



SECOND SESSION – EIGHTH PARLIAMENT

FIRST REPORT

**OF THE PORTFOLIO COMMITTEE ON JUSTICE, LEGAL AND
PARLIAMENTARY AFFAIRS**

ON

**THE STATE OF PREPAREDNESS OF THE ZIMBABWE ELECTORAL
COMMISSION (ZEC) TO HOLD BY-ELECTIONS**

Presented to Parliament 2015

(S.C. 17, 2015)

1.0 INTRODUCTION

- 1.1** Mr. Speaker Sir, pursuant to relevant legal declarations by the Honourable Speaker, by-elections were proclaimed for Chirumanzu-Zibagwe and Mt. Darwin constituencies for the 27th of March 2015. Furthermore, arising from the expulsion of some Members of Parliament by their political parties, 16 vacancies were created in the National Assembly for the following constituencies; Dzivarasekwa, Kambuzuma, Tsholotsho, Makokoba, Lobengula, GlenView South, Harare East, Kuwadzana, Highfields, Mpopoma-Pelandaba, Pumula, Mbizo, Dangamvura-Chikanga, Luveve, Hurungwe West and Headlands. These by-elections are scheduled for the 10th of June 2015.
- 1.2** In view of the fact that Zimbabwe adopted a new Constitution in 2013, your Committee decided to inquire into the state of readiness of the Zimbabwe Electoral Commission to conduct these elections. This arose as a result of the report by the ZEC Chairperson that there was no allocation in the national budget for by-elections. In addition, the inquiry was necessitated by the fact that there has been no comprehensive alignment of the electoral legal framework with the Constitution since the last elections (2013), given the fact that some of the provisions under which the 2013 elections were conducted were transitional in nature and have ceased to have legal force or effect.
- 1.3** Your Committee, as part of its executive oversight role, is empowered to inquire into matters that touch on the credibility of elections that are conducted in Zimbabwe.
- 1.4** The Committee, to that end, invited the Zimbabwe Electoral Commission to advise and inform the Committee of its state of readiness for the then forthcoming by-elections in particular, and others that may be held thereafter. Indeed as part of its inquiry process, the Committee also invited the Minister of Justice, Legal and Parliamentary Affairs, who is also one of the two Vice-Presidents, Honorable Mnangagwa, to appear before your Committee for the same reasons. His Ministry administers the Electoral Law. The Committee invited the Zimbabwe Elections Support Network (ZESN), the Zimbabwe Peace Project (ZPP) and the Elections Resource Centre (ERC) to get their views on the environment and conduct of the by-elections held on 27 March 2015 and of ZEC preparedness in general. The Committee will

deal with the evidence and submissions that it gathered and the reactions it got from these stakeholders.

2.0 METHODOLOGY

2.1 The Committee received oral evidence from the Zimbabwe Electoral Commission. The Chairperson of the Commission, the Hon Justice Rita Makarau gave a briefing to the Committee on the 16th of February 2015.

2.2 An invitation was also forwarded to the Executive, with a view to secure the evidence of the Honourable Minister of Justice, Legal and Parliamentary Affairs.

2.3 The Committee also received oral evidence from the Elections Resource Centre, and submissions from the Zimbabwe Election Support Network on the 18th of May 2015.

3.0 FINDINGS

3.1 Minister of Justice, Legal and Parliamentary Affairs:

3.1.1 As indicated above, your Committee sought the attendance of the Minister of Justice, Legal and Parliamentary Affairs, as he administers the Electoral Act. We were however unable to secure the attendance of the Honourable Vice President. The Administration of Parliament advised that because there were certain unspecified matters pending in the courts, the subject of our investigation was *sub judice*.

3.1.2 Your Committee, Mr Speaker, respectfully differs with the position adopted by the Administration of Parliament in that respect. Your Committee, as part of its oversight role, simply wanted to ascertain if the forthcoming by-elections would be in accordance with the dictates of the Constitution, as well as regional and continental benchmarks for credible elections. That would have been achieved without infringing the rule against deliberating on matters *sub judice*.

3.1.3 Your Committee makes the finding that in this case an attempt to hold the Executive accountable with respect to their role of ensuring constitutional compliance of the electoral legal framework that they administer was scuttled unnecessarily.

3.2 Zimbabwe Electoral Commission:

The Hon Justice Makarau testified before your Committee. Below is a summary of some of the key issues that arose from her oral evidence:

3.2.1 The electoral law binds the Commission to stick to the time-lines that are automatically set into motion by an electoral proclamation;

3.2.2 Consequent to the proclamation for the Chirumanzu-Zibagwe and Mt. Darwin West by-election dates by the President, the Commission set about preparing for those elections;

3.2.3 The Commission, which, as stated, received no budgetary allocation for by-elections, nor voter registration for this financial year, all the same requested a budgetary allocation of US\$2 143 000 to cover voter registration, voter education, the conduct of the by-elections and the requirements of the police. They were however allocated US\$1 473 000 for the Chirumanzu-Zibagwe and Mt Darwin West constituencies' by-elections. Notwithstanding this variance, the Commission did not anticipate shortfalls, as they had been addressed by a downward reduction in the daily allowances for officials. ZEC expressed hope that the money was not taken from the allocation of activities it had bid for and been allocated for the 2015 financial year. ZEC still expected to receive disbursements from the previous year's allocation, including outstanding dues to staff.

3.2.4 The Zimbabwe Electoral Commission had conducted voter education in the two constituencies between 21st and 27th January 2015 for the pre-nomination phase, and on the 10th of February 2015 for the voter registration exercise. Some civic society organizations had participated in the voter education exercise.

- 3.2.5** Pilot voter registration exercise for the Chirumanzu-Zibagwe and Mt Darwin West constituencies was conducted by the Commission to ensure inclusion of those that turned 18 years after the last elections in July 2013, and those that had not registered. When other by elections cropped, ZEC adopted the existing voters roll.
- 3.2.6** Both seats would be contested, as the nomination court results showed;
- 3.2.7** At the time the Committee received oral evidence, ballot papers were being designed for printing the Chirumanzu- Zibagwe and Mt Darwin West constituencies. Adequate ballot papers would be printed;
- 3.2.8** The printing of the voters' rolls for the two constituencies was anticipated after completion of the data capture process;
- 3.2.9** The Commission would establish 85 polling stations in Chirumanzu-Zibagwe and 46 in Mt. Darwin West based on the 2013 Harmonized General Elections because of the applicable population density and geographical size. Changes could however be made in consultation with the candidates;
- 3.2.10** Authority to recruit civil servants had already been obtained by the Commission from the Civil Service Commission. ZEC would train these before deployment;
- 3.2.12** The by-elections had received a fair amount of media coverage. ZEC had also conducted a political parties briefing for the by-elections at which the media was invited by ZEC;
- 3.2.13** The ZEC transport fleet needed replacement and had become expensive to maintain owing to age and mileage covered. The Commission had been embargoed by CMED (Pvt) Limited, its traditional supplier of vehicles over an unpaid debt of US\$3 million. In any event, the CMED fleet was in a deplorable state. Transport was therefore a major problem;
- 3.2.14** The Commission faced challenges with respect to the state of the electoral law, which has not

been aligned with the Constitution. Most of its actions were subject to litigation. Parliament needs to urgently attend to this matter;

3.2.15 According to the Chairperson, the Commission was well prepared for the forthcoming elections. The two problems that it faced, viz the invidious state of the law and the transport issue, were beyond its control.

3.3 The Elections Resource Centre (ERC)

Mr Tawanda Chimhini, the Executive Director of the ERC, gave evidence before your committee. Below is a summary of the major issues which he raised;

- 3.3.1** Election observers from COMESA, AU and SADC, as well as some local organizations noted that the 31st July 2013 harmonized election was held under circumstances which to an extent raised accusations of malpractice and diminished credibility. Administratively, some key processes were fast tracked, and poorly resourced. Further, no voters' roll was provided until the eve of the election, special voting was chaotic and media access was not equally distributed amongst the contesting political parties. Addressing these shortcomings remains of utmost urgency to the ERC.
- 3.3.2** The ERC however notes some of the progress made in the administration of elections by ZEC, in particular increased efficiency and relative increase in consultation with stakeholders.
- 3.3.3** The implementation of the pilot voter registration exercise comes out as one positive feature of the electoral landscape. Prior to this, sixteen local authority by-elections had been held without voter registration and associated inspections of the voters' roll as electoral best practices dictate. This had the effect of disenfranchising voters. The ERC therefore commends this effort of pilot voter registration in Chirumanzu-Zibagwe and Mt Darwin West constituencies, especially coming after strong advocacy by the ERC and other organizations.
- 3.3.4** ZEC has improved commendably on the voters' roll as access has been improved. It is important to keep the momentum and ensure consistent availability and access.

- 3.3.5** Electoral reform in Zimbabwe since July 2013 has been slow and inconclusive. There were hurried and ill-conceived amendments to the Electoral Act with views solicited from public hearings being ignored. Therefore, the electoral environment in Zimbabwe has been characterized by shifting and unclear parameters. Piece-meal electoral reform is inadequate, unacceptable and shortchanges the citizen whose quest for full expression and full implementation of rights has been ignored for too long.
- 3.3.6** ZEC is on record as saying that it is financially unstable and heavily indebted. This impacts heavily on its capacity to run elections efficiently and effectively. Delivery of a high quality, free and fair, credible election comes into doubt where resources are limited or largely unavailable. Further, the budget for holding elections appears to be too high. The average cost per voter in Zimbabwe is US\$70 which is way above the regional average of about US \$22 per voter.
- 3.3.7** The Legal framework of elections in Zimbabwe is unstable and unclear. The Electoral Commission is constitutionally mandated to register voters. However, the Electoral Act is yet to be aligned to the Constitution. While this process might be currently underway, it remains unclear as to the exact role to be played by ZEC in coming up with the proposed changes.
- 3.3.8** Little improvement was made to the voter education inadequacies experienced in the run up to the July 31 elections. This has been exacerbated by lack of finance making it difficult to roll out full voter education. Though ZEC made a call for collaboration in voter education with civil society for the Chirumanzu-Zibagwe and Mt Darwin West National Assembly by-elections, it received little response as it was late, and was limited to two weeks. This resulted in voters missing out on an opportunity to cast their vote after failing to produce requisite documents, or heading to the wrong ward and sometimes not being registered at all.
- 3.3.9** There must be clear recruitment procedures for posts in the Electoral Management Board. For instance, senior positions like that of the Chief Elections Officer were still held in an acting capacity basis. In addition, five police officers are found at each polling station. This has the effect of increasing election costs on the part of ZEC. The number of police officers around a polling station must be reasonable and not tantamount to intimidation of voters.

- 3.3.10** Voter registration time allocated for by-elections is inadequate. ZEC is on average allocating 12 days after nomination, but the Constitution states that it must be continuous. In addition, little time for inspection is being allocated after the nomination court sits and voter registration is closed. In some cases, there is no voters' roll inspection at all.
- 3.3.11** The political environment in Zimbabwe leaves a lot of room for improvement as the playing field appears to be still tilted towards the ruling party, ZANU (PF). There is continued intimidation of would-be candidates and voters as evidenced by the Vice President Mnangagwa's statements in the run-up to the Chirumanzu-Zibagwe by-election. These were widely covered in the media with little condemnation following the reports. In addition, electoral violence in areas such as Hurungwe has been widely publicized. So far ZEC has remained silent on such pertinent issues. Apparently, ZEC lacks an investigating mandate on political violence which role resides with the Zimbabwe Human Rights Commission.
- 3.3.12** Media access for political parties is neither even nor equal. ZEC is struggling to ensure equal access to public media for parties and candidates contesting in elections.
- 3.4 The Zimbabwe Election Support Network (ZESN)**
Ms Runyararo Munetsi, from ZESN, gave the following submissions;
- 3.4.1** The major objective of ZESN is to enhance the election process in Zimbabwe in order to promote democracy and good governance in general as well as free and fair elections in particular whilst adhering to internationally acceptable standards.
- 3.4.2** There is need for improvement on ZEC independence. ZEC should report to Parliament. Reporting to the Minister, who belongs to a particular political party, compromises its neutrality.
- 3.4.3** Currently, civic society cannot conduct voter education without being invited by ZEC. The law must make it easier for all stakeholders to be able to conduct voter education, as recommended by the AU observer mission.

- 3.4.4** Prisoners and those living in the diaspora should be allowed to exercise their right to vote in line with Section 67 of the Constitution.
- 3.4.5** ZESN is concerned about the high number of assisted voters. It implores ZEC to release statistics of assisted voters and make the process tamper-proof to allow citizens to exercise their right to vote freely. ZEC should also explore other ways to assist illiterate voters, for example, the use of ink by those who cannot write.
- 3.4.6** During its observation of the 3 by-elections held this year ZESN noted that there was voter intimidation, intolerance through pulling down of posters and block voting. It noted that since ZEC is embarking on pilot voter registration, it requires to be monitored and needs adequate resourcing.
- 3.4.7** ZESN also observed that there is need for an audit of the voters' roll and that it can be improved by including a photograph against each voter's name as in Zambia. ZESN further observed that ZEC did not provide the voters' roll 3 weeks before polling as required by law.
- 3.4.8** ZESN noted that ZEC does not have adequate resources for voter education, training of electoral officers, accreditation and security. The AU and SADC observers raised those concerns on the 31st July elections.

4.0 OBSERVATIONS

In the light of the foregoing, Mr Speaker Sir, your Committee observed the following, based upon the evidence received:

- 4.1** Elections are part of an electoral cycle. They are not an event. The level of voter education, which the Commission considers “fairly successful”, was conducted in the context of elections as an event rather than as part of a cycle. It is highly unlikely that such voter education conducted in those circumstances would have the required impact.

- 4.2 Related to the above, voter registration in Zimbabwe is continuous, because it is also part of a cycle. Because of the failure of the Executive to conduct the alignment process of legislation to the Constitution, legitimate voter registration appeared to have been discontinued after the Harmonized General Elections of 2013. The voter registration conducted by the Commission in relation to the two by-elections was too close to the event to be treated as genuine and inclusive. The resultant voters roll in the circumstances is questionable.
- 4.3 At the time of the inquiry, the voters roll was not available, as it was under preparation. The Committee would like to have sight of the roll in order to have a feel of the extent to which it has been updated. The Committee is unable at this time to give a clear opinion on the credibility of that roll, and hence of the resultant election.
- 4.4 It is a matter of public record that the courts have been approached to determine the legitimacy of elections in the absence of alignments of the electoral framework to the new Constitution. The Executive has made a number of promises in that regard, but has been lacking on delivery. In the circumstances the credibility of polls conducted under a legal framework the electoral management body characterizes as “invidious” and potentially in violation of the Constitution cannot pass the test of a free, fair and credible poll.
- 4.5 While the Commission may be logistically prepared to conduct the by-elections, the whole process carries the stain of illegitimacy arising from the legal framework that is inconsistent with the fundamental laws of Zimbabwe.
- 4.6 Your Committee noted with concern the resurgence of violence in some constituencies towards the by-elections. Your Committee noted an increase in the distribution of goods during election time which is tantamount to vote buying.
- 4.7 Your committee was unable to determine the source of the allocation of finances for the by-elections given that no budgetary allocation was made for such.

5.0 RECOMMENDATIONS

Mr Speaker Sir, in view of the above findings, your Committee makes the following recommendations:

- 5.1** That all elections and by-elections be conducted in full compliance with the letter and spirit of the Constitution of Zimbabwe.
- 5.2** That the Executive moves with speed to ensure the entire electoral framework i.e. statutory and otherwise is aligned to the Constitution of Zimbabwe.
- 5.3** That the Zimbabwe Electoral Commission be given adequate financial, technical and other resources to discharge its mandate and all its responsibilities under the Constitution, including the crafting of a credible voters roll.
- 5.4** That ZEC be frank and candid in its condemnation of anything that reduces or sullies the credibility of elections. ZEC must make statements on violence and make rulings pertaining to disciplinary measures for perpetrators of electoral violence. It must disqualify candidates or parties fingered in violence during election campaigns.
- 5.5** The introduction of a biometric voters' roll that is supported by the collection of biometric data and the electronic capturing, processing, storing and publishing of voters' roll should be expedited. This should be constructed in a cooperative manner taking stakeholder views on board.
- 5.6** That ZEC must be properly staffed with human resources for all departments. With a looming national voter registration exercise, ZEC must be well resourced to recruit enough staff for the exercise.
- 5.7** That voter education should be a continuous process. ZEC should institute a long term approach to voter education which also allows other non-state actors to contribute without unnecessary hindrances.

- 5.8 Immediate introduction of mechanisms (e.g. Braille) to assist physically impaired voters.
- 5.9 ZEC should provide gender disaggregated information on elections in order to facilitate informed stakeholder interventions.
- 5.10 ZEC must become more efficient in deploying scarce resources to maximum impact particularly in reducing the cost of election per voter to compare with regional comparisons.
- 5.11 Treasury must set aside a supplementary budget for by-elections and voter registration as well as for its unmet needs, and must still disburse to ZEC its 2015 budgetary allocation in order to enhance efficiency in the discharge of its mandate.
- 5.12 Treasury must provide sufficient funding to ZEC for it to be able to pay its creditors, including salary arrears for staff outstanding from last year.
- 5.13 Treasury must fund the operations of ZEC in a clear, transparent and accountable manner
- 5.14 Treasury must allocate the ZEC its own separate vote from the Consolidated Revenue Fund as required by Section 305(3) the Constitution in order to ensure its independence in terms of section 235 and not as a sub-vote of the Ministry of Justice, Legal and Parliamentary Affairs.

6.0 CONCLUSION

Mr Speaker Sir, in making these recommendations, your Committee is mindful of the existing economic hardships which could make it difficult to implement all of them at once. We are however of the view that the Executive should immediately take steps to improve the situation particularly where this can be done at manageable costs. The right to exercise one's vote is of such far reaching consequence that it cannot be sidelined on account of the cost to the State.