conduct, including public statements by senior state officials such as the Attorney-General, who are required by the Constitution to apply the law independently, impartially and without bias.</p>
XIV	ILLITERATE OR PHYSICALLY-HANDICAPPED VOTERS	<ul style="list-style-type: none"> ➤ The Bill recognises and upholds the freedom of illiterate and physically handicapped voters to be assisted by persons of their choice rather than by electoral officials or as in the past by police officers. Electoral officers may only assist where the voter does not have relatives or other persons of their choice to assist them. ➤ Whilst recognition of the freedom to choose, is an important step, there is a risk that such 'choice' may be forced upon voters by dominant political parties or individuals in certain areas. The observers and electoral officials must therefore play a more vigilant role to minimise that risk. ➤ Overall, this provision is a generous and welcome departure from the old provision whereby police officers had the power to provide assistance to such voters. By ensuring that voters bring a person of their choice or are assisted only by the presiding officer or electoral officers, this keeps the process within the exclusive jurisdiction of the Commission.
XV	POLLING RETURNS	<ul style="list-style-type: none"> ➤ There are mandatory requirements for the provision of electoral returns at all levels to the candidates and their political parties, e.g. polling station returns, constituency returns and that they must be posted outside the election centres for members of public. The availability of all these copies will enhance transparency as candidates and parties can use the opportunity to perform due diligence and ensure that the correct information is being

		transmitted right from the polling-station to the National Command Centre.
XVI	POSTAL VOTING	<ul style="list-style-type: none"> ➤ Although this voting avenue has always been available, the new provisions simplify the procedures and in particular allow the use of electronic communications in the applications for postal voting. ➤ Postal voting however remains too restricted to persons who are outside Zimbabwe on Government business, as well as their spouses if they are also out of the country. It remains unavailable to other voters who may be unavoidably outside the country but are still registered and entitled to vote. There is need to broaden the scope beyond persons on government business. There is no good reason why, if postal voting is available to those on government duty, it cannot be available to them too. ➤ Also of significance is that the restriction of postal votes excludes the many Zimbabweans abroad (the Diaspora). The restrictions confirm that the door is currently closed to the Diaspora unless they are on government business.
XVII	SPECIAL VOTING	<ul style="list-style-type: none"> ➤ The Bill also provides for a special voting procedure for members of the security forces (Police and Defence) who will perform duties during elections. It will also be used by electoral officials and accredited observers who will be on duty during the polling days and away from their regular places where they are eligible to vote. ➤ It is important to reconsider extending Postal or Special voting procedures to the elderly and infirm who would otherwise be unable to attend at polling stations during election days.
XIX	POLITICALLY-MOTIVATED VIOLENCE AND INTIMIDATION	<ul style="list-style-type: none"> ➤ The Bill essentially places a responsibility on political parties and candidates contesting an election to take steps to prevent politically-motivated violence and intimidation. It calls upon them to undertake to abide by a Code of Conduct set out in the Fourth Schedule to the Act.

		<ul style="list-style-type: none"> ➤ The Bill sets the structures for a law enforcement and prosecution system during election periods, including the appointment of a special police liaison officer, a Special Investigation Committee (SIC), the appointment of special magistrates, special prosecutors and special police units. ➤ Whilst in theory the structure looks fairly robust enough to deal with a serious problem that has plagued elections in Zimbabwe over the years, the test will obviously be in the implementation. In particular, there is need for vigilance to guard against selective application of the law, particularly at the level of prosecution where the Attorney-General has exclusive control and the current Attorney General has not made any effort to hide his political preferences. The Commission and election observers will have to be vigilant against selective application of the law.
XX	MEDIA COVERAGE	<ul style="list-style-type: none"> ➤ The Bill re-enacts parts of the Zimbabwe Electoral Commission Act (ZEC ACT) (which is to be repealed) which place a mandatory requirements on public broadcasters to treat all contesting political parties fairly and equitably and in particular to give all parties contesting an election free access to their broadcasting services as prescribed. This mandatory obligation on the public broadcaster is of particular significance in a country where there is only one broadcaster. Similar rules of fair and equitable treatment are prescribed for other broadcasters and the print media. ➤ Adherence to the legal requirements will be monitored by the Commission with the assistance of the Zimbabwe Media Commission (hereafter, the "ZMC") and the Broadcasting Services Authority (hereafter, "the BSA"). There is need however, for vigilant monitoring to identify and prevent circumvention of the rules. The biggest shortcoming in this regard is the lack of specific sanctions for breach of these rules and this must be improved. ➤ The definition of fair coverage must be clarified to ensure that coverage is not weighted too much in favour of negativity and criticism of particular

		parties and/or candidates and favourable treatment of another or others.
XI	ELECTORAL COURT	<ul style="list-style-type: none"> ➤ The powers of the Electoral Court, which has exclusive jurisdiction on all matters falling under the Act, will be extended so that it will have all the powers of the High Court in relation to electoral matters such as appeals, applications, petitions and reviews under the Act. Its capacity will also be enhanced since the minimum threshold for the number of judges has been raised from one to at least two. ➤ The major challenge, as with the rest of the judiciary in Zimbabwe will be the question of independence of the Electoral Court. It will be important to ensure that the Court is sufficiently resourced in order to execute its mandate efficiently in a challenging environment where speed is of the essence. ➤ As a general rule all matters before the Electoral Court and special magistrates' court must be regarded as urgent and therefore deserving of urgent attention and expedited resolution/conclusion.
XII	DELIMITATION OF CONSTITUENCIES	<ul style="list-style-type: none"> ➤ The Bill introduces a requirement that before notifying the Commission to carry out the delimitation exercise, the President must consult with the Commission so that the Commission is given adequate notice and time to complete the delimitation of constituencies and wards before calling a general election. This is a sensible clause which will ensure that the President does not act unilaterally and that the body responsible for the conduct of elections is involved at all relevant stages of the process.
XIII	INDEPENDENCE OF THE COMMISSION	<ul style="list-style-type: none"> ➤ The Bill re-enacts provisions of the ZEC Act and provides for ancillary powers. The major test however remains the independence of the Commission so that it can execute its mandate with efficiency. The test is always in the implementation of the rules and structures but of major concern are the financial and resource limitations of the Commission. ➤ The Commission must not only be

		<p>financially independent, drawing resources from the Consolidated Revenue Fund and in control of its own budget but it must have the full powers to run elections without interference and this includes the power to set election dates, on the basis of appropriate consultations.</p>
<p>XIV</p>	<p>RECOMMENDATIONS</p>	<p>1. New Voters Roll</p> <p>1.1 While ZESN notes the significance of creating an entirely new voters roll, if this option is to be taken, new registration of voters must commence immediately and significant resources must be deployed by the state and harnessed from the donor community since the process takes time and requires considerable resources.</p> <p>1.2 Further, in order to expedite the process of creating a new voters roll, ZESN urges that all unregistered voters must be encouraged to do so and those that are registered must confirm the accuracy of their registration so that if and when the proclamation to start registration for a voters roll is made, the facility for automatic transfer of registered voters to a new roll will be used to ease and quicken the process.</p> <p>2. Removal of Deceased Voters from the Voters Roll</p> <p>2.1. ZESN notes the new facility for removal of deceased or absent voters but recommends that incentives should be used to encourage relatives of deceased voters to notify the Commission to ensure their removal from the voters roll. In Mozambique, for example, they gave an incentive of a state-assisted burial if relatives assisted by notifying electoral authorities to delete their deceased relatives from the voters' roll.</p> <p>2.2. Alternatively or in addition, instead of relying solely on the relatives to</p>

ensure the removal of deceased or absent voters from the voters roll, there should be a legal requirement on relevant authorities that record deaths such as the Registrar General's Office to give to the Commission monthly notifications of any deaths so that the Commission can automatically remove the deceased from the voters rolls upon such notification. This is the practice that is used in Mozambique.

3. Ward Voters Roll

3.1 The requirement to provide a constituency voters roll to candidates must be extended to also cover the provision of ward voters rolls. There is no good reason why the requirement to provide free copies of the constituency voters roll to candidates does not extend to ward voters rolls.

4. Security Sector and Elections

4.1 ZESN strongly urges the incorporation in the Bill of provisions that specifically prohibit senior state employees, in particular senior members of the security forces, from engaging in conduct that unduly influences or has potential to unduly influence the election process. This conduct may include public statements that insinuate the unsuitability of candidates or parties that are qualified and eligible to participate in elections in Zimbabwe. This would deter such persons from conduct that has occurred in the past when senior security officers have issued public statements to the effect that they would only support an election result that favours certain candidates or parties but not other contestants.

4.2 ZESN therefore recommends the insertion of clauses in the electoral

laws which would make it a punishable offence to engage in such conduct. It is therefore recommended that the Bill incorporates provisions to prohibit such conduct. The purpose of these prohibitions would be to ensure that senior employees of the state or state-related institutions, including those that have a role in the elections process, such as the Attorney-General, exercise their powers impartially and in accordance with rules of fair-play.

5. Diaspora Vote

5.1 ZESN urges a reconsideration of the issue of the Diaspora vote with a view to upholding the Diaspora's right to vote. Allowing the Diaspora to vote encourages broader participation in politics and helps the country retain the loyalty of its citizens abroad. In doing so Zimbabwe would be following precedents already set in neighbouring countries like South Africa and Mozambique. The latter specifically mandates the electoral authorities to register Mozambicans living abroad so that they participate to fill the two seats reserved for the Diaspora.

6. Commission's Exclusive Role in Elections

6.1 ZESN recommends that the Commission be given sole and exclusive responsibility for the management of elections, including in particular, the registration of voters and all matters concerning the voters roll. The current system whereby responsibility is shared between the Commission and the Registrar General's Office causes confusion and dilutes accountability.

7. Monitoring Pre and Post-Election Violence in Polling Station-Based

voting

7.1 If the proposed new system of polling station-based voters roll is used ZESN urges close monitoring to prevent pre and post election violence given the risk that it will be easier to identify voting patterns within the small communities around which polling station-based voters rolls will be created. The Commission is urged to have back-up measures to cover those situations where during an election voters are displaced from their polling stations, which would prevent them from voting under this proposed system.

8. Presidential Election

8.1 ZESN urges that electoral legislation on the Presidential election must be designed to cater for a situation where whilst there is no candidate who wins by more than 50% of the votes in the first election and therefore needing a Presidential Run-Off election, there will be more than two candidates having the highest votes. This may happen where for example two candidates are tied in second place by reason of having an equal number of votes. The current rules on a Presidential Run-Off election are based on the assumption that there will only be two candidates with the highest votes in the first election. Failure to cater for the unlikely scenario raised in this recommendation could produce an unnecessary crisis.

8.2 ZESN recommends a review of the role of Parliament in the election of the President in the event of a deadlock at the Presidential run-off election. Currently, the rule is that where there is a deadlock Parliament will sit as an Electoral College to make the final decision. ZESN believes the

Presidency is too important an office for decisions on its holder to be delegated to Parliament. It is recommended that this be changed so that where there is a deadlock, a new election is held until such time that a clear winner is found. This recommendation is consistent with the position in Ghana, which has a similar system providing for run-off elections. Simply put, the decision on the Presidency must remain in the hands of the voters.

9. Convening Parliament pending Presidential Run-Off Election

8.1. ZESN recommends that the legislation should give a specific time-line of when the Parliament should be convened after the election, even in the event of a run-off Presidential election. This will ensure Parliament is able to commence its role and that it is not dependent on the timing of the outcome of the Presidential election.

10. Declaration of Results "Forthwith"

10.1 Although the proposed law sets up a requirement that the results of the Presidential election must be declared within a period of 5 days from the last polling day, ZESN urges that best practice is to follow the mandatory requirement that the results be declared forthwith. The 5 day limit should only be seen as the maximum possible date within which to announce the results otherwise the primary requirement is that results must be declared forthwith upon completion of counting.

10.2 In order to prevent pre-emption of results as envisaged in the Bill, ZESN also urges the Commission to ensure that results are declared forthwith

after counting and without any delays to prevent any anxieties or concerns. In the past pre-emption of the official declaration has occurred as a direct response to failures to declare results promptly. This can be avoided by the Commission ensuring prompt declaration of results.

11. Votes Re-count Period

11.1 ZESN recommends that as the requirement that the vote re-count be done within 5 days of the last polling day clashes with the above requirement for the announcement of results, it is better to require that the period within which the recount must be done be counted from the day that it is ordered by the Commission and that this be limited to not more than two days, unless the Commission extends it upon application to the Electoral Court.

12. Announcement of Re-Count Results

12.1 Still on the re-count, ZESN urges that instead of requiring that the results of the re-count can be announced within a 5 day period **“after the completion of the recount”** it should be declared forthwith upon completion and in any event, not more than 24 hours after the completion of the recount. There is legitimate justification for potentially waiting for a further 5 days from completing the recount before the result is declared. It only breeds anxiety, uncertainty and fears of rigging all of which the statute is ostensibly designed to minimise.

13. Funding for Voter Education

13.1 ZESN recommends a reconsideration and clarification of rules relating to the handling of foreign funding to support voter education. It is not entirely clear from the provision

		<p>whether the Commission has the discretion to refuse any foreign funds for onward passage to the local organisations. If it does have such discretion, ZESN urges that it should be used reasonably in favour of the primary goal of enabling the provision of voter education.</p> <p>13.2 In addition, it is not entirely clear that the funding that it receives will be passed on intact to the relevant organisation or whether the Commission will have the discretion to allocate it to other organisations. It is important to clarify that the funding will not be used in this broad way and that essentially the Commission is a receiving agent for the specific organisation that applied for funding.</p> <p>14. Accreditation</p> <p>14.1 ZESN notes that the Observers' Accreditation Committee ("OAC") which is responsible for the accreditation of both local and foreign election observers is comprised of a high number of political nominees. If the aim was to reduce political interference in the accreditation of observers, this is not fully achieved given the domination of political nominees. ZESN recommends that the composition of the OAC be the exclusive decision of the body charged with running elections, i.e. the Commission. Ministers, who are usually also contestants in an election, should have no role in the accreditation of observers since all other candidates in an election who are not Ministers do not have the same facility. Likewise, it is not necessary to give power to the Ministers of Government to invite persons to apply for accreditation to observe elections. Indeed, on the same basis, Ministers' right of objection against certain observers is</p>
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not justified given that other contestants or parties with an interest in an election do not have the same facility of objection. All this should be the exclusive domain of the Commission.

14.2 ZESN is also concerned that there is at present no provision for the applicants who would have been rejected for accreditation to seek recourse against the decision of the OAC. It is necessary to put in place an expedited procedure to deal with any appeals.

15. Shorten Period for Run-Off Election

15.1 ZESN recommends that the period within which the Presidential Run-off election be limited to a shorter period of time, for example, that the run-off be held within three weeks of the declaration of the first round results. This allows for a quick resolution of the Presidential contest. There is no need to have a long waiting period between the first election and the run-off – it only provides opportunities for manipulation and intimidation. The need to prepare for the run-off cannot be used as an excuse for the lengthy interval because the country must have back-up measures in place to cater for the run-off election should the need arise. Ghana, which has a similar system, has a very simple clause which requires the run-off election to be held within three (3) weeks of the first round of elections.

15.2 ZESN notes that one thing that is not adequately provided for under the current system is what happens where there is need for a Presidential run-off election, when the person who is the incumbent at the time is not one of the two candidates for the run-off election because he would have come third or lower in the first poll.

Placing power in the hands of such a person who is aggrieved by the loss of an election and is sure that he will not be in office for much longer is risky and problematic especially where politics of power transfer is sensitive. ZESN urges Parliament to reconsider this scenario and provide for back-up measures to cover for leadership in the interim period.

16. Disclosure of Ballot Paper Information

16.1 ZESN notes that while the provision requiring the disclosure of information regarding ballot papers is an important step, it must state clearly when and where the disclosures will be made. Presently it simply requires that disclosures be made 'without delay' and make no reference to the location. There must be clear guidance in the law on the timing and location of the disclosures. It is recommended that a specific time-period be stated, for example, that the disclosures should be made not more than fourteen (14) days before the election and also that the location of the disclosures must be specified as the constituency, provincial election centres or the National Command centre.

17. Postal Voting

17.1 It is recommended that as a security measure, tamper proof envelopes should be used in postal voting to prevent fraudulent activity.

17.2 ZESN urges the extension of postal voting to cover other persons who are eligible to vote but would not be present on the polling day. It should not be available to persons on government business only. If a person can show proof that he or she will not be present to cast his vote on polling day, he should be allowed to apply for

postal voting. At present the system discriminates against those in business who may have to be away to do business during election days. Postal voting does contain risks but it should be more widely available than it is at present.

17.3 Further to the recommendation on Diaspora voting, ZESN urges a reconsideration of postal voting to allow Zimbabweans in the Diaspora who are eligible to vote to use it.

18. Special Voting for the elderly

18.1 ZESN recommends that the special voting procedure be broadened to include the elderly, physically handicapped, the sick and infirm who would not otherwise be able to attend at polling stations on polling day. The state must take a pro-active approach that enables voters to fully exercise their right to vote in line with individuals' political rights as guaranteed under Section 23A of the Constitution. It is recommended that just as the state has made special procedures for those who cannot be physically present on government business, it must also account for the voting rights of those who cannot be present by reason of old age, physical incapacity or generally ill-health. At present the voting procedures which effectively limit the participation of the aged could be seen as discriminatory on the grounds of ageism and therefore potentially in violation of Section 23 of the Constitution.

19. Widening the Pool of Special Prosecutors

19.1 In order for the Attorney General's office to more effectively carry out its special prosecution duties during election times, ZESN urges that the

Attorney General be encouraged to draw from the pool of practising legal practitioners in the appointment of special prosecutors. This would not only enhance the capacity of the AG's Office but also lend to it much needed expertise and experience to tackle the volume of work that is likely to arise in such a climate. ZESN urges observers to be vigilant and watch out for selective application of the law.

20. Urgency as a General Rule in Election-related Matters

20.1 In order to ensure that the special legal machinery for preventing politically-motivated violence and intimidation fulfils its purpose, ZESN urges that, as a general rule, urgency must be the keyword in dealing with investigations and prosecutions. It is important that the electorate sees the legal machinery at work and that justice is done expeditiously as this will give them confidence and deter would-be perpetrators. Likewise, matters before the Electoral Court must as a general rule be dealt with on the basis of urgency. An applicant does not have to justify the urgency of any election-related matter brought before the Electoral Court and the special magistrates' courts.

21. Media Coverage

21.1 ZESN notes that the requirement of fair-play in both broadcast and print media coverage must also take into account that coverage can meet all the requirements on timing, amount and prominence but still be unfair by reason of bias and excessive negativity. ZESN therefore recommends that fair coverage must be defined to ensure that where the weight of coverage is negative, this would fail the test of fairness. This must be clear and specific to ensure

that media houses are fair and balanced in their approach to all competing parties and candidates.

21.2 The prohibition of hate speech and any language that incites violence or encourages racial, ethnic or religious prejudice or hatred is an important step but ZESN notes that the list of indices of prejudice or hatred in the provision omits '**gender**'. Given the sensitivity and importance of addressing gender issues, this is a glaring omission that must be corrected.

21.3 ZESN also notes that there are no specific sanctions provided for against breaches of the rules set for the media and that this omission makes the rules sound hollow and ineffective. ZESN recommends that clear sanctions, including possible loss of a licence or significant fines or indeed temporary suspension of publication be set out in the law. A law that fails to provide effective sanctions against breaches is not likely to make any impact and this must be corrected.

21.4 A final point is that there must be prohibition of attempts to circumvent these requirements through programming that purports to be otherwise than it actually is. In looking at fair coverage, monitors must look at the content rather than the form of programming. A political campaign for one party or denigration of others should not, for example, be dressed up as a lifestyle or culture programme.

22. ZESN urges that the Electoral Court, alongside other electoral institutions must be well resourced in order to more effectively carry out its functions and execute its duties.

23. Independence of the Commission

		<p>23.1 ZESN recommends that the independence of the Commission remains the most important factor in facilitating and ensuring a free and fair election. As the ultimate referee of elections it must not only have powers to set rules, manage elections exclusively without interference or direction from any other person but it must be financially self-sufficient and autonomous. To that end, provision must be made so that it draws its primary resources from the Consolidated Revenue Fund and that it must be in control of its own budget. The Commission must not be financially dependent on the President or ministers of government, all or most of whom will be candidates in elections that it manages. ZESN urges further tightening of the relevant rules and practices that impact on the independence of the Commission to ensure that the Commission is truly independent and the ultimate manager of all elections in the country.</p> <p>23.2 Finally, ZESN strongly recommends that the Commission be given full control of elections by granting it the power to set election dates in consultation with relevant parties and state authorities. The present system, retained by the Bill where the President sets dates and Ministers have some roles in the electoral processes is unfair because they are interested parties by virtue of being contestants in the elections. It means they are both players and referees in the same game which puts the other contestants at a disadvantage.</p>
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