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# Analysing the conduct of the police and traditional leaders and its impact on freedom of association and assembly during election periods in Zimbabwe

By *Francisca Midzi*

**Key Words:** Police; Traditional leaders; Freedom of Association; Freedom of Assembly; Elections

## Abstract

The full enjoyment of freedom of assembly and freedom of association by all is a critical component of a free and fair election. This paper examines the extent to which the Zimbabwean legal framework and the conduct of traditional leaders and police affect the exercise of these freedoms during election periods. The paper demonstrates that the Zimbabwean legal framework does not support a conducive electoral environment where individuals can freely assemble and associate in pursuit of their electoral goals. The paper highlights some of the unlawful practices by the police and traditional leaders that hinder free assembly and association such as malicious arrests, police brutality and impunity, intimidation and coercion of rural voters by traditional leaders. In the conclusion, this paper suggests reforms that are needed in order to ensure that the rights to freedom of assembly and association are enjoyed by all so as to ensure that the 2023 general election is held in a free and fair environment.

## 1 Introduction

For a long time, elections have been a hotly contested process marred by violence, allegations of electoral malpractices, police brutality and a general lack of respect for human rights, particularly the freedom of assembly and association. The freedom of association and assembly is an enabler for democratic electoral activities, such as the holding of demonstrations and rallies. The UN Human Rights Committee has noted that, ‘Together with other rights it [freedom of association and assembly] constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.’<sup>1</sup> Internationally, the Universal Declaration on Human Rights,<sup>2</sup> the International Covenant on Civil and Political Rights<sup>3</sup> (ICCPR), the African Charter on Human and People’s Rights<sup>4</sup> (African Charter) guarantee the freedom of association and assembly. Section 58 of the Constitution of Zimbabwe<sup>5</sup> enshrines the right to freedom of association and assembly. Zimbabwe has signed and ratified both the ICCPR and the African Charter. Therefore, the State is bound by both domestic and international law to respect, protect and promote freedom of association and assembly including during election periods.

Laws such as the Maintenance of Peace and Order Act [Chapter 11:23] (MOPA) and unconstitutional conduct by the police and traditional leaders contribute to a repressive environment that militates against free association and assembly particularly in the context of elections. The questions to be answered in this paper are; (1) Does the legal

1 Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement> (Accessed on 14 July 2022)

2 Article 20, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed on 4 August 2022)

3 Article 22, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed on 4 August 2022)

4 Article 10 and 11, <https://www.achpr.org/legalinstruments/detail?id=49#:~:text=The%20African%20Charter%20on%20Human, freedoms%20in%20the%20African%20continent> (Accessed on 4 August 2022)

5 Amendment (No. 20) Act, 2013

framework facilitate the freedom of association and assembly in electoral processes? (2) How are the police and traditional leaders hindering freedom of association and assembly in electoral processes?

## 2 Definition of the freedom of association and assembly

The UN Special Rapporteur on the rights to peaceful assembly and association defined peaceful Assembly as constituting of ‘... an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in.’<sup>6</sup> The Guidelines on freedom of association and assembly in Africa adopt a similar definition and add that the gathering would be, ‘for an expressive purpose and for an extended duration’ as well as recognising use of online platforms to exercise freedom of association and assembly.<sup>7</sup> Freedom of Association is exercised when, ‘... any groups of individuals or any legal entities [come] together in order to collectively act, express, promote, pursue or defend a field of common interests.’<sup>8</sup>

During electoral periods, people need to campaign, express their views on political parties or candidates and even to monitor and observe electoral activities. In so doing, they get to exercise their freedom of association and assembly hence its significance to free and fair elections. Underscoring the importance of freedom of association and assembly as well as other rights and freedoms in elections, the UN Human Rights Committee stated that, ‘Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.’<sup>9</sup>

Like all other human rights, the state has the obligation to respect and protect freedom of association and assembly. International human rights law and domestic law underscores these state obligations. The obligation to respect these rights implies the duty of the State to refrain from arbitrarily interfering with or curtailing the enjoyment of human rights.<sup>10</sup> For example, to uphold the freedom of association and assembly, the state has a duty to refrain from arbitrarily prohibiting peaceful gatherings. The State is also required to implement measures aimed at protecting individuals and groups against human rights abuses<sup>11</sup> for instance investigating and remedying police brutality during gatherings.

## 3 Analysis of the legal framework of the right to free association and assembly in the context of elections

The legal framework governing the rights to the freedom of association and assembly includes laws such as, MOPA, Criminal law (Codification and Reform Act) [Chapter 9:23], the Electoral Act [Chapter 2.13] and the Private Voluntary Organisations (PVO) Act [Chapter 17:05]. This paper shall not analyse the impact of all these laws to freedom of association and assembly. It will only focus on the MOPA and the PVO Act. The analysis of these two laws is also not exhaustive. The MOPA is the primary law that limits the exercise of the freedom of assembly and association in the interests of public order, peace and security. Selected provisions of the PVO Act and its amendment Bill shall also be analysed because of its possible effect on hundreds of organisations serving millions of the electorate in the not for profit sector. The Traditional Leaders Act does not directly affect the freedom of association and assembly but its analysis serves to show how it limits traditional leaders’ independence lending them to easy manipulation and political interference.

6 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association Miana Kia (21 May 2012) Page 7 paragraph 24, [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf) (Accessed on 27 July 2022)

7 Guidelines on Freedom of Association and Assembly in Africa, page 9 paragraph 3, [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf) (Accessed on 27 July 2022)

8 See Note 6, paragraph 51

9 UN Committee on Human Rights, General Comment 25, “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service (12 July 1996), paragraph 12, <https://www.osce.org/files/f/documents/4/a/19154.pdf> (Accessed on 20 August 2022)

10 The Inter-Parliamentary Union and the United Nations Office of the High Commissioner for Human Rights, Human Rights Handbook for Parliamentarians, page 32, <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (Accessed on 12 September 2022)

11 Ibid

Section 58 of the Constitution protects the, ‘right to freedom of assembly and association and the right not to assemble and associate with others.’ It also proscribes compelling someone to belong to an association or attend a gathering or meeting. The Constitution provides for a solid protection of rights by prescribing how they should be limited,<sup>12</sup> interpreted<sup>13</sup> and enforced,<sup>14</sup> mandating the government at all levels and every person and government at every level to respect, protect, promote and fulfil human rights.<sup>15</sup> The Constitution also provides for political rights<sup>16</sup> recognising that all individuals and groups have the right to participate in political activities and have a right to free, fair and regular elections. These provisions read together signify a clear intent by the Constitution to ensure the fullest protection of human rights.

The Constitution regulates the conduct of members of the security services by providing in Section 208 that they should abide by the Constitution and the law, that they shall not be partisan, further or prejudice the interest of any political party or cause, and that they must not be active members or office bearers of any political party or organisation.<sup>17</sup> Section 281 also prescribes the same for traditional leaders including that they should not be members of any political party and must treat all persons equally and fairly. Section 287 provides for the creation of an Integrity and Ethics Committee to enforce integrity and ethical conduct by traditional leaders, resolve disputes and receive complaints against them. For members of security services, Section 210 provides for the establishment of an effective independent mechanism for receiving and investigating complaints and remedying harm caused by misconduct of security services.

The Constitution encompasses a rich human rights framework to which laws, attitudes and practices must fully align. Unfortunately, nine years after the adoption of the Constitution, this rich constitutional framework remains largely on paper and unimplemented. The government has not yet established the Integrity and Ethics Committee for traditional leaders and the Independent Complaints Mechanism for members of security services. The Independent Complaints Commission Bill is still going through Parliamentary law making processes. Alignment of the Traditional leaders Act with the Constitution has not been done whilst the Public Order and Security Act (POSA) was repealed and replaced with the Maintenance of Peace and Order Act (MOPA) in 2019, which contains draconian provisions that undermine freedom of association and assembly. The gap between the Constitution and practice is a major drawback on the prospects for free, fair and credible elections, in particular the freedom of assembly and association in electoral processes.

### 3.1 Maintenance of Peace and Order Act

The Public Order and Security Act [Chapter 11:17] (POSA) was the main legislation regulating the exercise of freedom of association and assembly and was often used to undermine these freedoms during the Robert Mugabe administration. Emmerson Mnangagwa’s administration, introduced MOPA to replace POSA. MOPA contains some progressive provisions such as Section 8 (1), which compels the Police to give a written response within three days of receipt of the Convener’s notice for a procession or public demonstration. This only applies where the regulating authority is of the opinion that the demonstration or procession can go ahead without negotiations. POSA did not impose any time limits for police to respond to a Convener’s notification.

Section 18 of the MOPA repealed Section 37 of POSA, which allowed the Minister of Defence to deploy defence forces to assist police. Only the President is mandated under MOPA to deploy members of the defence forces to assist the police in line with Section 110(1)(g) and 213(1)(a) of the Constitution to maintain law and order. MOPA incorporates Section 214(1) of the Constitution, which provides for political accountability for deployment of Defence Forces by obligating the President to inform Parliament in appropriate detail of the reasons of and place of their deployment within 7 days of its first sitting after deployment.

12 Section 86

13 Section 46

14 Section 85

15 Section 44

16 Section 67

17 Section 208(2)(a)–(d)

MOPA however retained most of the retrogressive provisions of POSA. Notably, Section 7(1) (a) and (b) of MOPA requires convenors of gatherings to give a minimum of 7-days and 5-days' notice of their intention to conduct demonstrations and public meetings respectively. The Guidelines on Freedom of Association and Assembly in Africa recommend that, 'any notice period shall be as short as possible' and that it should be, '48 hours and not more than 5 days'.<sup>18</sup> Zimbabwe's notice period is therefore longer than recommended under international law. The notification period can even extend to 14 days. This is because the regulating authority can schedule a negotiation meeting with the Convener within seven days of receipt of the notification.<sup>19</sup> This provision fails to recognise the different ways of exercising the freedom of association and assembly, for example with spontaneous demonstrations. The policing of such demonstrations has never been human rights compliant and thus earning the Zimbabwe Republic Police notoriety for its heavy handedness when thwarting gatherings. MOPA's failure to provide exceptions has the effect of restricting freedom of assembly and association more so during elections, where the likelihood for spontaneous peaceful gatherings and or demonstrations is high. The UN Special Rapporteur on the rights to peaceful assembly and association pointed out that, 'The right to freedom of peaceful assembly protects the ability of individuals to protest election results to which they object, including on the grounds that those results appear to be fraudulent, and including when such protests occur spontaneously'.<sup>20</sup>

Section 7(5) and Section 8(11) of MOPA criminalise non-compliance with its provisions. Failure to notify attracts a level twelve fine and or 6 months imprisonment whilst non-compliance with a prohibition notice carries a level 14 fine and or imprisonment for a period not exceeding a year. Criminal liability for breach of procedural requirements in exercising a right is not a necessary and reasonable limitation as required by Section 86(2) of the Constitution as well as international human rights law. The possibility of arrest and imprisonment is excessive and has the effect of deterring people from organizing or participating in peaceful gatherings.

MOPA does not provide for accountability where the police fail to comply with its provisions, for example not complying with Section 13 when controlling gatherings resulting in injuries and deaths. The Act should have compelled the Police to prepare a detailed written report and to provide the convenor of the gathering with a copy of the report in cases where they use force. MOPA remains a repressive law that does not enable freedom of association and assembly. The Zimbabwe Human Rights Commission in its Report to the Human Rights Council voiced concern that the MOPA remains restrictive and needs further review.<sup>21</sup> Referring to MOPA, the UN Special Rapporteur on Freedom of association and assembly who visited Zimbabwe in 2019 noted that, '...the newly established legal framework does not address long-underlying concerns and is not conducive to free and unhindered exercise of the right to freedom of peaceful assembly, negatively affecting the exercise of the rights to freedom of association and expression'.<sup>22</sup>

### 3.2 Private Voluntary Organisations (PVO) Act

The purpose of the Private Voluntary Organisations (PVO) Act is to register and regulate PVOs. A Bill to amend this Act is currently before Parliament. The Bill's objectives are to comply with the Financial Action Taskforce on Anti money laundering and countering Terrorism Financing (FATF) recommendations and streamline administrative procedures as well as prohibit PVOs from undertaking political lobbying. The Bill, if enacted into law will further shrink civil society space and exert more governmental control beyond the proportionate and risk based approach required by the FATF. The United Nations Security Council Resolution 2462 of 2019 recognises the state's primary responsibility to prevent and suppress financing of terrorism acts and mandates governments to ensure that any measures taken to counter terrorism must comply with all its obligations under international law.<sup>23</sup> Several civil society

18 See Note 7, paragraph 72a

19 Section 8(3) MOPA

20 Guidelines on the rights to freedom of association and assembly in the context of elections and of the Covid-19 crisis, Page 10, paragraph (e) <https://freeassemblyandassociation.net/wp-content/uploads/2021/05/Guidelines-on-the-Rights-to-Freedom-of-Peaceful-Assembly-and-of-Association-in-the-context-of-Elections-and-the-Covid-19-crisis.pdf> (Accessed on 2 August 2022)

21 Zimbabwe Human Rights Commission "Submission to the United Nations Human Rights Council NHRI Report on Zimbabwe's Universal Periodic Review 3rd Cycle" (2021)

22 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, on visit to Zimbabwe, paragraph 30, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf> (Accessed on 14 July 2022)

23 United Nations Security Council Resolution 2462 of 2019, <https://www.ohchr.org/en/documents/country-reports/ahrc4450add2-visit-zimbabwe-report-special-rapporteur-rights-freedom> (Accessed 13 December 2022)

organisations locally and internationally have raised deep concern over the Bill's non-compliance with international best practices and the Zimbabwean Constitution.<sup>24</sup> It will be a major threat to the freedom of association and assembly, as it will impede on the easy formation of NPOs, introduce excessive governmental control of registered PVOs, limit participation in political activities, introduce stiff civil and criminal penalties.<sup>25</sup> Below are some of the provisions that will restrict freedom of association and assembly.

Clause 3C which compels registration as PVOs by all organisations that receive financial donations for their charitable activities, failing which anyone associated with the unregistered organisation may face criminal sanctions. Trusts and other organisations not registered as PVOs will immediately become unlawful organisations upon the Bill's enactment. This provision may also empower some traditional leaders to demand proof of PVO registration before allowing organisations to conduct their activities.

Clause 5 which prohibits PVOs from supporting or opposing political parties or candidates and creates an offence attracting a level 12 fine and or imprisonment not exceeding one year. This provision is also prone to abuse by the police because the definition of the offence is vague and overly broad thus it may be used to restrict PVOs from undertaking legitimate electoral activities. For example, through this provision PVOs can be restricted from investigating and exposing corrupt political party candidates or from expressing their support to a political party's policy of fielding women candidates.

## 4 Analysis of police conduct in relation to freedom of association and assembly in the context of elections

Through use of repressive laws and adding their own unlawful actions such as arbitrary use of force and dragnet arrests, police have made it difficult and dangerous for people to freely assemble and associate especially during electoral periods. In March 2007, at a 'Save Zimbabwe campaign' prayer meeting, police violently disrupted the meeting, injuring many, arresting opposition MDC leaders and other civil society leaders.<sup>26</sup> In the 2013 harmonised elections observation report, Zimbabwe Election Support Network (ZESN) reported twelve cases of harassment of CSOs by the police ranging from arbitrary arrests, office raids, detention without charge, and confiscation of voter education material inter alia.<sup>27</sup> 75 out of the 274 cases documented by the Zimbabwe Human Rights NGO Forum in August 2018 were committed or suspected to have been committed by police including arbitrary arrests, assaults, disruption of meetings and abductions.<sup>28</sup> Below are some of the common violations of the freedom of assembly and association committed by the police.

### 4.1 Non-compliance with the law

In as much as the MOPA is restrictive, the police have continuously contravened its provisions. For example, when dispersing an unlawful gathering Police must follow the steps in Section 13 (sub-sections 2, 3 and 4) which require them to:

- ▶ Obtain the attention of the people gathered;
- ▶ Order them to disperse within a reasonable time in English and in any officially recognised language; and
- ▶ If they do not start preparing to leave or start leaving within the specified time, the police can then use proportionate force excluding weapons likely to cause bodily injury and death (for example, button sticks).

24 International Federation for Human Rights, 'Zimbabwe: Private Voluntary Organisations Amendment Bill poses serious threats to freedom of association' (22 March 2022), <https://www.fidh.org/en/region/Africa/zimbabwe/zimbabwe-private-voluntary-organisations-amendment-bill-poses-serious> (Accessed on 21 September 2022)

25 Veritas, Bill Watch 74-2021 [Analysis of the PVO Amendment Bill], <https://www.veritaszim.net/node/5352> (Accessed on 21 September 2022)

26 Human Rights Watch 'Bashing dissent; Escalating violence and state repression in Zimbabwe' (2 May 2007), <https://www.hrw.org/report/2007/05/02/bashing-dissent/escalating-violence-and-state-repression-zimbabwe> (Accessed on 21 September 2022)

27 Zimbabwe Election Support Network "Report on the 31 July 2013 Harmonised Elections", [http://www.veritaszim.net/sites/veritas\\_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf](http://www.veritaszim.net/sites/veritas_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf) (Accessed on 21 September 2022)

28 <https://www.hrforumzim.org/2018-post-election-violence-monitoring-report-01-09-august-2018> (Accessed 13 December 2022)

The practice by the police once they arrive on the scene has been to start beating people, throwing tear gas, using water cannons and arresting them without following the elaborate instructions provided for in Section 13, subsections 2 and 3. If the police were to follow the instructions, injuries, arrests and deaths during crowd dispersal would most likely not occur. In the run up to the March 2022 by-elections, a video surfaced of a police officer beating Citizens Coalition for Change (CCC) supporters for holding car rallies.<sup>29</sup> Protestors now fear the police so much that they start running away the moment they see them approaching but in most cases police give chase and beat people using button sticks. Giving chase and beating protestors is an unnecessary use of force since the people would have already dispersed themselves.

Section 13(4) clearly states that the degree of force used shall not be greater than is necessary to disperse the gathering. The force used must be reasonable and proportionate to the circumstances of the case. This is yet another provision that the police have been contravening. After the January 2019 protests, the Zimbabwe Human Rights Commission noted unlawful acts by police and military such as, indiscriminate use of force resulting in eight deaths and many others injured. Their unlawful actions included forced entry into homes, dragnet arrests and torture targeting opposition and trade union leaders.<sup>30</sup>

## 4.2 Impunity for their transgressions

Police impunity is a major challenge on the exercise of the freedom of association and assembly. The police have injured people during dispersal of gatherings but there is no evidence of internal disciplinary action or prosecution to hold them to account. The creation of the Independent Complaints Mechanism in the Constitution was in direct response to the police's lack of accountability for their transgressions. The mandate of the Zimbabwe Independent Complaints Bill is to receive and investigate complaints from the public on misconduct by members of security services. The Commission of Inquiry set up to investigate the August 2018 violence found that 6 people were killed and 35 injured as a result of police and military actions<sup>31</sup> and that the perpetrators must be held accountable.<sup>32</sup> Four years later, none of the members of the police service have been brought to book. Impunity encourages police unlawful conduct and deters citizens from freely exercising their rights.

## 4.3 Poor investigations into alleged abductions, violence, killing

Police have been lethargic and unresponsive when it comes to investigating abductions, disappearances, torture and other criminal acts against opposition members and trade union or other civil society members.<sup>33</sup> The cases of abduction and torture of Samantha Kureya, Dr Peter Magombeyi, Cecilia Chimhiri, Johanna Mamombe, Netsai Marova and disappearance of Itai Dzamara are some examples of police failure to fully investigate and bring the perpetrators to book.<sup>34</sup> The reported deaths of 17 people and sexual violence against women by the police and military after the January 2019 protests<sup>35</sup> are also examples of police failure to fully investigate and hold perpetrators to account. Failure to investigate crimes around electoral processes creates an intimidating environment dominated by fear of state sanctioned violence. As a result, most people will not freely associate with their political parties or participate in gatherings out of fear and this creates an unfair electoral environment. According to the UN, 'In 2019 alone, 49

29 'Police brutality, political violence and flawed voters roll ahead of Zimbabwe by-elections' The Zimbabwe Situation, 20 February 2022, <https://www.zimbabwesituation.com/news/police-brutality-political-violence-and-flawed-voters-roll-ahead-of-zimbabwe-by-elections/> (Accessed on 21 September 2022)

30 Human Rights Commission Monitoring Report in the aftermath of the 14 January to 16 January 2019 "stay away" and subsequent disturbances, <https://www.veritaszim.net/node/4781> (Accessed on 14 July 2022)

31 Report of the Commission of Inquiry into the 1st of August 2018 post-election violence, page 48 paragraph C, <http://www.veritaszim.net/node/3364> (Accessed on 14 July 2022)

32 Ibid page 54 paragraph 76b

33 'Political Abductions and Forced Disappearances in Zimbabwe', [https://www.pindula.co.zw/Political\\_Abductions\\_and\\_Forced\\_Disappearances\\_in\\_Zimbabwe](https://www.pindula.co.zw/Political_Abductions_and_Forced_Disappearances_in_Zimbabwe). The report documents 20 cases of abductions in 2008 most of them being opposition members, 4 political activists in 2016 and 15 in 2019 (Accessed on 14 July 2022)

34 Human Rights Watch Country Report 'Abuses, ill-treatment and Torture', <https://www.hrw.org/world-report/2021/country-chapters/zimbabwe> (Accessed on 14 July 2022)

35 Zimbabwe Human Rights NGO Forum, 'On the days of darkness in Zimbabwe, An updated report on the Human Rights Violations committed between 14 January 2019 to 5 February 2019', <https://www.veritaszim.net/node/3514> (Accessed 13 December 2022)



cases of abductions and torture were reported in Zimbabwe, without investigations leading to perpetrators being held to account.<sup>36</sup> Government has stated that they have noticed a trend of staged abductions that happen close to international events aimed at tarnishing the government's human rights record. Nevertheless, government has not managed to prove the staging of the abductions.

#### 4.4 Selective application of the law

The credibility of the police service in Zimbabwe has long been lost due to their selective application of the law. Police have used Section 8 (Subsections 6 and 9) of MOPA to impose conditions regarding the gathering or prohibit it. In most if not all cases, opposition parties and civil society organisations working on governance and human rights have faced obstacles upon notifying police, for instance, being issued with a prohibition notice or being compelled to stick to a defined route.

It is very rare to hear reports of the police prohibiting ZANU PF rallies.<sup>37</sup> During the campaign period for the by-elections held in March 2022, the police prohibited or disrupted some of the CCC rallies.<sup>38</sup> The CCC party also raised concern that their rallies were banned on unjustified reasons such as the police not having the capacity to manage the event or that the venue they intend to use has been booked.<sup>39</sup> The selective application of the law also existed during the POSA. In the 2008 elections, the Pan African Parliament in its preliminary statement observed that, there were restrictions of the right to free assembly noting that the Opposition candidate was not afforded the same opportunity to hold star rallies as the ruling party candidate.<sup>40</sup>

## 5 Analysis of traditional leaders conduct in relation to the freedom of association and assembly in the context of elections

Traditional leaders occupy a special place in rural areas. They are the pillars of the local customary governance system that has a perfectly devolved structure. They have multiple roles including dispute resolution, taking care of the vulnerable, and preservation of the environment. The emergence of a strong opposition political party in the early 2000s saw the ruling party manipulating the traditional leaders' influential role in rural communities. Willingly or unwillingly, traditional leaders have practised various electoral malpractices throughout the electoral cycle. Some traditional leaders campaigned for ZANU PF, participated in partisan distribution of food aid, occupied leadership positions in party structures or coerced villagers to vote for the ruling party.<sup>41</sup> In the run up to the 2018 elections, the Masvingo High Court barred traditional leaders from participating in partisan politics as this violated the right to free and fair elections.<sup>42</sup> A 2021 survey conducted by the Afro-barometer found that about two-thirds of Zimbabweans believe traditional leaders wield "some influence", 47% believe traditional leaders have significant influence on how people in their jurisdictions vote whilst 72% want traditional leaders to stay out of politics and allow the free exercise of the right to vote.<sup>43</sup>

36 'Zimbabwe: UN experts demand an immediate end to abductions and torture', 10 June 2020, <https://www.ohchr.org/en/news/2020/06/zimbabwe-un-experts-demand-immediate-end-abductions-and-torture?LangID=E&NewsID=25944> (Accessed on 14 July 2022)

37 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, on visit to Zimbabwe, paragraph 38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf> (Accessed on 21 September 2022)

38 'ZRP, the law, and your right to gather – what the law says' 15 March 2022, <https://zimfact.org/fact-sheet-zrp-the-law-and-your-right-to-gather-what-the-law-says/> (Accessed on 21 September 2022) 1 July 2008

39 'Police Give Reasons For Banning CCC Rallies' 5 August 2022, <https://news.pindula.co.zw/2022/08/05/police-give-reasons-for-banning-ccc-rallies/> (Accessed on 21 September 2022)

40 'The Pan-African Parliament election observer mission to the presidential run-off and parliamentary by-elections in Zimbabwe' 1 July 2008 Relief Web, <https://reliefweb.int/report/zimbabwe/pan-african-parliament-election-observer-mission-presidential-run-and-parliamentary> (Accessed on 21 September 2022)

41 R. Fayayo, 'Zimbabwe's 2018 Elections: The Changing Footprints of Traditional Leaders', <https://www.boell.de/en/2018/07/26/zimbabwes-2018-elections-changing-footprints-traditional-leaders> (Accessed on 14 July 2022)

42 Zimbabwe Lawyers for Human Rights Alert, 'High Court bans all traditional leaders from politics' (17 May 2018), <https://kubatana.net/2018/05/17/high-court-bans-traditional-leaders-politics/> (Accessed on 14 July 2022)

43 Afrobarometer, 'Zimbabweans see traditional leaders as influential but want them to stay out of politics', <https://www.afrobarometer.org/publication/ad469-zimbabweans-see-traditional-leaders-influential-want-them-stay-out-politics/> (Accessed on 14 July 2022)

The Traditional Leaders Act [Chapter 29:17] provides for the duties and responsibilities of traditional leaders. It also provides for appointment and removal in line with their prevailing customs. The Act is outdated and inconsistent with the Constitution. The Act gives the President the power to appoint Chiefs whilst giving due consideration to the prevailing customs of that Community.<sup>44</sup> In the case of *Zvarikura & ors v Minister of Local Government, Public Works and National Housing & anor*,<sup>45</sup> the court held that, 'Clearly, ss 3 and 4 of the Traditional Leaders Act which gives the President wider powers in dispute resolution are unconstitutional in that the procedure outlined in those sections as they pertain to the appointment of Chiefs is not consistent with s 283(c)(i) and (ii) of the Constitution.' The Constitution provides for appointment, removal or suspension of a Chief by the President acting on the recommendation of the Provincial Assembly of Chiefs through the National Council of Chiefs and the Minister.<sup>46</sup>

The Act empowers the Minister to suspend a traditional leader pending disciplinary or criminal proceedings.<sup>47</sup> The Minister can also impose any of the punishments outlined in the Act including their removal from office save for the Chief where the recommendation is forwarded to the President. These provisions are inconsistent with the Constitution, which provides that the President resolve disputes on appointment, suspension and removal of traditional leaders acting on the recommendation of the Provincial Assembly of Chiefs.<sup>48</sup> Section 49 of the Act is also prone to abuse by the responsible Minister. It gives the Minister power to give policy directives that traditional leaders must observe in the exercise of their functions. Traditional leaders must comply with the Minister's directives.

The above highlights some of the provisions in the Act that make traditional leaders vulnerable to manipulation and coercion by the government. The Executive does not respect their constitutionally guaranteed independence<sup>49</sup> as evidenced by the non-alignment of their Act to the Constitution. Public statements or directives issued to traditional leaders in relation to elections, also demonstrate the blatant disregard of traditional leaders' independence. In June 2022, President Mnangagwa summoned traditional leaders at a government event where he publicly urged them to support ZANU PF. The Vice President also did the same whilst at an official government visit in Gwanda.<sup>50</sup>

Traditional leaders' practices that undermine the freedom of association and assembly include the following:

### 5.1 Intimidation and coercion of people

There have been reports of traditional leaders warning villagers to vote for the ruling party if they still want to stay in the area or benefit from government programmes. The SADC Observer Mission for the 2018 elections noted concerns by stakeholders that traditional leaders were using their influence to coerce or intimidate people to vote for ZANU PF.<sup>51</sup> The Zimbabwe Human Rights Commission received 46 complaints of intimidation and coercion against traditional leaders in the run up to the 2018 elections.<sup>52</sup> Traditional leaders have also become the gatekeepers of the ruling party with some of them stopping villagers from attending rallies by other parties, denying opposition parties and CSOs access to their communities and forcing them to attend ruling party rallies.<sup>53</sup>

### 5.2 Partisan distribution of aid

Government departments and donors often use the traditional leaders' devolved structures to roll out various programmes. There have been reports of partisan distribution of food aid facilitated by traditional leaders who remove

44 Sections 3 and 4 of the Traditional Leaders Act

45 <http://www.veritaszim.net/node/2618> (Accessed on 14 July 2022)

46 Section 283(c)(i) of the Constitution of Zimbabwe

47 Section 7, 10 and 13

48 Section 283(c)(ii) of the Constitution of Zimbabwe

49 Section 282(3)

50 Zimbabwe Peace Project monthly monitoring report June 2022, <https://reliefweb.int/report/zimbabwe/zpp-monthly-monitoring-report-june-2022> (Accessed on 14 July 2022)

51 'SADC Electoral Observer Mission to the Republic of Zimbabwe, Preliminary statement' 1 August 2018, [https://www.sadc.int/sites/default/files/2021-06/Zimbabwe\\_elections\\_Preliminary\\_Statement\\_August\\_2018\\_.pdf](https://www.sadc.int/sites/default/files/2021-06/Zimbabwe_elections_Preliminary_Statement_August_2018_.pdf) (Accessed on 15 September 2022)

52 ZHRC Reports on Politically Partisan Distribution of State Aid During Elections, <http://www.veritaszim.net/node/3330> (Accessed on 14 July 2022)

53 European Union Electoral Observer Mission Report for 2018 elections, page 21, [https://www.veritaszim.net/sites/veritas\\_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf](https://www.veritaszim.net/sites/veritas_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf) (Accessed on 14 July 2022)

names of opposition party supporters or mislead people that the donor or government aid is from the ruling party.<sup>54</sup> This discriminates against those who do not support the ruling party. The UN Special Rapporteur on the right to food, flagged partisan distribution of food aid as one of the structural obstacles to the realisation of the right to food. The Special Rapporteur urged the Government to, ‘... permit all people to have access to food aid without any reference to their regional origin or residence, or political affiliation.’<sup>55</sup>

### 5.3 Openly campaigning for the ruling party

Some traditional leaders have attended rallies, urged, or forced people to go for ZANU PF rallies, colluded with war veterans and ZANU PF youth to campaign for the party.<sup>56</sup> In 2017, at the Chief’s Council annual meeting, the President of the Chiefs Council called on Chiefs to support the ruling party candidate in the 2018 harmonised elections.<sup>57</sup>

## 6 Recommendations

Implementation of the recommendations provided herein before the 2023 elections is highly unlikely. Nonetheless for free, fair and credible elections in 2023 and beyond, the following recommendations are necessary:

### 6.1 Legal Reforms

6.1.1 **MOPA** must be amended to ensure that it fully complies with the Constitution and international human rights obligations. Some of the provisions to be amended include:

- (a) Section 7(1)(a) which should be amended to permit spontaneous demonstrations during elections, without prior notification.
- (b) Section 7(1)(a) and (b) which should be amended to reduce the notification period to 5 days, and 3 days respectively.
- (c) Section 8(3) which should be amended to compel the members of the police service to schedule a meeting with the Convener within 24 hours of receipt of notification.
- (d) A new provision must be added to compel the police to provide a detailed written report to Conveners where police resort to use of force.

6.1.2 The **Traditional Leaders Act** must be amended to ensure that it fully complies with the Constitution and international human rights obligations. Some of the provisions to be amended include:

- (a) Section 3 and 4 which should be amended to remove the President’s power to appoint chiefs and acting chiefs as well as to remove Chiefs from Office.
- (b) Section 49 which gives the Minister wide powers to issue compulsory policy directives to traditional leaders must be repealed.
- (c) The amendment should also introduce new provisions for the establishment of an Ethics and Integrity Committee and development of a Code of Conduct for Traditional leaders.

6.1.3 Government should withdraw the **Private Voluntary Amendment Bill** and initiate a participatory process of aligning the PVO Act to the Constitution that genuinely involves NGOs.

54 R Fayayo, ‘Zimbabwe’s 2018 Elections: The Changing Footprints of Traditional Leaders’, <https://www.boell.de/en/2018/07/26/zimbabwes-2018-elections-changing-footprints-traditional-leaders> (Accessed on 14 July 2022)

55 Report of the Special Rapporteur on the right to food on visit to Zimbabwe in November 2019, Paragraph 108 page 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/074/84/PDF/G2007484.pdf?OpenElement> (Accessed on 14 July 2022)

56 ZESN Report on 2013 harmonised elections, page 53, [http://www.veritaszim.net/sites/veritas\\_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf](http://www.veritaszim.net/sites/veritas_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf) (Accessed on 14 July 2022)

57 ‘Traditional leaders in Zimbabwe must toe the ruling party line — or else’ *Mail & Guardian Online* (25 July 2018), <https://mg.co.za/article/2018-07-25-00-traditional-leaders-in-zimbabwe-must-toe-the-ruling-party-line-or-else> (Accessed on 14 July 2022)

## 6.2 Conduct, institutional and policy reforms.

- (a) The Police should provide simplified information in all official languages explaining the notification procedures, police and convener's responsibilities and recourse mechanisms available to the public where they are not happy with police conduct.
- (b) Government must provide training to members of the police service at all levels and ranks to sensitise them on their constitutional mandate, in particular human rights-oriented enforcement of laws regulating the exercise of the freedom of assembly and association.
- (c) The police must ensure that it exercises political neutrality in the discharge of their functions during electoral process. The police command structure should regularly declare their political neutrality publicly.
- (d) Government must expedite the establishment and operationalisation of the 'Independent Complaints Mechanism', as required by Section 210 of the Constitution.
- (e) The National Chief's Council must publicly declare their non-partisanship and the principles that they must observe during elections. They should also conduct an outreach to all levels of traditional leadership reaffirming the need to respect the people's freedom of association and assembly in electoral processes.

# The Registration and Regulation of Political Parties in Zimbabwe: A Key Pillar in Prospects for Free and Fair Elections

*By Colleen Chibango*

**Key Words:** Political Party; Registration; Regulations; Elections; Zimbabwe

## Abstract

The nature and configuration of the legal framework governing the registration and regulation of political parties in Zimbabwe has become a major point of contestation. This is compounded by the presence of the Political Parties Finances Act which only addresses the financing of political parties and not other aspects of their regulation and registration. The Political Actors Dialogue in Zimbabwe (POLAD) platform has suggested changes to the political parties regulation and registration framework in Zimbabwe. The proposed changes include introducing mandatory registration of political parties which meet a certain threshold and ensuring public financing of all recognised political parties. This paper seeks to analyze the importance of political party registration for inter-and intra-party democracy, free and fair elections, political party financing and political party accountability. Campaign financing is critical for the freeness and fairness of elections. This paper advances arguments in support of mandatory registration and regulation of political parties. It does so by interrogating the shortcomings of the current legal framework and drawing lessons from comparative jurisdictions within the SADC region. It ends by making recommendations for a sustainable, democratic and institutionalized framework and governance structure for political parties in Zimbabwe.

## 1 Introduction

Political party regulation entails guidelines, rules, laws and policies that dictate how political parties must dispose of their mandates. Political party regulation sets the rules of the game; it establishes the minimum requirements in terms of how political parties should organize themselves and conduct their business. It sets parameters and standards in terms of how political parties should conduct themselves. How political parties are registered, deregistered and how they access finances, is all part of political party regulation. Simply put, political party regulation entails the dos and don'ts for political parties and the penalties that accrue to them where they fail to abide by the rules of the game. In Zimbabwe, the only aspect of political parties which is regulated is financing (Political Parties Finance Act).<sup>1</sup> All other aspects including registration, deregistration, ideology, internal democracy, accountability, campaign financing, amongst others, are not regulated. The debate on the need or lack thereof for Zimbabwean political parties to be registered is close to two decades old now. It started in 2005 when the predecessor of the now Zimbabwe Electoral Commission (ZEC), the Electoral Supervisory Commission (ESC) recommended the development of a law to provide for registration and regulation of political parties in order to prevent the emergence of fly by night and nondescript political parties.<sup>2</sup>

Since then, the debate has been raging between political parties, civil society and recently within the Political Actors Dialogue (POLAD). The debate is pitched between two distinct schools of thought; those in favour of registration and regulation school and those opposed to it. It is however perplexing that despite the pertinence of the debate in respect

<sup>1</sup> See section 3 of the Political parties Finance Act Chapter 2:11

<sup>2</sup> E. Masunungure, Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), [https://www.zesn.org.zw/wp-content/\\_protected/publications/publication\\_113.pdf](https://www.zesn.org.zw/wp-content/_protected/publications/publication_113.pdf) (Accessed 08 August 2022)

of intra and inter-party democracy, free and fair elections, apolitical party financing and political party accountability, academic literature on political party registration and regulation has remained largely embryonic. This paper seeks to fill this academic hiatus by interrogating how the current Zimbabwean legislative framework in respect of registration and by extension regulation of Zimbabwean political parties is antithetical to inter-and intra-party democracy, free and fair elections, political party financing and political party accountability. In so doing, the paper contributes to the broader electoral reform agenda in Zimbabwe.

## 2 Discursive institutionalism and the debate for and against regulation of political parties in Zimbabwe

The arguments put forward in this paper have to be viewed within Vivien Schmidt's<sup>3</sup> theoretical framework of discursive institutionalism. This theoretical underpinning is helpful in interrogating policy in the context of ideas, discourses and institutions<sup>4</sup> by emphasizing how ideas and discourses affect institutional stability and change. It enables citizens and policy makers to think, debate and transform the institutions they use. This also closely relates to the Gramscian perspective on the role of intellectuals in breaking the hegemonic discourse. Gramsci brings to the fore the importance of public discourse and debates in exposing ideas which serve as vehicles for elite domination, power and manipulation.<sup>5</sup> It serves to challenge the status quo through generating ideas that persuades others to debate, deliberate, argue and contest a certain policy and or legislation.

By making institutions objects of inquiry, Gramsci and Schmidt provide pathways for introspecting formal institutions such as the ZEC and the Electoral Court, to mention a few that are mandated to handle elections and election related matters. Subjecting institutions mandated to handle elections and election related matters to rigorous intellectual interrogation is particularly critical at this juncture where Zimbabwe is headed for the 2023 general elections. This is particularly so given that in Zimbabwe, these institutions are strategic weapons in the battle for hegemonic control.<sup>6</sup> This paper contributes to the electoral reform agenda in Zimbabwe by examining what is and what ought to be in respect of registration and regulation of political parties using the discursive institutionalism lenses.

Discursive institutionalism promotes deliberate democracy in that the ideas generated by communities and entrepreneurs in the policy and legislative sphere trigger policy and law makers to introspect the institutions that they lead in a critical way, to communicate and deliberate about them, to persuade themselves as well as others to change their minds about their institutions, and then to act to change them, individually or collectively.<sup>7</sup> This has the effect of disrupting elite monopoly in decision making ensuring democratic access.<sup>8</sup> Registration and regulation of political parties in Zimbabwe is a very pertinent yet academically under-explored subject in Zimbabwe. This is demonstrated by the fact that our academic literature search returned few results. There is thus a need for ideas and discourse on the matter. According to the discursive institutionalism theory as depicted by Vivien Schmidt, ideas and discourse are tied to action by serving as guides to public actors for what to do and as sources of justification and legitimation for what such actors do.<sup>9</sup>

## 3 Proponents of the Status Quo

While this paper argues for the registration and regulation of political parties, it is important to highlight the arguments that sustain the anti-registration and regulation of political parties in Zimbabwe. This school of thought argues that

3 V. Schmidt, "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse." *Annual Review of Political Science* (2008) pp.303–26

4 V. Schmidt, Discursive institutionalism: Understanding Policy in Context, Handbook of Critical Policy Studies *Boston University Cheltenham: Edward Elgar Publishing* (2015) p.13

5 A. Gramsci, Selections from the Prison Notebooks, *International Publishers*, New York, 1971

6 P.Muller, . "Les politiques publiques comme construction d'un rapport au monde." In *La Construction du Sens dans les Politiques Publiques*, edited by Alain Faure, Gielles Pollet, and Philippe Warin, Paris: L'Harmattan. 1995, p. 153–79

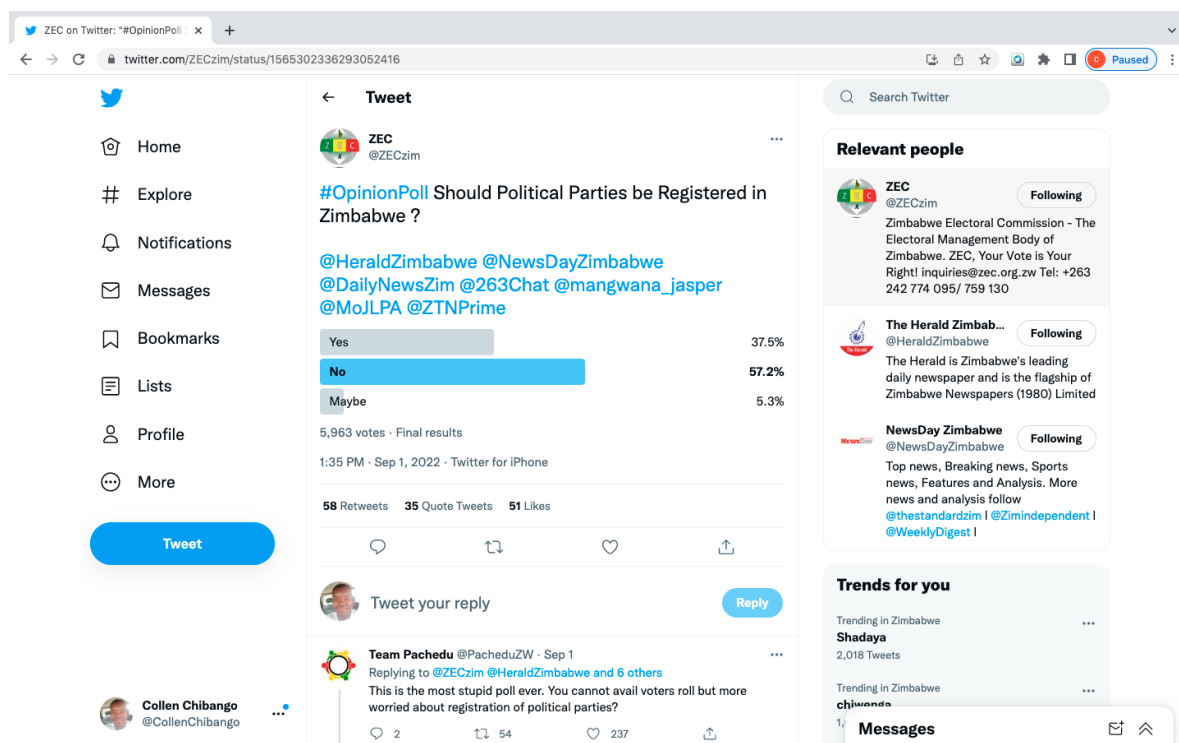
7 V. Schmidt, Discursive institutionalism: Understanding Policy in Context, Handbook of Critical Policy Studies *Boston University Cheltenham: Edward Elgar Publishing* (2015) p.13

8 Ibid

9 Ibid

instead of promoting multi-party democracy in Zimbabwe, registration and regulation of political parties in Zimbabwe may be weaponized by the state, which in Zimbabwe is conflated with the ruling party,<sup>10</sup> to mutilate opposition parties and by extension, multi-party democracy. Due to the real or imagined possibility of the compromising of the independence of the regulatory authority by the state in the hands of the ruling ZANU-PF party, regulation and registration of any aspect of political party activity in Zimbabwe may end up forming part of the weapons in their armoury.<sup>11</sup> Registration and regulation of political parties may be used to deregister, refuse registration or to impose unjustified penalties upon political parties which pose existential threats to the ruling party. This concern may, however, be addressed by making deregistration of a political party a rigorous process for example by requiring confirmation of deregistration by the High Court and providing several layers of appeal opportunities, among other possibilities. There are legitimate fears of the partiality of the ZEC or any other body that will be tasked to assume the role of registrar of political parties. It has to be emphasized that in as much as the need to have political parties registered is an electoral reform issue, the need to guarantee the independence and impartiality of the Zimbabwean electoral management body is an even bigger electoral reform issue.

In a survey conducted by the ZEC soliciting public opinion on whether or not the registration of political parties is desirable in Zimbabwe, 57.2 percent of the approximately 6 000 respondents responded that registration of political parties is not necessary in Zimbabwe. If the survey is anything to go by, it can thus be argued that the enactment of a law that regulates registration of political parties goes against the wishes of the majority of Zimbabweans, who would prefer to retain the current status quo. However, the apathy, suspicion and mistrust of Zimbabweans to the notion of political party registration may be due to concern that the drive to register political parties is inspired by the impulse to control political parties. There is nothing inherently wrong with registration of political parties *per se* but only if it is done in good faith.<sup>12</sup>



**FIGURE 1** Public perceptions on whether or not political parties should be registered, <https://twitter.com/ZECzim/status/1565302336293052416> (Accessed 15 September 2022)

10 B. Raftopoulos, *The Persistent Crisis of the Zimbabwean State*, <http://solidaritypeacetrust.org/1738/the-persistent-crisis-of-the-zimbabwean-state> (Accessed 31 August 2022)

11 E. Masunungure, *Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support*, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), [https://www.zesn.org.zw/wp-content/\\_protected/publications/publication\\_113.pdf](https://www.zesn.org.zw/wp-content/_protected/publications/publication_113.pdf) (Accessed 08 August 2022)

12 Ibid

In countries such as South Africa, Lesotho and Kenya where political parties are registered, political party regulatory authorities were created. The Zimbabwe Democracy Institute, in its 2017 report, argued that all key state institutions such as the media, the legislature, the judiciary and the electoral system have been either directly or indirectly captured by the state.<sup>13</sup> Proponents of the anti-registration and regulation school of thought are inspired by the legitimate fear that if created, the regulatory authority may be captured in a similar fashion by similar interests. This is what happened in apartheid South Africa and colonial Rhodesia when political parties and organizations perceived to be pushing for regime change agendas were criminalized and banned. This fear is further legitimized by the fact that Zimbabwean institutions are generally perceived to be not only weak but unaccountable.<sup>14</sup>

The current status quo is such that forming a political party is guaranteed as a right in Section 67(2)(a) of the Constitution, and is not regulated by any law. There is no law that governs the formation, registration or regulation of political parties. A political party simply needs to notify ZEC of its existence and intention to participate in an election any time before the sitting of the nomination court and it automatically qualifies to participate in that election. In Zimbabwe, it is more difficult to open a bank account than to form a political party.<sup>15</sup> Political parties are free to dispose of their mandates as they deem fit with little, if any external intrusion. This status quo enabled the Citizens Coalition for Change (CCC) to form a political party, contest in the March 26, 2022 by-elections and win them, all in a space of three months. With a law in place on registration and regulation of political parties, this would not have been possible within that short period of time as due diligence on whether or not certain formal requirements were met would need more time than was at CCC's disposal. This is also sometimes perceived as one of the advantages of not having registration requirements in place.

#### 4 Problems with the Status Quo

Political parties must be viewed as governments in waiting. By contesting an election, a political party assumes the potential to become the next government. It is therefore prudent that before a political party is allowed to contest an election, it is subjected to scrutiny in terms of its manifesto, its internal democracy, its vertical and its horizontal accountability mechanisms. This will assist in preventing the coming into power of political parties that are not suitable for governing such as dictatorships and gender insensitive political parties. Before the citizens vote in an election, political party registration provides a first line assessment of the political party's suitability to contest an election.

Without a law that regulates political parties, the political playing field will be chaotic, with nondescript, fringe and fly-by-night political parties that do not only confuse the electorate but also make ballot papers unreasonably lengthy. 127 political parties contested in the Zimbabwean general elections in 2018. The absence of a publicly accessible database of registered parties with names, symbols and colors of political parties may also create the room for the ruling party to create fake parties for purposes of preventing legitimate opposition parties from participating in elections. For example, when Citizens Coalition for Change was formed, several groups mushroomed contesting and claiming that Citizens Coalition for Change had stolen their names and symbols.

Political party proliferation creates administrative hurdles for the ZEC as most of them mushroom immediately prior to elections. This creates a situation whereby the ZEC is not aware of the number of political parties it will have to deal with until at the eve of elections, and as such, cannot plan and budget for engaging with them in both statutory and non-statutory engagement platforms. Registration prevents proliferation of fringe political parties since they would now be subjected to eligibility tests using indicators such as membership thresholds, internal democracy and governance requirements, geographic scope of membership, bank statements, and constitutions, amongst other indicators, before

13 Zimbabwe Democracy Institute, *Zimbabwe Transition in a Muddy Terrain: Political Economy Under Military Capture* <https://kubatana.net/wp-content/uploads/2017/12/Zimbabwe-Transition-in-A-Muddy-Terrain-Political-Economy-Under-Military-Capture-Terrain.pdf> (Accessed on August 2022)

14 Zimbabwe Country Report, BTI Transformation Index, <https://bti-project.org/en/reports/country-report/ZWE> (Accessed on 31 August 2022)

15 E. Masunungure, *Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support*, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), [https://www.zesn.org.zw/wp-content/\\_protected/publications/publication\\_113.pdf](https://www.zesn.org.zw/wp-content/_protected/publications/publication_113.pdf) (Accessed 08 August 2022)



they are granted registration status. Only serious political parties will pass these eligibility tests. The registration process of political parties must be made to be so thorough and robust that no political party can mushroom at the eve of an election and be eligible to contest in that election. With no minimum membership thresholds for one to be considered a political party, even one or two people can call themselves a political party.

The current Zimbabwean dispensation does not subject political parties to eligibility tests or scrutiny for the purpose of their legal existence or for the purpose of contesting elections. Although political parties that push divisive, tribal, extremist and violent agendas can be outlawed in terms of the Unlawful Organizations Act, there is still need for a law that provides for the interrogation of political parties' manifestos, agendas and ideologies for purposes of determining whether they are eligible to exist.

In the absence of a law that creates a central registry where all parties can depose of their names, symbols, colours and logos, there are possibilities for more than one political party using a similar or near similar name, symbol, logo or colour. This can create inter party conflicts with the possibility of leading to political tensions which may create a conducive environment for violence. These conflicts are very common in the Zimbabwean political context as evidenced by the different Movement for Democratic Change (MDC) formations such as MDC T, MDC M, MDC Alliance, MDC 99 as well as the ZANU Ndonga, PF ZAPU, ZANU PF and ZIM PF. The use of similar or nearly the same names, logos, symbols and colors also confuse the electorate, prevent them from making informed choices. This creates possibilities for voter manipulation.

The absence of a regulatory framework which requires political parties to be registered creates a dual dichotomy whereby political parties perceive of themselves as private entities who reserve the right to manage their own affairs and who perceive any intervention in their internal affairs by the state as an intrusion but at the same time expect to receive funding from the same state.<sup>16</sup> Logically, institutions that receive funding from the state are public institutions and as such, must be subjected to public scrutiny to ensure accountability on the use of public resources. In fact, one of the biggest shortcomings of the status quo is that it provides for both external and internal accountability deficits. An example of an external accountability deficit is that the law does not prohibit political parties that are regional in scope and agenda from contesting national elections. With regards to internal accountability deficits, a good example would be the absence of a law that prohibits political parties that fail to fulfill set gender thresholds from participating in an election.

## **5** Regional and International Practices

Registration and regulation of political parties is a normative practice in most countries in Africa and beyond. Generally, aspects of political parties which are subject to regulation in most democracies include registration, deregistration, funding, ideology, membership thresholds and internal democracy. In Lesotho, political parties are required to register in terms of the Societies Act 3548 of 1996 first before they register with the Independent Electoral Commission (IEC). In terms of the National Assembly Electoral Act Number 14 of 2011, the IEC is obliged to conduct due diligence on political parties who have applied to register before approving such registration. Part of this due diligence includes, among other things, verifying the authenticity of the 500 registered voters who would have endorsed such a political party's registration and ascertaining that their names, logos, colours and symbols are not similar to those of already registered parties. Section 24 of the Lesotho National Assembly Electoral Act prohibits discrimination based on racial, colour, religious and gender considerations. Political parties are therefore, by law, required to be accountable to their membership. Similarly, in South Africa, Section 16 of the Electoral Commission Act prohibits political parties from registering on pretty much similar grounds as of those in Lesotho such as advocating for violence and promotion of ethnic agendas.

Section 33 of the Lesotho National Assembly Electoral Act requires the Electoral Management Board to reject applications for registration by political parties whose names, symbols, logos and colours that resembles or closely resembles those of other registered political parties. Political parties which apply to register in Lesotho are required

<sup>16</sup> Zimbabwe Electoral Support network, Position Paper, Political Party Regulation in Zimbabwe, <https://www.zesn.org.zw/wp-content/uploads/2019/10/ZESN-Position-Paper-on-Political-Party-Regulation-in-Zimbabwe.pdf> (Accessed 18 August 2022)

to submit copies of their constitutions which should, among other things, provide for periodic democratic election of their leadership. If any amendment to such constitutions is made after registration, the IEC must be notified within 30 days of such amendment. Section 17 of the South African Electoral Commission Act and Section 27 of the Lesotho National Assembly Electoral Act legally empower these countries' EMBS' to deregister political parties and lay down the grounds thereof.

Contrary to the current Zimbabwean legislative framework, the manner in which Kenyan political parties dispose of and manage their internal affairs is subject to scrutiny by the Registrar of Political Parties. Section 3 of the Political Parties Act Number 11 of 2011 explicitly states that in the formulation of its internal policies and nomination of candidates, a political party must promote inclusive democracy and participation of the people. No organisation is allowed to operate or function as a political party unless it has been registered in accordance with the provisions of the Political Parties Act. It takes up to 44 days from the date of lodging an application for registration by a political party to the issuance of a certificate of provisional registration.<sup>17</sup> During this 44 day period, due diligence will be carried out, which includes publication of a notice in a gazette and newspapers inviting people nationwide, including existing political parties, to object to the intended registration or to register concerns in respect of name, symbols, and colours. It takes a further 180 days for a political party, after obtaining a provisional registration, to obtain full registration which enables it to participate in elections.

The Kenyan model is interesting in that it imposes mandatory gender requirements for a political party to be registered. Section 6 of the Political Parties Act provides that in its application for provisional registration, a political party's written application must not be signed by more than two thirds of the same gender. Section 7 further provides that not more than two thirds of the governing board of the political party lodging an application for registration must be of the same gender. No member of the governing board must have a prior conviction, nor must have been previously declared bankrupt. Contrary to Lesotho which sets the minimum membership threshold to 500 for purposes of registration, the Kenyan model sets the threshold at 1 000.<sup>18</sup> The law also bars the formation of political parties with a regional or tribal agenda by obliging the 1 000 members to be spread across more than half of the counties.<sup>19</sup> In addition to fulfilling gender, ethnic and regional diversity requirements, the 1 000 minimum threshold of the membership must also include special interest groups. It is also interesting to note that the Registrar of Political parties is empowered to direct a political party to amend its constitution.<sup>20</sup>

Public Officers excluding the President, Deputy President, Member of Parliament, Governor, Deputy Governor and Member of a County Assembly are prohibited from being founding members of political parties. They are also not eligible to hold office in a political party or to engage in a political activity that compromises the political neutrality of their public office. This is in stark contradiction to Zimbabwe where public officers such as members of the Zimbabwe Republic Police and the Zimbabwean National Army have openly participated in political activities of political parties or declared allegiance to political parties. Whilst this conduct is regulated through other laws including the Constitution of Zimbabwe, its implementation has been weak and the situation is worsened by the lack of enforcement.

The Political Parties Act of Kenya strives to foster political party transparency and accountability. Section 17 of the Political Parties Act makes it mandatory for a political party to have certain records at its head office and county offices. These include membership databases, constitution, policies, pledges, contributions and donations in cash or kind made to the parties, their expenditures, and audited accounts amongst other documents. These documents must be availed to the Registrar of Political parties for inspection.

17 Section of the Kenyan Political Parties Act, Number 11 of 2011

18 Section 7 (2) (a) of the Kenyan Political Parties Act, Number 11 of 2011

19 Section 7 (2) (b) of the Kenyan Political Parties Act, Number 11 of 2011

20 Section 9 (2) of the Kenyan Political parties Act, Number 11 of 2011

## 6 Conclusions and Recommendations

Reforming political parties regulation in Zimbabwe could lead to more accountable, democratic and institutionalised political parties, which comply with international best practices and the institutional theory. While reforming the regulation of political parties is critical to electoral reforms, it might not be the immediate target for the 2023 elections. Institutionalisation of political parties does not take place over night considering the amount of time it takes for law making. Even if the law allowing for registration and regulation of political parties is enacted before the 2023 elections, it may be too late to implement it for purposes of the 2023 elections. However, it is necessary that deliberations, discussions and debates in this regard start now.

Registration and regulation of political parties has become a standard practice regionally and internationally. Zimbabwe is lagging behind in this regard. Political parties in Zimbabwe lack accountability, partly as a result of the absence of a legal framework for their registration and regulation. The current legal status quo creates room for tribal, violent, extremist and regionalist political parties to exist and operate. The internal governance of political parties suffers in the absence of a legal framework that sets minimum standards fostering democracy and accountability. This is problematic because a political party without this internal democratic order in place then become a governing party. Good examples of legal frameworks which regulate political parties can be drawn from the Kenyan, South African and Lesotho models as examined in this paper. In Zimbabwe, in the absence of a central registry of political party names, colours, logos and symbols, political parties tend to use identical or near identical names, colours, logos and symbols and in the process confuse the electorate. This may also promote inter-party conflicts and violence. The current status quo makes it difficult for ZEC to plan and budget for engagement with political parties as it only becomes aware of the number of political parties contesting in an election just before or on the day of nomination. The absence of a regulatory framework also creates room for proliferation of fringe political parties in the run up to elections and this unnecessarily increases the administrative cost of holding elections.

Zimbabwe needs to enact a law that provides for the registration and regulation of political parties. The same law must provide for minimum requirements for a political party to register and must also provide for deregistration of political parties which do not meet the set standards and requirements. The law must create a central registry of political party names, logos, symbols and colours to prevent inter-party conflict and violence. This central registry must be created and managed by an independent body. In some countries, the EMB is responsible for this function. While this could be a possibility for Zimbabwe, it must be noted that the level of trust for the ZEC is below 50% according to the latest Afrobarometer findings.<sup>21</sup> This creates a challenge for it to be accepted as an impartial regulator. Registration and regulation must also provide for equitable access to finances by all political parties which meet the formal registration criteria. This may include, such as in the case of Lesotho, provision of campaign finances or reimbursement of funds used during a campaign by candidates from political parties which meet formal registration requirements. Section 3 of the Political Parties Finance Act which only provides for funding for political parties which garnered five percent of the vote in the previous general elections must be repealed. Gender equality requirements must be imposed on political parties for purposes of not only registration but selection and nomination of candidates. Political parties which do not meet gender equality requirements as enshrined in Section 81 of the Constitution of Zimbabwe must be de-registered.

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21 Summary of results Afro barometer Round 9 survey in Zimbabwe, 2022 Compiled by the Mass Public Opinion Institute  
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# Assessing Zimbabwe's media space ahead of the 2023 elections: Gaps and lessons from the 26 March 2022 by-election

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**Key Words:** Media, Elections, Free, Fair, Zimbabwe

## Abstract

Past election Observer Missions have consistently flagged the need for Zimbabwe to implement media-related reforms in order to facilitate free, fair and credible elections. The public media, in particular, has been flagged several times for not affording equitable coverage of political parties during elections. By now, expectations were that with the ongoing process of aligning media laws with the Constitution, this situation would have changed positively. The media space around the March 2022 by-elections, however, points to inadequate policy and legal measures to instill change in practice in line with the country's media freedoms and related rights. Incidents of media freedom violations and biased coverage of political parties by the public broadcaster all negatively impacted freedom of expression and access to information during the March 22 by-elections. These in turn have and will likely continue to impact informed voter participation and related political freedoms in the impending 2023 general election. Informed by incidents relating to the 26 March 2022 elections, this paper analyses the prevailing media space, the role of the media in covering and informing citizens on elections and key gaps in law and practice. It further makes recommendations for reforms and measures needed in place ahead of the 2023 elections.

## 1 Introduction

The media is a central figure in any democratic process, elections included. Its multi-pronged utility relating to informing and facilitating platforms of expression, while also informing public opinion, cannot be overlooked. Various factors determine the effectiveness or influence of the media in elections. These include political will and the presence of an institutional and legal framework that adequately supports free, independent and ethical media practice. While increased internet penetration and access have diversified and enhanced access to media platforms and dissemination of information amongst the public, mainstream legacy and electronic media entities remain key sources of public interest information. In this discussion, 'media' refers to public or private institutions and individuals engaged in information dissemination services through print, electronic and digital (new) media platforms. The latter includes websites, social media and video-sharing platforms utilised by media services or practitioners. Based on past electoral periods, the 26 March by-elections included, the role of the media remains a critical in elections in Zimbabwe. These elections, however, need attention and corrective measures to enable them to play their fourth estate role adequately. Below is an assessment of the current challenges in the media space in Zimbabwe and recommendations on how these challenges can be addressed ahead of the 2023 elections.

## 2 Significance of the media and media freedom in elections

In very simple terms, Media Monitoring Africa points out the fact that;

*“during an election period, the media plays a critical role in disseminating information to the electorate in order to facilitate informed decision-making when citizens exercise their vote at the election polls.”<sup>1</sup>*

The role of the media in elections is further affirmed by the International Foundation for Electoral Systems (IFES), which states that the media has for long;

*“... been recognized as a cornerstone of democracy and play(s) an important role in influencing political discourse during elections. When free and balanced, traditional media (print and broadcast) foster transparency and the dissemination of important electoral information.”<sup>2</sup>*

The Organization for Security and Co-operation in Europe (OSCE) weighs in, arguing that;

*“for elections to be genuinely democratic, a respect for... freedom of expression and the right to hold opinions without interference is essential...”<sup>3</sup>*

Having thus determined the significance of the media in covering electoral processes, it is also critical to note that there has been an increase in new media platforms and citizen’s ability to engage and share information online. This combined force of new and traditional media amplifies the role of the media in elections by *provid(ing) further avenues and possibilities for participatory citizenship.*<sup>4</sup> Further, while the emergence of more broadcasting players is noted,<sup>5</sup> public media still retains a significant role in shaping public opinion and perception, including on electoral issues. This is more so with respect to the Zimbabwe Broad Casting (ZBC) radio platforms<sup>6</sup> and Zimpapers print media products. ZBC is a state run broadcasting company while Zimpapers is a state owned newspaper company. The two media entities continue to dominate private media players in reach, listenership and readership respectively. As such, ensuing discussions in this paper will largely focus on the role and challenges associated with ZBC and Zimpapers in elections.

## 3 Current media space in Zimbabwe: Standards, practices, gaps and challenges and their impact on elections

The March 2022 by-elections amplified longstanding issues of concern that have been flagged in past elections and which have persisted despite Zimbabwe being legally bound by certain regional and international standards on media and elections. These include Articles 2, 17(3) and 27(8) of the African Charter on Democracy, Elections and Good Governance [ACDEG],<sup>7</sup> Article 19 of the International Covenant on Civil and Political Rights [ICCPR], Article 9 of the African Charter on Human and Peoples Rights [ACHPR]<sup>8</sup> and its corresponding Declaration on Principles of Freedom of Expression and Access to Information in Africa. The current media space is informed by Zimbabwe’s checkered history of repressive media laws, utilised over the years to infringe on the freedom of the media and related rights. This includes laws such as the Access to Information and Privacy Act (AIPPA)<sup>9</sup> and the insult, falsehood

1 Elections – Media Monitoring Africa, <https://mediamonitringafrica.org/elections> (Accessed 20 October 2022)

2 The evolving role of media in elections – IFES (21 May 2015), available at <https://www.ifes.org/news/evolving-role-media-elections> (Accessed 21 August 2022)

3 Organization for Security and Co-operation in Europe Office of the Representative on Freedom of the Media (RFoM) and Office for Democratic Institutions and Human Rights (ODIHR), “Freedom of media in elections and countering disinformation” Brief Paper for the Expert Meeting organized by the Office of the OSCE Representative on Freedom of the Media and ODIHR on 29 April 2022, <https://www.osce.org/files/f/documents/4/e/516579.pdf> (Accessed on 21 August 2022)

4 Note 2 above

5 Fourteen (14) community radio stations and six (6) free to air private television stations

6 Chingwete A & Ndoma S, Crisis communication: Radio tops Zimbabweans’ news sources – except for ‘other people’, Afrobarometer Dispatch No. 367-16 June 2020, [https://www.afrobarometer.org/wp-content/uploads/2022/02/ad367-crisis\\_communication\\_in\\_zimbabwe-afrobarometer-15june20.pdf](https://www.afrobarometer.org/wp-content/uploads/2022/02/ad367-crisis_communication_in_zimbabwe-afrobarometer-15june20.pdf) (Accessed 21 August 2022)

7 Ratified by Zimbabwe on 22 March 2022

8 Zimbabwe ratified by Zimbabwe on 13/5/91 and 30/5/86 respectively

9 Chapter 10:27

and defamation provisions contained in the Criminal Law Codification and Reform Act<sup>10</sup> (The Code). These laws instigated impunity against the media, arbitrary arrests and threats to personal privacy. Following the adoption of the 2013 Constitution, a process to align media laws has been underway. This has resulted in the repeal of AIPPA and its replacement by the Freedom of Information Act (FOI-Act)<sup>11</sup> and the Zimbabwe Media Commission Act (ZMC-Act),<sup>12</sup> while matters relating to the protection of privacy and personal information are included in the Cyber and Data Protection Act (CDP-Act).<sup>13</sup> While the repeal of AIPPA is commended, concerns remain regarding the adequacy of the new laws in promoting media freedom as discussed in the sections below.

### 3.1 Polarisation

The growing distinct divide between public and private media was out to play during the March 2022 by-elections — the former being openly allegiant to the ruling party and government while the latter seemingly leans in favour of the opposition at times. Traceable to past electoral periods, media polarisation is a growing threat to the media industry and to its various constituencies. In their report on the 2013 elections, the African Union Observer Mission (AU-EOM), noted that;

*“the media environment in Zimbabwe was highly polarised ... [and that] both private-owned and State-owned media establishments were evidently politically inclined in their reportage”<sup>14</sup>*

Similar observations were made in the ensuing 2018 elections by the European Union Observer mission (EU-EOM) which noted that;

*“the media landscape in Zimbabwe is highly polarized and largely dominated by state-owned or government-controlled media, especially in the rural areas.”<sup>15</sup>*

During the 26 March 2022 by-election, the media regulator ZMC decried the scourge just two weeks before the election. Speaking at a meeting on the media's role in elections, ZMC Chairperson Ruby Magosvongwe bemoaned how;

*“news coverage [had] been consistent with activities on the ground by political parties ... [and how] polarisation in the context of the print media [was] threatening to poison the electoral environment”<sup>16</sup>*

### 3.2 Dual accreditation of media to cover elections

The March 2022 election was also marred by complaints by media stakeholders<sup>17</sup> on the burdensome dual accreditation of the media to cover electoral activities. ZEC has been accrediting the media together with other observers in terms of Part IXB of the Electoral Act<sup>18</sup> based on stipulated fees payable to ZEC. The required dual accreditation and related fees arguably place an undue burden on the media, considering that all mainstream media accredit to conduct their work with the ZMC. Of concern is how the fees have been increased for Zimbabwean media working for foreign media houses during the course of 2022, which is arguably prohibitive. In January 2022 ZEC charged USD\$50 for this category of media to cover the March 26 by-elections but by October 2022 the figure had doubled to \$100. This raises

10 Chapter 9:23

11 Chapter 10:33

12 Chapter 10:35

13 Chapter 12:07

14 Report of African Union Election Observation Mission to the 31 July 2013 Harmonised Elections in the Republic of Zimbabwe, <https://www.eisa.org/pdf/zim2013au2.pdf> (Accessed 13 December 2022)

15 European Union Election Observation Mission, Final Report Republic of Zimbabwe Harmonised Elections 2018, [http://veritaszim.net/sites/veritas\\_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf](http://veritaszim.net/sites/veritas_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf), page 24 (Accessed 18 August 2022)

16 See <https://www.newsday.co.zw/2022/03/media-urged-to-shun-hate-speech> (Accessed 20 October 2022)

17 See <https://zimbabwe.misa.org/2022/01/25/dual-accreditation-inconvenient-burdensome-cost-for-media-practitioners> (Accessed 19 October 2022)

18 Chapter 2:13

concern that by the time the 2023 general elections are held, it may increase further. Numerous countries do accredit the media to cover elections, while in others such as Palestine, Nigeria and Ghana, there is no additional fee paid to the electoral body.

### 3.3 Politically motivated violations against media freedoms

Violations of media freedoms were also a feature during the March 26 by-elections in the form of physical attacks and barring of journalists from covering public events. On 28 February 2022, CCC President Nelson Chamisa reportedly vowed to *'limit access to [its] venues to those who are genuine journalists, who are not working for ZANU-PF.'*<sup>19</sup> These utterances were condemned by the ruling party and the media for various reasons, including the intended blatant violation of media freedom and for their potential to fan polarisation in the country.<sup>20</sup> Prior to that, suspected ZANU PF activists had attacked CCC's rally on 27 February 2022 resulting in some journalists covering the rally being physically assaulted, injured and having their equipment damaged. On 13 March 2022, MDC Alliance personnel reportedly barred journalists from covering their rally and only admitted them hours later. On 20 March 2022, TellZim journalist Courage Dutiro was reportedly slapped and manhandled by Nelson Chamisa's bodyguard during a Masvingo rally.<sup>21</sup> Beyond the March 26 by-elections, various incidents of media freedom violations have been reported including increased intolerance and discrimination against private media which could potentially hamstring the role and impact of the media in the coming election.

### 3.4 Non-implementation of past election observer mission recommendations on the media

Elections observer mission reports and related recommendations for the past 10 years clearly indicate little progress made regarding the role and positioning of the media around elections. Instead, what Zimbabwe has grown accustomed to, is *"a tendency of casually accepting election observer reports and their recommendations, but never act(ing) on them."*<sup>22</sup> A juxtaposition of observations made on the March 26 by-election with those from past elections shows no positive movement regarding fair and equitable coverage of political parties by public media. In their report on the 2013 harmonised elections, the AU-EOM observed that *"the national broadcaster tended to provide live and in-depth coverage largely to a single political party"*<sup>23</sup> and recommended that the ZEC should *"scrupulously enforce the relevant regulations of the Electoral Act to afford alternative voices and all political parties, equitable access at all times during elections."*<sup>24</sup> Come to the 2018 election, the EU-EOM in its "Final Report Republic of Zimbabwe Harmonised Elections 2018,"<sup>25</sup> gave a priority recommendation that *"State-owned media must abide by their legal obligation to be impartial and provide equitable treatment to all political parties and candidates."*<sup>26</sup> The recommendation was informed by its observations that public media was biased in favor of the incumbent president and the ruling party which received 84.9%, 81.8% and 76.5% of election-related coverage on public media outlets ZTV, Radio Zimbabwe and Classic 263, respectively. Their further assessment was that 44.5%, 14.4% and 10.2% of that coverage were reports portraying ZANU-PF positively, while 47%, 20% and 26.5% of the coverage received by the opposition MDC-Alliance party in the same media, were negatively toned reports. The EU-EOM also noted that;

*"ZANU-PF and its presidential candidate benefited from extensive additional coverage on ZBC through news on government achievements and live broadcasting of activities conducted by Emmerson Mnangagwa as Head of State."*<sup>27</sup>

19 See <https://www.herald.co.zw/chamisa-bars-public-journalists-from-rallies> (Accessed 18 August 2022)

20 See <https://allafrica.com/stories/202203020189.html> (Accessed 18 August 2022)

21 Zimbabwe by-election weekly monitoring report 7–13 March 2022 – Zimbabwe Situation – 15 March 2022

<https://www.zimbabwesituation.com/news/zimbabwe-by-election-weekly-monitoring-report> (Accessed 13 December 2022)

22 Align electoral laws to Constitution – Newsday, 28 June 2022, <https://www.newsday.co.zw/local-news/article/403/align-electoral-laws-to-constitution> (Accessed 17 August 2022)

23 Note 14 on Clause 48

24 Note 14 on Clause 82 H

25 See note 15 above

26 Note 15-Priority recommendation 5

27 Note 15 on page 29



In print media, the mission similarly observed extensive bias in favor of ZANU-PF by Government-controlled newspapers. The issue of public media performance remained key in the 26 March 2022 with neither the emergence of new media players, media law reforms instituted nor heightened CSO pressure for improved fair and equitable elections yielding envisaged positive change. With no “repercussions” nor effective mechanisms employed to redress these observed trends, this already gives the semblance that public media like ZBC are “getting away with it” again and will most likely continue to do so come the 2023 plebiscite. There is thus a sense of urgency as well as stakeholder<sup>28</sup> pressure on the need for measures to be put in place and the tightening of already existing ones to redress these issues ahead of the 2023 elections.

### 3.5 Inadequate legal and regulatory provisions

As noted above, while media law reforms instituted to date are commendable, concerns remain regarding the adequacy and impact of the new laws in place. The *Cyber and Data Protection Act* (CDP-Act), for example, seeks to promote data protection and cyber security by criminalising various acts including cyber-bullying and harassment, transmission of intimate images without consent and child sexual abuse.<sup>29</sup> However, concern remains that the Act's offences can be abused for political or other purposes and to curtail freedom of expression. An example is section 164C of the Code as amended through the CDP-Act which criminalises communication of “false data messages.” The provision arguably amounts to the criminalisation of the freedom of expression and a disproportionate way of redressing the harm caused. This is more so considering that as expressed in cases such as *Madanhire and Anor v AG*,<sup>30</sup> the harm caused by injurious expressions can still be redressed satisfactorily within the civil justice system. In this case, the Constitutional Court stated that the country has in place “an appropriate and satisfactory alternative civil remedy ... to combat the mischief of defamation.”<sup>31</sup> Barely in force for a year, the law is already threatening to censor the public and the media based on arrests made under it to date. On 3 August 2022, Alpha Media Holdings (AMH) Editor-in-Chief Wisdom Mdzungairi and two others were arrested and charged with publishing false data messages following a story they published pertaining to ongoing legal squabbles relating to Glenforest Memorial Park in Harare. The case, a first targeting the media, raised concerns that it marks the beginning of the assault on media freedoms using this law, and since then the law has been further used to arrest media personnel.<sup>32</sup>

The *FOI-Act*, the introduction of which is largely commended, also has some shortcomings that can curtail access to information by the public and the media. For example, contrary to the provisions of section 62(2) of the Constitution, section 7 of the *FOI-Act* guarantees access to information which is held by public bodies only, excluding information held by private entities. Similar laws such as South Africa's Promotion of Access to Information Act, do guarantee access to information held by both public and private entities.<sup>33</sup>

The *ZMC-Act* on the other hand is also considered a positive addition to the extent that it provides a standalone legal framework for media regulation. However, concerns remain particularly regarding its silence on the media's stake in the regulation of the profession as per regional and international standards for media self-regulation. This remains a key aspect in ongoing efforts to improve media professionalism and ethical standards. Additionally, the lack of adequate measures for ZMC to enforce its mandate on errant media entities such as the ZBC is of concern with this law.

Legal and regulatory provisions governing broadcasting in particular have also proved inadequate, particularly in promoting fair, balanced and equal access to the public broadcaster by all political parties concerned. In terms of sections 37 and 38 of the *Broadcasting Services Act* (BSA),<sup>34</sup> the ZBC is licensed as a public broadcaster and by virtue

28 Latest: US piles pressure on ZEC over reforms ahead of 2023 watershed elections, My Zimbabwe, 21 April 2022, <https://www.myzimbabwe.co.zw/news/94815-latest-us-piles-pressure-on-zec-over-reforms-ahead-of-2023-watershed-elections.html> (Accessed 18 August 2022)

29 Sections 164B; 164E and 165A

30 Nevanji Madanhire & Nqaba Matshazi v Attorney-General [CCZ 2/14]

31 Note 30 at page 16

32 Hope Chizuzu was arrested in August and in September 2022 – see <https://www.sundaynews.co.zw/chizuzu-charged-under-cyber-and-data-protection-act> and [https://zimbabwe.misa.org/media\\_violations/journalist-arrested-and-charged-for-publishing-falsehoods](https://zimbabwe.misa.org/media_violations/journalist-arrested-and-charged-for-publishing-falsehoods)

33 See sections 11 and 50 of the Act available on <https://www.gov.za/documents/promotion-access-information-act>

34 Chapter 12:06

of that classification, certain obligations accrue to it which include independence and impartiality,<sup>35</sup> fair, unbiased and equal coverage of all subjects and an overriding public interest obligation in its operations. However, the BSA—which is the overall legal framework governing broadcasting services in Zimbabwe—does not adequately empower the regulator—the Broadcasting Authority of Zimbabwe (BAZ)—to effectively “regulate” entities such as the public broadcaster ZBC. This is evidenced by numerous election observer recommendations which point to longstanding biased coverage of elections by the ZBC over the years, which implies an inadequacy in the legal framework, amongst other causal factors. Similarly, the *Zimbabwe Broadcasting Corporation (ZBC Commercialisation) Act (ZBC-Act) of 2001* lacks adequate mechanisms to ensure that the public broadcaster operates independently and effectively in line with the benchmarks for a true public broadcaster. While section 4(3) of the Act provides room for the ZBC to prioritise serving the needs of the State, it appears this provision is abused resulting in excesses that to date perpetuate its bias towards the ruling party as pointed out by the above cited findings of the election observer missions.<sup>36</sup>

The provisions of this Act are also clearly contrary to the African Charter on broadcasting<sup>37</sup> and the country’s Constitution. Sections 61(4) and 61(5) of the latter guarantees the freedom of establishment for broadcasters which includes independence from control by government or by political interests, while also providing that state-owned media must afford equal opportunities for the presentation of divergent views and dissenting opinions. There is, however, nothing in the ZBC-Act that facilitates the implementation of these provisions

*The Zimbabwe Electoral Commission (Media Coverage) Regulations – SI33 of 2008*<sup>38</sup> sets standards that public broadcasters and print media entities ought to adhere to in the coverage of elections. For public broadcasters, this includes stipulations that they should:

- (a) Ensure broad election programming covering, amongst other issues; (a) election manifestos and policies of the political parties/candidates; (b) election-related discussions; (c) interviews with candidates or political party representatives.
- (b) Ensure that contesting political parties or candidates are treated equitably in the allocation of airtime.

Print publications requirements include that they should:

- Refrain from publishing any content that incites violence or advocates hatred that is based on race, ethnicity, sex, gender, religion or political conviction.
- Offer the same terms and conditions of publication, without discrimination, to all the political parties and candidates contesting an election during an election period.

The effectiveness of these regulations and related provisions such as Part IVA of the Zimbabwe Electoral Commission (ZEC) Act<sup>39</sup> and sections 160G, H and J of the Electoral Act [Chapter 2:13] were put to the test in January 2022 when MISA Zimbabwe<sup>40</sup> wrote to the ZBC requesting for a broadcasting schedule that outlines the allocation of airtime on its radio and television stations for the 26 March 2022 by-elections. While the ZBC eventually produced a By-Elections Coverage Schedule, it still did not provide live coverage for the rallies of all the contesting political parties and further persisted in its skewed provision of airtime and coverage in favor of the ruling ZANU-PF party. In effect, the ruling party was afforded about 66% of media space and time during the run-up to the by-elections with the MDC-A and the CCC parties being afforded 15% each and other parties receiving 4%.<sup>41</sup> This points to the ineffectiveness of these regulations and related legal provisions which will likely persist unless redressed.

35 Section 2A (1) (f) – BSA

36 Note 14 and 15 above

37 Adopted at the 2001 UNESCO conference in Windhoek

38 Available on Kubatana at <http://archive.kubatana.net/html/archive/legisl/080616zec1.asp>

39 Chapter 2:12

40 MISA Urges ZBC To Provide Equal Coverage Ahead Of By-elections, Africa Press, 20 January 2022, <https://www.africa-press.net/zimbabwe/all-news/misa-urges-zbc-to-provide-equal-coverage-ahead-of-by-elections> (Accessed 20 August 2022)

41 See page 13 of ZESN Report On The: 26 March 2022 By-Elections – available on Kubatana at <https://kubatana.net/wp-content/uploads/2022/05/ZESN-by-election-report.pdf> (Accessed 21 August 2022)

### 3.6 Criminalisation of the media freedom and freedom of expression

Speaking as far back as the 2013 elections, political and media analyst Takura Zhangazha<sup>42</sup> bemoaned how:

*“the culture and practice of impunity and criminalization of the media and freedom of expression by the Zimbabwean state has contributed significantly to how elections have not necessarily reflected the democratic will of the people.”*

Almost a decade later, under the so-called progressive Constitution and a politically “new dispensation,” the scourge of criminalisation of freedom of the media and expression continued during and post the March 2026 by-elections. Several incidents of arrests of media personnel and citizens, as well as deliberate impediments placed on the exercise of media related rights paint a picture of what the 2023 electoral period could be like.

In December 2021, a Buhera man was arrested and charged<sup>43</sup> for undermining the authority of or insulting the President, following alleged utterances to the effect that the incumbent President is a dismal failure whose sole success was participating in the killing of civilians during Gukurahundi. The man was charged in terms of section 33(2)(a) (i) of the Criminal Law (Codification and Reform) Act. In February 2022, a Harare man was also arrested,<sup>44</sup> as was a Mutawatawa<sup>45</sup> man in June 2022, again for the same offence. In August 2022, an alleged ZANU-PF member was arrested for comparing the late President Mugabe to the incumbent President Mnangagwa.<sup>46</sup> Also arrested under the insult provisions in 2022, were two men from Mashonaland West province, a woman from Shurugwi, a Hwange man and journalist Mduduzi Mathuthu.<sup>47</sup>

In May 2022, ‘AMH’ journalists Blessed Mhlanga and Chengeto Chidi were arrested in Chitungwiza while working on a story.<sup>48</sup> During the course of their work, the two observed the police attempting to arrest Job Sikhala, the St Marys legislator, and started recording the incident leading to their arrest. During the incident, Mhlanga was reportedly physically assaulted and had his cell phone smashed by the police before it was confiscated together with their cameras. The two were charged with contravening section 25 (a) as read with section 30 of Statutory Instrument 21/2005, which prohibits the taking of photographs within a polling station. They were alternatively charged with disorderly conduct in a polling station as defined in Section 89 of the Electoral Act. The two were later acquitted of both charges. This case paints a chilling image of how the media are at risk of arbitrary arrests and disruption of their work, based on charges that often result in acquittals. In August and September 2022, another journalist Hope Chizuzu was arrested<sup>49</sup> for allegedly contravening Section 164 (c) (Transmission of false data messages intending to cause harm) of *the Code* as amended by the *CDP-Act*. The above incidents of arrests and prosecution of the media, signify continued weaponisation of the law to curtail freedoms which can likely escalate towards the 2023 elections.

42 Zhangazha T: Zimbabwean Media, Elections and Democracy, 24 April 2013, Zimbabwean Media, Elections and Democracy (takura-zhangazha.blogspot.com) (Accessed on 10 August 2022)

43 Man arrested for insulting President Mnangagwa: He is following the footsteps of late Robert Mugabe, My Zimbabwe, 22 December 2021, <https://www.myzimbabwe.co.zw/news/89709-man-arrested-for-insulting-president-mnangagwa-he-is-following-the-footsteps-of-late-robert-mugabe.html> (Accessed 20 August 2022)

44 Man in serious trouble for insulting president Emmerson Mnangagwa, My Zimbabwe, 23 February 2022, <https://www.myzimbabwe.co.zw/news/92065-man-in-serious-trouble-for-insulting-president-emmerson-mnangagwa.html> (Accessed 20 August 2022)

45 Mutawatawa man arrested for Insulting President Mnangagwa, Africa Press, 8 June 2022, <https://www.africa-press.net/zimbabwe/all-news/mutawatawa-man-arrested-for-insulting-president-mnangagwa> (Accessed 20 August 2022)

46 Man arrested for comparing Mnangagwa to Mugabe, Mbaretimes, 14 August 2022, <https://bulawayo24.com/index-id-news-sc-national-byo-222337.html> (Accessed 13 December 2022)

47 Cuthbert Mutero (49), Admire Mupemhi, Maria Mapfumo and Mehlo Mpala respectively ... see Zimbabwean authorities target Mnangagwa critics via outdated legislation – Bulawayo24 News (Accessed 20 August 2022)

48 MISA-Zimbabwe condemns the arrest of AMH journalists, Africa-Press, 8 May 2022, <https://www.africa-press.net/zimbabwe/all-news/misa-zimbabwe-condemns-the-arrest-of-amh-journalists> (Accessed 20 August 2022)

49 Note 33 above

## 4 Recommendations

Heading into the 2023 elections, a number of deliberate actions need to be taken by various stakeholders to redress challenges noted at various levels. In particular, the following measures are key:

### 4.1 Legal reforms

Several legal regulatory reforms are key including to the following instruments:

- 4.1.1 The **FOI-Act** should be amended to extend its application to information held by private bodies as envisaged in section 62(2) of the Constitution and as provided in similar laws of countries such as South Africa, Liberia and Rwanda.<sup>50</sup>
- 4.1.2 The criminal offence of transmitting false data messages provided for in section 164C of **the Code** as amended by the **CDP-Act** should be repealed and recourse had to civil remedies for actual harm caused.
- 4.1.3 **BSA and the ZBC Acts** should be amended to effect measures that insulate ZBC's independence from government or political control and which compel it to effectively implement existing laws and regulations. The 7th schedule of the BSA should be amended to add other requirements and principles that better enforce the obligation of ZBC (as a public broadcaster) to ensure equal coverage.
- 4.1.4 **Part 1XB of the Electoral Act** should be amended to exempt media from payment of fees to ZEC for purposes of observing various electoral processes such as the inspection of voter rolls and polling processes. While ZEC can still "accredit" or somewhat vet the media to cover such processes, the exercise should not be accompanied by an additional fee for all media accredited with the ZMC considering the nature, value and purpose of the media in covering such democratic processes. As noted above, a leaf can be taken from countries such as Palestine,<sup>51</sup> Ghana and South Africa<sup>52</sup> in this regard.
- 4.1.5 A wholesome review of the **ZEC (Media Coverage of Elections) Regulations, 2008** is critical towards strengthening their effectiveness in enforcing fair, equitable and balanced media coverage of elections.

### 4.2 Multi-stakeholder dialogues and consensus building

While some of the above stated challenges can be addressed legally, non-legislative measures will still be required to mitigate and redress the other challenges and to also complement legislative pursuits. For example, in order to redress the continuing media polarisation, politically motivated intolerance, media freedom violations and non-implementation of election observer mission recommendations on the media, high level multi-stakeholder engagements should be held periodically. These should be comprised of all political parties, CSO media representative organizations, media houses, regulators [ZEC, BAZ and ZMC], law enforcement agents and policy makers. The engagements should also assess and review the role that different stakeholders need to play in order to facilitate a conducive environment for the media to operate in as it covers elections. Entities such as the ZMC and the Zimbabwe Human Rights (ZHRC) could convene such engagements to allow a "neutral" engagement platform.

### 4.3 More initiatives by Independent Commissions

The ZHRC and ZMC in particular, should take more active steps, including collaboratively, to investigate and condemn acts such as arbitrary criminalisation of expression and other media freedoms violations.

50 Sections 11 and 50; 1.6 (b) and (c) and 3 respectively

51 <https://www.elections.ps/tabid/1173/language/en-US/Default.aspx> (Accessed on 19 October 2022)

52 Electoral Commission on accreditation for all Results Operation Centres for 2021 Municipal Elections, <https://www.gov.za/speeches/electoral-commission-accreditation-all-results-operation-centres-2021-municipal-elections> (Accessed 19 October 2022)

# A Critical Examination of the Effectiveness of the Zimbabwean Multi-Party Liaison Committees

By Shadreck Vengesai

**Key Words:** Elections; Liaison; Dispute; Party; Judicial

## Abstract

The Electoral Act provides for the establishment of judicial and non-judicial Electoral Dispute Resolution (EDR) mechanisms to peacefully and speedily resolve electoral disputes. However, there appears to be an over-reliance on the judiciary by parties to electoral disputes and in the process, shunning non-judicial mechanisms such as the Multi-Party Liaison Committees. This over-judicialization of electoral disputes erodes the very essence of other EDR mechanisms such as the MPLCs. Ironically, dispute resolution by its very nature is supposed to be non-adversarial and create win-win solutions to disputes, a characteristic which cannot be achieved through court proceedings, but which can be achieved through the use of MPLCs. This paper seeks to interrogate why parties to electoral disputes shun MPLCs and establish the missing link that can make MPLCs more efficient and more reliable to parties to electoral disputes. It does this by looking at their composition and the disputes that they have resolved/or failed to resolve so far. It looks at how MPLCs in other jurisdictions in the region are structured and composed and how effective they are and proffers recommendations on how the MPLCs' work as arbiters of electoral disputes can be enhanced.

## 1 Introduction

The Zimbabwean Multi-Party Liaison Committees (MPLCs) are established in terms of Section 160 of the Electoral Act Chapter 2:13, to provide for a mechanism to address electoral disputes. Alongside these, courts of law are also mandated to resolve legal disputes arising from the conduct of elections. There is a concern that MPLCs are under-utilized while courts (judicial forums) are over-relied upon for the resolution of election disputes. The Zimbabwean election dispute resolution mechanism is over-judicialized. This is not because there are no alternative election dispute resolution mechanisms. Rather, politicians, political parties and the general Zimbabwean public lack confidence in the alternative election dispute resolution mechanisms such as the MPLCs. If the enabling legislation of the Multi-Party Liaison Committees is strengthened and their efficiency enhanced, stakeholder trust in these mechanisms can be increased and win-win solutions to election disputes can be achieved.

## 2 The contact theory and election dispute resolution

This paper analyses the effectiveness of the Zimbabwean Multi-Party Liaison Committees from the theoretical viewpoint of the electoral governance model, deliberative democracy, sustained dialogue and the Contact Theory. Electoral governance refers to a wide set of activities such as voter registration, voter mobilization, candidate nomination, campaigning, voting, counting of the ballots, to mention a few, that create and maintain the broad institutional framework in which an election contestation takes place.<sup>1</sup> Its focus is on the structures, institutions and systems in place to ensure credible electoral processes and electoral outcomes. The set of rules, laws and procedures

1 Mozaffer, S and A Schedler, "The comparative study of elections and governance – introduction", *International Political Science Review* 23(1) 2002, pages 5–27

that regulate an election is what constitutes the primary focus of electoral governance. Applied to Zimbabwean electoral context, the electoral governance entails an examination of the Electoral Act, the Constitutional provisions that pertain to elections and the institutions that are mandated to deal with elections and elections related matters, which include the Multi-party Liaison Committees.

Electoral governance is composed of three pillars namely; rule making which entails making of the rules of the electoral game, rule application which entails implementation of those rules and rule adjudication which involves resolving of disputes arising within the electoral game.<sup>2</sup> The Zimbabwean Multi-party Liaison Committees perform two of these functions namely rule application in the form of enforcement of the Code of Conduct for Political Parties<sup>3</sup> and rule adjudication in the form of resolving any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code of Conduct for Political Parties.<sup>4</sup>

Multi-party Liaison Committees as set out in Section 160 of the Electoral Act consist of representatives of all political parties contesting in an election, representatives of independent candidates, the Zimbabwe Electoral Commission and where necessary and appropriate representatives from government, the security forces and other stakeholders involved in ensuring that the elections will be conducted in a free and fair manner. Notwithstanding the absence of a specific provision that provides for gender equality in the composition of MPLCs, their structure, composition and functioning clearly demonstrates that their central characteristic is inclusivity, reasonability, reciprocity and equality of debate between different political parties. This makes them epitomes of deliberative democracy.<sup>5</sup>

The rationale for the establishment of MPLCs is to bring belligerent Zimbabwean political parties together and to facilitate sustained dialogue between them with a view to creating win-win solutions to conflict between them. This rationale is inspired by the consensus based approach to resolving electoral disputes provided for in Section 160D of the Electoral Act Chapter 2:13. This resonates well with Gordon Allport's Contact Theory which posits that contact between members of belligerent groups can work to reduce prejudice and intergroup conflict and improve social relations through the development of mutual trust, more positive perceptions and less negative perceptions towards each other.<sup>6</sup>

According to Allport, the contact theory is made up of four pillars. The first pillar, which is the equal status pillar, postulates that members of the contact situation, which for purposes of this paper are political parties, must not be governed by or exist in unequal, hierarchical relations.<sup>7</sup> Rather they must be treated equally. The second pillar, which is the cooperation pillar, postulates that members of the contact situation must work together in a non-competitive environment. What this effectively means in respect of the Zimbabwean Multi-Party Liaison Committees is that they must not be used as platforms for political party contestations but rather as platforms for sustained and transformative dialogue whose aim is to create win-win solutions to problems. The third pillar, which is the common goals pillar, states that members of the contact situation rely on each other to achieve their shared and desired goal. It follows therefore that political parties that constitute the multi-party liaison committees must define a shared, and common agenda which is free, fair and credible election, result of which are acceptable by all of them. The fourth pillar, which is the institutional support pillar, posits that contact between political parties in the Multi-Party Liaison Committees must be backed up by the creation of institutions, legislation and policies.

The sustained dialogue theory entails or requires that there be "genuine interaction through which human beings listen to each other deeply enough to be changed by what they learn... It brings together participants from different groups in a repeated effort towards transforming conflicted relationships so that conflicts are constructively resolved."<sup>8</sup> The Contact Theory and the concept of sustained dialogue presupposes that bringing together representatives of

2 J. Napier, Political party Liaison Committees as a Conflict Resolution Mechanism: The South African Experience, *Journal for Contemporary History* 40(2), December 2015, pages 156–175

3 Section 160C (f) of the Electoral Act

4 Section 160C (a) of the Electoral Act

5 D. Pietrzyk-Reeves, Deliberative Democracy and Citizenship, Polish *Political Science Yearbook*, 2006, pages 43–64

6 B. Zuma, Contact Theory and the concept of prejudice: Metaphysical and moral explorations and an epistemological question, University of Cape Town, *Journal of Theory and Psychology*, Vol 24 (1), 2014 pages 40–57

7 Ibid

8 H. Saunders, Sustained Dialogue, Kettering Foundation available at [https://www.civicus.org/documents/toolkits/PGX\\_D\\_Sustained%20Dialogue.pdf](https://www.civicus.org/documents/toolkits/PGX_D_Sustained%20Dialogue.pdf) (Accessed on 1 November 2022)

antagonistic political parties that are contesting in an election, facilitating sustained dialogue between them, deliberation and regular communication within a formalised or legal structure such as the Multi-Party Liaison Committee about the many electoral governance and electoral conflicts concerning the conduct of an election, will more likely resolve these conflicts and result in accepted and legitimate election outcomes.<sup>9</sup> Sustained dialogue and the Contact Theory in respect of the Zimbabwean Multi-Party Liaison Committees means there is need for permanent Multi-Party Liaison Committees which operates throughout the electoral cycle, as opposed to the current status quo wherein their lifespan is periodic and only functional between nomination and proclamation of election results. Limiting the lifespan of Multi-Party Liaison Committees to the period between nomination and announcement of results is inspired by a narrow and parochial view of elections as an event and not a process. It prohibits them from dealing with other pertinent aspects of the electoral cycle such as delimitation, voter registration, and except for the national Multi-party Liaison Committees which can be established before nomination, nomination.

### **3 The establishment, Composition and Functions of the Multi-Party Liaison Committees**

Multi Party Liaison Committees are established in terms of section 160 of the Electoral Act. The Act provides for the establishment of national, constituency and ward level Multi-Party Liaison Committees. In terms of 160B of the Electoral Act Chapter 2:13 constituency and ward level Multi-Party Liaison Committees are appointed after the close of nomination in an election. The national level Multi-Party Liaison Committee is appointed six months before the end of the five-year term of Parliament as specified in section 143 of the Constitution.<sup>10</sup> The lifespan of Multi-Party Liaison Committees at all levels ends with the announcement of election results. The national level Multi-Party Liaison Committee is composed of the Chairperson of the Zimbabwe Electoral Commission who chairs the Committee, two representatives from each political party contesting in an election, two representatives of each independent candidate contesting in an election, and any other person invited by the representatives of every political party and independents represented in the Multi-Party Liaison Committee. The Constituency and Ward Multi-Party Liaison Committees, like the national level Multi-Party Liaison Committee, are chaired by representatives of the Zimbabwe Electoral Commission and composed of two representatives of each political party and independents contesting the election, and any person invited by the representatives of every political party represented in the liaison committee.<sup>11</sup> The functions of Multi-Party Liaison committees, as spelled out in Section 160C of the Electoral Act include:

- (a) to hear and attempt to resolve any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code.
- (b) in the case of a national multi-party liaison committee—
  - (i) to create and establish Multi-party Liaison Subcommittees in each province;
  - (ii) to delegate any of its functions to any Multi-party Liaison Subcommittee;
  - (iii) to monitor, supervise or direct the activities of Multi-party Liaison Subcommittees;
  - (iv) to immediately report upon and refer to the Zimbabwe Electoral Commission any disputes, concerns, matters or grievances relating to the electoral process.
- (c) to request the Zimbabwe Electoral Commission to mediate or appoint an independent mediator to resolve any dispute, concern, matter or grievance relating to the electoral process within a time frame requested by the Multi-Party Liaison Committee or within a reasonable time frame.
- (d) to present to the Zimbabwe Electoral Commission any reports, assessments, records or recommendations relating to the electoral process.
- (e) Generally, to assist in implementing the Code.

Section 160D of the Electoral Act adds the Multi-Party Liaison Committee, diverse in composition as they are, must make their decisions by consensus. There is no mention of gender equality or representation of persons with disabilities in the composition of the Multi-Party Liaison Committees. It must be noted that in terms of Section 160 B (1) of the Electoral Act Chapter 2:13, the lifespan of MPLCs is not permanent. It is periodic and only functional between nomination and proclamation of election results.

<sup>9</sup> J. Napier, Political party Liaison Committees as a Conflict Resolution Mechanism: The South African Experience, *Journal for Contemporary History* 40(2), December 2015, pages 156–175

<sup>10</sup> Section 160B (1) of the Electoral Act

<sup>11</sup> Section 160B (2) of the Electoral Act

## 4 Rationale for the Establishment of Multi-Party Liaison Committees

The rationale for the establishment of Multi-Party Liaison Committees is inspired by the new institutionalism school of thought which postulates that in polarized political dispensations such as Zimbabwe, institutional arrangements can provide the context in which differences can be managed and accommodated in a non-adversarial, non-violent political and consensus based way. This is achieved through interactions that can take place between political parties, through the formal structures created by legislation to deal with electoral matters. The Zimbabwean legislation already provides for win-win solutions to electoral disputes in Section 160D of the Electoral Act where it provides for consensus based decision making. A win-win situation is the result of a mutual-gains approach to negotiation in which parties work together to reach mutual interests.<sup>12</sup> In a win-win negotiation, when both sides are satisfied with their agreement, the odds of a long-lasting success are much higher. Finding your way to a win-win situation often involves reaching mutual gains by trading off your differing preferences.<sup>13</sup> Multi-Party Liaison Committees allow direct communication between the Zimbabwe Election Commission (ZEC) and political parties, and provide a vehicle to resolve disputes at the national, regional and local levels.<sup>14</sup> They create avenues for political parties that are contesting in an election to communicate and deliberate in formalized or legal structures and resolve election disputes, in a manner acceptable to all political players.<sup>15</sup> If properly constituted and properly functional, Multi-Party Liaison Committees have the potential to enable ZEC to be in regular contact with political parties through their organizational structure, their candidates, agents, and other party volunteers.<sup>16</sup> They ensure that political parties play a central role in ensuring fairness of the electoral process, engendering confidence in the same and ensuring that all players in the electoral process play by the rules. This then ensures that all contestants in an election accept the results.

## 5 Multi-Party Liaison Committees: Shortcomings of The Zimbabwean Legislative Framework

The biggest shortcoming of the Zimbabwean Multi-party Liaison Committees is their limited lifespan. Except the national Multi-Party liaison Committee which is appointed six months before the expiry of the five year term of Parliament and expires after proclamation of electoral results, the Constituency and Ward Multi-Party Liaison Committees' lifespan is confined to the period between nomination and announcement of results. They are mandated in terms of Section 160C (1) (a) of the Electoral Act to resolve any disputes, concerns, matters or grievances relating to the electoral process. It appears therefore that the meaning of "electoral" process in the mind of the law maker is limited to campaigning, actual voting, vote counting and announcement of results. If the electoral process is broadly defined to include such activities as boundary delimitation, voter registration, accreditation of voters and nomination of candidates, as it should be, the appointment of the Multi-Party Liaison Committees after nomination defies logic. This is so because it precludes it from dealing with disputes, concerns, matters or grievances which arise from these pre-election electoral processes in the latter and spirit of Section 160 (C)(1). Multi-party Liaison Committees ought to be permanent structures which exist throughout the electoral cycle. Sustained dialogue, which creates win-win solutions to conflicts, takes place over time and includes such processes as relationship and mutual trust building.

When made to be a permanent structure, MPLCs will have more time to build relationships, to promote or foster inter-political party tolerance, coexistence and cohesion, to define their common goals and to promote cooperation towards achieving these common goals. Consensus based decision making, which is required in section 160D of the Electoral Act is only feasible when there is mutual trust between the political parties represented in the Multi-Party Liaison Committees, clearly defined and agreed upon common goals as well as cooperation between the political parties in the Multi-party Liaison Committees, in line with the four pillars of the Contact Theory.

12 Harvard Law School: Program on Negotiation <https://www.pon.harvard.edu/tag/a-win-win-situation/> (Accessed on 1 November 2022)

13 Ibid

14 International Federation for Electoral Systems, Addressing Election Disputes and Election Offenses in Zimbabwe, <http://efzimbabwe.org/downloads/Election-Dispute-Resolution.pdf> (Accessed 13 December 2022)

15 J. Napier, Political party Liaison Committees as a Conflict Resolution Mechanism: The South African Experience, *Journal for Contemporary History* 40(2), December 2015, pages 156–175

16 The Electoral Knowledge Network, Parties and Candidates, 2nd Edition, 2012, <https://aceproject.org/ace-en/topics/pc/pcc/pcc06/pcc06c> (Accessed on 1 November 2022)



The mandate of the Zimbabwean Multi-party Liaison Committees is vaguely defined in legislation. Section 160C (1) (a) of the Electoral Act states their mandate is to “hear and attempt to resolve any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code”. An attempt is an act of trying to do something, especially something difficult, often with no success.<sup>17</sup> It appears from the wording of Section 160C (1) (a) of the Electoral Act that the mandate of the Multi-Party Liaison Committee is to attempt to, rather than to actually resolve electoral disputes, concerns, matters and grievances. It also appears from the wording of Section 160C (d) and (e) that instead of acting as a dispute resolution and conflict transformation mechanism in and of themselves, the Multi-Party Liaison Committees only act as “conveyer belts” which basically identify electoral related conflicts and disputes and forward them to the Zimbabwe Electoral Commission, which itself is not equipped to manage, transform or resolve. In fact, there is no clearly defined procedure in the Electoral Act which the Zimbabwe Electoral Commission must follow to resolve, manage or transform an election related conflict once it is reported in terms of Section 160 (c) and (d).

Neither the Electoral Act Chapter 2:13, nor Zimbabwe Electoral Commission’s administrative rules and procedures have a provision for capacity building of members of the Multi-Party Liaison Committees and the Zimbabwe Electoral Commission on sustained dialogue, conflict management and conflict transformation. There is no recognition that these are technical skills that are required by members of the MPLCs. As mechanisms for conflict management and transformation, Multi-party Liaison Committee members are supposed to possess skills in conflict transformation and dispute resolution, or at the very least the people who chair them must possess these technical skills. In any case, investment in capacity building for Multi-party Liaison Committees which are not permanent makes no economic sense. This technical deficiency, together with the absence of a record of when the Zimbabwe Electoral Commission constructively resolved or transformed a high profile conflict erodes trust in the Zimbabwe Electoral Commission’s capacity to handle electoral grievances and disputes and hence, over-reliance on the Courts, which themselves do not always produce satisfactory results in this regard.

Section 160 of the Electoral Act, which provides for the formation, operationalization and functioning of the Multi-Party Liaison Committees is silent on how the latter are accountable to the public. Their meetings, or records of meeting proceedings are not accessible to the public. The law does not provide for how frequently the Multi-Party Liaison Committee must meet. Their meetings are thus ad hoc, needs based and dependent on the availability of resources, in stark contradiction to the tenets of sustained dialogue. The Multi-Party Liaison Committee is a very critical structure of the electoral dispute resolution mechanism and as such, there must be statutory provisions on how frequently they must meet at all levels. This will also bring certainty to the Zimbabwe Electoral Commission in terms of the amounts of resources that should be allocated to the Multi-Party Liaison Committees at budgeting stage. It will also bring certainty to the number of meetings that each Multi-Party Liaison Committee must have during its lifespan. Sustained dialogue by its very nature entails frequent and regular engagement between the political parties and independents participating in an election.

## 6 Zimbabwean Multi-Party Liaison Committees in Action

Academic literature search on the success and or failures of the Zimbabwean Multi-party Liaison Committees yields virtually nothing. There is therefore a huge intellectual lacuna on the functions, successes and failures of the Zimbabwean Multi-Party Liaison Committees. Unlike the judicial electoral dispute resolution mechanisms whose proceedings and records are open to the public (e.g. the 2018 electoral petition was hearing was broadcast live), there is no publicly accessible record of the work of the Multi-Party Liaison Committees in Zimbabwe. This is highly unusual and undesirable for a statutory body with such importance. The minutes of the meetings of the Multi-Party Liaison Committees are not open to the public and are not easy to get, even for academic researchers. Researchers who attempt to access records of the work of the Multi-Party Liaison Committees are subjected to burdensome bureaucratic procedures which, among other things, include obtaining research clearance from the Zimbabwe Electoral Commission’s parent ministry. The records of the Zimbabwean Multi-Party Liaison Committee’s work (its successes and failures) must be publicly available, if trust in these institutions by the public at large, the politicians and the political parties is to be nurtured.

<sup>17</sup> Oxford Advanced Learners Dictionary meaning of the word “attempt” [https://www.oxfordlearnersdictionaries.com/definition/american\\_english/attempt\\_1#:~:text=attempt-,noun,test%20on%20the%20first%20attempt](https://www.oxfordlearnersdictionaries.com/definition/american_english/attempt_1#:~:text=attempt-,noun,test%20on%20the%20first%20attempt) (Accessed 17 August 2022)

To get insights into this subject matter, this author conducted key informant interviews with political party leadership and candidates in the 2018 elections from Zvishavane, Goromonzi, Gokwe, Zaka, Epworth, Mbare and Chitungwiza. From these interviews, it is apparent that the general Zimbabwean public is not familiar with the existence and functioning of the Multi-Party Liaison Committees. Although there seemed to be fewer Multi-Party Liaison Meetings in rural areas than in urban areas, perhaps as a result of resource constraints in rural areas, it is evident that the Multi-party Liaison Committees were indeed meeting during the 2018 harmonized elections. In some rural areas such as Zaka, Zvishavane, Gokwe and Goromonzi, the Multi-Party Liaison committees met only two or three times throughout the entire election period. This may have been a result of the fact that the law does not stipulate how frequently Multi-party Liaison Committees should meet or a result of resource constraints.

While it is evident that the Constituency and Multi-party Liaison Committees were indeed meeting, not much effort was made in enlightening the political parties represented in these meetings that the platforms they were participating in are statutory platforms wherein they are the key decision makers. The representatives of political parties who participated in the Multi-party Liaison Committee meetings perceived the meetings as amongst the many engagements meetings that political parties have with the Zimbabwean Electoral Commission. Some of the concerns raised included inter-party political violence, intimidation, vote buying and abuse of inputs, removal of posters of opponents by fellow opponents, to mention a few. In all of the 14 interviews conducted, not a single interviewee reported that any of the concerns and grievances they raised were dealt with by the Zimbabwean Electoral Commission. There are no publicly accessible records on the cases that the MPLCs have dealt with in the past. In comparison, the South African Party Liaison Committee meeting minutes are available online for every South African to make reference to. This has the effect of undermining public confidence in its ability to resolve election related disputes and conflicts.

## 7 Multi-Party Liaison Committees in South Africa: A Comparative Analysis

The South African PLC is probably the most formalized Multi-Party Liaison Committee in Africa and has a track record of good electoral governance and the successful resolution of conflict.<sup>18</sup> The 1998 Regulations on Party Liaison Committees provide for a structure similar to the Zimbabwean Multi-Party Liaison Committees in that it sets out national, provincial and municipal party Liaison Committees with two representatives of registered political parties in each of the structures at the three levels.<sup>19</sup> Just like in the Zimbabwean Multi-party Liaison Committees, the decisions of the South African Party Liaison Committees are reached through consensus.<sup>20</sup> While the Zimbabwean Electoral Act Chapter 2:13 does not empower the Multi-Party Liaison Committees with powers to recommend legislative amendments, the South African Party Liaison Committees can recommend legislative amendments that could be considered, such as to the content of the Electoral Act of 1998.<sup>21</sup>

Unlike the Zimbabwean Multi-Party Liaison Committees whose frequency of meetings are *ad hoc* and not specified in legislation, the South African Party Liaison Committee structures meet once a week after the proclamation of an election, twice a day on an election day, and every second month during inter-election periods to discuss issues that need attention or resolution.<sup>22</sup> The South African Party Liaison Committee has objectively verifiable evidence of success in the form of conflict avoidance and rule implementation functions it has performed on a variety of issues which include conflicts around the voters' roll, voter registration, voter mobilization, inter-party political violence, submission of candidates lists, among others.<sup>23</sup> The work of the South African party Liaison Committee has led to the removal of electoral staff who might have political leanings from supervisory positions of the Independent Electoral Commission.<sup>24</sup>

18 J. Napier, Political party Liaison Committees as a Conflict Resolution Mechanism: The South African Experience, *Journal for Contemporary History* 40(2), December 2015, pages 156–175

19 Ibid

20 Ibid

21 Ibid

22 Ibid

23 Ibid

24 Ibid

‘There is a general lack of awareness by Zimbabweans on their Multi-Party Liaison Committees’ existence and functions, let alone trust and confidence. Public trust and confidence are built through a long time of persistently demonstrating evidence of good work and results. This can only happen if the Multi-party Liaison Committee is made permanent. Its conflict management, conflict transformation and dispute resolution prowess will then be enhanced by not only capacity building but by a long time of doing similar work. This is precisely what happened in South Africa. When a permanent Party Liaison Committee was established in 1998, it lacked public trust and confidence but over time, it began gaining trust and there is now a greater willingness to accept PLC inputs.<sup>25</sup> In fact, most of its decisions have found their way through to parliament for enactment in legislation.<sup>26</sup>

The reduction in politically motivated violence and intimidation in South Africa, which is attributed to the work of the party Liaison Committee, is evident in the fact that in the general election in 1994 there were 3 558 cases of violence and intimidation, in 1999 there were 1 032, in there 2004 there were only 108 cases and in 2011 there were 49 cases.<sup>27</sup> The South African party Liaison Committees have become a focal point not only for political parties but for the Independent Electoral Commission as well in dealing with and in resolving electoral related conflicts. By contrast, in Zimbabwe, political parties prefer to have all election related disputes to dealt with by the judiciary because the Multi-party Liaison Committees are yet to be made permanent, formalized and efficient. The South African Party Liaison Committee has grown to the extent that it is incomprehensible for the South African electoral system to function without it.<sup>28</sup>

## 8 Conclusions and Recommendations

Over-judicialization of electoral disputes in Zimbabwe is a result of non-functionality of alternative forms of electoral dispute resolution mechanisms such as Multi-Party Liaison Committees. Over-reliance on the court system has its own challenges because as opposed to Multi-Party Liaison Committees where decisions are negotiated and consensus based, court processes are adversarial and decisions generally benefit one party to the dispute. There is limited awareness on the existence and functions of the Multi-party Liaison Committees and the public as well as political parties do not have trust and confidence in them. In fact, the Zimbabwean Multi-party Liaison Committees are yet to establish themselves as credible and trusted election dispute mechanisms. Dispute resolution by its very nature requires time which is not at the disposal of the Multi-party Liaison Committees which are only operational during elections. The mandate of the Multi-Party Liaison Committees is not clearly spelled out in the enabling legislation.

There is need to amend Section 160B (1) of the Electoral Act to give the Multi-party Liaison Committees a permanent lifespan. The Act must also be amended to give MPLCs a wider mandate to handle electoral disputes throughout the entire electoral cycle, including pre-election disputes around delimitation, voter registration and nomination. The knowledge and skills capacities of the Zimbabwe Electoral Commission and the Multi-party Liaison Committees to handle electoral disputes need to be strengthened. The legislation that provides for the establishment and operationalization of the MPLCs (section 160A – 160D) does not provide the state with a legal obligation to build the capacity of MPLCs in such technical areas as conflict transformation, conflict management, dispute resolution and sustained dialogue. In line with the principle of sustained dialogue, the Act must be amended to require the Multi-party liaison Committees to meet frequently per year. There is also need to raise public awareness on the existence and functions of the Multi-Party Liaison Committees. The law must be amended to provide greater clarity on the procedures that the Zimbabwe Electoral Commission must take once a dispute has been referred to it. It must also specifically provide for how the Multi-Party Liaison Committee must account for its work to the public.

25 Ibid

26 Ibid

27 Tlakula, P 2007. Democratic elections in a global context. *Potchefstroom Electronic Law Journal* (2007) (2) pages 110–115

28 Napier, Political party Liaison Committees as a Conflict Resolution Mechanism: The South African Experience, *Journal for Contemporary History* 40(2), December 2015, pages 156–175

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# Was Statutory Instrument 225A of 2022 a subversion of the independence of the Zimbabwe Electoral Commission?

By *Takunda Tsunga*

**Key Words:** Elections; Independence; COVID-19; Democracy and Constitution

## Abstract

Holding regular elections is an essential characteristic of participatory democracy. However, a case for postponing elections was made during the COVID-19 pandemic following the gazetting of Public Health (COVID-19 Prevention, Containment and Treatment) (Amendment) Regulations, 2020 (NO. 4) (SI 225A/2020). Despite the critical nature of the issue for democracy, there has been sparse literature on election suspensions in Zimbabwe. The decision to suspend an election and prevent citizens from exercising their right to vote is a major one and should be taken only in a limited set of circumstances. The suspension of elections raised critical questions that have never been addressed before in Zimbabwe's legal framework.

The legislative lacuna surrounding electoral suspension is complicated by the absence of explicit legal provisions that indisputably govern election postponement and suspensions. This research investigates the constitutional and judicial interpretation of suspensions to elections in light of SI225A of 2020, investigating whether the interpretation adhered to the premises of the Constitution and whether a statutory instrument can infringe on constitutionally guaranteed rights and the independence of the Electoral Commission. The analysis and effects of the suspension on electoral integrity will be traced through a comparative analysis of regional and international standards.

## 1 Introduction

Free and fair elections are a necessary but not sufficient condition of democracy<sup>1</sup> and are central to the development of democratic and inclusive societies. Not only do democratic elections provide means to economic growth and development, since citizens can elect leaders based on their campaign promises and policies on socio-economic development; regular elections also contribute to peacebuilding by conferring authority on leaders, facilitating peaceful transfers of power, and promoting citizens' participation and inclusion in governance.<sup>2</sup>

In Africa, through the African Union Charter on Democracy, Elections and Governance (ACDEG)<sup>3</sup> and Southern Africa Development Community (SADC) Principles and Guidelines Governing Democratic Elections,<sup>4</sup> among others, member countries have been provided with guidelines and standards which they must comply with to ensure that they conduct credible, free and fair elections. The principles of good governance are founded on supremacy of the constitution and the holding of democratic and credible elections.

1 Schmitter PC and Karl T.L. *What democracy is and is not*. Journal of Democracy, Volume 2 (3) 1991. <https://www.ned.org/docs/Philippe-C-Schmitter-and-Terry-Lynn-Karl-What-Democracy-is-and-Is-Not.pdf> (Accessed 28 September 2022) pp. 75–88

2 Oduro, F. *The Changing Nature of Elections in Africa: Impact on Peacebuilding*. In: McNamee, T., Muyangwa, M. (eds) *The State of Peacebuilding in Africa*. (Palgrave Macmillan, 2021) pp. 163–180

3 African Charter on Democracy, Elections and Governance. Date of Adoption: January 30, 2007

4 Southern Africa Principles and Guidelines Governing Democratic Elections. Adopted on 20 July 2015, Pretoria, Republic of South Africa

The outbreak and subsequent spread of the coronavirus pandemic (COVID-19) has claimed a significant number of lives across the world. The spread of the virus and various government responses have had a significant impact on the electoral cycle. These different approaches to managing elections during a pandemic raise a number of questions about the risks to democracy in the presence of an external threat, such as COVID-19, and join a wide range of questions concerning risk, democracy, and public participation.<sup>5</sup>

In this article, I argue that the COVID-19 pandemic posed a significant risk to Zimbabwe's ability to guarantee free and fair elections and that appropriate measures needed to be taken to offset the risks that the public health emergency posed on both public health protection and electoral integrity. I illustrate how the pandemic may affect critical elements that constitute free and fair elections. However, any action to mitigate the electoral risks from the pandemic, including cancellation and postponement of elections, must be dictated by legislation and the constitution. Postponement of elections outside of legislative authority can create a power vacuum, constitutes abuse of power, and potentially can be used to further consolidate authoritarian rule and undermine the reconsidering.

This article provides a comparative overview of the use of postponement of elections in Africa. The argument is made that elections should be viewed as a central part of democracy. Their effectiveness is dependent on the regularity, inclusiveness and credibility of the processes and outcomes. However, in situations where the delivery of these tenets is in doubt because of a public emergency, the decision to suspend or cancel elections must be lawful, that is it must be explicitly guided by law including laws governing the time frames for holding elections.

## 2 Constitutional Framework for Elections

The Constitution of Zimbabwe<sup>6</sup> guarantees political rights,<sup>7</sup> and electoral principles, which are central to Zimbabwe's democracy. These principles include free, fair and regular elections;<sup>8</sup> a multi-party democratic political system;<sup>9</sup> timing of elections<sup>10</sup> and the filling of electoral vacancies<sup>11</sup> when they occur. These principles dictate the conduct, manner, and timing of elections.

## 3 Timing of Elections

As is the case with all other principles guaranteed in the Constitution, rights and principles guiding elections are fully justiciable. The state through the Zimbabwe Electoral Commission (ZEC) has duties to protect, promote and fulfil these rights. The duty extends to refraining from interfering with the existing access to these rights and obligations.

The timing of elections is expressly guaranteed in section 158 and section 159 of the Constitution and sections 38 and 39 of the Electoral Act which designate that a general election must be held not more than thirty days before the expiry of the five-year period of Parliament.<sup>12</sup> In the case of electoral vacancies, section 159<sup>13</sup> states that whenever a vacancy occurs, an election to fill the vacancy must be held within ninety days. The Constitution and subsidiary legislation do not provide for the extension of this term of five years nor an extension of a vacancy beyond the ninety-day period envisaged by the Constitution.

5 Weblert T, Tuler. S. *Four Decades of Public Participation in Risk Decision Making*. Society for Risk Analysis (2018) <https://doi.org/10.1111/risa.13250> (Accessed 21 September 2022)

6 Constitution of Zimbabwe Amendment (No. 1) Act, 2017

7 See s 67 of the Constitution

8 See s 3 (2) b ii of the Constitution

9 See s 3 (2) a of the Constitution

10 See s 158 of the Constitution

11 See s 159 of the Constitution

12 See section 158 of the Constitution of Zimbabwe 2013 which states that:

- (1) A general election must be held so that polling takes place not more than—
  - (a) thirty days before the expiry of the five-year period specified in section 143;
  - (b) where Parliament has passed resolutions to dissolve in terms of section 143(2), ninety days after the passing of the last such resolution; or
  - (c) where Parliament is dissolved in terms of section 109(4) or (5) following a vote of no confidence, ninety days after the dissolution.

13 See s 159 of the Constitution

## 4 Postponement of Elections

### 4.1. Comparative Law

#### 4.1.1 African Court on Human and Peoples' Rights

On July 16, 2021, the African Court on Human and Peoples' Rights issued an advisory opinion<sup>14</sup> on the right to participate in a country's election that are held during a public health emergency or a pandemic, such as the COVID-19 crisis. With regard to the questions brought forward by the applicant, the Court condensed them as follows:

- A. On the decision to conduct or not to conduct elections in the context of a public health emergency or a pandemic
- B. On the obligations of State Parties to ensure effective protection of citizens' right to participate in the government of their countries in the context of an election held during a public health emergency or a pandemic
- C. On the obligations of State Parties that decide to postpone elections because of a public health emergency or a pandemic.

Regarding the first issue (A), the Court noted that the African Charter of Human and Peoples Rights<sup>15</sup> (as supplemented by Article 2 and 3<sup>16</sup> of the African Charter on Democracy, Elections and Governance) leaves the decision to conduct or not to conduct elections, with the competent organs of the State concerned;<sup>17</sup>

*“Concerning the postponement, the Court notes that, Article 13(1) of the Charter, as supplemented by Articles 2 and 3 of the ACDEG, by referring to domestic law, the determination of conditions for the exercise by citizens of the right to participate freely in the governance of their countries, gives the competent bodies of each State the power to decide to postpone elections in accordance with its domestic law.”<sup>18</sup>*

Domestic law dictates the conditions under which elections are held and therefore, subsequently it is also for the states to determine whether to postpone an election in an emergency.

*“The Court is of the view that the provisions refer back to domestic law the definition of the conditions for the exercise by the citizens of their right to participate in elections, including in particular their postponements.”<sup>19</sup>*

However, a postponement should be an exception to the principle that elections must be held regularly, within the required timeframe. In making such a decision, the Court must take steps to ensure that, if an election is held during such a situation, it is safe and inclusive.

#### 4.1.2 South Africa

Section 21 (1) of the Electoral Act of South Africa<sup>20</sup> allows the Independent Electoral Commission of South Africa (IEC) to request the person who called an election to postpone the voting day for that election, provided the Commission is satisfied that the postponement is necessary for ensuring free and fair elections.<sup>21</sup> The new voting day for the election must still fall within the 90-day period as required by section 159 (2) of the Constitution.<sup>22</sup> The IEC has a constitutional duty in terms of section 190(1)(b) of the Constitution<sup>23</sup> to ensure that free and fair elections take place in terms of the relevant legislation.

14 ACHPR Advisory Opinion on Request No. 001/2020 by the Pan African Lawyers Union (PALU) on the Right to Participate in the Government of One's Country in the Context of an Election Held During a Public Health Emergency or a Pandemic, such as the COVID-19 Crisis

15 Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

16 ACDEG, Article 2: “The objectives of this Charter are to: 3. Promote the holding of regular free and fair elections to institutionalise legitimate authority of representative government as well as democratic change of governments;” Article 3: “State Parties shall implement this Charter in accordance with the following principles: 4. Holding of regular, transparent, free and fair elections.”

17 ACHPR Advisory Opinion at para 54

18 At para 52

19 At para 96

20 Act No 73, 1998

21 Section 21 (1) (a) Electoral Act No 73, 1998

22 Constitution of the Republic of South Africa, 1996

23 Ibid

### 4.1.3 Nigeria

In Nigeria the authority to postpone elections is vested in the Independent National Electoral Commission (INEC). The Electoral Act, section 24 (2) states that:

*“Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded or it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election, provided that such reason for the postponement is cogent and verifiable.”<sup>24</sup>*

Before the first cases of Covid-19 in Nigeria were identified, the INEC had scheduled two gubernatorial elections in Edo and Ondo States which were originally scheduled for 19 September and 10 October 2020, respectively. According to the INEC, it would have been legally impossible to postpone these two elections.<sup>25</sup> The INEC Chairman explained that the INEC considered it imperative to synchronise all electoral planning and activities to avoid a possible legal lacuna, arguing that *‘[o]ur democracy and electoral processes cannot be truncated due to [a]pandemic.’<sup>26</sup>*

## 5 Electoral Framework in Zimbabwe – Suspension of Elections

The Zimbabwe Electoral Commission (ZEC) is the constitutional body empowered to prepare for, conduct and supervise elections.<sup>27</sup> Historically, section 123 of the Electoral Act<sup>28</sup> provided for the postponement of elections. It provided that: “Notwithstanding any other provision of this Part, if the Commission considers that it is necessary to postpone any election— (a) to enable a voters’ roll to be prepared or updated; or (b) for any other reason, to enable the election to be held properly in accordance with the Electoral Act.”<sup>29</sup> The provision empowered the Commission to postpone elections to a date not later than one year after the date on which the postponed election was due. However, this section was repealed by s.68 of Act No. 17 of 2007.

Currently, there are no expressed statutory provisions that explicitly allow ZEC, the authority, to postpone elections. Sections 192 (5) and 132 (1) of the Electoral Act<sup>30</sup> qualify alterations to the dates on which electoral processes and by-elections must occur. According to s192 (5), the Commission may alter any period specified arising out of or resulting from any election, while section 132 (1) (a) states that where anything is to be done by a particular date, the Commission may direct that the thing is to be done by a different date. However, the alterations to by-elections should occur within the confines of the timelines established by the Constitution. In January 2019, following nationwide protests during which security forces fired live ammunition, killing 17 people, and raped at least 17 women,<sup>31</sup> the Electoral Commission altered the dates of Chitungwiza Ward 24 and Bulawayo Municipality Ward 28 Local Authority By-Elections citing that *‘It is now not feasible to conduct free and fair by-elections on the fixed days due to unforeseen circumstances.’<sup>32</sup>* The by-elections were postponed to a date within the 90-day period prescribed for holding those by-elections. The legislative framework does not provide for altering dates beyond the constitutionally prescribed periods for holding elections.

24 Electoral Act, 2010 (No. 6 of 2010) Section 24 (2)

25 Sani. I. “Nigerian State Elections during the Covid-19 Pandemic Case Study”, *International Institute for Democracy and Electoral Assistance*, 23 August 2021. <https://www.idea.int/sites/default/files/nigerian-state-elections-during-the-covid-19-pandemic-en.pdf> (Accessed 31 October 2022)

26 Sani. I. “Nigerian State Elections during the Covid-19 Pandemic Case Study”, *International Institute for Democracy and Electoral Assistance*, 23 August 2021. Accessed at <https://www.idea.int/sites/default/files/nigerian-state-elections-during-the-covid-19-pandemic-en.pdf> on 31 October 2022

27 See s 239 of the Constitution

28 Electoral Act [2:13] of 2007

29 Section 23 of the Electoral Act [2:13] of 2007

30 Electoral Act [Chapter 2:13]

31 Human Rights Watch. *Zimbabwe: Excessive Force Used Against Protesters* 12 March 2019 <https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters> (Accessed 5 August 2022)

32 Zimbabwe Electoral Commission. *Local Authority By-Elections: Alteration Of Dates: Chitungwiza Ward 24 And Bulawayo Municipality Ward 28* <https://www.dropbox.com/s/5nb1wsrkadrofwh/Election%20Notice%20-%20%20local%20authority%20%20by%20elections%20chitungwiza%20and%20bulawayo%20%28%29.pdf?dl=0>



On the 25th of March 2020, the ZEC suspended electoral activities by tweet, as a “precautionary measures to protect its employees and the general public from the (COVID-19) pandemic.”<sup>33</sup> Electoral activities that were suspended included by-elections. The Constitution<sup>34</sup> and the Electoral Act<sup>35</sup> prescribes timeframes for holding by-elections and filling vacancies. Elections and by-elections are constitutionally and legally prescribed and could not be suspended by way of a press statement only, as ZEC had not taken any subsequent steps beyond the tweet to legalise the suspension of electoral activities by gazette as envisioned by section 192 (6) of the Electoral Act.<sup>36</sup>

In response to criticism,<sup>37</sup> the Minister of Health and Child Care, Retired General Constantino Dominic Chiwenga, issued Statutory Instrument 225A of 2020.<sup>38</sup> The purpose of the decree was to suspend;

*“the holding of any by-election to fill a casual vacancy in Parliament or in a local authority is, for the duration of the period of the declaration of COVID-19 as a formidable epidemic disease, suspended ...”*<sup>39</sup>

## 6 Principles taken into account when suspending elections

When considering the concept of free and fair when faced with a postponement of an election, due consideration needs to be given to the value of the crisis and its impact on free and fair elections. In the *Electoral Commission v Minister of Cooperative Governance and Traditional Affairs*<sup>40</sup> case, the Constitutional Court was faced with an application that would result in the postponement of elections in the light of the Covid-19 pandemic and its impact on free and fair elections. On 20 May 2021, the IEC had appointed Justice Moseneke in terms of section 14 (4) of the Electoral Commission Act to inquire into the likelihood of the 2021 local government elections being free and fair in light of the Covid-19 pandemic.<sup>41</sup> The IEC considered it prudent to commission this process following representations by political parties in the National Political Party Liaison Committee<sup>42</sup> concerned with the trajectory of the pandemic and the holding of elections under those conditions.<sup>43</sup>

On 20 July 2021, the Moseneke Inquiry produced its report in which it recommended that the local government elections be postponed to February 2022,<sup>44</sup> as they were unlikely to be free and fair if held in October 2021.<sup>45</sup> The IEC, on the recommendations of the Moseneke Inquiry, approached the Court on the basis that, although it had a constitutional and statutory obligation to hold the forthcoming local government election in October 2021, it would not be able to hold a constitutionally compliant election. It, therefore, sought an order that declared that it could hold the local government election outside the 90-day period.<sup>46</sup>

33 Zimbabwe Electoral Commission 2022 [Twitter] 26 March. Available at <https://twitter.com/ZECzim/status/1243124683131817985> (Accessed 18 September 2022)

34 Section 159 of the Constitution of Zimbabwe

35 Section 39 of the Electoral Act

36 Regulations made in terms of subsection (1) and statutory instruments made in terms of subsection (4) shall not have effect until they have been approved by the Minister and published in the *Gazette*

37 Election watchdog, Election Resource Centre had raised concerns around the conduct of the Zimbabwe Electoral Commission and that ZEC should be guided by the relevant legislation and the Constitution of the land in suspending electoral activities. Available at <https://kubatana.net/2020/06/09/erc-statement-on-zec-press-release-on-suspension-of-by-elections>

38 Public Health (COVID-19 Prevention, Containment and Treatment) (Amendment) Regulations, 2020 (No. 4)

39 At section 2

40 [2021] ZACC 29

41 The Commission appointed Justice Moseneke in terms of section 14(4) of the Electoral Commission Act, 1996, which provides that that “[t]he Commission may, if it deems it necessary, publish a report on the likelihood or otherwise that it will be able to ensure that any pending election will be free and fair.”

42 Electoral Commission Act, 1996

43 See <https://www.gov.za/speeches/electoral-commission-appoints-former-deputy-chief-justice-dikgang-moseneke-evaluate> (Accessed 30 October 2021)

44 Justice Dikgang Moseneke. A Report to the Electoral Commission of South Africa in Terms of Section 14(4) Read With Section 5(2)(A) Of The Electoral Commission Act (2021). [https://www.elections.org.za/freeandfair/Live/20210720%20A%20REPORT%20TO%20THE%20ELECTORAL%20COMMISSION%20OF%20SOUTH%20AFRICA%20IN%20TERMS%20OF%20SECTION%2014\(4\)%20READ%20WITH%20SECTION%205\(2\)\(a\)%20OF%20THE%20ELECTORAL%20COMMISSION%20ACT%20\(Final%20edits%20-%2020210726\).pdf](https://www.elections.org.za/freeandfair/Live/20210720%20A%20REPORT%20TO%20THE%20ELECTORAL%20COMMISSION%20OF%20SOUTH%20AFRICA%20IN%20TERMS%20OF%20SECTION%2014(4)%20READ%20WITH%20SECTION%205(2)(a)%20OF%20THE%20ELECTORAL%20COMMISSION%20ACT%20(Final%20edits%20-%2020210726).pdf) (Accessed 30 October 2022) at paras 256 and 321

45 Moseneke Report at para 321

46 Referred to in section 159 of the Constitution and section 24(2) of the Municipal Structures Act

The Court,<sup>47</sup> when faced with the application to postpone elections, emphasised the importance of regular elections for local government to remain democratic, accountable, responsive, and open<sup>48</sup> and adhering to the time-limit is therefore of utmost importance.<sup>49</sup> Importantly, the Court also emphasised that the determination would depend on the standard for free and fair elections which applies in the context of Covid-19 and whether the standard should be altered in the face of a public emergency. It does not follow that the resultant elections would, in an *ex post facto* (after the fact) assessment, be found to be free and fair. An *ex post facto* challenge would be the occasion to decide what exactly the standard of freeness and fairness entailed in the circumstances.

The Court referred to the judgement in *Kham v Electoral Commission*<sup>50</sup> in which it held that there was no internationally accepted definition of the term “free and fair” elections, an election must be assessed in context, and that the assessment ultimately involves making a value judgement.<sup>51</sup> The Court also held that the standard of free and fair elections “must at least to an extent be conditioned by the circumstances prevailing in a country.”<sup>52</sup> The Court noted that the standards by which international observers assess free and fair elections remain vague. There had been little progress in the development of a practical set of criteria by which to judge whether an election has been free and fair.<sup>53</sup> The Court held that the Commission’s constitutional duty was to conduct the elections, making them as free and fair as circumstances reasonably permitted.<sup>54</sup>

If in law the standard of free and fair elections must be adjusted to take into account the existence of the pandemic and the restrictions brought in its wake, it cannot be said at this stage that timeous elections will not meet that standard.<sup>55</sup>

First, the standard of free and fair elections may be altered in light of the Covid-19 pandemic, making it more difficult to establish that the 2021 local government elections were not free and fair in terms of an altered standard with paramount importance being placed on the following elements:

*“First, every person who is entitled to vote should, if possible, be registered to do so. Second, no one who is not entitled to vote should be permitted to do so. Third... the registration of voters must be undertaken in such a way as to ensure that only voters in that particular area are registered and permitted to vote. Fourth, the Constitution protects not only the act of voting and the outcome of elections, but also the right to participate in elections as a candidate and to seek public office.”*<sup>56</sup>

The Constitutional Court has been reluctant to provide relief in postponing elections with emphasis given to the importance of regular elections to “remain democratic”. Echoing the sentiments of Chief Justice Mogoeng, postponement of elections beyond prescribed constitutional timeframes “would create a constitutional crisis.”<sup>57</sup>

## 7 Independence of ZEC

Independence of an electoral commission implies free from undue interference from anyone including not being subject to the direction or control of the executive, political parties, interest groups and individual candidates. Independence in an election management body is essential for establishing public trust in elections. This is also in the spirit of the African Charter on Democracy, Election and Governance in article 15.2,<sup>58</sup> which stipulates that “state parties shall ensure that the independence of or autonomy of institutions [that promote and support democracy] is guaranteed by the constitution.”

47 *Electoral Commission v Minister of Cooperative Governance and Traditional Affairs* [2021] ZACC 29

48 *Ibid* at para 161

49 Para 154(d)

50 *Kham v Electoral Commission* [2015] ZACC 37; 2016 (2) SA 338 (CC); 2016 (2) BCLR 157 (CC)

51 *Ibid* at para 34

52 Kruyer. C. *The Prospects Of Legal Challenges To The 2021 Local Government Elections*. 26 October 2021 <https://hsf.org.za/publications/hsf-briefs/the-prospects-of-legal-challenges-to-the-2021-local-government-elections> (Accessed 27 July 2022)

53 *Kham v Electoral Commission* at para 190

54 *Ibid* at para 206

55 *Ibid* at para 226

56 *Ibid* at para 34

57 *Ibid* at para 131

58 African Union (2007) African Charter on Democracy, Elections and Governance, Addis Ababa, African Union, Assembly/AU/Dec.147 (VIII)

The issue is whether the conduct of the Minister of Health, in implementing SI 225A of 2020, impinged on the affairs of the Commission in a manner which affected its independence in the carrying out of its functions, or whether such conduct constituted a threat to do so.

It is clear that the Zimbabwe Electoral Commission perceived itself as bearing responsibility for election administration in Zimbabwe. On 19 August 2020, the Commission published the ZEC Covid-19 Policy on Electoral Activities which amongst other,

*“to provide guidance on procedures and conduct of electoral activities/processes in a Covid-19 prone environment. This stems from the realization that the pandemic will be with the world for some time to come and it is now the “New Normal”, hence the need to navigate through it.”<sup>59</sup>*

Nor was it the only instance in which ZEC believed this perception. On 15 September 2020, the ZEC Chairperson Priscilla informed the public that,

*“It (ZEC) had lifted with immediate effect the suspension of electoral activities... with the lifting following cautionary observation of the pandemics trends and the drafting and operationalisation of the COVID-19 Policy on Electoral Activities.”<sup>60</sup>*

What emerges clearly is that the Chairperson of the ZEC and the Chief Elections Officer regarded the Electoral Commission as the competent authority vested with the constitutional mandate to administer elections. The Constitution places a constitutional obligation on organs of state to assist and protect the Commission in order to ensure its independence. The Constitution guarantees that the Electoral Commission is independent and is not subject to the direction or control of anyone. Section 239 of the Constitution details the functions of the Commission, being to prepare for, conduct and supervise elections and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law.

Constitutionally, it is apparent from the functions listed under section 239 of the Constitution that the Commission's function in the electoral environment is not supervisory. The functions relate to an active administration of elections which no other constitutional and statutory body is vested with the authority to administer elections. The Minister of Health caused SI 225A of 2020 to be passed notwithstanding the fact that the Commission had published their COVID-19 Policy on Electoral Activities and had lifted the suspension on electoral activities. Additionally, the Minister of Health caused the statutory instrument to be gazetted even though it could lead to the disenfranchisement of voters, violating the constitutional right to regular elections.

The statutory instrument was inconsistent with the Constitution because according to section 158(3) of the Constitution,<sup>61</sup> the holding of by-elections is mandatory and must take place within ninety days after the vacancies occurred. The instrument purported to suspend the holding of by-election which contradicted the Constitution. The legality of the provision was questioned in the *Ellah Tayengwa v ZEC & Ors*<sup>62</sup> case, where the court held that the Zimbabwe Electoral Commission, a key player in the preparation for, conducting and supervision of an election was not designated as an essential service in the national lockdown legislation.<sup>63</sup> It meant that it was constrained from fulfilling its constitutional mandate to hold elections within the prescribed timeframes. The court held that the legality of that legislation was not questioned, missing an opportunity to address the concerns around the independence of the electoral commission in light of SI 225A of 2020.

The Public Health Act, under which the statutory instrument was issued had no capacity to amend or vary the provisions of the Constitution governing the timeframes for holding elections and by-elections. Unlike other

59 Zimbabwe Electoral Commission. *Covid-19 Policy on Electoral Activities*. 19 August 2020. [https://www.veritaszim.net/sites/veritas\\_d/files/ZEC%20COVID%2019%20POLICY%20ON%20ELECTORAL%20ACTIVITIES%20%283%29.pdf](https://www.veritaszim.net/sites/veritas_d/files/ZEC%20COVID%2019%20POLICY%20ON%20ELECTORAL%20ACTIVITIES%20%283%29.pdf) (Accessed 15 November 2022)

60 ZEC Lifts Suspension of Elections. *Herald*. (15 September 2020) <https://www.herald.co.zw/just-in-zec-lifts-suspension-of-elections/> (Accessed 15 November 2022)

61 Constitution of Zimbabwe Amendment (No. 1) Act, 2017

62 *Ellah Tayengwa & 7 Ors v ZEC & 2 Ors*. Case No HC 5854/20

63 S.I. 83 of 2020

jurisdictions, such as Kenya and Nigeria where the law permits the postponement of elections in the event of public emergencies, in Zimbabwe the law does not permit this. The Constitution clearly provides that “statutory instruments must be consistent with the Act of Parliament under which they are made.”<sup>64</sup> The suspension of electoral activities through SI 225A of 2020 undermined the administrative independence of and electoral democracy.

The decision by the Minister of Health to suspend electoral activities subverted the political rights of Zimbabweans, in particular their right to political representation. The extent that the SI promulgated by the Minister of Health sought to bar ZEC from organising elections, it unlawfully interfered with ZEC’s constitutional mandate to administer elections. While, there is no doubt that the power to postpone or suspend elections are necessary in situations of emergencies, such powers must be exercised lawfully and in accordance with certain minimum standards namely: to postpone elections in accordance with its domestic law and for the domestic law to define the conditions for postponing elections taking into account the practicality of conducting a free and fair election, with due consideration given to making them as free and fair as circumstances reasonably permitted. With the Electoral Commission implementing their COVID-19 Guidelines on Electoral Activities as a preliminary step to holding by-elections, SI 225A of 2020 infringed on the Commissions independence.

## 8 Ellah Tayengwa Case

In response to the gazetting of SI 225A of 2020, Ellah Tayengwa and seven others filed a High Court<sup>65</sup> application seeking a relief against the ZEC, the President of Zimbabwe and the Minister of Health that the ZEC and President of Zimbabwe’s omissions in not holding by-elections, was in breach of The Electoral Act, Public Health Act and sections 258 and 259 of the Constitution of Zimbabwe. Additionally, SI 225A/2020 was *ultra vires* Section 158 and Section 159 of the Constitution of Zimbabwe and sections 39 and 121A of the Electoral Act.

The applicants averred that s158(3) of the Constitution required that by-elections for vacancies in Parliament and local authorities take place within 90 days after the vacancy arose. Section 159 of the Constitution and Section 39 of the Electoral Act required that whenever a vacancy occurred in any elective public office, the authority charged with organising elections to that body must cause an election to be held within ninety days to fill the vacancy.

The court determined that the Amendment Regulations are not *ultra vires* ss 158 of the Constitution, 39 and 121A of the Electoral Act since the regulations were made in terms of a law of general application which, in terms of the Constitution, can be utilized to limit certain fundamental human rights and freedoms. The right to vote and the holding of an election that was free, fair and credible were all part of the fundamental rights and freedoms that were subject to limitation in terms of a law of general application.

In responding to the administrative independence of the Electoral Commission, the Court fell short in addressing the independence of the Commission in relation to SI225A of 2020. The Court held that ZEC was a key player in the preparation for, conducting and supervision of an election. However, it was not designated as an essential service in the national lockdown legislation. Therefore, it meant that it was constrained from fulfilling its constitutional mandate as a result of that legislation. The legality of that legislation was not questioned. It was not an issue before the court.<sup>66</sup>

## 9 Conclusion

Elections are at the bedrock of the democratic process. They are indispensable towards achieving participatory democracy. The paradox around the postponement of elections is that postponing elections will break constitutionalism and can trigger breakdown and trust in the electoral system. However, there is also a fiduciary duty on the State and State Institutions to protect citizens from public emergencies and an even greater duty on the Electoral Commission to ensure that it delivers an election that is free and fair when mandated to do so.

64 See Section 134(c) of the Constitution

65 *Ellah Tayengwa & 7 Ors v ZEC & 2 Ors* Case No HC 5854/20

66 *Ellah Tayengwa* at pages 24–26

In the *Kham v Electoral Commission*<sup>67</sup> case, the court aptly addressed this paradox when faced with a postponement of elections beyond the prescribed time frames and the delivery of a free and fair election. The Court held that there is no internationally accepted definition of the term “free and fair elections”<sup>68</sup> Whether any election can be so characterised must always be assessed in context. Ultimately it involves a value judgement,<sup>69</sup> conditioned by the circumstances prevailing in a country at any given time, with paramount importance being placed on ensuring that every person who is entitled to vote should, if possible, be registered to do so. Second, no one who is not entitled to vote should be permitted to do so.<sup>70</sup> Electoral stakeholders must attempt to take clear steps to develop a practical set of criteria by which to judge whether an election has been free and fair; however, this criterion must be assessed based on the prevailing environment.

But what is clear from the discourse is the reluctance of institutions to postpone elections beyond constitutional and legal time frames due to the constitutional crisis that would prevail. It is up to domestic law to dictate the conditions under which elections are held, and therefore, subsequently, it is also for the states to determine whether to postpone an election in an emergency; however, the grounds for postponement should be entrenched in law and be clear. Electoral stakeholders in Zimbabwe must take steps to implement legislative reforms to entrench clear laws around election postponement and the grounds which qualify for postponements.

Elections rely heavily on procedure. ZEC must remain true to that approach. Whether it is proposals for the implementation of a legal amendment, the introduction of new rules or policies or the provision of new guidelines, changes must be properly and clearly articulated to offer guidance to the electoral officials who will be implementing them or the stakeholders who need to comply with them. In executing these responsibilities, ZEC must be practical and adaptive to the changing environment.<sup>71</sup>

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67 [2015] ZACC 37; 2016 (2) SA 338 (CC); 2016 (2) BCLR 157 (CC)

68 There is even a shift among international observers towards abandoning the “free and fair” standard and to ask instead whether the election is a legitimate expression of the will of the people or properly reflects the wishes of the people. In response to a question from the Swedish Ministry of Foreign Affairs regarding this shift in the public discourse over elections, the ACE Electoral Knowledge Network said:

“[A] shift has indeed taken place in the discourse of terms used to characterize the conduct of elections, and that consequently there are fewer references to elections as “free and fair”. This shift was seen as a trend which began in the 1990s, when elections that were described as “free and fair” at the same time could be seen by analysts to lack integrity, and it was also predicted to become a more widespread trend in the future. Moreover, one [Practitioners’ Network] member expected that the trend would go further as countries engage with new elections related technologies.

Information available from the ACE website (15 February 2013). Accessed at <http://aceproject.org/electoral-advice/archive/questions/replies/54818966>

69 *Kham v Electoral Commission* at para 34

70 At para 34

71 Commonwealth Elections and COVID-19 Briefing Paper. *COVID-19 and Election Management in Africa: Challenges, Innovations and Opportunities*. Issue 1 of 2021. The Commonwealth. <https://www.thecommonwealth.io/wp-content/uploads/2021/03/CWElection-andC19AfricaFN.pdf> (Accessed 21 October 2022)

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