



European Union Election Observation Mission



FINAL REPORT **REPUBLIC OF ZIMBABWE** **Harmonised Elections 2018**





EU EOM ZIMBABWE HARMONISED ELECTIONS 2018

FINAL REPORT

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This report contains the findings of the EU Election Observation Mission (EOM) on the Harmonised Elections 2018. The EU EOM is independent from the European Union's institutions, and therefore this report is not an official position of the European Union.

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I. Executive Summary

The 30 July polls in Zimbabwe were for the presidency, parliament and local councils - known as the Harmonised Elections - and were the first since the stepping down from power of the former president Robert Mugabe after 37 years in office. Many previous elections have been contentious and with reports of abuses, and so while the commitment to hold credible elections by the interim president was welcomed, a legacy of the past was a low level of trust in the democratic process and institutions, which permeated the electoral environment.

The right to stand was provided for, the elections were competitive and political freedoms during the campaign were respected. On Election Day, voters enjoyed the right to vote and both the campaign and election day were largely peaceful.

However, the right to an effective legal remedy was not adequately provided for, there is no equal suffrage and shortcomings in the registration of voters somewhat compromised universal and equal suffrage. Notably, major shortcomings in the pre-election environment impacted on the free expression of the will of electors, state resources were misused in favour of the incumbent and coverage by state media was heavily biased in favour of the ruling party. Further, the electoral commission lacked full independence and appeared to not always act in an impartial manner. The final results as announced by the Electoral Commission contained numerous errors and lacked adequate traceability, transparency and verifiability. Finally, the restrictions on political freedoms, the excessive use of force by security forces and abuses of human rights in the post-election period undermined the corresponding positive aspects during the pre-election campaign. As such, many aspects of the 2018 elections in Zimbabwe failed to meet international standards.

The election was competitive, with a large number of candidates and political parties contesting all three elections. The campaign was largely peaceful, with freedoms of movement, assembly and expression respected, and both the main presidential candidates held numerous rallies across the country. However, while political rights were largely respected, there were concerns regarding the environment for the polls and the failure to achieve a level playing field. Observers widely reported on efforts to undermine the free expression of the will of electors, through inducements, intimidation and coercion against prospective voters to try to ensure a vote in favour of the ruling party. Such practices also included direct threats of violence, pressure on people to attend rallies, partisan actions by traditional leaders, collection of voter registration slips and other measures to undermine confidence in the secrecy of the vote, manipulation of food aid and agricultural programmes and other misuses of state resources.

The introduction of a number of legal and administrative changes was welcomed, including increasing the number of polling stations, limiting voters to voting only at their registered station, and limiting the number of excess ballots to be printed. The Zimbabwe Electoral Commission (ZEC) put in place administrative arrangements for the holding of the 30 July polls as scheduled. However, the potentially positive measures were undermined by ZEC's persistent lack of inclusivity and transparency. Further, the election management body became embroiled in a number of contentious issues, including the layout of the presidential ballot, modalities for printing and distributing ballots, poor procedures for confirming ballot security between printing and election day and the conduct of postal voting. ZEC also failed to make full or proper use of the

Multi-Party Liaison Committees, particularly at the national and provincial levels. These issues contributed to a deterioration in the relationship between the electoral commission and the opposition in the weeks before the election.

On the day of the election EU observers reported positively on the conduct of voting. Zimbabwean citizens turned out in large numbers and despite some lengthy queues, particularly in high density areas, the voting process was managed well by polling officials who worked hard to process voters. Some problems with the voter roll, or lack of voter awareness of their polling location, were evident. Party agents were present in virtually all of the polling places visited by EU observers. However, there appeared to be a high degree of instances of assisted voting in some places. The vote count in polling stations was reasonably well organised, though procedures were not always followed. The result was posted at the polling station in many instances, but not all.

Presidential results announced by ZEC were based on figures from the provincial level. ZEC also provided a CD-ROM with polling station figures set out in excel format. As this was not a presentation of the actual V11 forms from each polling station, the CD-ROM did not provide the level of transparency, traceability and verifiability which was hoped for and which could have been achieved. Further, the figures presented by ZEC in the CD-ROM contained a large number of errors and inaccuracies. While these may not bring in to question the outcome *per se*, the errors do raise enough questions to have doubt as to the exact accuracy and reliability of the figures presented. The information provided by ZEC attests to a lack of quality control in its work, notably given that this was such a critical aspect of the elections. It is also notable that the provinces with the highest margin of votes in favour of the ruling party have been the areas with the highest number of reports of “*smart intimidation*”, misuse of state resources, involvement of traditional leaders and other electoral malpractices

While the country stayed generally calm after polling, tension in Harare increased dramatically as the first parliamentary results indicated a clear lead for the ruling ZANU-PF. The fact that presidential results were not being released added to speculation and tensions. Before the announcement of official results by ZEC, MDC-A leaders started claiming that their party had won and that at least the presidential elections had been rigged. On 1 August a demonstration in the vicinity of the ZEC command centre was met with the deployment of military units. Soldiers fired live rounds into the crowd leaving at least six people dead and 14 injured. The MDC-A headquarters was also raided, and 27 persons, reportedly engaged on the MDC-Alliance’s vote tabulation, were arrested and computer equipment was seized, and to-date has not been released.

Following the declaration of results, there were reports of violence, and human rights defenders documented over 150 human rights violations between 1-7 August, including retributive acts against supporters, agents and candidates of the opposition. Reports of such of such acts persisted in the post-election phase. The legal challenge against the presidential results by Nelson Chamisa, presidential candidate for MDC-Alliance, was handled in a timely and transparent manner, but was rejected by the court on the basis that their claims were unproven. While ZEC’s poor management of the results may have opened up the process to a degree of legal jeopardy, the case brought by Chamisa did not adequately prove the case for a substantial change of the result. However, many of the claims regarding problems during the pre-election period and many of the procedural errors in ZEC’s management of the results had varying degrees of validity.

Based on EU EOM monitoring, the state broadcaster, the Zimbabwe Broadcasting Corporation, failed to abide by its legal obligation to ensure equitable and fair treatment to all political parties and candidates. State-owned TV, radio and newspapers, which dominate the media landscape, were heavily biased in favour of the ruling party and incumbent president in their election-related coverage. Media operated in a generally free environment during the campaign and freedom of expression was respected.

The legal framework provides for key rights and freedoms for the conduct of competitive elections. However, shortcomings in the Electoral Act and the absence of campaign finance regulations limit the integrity, transparency and accountability of the process. Furthermore, delays in adjudication, dismissal of court cases on merely technical grounds and a number of controversial judgments compromised the right to an effective legal remedy.

The switch to biometric voter registration so close to the election was a major challenge for ZEC, which assumed responsibility for the roll for the first time. Data indicates a capture rate of 78.6% of the estimated eligible population, though with lower levels of registration in urban areas and a number of errors which remain to be resolved. The manner of sharing the voter roll with stakeholders proved contentious and, while acknowledging the effort ZEC made in undertaking the biometric registration, its lack of transparency and failure to provide clear and coherent information about voter registration overall added to a sense of mistrust by stakeholders.

In the direct election for the National Assembly, only 14.75% of candidates were women and women were nominated in just 126 of the 210 seats. But by virtue of the additional proportional list system for the Assembly, which is a temporary constitutional measure, women will represent some 33% representation in the parliament overall.

Priority Recommendations

1. ZECs independence needs to be strengthened, free from governmental oversight in the approval of its regulations.
2. ZEC must provide effective and timely information on all steps of the electoral preparations, making all information of public interest, including ZEC resolutions and verifiable polling station level results, immediately and easily accessible.
3. Voter registration needs to be enhanced in “under registered” districts of the country to ensure universal and equal suffrage.
4. Legal measures should be introduced to mitigate abuse of the advantage of incumbency and abuse of state resources
5. State-owned media must abide by their legal obligation to be impartial and provide equitable treatment to all political parties and candidates.
6. The results management process needs to be more coherent and fully explained to all stakeholders well in advance of the polls in order to enhance transparency, verifiability and integrity of the results process.
7. The process of aligning the Electoral Act with the 2013 Constitution needs to be pursued and completed.

8. Develop regulation of political party financing to promote accountability and transparency and as a key step towards creating a level playing field between political parties.
9. Procedures for the security of the ballot from printing, deployment to polling stations and on Election Day should be reviewed and procedures clearly announced for future elections.
10. Multi-Party Liaison Committees should be a regular feature of inter-party dialogue throughout the entire electoral cycle, to be an effective conflict resolution tool for political parties and to provide an effective forum for reporting on non-compliance with the Code.¹

II. Introduction

The EU was invited by the Government of Zimbabwe to observe the Harmonised Elections and a Memorandum of Understanding between the EU and the Ministry of Foreign Affairs was signed on 28 May 2018. The EU EOM was led by Elmar Brok MEP, from Germany.

A core team of ten experts was present in Harare from 6 June. Forty-four long-term observers arrived in Harare on 19 June and were deployed on 23 June to all ten Provinces. The mission was joined by 44 short-term observers on 24 July 2018, as well as by a seven-person delegation from the European Parliament headed by Norbert Neuser MEP, from Germany. In addition, 26 locally-recruited short-term observers from EU Member States accredited in Harare, also joined the mission.

In total, the EU EOM deployed 140 observers from all 28 EU Member States (and Canada, Norway and Switzerland) across the country. On election day, observers visited over 600 polling stations in 154 of the 210 constituencies in all ten provinces of Zimbabwe to observe voting and counting. The EU EOM issued its preliminary statement in Harare on 1 August 2018

The EU EOM was independent in its findings and conclusions and adhered to the Declaration of Principles for International Election Observation².

III. Political Background

The 2018 Harmonised Elections were the first since the November 2017 events, which resulted in stepping down from power of the former President Robert Mugabe after 37 years in office. The elections offered the country the opportunity to break with the legacy of the past and the history of contentious elections marked by abuse of political and human rights and state-sponsored violence. Since his inauguration on 24 November 2017, the interim President and new leader of the ruling ZANU-PF, Emmerson Mnangagwa, stated his commitment to political and economic reforms and “*free, fair and peaceful elections*”. While the opening of political space prior the

¹ The Peace Pledge Initiative signed up to by the political parties, including ZANU-PF and MDC-A, would also be an effective way to help the MPLCs in promoting inter-party dialogue and in addressing non-compliance with the Code.

² The Declaration of Principles was signed at the United Nations in 2005. There are currently over 50 signatory organisations, representing both governmental and non-governmental institutions conducting international observation. The Declaration reflects best practices in observation and also outlines the respective rights and responsibilities, including a code of conduct, for international observers.

elections was broadly acknowledged, public confidence in national institutions and the political message of a “*new dispensation*” remained critically low.

On 30 July, Zimbabweans cast ballots for the presidency, parliament and local councils (see Legal Framework section for description of the electoral system). Twenty-three candidates registered for the presidential election³, 1,631 contested for the National Assembly and 6,576 for local councils. The ruling ZANU-PF was challenged by a new opposition coalition, the Movement for Democratic Change Alliance (MDC-Alliance), which was formed in August 2017 by seven opposition parties.⁴ For the first time in 38 years the ruling party contested the presidential elections with a new candidate, President Emmerson Mnangagwa⁵, who built his campaign on the pledge of a “new beginning”.⁶ The opposition MDC-Alliance also fronted a new candidate, Nelson Chamisa, who succeeded the long-standing opposition leader Morgan Tsvangirai after his death in February 2018. Both parties experienced controversial succession processes, internal splits and conflicts prior to the elections, which impacted on the campaign environment, most significantly during the primaries and the nomination process. The main opposition party MDC-T split with the former Vice-President of the party, Thokozani Khupe, who led a small faction retaining the original name and symbol of the MDC-T party.⁷ The most significant ZANU-PF splinter party was the National Patriotic Front (NPF),⁸ which publicly endorsed the presidential candidacy of Nelson Chamisa.

Zimbabweans have traditionally voted predominantly along specific demographic lines with the opposition having its strongholds in urban areas and the ruling party relying on the vote of the rural population. The pervasive link of the ruling party with state structures was particularly manifest in rural areas. This deepened existent division lines across the country and negatively impacted on the democratic character of the electoral environment. The economic hardship and the dependency of the population, especially in some rural areas, on food aid and state development projects for instance, made voters vulnerable to manipulation and intimidation. Further, the history of rigged and violent elections, an atmosphere of fear and deep mistrust in the electoral process made for a challenging election environment which required additional efforts by stakeholders to convince voters that these elections would be different from previous ones.

IV. Legal Framework

The legal framework provides for key rights and freedoms, but further reform of the Electoral Act is required

³ One candidate withdrew on 24 July 2018.

⁴ These are the leading party of the Alliance, the Movement for Democratic Change-Tsvangirai (MDC-T) before the split in April 2018, Movement for Democratic Change-Ncube (MDC-N), People’s Democratic Party (PDP), Transform Zimbabwe (TZ), Zimbabwe People First (ZPF), Zimbabwe African National Union-Ndonga (ZANU-N), and Multi-Racial Christian Democrats (MCD).

⁵ Emerson Mnangagwa is a long-standing member of the ZANU-PF leadership, having held senior positions in government since independence, including Minister for State Security 1980-1988, Minister of Defence 2009-2013, First Vice-President 2013-2017.

⁶ With ZANU-PF now endorsing economic reforms, foreign investment, devolution of powers and re-engagement with the West, the campaign messages of the ruling party targeted traditional opposition topics.

⁷ Thokozani Khupe ran for the presidency, largely relying on votes from her traditional stronghold in Bulawayo.

⁸ NPF was formed by disaffected ZANU-PF members linked to Robert Mugabe and Generation 40, the political grouping supporting former First Lady Grace Mugabe, shortly before the court nomination.

A International Principles and Commitments

The fundamental civil and political rights necessary for democratic elections are set out in the 2013 Constitution and the country's commitments, being a State Party to the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women. Zimbabwe also signed the SADC Principles and Guidelines on Democratic Elections and the African Charter on Democracy, Elections and Governance.

B The Constitution of Zimbabwe

The promulgation of a new Constitution on 22 May 2013, following a lengthy negotiation process that started in 1999, led to a plethora of reforms that were hailed by the civil society as necessary for the creation of an environment conducive for the protection of fundamental rights and freedoms and the holding of democratic elections. Notably, the Constitution enhanced civil and political rights, such as the freedoms of assembly and association, of expression and of the media, the right of access to information⁹ and introduced the funding of political parties for the purpose of “promoting multi-party democracy”.¹⁰ It also introduced a mixed electoral system for the parliamentary elections, instead of the first-past-the-post system (FPTP) which was in place for both chambers of Parliament,¹¹ and strengthened the role of the ZEC by making it solely responsible for the registration of voters and accreditation of observers.

Regrettably, the Constitution of Zimbabwe Amendment (No.1) Act of 2017 that amended the system of the appointment of the Chief Justice, the Deputy Chief Justice and the Judge President of the High Court by the President after consultation with the Judicial Service Commission, which was actually the system in the Lancaster House Constitution¹², limited the independence of the judiciary by enhancing the presidential powers.¹³

⁹ The 2013 Constitution introduced in s.62 for the first time the right of access to information held by the State, its institutions or its agencies of government at any level.

¹⁰ Funding of political parties was already provided in the Political Parties Finance Act (PPFA), enacted in 2002, but only for those parties whose candidates participated in the general election and received five per cent of the votes cast; importantly, the 2013 Constitution in its s.67(4) does not impose such restrictions.

¹¹ A quota with an 60 seats for women through a PR party-list system was introduced in the 2013 Constitution.

¹² The Lancaster House Agreement, signed on 21 December 1979, declared a ceasefire in the Rhodesian war, and led to the creation of the Republic of Zimbabwe. The Agreement included an Independence Constitution as well as pre-independence arrangements and a ceasefire. The Agreement is named after Lancaster House in London, where the parties to the settlement attended the conference on independence from 10 September to 15 December 1979.

¹³ Under the previous system of appointment, the President should make these appointments from a list of nominees put forward by the Judicial Service Commission, following a public interview of the candidates. On 1st February 2018 the Constitutional Court heard a matter brought before it by two opposition party MPs, who were challenging the legality of this amendment. They argued that, when the bill was debated and voted for, the National Assembly and Senate were not fully constituted as some legislators who did not attend the sessions were counted as present, this resulting in a contravention of s.328(5) of the Constitution which requires a Constitutional Bill to be passed by two-thirds of the membership of both Senate and National Assembly, sitting separately. They also argued that no vote was conducted as required by law, as assumption had been made that all ZANU-PF MPs would vote for the bill while those in opposition would oppose it, resulting in simply counting the number of people on each side. Up to date, the Court has not delivered its judgment.

C Electoral Legislation

The legal framework applicable to the 2018 harmonised elections generally provides adequate conditions for competitive elections, if implemented in good faith.

The Electoral Act, amended in several instances, ought to be revised again in order to align its provisions with the new Constitution, which stipulated that an Act of Parliament must provide for the conduct of elections and referendums in accordance with s.157 of the Constitution.¹⁴ The latest revision of the Electoral Act was passed on 28 May 2018, which was very close to the time of election and not in accordance with best practice. The Electoral Amendment Act 2018 contains some advances in relation to the previous law, related to the necessary provisions for the Biometric Voter Registration (BVR) and the closure of voter registration two days after proclamation of the election date, the extension of the allowable period of non-residence in a constituency from twelve to eighteen months before being removed from the voter register, the facilitation of voter education activities of citizens and associations by repealing the requirement of channeling foreign funds through ZEC, the establishment of additional polling stations in congested areas and limiting the excess ballot papers printed for any election to 10 per cent. The Electoral Act now provides for the set-up of the national Multi Party Liaison Committee (MPLC) before the close of nominations and at any time after the beginning of the six-month period before the end of the Parliament's five-year term, and the establishment of the Electoral Court as a division of the High Court to align with S.183 of the Constitution, while a significant amendment was the criminalisation of intimidating statements by people that they can discover how a voter has casted his/her ballot.

Recommendation 1: The Electoral Act should be aligned with the 2013 Constitution, in particular those provisions related to the constitutional right to vote (including postal voting for homebound voters and those in hospitals and penitential institutions), reinforcement of the independence of ZEC in relation to responsibility for its own regulations, voter registration, and accreditation of observers, as well as the required approval of regulations.

Nevertheless, a number of the substantive proposals put forward by the opposition were not included, resulting in some provisions of the EA not being fully aligned with the Constitution and not giving effect to its letter or spirit. These concern mostly the reinforcement of the independence of the ZEC in relation to the implication of the office of the Registrar General in the voter registration, the accreditation of observers and the requirement of the approval of the Minister of Justice, Legal and Parliamentary Affairs of the regulations adopted by the ZEC;¹⁵ and the non-expansion of the right to postal voting to people in the diaspora, homebound voters and voters in

¹⁴ The Electoral Act was initially adopted in 2004 and has since undergone a series of amendments, the previous one of 2016 incorporating the amendments made by the General Laws Amendment Act (No. 3 of 2016). Earlier it had been modified by the Electoral Amendment Act (No. 6 of 2014) and the National Prosecuting Authority Act (No. 5 of 2014] as well as by the Electoral Amendment Act, 2012 (No. 3 of 2012), the Local Government Laws Amendment Act, 2008 (No. 1 of 2008) and the Electoral Laws Amendment Act, 2007 (No. 17 of 2007). The Electoral Amendment Act (No. 6 of 2018) was gazetted on 28 May 2018.

¹⁵ In its judgment No. CCZ 05/18 of 1 June 2018, the Constitutional Court dismissed an application against the Minister of Justice, the ZEC Chairperson and the Attorney General challenging S.192(6) of the Electoral Act that requires the ministerial approval of the regulations adopted by the ZEC. The Court ruled that “the approval sought from the Minister is not that so that he gives his personal views concerning the substance of the regulations, but it is sought in order for him to exercise his administrative functions as the lawful Administrator of the Electoral Act”.

hospitals and penitentiary institutions.

In addition, the numerous amendments since its adoption in 2004 led to an Electoral Act with several shortcomings, ambiguities and inconsistencies, such as, *inter alia*, the procedure for tabulation and determination of results of the presidential election,¹⁶ the lack of effective enforcement mechanisms by the ZEC on campaign and media related violations, overly restrictive provisions on voter education conducted by persons other than the ZEC which even foresee criminal penalties for such activities if the stringent provisions of the Electoral Act are not respected, the absence of obligation by the ZEC to publish the results broken down to polling station level, the alignment of the *1995 Electoral Act Applications, Appeals and Petitions Rules* with the Electoral Act, and the lack of defined mechanisms by the ZEC for examining and resolving complaints filed by citizens as provided for by s.239(k) of the Constitution.

D Electoral System and Constituency Delimitation

The 30 July 2018 Harmonised Elections were for the direct election of the president, 210 members of the National Assembly and local councillors. The presidential election is conducted under a majority run-off system: a candidate is elected if s/he wins more than half the votes in the single national constituency¹⁷; otherwise, the two candidates with the highest numbers of valid votes are to contest a run-off election not less than 28 and not more than 42 days after the polling day.

The Constitution provides for a joint plurality party-list system for the parliamentary and provincial/metropolitan council elections. The election of 210 National Assembly members is on the basis of the FPTP system, while 60 National Assembly seats for women (six from each of the 10 provinces), 60 of the 80 Senate seats, and the 100 directly elected provincial council seats, are elected through a proportional representation party-list system, all linked to the same ballot. This additional proportional allocation of seats to parties based on votes won in the single-member constituencies may provide an added advantage to the largest party.

The senatorial party-list system for 60 Senators, places female and male candidates alternately, and the list is headed by a female candidate. While the law provides for independent candidates, they cannot contest under the political party-list system. A total of 18 of the 80 Senate seats are indirectly elected Chiefs. Further, the 2013 Constitution introduced two Senators representing persons with disabilities elected by an electoral college (see section on Persons with Disability). Councillors of local authorities are also elected on the basis of FPTP, representing local wards.

The Constitution stipulates that for electoral purposes, the State is divided into 10 provincial constituencies, 210 National Assembly constituencies and as many wards as the number of members to be elected to the local authorities concerned. Once every ten years, on a date fixed by ZEC as soon as possible after a population census, ZEC has to conduct the delimitation of electoral boundaries. According to the Section 161 of the Constitution, the boundaries of constituencies across the country should be delimited to achieve as far as possible an equal number of registered voters in

¹⁶ They are defined in two different parts, S. 37C and 110, which are not aligned with each other.

¹⁷ In announcing the result for the presidential elections, ZEC announced on the basis of the percentage of votes secured in terms of all votes cast, including invalid votes. This is a less usual formulation, than expressing it as a percentage of valid votes cast. It is noted that the law is ambiguous in this regard.

each constituency. The Constitution further stipulates that no constituency or ward should have 20 percent more or fewer registered voters than the other constituencies or wards. Constituency boundaries delimited by ZEC remain unchanged since the 2008 elections, and do not reflect the more recent census. There are significant variations in the size of constituencies for National Assembly elections. The largest constituency of Harare South, with 76,425 voters is over five times larger than the smallest of Gutu North, with 14,198 voters. Half of the constituencies differ from the average by more than 20%. As such, equal suffrage is not provided for.

Recommendation 2: Constituency delimitation must be carried out in good time prior to the next elections to ensure equal suffrage in accordance with the Constitution. An Act of Parliament could be adopted developing and elaborating the legal framework for boundary delimitation, to also include provisions for consultations with political parties and civil society and a complaints and appeals mechanism before the parliamentary approval process.

V. Election Administration

Administrative arrangements for polling were in place, but ZEC lacked transparency and inclusivity; and further enhancement of the level of trust stakeholders, including voters, have in its independence and in the electoral process is required

A Role and Structure of the Zimbabwe Electoral Commission

ZEC is established as an independent constitutional body, composed of a chairperson and eight commissioners, with a six year mandate, renewable once. The president, after consultation with the Judicial Service Commission and the Parliamentary Committee on Standing Rules and Orders, appoints the chairperson who must be a judge, and one commissioner as Deputy Chairperson. Eight commissioners are appointed by the president from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders. Four commissioners are women as constitutionally required, and so, currently, is the Chair.¹⁸

ZEC's independence is, to some degree, undermined by the involvement of the Ministry of Justice, Legal and Parliamentary Affairs in the approval of regulations adopted by the Commission. Further, the complaint that large numbers of ZEC staff are former security force personnel, and had been employed during previous contentious elections, was never fully clarified by the institution, raising concerns regarding ZEC's independence and impartiality. Thus, doubts remained about its capacity to carry out its mandate without government and security force interference, as seen in past polls.¹⁹

¹⁸ Chairperson Justice Priscilla Chigumba was sworn in on 1 February 2018 after the resignation of the former chairperson. Six commissioners, whose mandate expired, were replaced in 2016. The Standing Rules and Orders Committee must advertise the vacancies, invite the public to make nominations, conduct public interviews of prospective candidates, prepare a list of nominees and submit the list to the President. The number of candidates on the list must be at least one-and-a-half times the number of vacancies to be filled. ZEC meets at least six times a year, decisions are taken by a majority vote with a minimum quorum of five commissioners.

¹⁹ To illustrate the challenge for ZEC to reassure public confidence prior to polling, the Afrobarometer poll referred to 29% of respondents doubting that their vote would be counted, while 44% believed that incorrect results would be announced, Pre-election baseline survey April/May 2018, http://afrobarometer.org/sites/default/files/zim_r7_presentation_07062018.pdf.

Recommendation 3: ZECs independence needs to be strengthened, free from governmental oversight in the approval of its regulations.

B ZEC Management of the Electoral Process

ZEC put in place the administrative arrangements to ensure that polling took place on schedule on 30 July, including the recruitment and training of some 131,000 officers who worked in 10,985 polling stations which were established in all 1,958 wards across the country.²⁰ Polling station lists were made public in national newspapers on 9 July and again on Election Day.²¹

A number of legal and administrative changes made a positive contribution to the process. The introduction of biometric voter registration, the change to a system whereby people must vote at the specific polling station where they are registered as opposed to any polling station in the ward, and increasing the overall number of polling stations, by splitting those of busy urban areas in particular, were all positive actions as they enhanced integrity measures.²² Legal amendments to limit the printing of excess ballots to no more than 10% and the 2014 decision to provide for MPLCs were also welcomed as good practices which could enhance confidence and communication respectively.

However, these potentially positive measures were somewhat undermined by the conduct of ZEC's management, which often lacked inclusivity, transparency or effective communications. For instance, key MPLC meetings were cancelled at critical moments in the process; details on the newly-created polling stations were poorly communicated, leading to suspicions among the opposition regarding the extra polling places; procedures for ballot printing lacked transparency and meant that trust was not enhanced; mistakes in the voter roll, a paucity of timely voter education and the failure to provide a second voter roll for use outside polling places²³ meant that some voters were unable to easily identify their correct polling station. Given the low base of trust in the electoral process among many stakeholders, a more inclusive and transparent approach by the election management body should have been a priority and ZEC could have used discretionary powers to provide for transparency.

EU observers reported more positively on the provincial and district level election administration. Election officials were pro-active in sharing information and were committed to work with more transparency. Lower level commissions established their operational logistics committee and stakeholder relations were strengthened with the set-up of constituency and local-level MPLC.

²⁰ ZEC initially proposed a budget of \$179 million to run the harmonised election. However, it was only allocated \$95.9 million.

²¹ *The Financial Gazette* 12-19 July, *The Herald Supplement*, 30 July.

²² The increase of polling stations compared to 2013 elections was a positive attempt to decrease the number of voters per polling station and thus decrease the waiting time to vote. ZEC did not adequately explain this positive innovation, and some opposition parties raised questions regarding the creation of new polling stations and whether they would possibly be misused by the authorities. In a press statement published in print media on 10 June, in response to a petition by the MDC Alliance, ZEC confirmed its intention to create sub-polling stations within the same locations.

²³ This was not required by law, but was suggested to ZEC and discussed by the election management body. The proposal would have facilitated the administration of the process on election day and would have been very helpful to voters, but the idea was eventually not pursued by ZEC.

ZEC has the legal responsibility to design the ballot papers. However, its decision to arrange the presidential ballot in two columns, and notably in a way which placed the incumbent president at the top of the second column, was contentious. The decision was taken without any consultation with parties or a reasonable explanation and led to accusations that ZEC's position on the matter was biased, as it appeared to give the incumbent president an undue advantage. ZEC decided that the 23 presidential candidates on the ballot, who according to law must be listed in alphabetical order, would be split into two columns, but not split into 12 and 11 names as may seem logical, but split 14/9. As such, the incumbent president, Emmerson D. Mnangagwa (previously 15th on the list of 23 in alphabetical order) was placed at the top of the 2nd column.

Furthermore, the event ZEC organised for parties and observers to witness the printing did not afford effective transparency as it was a one-off event and did not provide the possibility of full scrutiny of what was being printed.²⁴ Also, procedures for the securing of ballots during storage and distribution appeared lax and raised concerns. Nevertheless, ZEC complied with the Election Act on the publication of details regarding the printing of ballot papers. On 28 July ZEC published an Election Notice which included a national list of polling stations, number of registered voters and the total of printed ballot papers for each polling station.²⁵

Regarding the staffing of ZEC, the lack of neutrality of its officials in past elections was assessed as a key vulnerability for the polls. ZEC requests the secondment of civil servants, which are selected, screened and trained by the Commission, and remain under its direction and control during the period of elections.²⁶

The formation of MPLCs as a conflict management tool was welcomed.²⁷ Such bodies could have, if used effectively, enhanced accountability and transparency in the electoral process. However,

²⁴ Based on a report from EU observers, on 29 June stakeholders were invited by ZEC to witness the printing of ballot papers at the Harare's Fidelity Printers. This was supposed to be an opportunity to clarify ballot security features, the ballot design as well as clarifying candidate and party slots. With the exception of the ZANU-PF, the event was attended by approximately 50 guests, including two presidential candidates, representatives of the MDC Alliance, and a number of smaller parties. The ZEC had promised full visual access to the printing process, yet this was not provided. Opposition candidates and parties claimed that the printing process had started beforehand and that ZEC failed to provide information on the number of printed ballots.

²⁵ In terms with the Electoral Act Section 52A (2) the ZEC notified that the Fidelity Printers and Refiners (Pvt) Ltd, was given the mandate to print ballot papers for the Presidential and National Assembly elections, and that Printflow (Pvt) Ltd, printed ballots for the Local Authority election. Both companies are located in Harare. A total of 6,150,950 ballots for each presidential and national assembly were printed for 5,695,706 registered voters; a total of 6,036,250 local authority ballot papers were printed for 5,590,044 registered voters. The ZEC calculated a minimum average of 3% contingency ballots for each polling station. The number of local authority ballots is less than for the other polls because in 46 wards candidates were returned unopposed and no elections were held. Also, a candidate for ward 13 in Chimanimani died and the ward election will be held on another date, ZEC Election Notice 28 July on Printing and Distribution of ballot papers. In 2013 ZEC used the same firms for ballot paper printing, and printed 35% more ballots than the total voting population of 6,4 million.

²⁶ The law establishes that those seconded to the ZEC through the Public Service Commission, the Health Services Board, and through any statutory body or council, consists of persons employed by the State other than members of the security services and any other security service that may be established.

²⁷ The multiparty liaison committees were constituted at national, provincial, constituency and local authority level. They are mandated to attempt to resolve electoral disputes arising from the non-compliance with the Code of Conduct for Political Parties and Candidates, Electoral Act, Section 160 (A/D); Concerns raised by opposition parties at MPLC's included references to acts of intimidation perpetrated against candidates or voters, the alleged use of former security personnel as civil servants for election work, instances of electoral violence, biased conduct of traditional

this was a missed opportunity for these elections, as the national-level MPLC did not meet as regularly as it should have, with two meetings cancelled in the month leading up to the polls, and was not used enough by either ZEC or the political parties as a real forum to resolve disputes or discuss and agree on contentious areas. EU EOM observers reported that MPLCs at lower levels were more effective and relations were better between parties and ZEC. The Peace Pledge could also have been used as a means for addressing disputes and alleged irregularities, though the Code of Conduct and associated MPLCs remain as the main legal mechanism in this regard.

Recommendation 4: There needs to be more frequent MPLC meetings throughout the entire electoral process, so that it is an effective conflict resolution tool for political parties and provides an effective forum for reporting on non-compliance with the Code and for exchanges of views and information with ZEC.

ZEC published an electoral calendar, the full list of polling stations, the voter roll, the list of nominated candidates, election officer's manual, the list of constituency elections officers. Additionally, a number of notices were published in the print media with electoral information.²⁸ Further, the ZEC website was relaunched during the campaign, and was improved making it more user-friendly, though it lacked some key information, including resolutions which complement the Electoral Act, which is in breach of constitutional transparency provisions and were crucial to stakeholder understanding of the process. Information on electoral officer cascade training, voter education, lists of CSOs cooperating in voter education activities, and electoral data and statistics were also lacking.

Recommendation 5: ZEC should offer effective information on all steps of the electoral preparations with full transparency, making all information of public interest immediately and easily accessible, including resolutions and complete and timely publication of polling station results.

The voter education campaign ran for ten days prior to the election with both national radio and television broadcasting ZEC-produced materials, and with adverts published in print media and billboards erected in main urban areas. Voter education materials were translated into 13 local languages and included specific messages for diverse voter target groups such as women, first time voters, disabled persons, persons with albinism and the visually impaired. EU observers reported an intense programme with direct door-to-door voter education activities in both rural and urban areas. The relatively short voter education timetable meant that exposure of communities, notably in rural areas where it was arguably most required, for instance regarding voting procedures and the secrecy of the vote (see Election Campaign section) was limited.

Recommendation 6: There needs to be a longer and more comprehensive implementation of voter education activities.

leaders, distribution of food aid and agricultural supplements by the ZANU-PF candidates during campaign activities and requests for transparency in the storage and dispatch of ballot papers.

²⁸ A press statement was published by ZEC on the voter roll. It included details regarding the biometric voter registration technology, the Automated fingerprint identification system (AFIS), and the voter roll inspection period. Also, it clarified issues on data corrections, double registration and alleged ghosts voters, *The Herald*, 19 July 2018.

In the weeks leading to the poll, ZANU-PF started an SMS campaign targeting registered voters. There was an immediate reaction from citizens questioning how the party was able to have access to ward-specific individual information. The mobile providers denied they gave the numbers to ZANU-PF, however many people accused the electoral commission of providing the numbers or accused ZANU-PF of hacking the ZEC database. During voter registration the commission collected the mobile numbers of some 3 million people, but denied any involvement in the matter.²⁹

Voting, counting and collation procedures were provided in the Electoral Act and the Electoral Officers Guidebook. Some safeguards intended to protect the integrity of the process were established, such as producing serially numbered ballot papers and stubs, a voter roll with colour pictures of voters for each polling station, and the use of indelible ink. The election specific return forms (V11) and ward and constituency collation forms (V23 A and B) combined with the obligatory public posting and sharing of originals returns with party agents was a positive measure. (See section on Voting, Counting and Collation for an assessment as to how these provisions were actually implemented.)

Actions which could have further improved the process were not considered by the ZEC, although they were within its mandate. ZEC offered a toll free number to help voters find their station, while a polling station official was tasked to provide information to voters attending a polling station, but the absence of a second voter roll for posting outside each polling station on Election Day, which while not legally required had been proposed, meant voters were not able to fully check their registration details and thereby more easily identify their correct polling station. Regarding the ballot distribution, ZEC cited security concerns and thus decided to not share details of the operational plan. Additionally, the late decision to change the position of the voting booths in polling stations, so that the back of a voter would face party agents and polling officials seemed unnecessary and again raised concerns at ZEC's decision-making. In the event, ZEC reversed this decision.³⁰

The EU-funded UNDP technical assistance project advised the electoral commission in key areas, including on strengthening institutional and electoral capacity, on voter registration, voter education activities, on a comprehensive cascade training of election staff and the production of an Election Officers Manual, on training of police, on ZECs media monitoring effort and providing support on non-sensitive election materials.³¹ Separately, the African Union also provided assistance to ZEC in support of the training of polling staff. The International Foundation for Electoral Support (IFES) supported the introduction of the use of ICT technology in core electoral management areas, while the Electoral Institute for Sustainable Democracy in Africa (EISA)

²⁹ The ZEC collected voter's mobile numbers during the BVR exercise for the purpose of voter information.

³⁰ The reason given was to prevent voters from taking pictures of marked ballots and of ballot paper serial numbers, as was the case in previous polls, including the postal voting. ZESN and other stakeholders expressed concern over this decision claiming that the new setup infringed the Electoral Act and would not guarantee the secrecy of the vote. "Positioning of the voting booths must safeguard secrecy of the vote", Zimbabwe Election Support Group, Press Release 17 July; <http://www.zesn.org.zw/>

³¹ The European Union provides development assistance amounting to EUR234 million to Zimbabwe. The Zimbabwe Electoral Commission Capacity Building Project supports ZEC's capacity building, the strengthening of voter registration, voter education programmes, and an effective engagement of ZEC with stakeholders. Further EU funding was directed to civil society organisations in support of inter-party dialogue, media support and monitoring, electoral litigation and the audit of voter roll amongst other activities.

promoted the strengthening of the electoral management body’s relationship with key stakeholders, and the promotion of accurate and impartial election reporting.

VI. Voter Registration

The voter roll is generally inclusive but could be further improved. Enhanced ZEC transparency on data for voter registration is vital in order to help address anomalies and to boost confidence

A The Right to Vote

Under Section 67 of the Constitution, “every Zimbabwean citizen who is of or over eighteen years of age” has the right to vote. Certain disqualifications apply for people detained as mentally disordered, those declared incapable by a court, and those convicted of certain offences. It is not possible for the Zimbabwean diaspora to vote abroad, with the exception of diplomatic staff and their spouses (see Election Disputes section).

B Voter Registration

Voter registration takes place on a continuous basis and requires citizens to actively register as a voter. This was the first time that Zimbabwe has utilised a biometric voter registration (BVR) system. Further, in a departure from the past, following the 2013 constitutional amendment, ZEC was given the sole responsibility for voter registration, albeit with some cooperation with the Registrar-General for the confirmation of ID as required. BVR technology³² was used to capture a facial picture and fingerprints of each person. Voters were required to complete a voter registration form, and provide proof of identity (picture ID or passport) and proof of residence to be registered.

ZEC started the BVR process on 18 September 2017, with the establishment of ten provincial and 63 district offices and continued through a series of phases around the country using registration centres, mostly reflecting polling station locations. A further BVR “Blitz” began on 10 October 2017 and stretched to 19 December 2017. Due to the probable underestimation of resources and speed of registration ZEC extended the “Blitz” through a “mop-up exercise” from 10 January 2018 to 8 February 2018. A verification period, when voters could check their own inclusion in the roll, took place 19-29 May 2018, after which the roll was further checked for errors and duplications. While registration is continuous, only those voters registered and confirmed by 1 June were included on the roll for the 2018 elections.

The accuracy and integrity of the voter roll was a major point of contention in past elections and remained an issue under close scrutiny for these elections. The law states that ZEC should make the roll available to political parties, nominated candidates and voters in an “analysable and searchable” form and the EU EOM had been informed by the Chair of ZEC that it would be available prior to nomination of candidates on 14 June 2018. In the event, the final voter roll was

³² Biometric technology was supplied by a South African regional office of Hong Kong based company (with a production centre in China), Laxton, and software based de-duplication was done by a US company, IPSIDY. A lengthy procedure (with a court case, a contract signed in March 2018) of the acquiring company delivering de-duplication led to serious technological and time constraints.

announced by the ZEC Chairperson on 15 June with 5,681,604 names in total (78.6% of the estimated eligible population).

In reality the roll was not made available for sharing until 18 June. Candidates complained that printed copies were not available at that time, but the voter roll was shared as a searchable soft copy, in the form of an excel database on a CD-ROM, with candidates, political parties and CSOs, which is the format foreseen in the law. Unfortunately, ZEC's handling of the matter did not enhance transparency and the fact that it made the roll available late meant that the matter did not bolster the level of confidence of stakeholders in ZEC. Various NGOs and parties conducted audits in order to determine their level of confidence in the accuracy and inclusiveness of the final version³³.

Following a further series of corrections a revised final voter roll for the election was announced by the ZEC Chair on 9 July. It comprised 5,695,706 names, which is exactly 11,770 voters more than the roll distributed to stakeholders in June. The addition in Mashonaland West province alone was more than 10,000 voters. Overall, the capture rate of registered voters by district shows a few anomalies, including the under-representation of urban areas compared to rural areas (see below) and also cases of possible under-registration, in a few rural districts³⁴ in Matabeleland North and South.

Province	Final VR 2018	ZIMSTATS 2018 projected population	Percentage of registered voters
Bulawayo	258,567	409,389	63.2
Harare	900,728	1,345,818	66.9
Manicaland	733,370	912,762	80.3
Mash Central	531,984	620,279	85.8
Mash East	633,410	735,790	86.1
Mash West	655,133	834,414	78.5
Masvingo	617,212	754,314	81.8
Mat North	339,135	389,592	87.0
Mat South	264,185	356,586	74.1
Midlands	761,982	865,185	88.1
TOTAL	5,695,706	7,224,129	78.8

ZEC data shows significant differences between provinces (see table above), with the main urban areas of Harare and Bulawayo with markedly lower capture rates. The rest of the country, without the two metropolitan provinces, showed a capture rate of 82.9%, so the difference between Bulawayo and Harare with the rest of the country was 16%. The reasons for this may vary, but voter apathy may account for some of the variance. Reports from the Election Resource Centre pointed out that some registration centres in Harare closed early after achieving a specific number

³³ USAid and the EU funded two external audits, respectively an IT-based audit on internal consistency and integrity of the database and a sample-based check, using both list-to-voter and voter-to-list methodologies.

³⁴ Bulilima 58.6%, Mangwe 69.3% and Tsholotsho 68.8% – country capture rate is 78.8% using mathematical projection of the population.

of registered voters per day. Available figures indicate a significantly higher proportion of young voters, under-35 years of age, registered nationally in 2018 compared to 2013.

Recommendation 7: Ensure enhanced voter registration in “under registered” districts of the country to ensure universal and equal suffrage.

In determining a target figure for the estimated eligible voter population, ZEC (and also ZESN) used a purely mathematical population projection (based on a 1% annual growth of population against the census). However, using a more robust projection by ZIMSTATS³⁵ it would suggest that the total number of eligible voters should be some 900,000 more, which would mean that the ZEC capture rate for the 2018 elections would be below 70% nationwide.

One of the key elements of the roll is the residence address of a voter, which determines the polling station and constituency allocation. However, in many cases it is hard to verify the real address of a voter, as there is no national household list. This problem is exacerbated by the fact that registrars accepted the same address in various formats and also by the use of pre-commissioned affidavits³⁶ during the registration period which possibly are not entirely accurate.

Recommendation 8: In order to ensure universal and equal suffrage as well as the right to vote, there is a need to review procedures for the identification of voter addresses (lessening the over-use of pre-commissioned affidavits), to ensure the correct allocation of polling station / ward / constituency for each voter, and to ensure a consistent format for the capturing and registering of voter addresses.

EU EOM research of the June voter roll found 41 duplicate ID numbers, three voters born in the 19th century³⁷, and close to 2,500 duplicates. It is hard to verify how many of these cases are real duplicates and how many rare coincidences³⁸.

The June voter roll was examined and audited by various CSOs and think tanks. An audit by ZESN³⁹ showed that 4% of voters could not be located, because they had moved and an additional 9% (which represents over half a million people extrapolated to the entire population) were not found at their given addresses and were not known in the neighbourhood. Most probably these findings reflect a casual approach to the proof of residence during registration, notably through the use of pre-commissioned affidavits. According to ZESN, the roll contained 37,640 addresses with voters registered at the same address but allocated to different wards, affecting 5% of all registrants.⁴⁰ In a separate report, by Team Pachedu⁴¹, more than 9,100 records are assigned to

³⁵ ZIMSTAT Population Projections Thematic Report, August 2015.

³⁶ It is foreseen that a person can sign an affidavit in lieu of documentation confirming their address. In the Zimbabwe context in some areas people may not possess such documentation or their residence may not have a formal address as such. Thus it was reported that affidavits were filled out in advance by officials for convenience sake, and other a common point of “address” – such as a church or other identifiable location - was used for a number of people in a given area

³⁷ Most of these mistakes were cleared with issuing the final VR in July.

³⁸ 11 cases are exactly the same (with the same address written alternatively).

³⁹ Preliminary unofficial results from the random sample of 1200 voters.

⁴⁰ In Manicaland 10% of all registrants are listed in the same locations but registered in multiple wards.

⁴¹ <http://www.teampachedu.org/index.html>

incorrect constituencies and at least 45,010 voters are assigned to incorrect wards. Team Pachedu reported also on a large number of problematic IDs, most likely caused by errors on behalf of the issuing authority.

Overall, the ZESN report, while identifying a number of problems⁴² and mistakes, most of which were expected, does not bring into question the overall integrity of the roll. However, it indicated variances in registration levels across different areas and also raised concerns that some voters may have faced a number of challenges on Election Day in identifying their correct polling station or being correctly identified at the polling station. In the event, this was shown in the observations by EU observers, who reported that in 22% of polling stations visited voters were turned away because they were not on the voter roll. Official figures from ZEC report some 1.3% of such instances (which is 74,000 voters nationwide).

While acknowledging the major effort ZEC made in undertaking the BVR, the voter roll failed to adequately capture prospective voters in some areas. Also, the lack of transparency and failure to provide clear and coherent information and data about voter registration overall added to a sense of mistrust among stakeholders towards ZEC. Further, clarifications on some of the anomalies identified above remain outstanding, including the extent to which the deduplication process was actually undertaken and the extent to which the right to vote was affected by voters not being able to find their names on polling station lists on election day.

Recommendation 9: Clarify and resolve anomalies identified in the voter roll); publish results of the deduplication process conducted by ZEC or conduct/finalize a comprehensive new deduplication process including whole voter roll.

VII. Registration of Political Parties and Candidates

The election was competitive, but party primaries were marked by irregularities and violence resulting in intra-party conflicts and a level of tension during the nomination process

There are no legal regulations in Zimbabwe on the formation, registration and internal operation of political parties. If a party wants to contest in elections the only stipulations are that it must register with the ZEC and its candidates must comply with certain requirements and qualifications of the nomination courts.

The conditions for the right to stand for election are reasonable and administration of the nominations process did not provide any undue obstacles. The right to stand for election for public office is afforded to every Zimbabwean citizen who is eighteen years of age or older. In addition, the Constitution also provides specific conditions for qualification as a candidate depending on the elected seat and/or body. Eligibility to stand in elections for the President of Zimbabwe is granted to citizens (by birth or by descent) who reached the age of 40, are ordinarily residents in Zimbabwe and registered voters. Both the President and Vice-Presidents cannot hold more than two terms under the Constitution.

⁴² These includes mismatches in ID numbers, names and date of birth, but also thousands of instances where voters had a different polling station allocated to them compared to the one allocated in the June version of the voter roll.

Stakeholder and media reports on the primaries indicated irregularities, allegations of rigging and imposition of candidates and, in some cases, violence. A significant number of ZANU-PF incumbents⁴³, especially those believed to be loyal to Robert Mugabe or close to Generation 40 (G40), the faction connected to the former First Lady Grace Mugabe, were reportedly prevented from participating in the primaries and more than 50% of the contesting incumbents failed to secure a nomination.⁴⁴

The opposition primaries also faced challenges. The agreed seat-sharing formula was opposed by some MDC-T officials, which fielded their own candidates in constituencies reserved for smaller coalition partners. This resulted in chaos and tension at the MDC-Alliance Headquarters during the nomination procedures. The party could not prevent multiple candidates being registered from the party, and this resulted in such cases in 13 constituencies.⁴⁵ ZEC refused to withdraw the nominations without the agreement of the candidates and corrected the notification on the withdrawal of seven MDC-Alliance candidates published on 4 July, by issuing a new notification one day later stating that six of these candidates “remain as contestants”. This led to a split of the MDC-Alliance vote and the possible loss of at least two seats. A number of unsuccessful candidates from ZANU-PF and MDC-Alliance were reported to have eventually filed nomination papers as independents or as candidates of smaller ‘dissident’ parties.⁴⁶

Based on ZEC’s candidate list gazetted on 22 June, there were 43 parties (out of 134 registered) and 1,648 candidates contesting the National Assembly elections. Of these, 243 (14.75%) were women. Most of the 246 independents (14.93%) were affiliated to one of the two main political parties, ZANU-PF and MDC-Alliance. ZANU-PF had a candidate in every constituency. There were three constituencies with no MDC-Alliance candidate.⁴⁷

Based on the number of candidates, Bulawayo and Harare had the most highly contested constituencies, followed by some constituencies in Manicaland and Mashonaland East Province.⁴⁸ Constituencies with the fewest contestants, e.g. Mudzi South and Mudzi North (each of them with only 2 contestants) have a history of election violence, which may be a deterring factor explaining the lack of political participation.

Overall the election was competitive. The main challenges related to candidate nomination were the poor conduct of party primaries, in some instances, and the lack of rigour in candidate nomination, which led to a degree of confusion with some multiple nominations from the same

⁴³ Reports indicated nearly 30% of incumbents were expelled from the ruling party or prevented from taking part in the primaries.

⁴⁴ There were an unprecedented high number of candidates participating in the ZANU-PF primaries. Reportedly the ZANU-PF has changed the internal guidelines on the conduct of primaries, giving better chances to new candidates to compete for seats usually reserved for liberation war veterans.

⁴⁵ Some smaller parties, e.g. PRC, MDC-T and NPF also have double nominations in at least one of the 210 constituencies.

⁴⁶ In particular the New Patriotic Front (NPF), formed by disaffected ZANU-PF members and linked to Robert Mugabe and G40, and MDC-T Khupe on the opposition side.

⁴⁷ These were Hurungwe East in Mashonaland West Province, Chiredzi North in Masvingo Province and Insiza North Matabeleland South Province, where ZANU-PF is contesting only small opposition parties.

⁴⁸ Dangamvura-Chikanga and Headlands constituencies (each with 16 candidates) in Manicaland and Goromonzi South (15 candidates) in Mashonaland East.

party for the National Assembly elections. However, this latter factor also reflected a degree of mismanagement by the parties themselves.

VIII. The Election Campaign and Pre-Election Environment

Political freedoms were respected during a generally peaceful campaign, but mistrust in ZEC and misuse of state resources were pervasive and reports of intimidation of voters undermines belief in the right to vote freely

A The Election Campaign

There is a broad consensus among stakeholders that the 2018 election campaign was conducted with an unprecedented level of freedom compared to previous elections, with voters actively participating in campaign events and civil society free to engage without hindrance. The potentially restrictive legal framework (notably the Public Order and Security Act which requires police permission for gatherings and provides the police broad restrictive powers), which was formerly used to control political activities, was not enforced for the campaign until 25 July, when a planned MDC-Alliance demonstration against ZEC was banned by the police.⁴⁹ For this period prior the polls, basic campaign freedoms of movement, assembly and expression were respected. The campaign was largely peaceful, with some cases of election-related violence, notably with intra-party conflicts resulting from the primaries, and isolated cases of obstruction of opposition campaign activities, most significantly in Harare, Mashonaland Central and Manicaland.

The presidential campaign was very competitive, with both main candidates, President Emmerson Mnangagwa of ZANU-PF and Nelson Chamisa of MDC- Alliance, conducting large-scale rallies in all ten provinces. This marked an improvement over previous elections, when opposition rallies were restricted in several areas. In contrast to the generally peaceful campaign environment, a bomb attack on President Mnangagwa's rally in Bulawayo on 23 June resulted in two members of the presidential guard being killed and 47 other people injured. The immediate reaction of President Mnangagwa, stating that he would not allow "*this cowardly act*" to impact on the conduct of elections, diminished the chance of any possible negative implications for the campaign. Opposition leaders used social media to express their condolences and condemn the attack. Nelson Chamisa wrote on Twitter: "*Violence must have no place in our politics.*"

On 26 June, the National Peace and Reconciliation Commission (NPRC) launched a national Peace Pledge, involving parties and independent candidates, civil society and other stakeholders. Seventeen parties contesting for the presidency signed the Peace Pledge, committing to a violence-free campaign. Positively, similar peace pledge initiatives were undertaken at provincial levels, with candidates affirming their intention to abide by the *2018 Electoral Code of Conduct for Political Parties, Candidates, and other Stakeholders*. However, no signings at constituency level were reported by EU observers or the NPRC.

Positively, MPLCs were established at provincial levels. EU observers indicated that MPLCs at district and constituency levels functioned well, with better communication and exchanges

⁴⁹ On 25 July, the police also banned a rally of the Mthwakazi Republic Party (MPR) in Bulawayo.

between parties, ZEC and security forces than at the national and provincial levels (see Election Administration section).

The opposition held a mass demonstration on 11 July under the slogan “*no reforms, no elections*”, which attracted thousands of people, including representatives of trade unions, civil society and human rights organisations. The opposition leadership handed over a petition with a series of “*urgent electoral demands*” – including a call for an external audit of the voter roll, the cessation of printing of ballots and increased transparency in the later distribution of ballots - to ZEC and declared it would escalate the protests if these demands were not responded to. The demonstration passed peacefully but was marked by abusive language by some protestors against the Chair of ZEC, and threats by opposition leaders that the elections would not take place, which contributed to an increase in pre-election tension.

Assertions by MDC-Alliance leaders that any outcome in favour of their opponent must be a rigged result also caused tension. Most notably, the MDC-Alliance presidential candidate, Nelson Chamisa, stated he would announce the results before ZEC and the country would be “*ungovernable*” if elections are rigged. The leader of the People’s Democratic Party and MDC Alliance member, Tendai Biti, reiterated the threat later on Twitter, saying that “*Those planning to steal the election must know that this country will be ungovernable*”. Statements by opposition leaders that they would not boycott the elections but that “*there is not going to be elections in Zimbabwe on 30 July if ZEC continues to stall on key electoral reforms*”,⁵⁰ also created some uncertainty and confusion among stakeholders and voters.⁵¹ Some other opposition parties also publicly criticised ZEC. For instance, the MDC-T led by Thokozani Khupe, called for more transparency, accountability and inclusiveness and raised the question of ZEC’s independence by referring to “*a shadowy force*” in control of the institution. A third MDC-Alliance demonstration against the ZEC, which was planned to take place on 25 July, was banned by the police.

B The Pre-Election Environment

The history of repression and violence, including state sponsored violence, during previous elections was used as an intimidatory tool in the campaign by some candidates, politicians and supporters, stirring fears among the population about state sponsored post-election violence, for example by referring to the orchestrated violence in 2008.⁵² EU observers around the country reported an increase in tension closer to the elections and also reported on threats of violent consequences after the election should voters not vote in favour of ZANU-PF. Such threats had a

⁵⁰ MDC-Alliance Election Bulletin Issue 5 published on 16 July 2018.

⁵¹ For example, there has been some speculation on social media related to a possible postponement of the elections. Zimbabwe Election Watch 2018: Postpone the Elections and Address Serious Issues of Concern, posted on 12 July on [facebook.com/ZimWatch18](https://www.facebook.com/ZimWatch18) and [Twitter.com/ZimWatch18](https://twitter.com/ZimWatch18).

⁵² EU observers reported an increase in references to the 2008 election violence made at campaign rallies and social events. For example on 16 July, at a ZANU-PF rally in Shale, Umzingwane district, Matabeleland South, the National Assembly candidate stated “*Vote wisely, vote right. There is no room for mistakes like in 2008. Let there be no repeat of that.*” On 3 July in Guruve South, Mashonaland Central, ZANU-PF supporters were singing “*Tell them to vote for ZANU-PF unless they want war. If they are not going to vote for ZANU-PF, we are going to start war*”, a song used in 2008 elections. The use of similar intimidatory language and songs was observed by EU observers in Manicaland and Masvingo.

strong resonance in rural areas and other areas affected by the severe post-election violence in 2008.

There were various cases of inducement, coercion, and so-called “smart intimidation” reported to and observed by EU observers, mainly in rural areas. The lack of legal measures to ensure a level playing field impacted on the fairness of the campaign. EU observers reported an extensive use of state resources and advantage of incumbency across the country. State development projects, such as Command Livestock and Command Agriculture, were announced at ZANU-PF campaign rallies and were widely publicised in the media.⁵³ Food aid was usually distributed by using ZANU-PF structures.⁵⁴ The distribution of the presidential input scheme (fertilisers and seed) commenced in June, four months earlier than usual, which was cited by different stakeholders as an example of inducement. Domestic observer organisations identified food aid or equipment given out at rallies as the most widespread form of misuse of state resources in the campaign, followed by the use of government vehicles, buildings and officials.⁵⁵ EU observers reported that voters in resettlement areas appeared to be particularly vulnerable to coercive practices attributed to traditional leaders and local administration, related to their lack of land ownership and dependency on state structures.

Recommendation 10: Legislative measures, including effective and dissuasive sanctions, should be introduced to mitigate abuse of state resources and misuse of the advantage of incumbency, such as use of government vehicles, property and funds and the involvement of public officials in political activities, in order to guarantee the free expression of the will of electors and help create a more level playing field.

There was concern regarding the role of traditional leaders in the campaign, with numerous reports of chiefs publicly supporting ZANU-PF, attending their rallies and in some cases obstructing opposition rallies in their communities.⁵⁶ A number of observer teams reported traditional leaders involved in the campaign and influencing voters by threatening to cut food aid and agricultural inputs if they did not vote for ZANU-PF.⁵⁷ Traditional leaders themselves were also sometimes the target of intimidation, with one chief in Mashonaland East reporting coercion to attend a

⁵³ On 22 June, President Mnangagwa launched Command Livestock in Gwanda, Matabeleland South, handing over 660 heifers, just before he addressed a rally. *The Herald* on 14 July reported that Emmerson Mnangagwa has given 1,440 cattle to the farmers in the Matabeleland North at a rally the day before. “Government has given 18,000 tonnes of maize to Mashonaland Central”, the *Herald*, 13 July 2018. The *Herald* of 15 June, wrote that the Presidential Inputs Scheme targeting 1.8 million smallholder farmers “has this year been launched earlier (on 13 June) than in previous years to allow smallholder farmers ample time to prepare for the 2018/2019 season”.

⁵⁴ “Government has given 18,000 tonnes of maize to Mashonaland Central” *The Herald*, 13 July 2018. If food aid is distributed through governmental bodies, for example the Grain Marketing Board, ZANU-PF members reportedly play a key role in the process

⁵⁵ Report of the Zimbabwe Electoral Support Network on *Pre-Election Political Environment and Observation of Key Electoral Processes*, July 2018. EU observers reported that ZANU-PF structures and members played a key role in the distribution of food. Voters were reportedly threatened with exclusion from the input schemes if they did not vote for the ruling party.

⁵⁶ Section 281(2) of the 2013 Constitution provides that traditional leaders must act in a politically neutral way. Similar rules apply for District Administrators, Section 200(3). A High Court decision found that the President of the National Council of Chiefs, Fortune Charumbira, acted unconstitutionally in urging traditional leaders to support ZANU-PF.

⁵⁷ For example, in Masvingo, Matabeleland South, Mashonaland Central, Mashonaland East.

ZANU-PF rally, under threat of having his house burnt down.⁵⁸ There were accusations of the involvement of war veterans in intimidation, received by observers in Hurungwe, in Mashonaland West, as well as in Mberewegwa North in Midlands.

Recommendation 11: Effective mechanisms should be introduced for monitoring and sanctioning of partisan behaviour by traditional leaders and civil servants, to help ensure the impartiality of state structures in the election.

Incentives had been given to chiefs and some church leaders, who officially endorsed the ZANU-PF campaign. Different sects of the apostolic church, for example, prophesied victory for President Mnangagwa and the ruling party gave them donations and used their mass ceremonies for campaign purposes.⁵⁹ There is also evidence that people, including children and their teachers, were forced to participate in political rallies⁶⁰ and school premises and properties were used for campaign purposes. Serious concerns regarding perceived or actual violations of the secrecy of the vote were also raised. EU observers reported on people (especially the elderly) being approached by individuals asking for voter registration slips and pretending that they would be able to follow their vote through the new BVR system. Such reports are consistent with findings of the Zimbabwe Human Rights Commission and civil society organisations.

Overall, these reported cases of intimidation and coercion violated the purpose and main principles of the *Code of Conduct*.⁶¹ MPLCs were established too late to effectively deal with violations of the campaign regulations and mechanisms for monitoring and sanctioning non-compliance with the Code were de facto non-existent. The main infraction prosecuted was the destruction of posters.

Overall, campaign freedoms were largely respected and the campaign was peaceful. However, the series of short-comings in the pre-election period unduly impacted on the free expression of the will of the electors and taken together with the lack of equal opportunity, due to the abuse of state resources, the overall democratic character of the pre-election environment was undermined.

C Campaign Finance

The Political Parties (Finance Act) regulates financing of political parties. Each political party whose candidates received at least five per cent of the total number of votes cast in the most recent

⁵⁸ Having suffered this fate in 2008, he complied rather than risk injury.

⁵⁹ On 14 July, at a mass Passover ceremony of the Johanne Marange sect, reportedly attended by more than 250.000 people, the President welcomed the prophecy about his election victory and promised to continue his support to the church. On 12 July, at the burial ceremony of the leader of another apostolic sect the government has reportedly donated 30 tonnes of rice to the community of the deceased religious leader.

⁶⁰ Video evidence circulated on social media showing police and authorities preventing people from leaving a presidential rally in Bindura (Mashonaland Central), which was also observed by EU observers. EU observers reported similar cases in Chimanimani West (Manicaland) and Chinhoyi (Mashonaland West). There have been also some reports from EU observers of opposition campaign activities being obstructed, mainly at ward levels, by chiefs and headmen, for example in Gutu, Masvingo North, Mwenezi districts in Masvingo Province

⁶¹ The Code's purpose is to create "a climate of tolerance in which electioneering activity may take place without fear of coercion, intimidation and reprisals". The Code includes stipulations that there should be: no violence; no intimidation, fear and bribery; balanced media coverage; freedom of movement; and no incitement to violence or hate speech. All political parties are required to inform their members about the Code, to supervise their compliance with it and initiate disciplinary measures in case of non-compliance.

general election was entitled to a proportional share of funds paid and distributed among all qualified parties. The Minister of Justice, with the approval of the Minister of Finance, has to publish each year the amount distributed among political parties from the Consolidated Revenue Fund. Independent candidates are not entitled to any state funding. Based on this provision, ZANU-PF and MDC-T, received \$6,126,633 and \$1,873,663 respectively.

The Political Parties (Finance) Act does not include any provisions on campaign expenditure, but regulates only the requirements for a yearly state funding of political parties not specific to election-related activities,⁶² while independent candidates are not entitled to any funding. Although foreign funding is prohibited, there is no ceiling on campaign contributions or disclosure requirements for donations. There was a huge disparity in campaign financing and, ZANU-PF dominated all forms of campaigning across the country, including through billboards, posters, distribution of regalia, rallies and road shows. Leaders of the MDC-Alliance and MDC-T admit that they did not have adequate funding to run the campaign or to deploy agents everywhere on election day.⁶³

Section 93 of the Electoral Act offers a detailed description of permissible election expenses, to include “miscellaneous expenses not exceeding in the whole such sum as may be prescribed”; the Electoral (Amendment) Regulations of 2013 specify this sum to five hundred thousand United States dollars.⁶⁴ Nevertheless, there is a complete lack of reporting requirements and transparency mechanisms thus not only rendering this provision redundant but also undermining the ability of candidates to campaign on a level playing field (see Election Campaign and Pre-Election Environment section). Neither ZEC nor any other independent authority is mandated to oversee respect for campaign finance provisions.

The lack of regulation related to campaign finance not only undermines transparency and accountability, but it exacerbates the lack of a level playing field and enables the misuse of state resources for campaign purposes without any real checks and balances.

Recommendation 12: Promote accountability and transparency of campaign finance and expenditure by introducing regulations on campaign expenditure, including reporting requirements before the nomination process and shortly after the declaration of results. In order for this to be effective there needs to be a clear mandate for an independent institution – possibly ZEC - to oversee respect for such regulations and to undertake campaign finance audits.

⁶² Each political party whose candidates received at least 5% of the total number of votes cast in the most recent general election is entitled to a proportional share of funds paid and distributed among all qualified parties. There is no obligation for the parties to account for the public funds that have been availed to them.

⁶³ Meetings of Jameson Timba, Chief of Legal Department, MDC Alliance, and Thokozani Khupe, MDC-T, with EU EOM on 27 and 28 June respectively. However the EU is still looking into a project to fund the training and deployment of party agents for all parties in parliament and requesting such support.

⁶⁴ The Electoral (Amendment) Regulations of 2013 (S.I. 87/2013) amend the Electoral Regulations of 2005 (S.I. 21/2005) which, in section 22 (2) specified that sum to ten million dollars (NB. Zimbabwean dollars).

IX. International and Domestic Election Observation

A number of international election observation missions were deployed for the polls⁶⁵, this included invitations for the first time since 2002 for the Commonwealth, EU and the US-based International Republican Institute and National Democratic Institute. This open invitation to so many groups was a positive initiative on behalf of the authorities.

ZEC reports that it accredited 1,007 international observers⁶⁶. This includes all locally-based internationals who sought accreditation as well as others. Of the major international organisations, SADC deployed ten long-term observers and also had a short-term delegation led by Manuel Augusto, Minister for Foreign Affairs of Angola⁶⁷. The African Union team was led by Hailemariam Desalegn, former prime minister of Ethiopia and comprised some 50 short-term observers. The Commonwealth team was led by John Mahama, former president of Ghana and had 23 persons in total. IRI/NDI's mission had four leaders, two former Assistant Secretaries of State from the US and two former African heads of state, from Liberia and the Central African Republic. It included 14 long-term observers and a core team of six long-term analysts and on election day comprised some 60 observers in total. The Carter Center deployed a small technical team to follow the process.

ZEC accredited 11,019 national observers. Of these, ZESN was the largest, deploying some 6,500 short-term observers, 210 long-term observers and 750 observers to report for the sample-based observation. Of the others, the Zimbabwe Council of Churches deployed 300 observers, the Catholic Commission for Justice and Peace deployed 700 observers and the Election Resource Centre deployed 63 observers. In addition, ZESN, together with some 30 other organisations cooperated in an Election Situation Room (ESR)⁶⁸, which also sought to bring together the information from various organisations, pre-election and over election period, and to provide a hotline for reports during the Election Day.

Overall, it is clear from the number of accredited national and international observers that the requisite freedoms were put in place to enable such actors to undertake their duties, and ZEC also established reasonably effective and timely accreditation procedures. Having said this, while such problems were overcome, the requirement for national observer groups to acquire individual accreditations for each of their observers, together with the \$10 fee for each accreditation, placed an onerous burden on the organisations. Further, the charge of \$100 per international accreditation is excessive and unnecessary, and it remains an anomaly compared to experiences in other observed countries.

⁶⁵ In addition, there was a pre-election visit of The Elders, led by Kofi Annan and also including Mary Robinson and Lakhdar Brahimi. The Elders visited Zimbabwe from 19-21 July "in support of those working towards an inclusive transition for the country".

⁶⁶ ZEC also accredited 202 foreign journalists.

⁶⁷ There were also separate missions from SADC-Parliamentary Forum and SADC Election Commissioners Forum.

⁶⁸ The Steering Committee for the ESR comprised some of the leading election-related and human rights groups: Counselling Services Unit, Election Resource Centre, Habakkuk Trust, Heal Zimbabwe Trust, National Association of Societies for the Care of the Handicapped, National Association of Youth Organizations, Women's Coalition of Zimbabwe, Zimbabwe Christian Alliance, Zimbabwe Election Support Network, Zimbabwe Lawyers for Human Rights, and Zimbabwe Peace Project.

X. Media and Elections

Media operated in a generally free environment, but overwhelming bias in state media meant legal provisions for fair and balanced reporting were not respected

A Media Environment

The media landscape in Zimbabwe is highly polarized and largely dominated by state-owned or government-controlled media, especially in the rural areas. The government controls, in a direct or indirect way, all electronic media available in the country and real private media is only present in the print. After years of repression, Zimbabwean journalists currently operate in a much freer environment. Since the beginning of the “new dispensation” period in November 2017 the number of reported detentions and attacks against journalists has decreased significantly. However, the current legal framework still leaves room for restriction of fundamental rights such as freedom of expression or freedom of the media. The Reporters Without Borders 2017 World Press Freedom report ranks Zimbabwe 128 of 180 countries (four positions lower than in 2016).

State-run Zimbabwe Broadcasting Corporation (ZBC) has an official monopoly of free-to-air terrestrial TV broadcasting, with the state-owned ZTV being the only TV station operating in the country. ZBC operates also four radio stations which broadcast nationwide, 24 hours per day: Classic 263; Radio Zimbabwe; Power FM and National FM. Radio is the main source of information for Zimbabweans, especially for those living in the rural areas.

In 2012, the government licensed, for the first time in Zimbabwe’s history, two national commercial radio stations: Star FM and ZiFM. This action, nevertheless, far from representing an opening of the market to private broadcasters, reinforced the control of the state in the electronic media sector since both radio stations are directly linked to the government⁶⁹. Similarly, in March 2015, the Minister of State for Information and Publicity licensed eight provincial urban-based commercial radio stations. In July 2018, a new provincial commercial radio station was licensed to operate in Gweru. However, all these radio stations are also owned by enterprises controlled by the State or politically linked to the government. In addition, 17 years after the enactment of the Broadcasting Services Act (2001), which provides for community radio stations, the government is still to license a single community radio station.

Recommendation 13: Liberalise the electronic media sector, including issuing licenses for community radio stations.

Newspapers are the only media sector in Zimbabwe where fully private enterprises are present. There are five daily newspapers in the country, widely read in the main urban areas, particularly Harare and Bulawayo. The government-controlled Zimpapers (Zimbabwe Newspapers Limited) is the largest newspaper publisher in Zimbabwe. Its titles include *The Herald* (top selling daily newspaper in Zimbabwe -45,000 copies and 31 per cent of market share) and its Bulawayo-based sister paper, *The Chronicle*. Zimpapers also publishes two tabloid dailies (*H-Metro* –Harare and *B-Metro* –Bulawayo) along with a number of weeklies (*The Sunday Mail* is the most prominent).

⁶⁹ Star FM is owned by state-run Zimpapers whilst ZiFM is owned by Supa Mandiwanzira, Minister of Information, Communication and Technologies.

Private publisher Alpha Media Holdings owns the Harare daily newspaper *NewsDay*, the Sunday newspaper *The Standard* and the business weekly *The Zimbabwe Independent*. The daily newspaper *Daily News* and the weekly *Financial Gazette* (both published by Associated Newspapers of Zimbabwe, ANZ) complete the list of most prominent private publications.

Internet in Zimbabwe has grown significantly since 2009 and is still on the rise. Latest statistics (2016) by the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) show that the country's total internet penetration stands at 50.1% of the population. Online media is increasingly popular among Zimbabweans, not only as a means to gather independent information but also to engage in discourse about current affairs. All Zimbabwean newspapers have an online edition and many more publish online. The government runs also its own online media: BH24.

As a consequence of the polarized environment in the traditional media, social media is also widely used among Zimbabweans as a source of information and platform for public debate. The role of social media in the dissemination of election related information and campaign messages by political parties and candidates during the electoral campaign period was significant. Nevertheless, the level of fake news and abusive language circulating on these platforms was also high, especially in the lead-up to elections.

B Legal Framework for Media

The legal framework for the media in Zimbabwe, while providing for fundamental rights, needs further improvement. Laws such as the Access to Information and Protection of Privacy Act (AIPPA) and the Broadcasting Services Act (BSA) contain provisions which are not in line with fundamental rights included in the Constitution and the Public Order and Security Act (POSA) has been used to justify the arbitrary detention of journalists on occasion.

Sections 61 and 62 of Zimbabwe's Constitution of 2013 provide for freedom of expression, freedom of the media and access to information. While every person is entitled to freedom of the media, including protection of the confidentiality of a journalist's sources of information, Section 61 (4) of the Constitution specifically states that all state-owned media must be free to determine independently the editorial content of their broadcasts or other communications, be impartial and afford fair opportunity for the presentation of divergent views and dissenting opinions.

Despite these fundamental freedoms and rights, the current media environment and media laws do not guarantee the constitutional provisions aforementioned. According to the AIPPA (2002), which regulates all media in the country, journalists and media companies operating in Zimbabwe must be licensed and have to renew their licenses every year. The AIPPA imposes also strict content restrictions on the media. Foreign ownership of media outlets is forbidden by AIPPA (although non-citizens may own minority shares in companies that own media outlets) and media outlets may only hire Zimbabwean citizens or permanent residents.

Other controversial laws directly or indirectly regulating the media sector and being in conflict with provisions in the Constitution are the BSA (2001), the Censorship and Entertainments Control

Act (1967), the Official Secrets Act (1970). Another example is the Criminal Law, which criminalises defamation of the Head of State and the undermining of the authority of the State as well as the reputation and morale of the security forces.

The “new dispensation” period raised optimism amongst journalists that some of these media laws may be altered in order to align them with the 2013 Constitution. However, so far no changes or amendments have been implemented and the government has been reluctant to reform the existing media legislation. Paradoxically, an envisaged very restrictive cyber law is currently in the drafting process and is likely to be enacted in the upcoming months.

Recommendation 14: There needs to be comprehensive legal reform in order to harmonise current media regulations with the Constitution, in order to adequately safeguard freedom of expression.

The Constitution (Section 248) provides also for the establishment of the Zimbabwe Media Commission (ZMC), with the functions, among others, to promote freedom of the media, enforce good practices and ethics in the media and ensure fair and wide access to information. The ZMC is also responsible for receiving complaints and, where appropriate, taking actions against journalists breaching any law or code of conduct applicable to them. Nevertheless, during the past years the ZMC has been ineffective in the fulfilment of these responsibilities. Consisting of a chairperson and eight other members, all of them appointed by the President, the last ZMC board finished its five-year term on 2015. Since then, no new board has been appointed and the ZMC has largely limited its work to issuing licenses to journalists.

Together with the ZMC, the Broadcasting Authority of Zimbabwe (BAZ), as established in the BSA, is responsible for, among other things, planning and advising on the allocation and distribution of the available frequency spectrum, advising the Minister of Information on the allocation of broadcasting licenses and encouraging diversity in the control of broadcasting services. Similar to the ZMC, the BAZ does not have an official board since 2015 and its policy of issuance of broadcasting licenses, which so far has favoured only enterprises or persons linked to the government, is strongly criticized and considered as partisan by the media sector.

C Media Regulation for the Election Campaign

With reference to elections, media are regulated by the Electoral Act, which sets out the parameters of election coverage in section 160 (E-K), and the Statutory Instrument number 33.

According to section 160G of the Electoral Act, public broadcasters should afford all political parties and independent candidates free access to their broadcasting services. The Electoral Act also establishes that specific regulations be made to provide for the total amount of airtime to be allocated to each political party and candidate, as well as the specific times and areas at which those broadcasts are to be transmitted. The referred regulations should also ensure a fair and balanced allocation of airtime between parties and candidates.

As a result of these provisions, in 2008 the Statutory Instrument 33 on Media Coverage of Elections was adopted to regulate election programmes and advertisements to be broadcast on

ZBC, as well as the conduct of broadcasters and publishers during the election period. Although this regulation does not establish a specific amount of airtime to be allocated to electoral contestants in the state-owned media, it provides for interviews with candidates and programmes in which political parties and candidates can present their manifestos or discuss the elections.

Section 160H of the Electoral Act establishes also that any media willing to publish any advertisement by or on behalf of a political party or candidate shall offer the same terms and conditions to all contestants and charge them the lowest rate offered to publishers or commercial advertisements. In the case of the state-broadcaster, rates for election advertisements shall be 70% of its current advertising rates.

Regarding news coverage during the election period, section 160J of the Electoral Act establishes that both electronic and print media shall ensure equitable treatment to all political parties and candidates, as well as accuracy and fairness in their reports, making clear distinction between factual reporting and editorial comment. Parties and candidates must also be afforded a reasonable right of reply to false allegations made in the news.

Finally, the Electoral Act (section 160K) establishes the obligation of the ZEC to monitor the Zimbabwean media during the election period to ensure that political parties, candidates, broadcasters, print publishers and journalists abide by the provisions in the Act.

D EU EOM Media Monitoring

During the electoral period, media and journalists operated in a generally free environment, which only deteriorated in the wake of the incidents of 1 August in Harare (see section on Results and Post-Election Environment). The EU EOM registered a total of eight cases of journalists injured, attacked or harassed during the entire observation period.

Overall, election coverage in the media was not pluralistic. Print and electronic media at national and provincial levels made efforts to provide some coverage to minor parties, mainly through candidate profiles and interviews published in the national newspapers and debates aired on some provincial radios stations. However, ZANU-PF and the MDC-Alliance largely dominated the election-related information presented to voters.

In accordance with the Electoral Act, from 4 July the state broadcaster ZBC afforded free access to political contestants through various programming (“The Manifesto”, “The Candidate” and “The Debate”) aired on TV and radio stations. Nevertheless, ZBC failed to abide by its legal obligation of ensuring equitable and fair treatment to all political parties and candidates in its news and current affairs programmes.

From 25 June to 30 July 2018 the EU EOM monitored 12 media outlets with a nation-wide reach. This sample included the state-owned media ZTV, Classic 263, Radio Zimbabwe, the government-controlled newspapers *The Herald*, *The Chronicle* and *The Sunday Mail*, as well as commercial radio stations Star FM, ZiFM and the private newspapers *NewsDay*, *Daily News*, *The Standard* and *The Zimbabwe Independent*.

According to EU EOM media monitoring findings, the state-owned media provided heavily biased coverage of the electoral process in favour of the ruling party. During the analysed period ZANU-PF received a total of 84.9%, 81.8% and 76.5% of election-related coverage⁷⁰ (airtime) on ZTV, Radio Zimbabwe and Classic 263, respectively. Qualitatively, 44.5%, 14.4% and 10.2% of that coverage were reports portraying ZANU-PF in a positive tone, while 47%, 20% and 26.5% of the coverage received by MDC-Alliance in the aforementioned media were reports in a negative tone. Furthermore, 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.

Government-controlled newspapers *The Herald*, *The Chronicle* and *The Sunday Mail* also favoured overtly ZANU-PF by allocating 62.8%, 64.8% and 52.8%, respectively, of their electoral coverage to the ruling party. While 54.7% of the reports about ZANU-PF in the three newspapers were presented in a positive tone, 67.1% of the coverage received by MDC-Alliance in the referred publications portrayed the opposition party in a negative tone.

Imbalances in favour of the ruling party were also observed in coverage by Star FM and ZiFM, which allocated a total of 50.8% and 42.3% of election-related airtime, respectively, to ZANU-PF and 27.3% and 31.5%, respectively, to MDC-Alliance. The tone in both radio stations was majorly neutral.

Recommendation 15: ZBC needs to be reformed into a truly independent public service broadcaster and state-owned media must abide by their legal obligation to be impartial and provide equitable treatment to all political parties and candidates.

In private newspapers there were imbalances in their election-related reporting in favour of the MDC-Alliance and its presidential candidate. Although the distribution of space in *NewsDay*, *Daily News* and *The Standard* was more balanced than in the state-controlled newspapers, the ruling party received the largest amount of news and information presented in a negative tone by the private newspapers. Specifically, 27.1% of coverage related to ZANU-PF was negative in tone in *NewsDay*, *Daily News*, *The Standard* and *The Zimbabwe Independent*, while in the same newspapers 9.5% of reports on MDC-Alliance were positive in tone. In addition, *The Zimbabwe Independent* allocated 52.5% of its electoral coverage to MDC-Alliance and 20.5% to ZANU-PF.

ZANU-PF largely dominated advertising by political parties in the media, with 87.2%, 46.8% and 95.4% of all advertisements, spots and paid-for programmes broadcast and published on TV, radio and newspapers, respectively, during the analysed period.

The Herald, *The Standard* and *NewsDay* violated the campaign silence period on 29 and 30 July by publishing some news and opinion articles that favoured both presidential candidates Emmerson Mnangagwa and Nelson Chamisa.

ZEC, supported by the BAZ and the ZMC, and despite facing a number of limitations, managed to fulfil its legal mandate to monitor media from 9 July. However, ZEC was ineffective in ensuring fairness and equitable coverage by broadcasters and publishers as established in the law. The legal

⁷⁰ This is coverage of the election in news, current affairs and special election-related programming.

provisions in this regard lack a realistic mechanism for enforcement, as the Electoral Act confers limited power on ZEC to actually deal with media violations.

Social media played a crucial role through the election period with two distinct groups from across the political divide competing for space to push their party agendas. All political leaders were very active on social media. ZANU-PF and MDC-Alliance presidential candidates permanently communicated their plans, rallies and shared information with their supporters via Facebook and Twitter. Independent candidates also enjoyed support on social media.

Despite positive campaign messages, social media became also a tool to spread fake news and abusive language, especially in the lead-up to the elections. Hate speech against opponents increased on platforms such as Twitter, Facebook and WhatsApp and abusive language was also used, especially against women who had left the Nelson Chamisa-led MDC-Alliance and joined the Thokozani Khupe faction. Hate speech targeted also the ZEC chairperson Priscilla Chigumba.

XI. Participation of Women

Affirmative measures for the representation of women mean women are present in parliament, but the number of women put forward as candidates by political parties remains very low

Women were elected to parliament in large numbers during these elections. This was due to the presence of two special measures to enhance the political participation of women included in the Constitution.

It is required that, for the 60 elected seats in the Senate (20 seats are selected otherwise), political party lists must all be headed by a woman, and each must list male and female candidates alternately, securing at least 50% of the seats for women. This means that, of the total of 80 Senate seats, at least 30 automatically go to women. In addition, two senators are elected by an electoral college to represent persons with disabilities, one of whom must be a woman. Therefore, at a minimum, 31 of the senators are women. A total of 35 Senate seats were secured by women this time, compared to the 38 seats secured by women in 2013. On neither occasion did a woman secure a single one of the 18 seats which are allocated to representatives of the National Council of Chiefs.

Unlike the provisions related to the Senate, which are foreseen as permanent in nature, a temporary special measure was applied to the National Assembly, by which 60 seats (of the total of 270) are reserved for women, with the allocation determined according to a party-list proportional representation system. This applied in 2013 and this year, but has now come to an end. The women's movement is advocating extension of this measure. Of the 210 directly elected seats in the National Assembly, women won just 25 of these seats in this election, compared to 26 in 2013.

The two houses of parliament have a combined membership of 350 parliamentarians. Of this figure, 116 are female, which gives women a 33.14% representation overall. This represents a decrease on the figure of 35% in the parliament elected in 2013. It does, however, represent a vast amelioration over the previous level of 17% which had been achieved by women in 2008.

Political parties did not nominate women in significant numbers as candidates. In the direct election of 210 seats in the National Assembly, only 14.75% of the candidates (243) were women. Women were nominated in just 126 of the 210 constituencies, while 20 of the 47 political parties which nominated candidates did not nominate a single woman. Legal regulation of political parties is extremely limited. Existing law does not contain any provision which requires affirmative action or gender mainstreaming within political party structures.

There are no special measures applicable to women in local authority elections. In 2013, women secured just 16% of the membership of these bodies across the country. Women comprised just 17% of the candidates in the local authority elections for these elections.

On the face of it, some aspects of these elections represented progress towards the advancement of equality for women. Four of the 23 candidates for president were women. Additionally, the Electoral Act was amended in advance of these elections to require ZEC to mainstream gender awareness throughout all of its functions, while the legislation also newly required all accredited observers to address the impact of the elections on women in their observation.

The reality, however, is that there is a significant gap between the participation of women and men in political life. Traditional, patriarchal, cultural and socio-economic barriers have historically contributed to the marginalisation of women. Gender stereotypes were visible during the election campaign, particularly evident in much psychological violence against women. There was significant denigration of the personal morality of female candidates. Defamatory remarks, amounting to hate speech, punished women for straying outside their gender roles. The political environment was hostile to women.

XII. Participation of Persons with Disability

Persons with disability have reserved representation, but further administrative reform could help improve their access to a secret ballot

Zimbabwe acceded to the Convention on the Rights of Persons with Disabilities in 2013, but no legislation has yet been introduced to align domestic law with the commitments in the Convention. Prevailing law, the Disabled Persons Act, 1992, reflects a welfare rather than a rights-based perspective, from which political rights are absent. In the Constitution of 2013 there is a guarantee of the rights of persons with disabilities, as well as a prohibition on unfair discrimination on disability grounds in Section 56. The provisions are, however, heavily circumscribed. The Constitution does not contain any specific guarantee of the political rights of persons with disabilities.

Recommendation 16: Incorporate the Convention on the Rights of Persons with Disabilities into domestic law.

The Constitution includes protection for the right to vote of all citizens and for this vote to be cast in secret. Braille ballot papers, tactile ballot guides or other assistive measures have never been provided for persons with visual and other impairments. Assisted voting is provided for by law instead, which denies a secret ballot. The High Court, in July 2018, rejected the application of a

person with a visual impairment who had sought to compel the ZEC to provide Braille ballot papers in the harmonised elections. The Court decided that Braille was impractical as levels of Braille literacy are low amongst those with visual impairments. While this may be true, persons with disabilities advocate an absolute vindication of their right to a secret ballot and suggest that assistive measures, such as tactile ballot guides or electronic voting machines with an audio facility, ought to be employed in future elections.

In 2008 the Supreme Court struck down the then prevailing provisions of the Electoral Act which had required that persons requiring assistance to cast their vote should be assisted by police officers and others on electoral duty, denying the voter any choice of assistant. The Electoral Act was amended in advance of these elections, in a positive manner, to permit persons in need of assistance to choose their own assistant. Those without an assistant are still assisted by polling staff and the police.

The BVR process captured data on the disability status of voters. This information was not subsequently published by ZEC, nor used to make tailored preparations at polling stations for the access needs of persons with disabilities. Difficulties in gaining access to polling stations were observed in 10% of polling stations visited by the EU EOM on Election Day. Nonetheless, in a positive innovation, polling booths with low ledges, to facilitate the participation of wheel-chair users, were provided in many of the polling stations observed by the EU EOM.

Two members of the Senate, one man and one woman, were elected in Harare on 2 August to represent persons with disabilities. Statutory Instrument 126 of 2018, the Electoral (Prescribed Associations and Institutions) Notice, 2018, set out a list of institutions and private voluntary organisations which were entitled to participate in the electoral college process. This list was subsequently revised by Statutory Instrument 138A, the Electoral Notice: Correction of Error, which removed 18 duplications from the list. A total of 170 delegates was invited to participate, of whom 134 were present on the day. There was some speculation that the lack of full participation may have been due to the violence which had taken place in the city on 1 August.

The franchise for this election does not extend to individual persons with disabilities, as only representatives of prescribed bodies may nominate candidates and vote. This is a source of grievance to some persons with disabilities, as the electorate for the two senatorial positions is very small. An argument is made that the election could instead be conducted in concert with the general harmonised elections, with persons with disabilities all eligible to vote for their representatives.

XIII. Polling, Counting and Collation (Including Postal Voting)

Reasonably well-managed and peaceful voting and counting process in polling stations, some queue mismanagement and results not posted in some instances

A Postal Voting

EU EOM observers reported that postal voting was ongoing between 12 and 16 July in a number of police stations and headquarters, under the supervision of police senior commissioners. The

bulk of approved applications were from the police with 4,616 requests, 2,403 election officers, 80 from the army and 315 from the air force. The remainder included 50 requests from diplomatic missions. Observers were present in eight police locations and observed the process. While the police facilitated the process at various police locations, the practices as observed by the EU EOM were not always as foreseen in the law. Also, ZEC's failure to fully inform stakeholders and parties about how, where and when postal voting would be managed caused some apprehension and criticism.⁷¹ After the conclusion of postal voting and sorting, ZEC made efforts to inform about the process for the sealing of postal ballot boxes at polling stations.⁷²

The Electoral Act does not provide for postal voting to be administered by police commanders. It provides for postal ballots for the police to be distributed through a commanding officer, but thereafter each individual should complete their ballot in secret and then return directly to ZEC through the postal system. The set-up, as observed by the EU EOM, was inappropriate and infringed the Electoral Act. ZEC's ambiguity in managing the postal ballot reiterates its poor communication with the public and stakeholders on key electoral stages.⁷³

B Poll Preparations and Election Day

ZEC established an early deployment of presiding officers and polling staff to polling stations. This allowed for a review of ballot papers and sensitive election materials, but also obliged polling officers to overnight at polling stations. EU observers reported an overall positive process, however in Shamva-South, North and Bindura North observers noted that party agents, except for the ZANU-PF, were absent and that there was little oversight regarding the security of ballot papers.

Recommendation 17: The security of the ballot from printing, deployment to polling stations and on Election Day should be reviewed and procedures clearly announced for future elections.

On Election Day, EU observers reported from some 600 polling stations in 154 constituencies. The overall assessment of polling was positive with only nine polling stations assessed performing poorly/badly, while the rest was evaluated as good or very good. Polling stations mostly opened on time and voting was conducted in a peaceful atmosphere around the country, with long queues in many places, causing some organisational challenges. Observers also reported some challenges for election staff with poor lighting, particularly in polling stations using tents.

⁷¹ ZESN issued a statement expressing concern over the 'chaotic start of the postal voting process'. They called upon ZEC for increased transparency, to announce the specific number of ballot papers dispatched and expressed concern about the initial conflicting statement issued by the ZEC and the police forces regarding the process.

⁷² Electoral notice "Invitation to sealing of postal ballot boxes" on 28 July, at respective polling stations, as published 25 July, in *The Herald*.

⁷³ Observers were able to follow postal voting in eight locations, namely in Bulawayo, Mount Darwin, Bindura, Chinhoyi, Marondera Central, Nkayi district in Matebeleland north, Hwange and in Chiredzi. In Bulawayo Rosscamp Police Headquarters observers found approximately 300 police officers waiting to cast their postal ballot in *ad hoc* polling station managed by the police assistant commander. Police officers were marking their individual postal ballots in a separate room as to protect the secrecy of the vote, but in the presence of superiors who were acting as presiding officers. Three ballots for presidential, national assembly and local councillor elections were used, and prescribed envelopes provided. Initially, the ZEC officials seemed not to be aware of the ongoing postal voting, while the Zimbabwe Republic Police issued a statement confirming their actions.

Observers reported that voting procedures were largely followed, with the secrecy of the ballot ensured in almost all of the visited polling stations. EU observers reported the presence of party agents in all of visited polling stations and domestic observers in 71% of visited places. EU observers also reported that in most places ZEC staff in polling stations worked extremely hard and diligently to process voters and that voters had a reasonable understanding of the voting process.

EU observers reported a high degree of assisted voting in some places and also of voters not finding their name on voter lists in some 22% of polling stations visited (see section on Voter Registration), indicating problems with the voter roll and/or voter awareness. In 28% of the polling stations visited voters were not always checked for ink and in 6 % voters were not always marked with indelible ink.

C Counting at the Polling Station

Counting was observed in a total of 52 polling stations. EU observers reported that they were able to follow the counting of ballots without undue restriction in the presence of party agents and citizens observers. Counting was generally well organised and meticulous, although very slow. Observers in Makonde, Hurungwe and other areas reported that in many rural polling stations gas lamps were missing and that polling staff used mobile phones and candles to complete the counting of ballots.

Some problems in ballot reconciliation, in determining valid and invalid ballots, in completing the numerous originals of return forms and in packing election materials for the three elections were noted. EU observers reported that the results were not posted at the polling station, as required by law, in 10 out of the 52 polling stations observed.

D The Collation Process

Collation of results was completed at ward, constituency, provincial and national level and the transmission of those results, from polling stations through each of the levels up to the national command centre, was as a manual process. Collated results were delivered in person by the responsible officer for each level of the process. At a lower level, local councillors and national assembly winners were announced at ward and constituency centres respectively. EU EOM observers reported an overall good collation process and access for observers was provided. However, there were some instances where party agents did not receive a copy of the completed results, and some results were not displayed outside the collation centres. This was the case in Mberengwa, where presidential constituency results were not posted in four constituencies. Instances of inconsistent implementation of collation procedures at lower levels were also observed.

EU observers in Mutoko reported that collation at ward level was less well organised than other parts of the process, possibly due to the challenging context of working in the middle of the night. A number of ward returns had then to be corrected at the constituency collation centre. Observers in Chitungwiza, among other places, reported of unreasonable delays in delivery of returns and counting due to the manual copying of return forms at polling station, ward and constituency

stages. In Marondera it was noted that those parties and candidates who lost in the constituency also lost interest in observing the constituency collation process. This underlines the importance of impartial local observer groups to cover the process as political parties are unlikely to sign for results that do not favour them even when the process was conducted in a proficient manner.

Some party agents and CSOs claimed that polling station return forms, the V11, were altered and return figures changed at ward and constituency collation centres. The EU EOM was informed of an MDC-A party agent in Gokwe South who refused to sign such a ‘replacement’ V11 form and claimed being harassed during the night by army personnel. The EU EOM observed ZEC officers in Makoni North completing V11 forms two days after Election Day, even though polling staff and party agents were not present. They claimed this was due to the earlier lack of V11 forms. In other areas EU EOM observers have not received verifiable reports on alteration of results. EU observers, however, reported only of minor administrative corrections which were made to V11, ward and constituency forms, such as numerical and spelling errors, and cases of missing signatures or ZEC stamps, and that corrections were made in the presence of party agents in most cases.

Recommendation 18: The results management process must be coherent and better explained to all stakeholders in order to enhance the transparency, verifiability and integrity of the election. This could include publishing the original V11 and V23a/b returns.

XIV. Election Results and Post-Election Environment

A close and contested outcome to the presidential election and presentation of results lacked verifiability. A disproportional reaction by security forces to disturbances, preceded an overall deterioration of the political environment

A Election Results

On 3 August the ZEC chairperson declared the presidential results with the incumbent, Emmerson D. Mnangagwa, receiving 2,460,463 votes (50.8%), while the opposition candidate Nelson Chamisa received 2,147,436 (44.3%). With a margin of victory of 313,027 votes (around 38,000 votes over the 50% threshold) Mnangagwa was declared President-elect. Shortly before the declaration at 00.40, the chairperson and chief agent of MDC-Alliance, Morgen Komichi, took to the stage and declared that his party “*totally rejected the results*” and that he therefore refused to sign the results’ form.⁷⁴ The MDC-Alliance later lodged an unsuccessful legal challenge to the presidential result (see Electoral Disputes section).

The announcement of the National Assembly results was finalised on 2 August, and ZEC only published the lists of all members declared elected to the parliament some two weeks later, taking account of the proportional distribution of seats based on party lists. These results are subject to change still depending on the outcome of petitions related to the National Assembly elections (see Electoral Disputes section).

⁷⁴ Morgen Komichi was removed by the police. Later he stated that he was not given access to the verification process. He called the elections fraudulent and illegal.

Distribution of National Assembly Seats⁷⁵ (Total 270 seats - 210 constituency seats + 60 women's quota seats)

<i>Party</i>	<i>Total</i>	<i>Constituency seats</i>	<i>Party-list seats [women's quota]</i>
Independent	1	1	--
MDC Alliance	87	63	24
MDC-T	1	--	1
NPF	1	1	--
ZANU PF	180	145	35
<i>Total</i>	<i>270</i>	<i>210</i>	<i>60</i>

Distribution of Senate Seats (Total 80 seats - 60 party-list seats + 18 seats for Senator Chiefs, + 2 seats for Senators Representing Disabled Persons)

<i>Party</i>	<i>Total</i>	<i>Party-list seats [60]</i>	<i>Other seats [20]</i>
MDC Alliance	24	24	--
MDC-T	1	1	--
ZANU PF	35	35	--
Senator Chiefs	18	--	18
Disabled reps	2	--	2
<i>Total</i>	<i>80</i>	<i>60</i>	<i>20</i>

Based on these figures, which at the time of writing were still subject to change following petitions, ZANU-PF has exactly two-thirds of the seats in the Assembly.

With regards to the presidential results, chief agents of contesting presidential candidates had access to the national results verification process through to the evening of 2 August. The presidential returns verification process used the ward collation forms, which summarise polling station results for each of the 1,958 wards with relevant polling station returns (form V11) attached.⁷⁶ The Acting-Chief Election Officer had to verify and display returns forms and allow a candidate and/or chief agents to make notes of the contents of each return form. The National Constitutional Assembly made 13 verification requests and the MDC-Alliance made eight.⁷⁷

⁷⁵ As reported by Election Watch 41/2018 on 18 August 2018, based on ZEC's published lists of all members declared elected to the new parliament

⁷⁶ The Electoral Act, section 110, (3) (a) makes reference to ward collation returns as per section 65 (3), however it describes the process in terms of using constituency returns for the verification process. In fact, what ZEC used were the ward returns. The framework lacks clarity on which documents to use, nevertheless, the use of the ward returns provides a more consistent and verifiable approach.

⁷⁷ At the National Collation Centre it was observed that candidates' chief agents were not comparing their own copies of the polling station return forms (V11 forms) against those provided by ZEC. The Build Zimbabwe Alliance and the Zimbabwe Partnership for Prosperity chief agents requested the verification of three and one ward respectively.

In such a disputed presidential race a higher level of scrutiny could have been expected. Seemingly, candidates were not able to collect results information from their polling station agents in time to compare with return forms presented at the national collation centre. The MDC-Alliance alleged that presidential results were transmitted to ZEC and saved on a server, in a parallel process, which candidates and parties were not informed about.⁷⁸ ZEC did not answer their request for clarification.

Four days after the poll, ZEC provided stakeholders with a free CD-ROM copy of presidential results, in a protected excel format. Local council election results and details on postal ballots remain outstanding. The results provide a breakdown per polling station, apparently based on original V11s. As these results are not in the official V11 form, they do not provide the full traceability which the EU EOM had called for in its preliminary statement.

The figures presented by ZEC contain many anomalies and inaccuracies. These did not bring in to question the results *per se*, but do raise enough questions to have doubt as to the accuracy and reliability of the numbers presented. Examples of inaccuracies include inaccurate totals for constituencies and/or provinces, inaccurate sums for the two main candidates in two provincial level cases, double entry of some polling stations, and, in some cases, more voters apparently having voted than are on the voter roll⁷⁹. ZEC later corrected some errors and amended the election result, meaning that ED Mnangagwa was attributed with 50.67% rather than 50.8%. These errors were highlighted in the court case brought by Chamisa (see Electoral Disputes section), but they were not found, by the Court, to have materially affected the overall outcome.

Intriguingly, the figure of 50.8% of votes initially announced for the winning candidate, which is the most widely-reported, appears not to have been a percentage of the total number of valid votes cast (if it is so, it should be 51.5%), but it is the respective percentage of the total number of votes cast (including invalid votes). All-in-all the CD-ROM provided by ZEC attests to a lack of quality control in its work and such errors and lack of transparent opened the process to legal jeopardy.

National Assembly constituency results are provided only with the votes per candidate and constituency, no invalid vote totals are provided, and there is no breakdown per polling station. In comparison with the presidential results, it is estimated that some 45,000 more valid votes for the presidential elections than National Assembly elections nationally. Such a discrepancy is surprising, though it cannot be ascertained if it represents an anomaly with the presidential result or with the Assembly results.

It is notable that there is some correlation between provinces with the highest margin of votes in favour of the ruling party, such as across Mashonaland, and provinces with the highest number of reports of “*smart intimidation*”, misuse of state resources, involvement of traditional leaders and

⁷⁸ The MDC-A chairperson addressed a letter to ZEC chair requesting clarification on the transmission of results process and the use of a server, alleging that presidential results were being intentionally ‘managed’.

⁷⁹ The Provinces of Mashonaland Central and West show major discrepancies in vote totals for candidates in comparison with the ZEC summation (Mnangagwa received more than 6,000 extra votes and Chamisa received over 1,000 votes too few). In four polling stations in Zaka West Constituency, wards 22 and 23 have exactly the same result, which is close to impossible to achieve under normal circumstances. A polling station in Harare was entered twice with complete information. And, seven polling stations recorded a turnout above 100%, and many polling stations close to 100%

other electoral malpractices as indicated in the reports by EU observers and civil society observer groups. MDC-Alliance's performance in the parliamentary elections was additionally undermined by its inability to prevent the split of votes in the 13 constituencies where the party fielded multiple candidates.⁸⁰

ZESN, issued their report on the Sampled-Based Observation (SBO). ZESN concluded that the ZEC's results are consistent with their SBO projections, falling within the sample estimated ranges. Presidential candidate Nelson Chamisa (MDC-A) received 44.3% of the votes cast as announced by ZEC while the SBO estimate falls at 45,8% with a margin of error of +/- 2.0%. For Candidate Emmerson Mnangagwa (ZANU-PF) ZEC announced 50.8% of votes cast, while the SBO estimate is 50.7% of valid votes cast. However, the Sample-Based Observation with its projection falling above and below the 50% threshold, did not definitely confirm whether or not there should have been a presidential run-off.

B Post-Election Environment

Tension in Harare increased dramatically as the first parliamentary results indicated a clear lead for ZANU-PF and, at the same time, MDC-Alliance leaders intensified their accusations that the elections had been rigged. On 1 August a large group of MDC-Alliance supporters gathered near the MDC headquarters (rough estimations point at 3,000 to 4,000 protestors). Some started demonstrating and a number of cars and commuter busses set alight, tyres burned in the streets, stones were thrown and some ZANU-PF billboards were torn down. When a group of protestors reached the vicinity of the ZEC command centre and the ZANU-PF headquarters, the military was deployed to quell the unrest. Soldiers fired live rounds into the crowd⁸¹ leaving at least six people dead and 14 injured. The official explanation by the government was that the demonstration was illegal under the Public Order and Security Act and as the police felt overwhelmed with the situation the army was called on for support.

Following these events, the international observer missions present in the country, including the EU, issued a joint statement urging calm and restraint and this was followed by a series of meetings with the president, the main opposition candidate and the chair of ZEC to reinforce the message and urge an expeditious and transparent completion of the results process.

POSA was also invoked to obstruct a press conference of Nelson Chamisa on 3 August. Riot police, with shields and batons, dispersed the assembled members of the international and local press. The ZRP subsequently issued an apology, explaining that the press conference had been mistaken for a political gathering. The President condemned the behaviour of the police and stated that he was "*urgently investigating the matter to understand what has happened*". This has prompted speculation as to who in Zimbabwe was in control of the security forces.

Recommendation 19: Amend the Public Order and Security Act to guarantee that if it is invoked it must be ensured that legitimate political freedoms are not denied and that powers afforded to

⁸⁰ This is particularly valid for the constituencies Bulawayo South and Harare South, where both MDC-Alliance candidates together received significantly more votes than the winning candidate of ZANU-PF.

⁸¹ The official explanation by the government is that the police felt overwhelmed with the situation and the army was called on for support.

security forces are limited to reasonable and proportionate measures respecting human rights. Further, the excessive use of force must not be tolerated.

President Mnangagwa's immediate reaction on Facebook to the 1 August disproportional use of force by members of the presidential guard also indicated he might have not been informed about the deployment of the military to suppress the demonstration. In his statement on ZBC he held the MDC-Alliance leadership accountable for the violence, damage of property, and loss of lives. At a press conference on 3 August, he called for calm and unity and urged the nation to move beyond the tragic events. He also promised an independent investigation into the violent events, indicating later the investigation would start only after his inauguration. On 5 August, the ZDF and ZRP issued a joint statement denouncing social media reports suggesting that the army had declared a national shutdown urging people not to report for work and stated that "*such propaganda is meant to incite public violence and tarnish the image of Zimbabwe Defence Forces*". A second joint statement on 7 August denied involvement of the security forces in the violent crackdown on opposition as reported on social media and by international and domestic press.⁸²

In a series of public statements, MDC-Alliance claimed that the presidential election results had been manipulated and that Nelson Chamisa has won the election. On 3 August Nelson Chamisa accepted the parliamentary results, but accused ZANU-PF of fraud in the presidential elections, calling the results "*a coup against the will of the people*." The party accused the government of suppressing opposition supporters and harassing MDC-Alliance polling agents in order "*to ensure that people are denied the chance to challenge the election results*".⁸³ Riot police sealed off the MDC-Alliance headquarters on 1 August, with party agents and employees reportedly in charge of voter tabulation locked inside.

On 2 August, the police stormed the building and confiscated equipment and computers, including some V11 forms. They arrested 27 persons and charged them with "*inciting violence*" and "*possession of dangerous weapons*". Police patrols and water cannons located in front of the MDC-Alliance Headquarters were removed on 6 August and the 27 detained party staff members were released on bail one day later. Warrants for the arrest of nine senior party officials were issued, including for Tendai Biti.⁸⁴ Subsequently it appeared that much of the MDC-Alliance leadership had left the public domain and went into hiding.

The Zimbabwe Human Rights Commission published a statement on 10 August "on the 2018 harmonised elections and the post-election environment" which included confirmation that members of the public were assaulted by people in military uniforms who were moving around in military trucks. Their investigations related to the situation in Kuwadzana and Warren Park in Harare as well as Chitungwiza. Additional investigations by the ZHRC established that there had

⁸² [Joint ZDF ZRP Statement 7 August 2018](#)

⁸³ [MDC Election Bulletin Issue 19](#)

⁸⁴ The Herald of 7 August published the names of nine senior MDC-Alliance officials wanted by the ZRP: Tendai Biti, Morgan Komichi, Happymore Chidziva, Jim Kunaka, Paddington Japajapa, Mafaiti Mubaiwa, Jeff Tafadzwa Chaitezvi, Lovejoy Chitengu and Chamunorwa Madya. The Criminal Investigations Department spokesperson stated the nine were "wanted by the Criminal Investigations Department for contravening section 37 of the Criminal Law Codification and Reform Act, Chapter 9:23". The MDC Alliance officials are accused on "*participating in a gathering with intent to promote public violence, breaches of the peace or bigotry*". Biti was eventually controversially deported from Zambia and brought back to Harare and charged with illegally issuing the election results. The case continues.

been a “hunting down and harassment of polling agents for independent candidates and opposition political parties, resulting in bodily and emotional harm as well as damage to property.” This applied to both urban and rural communities, with the burning down of the homestead of an MDC-Alliance polling agent in Mutoko East also catalogued.

XV Electoral Disputes

The handling of the legal challenge against the outcome of the presidential election was transparent and timely, but overall the handling of election disputes highlights that the right to an effective legal remedy is not adequately provided for

A Pre-Election Court Applications and Offences

The right to a legal remedy is provided for in the Constitution, which also empowers ZEC to receive and resolve complaints filed by citizens and to take such action as required. However, the Electoral Act does not contain administrative complaint mechanisms, except for those related to voter registration. Hence, election-related disputes are resolved only by the judiciary, resulting in protracted adversarial processes which, considering the absence of time limits for the setting down of hearing and delivery of judgements in pre-election court challenges, do not always ensure a timely and effective legal remedy.⁸⁵

Recommendation 20: Incorporate provisions for an administrative complaint mechanism within ZEC which will enable voters to seek protection of their rights.

Moreover, the limited constitutional independence and transparency in the appointments of the Chief Justice, the Deputy Chief Justice and the Judge President of the High Court, and the opaque system of allocation of election-related matters to judges by the Judge President of the High Court, has led to limited confidence in judicial impartiality on behalf of stakeholders. This was further compounded by a number of controversial judgments related to elections.

Some 55 applications were filed to the courts, dating back several months before the proclamation of the elections and up to election day. Despite some claims that they were frivolous and politically-motivated, it should be stressed that ZEC was vulnerable to legal challenges not only because some provisions of the Electoral Act are not fully in line with the letter and the spirit of

⁸⁵ There were even some urgent chamber applications filed to compel the High Court to hear applications that were already pending before it. In addition, a ruling of the High Court dismissed an application for a declaratory order compelling ZEC to comply with its constitutional obligation of transparency in the exercise of its operations, citing its lack of jurisdiction to intervene in ZEC’s functions in the absence of illegality, which further limited the protection of the electoral rights of citizens.

the Constitution,⁸⁶ but also due to its interpretation and implementation of the law, as well as of its seemingly narrow understanding of the rights and obligations bestowed to it by the Constitution.⁸⁷ The only significant court cases to be upheld by the courts were the matter with regards to the obligation of traditional leaders to be politically neutral,⁸⁸ the voting rights of “alien” citizens and those of teachers deployed as polling staff on Election Day, as well as the provision of the final voters roll to an applicant. Regrettably, other significant matters, relating to the independence of ZEC, the diaspora vote,⁸⁹ release of the provisional voter roll,⁹⁰ transparency in electoral operations, the protection of school children from enforced participation in political activities,⁹¹ ZEC’s almost exclusive right to conduct voter education,⁹² the right of voters with visual impairments to a secret ballot, the handling of postal voting and allegations of interference with the political neutrality of traditional leaders by the President during his campaign activities,⁹³ were dismissed, mostly by the High Court but a couple also on appeal. Notably, a high number of cases

⁸⁶ Such as the publication of the voters roll, diaspora voting, prisoners’ right to vote, transparency of the electoral commission, voter education, printing of ballot papers, media environment and the existence of a level-playing field.

⁸⁷ In one court application requesting ZEC, *inter alia*, to disclose its operating procedures, among other things, ZEC argued that it has the discretion to come up with rules and procedures on how it operates and that the request for transparency would interfere in its functions. In another application requiring ZEC to share a copy of the provisional voter roll, ZEC argued, on appeal, that the Court, by ordering that it provides a copy of the provisional voters roll, sanctioned an undue infringement of its constitutionally guaranteed independence.

⁸⁸ In a matter filed by the *Election Resource Centre v. Chief Charumbira, National Council of Chiefs, Minister of Local Government, Public Works and National Housing*, Case No. HC 1718/2018, the court ruled that disciplinary proceedings against a traditional leader supporting ZANU PF in public statements should be initiated by the Minister of Local Governance, while the National Council of Chiefs should establish the Integrity and Ethics Committee of Chiefs, provided under the Constitution to monitor such conduct.

⁸⁹ The Constitutional Court ruled, in *Shumba, Mfumisi, and Nyambiya v ZEC and others*, No. CCZ 4/18, that the residency requirements for eligibility to vote are not directed only at the diaspora, while they are justified by the constituency-based nature of the country’s electoral system; it further supported that the “residency requirement is the safeguard that is in place to ensure that the electoral system maintains this character”.

⁹⁰ Following persistent requests by various stakeholders for the publication of the provisional voter roll and ZEC’s failure to make it available for public inspection, the Election Resource Center filed on 28 May an urgent application to the High Court, which opined that it was not within ZEC’s discretion to provide the applicant with the provisional voter roll before effecting any corrections following the inspection exercise, and ordered ZEC to furnish a copy of the roll to the applicant (*Trustees of Election Resource Centre Trust v. ZEC*, HH 307-18 and HC 4863/18). This decision was overturned on appeal by the Supreme Court.

⁹¹ The Masvingo High Court ruled, in *Amalgamated Rural Teachers Union of Zimbabwe v. ZANU PF and the Ministry of Primary and Secondary Education*, that school children and teachers should not be forced to attend rallies and political parties should not use school property for their private interests. It was overturned on appeal by the Supreme Court.

⁹² For instance, in an application filed with the High Court (*Veritas v. the Zimbabwe Electoral Commission, the Minister of Justice, Legal and Parliamentary Affairs and the Attorney General of Zimbabwe* (HC 353-18) avering that voter education should not be the monopoly of the State, the Minister of Justice and the Attorney General conceded that s.40C(1)(h) of the Electoral Act should be struck down as it was a lacuna in the law, while argued the case on the merits. However, ZEC raised objections *in limine* which the court ultimately followed and thereby dismissed the case. Thus, ZEC effectively blocked the repeal of a provision that the government had accepted should be struck down.

⁹³ EC08/18, *MDC v. E.D.Mnangagwa, ZANU PF, Chief F.Charumbira and Chief A.Tome*. The court ruled that it had no jurisdiction over the President who, according to the Constitution, is not liable to civil or criminal proceedings for things done or omitted in his personal capacity whilst in office.

were dismissed on technical grounds, despite the constitutional requirement that the rules of court “must ensure that the court (...) is not unreasonably restricted by procedural technicalities.”⁹⁴

Despite some exceptions, it appears there was a systematic delay by the High Court in either setting down dates for hearing⁹⁵ or delivering judgments in a timely manner – despite the Chief Justice’s directive that all election-related matters should be treated as urgent. *In contrario*, the Electoral Court made significant efforts to adjudicate all matters pending before election day in a timely manner.

Recommendation 21: Establish reasonable and appropriate time limits in the legal framework for the proceedings, hearing and determination of pre-election applications filed at the High and the Electoral Courts, in order for matters to be completed and court decisions rendered well in advance of election day.

The Special Investigation Committees, responsible for the expeditious handling of cases of politically motivated violence or intimidation, appeared in general to effectively refer cases to the Magistrates Courts. Most of these concerned minor clashes between intra-party supporters and tearing down of campaign material; there were however some cases of threats and intimidation, and malicious damage of property.

B Post-Election Petitions and Offences

i. Presidential Election Petitions

The Constitution provides for a seven-day time limit after the date of the declaration of presidential election results, for the submission of petitions or applications challenging the validity of the election, while it provides exclusive jurisdiction to the Constitutional Court on first and last instance. Following the lodging of an application, a 14-day time limit is foreseen for the Court to render its judgment. In determining an application, the Court may either declare a winner, invalidate the election in which case a new election must be held within 60 days, or make any other order it considers appropriate.

⁹⁴ It is noteworthy that the Supreme Court, in upholding two appeals filed by ZEC and ZANU PF regarding the provisional voters roll and the participation of school children in political rallies respectively, based its decisions on a technical ground that was not even raised by the applicants.

⁹⁵ For instance, following the receipt of SMS messages canvassing votes for ZANU-PF by mobile subscribers, a voter filed an application for a declaratory order on 11 July (Masvingo High Court, no.305/18), versus the Econet Wireless, ZANU PF, the ZEC and the ZANU PF Gutu West Parliamentary candidate. The applicant asked the court to declare the conduct of ZANU PF illegal, as he did not belong to a political party and he had never consented to being contacted. Until 17 August, a date for hearing had not been set down. In another case filed on 31 May (*Veritas v. Zimbabwe Broadcasting Corporation, Zimbabwe Newspapers Ltd, ZEC and Others*, case no.230/18), the applicant was seeking an order to compel, *inter alia*, the Zimbabwe Broadcasting Corporation and the Zimbabwe Newspapers to ensure that their reporting is impartial and for ZEC to disclose the manner in which it would monitor the media during the election period. Hearing of this case was set down for 18 September. Up to 24 August, seven pre-election cases were still pending at the High Court.

Following the declaration by the ZEC on 3 August, the time limit to challenge the results expired on 10 August. In the only application lodged, the MDC Alliance aggrieved presidential candidate N. Chamisa (herein under: the applicant) asked the Court to declare that the presidential election was not conducted in accordance with the law, that the result announced by ZEC and the concomitant declaration that E.D. Mnangagwa (herein under: the first respondent) was the duly elected President is declared unlawful and set aside, and that the Court declares the applicant, Chamisa, the winner.⁹⁶ Alternatively, the applicant asked the Court to order fresh elections to be held within 60 days of the court order.

The application was based upon two main grounds: that ZEC failed to follow the processes related to the collation and announcement of the results; and that the actual results announced are afflicted by mathematical and statistical errors in a manner that affects their validity.⁹⁷ The applicant also alleged that ZEC, in the run up to the polls, involved itself in a series of constitutional⁹⁸ and electoral law⁹⁹ violations all of which had the effect of undermining the impartial conduct of the elections. Despite the important number of pre-election court cases that challenged certain issues, that the application alleged amounted to constitutional and electoral law breaches,¹⁰⁰ the founding affidavit made limited reference to these. Moreover, the application did not include evidence for some of the averments made, while among the supporting evidence only 47 v11 forms (out of a total of some 11,000) were adduced.

Preliminarily, the Court considered that the application was defective as not served upon the respondents in accordance with the Constitutional Court Rules and the Court's interpretation of the reckoning of time, but condoned due to the "importance of the matter and the public interest". However, it avoided addressing the role of the Court's sheriff who failed to serve the application on time although the sheriff had been, as supported by evidence, duly instructed by the applicant.

⁹⁶ The application was filed against the president-elect, the other 21 presidential candidates as well as the ZEC, its Chairperson and the Chief Elections Officer.

⁹⁷ Such as, *inter alia*, a difference of 40.000 more votes cast for the Presidential than for the National Assembly election; differences between v11 and v23 forms, showing an inflation of the first respondent's votes and deflation of the applicant's; more people than those registered voted in some polling stations and in cases it is the 1st respondent who collects the bulk of the votes, the discrepancy being some 31.204; ZEC collated results twice at some polling stations, leading to an increase of 9.035 votes; no results sheets were posted at 21 percent of polling stations.

⁹⁸ In particular, the constitutional breaches alleged were the lack of independence, transparency and accountability of the ZEC, the failure of state owned media to comply with the constitutional obligation of impartiality and objectivity while the ZEC also failed to fulfill its relevant obligation to ensure compliance, and the partisan conduct of traditional leaders and members of the security sector.

⁹⁹ The alleged electoral law violations included, *inter alia*, the lack of access to the full version of the voters roll, the design of the presidential ballot paper, polling station results not posted at 21 percent of polling stations, violation of postal voting procedures, intimidation and coercion by soldiers and ZANU PF officials against rural inhabitants, and inducements to voters including food aid and agricultural input scheme.

¹⁰⁰ Such as court applications challenging the independence of ZEC, the release of the provisional voters roll, ZEC's transparency in its operations, the conduct of postal voting by members of the security forces, or the political neutrality of traditional leaders.

In regards to the pre-election violations alleged, of concern is the fact that although the Court acknowledged the existence of some pre-election High Court judgments pertaining to the conduct of postal voting, the design of the ballot paper, the release of the voter roll with photos and the voting of civil servants, it did not refer to other judgments, such as the one of the Electoral Court related to the distribution of agricultural seed under the guise of it being the presidential inputs scheme,¹⁰¹ or the one of the High Court banning the President of the National Council of Chiefs from making political statements supporting ZANU PF and declaring unconstitutional the conduct of campaigns by traditional leaders.

In its unanimous decision of 24 August (CCZ 42/18), the Court ruled that the applicant failed to adduce “clear, sufficient, direct, and credible evidence” that the alleged irregularities “materially existed”. The Court reserved to address the totality of the allegations in the main judgment.¹⁰² The Court opined that a declaration of results under the Electoral Act creates a presumption of validity of the said declaration, and that “the *onus* and burden of proof rests with the applicant”, who had to “prove to the satisfaction of the Court” that the entire election process was so poorly conducted that it was not “in substantial compliance with the law”. In accordance with the common law approach, the Court placed the *onus probandi* on the applicant to provide firm and credible evidence of the departure of the ZEC from the prescriptions of the law.

While the Court made extensive reference to the “best evidence rule” and repeated the need for the applicant to have produced “primary source evidence”, either from a recount or through an analysis of the content of the unsealed ballot boxes through an application to the Electoral Court, and stressed that the applicant chose not to exercise his right to obtain the necessary evidence, it completely disregarded the value of the evidence placed before it. Yet, the evidence which the Court mentioned as the acceptable evidence would still not have been made easily available, as it had to be applied for – it is notable that when recourse has been made to that in the past, no application had succeeded.

In juxtaposition to the constitutional requirement that the elections “must be free from violence and other electoral malpractices” and that “the ZEC must ensure that whatever voting method is used, it is simple, accurate, verifiable, secure and transparent”, the Court did not consider ZEC’s lack of transparency in the publication of the detailed election results or the lack of accuracy in the figures announced (see Results section for commentary on the errors in the announced results). Importantly, the Court was satisfied that ZEC produced clear and tangible evidence to refute all allegations and ruled that ZEC made a critical submission that the exact figures announced were incorrect and minor adjustments were made, which did not affect the result of the election. Ultimately, the Court found that the applicant did not prove the alleged irregularities and subsequently dismissed the application with costs.

¹⁰¹ Pre-election matter brought against the ZANU PF candidate in Murewa South. The Electoral Court heard the matter on 24 July 2018 and ordered the candidate not to use inputs distribution as part of the campaign.

¹⁰² At the moment of writing this report, the full judgment has not been made available yet.

ii. Parliamentary and Local Council Election Petitions

Election results can be contested through a petition lodged at the Electoral Court, within fourteen days following the declaration of results, and only by candidates themselves. Notably, the *Electoral Act Applications, Appeals and Petitions Rules 1995* (herewith: the Election Petition Rules) are not aligned with the Electoral Act as they were produced before it was enacted, but they are not formally repealed either. However, the Electoral Act contains two contradictory provisions,¹⁰³ the first suggesting that these rules are redundant as were repealed together with the previous Electoral Act, and the second intending to perpetuate their existence despite the Electoral Act under which they were taken having been repealed.¹⁰⁴

Recommendation 22: Introduce provisions allowing citizens and civil society organisations to file petitions against the results under reasonable conditions.

Furthermore, the Election Petition Rules are overly formalistic and onerous, with some provisions *de facto* restricting the right of access to justice.¹⁰⁵ In a positive development, the amount of security for costs to be lodged by the petitioners was reduced.¹⁰⁶ According to a Practice Direction of the Chief Justice published on 6 August, petitioners should pay 5,000 USD as security for costs for challenging the presidential election results, 2,000 USD for petitions against National Assembly results and 1,000 USD for local authority petitions. During the 2013 elections, the security for costs amounted to 10,000 USD for all types of petitions, which led to an actual restriction of the right of access to justice.¹⁰⁷

Recommendation 23: Revise the Electoral Act Applications, Appeals and Petition Rules of 1995 and align them with the Electoral Act

The time limit of 14 days for the submission of petitions to the Electoral Court¹⁰⁸ against National Assembly and local council election results started to run from the day the results for each election and each constituency/ward were declared. The Court has six months for their determination, while an appeal, only on a question of law, may be filed to the Supreme Court within 15 days and determined within three months. Filing of a petition does not have a suspensive effect; a duly

¹⁰³ Sections 165(4) and 193(3)(d).

¹⁰⁴ In a petition challenging some of the 2013 election results, the Harare Electoral Court came to the conclusion (ECH 11-2013 of 27 March 2014) that the 1995 Rules are valid and failure to comply with them renders a petition invalid.

¹⁰⁵ Such as Section 21(f) that requires the petitioner, when a corrupt or illegal practice is alleged, to state in the petition the full names and addresses of every person who allegedly was guilty of such a practice.

¹⁰⁶ The *Electoral Regulations 2005 as updated to 1st June 2018* and the *Electoral (Amendment) Regulations 2013* stipulate that the security costs should be not less than 500 US\$. The exact amount is fixed by the Registrar after consultation between the ZEC and the Chief Justice.

¹⁰⁷ In particular, 62 out of the 101 petitions filed challenging the 2013 NA and local council election results were withdrawn due to an inability to pay the security for costs.

¹⁰⁸ On 15 June the appointment of 35 judges of the High Court to the Electoral Court, in accordance with S.162 (1) of the EA, was gazetted; the proclamation specified that the appointment would have retrospective effect from that month and would be valid for the next six months.

declared member of the National Assembly shall remain as a member until the conclusion of the case.

In total, twenty petitions against the National Assembly results have been submitted, a remarkable decrease in comparison to the number of petitions filed following the 2013 Harmonised elections.¹⁰⁹ In particular, two were filed in each of the constituencies of Chegutu West, Goromonzi West, Tsholotsho North (the petition concerns the allocation of seats according to the PR system in Matebeleland North province), and one each in the constituencies of Mutare North, Murewa South, Kariba, Bindura South, Mutasa South, Zvimba East, Zvimba South, Bulawayo South, Kwekwe Central, Chimanimani West, Mhondoro-Mubaira, Chipinge East, Mutare Central and Chikomba Central. They have been brought by MDC Alliance (9 cases), ZANU PF (4), independent candidates (3), MDC-T (2), NPF (1) and People's Rainbow Coalition (PRC) (1).

ZANU PF is a respondent in twelve petitions, while MDC Alliance in five; one petition was filed against the National Patriotic Front (NPF) by the MDC Alliance. The two petitions lodged by the MDC-T challenge the proportional allocation of seats in the Senate and the women's quota to the National Assembly respectively.

Worth noting is the petition in Chegutu West Constituency, where the ZEC erroneously declared Zanu PF's Dexter Nduna as the winner of the National Assembly elections instead of MDC Alliance's Gift Konjana. Nduna had initially been announced as the winner with 10.932 votes, however, the MDC Alliance candidate who had polled 10.828 votes challenged the result and was able to provide evidence that there was a discrepancy on the figures, which ZEC afterwards confirmed, due to a transcription error from v23A forms to v23B forms during data capturing.¹¹⁰ ZEC stated that the law does not permit reversing a declaration once made, therefore leaving Konjana with no choice but to approach the Electoral Court for relief. In the meantime, another candidate in the same constituency, Shingirai Bobo of the People's Rainbow Coalition (PRC) also approached the court, challenging the 'declaration' of Konjana as winner; yet Konjana was not declared to be the winner by the court.

iii. Post-Electoral Offences

Following the announcement of presidential election results and the incidents of violence in Harare, it would appear there was a serious clampdown on people from the opposition political parties, especially the MDC Alliance as well as independent candidates or supporters.

In particular, 27 MDC Alliance supporters, agents and employees were arrested in Harare on public violence charges. They appeared in court on 6 August and were eventually released on bail the following day. The Zimbabwe Lawyers for Human Rights reported on offering legal support in at

¹⁰⁹ Following the 2013 Harmonised elections, a total of 101 petitions challenging the National Assembly and local council election results had been lodged. This year's decrease is even more astonishing considering the significant reduction of the security costs that petitioners have to pay within seven days of filing, as per s.168 (3) of the Electoral Act.

¹¹⁰ It was reported that the results of Konjana and another candidate one Kache Simon were interchanged. Instead of capturing Kache's results as one vote and Konjana's as 121 votes, they were reversed giving Kache 121 and Konjana one vote. Upon the correction, Konjana's total would go up to 10.949 votes, 17 more votes than Nduna.

least 24 post-election politically linked arrests. Such matters included the arrest of Tendai Biti, former minister of finance and leader of the opposition PDP party, who argued that he was illegally removed from Zambia where he had sought asylum, his brother Steven Biti who ostensibly was being arrested as a bait on Tendai as well as Morgan Komichi, the MDC Chairperson who was arrested for allegedly interrupting, obstructing and disturbing proceedings related to the announcement of results of the 2018 elections.

These arrests and detentions targeted the leadership of the MDC Alliance, and almost a month after the arrests, none of the matters has been tried. There could be concern that in certain matters, police was conducting arrests in order to investigate the perpetration of alleged offences, instead of the internationally accepted principle of investigating before arresting.¹¹¹

The apparent systemic arrest of the opposition was widespread and was also observed in areas other than in Harare. LTOs reported of the arrest of a known MDC Alliance activist and party member in Gokwe South who was accused of possessing sensitive political information, while in Bindura South, a re-elected ZANU PF MP was acquitted on intimidation charges by a local Village Head in a court decision of 9 August. In Chegutu, two MDC supporters were arrested while celebrating the results, and accused of disturbing peace and security and of disorderly conduct in a public place; they were released on bail. In Bulawayo, three persons were brought before the Magistrate's Court charged with minor offences on election-day.¹¹² In Makoni district, there has been one official complaint recorded with the resident Magistrate and a few more incidents reported to the police. Despite the seemingly politically motivated arrests of mainly opposition supporters and activists, it is noted also that in Mbire district, three ZANU-PF supporters were arrested on election-day for intimidation of people queueing to vote.

XVI Conclusion

The elections were competitive, the campaign was largely peaceful and, overall, political freedoms during the pre-election campaign, including freedom of movement, assembly and speech, were respected. However, the misuse of state resources, instances of coercion and intimidation, partisan behaviour by traditional leaders and overt bias in state media, all in favour of the ruling party, meant that a truly level playing field was not achieved, which negatively impacted on the democratic character of the pre-electoral environment.

Election Day passed peacefully, was generally well-managed and conducted mostly in an orderly manner. Some procedural irregularities were observed as well as instances of results not being

¹¹¹ For instance, the case of an election agent in Gokwe, allegedly assaulted by ZANU PF members, who when approached the police to report the incident was subsequently arrested for assault, could be a case in point. Another example is the mass arrest of all people who were found at MDC Headquarters on 2 August 2018, when the police raided the offices in pursuit of a specific warrant of arrest granted to look for computers or any subversive material, unlicensed firearms, ammunition, or stones which may have been used in the commission of acts of public violence.

¹¹² An MDC supporter for wearing campaign regalia in the vicinity of a polling station, a person who refused to have his finger marked and to leave the polling station, and one person due to violent conduct after he was informed he was not eligible to vote.

posted at the polling station. Such incidents added to concerns about the lack of transparency, traceability and verifiability of the vote, which fuelled further post-election tensions.

The tragic deaths of protestors on 1 August, as a result of excessive use of force by security forces, and the subsequent abuses of human and political rights of members of the opposition further marred the perception of the electoral context. In addition, the arrests of opposition politicians and the raids of opposition offices and the confiscation of computers immediately after the elections were also means to weaken opposition policy. The Commission of Enquiry announced in the inauguration speech of President Mnangagwa should be followed closely in order to ensure that justice is done.

Looking to the future, it is clear that there is a thirst for democratic change in the country and the people want to see democratic dividends delivering a better life for all Zimbabweans. This Report and Recommendations are offered to support such a democratic direction. It is fundamentally important that both government and opposition pursue democratic aspirations of their citizenry and deliver the reforms necessary to this end. The test of any successful democratic transition is when the opposition of today has a fair chance to be the government of tomorrow.

At the end of this Final Report of the EU EOM there are 22 recommendations. These recommendations are offered to help address a number of the shortfalls outlined in this report. Both this report and its recommendations also serve as important benchmarks for assessing the commitment of the Government of Zimbabwe to furthering democratic transition in the country.

XVII Recommendations

NO	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL/REGIONAL PRINCIPLE / COMMITMENT
LEGAL FRAMEWORK (Incl. Constituency Delimitation)					
1	The Electoral Act is not fully aligned with the 2013 Constitution, which is the supreme law of the country therefore no subsidiary legislation should be inconsistent with it. (p. 7)	The Electoral Act should be aligned with the 2013 Constitution, in particular those provisions related to the constitutional right to vote (including postal voting for homebound voters and those in hospitals and penitential institutions), reinforcement of the independence of ZEC in relation to responsibility for its own regulations, voter registration, and accreditation of observers, as well as the required approval of regulations.	Electoral Act: s.18, s.23 s.9(5), s.12(1)(e), s.56(1) as read with s.72, s.40H, s.192(4)	Parliament	<p>Universal suffrage "elections which shall be by universal and equal suffrage" - ICCPR, art. 25</p> <p>"States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed" - ICCPR GC 25, para.11</p> <p>"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law." - ACHPR, art. 13(1)</p> <p>"State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people" - African Charter on Democracy, Elections & Governance, art. 4(2)</p> <p>"Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law." – OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, IV (1)</p> <p>Independent electoral authority "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."</p>

					- ICCPR GC 25, para.20
2	The Constitution stipulates that no constituency should have 20 percent more or fewer registered voters than any other. However, there are significant variations in the size of constituencies for the National Assembly elections. (p. 9)	Constituency delimitation must be carried out in good time prior to the next elections to ensure equal suffrage in accordance with the Constitution. An Act of Parliament could be adopted developing and elaborating the legal framework for boundary delimitation, to also include provisions for consultations with political parties and civil society and a complaints and appeals mechanism before the parliamentary approval process.	A new Act	Parliament, ZEC	<p>Equality of the vote: UDHR - Article 21, (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures;</p> <p>ICCPR Article 25 plus General comment 25: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.</p>
ELECTORAL ADMINISTRATION					
3	According to the Constitution, ZEC is created as an independent body. It should be independent and not subject to the direction or control of anyone. ZEC's independence is, to some degree, undermined by the involvement of the Ministry of Justice, Legal and Parliamentary Affairs in the approval of regulations adopted by the Commission (see also Recommendation 1). (p. 10)	ZECs independence needs to be strengthened, free from governmental oversight in the approval of its regulations.	Amendment of the Electoral Act	Parliament	<p>Independence of the Electoral Management Body “ An independent electoral authority should be established to supervise the electoral process and to ensure tht it is conducted fairly, impartially...” International Covenant on Civil and Political Rights (ICCPR) General Comment 25, Article 20</p> <p>“ Establish and strengthen independent and impartial national electoral bodies for the management of elections.” African Charter on Democracy, Elections and Governance, Article 17.1</p> <p>“Establish impartial, professional, independent, all inclusive, competent,, and accountable EMBs, staffed by eminent, non-partisan and capable commissioners, and efficient and professional personnel;” The Southern African Development (SADC),</p>

					Principles and Guidelines Governing Democratic Election, Article 5.1.4
4	The formation of Multi-Party Liaison Committees (MPLC) could have, if used effectively, enforced the Electoral Code of Conduct by establishing a reporting mechanism on non-compliance as foreseen in the Electoral Act (160C) and the Code of Conduct (12.1), and enhanced, accountability and transparency in the electoral process. However, this was a missed opportunity, as the national-level MPLC did not meet as regularly as it should have and was not used enough by either ZEC or the political parties as a real forum to resolve disputes. (p. 12)	There needs to be more frequent MPLC meetings throughout the entire electoral process, so that it is an effective conflict resolution tool for political parties and provides an effective forum for reporting on non-compliance with the Code and for exchanges of views and information with ZEC.	No change needed	ZEC, Parliament, Political Parties	<p>Transparency / Freedom of Expression ACHPR, Chapter 5, Article 12(2) and 13 “Strengthen political institutions to entrench a culture of democracy and peace”</p> <p>“State Parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace” ACHPR, Chapter 2, Article 2(6)</p> <p>“Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and ^{INT}tolerance.” ICCPR Article 19(2)</p> <p>“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”</p>
5	ZEC’s management often lacked inclusivity, transparency or effective external communications. For instance, key meetings were cancelled and key decisions were poorly communicated. ZEC’s website was relaunched in July but it lacked key information, including resolutions which complement the Electoral Act which is in breach of constitutional transparency provisions. (p. 12)	ZEC should offer effective information on all steps of the electoral preparations with full transparency, making all information of public interest immediately and easily accessible, including resolutions and complete and timely publication of polling station results.	Changes in ZEC management processes, Amendment of Electoral Act as required	ZEC, Parliament	<p>Right of access to information “ To give effect to the right to information, States parties should proactively put in the public domain Government information of public interest. “ ICCPR, GC 34, Article 19</p> <p>“Every individual shall have the right to receive information”. African Charter on Human and Peoples Rights, (ACHPR) Article 9.1</p> <p>Promotion of transparency “ Each State Party shall, in accordance with the</p>

					<p>fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interests.”</p> <p>United Nations Convention against Corruption (UNCAC) Public Sector, Article 7.4</p> <p>“Establish the necessary conditions to foster transparency and accountability in the management of public affairs”.African Union Convention on Preventing and Combating Corruption, Article 2.5</p>
6	<p>The relatively short period for voter education did not address concerns that voters, especially in rural areas, required more comprehensive information, for instance regarding voting procedures and the secrecy of the vote. Further, current provisions on voter education are overly restrictive. (p. 12)</p>	<p>There needs to be a longer and more comprehensive implementation of voter education activities.</p>	<p>Amendment of Electoral Act and ZEC regulations</p>	<p>Parliament ZEC</p>	<p>Right of access to information</p> <p>“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds...”. ICCPR, Article 19,2</p> <p>“...Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. ...Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”</p> <p>ICCPR, GC 25, Article 12</p> <p>“ Each individual shall have the right to receive information.”</p> <p>ACHPR, Article 9,1</p> <p>“Ensure that voter education capacitates and empowers all eligible citizens;”</p> <p>SADC, Principles and Guidelines Governing Democratic Elections, Principles for Conducting Democratic Elections, Article 4.1.10</p>
VOTER REGISTRATION					
7	ZEC data shows significant	Ensure enhanced voter	No change	ZEC	Right to vote:

	differences between provinces with the main urban areas of Harare and Bulawayo with markedly lower capture rates. (p. 16)	registration in “under registered” districts of the country to ensure universal and equal suffrage.	needed		UDHR - Article 21, (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures; ICCPR Article 25 plus General comment 25: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
8	Audits of the voter roll indicated numerous problems with the correct attribution of voter addresses and also numerous instances of persons at the same address being allocated to different wards, among other problems. (p. 16)	In order to ensure universal and equal suffrage as well as the right to vote, there is a need to review procedures for the identification of voter addresses (lessening the over-use of pre-commissioned <i>affidavits</i>), to ensure the correct allocation of polling station / ward / constituency for each voter, and to ensure a consistent format for the capturing and registering of voter addresses.	Amendment of ZEC regulations for voter registration	ZEC	Right to vote: UDHR - Article 21, (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures; ICCPR Article 25 plus General comment 25: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
9	The lack of transparency and failure to provide clear and coherent information and data about voter registration overall added to a sense of mistrust among stakeholders towards ZEC. Further, clarifications on some of the anomalies identified remain outstanding (e.g. problematic IDs and others), including the extent to which the deduplication process was actually undertaken.	Clarify and resolve anomalies identified in voters' roll (additionally by official audit and research of voters' roll); publish results of deduplication process conducted by ZEC or conduct/finalize a comprehensive new deduplication process including whole voters' roll.	Enhance capacity of ZEC to maintain the voter roll.	ZEC	Right to vote: UDHR - Article 21, (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures; ICCPR Article 25 plus General comment 25: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

	(p. 17)				
POLITICAL PARTIES AND CAMPAIGN ENVIRONMENT					
10	<p>There is a lack of legislative measures to ensure a level playing field, which impacted on the fairness of the campaign. EU observers reported an extensive use of state resources and advantage of incumbency across the country. (p. 21)</p>	<p>Legislative measures, including effective and dissuasive sanctions, should be introduced to mitigate abuse of state resources and misuse of the advantage of incumbency, such as use of government vehicles, property and funds and the involvement of public officials in political activities, in order to guarantee the free expression of the will of electors and help create a more level playing field.</p>	<p>New provisions in Electoral Act</p>	<p>Parliament</p>	<p>Level Playing Field, Equality ICCPR GC 25, paragraph 19. “Persons entitled to vote must be free to vote for any candidate for election... and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” UN CAC article17. “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”</p> <p>ACHPR Article 13(2)&(3) “Every citizen shall have the right of equal access to the public service of the country. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.”</p> <p>SADC PF, Norms and Standards for Elections in the SADC Region Part 2(3) and 3 (6) “In the interest of creating conditions for a level playing field for all political parties and promoting the integrity of the electoral process, parties should not use public funds in the electoral process. The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage.”</p>

					“The Electoral Commission should therefore be legally empowered to prohibit certain types of expenditures so as to limit the undue impact of money on the democratic process and the outcome of an election.”
11	Section 281(2) of the Constitution provides that traditional leaders must act in a politically neutral way. Similar rules apply for District Administrators, Section 200(3). Reports confirmed that traditional leaders were involved in the campaign, including intimidating and influencing voters. Reports also indicated that members of the district administration were also involved in the campaign of the ruling party. (p. 22)	Effective mechanisms should be introduced for monitoring and sanctioning of partisan behaviour by traditional leaders and civil servants, to help ensure the impartiality of state structures in the election.	New provisions in the Electoral Act and Political Parties Code of Conduct	Parliament	<p>Level Playing Field, Equality ICCPR GC 25, paragraph 19. “Persons entitled to vote must be free to vote for any candidate for election... and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”</p> <p>UNCAC article17. “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”</p> <p>ACHPR articles 13(2)&(3) “Every citizen shall have the right of equal access to the public service of the country. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.”</p>
12	The Political Parties (Finance) Act does not include any provisions on campaign expenditure. Further, there is a complete absence of reporting requirements and transparency mechanisms,	Promote accountability and transparency of campaign finance and expenditure by introducing explicit regulations on campaign expenditure, including reporting requirements before the	Amendment of the Political Parties (Finance) Act	Parliament	<p>Level playing field, Transparency ICCPR General Comment 25 paragraph 19. “Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”</p>

	resulting in a lack of accountability for campaign finance. (p. 23)	nomination process and shortly after the declaration of results. In order for this to be effective there also needs to be a clear mandate for an independent institution – possibly ZEC - to oversee respect for such regulations and to undertake campaign finance audits.			<p>UNCAC article 7.3 "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."</p> <p>SADC PF, Norms and Standards for Elections in the SADC Region Part 3 (6). "The Electoral Commission should therefore be legally empowered to prohibit certain types of expenditures so as to limit the undue impact of money on the democratic process and the outcome of an election. It should be empowered to ensure that proper election expenses returns are submitted on time, to inspect party accounts, and for parties to have properly audited and verified accounts."</p>
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MEDIA					
13	The media landscape in Zimbabwe is largely dominated by the state-owned or government-controlled media. Further, 17 years after the enactment of the BSA, which provides for community radio stations, the government is still to license community radio stations in the country. (p. 25)	Liberalise the electronic media sector, including issuing licenses for community radio stations.	No legal change needed	Broadcasting Authority of Zimbabwe and Government	Freedom of the media Section 61-3 of the Constitution. BSA (Part II, Articles 3-2-e and 3-2-f, and Part IV). UN General Comment 34 (independence of media regulatory bodies) of 2010 Joint declaration on key challenges to freedom of expression by rapporteurs of UN, OSCE, OAS and ACHPR
14	Current regulations such as Access to Information and	There needs to be comprehensive legal reform	Amendments in AIPPA, BSA,	Parliament	Freedom of expression, Freedom of the media, Right to access to information

	Protection of Privacy Act (AIPPA), Broadcasting Services Act (BSA), Public Order and Security Act (POSA) and the Criminal Law contain provisions which are not in line with fundamental freedoms included in the Constitution such as freedom of expression, freedom of the media and access to information. (p. 27)	in order to harmonise current media regulations with the Constitution, in order to adequately safeguard freedom of expression.	POSA, Criminal Law		Sections 61 and 62 of the Constitution of Zimbabwe. Article 19 of ICCPR (freedom of expression and freedom of information)
15	Media monitoring showed that the state-broadcaster failed to abide by its legal obligation to ensure equitable and fair coverage to parties and candidates. Similarly, government-controlled newspapers provided biased election coverage in favour of the ruling party. (p. 29)	ZBC needs to be reformed into a truly independent public service broadcaster and state-owned media must abide by their legal obligation to be impartial and provide equitable treatment to all political parties and candidates.	Amendment of Broadcasting Services Act	Parliament, ZBC, Zimpapers, Zimbabwe Media Commission	Freedom of the media, Independence and impartiality of the state-owned media. Section 61-4-b and c of the Constitution. AIPPA, Part VII, art 39-1-a, 39-2-c. Electoral Act, sections 160G-2-d and 160J-a, b and c. Article 17(3) of the African Charter on Democracy, Elections and Governance
PARTICIPATION OF PERSONS WITH DISABILITY					
16	Zimbabwe acceded to the Convention on the Rights of Persons with Disabilities in 2013, but no legislation has yet been introduced to align domestic law with the commitments in the Convention. (p. 32)	Incorporate the Convention on the Rights of Persons with Disabilities into domestic law.	Amendment of the Disabled Persons Act	Parliament	The Right to participate in political life. Convention on the Rights of Persons with Disabilities: Article 29
POLLING, COUNTING, COLLATION and RESULTS					
17	EU observers noted that there was little oversight regarding the security of ballot papers. (p. 33)	The security of the ballot from printing, deployment to polling stations and on Election Day should be reviewed and	ZEC to establish appropriate procedures	ZEC	Promotion of transparency “Establish the necessary conditions to foster transparency and accountability in the management of public affairs”.

		procedures clearly announced for future elections.	for management of ballot security		<p>African Union Convention on Preventing and Combating Corruption, Article 2.5</p> <p>“ The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process ... so that electors have confidence in the security of the ballot and the counting of votes “.</p> <p>ICCPR GC 25, Article 20</p> <p>“ Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interests.”</p> <p>United Nations Convention against Corruption (UNCAC) Public Sector, Article 7.4</p> <p>“Establish the necessary conditions to foster transparency and accountability in the management of public affairs”.African Union Convention on Preventing and Combating Corruption, Article 2.5</p>
18	ZEC’s late publication of the process for the transmission of results was incomplete and did not allow stakeholders to be fully informed as to what should be expected. This contributed to doubts about the transparency and verifiability of the collation process for the presidential results. (p. 35)	The results management process must be coherent and better explained to all stakeholders in order to enhance the transparency, verifiability and integrity of the election. This could include publishing the original V11 and V23a/b returns.	Amendment of the Electoral Act	Parliament	<p>Promotion of transparency</p> <p>“Establish the necessary conditions to foster transparency and accountability in the management of public affairs”.</p> <p>African Union Convention on Preventing and Combating Corruption, Article 2.5</p> <p>“ The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process ... so that electors have confidence in the security of the ballot and the counting of votes “.</p> <p>ICCPR GC 25, Article 20</p> <p>“ Each State Party shall, in accordance with the</p>

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ELECTION RESULTS AND POST-ELECTION ENVIRONMENT					
19	<p>A demonstration after the election left at least six people dead and 14 injured. To suppress public disturbances, security forces fired live rounds into the crowd. The official explanation by the government was that the demonstration was illegal under the Public Order and Security Act and as the police felt overwhelmed with the situation the army was called on for support. (p. 39)</p> <p>Post-election, human rights groups confirmed that members of the public were assaulted by people in military uniforms and that there had been a “hunting down and harassment of polling agents for independent candidates and opposition political parties, resulting in bodily and emotional harm as well as damage to property.” (p. 39)</p>	<p>Amend the Public Order and Security Act to guarantee that if it is invoked it must be ensured that legitimate political freedoms are not denied and that powers afforded to security forces are limited to reasonable and proportionate measures respecting human rights. Further, the excessive use of force must not be tolerated.</p>	<p>Amend the Public Order & Security Act to ensure compliance with constitutional and international standards and protection for the rights to life, freedom of assembly and freedom of expression.</p>	Parliament	<p>Freedom of Assembly ICCPR Article 21 – freedom of assembly: The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.</p>
ELECTORAL DISPUTES					

20	The Constitution empowers ZEC to “receive and consider complaints from the public and to take such action (...) as it considers appropriate”. However, contrary to the detailed rules on adjudication of candidate nomination and petitions against election results, there are no provisions in the Electoral Act on the submission of administrative complaints during the campaign period to ZEC, except for complaints on voter registration issues. (p. 40)	Incorporate provisions for an administrative complaint mechanism within ZEC which will enable voters to seek protection of their rights.	Electoral Act, s.190	Parliament, ZEC	<p>Right to an effective remedy “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” – ICCPR, art. 2(3)(a)</p> <p>“Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities...” - OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, IV (6)</p>
21	The Electoral Act does not include any time limits for the adjudication of pre-election applications filed at the High and the Electoral Courts. Despite the fact that all election matters are considered as urgent, there was an important number of pre-election matters that were set down for hearing with significant delays and judgments that were not rendered before the election-day. (p. 42)	Establish reasonable and appropriate time limits in the legal framework for the proceedings, hearing and determination of pre-election applications filed at the High and the Electoral Courts, in order for matters to be completed and court decisions rendered well in advance of election day.	Electoral Act, High Court Rules	Parliament	<p>Right to an effective remedy “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” – ICCPR, art. 2(3)(a)</p> <p>“to ensure that individuals have accessible and effective remedies... Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.” – ICCPR GC 31, para.15</p>
22	The Electoral Act does not provide for the right of voters and civil society groups to file petitions challenging the results of the National Assembly or local council elections. (p. 45)	Introduce provisions allowing citizens and civil society organisations to file petitions against the results under reasonable conditions.	Electoral Act, s.167	Parliament	<p>Right to an effective remedy: ICCPR article 2(3)(a) African Union Declaration on the Principles Governing Democratic Elections in Africa, IV, 6</p>
23	The Electoral Act Applications, Appeals and Petition Rules of 1995 are outdated, excessively	Revise the Electoral Act Applications, Appeals and	The Rules to be aligned in terms of s.165	Parliament	<p>Right to an effective remedy “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective</p>

	<p>formalistic and technical, with some provisions effectively restricting the right of access to justice (such as, as section 21(f) which requires the petitioner, when a corrupt or illegal practice is alleged, to state in the petition the full names and addresses of every person who allegedly was guilty of such a practice). Further, the rules are not aligned with the Electoral Act as they were produced before it was enacted. (p. 45)</p>	<p>Petition Rules of 1995 and align them with the Electoral Act</p>	<p>of the Electoral Act</p>		<p>remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” – ICCPR, art. 2(3)(a)</p> <p>“Establish and strengthen national mechanisms that redress election related disputes in a timely manner.” - African Charter on Democracy, Elections and Governance, art.17 (2)</p> <p>“Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;” ^[1]_[SEP] African Charter on Human and Peoples’ Rights, art.7 (1)</p>
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