

Dealing with Electoral Fraud in Zimbabwe: A Critical Appraisal of the 2012 Electoral Act

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Abstract: Electoral politics since its inception has presented both acceptable and unacceptable forms of behaviour when it comes to the conduct of elections that have changed through time. Elections worldwide has thus featured attempts by some institutions and participants to undermine the integrity of elections through various ways as ways of getting into power or seeking maintenance of the status quo. Zimbabwe as one of the emerging democracies after so many decades of colonialism has been active in using elections as a democratic way of choosing its national leaders. The Zimbabwean electoral environment has since independence in 1980 been criticised for failure to adhere to the principles of free and fair elections. The timely held elections have been condemned because of their high levels of electoral fraud. To address the anomalies the Electoral Act was amended in 2012 to try and enhance the system to do away with electoral fraud. The paper therefore seeks to analyse the successes of the Act in dealing with electoral fraud as well as the loopholes that still exist which could be manipulated by the electoral fraudsters. Suggestions will be made as to how these electoral challenges could be overcome.

I. INTRODUCTION

Vote rigging in Zimbabwe has characterised the election environment. Reports of vote rigging have been part of the history of elections in Zimbabwe. Attempts have been made to ensure that the electoral menace be dealt with. One such sure way has been the improvement of the laws that govern elections. The fundamental law in relation to Zimbabwe has been the Electoral Act. Following the massive allegations of vote rigging in the hotly contested 2008 efforts were made to address the law governing the conduct of elections. Major changes were done in 2012 in an effort to improve the conduct of elections in Zimbabwe especially in the view of the coming 2013 harmonised elections. The paper therefore seeks analyse the changes that were made to the electoral Act in an attempt to deal with vote rigging. Further, it will cite the weaknesses in comprehensively addressing vote rigging and proffer ways of handling the obtaining challenges.

II. CONCEPTUALISING ELECTORAL FRAUD AND VOTE RIGGING

Wikipedia defines Electoral fraud or vote rigging as “an illegal interference with the process of an election. Acts of fraud affect vote counts to bring about an election result, whether by increasing the vote share of the favoured candidate, depressing the vote share of the rival candidates, or both.”¹ In addition electoral fraud includes artificial attempts to bloat registries, infractions with respect to electoral laws, classic “stuffing and burning” of ballots, vote buying or undue influence over electoral commissions². To this effect, it makes it difficult to translate people’s preferences into outcomes. In highlighting the adverse effects of electoral fraud Long (2010) fraud can be costly because it produces unintended and violent domestic outcomes such as protest and violence from angry citizens who view the race as illegitimate that one or both parties may want to avoid³. In addition, fraud vitiates the delegation relationship between citizens and elected leaders and may unfairly result in the re-election of leaders who voters otherwise want to toss out of office due to performance. In rectifying electoral anomalies Kuhne asserts that choosing the appropriate Electoral System as well as establishing a functioning Election Commission and Complaints Mechanism is indispensable for ensuring sufficiently free and fair elections⁴. In order address the anomalies political actors in Zimbabwe revised the

¹ Electoral Fraud, en.wikipedia.org/wiki/Electoral_fraud, date accessed 3/12/2014

² James D Long (2010) *Electoral Fraud and the Erosion of Democratic Gains in Kenya*. San Diego: Centre for the Study of African Political Economy, Michael Alvarez, Thad E Hall and Susan D. Hyde (2008), *Electoral Fraud: Detering and Detecting Electoral Manipulation*. Amazon Books.

³ James D Long (2010) *Electoral Fraud and the Erosion of Democratic Gains in Kenya*. San Diego: Centre for the Study of African Political Economy.

⁴ Winrich Kuhne (2010) *The Role of Elections in Emerging Democracies and Post Conflict Countries: Key Issues, Lessons Learned and Dilemmas*. International Policy Analysis, Berlin: Fredrick Erbert Stiftung

Electoral Act as a way of trying to resolve concerns that had been raised by academics, commentators and concerned institutions. Participation of political actors political parties who in this case are key architects and drivers in rigging as they seek to capture state power- to agree on what they consider as the most feasible and fair way of dealing with the Electoral Fraud.

III. HISTORICAL BACKGROUND TO ELECTORAL FRAUD IN ZIMBABWE

Issue of vote rigging has been cited as the most callous order of the day when it comes to elections in Zimbabwe (ZESN 2013, Makumbe and Compagnon 2000, Sokwanele 2013). The act of stealing elections is not a phenomena which can be confined to Zimbabwean elections alone, as elections the world over are either rigged or have anomalies. Various methods of vote rigging have been exposed throughout the elections held in post independent Zimbabwe. A mishmash of deliberate actions on the part of biased election officials and gross administrative error or general ineptitude of the institutions running the elections which have been blamed for election malfeasance in Zimbabwe. To this effect, the following manifestations of electoral fraud have been identified and exposed as they show the multifacetedness of electoral fraud as practised in different localities across Zimbabwe. Among them include: vote buying, control of institutions by the incumbent, violence as a tool of control and win over votes, gerrymandering, legislative framework (Public order and Security Act, Broadcasting Act giving sole authority of public information to ZBC, Access to Information and Protection of Privacy Act (AIPPA), individuals conducting the elections (elections agents assisting disabled and the elderly), bribery of the elections agents, voters themselves- attempting to voting twice, individuals seeking office-intimidation and coercion and supporters- local and international agents.

In this vein, deliberate disfranchisement of voters may also occur because of other kinds of official misconduct which encompass malpractices such as turning away voters already in line when polls close; intimidating or misinforming voters when they arrive at the polls; producing misleading or poorly designed ballots; failing to provide bilingual voting materials as required by law, failing to upgrade or repair voting systems in specific election districts and by other means⁵. In addition, there is overall disfranchisement of voters through antiquated voting systems, errors mismanagement of registration, intimidation and harassment is a far bigger problem today than traditional forms of election fraud. These electoral initiatives relentlessly seek to satisfy the need for a particular party or candidate to outpace, outwit and outshine their electoral opponents. It should be noted that without being able to sort out the above mentioned issues elections in Zimbabwe will always be dogged by ceaseless contestations and serious flaws.

IV. DEALING WITH ELECTORAL FRAUD

Section 4A of Chapter 2:13 of the Electoral Act provides for the establishment of the Electoral Commission- an independent body to oversee the electoral process rather than it being manned by a senior civil servant often controlled by a political appointee in form of a minister. ZEC is charged with the constitutional mandate of promoting fairness and transparency in the electoral processes in Zimbabwe. In a bid to enhance its operational efficiency, ZEC is headed by some Commissioners. The appointment of Commissioners to ZEC is done by the President of the Republic of Zimbabwe who is also a candidate in the elections. This clause does not guarantee total independence of the Commission as it still reports to the President. The Commissioners should thus be appointed by the Parliament as this will enhance their independence as it will be subjected to parliamentary oversight rather unilateral presidential oversight. The Act also guarantees security of tenure of the Commissioners unless in exceptional circumstances of gross misconduct, incapacity, incompetence as envisaged by section 187 of the New Constitution. The Commissioners should enjoy unfeigned independence in the discharge of their duties as enshrined in sections 10A and 11. In this regard, the commissioners should conduct their duty without fear of facing adverse consequences for decisions they make.

Independence of the Commission is also seen by the Commission's ability to mobilise and control its finances. Section 12 talks about the diverse sources of funds and finances that should accrue to the Commission and these include moneys appropriated by the Act of Parliament, fees and charges and other income, proceeds of any monetary penalties, nomination fees paid by candidates as well as donations among other sources. Such a broader pool of revenue sources will enhance its operational efficiencies. However, it is imperative that ZEC be well-resourced to this effect it must siphon or draw funds directly from the Consolidated Revenue Fund in order to ensure that it effectively and independently carries out its duties.

In addition, section 10A sets out the provisions for guaranteeing the independence of the Commission. To this effect, the Commission should deliver its duties and responsibilities wholly without any interferences, hindrances and obstructions by external players such as the State, private persons/ or private voluntary organisations among others. The Commission should be given adequate assistance and reasonable protection to

⁵ Lorraine Minnite (2003) *An Analysis of Voter Fraud in the United States*. Washington D.C: Congressional Press.

ensure that it operates independently, impartially and professionally. Furthermore, the employees of the Commission should not directly or indirectly interfere with the voting process nor align themselves to any political parties. As an efficient entity ZEC should relentlessly work to eliminate any forms of institutional bias in the management of elections.

Section 37 of Chapter 2:13 of the Electoral Act states that Constituency delimitation is to be done by the ZEC, this initiative will go a long way in the avoidance of gerrymandering. Delimitation has in the past been used to dilute areas where the ruling party was losing a case in point was Harare South which was diluted by nearby resettlement areas such that the opposition MDC could have a clean sweep in terms of election victories in Harare. ZEC will consult with voters, political parties and other interested bodies before carrying out the delimitation exercise however, the final decision lies with the Commission. Part IXA 40C of the Electoral Act of 2012 gives ZEC mandate on voter education. However, the commission does allow accredited bodies to also exercise voter education. In this regard, proper delimitation of constituencies and stakeholder consultations will enable transparent electoral processes to take place.

In a bid to fulfil transparent and accountable electoral practices ZEC announces the results of any election or referendum as well as submits a report on the conduct of elections to the key electoral stakeholders (Political parties, the President, the Senatorial president, the Speaker of the House of Assembly) [Section 13 of the Electoral Act]. This initiative is useful given the protracted delays in publishing the 29 March 2008 election results. In addition to the enhancement of transparency and accountability of the Commission, section 6 (3) notes that there must be unfeigned access of the voters roll by any person upon request and payment of the prescribed fee. However, the general populace might not have the adequate money to pay for the processing and extraction of the printed or electronic voters' rolls. In addition, to compound chances of manipulation of the electronic voters' rolls they are presented in a format that prevents them from being tampered with or altered. There must be continuous uninterrupted registration of voters. Section 36 subsection 1 (2) provides for the non-interruption of continuous registration and the extension of the period of new registration. This will help to grant the voters sufficient time and space to register as well as accommodating them in their diverse localities. In the previous elections registration exercises were alleged to have been marred by ineffable interruptions as those areas that were perceived to be strongholds for opposition parties delayed starting the process, as well as reports of members of the opposition parties were impeded from registering especially in the rural areas were noted, thus locking out other prospective voters⁶. To this effect, the Electoral Act now provides for the incessant and unremitting registration of voters.

In further buttressing the need for openness in the Zimbabwean electoral processes section 62 now provides for the procedure after sealing of ballot boxes, and this procedure outlines who can be inside the polling station after voting. These people include the political party's agents including those roving agents who were in the vicinity of the polling station during the voting process. This initiative ensures that the electoral process is open and transparent to all concerned and is consistent with the "free and fair" provisions in the New Constitution in Zimbabwe.

The voters roll has been an issue in elections in Zimbabwe as the voters roll released to political parties who included either deceased or none existent people with at time none existent physical addresses. Accordingly there have been simmering complaints about the voters' roll being perpetually inaccurate and outdated. Clause five states that the voters roll is under the control of ZEC in both print and electronic than the previous which reside in the registrar's office often accused of manipulating the voters roll to facilitate rigging. Clause six – which enables anyone to inspect the voters roll and making it available to the contesting parties. This clause has proved to be a challenge as the Registrar Generals Office in past elections at times failed to produce the voters roll to the public, this was seen as a tactic used to keep the incumbent in power⁷.

Section 52A highlights issue relating to the publication of the details of the ballot papers. In this vein, political parties and candidates contesting an election as well as election observers are furnished with the information about where and by whom the ballot papers have been or are being printed. In addition, information about the total number of the ballot papers that would have been printed for the election as well as the number of ballot papers that would have been distributed to each polling station and special polling stations. This will

⁶ John M Makumbe (2002) *Behind the Smokescreen: The Politics of Zimbabwe's 1995 General Elections*. Harare University of Zimbabwe Press, ZESN (2013) *Analysis of the amendments to the Electoral Law Introduced by Statutory Instrument 58 of 2013 the Presidential Powers (Temporary Measures) (Amendment of the Electoral Act) Regulations*. Harare: ZESN. , Eldred Masunungure (2009) *Voting for Change*. Harare: SAPES.

⁷ ZESN 2014, Crisis in Zimbabwe Coalition (2013) *Passing of Electoral Act Amendment and Zimbabwe Human Rights Commission Bills Highly Commendable*. Harare: CZC, John M Makumbe and Daniel Compagnon (2000) *Behind the Smokescreen: The Politics of Zimbabwe's 1995 General Elections*. Harare University of Zimbabwe Press.

enable reconciliation to be conducted as well as eliminating chances of inflating the electoral results as was the case with the previous elections where the election results outnumbered the printed ballot papers⁸. The movement of ballot boxes during elections to provincial centres was seen as a major loophole as it was alleged by civil society and the opposition to be the way ballots would be stuffed whilst being transported to the command centres. Part XIII 64 of the Electoral Act states that vote counting based on polling stations so as to avoid manipulation of statistics during transmission. In addition to that, representatives or polling agents of each contesting political party will be available during the voting and counting of the votes (section 95 subsection 5). The Electoral Act of 2012 provides for the enablement of the disabled to choose their representative to assist them in the process of voting and providing safety for the vote of such person in the absence of such person (two ZEC officials, police on duty and a police on duty). In previous elections a disabled member of the public would be accompanied by a relative and would tell the relative or companion which party they wanted to vote for thereby creating room for rigging as the person who might be accompanying the disabled counterpart could not take heed of the preferences of the disabled people as was the case with the 2008 elections.

The 2008 elections saw the Tendai Biti Secretary General of the Movement for Democratic Change formation of Morgan Tsvangirai opening a command centre and announcing election results based on tallies posted outside the polling stations⁹. To avoid creating unnecessary hype amongst the electorate part XIII 68 allows ZEC to be the sole authority that announces the results through the Chief Election Officer. This provision places some limits to the extent to which unofficial results can be announced by an individual other than the election management body. By and large, to elude the pre-emption of results the Commission should ensure that results are declared forthwith after counting and without any delays to prevent any anxieties or concerns. ZESN (2013) asserts that in the past pre-emption of the official declaration has occurred as a direct response to failures to declare results promptly. This justifies the need for promptness in the announcement of election results. Political parties especially in the run up to elections have been fingered in encouraging supporters to be violent and Part XVIII B states that it is the responsibility of political parties desist from violence as people should be persuaded to vote for a certain party and not coerced. To this effect, measures against politically-motivated violence and intimidation of whatsoever form. In addition section 133 K outlines the special penalty for politically motivated violence and intimidation after the investigations, prosecutions and trials of these and related cases have been conducted. Culprits and perpetrators of political violence in addition to the penalty are also prohibited from campaigning or taking any further part in the election. Accordingly, the use of secret ballot is meant to insulate people from outside pressure, undue influence, intimidation, threats, coercion, bribery or even verbal disapprovals of their choice¹⁰. In a bid to do away with the past elections cases of harassment, persecution and even abductions of chief elections agents that were reported after the announcement of their full details by the elections officer. Section 94 now provides for the removal of the requirement of the constituency elections to give public notice of the full names and address of the chief election agent thus giving them security and protection who are always targeted by supporters of opposing candidates.

Furthermore, Part XVIII B also states that special liaison officer and special investigation committee to investigate and deal with violence as violence during elections in Zimbabwe has been a common feature especially in the 21st century. Section 161 states that an Electoral court to handle disputes if they ever arise will be established. Previously election disputes have been handled by Zimbabwe's judiciary which is yet to come up with a verdict of elections held in 2000 and 2002 after they were contested by the opposition Movement for Democratic Change. In addition, in a bid to regulate the behaviour of parties to the electoral process section 160A establishes the code of conduct for political parties. The purpose of this Code is to promote conditions that are conducive to free and fair elections and a climate of tolerance in which electioneering activity may take place without fear or coercion, intimidation or reprisals. In this scenario, all political parties and their members and supporters, and all candidates and their supporters, must promote conditions conducive to free, fair and democratic elections conducted through a secret ballot in a climate of democratic tolerance in which political

⁸ ZESN (2014) *Analysis of the amendments to the Electoral Law Introduced by Statutory Instrument 58 of 2013 the Presidential Powers (Temporary Measures) (Amendment of the Electoral Act) Regulations*. Harare: ZESN, Eldred Masunungure (2009) *Voting for Change*. Harare: SAPES. Crisis in Zimbabwe Coalition 2009, Masipula Sithole and John M Makumbe (1997) *Elections in Zimbabwe: The ZANU (PF) Hegemony and its Incipient Decline*. African Association of Political Science.

⁹ Sokwanele (2013) *The Electoral Act of 2012 and its Prospects in Promoting Sound Electoral Practices*.

¹⁰ Crisis in Zimbabwe Coalition (2013) *Passing of Electoral Act Amendment and Zimbabwe Human Rights Commission Bills Highly Commendable*. Harare: CZC.

activity may take place without fear of intimidation or reprisals. The creation of the code of conduct helps in setting the *modus operandi* as well as the parameters within which political parties operate thereby avoiding political mischief and unhealthy confrontations between and among political party supporters. The absence of an effective system that protects all from unruly elements will always be targeted by some errant opposing party.

Part XXIB 160G states that all political parties must enjoy unhampered access to public media. This eliminates discrimination of other political parties, thus making the electoral campaign machinery asymmetrical and skewed towards the dominant or ruling party that has unrestricted control over the media. To this effect, the public media in Zimbabwe has been monopolised by ZANU PF as the opposition has complained that they have not been allowed to advertise and market their ideas through the public platform.

In addition the Electoral Act provides for the operations of other bodies such as the Human Rights Commission in upholding a favourable environment upon which elections are conducted. The Human Rights Commission which is meant to uphold and oversee human rights related issues before, during and after elections. This initiative has been adopted as result of reports of widespread violation human rights and gross abuse of members of the opposition in the previous elections in Zimbabwe. The period towards the June 2008 Run-off period saw many supporters of the opposition MDC party reportedly being butchered, tortured, maimed, murdered as well as being abducted by some rowdy ZANU-PF youths and members of the central intelligence. Such atrocities have prompted the Electoral Act to empower these human rights related bodies. Cases of violation of human rights during election time were also reported in most African countries in general and Zimbabwe in particular¹¹.

V. GAPS IN THE CURRENT ENVIRONMENT

There are some gaps regarding the translation of the electoral theory into practical aspects underpinning real electoral conduct and practice that is the law as it says and how it is practiced should be upheld. Politicians and leaders tend to be trapped in reverberating rhetoric on the need for democracy and free and fair elections thereby failing to be serious about implementing them¹². The Electoral Act should be fully translated into reality and this should be seen by the full judicious operationalization and implementation of the theoretical provisions contained in electoral legislation.

The Electoral Act is limited as it solely applies to the internal environment, where international actors are involved in Electoral Fraud it cannot limit or control such behaviour. It is imperative that the Electoral Act should not be silent on the regulation of the behaviours of the international players when then the local electoral processes are not immune from this external influence. To this effect, there is need to broaden the scope of this Act to be useful in regulating the behaviour and activities of the international environment.

Vote rigging is a human behavioural problem (vote buying follows the principle of willing buyer and willing seller). How to control the behaviour of human beings has remained a challenge. It appears people do not just give their vote/ or expect to gain vote without corresponding benefits. However, it is prudent to understand human behaviour and how it should contribute to the much needed electoral patterns and outcomes. To this effect, it is needful to bolster the role of observers as this will go a long way in enhancing the veracity and plausibility or authenticity of the electoral processes.

The Electoral Act is not the only legislation that contributes to free and fair elections or removes all aspects of vote rigging. Reforms of various pieces of legislation that undergird the practice of elections is also a prudent initiative towards the curtailment of electoral fraud in Zimbabwe. Statutory provisions and clauses that are prohibitive and restrictive in the realisation of free and fair elections should be struck off and or amended. Over and above, reform is needed in the following legislations in Zimbabwe:

- Broadcasting Services Act (BSA)
- Access to Information and protection of Privacy (AIPPA) (which controls the flow of information)
- Public Order and Security Act (POSA) (which controls the grouping of people for political reasons).
- Political Finances Act (which gives privileges to certain political partners thereby giving the incumbent much resources for political manoeuvring).

Allowing political parties to do voter education impedes upon the need to uphold impartiality in the electoral process. In this scenario, their biased nature causes the voter related information to be biased towards the ideologies of a certain political party the partisan nature of these political parties renders them non neutral in

¹¹ Zimbabwe Human Rights NGO Forum, 'Can the elections in Zimbabwe be free and fair in the current environment?', Harare, 18 March 2008, pp. 4-5. The Forum's answer to the question was that 'it is not possible to hold free and fair elections under the prevailing conditions.'

¹² Alin Rocha Menocal (2013) *Ten Things to know about Elections and Democracy*. London: Overseas Development Institute. , Andreas Schedler (2011) The Menu of Electoral Fraud. *Journal of Democracy*. 13(2) 36-50.

voter education. Even the ZEC officials have their political affiliation rendering neutrality impossible. There is need for a non-partisan body to conduct voter education.

There is need for the purging of the voters roll. The Zimbabwe voters roll has been criticised for being unendingly inaccurate and outdated. There is need for an accurate, up-to-date and clean voters roll. An accurate and a clean voters roll is the quintessence of an encyclopaedic and a translucent voting process. There is need for the custodians of the national records such as the Registrar General's office to give information on any deaths and permanent migration recorded to the Commission on a monthly basis. That way, the Commission will be in a position to come up with an updated voters roll.

It appears vote rigging is as old as elections themselves it part and parcel of the electoral processes. Expending people's efforts in trying to eliminate the old malpractice is at best unprofitable as countries regardless of their levels of development have an inclination towards electoral fraud. In addition, elections alone are but one facet of democracy. Whether they are important in developing countries remains debatable. Given the resources that are needed to conduct elections and the levels of poverty that exist preference must as well be given to promoting the achievements of basic needs rather than the conduct of elections or to improve production of farmers, miners and other formal and non-formal workers.

VI. CONCLUSION

The research has espoused on the environment governing elections in Zimbabwe in as far as electoral Fraud and vote rigging is concerned. Of importance to being the rampant vote rigging mechanisms that have been adopted by political players in Zimbabwe elections, from individual level through institutions governing elections to the international actors. Addressing the problem in Zimbabwe calls for holistic approach that seeks to identifying all loopholes and gaps that can be utilised by electoral fraudsters. Above all, it hinges on appeal to morality, honesty and integrity of participants in elections be they individual voters, individuals running institutions conducting elections, those seeking support to hold political office and the general supporters.

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