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Final Report



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Final Report
EU Election Follow-up Mission to Zimbabwe
2 – 29 May 2022



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ACRONYMS

AIPPA	Access to Information and Protection of Privacy Act
BAZ	Broadcasting Authority of Zimbabwe
BSA	Broadcasting Services Act
BVR	Biometric Voter Registration
CALR	Centre for Applied Legal Research
CCC	Citizens Coalition for Change
CSO	Civil Society Organisation
DPA	Data Protection Act
DPOs	Disabled People Organisations
DRG	Department of Registrar-General
EISA	Electoral Institute for Sustainable Democracy in Africa
ERC	Election Resource Centre
EU EFM	European Union Election Follow-up Mission
EU EOM	European Union Election Observation Mission
FIA	Freedom of Information Act
FVR	Final Voters Roll
ICCPR	International Covenant on Civil and Political Rights
IMT	Inter-Ministerial Task Force
NID	National Identity Card
IECC	Integrity and Ethics Committee of Chiefs
IFES	International Foundation for Electoral Systems
IMT	Inter-Ministerial Taskforce
LA	Local Authority
MDC	Movement for Democratic Change
MDC-Alliance	Movement for Democratic Change -Alliance
MISA	Media Institute of Southern Africa
MPLCs	Multi-Party Liaison Committees
MPOA	Maintenance of Peace and Order Act
NA	National Assembly
NCCs	National Council of Chiefs
NPRC	National Peace and Reconciliation Commission
POLAD	Political Actors Dialogue
POSA	Public Order and Security Act
PREPARE	Pre-Election Pact on Reform
PVO	Private Voluntary Organisation
RPD	Convention on the Rights of Persons with Disabilities
UNDP	UN Development Programme
VR	Voters Roll
ZANU-PF	Zimbabwe African Nation Union Patriotic Front
ZBC	Zimbabwe Broadcasting Corporation
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Electoral Support Network
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZIM-ECO	Zimbabwe Electoral Commission Capacity Building Project
ZMC	Zimbabwe Media Commission

I. EXECUTIVE SUMMARY

An EU Election Follow-up Mission (EFM) was deployed to Zimbabwe from 2 May to 29 May 2022. The EFM was led by Mr. Elmar Brok, former Member of the European Parliament and the Chief Observer of the 2018 EU Election Observation Mission (EOM) and included two independent election experts. The main objectives of the EU EFM were to assess the status of the implementation of the recommendations of the 2018 EU EOM as well as to discuss further steps to advance the electoral reform process in the country. This was the first EFM deployed to Zimbabwe.

The 2018 EU EOM proposed 23 recommendations, aiming, *inter alia*, at aligning the Electoral Act with the 2013 Constitution, strengthening the independence of the Zimbabwe Electoral Commission (ZEC) and increasing its transparency and effectiveness, creating a level playing field and an environment conducive to an inclusive election campaign, reforming the media environment and regulations to fully guarantee the freedom of expression and of the media as well as the independence and impartiality of state-owned media, promoting transparency in the results management process and providing for the right to an effective legal remedy. In total, no proposed recommendation requires constitutional reform, but 13 require amendments of the Electoral Act and other primary legislation, three require reforms to subsidiary legislation (ZEC regulations and other types of delegated legislation), four require operational reforms, two both primary and subsidiary legislation reforms, and one primary legislation and operational reform.

Positively, several actions to undertake a comprehensive electoral reform were initiated following the 2018 elections, both from the government side as well as civil society. The Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution (IMT) developed a draft bill to amend the Electoral Act, which took into consideration the recommendations proposed by all observer teams as well as two draft bills developed by civil society organisations. The ZEC undertook a series of post-election review processes with a variety of stakeholders and compiled its own recommendations for electoral reform that it submitted to the Minister of Justice, Legal and Parliamentary Affairs. However, the Covid-19 pandemic and the subsequent lockdowns caused an inevitable lack of the momentum and a delay in the consultations. The model IMT Electoral Amendment bill is currently under review by the Attorney General's Office. If no significant changes are introduced before it is gazetted or during the deliberations in Parliament, the bill would bring noteworthy improvements to critical stages of the election process and address some weaknesses in the electoral framework previously identified by the EU EOM and other international and domestic observers.

Nevertheless, the EFM noted slow and limited progress in terms of implementation of the recommendations offered by the 2018 EU EOM. Out of the 23 recommendations, at this time two can be considered partially implemented. Actions to address nine of the recommendations are ongoing, mainly linked to the model IMT Electoral Amendment bill, but it is not yet certain whether they will be implemented before the 2023 elections. For eight of the recommendations proposed, it is too early to determine whether they will be implemented in due time before the next elections as no action has been taken yet.

Therefore, a number of important areas remain unaddressed, or their implementation is ongoing but it is not yet clear if and when they will be achieved. It is crucial that deliberations on prospective reforms continue to be inclusive and that amendments to the legal framework are passed on time to allow for legal certainty and adequate preparations for their practical implementation. Important reforms too close to the 2023 elections could have a negative impact on ZEC's ability to incorporate all statutory changes into its preparations.

The electoral reforms have been taking place against the background of a deepening political polarisation. The lack of political dialogue between major political actors might impact the integrity of the general elections. The role of security forces, especially in ensuring proportionate and equitable

application of newly introduced laws, in particular the Maintenance of Peace and Order Act (MPOA), is critical for the security environment of elections, as citizen observers emphasised in the light of the 26 March 2022 by-elections. The lack of accountability for human rights abuses and excessive use of force by security agencies against civilians exacerbate existing tensions.

Key recommendations designed to improve the campaign environment by promoting a level playing field, accountability and transparency have been largely disregarded up till now. Major stakeholders involved in electoral reform, such as the Zimbabwe Election Support Network (ZESN) and the Centre for Applied Legal Research (CALR), refer in this regard to the low level of public awareness as to the relevance of these issues in rebuilding public trust in national institutions and the democratic process in general. The impartial behaviour of traditional leaders and civil servants remains critical for the free expression of the will of voters.

The legal reforms observed in the media sector represent a certain progress towards the harmonisation of media regulations with the 2013 Constitution, most significantly through the repeal of the Access to Information and Protection of Privacy Act (AIPPA) and the introduction of three other laws to replace it. However, the delay in the reform of the broadcasting sector through the amendment of the Broadcasting Service Act maintains doubts about the ability of the Zimbabwe Broadcasting Corporation to secure an independent and inclusive coverage of the elections, as indicated in the observation reports on recent by-elections. In addition, EFM interlocutors expressed concerns of backsliding related to the implementation of licensing practices as well as some newly introduced legal provisions that are not in line with the freedom of expression and media freedoms enshrined in the 2013 Constitution and in international and regional conventions which Zimbabwe has ratified.

The ZEC Strategic Plan 2020-2024 demonstrates a commitment to long term planning, while its self-assessment of operations shows an awareness of shortcomings. Both are related to its internal functioning as well as the electoral operations, which also reflect the vulnerabilities identified by the 2018 EU EOM concerning, *inter alia*, communication with stakeholders, voter registration and voter education, and media monitoring capacity. It is too early to determine whether reforms will be implemented before the next elections. A major improvement in its operational strategy is the acknowledgement of the importance of issues related to gender, youth and people with disabilities, and ZEC's goal to develop a more proactive approach to address inclusivity in the electoral processes.

Finally, the low levels of trust in the election administration continue to permeate the electoral environment. ZEC's limited communication and public outreach efforts, whose improvement is a priority EU EOM recommendation, do not contribute to alleviation of these concerns. Considering the challenging relationship between ZEC and the opposition already manifested since the 2018 elections, the Commission needs to reinforce its communication strategy and adopt a proactive approach to information-sharing, while continuously engaging with all electoral stakeholders in the run up to the 2023 elections.

II. MISSION INFORMATION

An EU Election Follow-up Mission (EFM) was deployed to Zimbabwe from 2 May to 29 May 2022. The EFM was led by Mr. Elmar Brok, former Member of the European Parliament and the Chief Observer of the 2018 EU Election Observation Mission (EOM) and included two independent election experts. During his visit in the country from 16 May to 20 May, Mr. Brok conducted meetings with a wide range of stakeholders, including Government representatives, political parties, independent constitutional bodies, Church representatives, and international organisations.

The main objectives of the EU EFM were to assess the status of the implementation of the recommendations of the 2018 EU EOM as well as to discuss further steps to advance the electoral reform process in the country. This was the first EFM deployed to Zimbabwe.

III. CONTEXT

A. POLITICAL CONTEXT

The 2018 harmonised elections were the first since the stepping down of former President Robert Mugabe after 37 years in power. The EU EOM observed a campaign with political freedoms generally respected. The presidential race between President Emmerson Mnangagwa of the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) and Nelson Chamisa of the main opposition Movement for Democratic Change (MDC)-Alliance was competitive, with a high level of engagement of voters and civil society. This generated expectations that President-elect Mnangagwa¹ would make steps to uphold his campaign promise to break with the legacy of the past by introducing comprehensive political and electoral reforms.²

The abruptly deteriorated post-election environment,³ the disputed outcome of the presidential elections,⁴ and the violent suppression of the January 2019 protests,⁵ followed by a series of attacks on human rights activists, opposition leaders and journalists, increased tensions and raised scepticism about the political will of the Government for reforms. Human rights abuses and excessive use of force have not been prosecuted, as demonstrated by the failure to address the recommendation of the Motlanthe Commission of Inquiry to hold to account those responsible for the 2018 post-election violence.⁶

To address political polarisation and promote a national dialogue, several initiatives were launched in 2019, including the formation of the Political Actors Dialogue (POLAD) by President Mnangagwa. Seventeen leaders of political parties contesting in the 2018 harmonised elections joined the dialogue platform, co-chaired by the National Peace and Reconciliation Commission (NPRC) and the Zimbabwe Gender Commission (ZGC). Boycotted by the leaders of the main opposition MDC-Alliance,⁷ POLAD has been largely unsuccessful in reducing political tensions and bringing up electoral reforms on the political agenda.⁸

There has been a growing public criticism related to the slow reform progress,⁹ which reportedly has been impacted by two major events: first, the suspension for indefinite time of electoral activities following the President's Declaration of State of Disaster in view of the global Covid-19 pandemic in March 2020;¹⁰ and second, the recall of opposition Members of National Assembly (NA) and Local Authorities (LAs), who contested the 2018 harmonised elections under the umbrella of the MDC-

¹ ZEC declared President Mnangagwa winner by receiving 50.8 percent of the vote, while Nelson Chamisa received 44.3 percent.

² Zimbabwe has a history of violent elections with numerous reports of abuses and coercion resulting in lower level of trust in state institution. A persistent problem has been the pervasive link of the ruling party to state structures.

³ On 1 August 2018, security agencies used disproportional force, including live rounds, against civilians to suppress a demonstration by opposition supporters, which evolved into riot, resulting in six persons killed and multiple injured.

⁴ The MDC-Alliance election petition to the Constitutional Court was not successful; Nelson Chamisa has been refusing to recognise the legitimacy of President's Mnangagwa term ever since.

⁵ In January 2019, protests against the economic crisis were violently suppressed by security forces. [Human rights organisations](#) reported of 17 persons killed, numerous injured, and more than 1000 persons arrested. Repression against the population in certain areas of Harare and targeted attacks on opposition and human rights defenders allegedly continued after the demonstrations. Zimbabwe Human Rights Commission, [Press Statement](#), 22 January 2019.

⁶ President Mnangagwa set up a commission headed by former South Africa President Motlanthe to investigate the conduct of security forces during the 1 August unrest and the circumstances leading to the killings.

⁷ Nelson Chamisa of the MDC-Alliance refused to join the forum referring to the disputed outcome of the presidential elections, hence questioning the genuineness of the dialogue. Accord, [Constructive National Dialogue in Zimbabwe](#), 24 June 2019.

⁸ Election Resource Centre, [ERC Bemoans Lack of Comprehensive Approach in Electoral Reforms](#), 6 November 2021. In 2021, President Mnangagwa triggered a [public controversy questioning the purpose of POLAD](#) by handing 19 brand new vehicles to its members.

⁹ The Independent, [ZESN Concerned about the Slow Pace of Electoral Reform](#), 8 October 2021.

¹⁰ On 25 March 2020, ZEC announced the suspension of all election activities until further notice.

Alliance, following a Supreme Court judgement of 31 March 2020 over the leadership of MDC.¹¹ Reportedly, the recall of the opposition parliamentarians impeded the consultative process in the Parliament. Representatives of ZANU-PF who met with the EFM referred in this regard to the need for finding alternative ways for the engagement of the opposition in consultative forums outside the parliament.

In January 2022, following the call for by-elections, the leader of the opposition Nelson Chamisa ended the long period of MDC internal party struggles by founding a new party, the Citizens Coalition for Change (CCC). The party is actively advocating for electoral reforms, but refuses to take part in Government-led initiatives. The party leadership expressed to the EFM its deep dissatisfaction with the current status of electoral reforms. Recently, the CCC announced a Pre-Election Pact on Reform (PREPARE), which constitutes a set of seven critical electoral issues and related minimum preconditions to be met before the 2023 elections.¹²

Restricted democratic and civic space

The Public Health Order¹³ issued by the Ministry of Health contains some excessively broad provisions not necessarily related to Covid-19, such as the prohibition of “*false reporting during national lockdown*” and restrictions on political demonstrations with disproportionate penalties.¹⁴ The UN High Commissioner for Human Rights reacted by issuing a statement warning that Zimbabwe “*should not use the coronavirus pandemic as an excuse to clamp down on fundamental freedoms.*”¹⁵

Another highly contentious issue has been the introduction of the Private Voluntary Organisations (PVO) Amendment Bill in 2021. The main purpose of the Bill is to protect non-profit organisations from being used as cover for the financing of activities by terrorist groups and “*to prevent PVOs from undertaking political lobbying.*” If adopted as gazetted, the amended law will severely restrict the freedom of association, including legitimate activities of civil society organisations, by providing the Government with wide powers to interfere in CSO governance and activities and by preventing them from “*political lobbying*”. In addition, in October 2020 the Cabinet approved the principles of the proposed amendments to the Criminal Law (Codification and Reform) Act, that would reportedly allow the prosecution authorities to initiate criminal proceedings against anyone who, in their discretion, is undermining the country or using false statements to present a negative picture of Zimbabwe to foreign governments. If enacted, these provisions would severely restrict the freedom of expression. In March 2022, the African Charter on Democracy, Elections and Governance, entered into force, which obliges Zimbabwe to “*create conducive conditions for civil society organizations to exist and operate within the law*” (Article 12(3)).

B. ELECTION-RELATED DEVELOPMENTS

According to the 2013 Constitution, by-elections should take place within 90 days after the vacation of a seat arising due to death or recall of members of the bicameral Parliament (NA and Senate) and the LA, unless the vacancies occur within nine months before general elections.¹⁶ ZEC’s decision to lift the suspension of election activities and proceed with holding by-elections on 5 December 2020 was followed by a prohibition of any by-election for the duration of declaration of COVID-19 as an

¹¹ The Supreme Court judgment No. SC 56/2020 declared the 2016 appointment and subsequent election of Nelson Chamisa as President of MDC null and void. Subsequently, the party lost its assets and the right to party funding.

¹² The CCC’s “*seven minimum electoral reforms for a free, fair, and credible election in Zimbabwe*” request the right to vote for diaspora, de-politicised state institutions including the ZEC, inclusive voter registration and an accessible auditable Voters’ roll, media and political freedoms, de-politicised distribution of inputs and food handouts, real-time auditable results announcement, and an agreement on the procurement and storage of all electoral material.

¹³ The Statutory Instrument 2020-083 (Public Health Order) was revised multiple times with different types of restrictions.

¹⁴ Part IV, Section 14 of [the Public Health Order](#). Most prominent case of abuse of the regulations on “*false reporting*” has been the arrest of journalist Hopewell Chin’ono, who was imprisoned for 45 days for allegedly publishing “*false information*” on Twitter.

¹⁵ News.un.org: [Zimbabwe: Covid-19 must not be used to stifle freedoms](#), 24 July 2020

¹⁶ Section 158(3) of the 2013 Constitution.

epidemic disease by the Ministry of Health.¹⁷ Notably, the Zimbabwe Human Rights Commission (ZHRC) and a number of CSOs expressed concerns that the indefinite suspension of the by-elections was not consistent with the provisions of the 2013 Constitution on the right to participate in regular elections and the limitations that could be imposed,¹⁸ as well as Article 25 of the International Covenant on Civil and Political Rights (ICCPR).¹⁹

26 March by-elections

The by-elections were finally proclaimed on 6 January 2022, to be held on 26 March. They were conducted to fill 28 vacant seats in the NA and 122 in the LA.²⁰ Most of the vacancies (19 NA and 78 LA) resulted from the recalls of opposition MDC-Alliance elected candidates. The newly-founded CCC party won 19 of the NA seats and ZANU-PF won 9 NA seats.²¹

Citizen observer groups reported of a campaign environment with opposition activities at times restricted by the allegedly selective application of the Public Health Order and the Maintenance of Peace and Order Act (MPOA).²² As noted by the observers, the police apparently used the Covid-19 regulations and MPOA provisions to curb opposition campaign, mostly by the CCC, and to the benefit of the ruling ZANU-PF. To overturn allegedly arbitrary restrictions of their campaign activities by the police, the CCC filed five court applications to proceed with their rallies, of which three were successful.²³ Based on recorded cases, citizen observers reported of “*a rapid increase in cases of politically motivated violence and intimidation against opposition*”²⁴ with one person dead.²⁵ Furthermore, observers referred to an uneven playing field in the campaign, including partisan involvement of traditional leaders, vote buying and abuse of state resources. Serious concerns were also raised on the integrity of the Voters Roll (VR), the high percentage of assisted votes in some areas, the low turnout, and the lack of adequate communication by ZEC.

Amendments to the 2013 Constitution

The most substantial reform to date has been the passing of the Constitution of Zimbabwe Amendment (No.2) Act, 2021. Except for the extension by two extra parliamentary terms of the provision for the 60 party-list seats for women in the NA and introduction of a ten-seat quota for the party-list proportional representation of youths, the other amendments have been widely criticised by civil society organisations, the legal community and opposition parties as further consolidating presidential powers.

In particular, the Constitution of Zimbabwe Amendment (No.2) Act introduces provisions empowering the President to appoint and remove the Vice-Presidents from office, instead of their direct election and removal by the Parliament that was in force before the Amendment, and to extend the tenure of office for the Chief Justice, the Deputy Chief Justice and judges of the Constitutional

¹⁷ SI 225A/2020 of the Public Health (COVID 19 Prevention, Containment and Treatment) (Amendment) Regulations 2020, No.4.

¹⁸ [ZHRC statement](#) on the suspension of the elections, 22 April 2020.

¹⁹ Section 67(2) (c) and (d) and Section 86 of the 2013 Constitution. Section 86 states that the right to vote can be limited so long as the limitation is “*fair, reasonable, necessary, and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.*”

²⁰ On 7 May, seven new by-elections for LAs also took place.

²¹ CCC lost two NA seats won in 2018 under the umbrella of MDC-Alliance, and ZANU-PF added one more NA seat.

²² [ZESN Report on the 26 March 2022 By-Elections](#), [ERC Pre-Election Statement](#), [ZCC Ecumenical Election Observation Preliminary Findings](#), [Elections Observation Statement](#), [ZCC Ecumenical By-Election Observation Statement, 9 May 2022](#).

²³ See for more information [ERC and ZESN Pre-Election Statement on the Process of the 26 March B-Elections](#), 27 March 2022 and [ERC Pre-Election Statement, 28 March 2022](#).

²⁴ [ERC Pre-Election Statement](#), including cases of violence, p.2

²⁵ Reportedly, violence erupted at a CCC rally on Gokwe on 26 February, when gathered supporters were dispersed by the police. On 27 February in Kweke, violence, allegedly spearheaded by ZANU-PF supporters, resulted in one CCC supporter dead. For more details see [ZESN Report on the 26 March 2022 By-Elections](#), p. 10-11.

and the Supreme Court, for a period of five years after retirement age subject to certification of physical and mental fitness and approval by the President.²⁶ The Constitution of Zimbabwe Amendment (No.2) Act also removed the public interview requirement for the post of Prosecutor General, who is now being appointed solely by the President, and allows for the promotion of sitting judges of the High Court, Labour, Administrative and Supreme Court to a higher court without subjecting them to the public interview procedure. Notwithstanding the presidential grip on the vice-president's position, the Constitutional Amendment (No.2) Act enables the President to influence in a severe and extensive manner the appointment of higher-ranked judges and which could, in turn, limit judicial independence.²⁷

Electoral Reform Initiatives

Following the 2018 elections, several actions to undertake a comprehensive electoral reform were initiated, both from the government side as well as civil society. The Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution (IMT), chaired by the Attorney General, was tasked to prepare draft legislation to harmonise the Electoral Act with the 2013 Constitution, taking into consideration the recommendations proposed by observers' teams.²⁸

Alongside these initiatives, ZEC commenced in October 2018 a post-election review process with a variety of stakeholders, that culminated with a conference in Nyanga in April 2019.²⁹ Among issues discussed was the need to prioritise electoral reforms to ensure alignment of the legal framework with the 2013 Constitution, the enforcement of the electoral Code of Conduct and the promotion of gender parity through the introduction of registration and internal democracy requirements for political parties. ZEC compiled its own recommendations for electoral reform and submitted them to the Minister of Justice, Legal and Parliamentary Affairs.

In a parallel process, civil society organisations (CSOs) undertook significant efforts to advance the electoral reform agenda and engaged with all stakeholders in several rounds of consultations. The Zimbabwe Electoral Support Network (ZESN) submitted a petition to the Parliament in December 2018 and presented its recommendations on proposed amendments to the Electoral Act in February 2019. After consultations with members of Parliament and upon a request by the Speaker, ZESN submitted a model electoral amendment bill in October 2020, that was essentially based on the 2018 observers' recommendations. It was accepted by the Parliament as a working document for subsequent consultations between ZESN and the Parliament Portfolio Committee on Legal and Parliamentary Affairs. ZESN's model bill was later updated, also following consultations with the

²⁶ The Constitution of Zimbabwe Amendment (No.2) Act was signed into law by the President on 7 May 2021, a few days before the Chief Justice would reach the mandatory (before the amendment) retirement age. Acting in accordance with the amended Section 186 of the Constitution, the Chief Justice exercised the option to extend his tenure of office by an additional five years, which the President accepted on 11 May 2021.

²⁷ Litigation ensued following the 2nd Amendment. On 22 September 2021, the Constitutional Court delivered a judgment in *Marx Mupungu v Minister of Justice, Legal & Parliamentary Affairs & 6 Others*. The court set aside a High Court declaratory order of 15 May 2021 that Chief Justice Luke Malaba had ceased to be the Chief Justice on attaining the retirement age of 70 years on 15 May 2021, notwithstanding the purported extension of his tenure by the President following Constitution of Zimbabwe (No. 2) Act of 2021. In the High Court, Musa Kika made the argument that a term limit extension cannot benefit an incumbent, per section 328 of the Constitution. In the Constitutional Court, Musa Kika argued for the recusal of Judges presiding over the matter, based on the *nemo iudex in causa sua* rule, as they had a substantial interest in the matter, in that the judges were parties to the High Court matter and had in fact all noted an appeal which was pending before the Supreme Court. The recusal application was dismissed. Meanwhile, Mr Justice Bharat Patel, one of the two Constitutional Judges to write the *Marx Mupungu* judgment has since benefited from his own judgment by having his one term extended.

²⁸ A Committee for Political and Electoral Reforms at the Cabinet level was also set up but has been largely inactive.

²⁹ A total of 150 representatives of political parties, civil society, government departments and statutory institutions, media organisations and development partners participated in the conference, held from 10 to 12 April 2019.

Independent Commissions of Chapter 12,³⁰ representatives of the three parliamentary parties³¹ and the Political Actors Dialogue (POLAD).³² The final version was shared with the Speaker of Parliament as well as the Chairperson of the Portfolio Committee of Justice, Legal and Parliamentary Affairs, as well as representatives of the Ministry of Justice, Legal and Parliamentary Affairs and of civil society on a meeting in Kariba on 29-30 May 2022.

Likewise, Veritas Zimbabwe also developed a model electoral amendment bill in 2018 which was discussed with members of Parliament and civil society. Other consultations were organised by the Election Resource Centre (ERC), which, *inter alia*, facilitated a three-day electoral reform workshop for the Political Actors Dialogue (POLAD) in Nyanga in May 2021.³³ Efforts to bring the parliamentary political parties to dialogue on electoral reform were also undertaken by the Zimbabwe Institute (ZI). However, against the background of deepening polarisation after the 2018 elections, inter-party dialogue was not achieved and hence only unilateral consultations between each party and the ZI took place.

In December 2021 the IMT invited a number of CSOs, along with representatives of government departments, to a final “write workshop” during which the model draft bills developed by ZESN and VERITAS were reviewed, so as to incorporate elements of both proposals to a draft Electoral Amendment bill to be introduced to Parliament.³⁴ The model IMT Electoral Amendment bill that was produced, incorporating several provisions from the other two model bills, is presently at the Attorney General’s Office and it should be gazetted following examination and possible amendments by the Cabinet Committee on Legislation. Regrettably, as EFM interlocutors referred to, the amendment of the Electoral Act was not prioritised in the legislative agenda of the parliamentary sessions, which is evidenced by the slow pace of the reform process up to date.

The Minister of Justice, Legal and Parliamentary Affairs informed the EFM that the bill will be brought to the Cabinet Committee and then to Parliament by the end of July, with a plan to enact it by December 2022. However, concerns remain on whether the Electoral Amendment bill will be supported by a consensus between the ruling party and the opposition. The short period left between its planned publication in the Government Gazette and enactment might lead to an expedited parliamentary review process before the bill is sent to the President for assent, and in such case a piecemeal approach to reforms cannot be excluded.³⁵ In addition, protracted legal uncertainty of the rules of the upcoming elections might not allow sufficient time to the ZEC for comprehensive regulation of the statutory changes and their implementation, which could have an impact on uniform application at all levels of its structure. Adoption of widespread and substantial legal reforms in the

³⁰ Chapter 12 of the 2013 Constitution establishes five independent commissions: the Zimbabwe Electoral Commission, the Zimbabwe Human Rights Commission, the Zimbabwe Gender Commission, the Zimbabwe Media Commission and the National Peace and Reconciliation Commission.

³¹ ZESN conducted a five-day workshop in Bulawayo with representatives of ZANU-PF, CCC and MDC-Alliance during which the draft model bill was discussed, though in parallel platforms due to parties’ refusal to cooperate.

³² The thematic areas of the draft Electoral Act Amendment bill where consensus was not reached with POLAD, were related to the diaspora voting, the scope of citizens who can enjoy special voting rights, the composition of the observers’ accreditation committee and the role of the Minister in approving ZEC’s regulations; furthermore, the highly divisive subject of political parties’ regulation and campaign financing.

³³ A total of 20 participants attended this workshop, including representatives of political parties as well as of the Ministry of Justice, Legal and Parliamentary Affairs. Among the issues agreed by the participants were the access to the Voters Roll, establishment of the Multi-Party Liaison Committees (MPLCs) throughout the electoral cycle, ZEC’s empowerment to ensure compliance by the public broadcaster of airtime allocated to electoral contestants and the formal regulation of ballot paper design. No consensus was reached on issues related to the diaspora voting.

³⁴ The following civil society organisations participated in this meeting: ZESN, Veritas, ERC, Women’s Academy for Leadership and Political Excellence (WALPE), NGO Forum and Women and Law in Southern Africa (WLSA).

³⁵ According to the Parliamentary Standing Orders, a Bill may be fast tracked where a motion to do so is given and is agreed on. However, it is required that the mover of the motion has given prior notice and the motion then appears on the order paper. The motion suspends the Standing Orders normally applicable to sitting hours and time-limits for reporting on Bills by the Parliamentary Legal Committee (PLC). There is no specific law on public hearings, but it seems to have developed to become custom; therefore it could be possible to proceed without consultation or with the most minimum consultations.

last six months before the elections would also deprive electoral contestants and voters of the opportunity to become familiar with the new rules in a timely and sufficient manner.³⁶

Analysis of proposed amendments to the Electoral Act

Aiming to align the Electoral Act with the 2013 Constitution and to eliminate inconsistencies within different provisions of the Electoral Act resulting from numerous prior amendments, the model IMT Electoral Amendment bill contains 90 clauses that propose to amend some 93 sections of the Electoral Act. It includes notable advancements, which, if adopted as such, would address some of the shortcomings identified by all observers' missions.

Some of the key improvements of the model IMT Electoral Amendment bill are provisions that enhance the independence of the ZEC by removing the requirement for ministerial approval of ZEC's regulations before being published in the Gazette. Other proposed amendments empower ZEC to adopt regulations on the manner that boundary delimitation is conducted and on the procedure for determining relevant complaints; these provisions, if adopted, would clarify ambiguities in the legal framework in this regard.

The draft IMT bill also increases the transparency of the process, by introducing provisions to make the VR available to political parties within a period of two days following the closure of the VR and to candidates within two days following nomination, and by requiring ZEC, in compliance with any law relating to the provision of access to information, to establish voluntary or mandatory mechanisms facilitating the exercise of this right to any electoral information which must be made accessible by the public. The draft bill further repeals overly restrictive provisions on voter education activities conducted by other stakeholders than the ZEC, so as to guarantee the freedom of expression enshrined in the 2013 Constitution. It also expands postal ballot to anyone not able to vote physically on a polling station, in particular to people managing essential services, and those hospitalised and living with disabilities.

With the ostensible purpose to improve the effectiveness of the Multi-Party Liaison Committees (MPLCs) and to enhance expedient conflict resolution between political parties, the draft IMT bill also adds two new levels of MPLCs and requires MPLCs to meet regularly during the election period but in any case, at least once a week. Other amendments would oblige ZEC to make regulations prescribing codes of conduct for traditional leaders, civil servants, members of disciplined forces, journalists and media operators in relation to elections and would provide for the enforcement of the codes of conduct by empowering ZEC to institute civil proceedings for relevant contraventions. The draft IMT bill also takes steps to strengthen the integrity of the vote, by introducing a provision permitting the Electoral Court to disqualify candidates and their agents, as well all members of political parties, who are convicted by any court of criminal offences that constitute electoral malpractices.

A time limit introduced by the draft bill, after which nominated candidates can no longer withdraw their candidatures, and a subsequent repeal of the sections of the Electoral Act that allowed for withdrawal at any time before polling, would facilitate the electoral preparations by removing an unnecessary burden to the election administration to inform voters and to ensure that the said candidate's name is removed from the ballot paper.

Aiming to ensure electoral justice and compliance with the 2013 Constitution, the draft IMT bill also introduces a provision requiring that reasonable and appropriate time limits must be established by the Act for the proceedings, hearing and determination of pre-election applications filed at the High and the Electoral Courts, for matters to be completed and court decisions rendered well in advance of Election Day. Finally, a new provision extending legal standing to political parties, ZEC and "any

³⁶ Pursuant to the Venice Commission *Code of Good Practice in Electoral Matters*, "the fundamental elements of electoral law should not be open to amendment less than one year before an election."

other person who can demonstrate a substantial and particular public interest in the outcome of the petition” to file election petitions further upholds the right to an effective remedy. Protection of voters’ rights is further strengthened in the model IMT Electoral Amendment bill by repealing a provision in the Act that limits the submission of administrative complaints only to those related to voter registration and by introducing a new clause allowing for “any person aggrieved by a decision or conduct of any employee of the Commission in the discharge of his or her functions” to lodge a complaint with ZEC.

Notably, the amendments included in the model IMT Electoral Amendment bill predominantly align with those proposed by the ZESN and Veritas draft bills.

C. INSTITUTIONAL CONTEXT

The ZEC is composed of a Chairperson and eight commissioners, appointed for a six year mandate, renewable once.³⁷ Four of the eight Commissioners other than the Chairperson must be women. ZEC’s Chairperson was sworn in on 1 February 2018 after the resignation of the former chairperson. Six Commissioners were appointed on 6 July 2016, after the expiration of the mandate of their predecessors, and only two will be eligible for reappointment after the expiration of their mandate in 2022, while the other two were appointed in November 2021.

The timely development of the ZEC Strategic Plan 2020-2024³⁸ demonstrates a commitment to long term planning, while its self-assessment of operations shows an awareness of shortcomings that need to be addressed. Main challenges identified by the ZEC include, *inter alia*, its weak internal communication and overly bureaucratic processes, ineffective continuous voter registration, poor communication strategy towards stakeholders, lack of implementation of continuous voter education campaigns and its limited media monitoring capacity.

Additionally, the priority areas indicated by ZEC reflect the observers’ recommendations and include ZEC’s cooperation with the Executive and the Parliament on the legal reform proposals, institutional strengthening and provision of e-services to stakeholders, voter registration exercise targeting groups of low registration and correction of anomalies related to voters’ addresses, targeted voter education strategy, institutionalisation of stakeholder engagement and more effective public relations strategy. Moreover, ZEC refers to the lack of accountability in campaign finance and of legislative measures to monitor the use of state resources and indicates its intention to focus on policy advocacy on required legal changes to address them. A major improvement in comparison to the previous Strategic Plan is the acknowledgment of the importance of issues related to gender, youth and people with disabilities, and its goal to develop a more proactive approach to address inclusivity in the electoral processes.³⁹

Since the adoption of the Strategic Plan, the Covid-19 pandemic created additional challenges to the electoral process. In response to these, ZEC adopted a Covid-19 policy in September 2020 that sets out clear guidelines on how the elections and other electoral activities would be conducted within the pandemic without exposing those involved to health risks. A review of this policy is planned to be conducted before the 2023 elections.

The low levels of trust of electoral stakeholders towards the election administration continue to permeate the electoral environment, whereas ZEC’s limited communication and public outreach efforts do not contribute to the alleviation of related concerns. Considering the challenging relationship between ZEC and the opposition already manifested during the 2018 elections, the

³⁷ Chapter 12 Section 238 of the Constitution of Zimbabwe. The Chairperson, who must be a judge or former judge of the Supreme or the High Court, is appointed by the President after consultation with the Judicial Service Commission and the Parliamentary Committee on Standing Rules and Orders. Eight commissioners are appointed by the President from a list of not fewer than twelve nominees submitted by the Parliamentary Committee on Standing Rules and Orders.

³⁸ [ZEC Strategic Plan 2020-2024](#).

³⁹ The set-up of a Research and Diversity department in 2019 and its active engagement with CSOs led to the development of a Gender and Inclusion Policy which seeks to guide the gender mainstreaming of the Commission.

Commission needs to reinforce its communication strategy and adopt a proactive approach to information-sharing, while continuously engaging with all political parties and electoral stakeholders in the run up to the 2023 elections.

D. EU ACTIONS ON EOM FOLLOW-UP

Following the publication of the 2018 EU EOM Final Report, the EU monitored the status of the proposed recommendations and identified ways of providing support for their implementation, including assistance to institutions and organisations involved in electoral reform. Subsequently, the EU provided support to the Zimbabwe Electoral Commission, the Parliament of Zimbabwe, the Zimbabwe Electoral Support Network (ZESN), the Election Resource Centre (ERC), the Centre for Applied Legal Research (CARL), the Zimbabwe Lawyers for Human Rights (ZLHR) and other civil society organisations as well as independent institutions including the Zimbabwe Human Rights Commission (ZHRC).

Furthermore, the EU has continuously advocated for the implementation of the 2018 EU EOM recommendations through regular political dialogue with the authorities as well as coordination among other stakeholders involved in electoral assistance (see section on Chapter V. *Ongoing and Planned Donor Support*).

IV. IMPLEMENTATION STATUS OF EU EOM RECOMMENDATIONS

A total of 23 recommendations were formulated by the 2018 EU EOM, out of which ten are priority ones, linked to: a) independence of the ZEC, b) effective/timely information from ZEC to electoral stakeholders and the wider public, c) voter registration, d) incumbency advantages and use of state resources, e) impartiality of state-owned media, f) aligning the Electoral Act with the 2013 Constitution, g) develop regulations for political party financing, h) reinforcing the security of the ballot, i) hold regular meetings of the Multi-Party Liaison Committees throughout the electoral process, and j) enhance transparency and verifiability of the results management process. In total, 15 recommendations require amendments to the Electoral Act and other relevant legislation, four require administrative change, two both legal and administrative change and two ZEC operational reforms.

The EFM noted slow and limited progress in terms of implementation of the recommendations offered by the EU EOM. Out of the 23 recommendations, at this time two can be considered partially implemented. Actions to address nine of the recommendations, three of which priority ones, are ongoing, but it is not yet certain whether they will be implemented before the 2023 elections. No action has been taken to implement eight of the recommendations proposed.

Several EFM interlocutors indicated the lack of political will for the implementation of the recommendations requiring legal reforms. With regards to the Electoral Act, the EFM assessment shows that a number of recommendations are reflected in the model IMT Electoral Amendment bill, without prejudice of the finally gazetted bill. The EFM welcomes ongoing efforts by the authorities, civil society and political parties to push this process forward in an inclusive and timely fashion. On the other hand, while broad reforms on the media sector have been made that constitute a positive development, such as the licensing of community radios, the repeal of the restrictive AIPPA and the adoption of new laws, their implementation up to date has not led to a genuine opening of the media space that would enhance diversity and plurality. Positively, ZEC initiated some operational reforms but as their implementation is ongoing, their overall impact can only be assessed at a later stage and mostly during the 2023 electoral period.

The detailed overview of the state of implementation of the EOM recommendations is provided in the matrix at the end of this report.

A. LEGAL FRAMEWORK

The 2018 EU EOM recommended to **align the provisions of the Electoral Act with the 2013 Constitution so as to fully guarantee the right to vote to homebound voters, those in institutions and on duty on polling day, as well as the provisions related to reinforcing of the independence of ZEC in relation to its responsibility for its own regulations, voter registration and accreditation of observers** (priority Rec.#1). The implementation of this recommendation necessitates the amendment of some provisions of the Electoral Act. The draft IMT bill includes a provision to expand postal ballot to anyone not able to vote physically on a polling station, in particular to people managing essential services, and those hospitalised, in penitentiary institutions and living with disabilities. This provision, if adopted, would align the Electoral Act with the Constitution and would fully address the 2018 EU EOM recommendation.

B. BOUNDARY DELIMITATION

The 2018 EU EOM recommended to **conduct constituency delimitation in good time prior to the next elections. 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** (Rec. #2).

The 2013 Constitution stipulates that the delimitation exercise should be conducted once every 10 years on a date fixed by the ZEC so as to fall as soon as possible after a population census. During the deliberations on the Constitution Amendment (No.2) Bill, clause 12 of the Bill would have amended section 161 of the Constitution to remove the link between delimitation and population censuses, but finally this clause was omitted. However, the Census and Statistics Act was amended in 2020⁴⁰ so as to align the conduct of decennial national censuses in a manner that would enable ZEC to take into account census data when delimiting electoral boundaries every 10 years, as required by section 161(1) of the Constitution. Of note is Section 12(4) of the Census and Statistics Act, which amended the time of conducting the population census, stipulating that “*Notwithstanding that the ten-year period from the census of 2012 has not yet expired, the next census shall be taken so as to be completed by the 1st July, 2021, and thereafter a census shall be taken every ten years from that date.*” The aim of this amendment was to afford ZEC ample time to delimit electoral boundaries in accordance with census data. Despite this amendment, the census was not conducted in 2021 as prescribed in the Act, due to preparations being affected by the Covid-19 pandemic.⁴¹ The 2022 Population and Housing Census only started on 21 April 2022 and the collection of data was completed on 5 May.

As the 2018 EU EOM noted, constituency boundaries remain unchanged since the 2008 elections. Considering population movements over the years, the current electoral boundaries were no longer representative of the geographical distribution of the voters, since the last population census was conducted in 2012. For the new boundaries delimited to apply to the 2023 elections, the delimitation exercise should be completed at least six months prior to the elections, as Section 161(2) the 2013 Constitution prescribes.

The *Delimitation of Constituencies, Wards and other electoral boundaries Notice* was gazetted on 24 May 2022, stipulating that the delimitation process will start on 1 June and continue until the culmination of the drafting of a preliminary report which should be no later than 31 December 2022. The Notice further informs that for the purpose of delimitation, the VR shall be deemed to be closed

⁴⁰ The Bill was gazetted on 12 June 2020 and passed on 4 September 2020.

⁴¹ See http://www.xinhuanet.com/english/africa/2021-05/19/c_139955430.htm

on 30 May 2022, but will remain open for continued registration for any by-elections and the 2023 general elections.

The EU EOM recommendation on boundary delimitation has not been implemented through the adoption of new law. Therefore, as the Electoral Act is silent on the modalities of the delimitation exercise and does not provide adequate legal mechanisms to allow for improved transparency and accountability, important challenges remain. Specifically, it is unclear whether and how the consultation of electoral stakeholders will be conducted, as Section 37A of the Electoral Act states that “*When fixing or reviewing the boundaries of constituencies and other electoral divisions, the Commission shall, so far as is practicable within the time available, entertain representations from voters, political parties and other interested persons and bodies likely to be affected by the decision made by the Commission.*” The absence of explicit procedures for the conduct of the delimitation may lead to protracted litigation that could also impact the timeline of the exercise. The model IMT Electoral Amendment bill proposes to empower ZEC to adopt regulations on the manner that boundary delimitation is conducted and on the procedure for determining relevant complaints concerning delimitation; this suggested provision would clarify some ambiguities in the legal framework but does not necessarily provide for consultations with electoral stakeholders, as recommended. If adopted as such, it could partially address the 2018 EU EOM recommendation #2, but it would be applicable only after the ongoing delimitation exercise.

If the boundary delimitation is finalized by December 2022 as per the current plan or at least six months before polling, and is sufficiently inclusive and transparent, it could promote the principle of the equality of the vote. Finally, it will be important for ZEC to ensure that the demarcation process is sufficiently explained to all stakeholders to guarantee that it is not perceived to be politically motivated as well as to rebuild trust in the electoral management body.

C. ELECTION ADMINISTRATION

In its final report on the 2018 elections, the EU EOM addressed four recommendations to the election management body, three of which are priority ones. The first suggests **strengthening ZEC’s independence so that it is free from government oversight in the approval of its regulations**, for which the amendment of the Electoral Act is necessary (priority Rec. #3). In its interaction with the EFM, ZEC supported that “*the involvement of a Ministry in the approval of certain legislation does not take away the independence of the Commission*”, but noted that “*the use of the word “approval” has been misconstrued as undermining the independence of the Commission.*” Nevertheless, the model IMT Electoral Amendment bill proposes, in article 84, the removal of the requirement for ministerial approval of ZEC regulations, and also contains some other provisions reinforcing ZEC’s independence.⁴² Therefore, if adopted as such, it would implement the EU EOM recommendation.

The holding of more frequent meetings of the Multi-Party Liaison Committees (MPLCs) throughout the entire electoral process, as an effective conflict resolution tool for political parties and an effective forum for reporting on non-compliance with the Code of Conduct, is also a priority recommendation (priority Rec. #4). It does not require any legislative change as the Electoral Act foresees, in Section 160B, the formation of MPLCs at national, constituency and local level at any date on or after the beginning of the period of six months before the end of the five-year term of Parliament. ZEC took positive steps by engaging stakeholders already in August 2021 at the provincial level, even before the by-elections were proclaimed, while in Harare ZEC was holding monthly meetings with civil society organisations and political parties. Once the by-elections were

⁴² Such as the removal of the legal requirement for obtaining Ministerial approval for the dismissal of the Chief Elections Officer, as well as of the requirement stipulated in Section 13 for the ZEC to submit its report on the conduct of elections and referenda to the President and the Minister (as well as to the President of the Senate and the Speaker of the National Assembly), and requiring the report to be submitted only to the President of the Senate and the Speaker. Both amendments reinforce ZEC’s independence to conduct its duties.

called, MPLCs were formed in January 2022. Nevertheless, EFM interlocutors criticized the absence of constructive approach and genuine engagement by ZEC during the national-level MPLC meetings that would encourage open discussion and address stakeholders' concerns, as well as the late invitations to these meetings. On a positive note, the ZEC Chairperson informed the EFM of its intention to keep MPLCs activated for the boundary delimitation exercise with monthly meetings. This could be a positive development; however, it is too early in the electoral cycle to determine whether this recommendation has been implemented, as the overall impact of any progress can only be assessed closer to the next elections. It is noteworthy that in its recommendations following the national post-election review conference in April 2019, ZEC proposed the amendment of the Electoral Act to provide for the existence of the MPLCs throughout the electoral cycle instead of the current six months before elections. Furthermore, the model IMT Electoral Amendment bill also addresses this issue by introducing a provision that requires MPLCs to meet regularly during the election period and in any case, at least once a week.

The 2018 EU EOM also recommended **more effective information-sharing on behalf of the ZEC with election stakeholders on all steps of election preparations with full transparency, making all information of public interest immediately and easily accessible** (priority Rec. #5). The implementation of this recommendation has not been successfully fulfilled. EFM interlocutors from CSOs lamented the absence of responses by ZEC in requests for clarifications regarding inconsistencies on the VR; in addition, ZEC did not make the VR available to all stakeholders ahead of the 26 March by-elections.⁴³ Ignoring stakeholders' concerns regarding the quality of the VR demonstrates a general attitude not conducive to a rapid and genuine external flow of communication. Additionally, there is a need for a redesigned user-friendly website that would provide all essential information to the electorate. Such measures would demonstrate a degree of transparency and would be in line with international standards such as the right of access to information, and would represent a step towards regaining public confidence in the electoral process.

The EU EOM found the legal provisions related to voter education conducted by CSOs to be overly restrictive and recommended **longer and more comprehensive implementation of voter education activities** (Rec. #6). Notably, ZEC conducted two voter information campaigns, one targeting the 2022 voter registration "blitz" and one the by-elections. It is still too early in the electoral cycle to determine whether this recommendation has been implemented, but the issue of financial and human resources, both for ZEC and CSOs conducting voter education, remains a major challenge for the early commencement of these activities. On a positive note, the model IMT Electoral Amendment bill would, if adopted as such, repeal the sections of the Electoral Act that give ZEC a monopoly over the provision of voter education, as it considers that they infringe on the freedom of expression guaranteed by the Constitution, and also includes provisions that would enjoin ZEC to encourage persons and organisations to provide voter education in order to ensure a well-informed electorate.

D. THE RIGHT TO VOTE AND VOTER REGISTRATION

The 2018 EU EOM offered three recommendations on voter registration. These do not require legal amendments but ZEC operational reforms as well as revision of its relevant regulation on voter registration. Noting the under-representation of urban areas compared to rural areas in the 2018 Final Voters Roll (FVR), with Harare and Bulawayo presenting the lowest capture rates, the EU EOM underlined the need to **ensure enhanced voter registration in "under registered" districts of the country to ensure universal and equal suffrage** (priority Rec. #7).

For the impending boundary demarcation exercise, ZEC organised a mobile voter registration blitz in two phases, from 1 to 28 February and from 11 to 30 April 2022, with the set-up of 2713 mobile registration centers in all 210 constituencies. Although ZEC aimed to register one million new

⁴³ See [Election Resource Centre Pre-Election Statement](#), page 3.

voters,⁴⁴ this target was not achieved,⁴⁵ due to some extent to voters' apathy but also to the lack of national identification documents (NIDs) among applicants, and in particular first-time voters.⁴⁶ The absence of coordination between ZEC's voter registration blitz and the Department of Registrar-General (DRG) mobile registration programme for the issuance of NIDs also contributed to the low voter registration rates.⁴⁷ Reportedly, an additional voter registration blitz is being prepared during this year. While ZEC is to be commended for the decision to conduct a voter registration blitz, it did not foresee a geographical target of the exercise that would put special focus on the under-registered urban areas. On the contrary, ZESN and ERC indicated in their observation report of the Phase 1 voter registration blitz, that not only there were more registration centres in rural areas reflecting lower population densities,⁴⁸ but that urban registration centres were open for "*an insufficient number of days compared to rural registration centres to provide individuals in urban areas an equal opportunity to register to vote.*" Therefore, this EU EOM recommendation has not yet been implemented.

Low levels of trust in the quality of the VR were raised by numerous EFM interlocutors from civil society and political parties, who criticized the 31 January 2022 VR that was released by ZEC due to a number of inaccuracies and errors. In particular, an analysis of the VR by the ERC indicated a number of concerning issues, such as voters' addresses to have been updated without any action being taken by them, voters registered at the same polling location in the 2022 VR but at a different polling station than on the 2018 FVR, voters registered at a different polling station and polling location on the 2022 VR even though they have the same address in the 2018 FVR, voters assigned to a different ward despite having the same address in the 2018 FVR.⁴⁹ To date, explanations have not been provided for these shortcomings, which could, however, be related to the update of the addresses' register. Most importantly, ZEC ignored the ERC's request to provide it with electronic copies of the 31 January 2022 VR and of the VR that were used in the 26 March by-elections,⁵⁰ despite a specific provision in the Electoral Act that voters can receive a copy of the VR for a fee.

Although the ongoing harmonisation of the spelling of addresses could be an explanation for some of the shortcomings, ZEC's lack of information-sharing further undermined stakeholders' trust in the quality of the VR and decreased their confidence in the Commission's independence. Whereas voter registration in Zimbabwe takes place on a continuous basis and there is always room for improvement, the 2018 EU EOM recommendation for ZEC to **clarify and resolve anomalies identified in voters' roll and publish results of deduplication process conducted by ZEC or conduct/finalise a new deduplication process** (Rec. #9), has not been addressed up to date.

In order to ensure universal and equal suffrage as well as the right to vote, the 2018 EU EOM further recommended to **review procedures for the identification of voter addresses, to ensure the correct allocation of polling station/ward/constituency for each voter and to ensure a consistent format for the capturing and registration of voter addresses** (Rec. #8). ZEC informed the EFM that it is currently reviewing the voters' addresses, for which it created an "Alpha List" following the

⁴⁴ <https://www.zbcnews.co.zw/zec-targets-to-register-one-million-new-voters/>

⁴⁵ According to ZEC's statistics, a total of 49,672 new voters registered during the Phase 1 and 111,218 during Phase 2 of the blitz. See also: <https://allafrica.com/stories/202203080242.html>

⁴⁶ Access to documentation such as national IDs and birth certificates has been affected not only by the closure of the DRG offices due to Covid-19 restrictions, but, *inter alia*, by the lack of adequate decentralization of DRG offices, the non-computerisation of sub-offices resulted in long processing times, the long queues in the DRG offices in urban areas leading to a limitation of the number of persons served per day, the delays in issuance of national IDs due to the centralization in Harare of the fingerprint verification and red tape in the system of transmitting documents. See Zimbabwe Human Rights Commission [Report on National Inquiry on Access to Documentation in Zimbabwe](#), April 2020.

⁴⁷ ZEC had to postpone the VR blitz initially scheduled for December 2021 as the Registrar-General failed to provide National Identity Documents to citizens. See ERC [Pre-election Statement on the observation of the 26 March by-elections](#).

⁴⁸ 2,132 rural vs 582 urban registration centres.

⁴⁹ See [ERC Analysis of the 31 January 2022 Voters Roll](#).

⁵⁰ For the 26 March by-elections, ZEC prepared a separate Voters Roll for each of the 150 constituencies where by-elections were conducted and shared them with candidates of each particular constituency. However, before the end of the cleaning exercise, the opposition CCC received the nationwide VR. ZEC claimed that it never authorised its release and proceeded to the suspension of its Deputy Director of the Voter Registration and Delimitation department.

first biometric voter registration (BVR) exercise in 2017-2018. As this is a dynamic list, the implementation of this recommendation is ongoing and should be fully assessed when the last updated VR for the 2023 elections is released.

E. POLITICAL PARTIES, POLITICAL PARTY FINANCING AND ELECTION CAMPAIGN

The 2018 EU EOM offered three recommendations related to political parties and the campaign environment requiring legislative measures; these address the issues of level playing field in the campaign (priority recommendation), the partisan behaviour of traditional leaders and civil servants, and campaign finance and expenditure. To date, none of the three recommendations has been addressed.

The uneven playing field and the abuse of state resources for campaign purposes by the ruling party is one of the persistent issues in Zimbabwe, as observed by the 2018 EU EOM. In general, there is a low awareness of the impact of the uneven playing field in the campaign on the credibility of elections and the public trust in state institutions, and particularly among political parties. It appears that the consultative platforms on electoral reforms have not addressed the EU EOM recommendation **to introduce legislative measures, including effective and dissuasive sanctions to mitigate abuse of state resources** (priority Rec. #10). EFM interlocutors considered that the implementation of this recommendation would first require a comprehensive awareness raising campaign. In reference to this recommendation, ZEC expressed the opinion that the Electoral Code of Conduct for Political Parties is a solid and sufficient legal basis regulating the campaign. Notably, the Code of Conduct does not address the abuse of state resources and does not provide enforcement mechanisms. However, the model IMT Electoral Amendment bill addresses the latter issue by including a new section providing for the enforcement of the Code of Conduct. In particular, the new section would empower ZEC to institute civil proceedings for contraventions of the Code and allowing for the penalisation of contraventions by the Electoral Court. If retained, this provision would constitute a positive step by enforcing compliance with the electoral offences of the Code, yet, the issue of abuse of state recourses would remain unaddressed.

The partisan behaviour of traditional leaders in favour of the ruling party is a highly contentious issue in Zimbabwe. The involvement of chiefs in the campaign has been largely tolerated, though this is in a contradiction with Section 281(2) of the Constitution. A High Court Order of 14 May 2018 instructed the National Council of Chiefs and the Minister of Local Government to put in place mechanisms for the establishment of the constitutionally provided Integrity and Ethics Committee of Chiefs (IECC) that would examine complaints related to traditional leaders. The Committee has not been established to date and complaints filed with ZEC concerning traditional leaders are reportedly being forwarded to the Ministry of Local Government. The CALR informed the EFM that the amendment of the Traditional Leaders Act (2007) to provide compliance with the 2013 Constitution through the establishment of the IECC is currently underway, with the perspective to be adopted into law before the 2023 elections. It is however uncertain how the newly established IECC would enforce an effective mechanism to address the EU EOM recommendation for monitoring and sanctioning. The issue of partisan behaviour of civil servants, that was widely observed in the 2018 elections, has also apparently not been considered during the consultative forums on electoral reform. Thus, if the Traditional Leaders Amendment bill is enacted before the 2023 elections, the EOM recommendation **to introduce effective mechanisms for monitoring and sanctioning of partisan behaviour by traditional leaders and civil servants, to help ensure the impartiality of state structures in the election** (Rec. #11) will be only partially addressed.

The recommendation **to promote accountability of campaign finance by introducing explicit regulations on campaign expenditure and the establishment of a relevant independent oversight institutions** (priority Rec. #12), which necessitates amendment of the Political Parties (Finance) Act, has not been included in the legal reform agenda. Reportedly, pro and contra arguments related to the proposal to regulate political parties in Zimbabwe, for example through the establishment of an independent office of Party Registrar, have dominated the consultations with political parties. It

appears also that the huge disparity in campaign financing and expenditures observed in the 2018 elections has triggered arguments about the need to introduce campaign funding for all participants in the elections, without, however, addressing the related need to regulate campaign expenditures.

F. MEDIA

The media sector has experienced the most broad and inclusive legal reforms, with the IMT and the Minister of Information, Publicity and Broadcasting Services reportedly commencing intensive and regular consultations with all relevant actors immediately after the 2018 elections. The reform process is still ongoing and it is too early to assess the impact of the new laws on the media environment, taking under consideration also the concerns expressed by stakeholders about the implementation practices of relevant authorities. The Media Institute of Southern Africa (MISA) Zimbabwe indicates a considerable reduction in the number of media freedom violations.⁵¹ However, media freedom remains precarious, especially with regards to the possibility of adding the so-called “*patriotic*” provisions in the Criminal Law and the PVO Amendment Bill if enacted as gazetted.⁵²

The 2018 EU EOM offered three recommendations related to media reform, two of which require legal reforms. The EFM finds that there is a certain progress towards the **harmonisation of existing media regulations with the fundamental freedoms of expression, freedom of the media and access to information enshrined in the 2013 Constitution** (Rec. #14). Most significantly, the widely discredited Access to Information and Protection of Privacy Act (AIPPA 2002) was repealed in 2019 and replaced by three other laws, namely the Freedom of Information Act (FIA) 2020, the Data Protection Act (DPA) 2021, and the Zimbabwe Media Commission (ZMC) Act 2021.

The FIA puts into effect the right of access to information as enshrined in the 2013 Constitution and provides the Zimbabwe Media Commission (ZMC) with oversight powers, including responsibility to set the regulations implementing the FIA. The Freedom of Information (General) Regulations 2021⁵³ was welcomed by the media community for bringing clarity to some vague formulations of the FIA, with the main criticism related to the high fee for filing an appeal in case of information requested not granted or not responded to on time.⁵⁴ The ZMC Act includes provisions in regard to the ZMC functions and how these are exercised, provides for complaints procedures and, commendably, establishes a Media Fund to assist media through trainings, grants, research and the promotion of awareness of media freedom principles, among others.

The Data Protection Act (initially introduced as the Cyber Security and Data Protection Bill) seeks to “*increase data protection in order to build confidence and trust in the secure use of information and communication technologies by data controllers, their representatives and data subjects.*”⁵⁵ The law introduces a number of new definitions and progressive provisions, related also to cybersecurity and cybercrimes, and amends provisions in the Criminal Law (Codification and Reform), the Criminal Procedure and Evidence Act and the Interception of Communications Act.⁵⁶ There are concerns expressed by the media community that certain new provisions and related implementation practices might not be in line with the human rights and freedom of the media provisions enshrined in the 2013 Constitution; for instance, those related to the criminalisation of the transmission of data messages inciting violence or damage to property and of data messages “*knowing to be false with the intent to*

⁵¹ 22 recorded cases in 2021 compared to 52 in 2020, <https://kubatana.net/2022/05/03/journalism-safety-and-security-a-priority-ahead-of-2023-national-elections/>.

⁵² During the last three years, the rankings of the country in the World Press Freedom Index have been steadily declining – 126 (out of 180) in 2019, 130 in 2020, and 137 in 2021.

⁵³ The Regulations require entities to disclose information on their institutions within six months of the regulations' enactment date, and within six months of the entity's establishment date for those that were or will be established after the regulations' enactment date. The appointment of a specific information officer to deal with the requests is also required.

⁵⁴ The Regulations set the fee to ZWL 5,000 (the equivalent of around 15 Euro).

⁵⁵ Data Protection Act, Part I, 2 (Object).

⁵⁶ In terms of these provisions, the DPA prohibits, *inter alia*, the transmission of data messages inciting violence or damage of property, sending threatening data messages, hacking, spam, cyber-bullying and harassment, posting of sexually explicit content without consent of the data subject.

cause psychological or economic harm,” with harsh penalties foreseen. As the vague terms used in these provisions could lead to abusive interpretation and application by the courts, the DPA is perceived by media practitioners as sponsoring self-censorship. MISA refers with concern also to the tight link of cybersecurity to national security, through the new provisions in the Interception of Communications Act, and the newly formed Cybersecurity and Monitoring of Interception of Communications Centre to be housed in the Office of the President.⁵⁷

The 2018 EU EOM recommendation to **liberalise the electronic media sector, including issuing licenses for community radio stations** has been addressed, however not effectively (Rec. #13). Nearly 20 years after the enactment of the Broadcasting Services Act (BSA), which meanwhile is regarded as obsolete, its regulatory body, the Broadcasting Authority of Zimbabwe (BAZ), opened the procedures for licence applications in 2019. So far, six private TV stations and 14 community radios have been awarded licences.⁵⁸ The licences for community radios play an important role for the promotion of inclusiveness and devolution. However, the centralised licencing procedures⁵⁹ as well as the registration and renewal fees⁶⁰ do not fully support these principles, with applicants given the opportunity to apply only in Harare. Furthermore, while the liberalisation of the electronic media sector is a major step towards increasing media plurality and diversity, EFM interlocutors raised doubts on the fairness of the process, on the ground that the licencing procedures appear to be highly biased in favour of the ruling party, with the majority of licences being awarded to either politically linked to or owned by governmental or military representatives. Thus, while this recommendation has *stricto sensu* been addressed to some extent, a liberalisation of the media in terms of diversity and pluralism has not been achieved so far.

Currently, the IMT is finalising the drafting of the long-awaited Broadcasting Service Amendment bill, the first draft of which was reportedly presented to stakeholders in 2018. The bill is essential for aligning the broadcasting sector with the 2013 Constitution and ensuring equitable coverage of electoral issues in the broadcasting media. There is a serious concern among media practitioners, though, that the bill might not be or might be too late introduced to Parliament before the 2023 elections. It is expected that the bill will bring positive changes in the media sector, such as diminishing the monopoly in the broadcasting sector⁶¹ and addressing the need of foreign investment in the industry.⁶²

There is uncertainty as to what extent the draft Broadcasting Service Amendment bill would address the 2018 EU EOM recommendation on the **need to reform the state-owned Zimbabwe Broadcasting Corporation (ZBC) into a truly independent public service in order to comply to the requirements of impartiality and equitable treatment of all political parties and candidates** (priority Rec. #15).⁶³ According to CSOs’ observation reports on the 26 March by-elections “*state-owned media, including both print and electronic media, continued to show bias towards the ruling ZANU-PF party in their reporting on electoral issues.*”⁶⁴

⁵⁷ MISA, [Analysis of the Data Protection Act](#), 6 December 2021.

⁵⁸ The TV stations received licenses in 2020 but are yet to be on air. Reportedly, only two of the 14 community stations are operational, with the rest facing the risk to have their licences withdrawn.

⁵⁹ Currently, applicants across the country are given the opportunity to apply for licence only in Harare.

⁶⁰ The registration fee was set at ZWL 17,000 (49, 57 Euro) per annum for the ten-year license period, additionally to the ZWL 8,500 (24, 78 Euro) application fee.

⁶¹ For example, by limiting the number of licences an entity may hold and further open up the airwaves through licensing procedures.

⁶² The latter is especially relevant considering that the ZBC is still the main broadcaster in the country. Zimpapers Television Network recently started broadcasting via a paid satellite channel on DSTV, which most Zimbabweans, who do not have access to paid services, cannot afford.

⁶³ Notably, in a judgement of 19 June 2019, the High Court ruled that the ZBC and Zimpapers Television Network (TN) acted in breach of Section 61 of the Constitution (freedom of expression and freedom of the media), during the 2018 harmonised elections by failing to provide dissenting views and divergent views opinions. Furthermore, the High Court ordered ZBC and Zimpapers TN to ensure that they do not show bias in their communications towards one political party or its candidates and that they exercise impartiality and independence in their duties.

⁶⁴ [ERC Pre-Election Statement](#), p. 5.

G. PERSONS WITH DISABILITIES

The 2018 EU EOM noted that Zimbabwe acceded to the Convention on the Rights of Persons with Disabilities (CRPD) in 2013, but no legislation was introduced to align domestic law with the commitments in the Convention. Therefore, it recommended to **incorporate the CRPD into domestic law** (Rec.#16).

A comprehensive National Disability Policy was adopted in June 2021, that includes key standards guided by the provisions of the Constitution and international conventions, and a detailed implementation framework. Among the key activities of the Policy is the formulation of national guidelines for ensuring that persons with disabilities exercise their right to political and public life. As positive development as this may be, it does not have the force of a law. However, work to address the EU EOM recommendation has been initiated through the drafting of a new bill at the initiative of the Ministry of Public Service, Labour and Social Welfare that was submitted to Attorney General's Office in 2020; its finalisation and subsequent submission to Parliament is still pending. Disabled People Organisations (DPOs) informed the EFM that a consultation process took place between January and March 2020, during which DPOs throughout the country were invited to provide their input on the draft bill. Stakeholders shared concerns with the EFM though, that the inclusiveness of the process was not sufficiently ensured as the draft document was not communicated to DPOs in advance to allow for informed input. Also, the invitations to participate in the consultations were reportedly sent too late to allow for sufficient mobilisation of persons with disabilities.

H. POLLING, COUNTING AND COLLATION OF RESULTS

In its 2018 final report, the EU EOM recommended to **review the security of the ballot from printing and deployment to polling stations and on Election Day and procedures to be clearly announced before next elections** (priority Rec. #17). ZEC informed the EFM that during the distribution and transport of ballot papers, candidates and their agents as well as observers are encouraged to be present and to record the serial numbers of ballot papers. No concrete steps have been taken yet by ZEC to establish appropriate procedures for management of ballot security. It remains to be seen if ZEC takes any action towards implementing this recommendation ahead of the 2023 elections.

The 2018 EU EOM found that ZEC's late publication of the guidelines on 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 negatively affecting their trust on the integrity of the collation process. Therefore, it recommended a **coherent results management process that should be better explained to all stakeholders in order to ensure the transparency, verifiability and integrity of the election, and could include publishing the original V11 and V23a/b forms** (priority Rec. #18). In its meeting with the EFM, ZEC shared its intention to enhance, through continuous voter education, the population's knowledge and understanding of the legal time frames of the results management process. However, as ZEC published in its report of the National Multi-Stakeholder Post-Election Review Conference, "*the issue of institutional human and financial resources both for the ZEC and CSOs remain a challenge*".⁶⁵ Therefore it is uncertain how continuous voter education would be implemented.

The ZEC further informed the EFM that it is also exploring the possibility of electronic display of results and their live streaming on Facebook, and that it also submitted a recommendation on reforming Section 110 of the Electoral Act, which provides for the determination and transmission of results, so as to improve the credibility of the process. The ZESN model Electoral Amendment Bill explicitly foresees that polling station returns and the ensuing ward centre returns, constituency returns and provincial returns for the presidential election will be displayed for the public in real time in such manner as may be prescribed, but this is not included in the model IMT Electoral Amendment

⁶⁵ ZEC National Multi-Stakeholder Post-Election Review Conference Report, page 23.

bill. The EFM welcomes that ZEC is considering how to best address this recommendation and highlights the importance of its full implementation, in order to enhance stakeholders' confidence in the impartiality of the election management body and the integrity of the results.

I. ELECTION RESULTS AND POST-ELECTION ENVIRONMENT

The Public Order and Security Act (POSA) 2002, regulating gatherings, processions and public demonstrations, has been largely used in the past to restrict political and civil rights and suppress political opposition by granting wide powers to the police to impose restrictions on gatherings or temporarily prohibit demonstrations (Sections 27(1)). During the 2018 campaign period, POSA was not evoked and the EU EOM observed a peaceful campaign environment with unprecedented level of freedoms respected. However, it was enforced to deploy the military to suppress the protest on 1 August 2018, which resulted in six people killed and 14 injured. The 2018 EU EOM recommended **to amend POSA in order to guarantee that political freedoms are not denied and that powers afforded to security forces are limited to reasonable and proportional measures respecting human rights** (Rec. #19).

POSA was repealed in November 2019 and replaced by the Maintenance of Peace and Order Act (MPOA). The new Act introduced some positive changes, which partially address this recommendation. Most significantly, in compliance with the 2013 Constitution, MPOA stipulates that any deployment of the Defence Forces to assist the police can be authorised only by the President, who is obliged to promptly notify the Parliament (Section 18).⁶⁶ MPOA also introduces time limits to be respected by the police in regards to notification of political parties to their requests for campaign rallies, while the provision on temporary prohibition of demonstrations included in the POSA (Section 27) has been removed.⁶⁷ EFM interlocutors opined that the other MPOA provisions replicate POSA to a great extent in terms of the broad discretion given to the police to regulate campaign and demonstrations, which, as reported by observer groups was allegedly used to restrict opposition campaign activities during the 26 March by-elections.⁶⁸ Thus, additional regulations are needed to guarantee the implementation of the provisions of MPOA in equitable manner and in respect to fundamental rights are needed.

Recommendation #19 also added that **excessive use of force must not be tolerated**. The strong notion of impunity following the killings during the unrests in August 2018 and January 2019 show that this part of the recommendation has not been considered. Besides holding to account perpetrators, in order to address human rights abuses the Government should ensure the independent work of the Zimbabwe Human Rights Commission (ZHRC), of the National Peace and Reconciliation Commission (NPRC) as well as of the ten Provincial Peace Committees established in 2019.⁶⁹

J. ELECTORAL JUSTICE

The 2018 EU EOM offered four recommendations related to electoral disputes, all requiring amendments to the Electoral Act and two also of the High Court Rules.

⁶⁶ In contradiction to Section 213 of the 2013 Constitution, POSA (Section 37) allowed for the deployment of the Defence Forces to assist the police without the President's authorisation.

⁶⁷ A Constitutional Court judgement of 18 October 2018 declared this POSA provision unconstitutional, as being in conflict with the constitutionally guaranteed right "to demonstrate and to petition" and the constitutionally provided "limitation of rights and freedoms" provisions.

⁶⁸ <https://www.hrforumzim.org/publications/an-analysis-of-the-maintenance-of-peace-and-order-bill-2019/>.

⁶⁹ The NPRC is one of the five independent commissions established in terms of Chapter 12 of the 2013 Constitution, mandated to promote national healing, peace and reconciliation. The NPRC became fully operational after the 2018 elections. A 2019 High Court judgement extended the ten-year tenure of the NPRC to 2028, however, the Government appealed against this decision. The ZHRC is another independent commission mandated to protect, promote and enforce human rights.

In particular, the EOM suggested to **incorporate provisions for an administrative complaint mechanism within ZEC which will enable voters to seek protection of their rights** (Rec. #20). The IMT Discussion Paper on the Outstanding Alignment of the Electoral Act with the Constitution recommends, in order to ensure electoral justice and compliance with section 67 of the Constitution, “*to enable voters to seek the protection of their rights and following regional and international conventions on citizens' right to effective remedy, the Electoral Act should establish, within the ZEC, a mechanism to receive and adjudicate administrative complaints beyond voter registration issues.*” This aligns with the EU EOM recommendation. Consequently, the model IMT Electoral Amendment bill repeals section 190 of the Electoral Act that limits the submission of administrative complaints only to those related to voter registration and provides for “*any person aggrieved by a decision or conduct of any employee of the Commission in the discharge of his or her functions*” to lodge a complaint with ZEC. If this provision is retained as such in the bill when enacted, it would address the relevant EU EOM recommendation.

The EU EOM also proposed to **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** (Rec. #21). ZEC informed the EFM that it made proposals for time limits to be introduced in the law. Likewise, the model IMT Electoral Amendment Bill introduces a section providing that “*matters brought before the Electoral Court during an election period shall be determined within such time as may be prescribed in rules of court but in any event, well in advance of polling day or, the first polling day, as the case may be (...)*”. If this section is adopted as such, it would address the EU EOM recommendation.

The recommendation to **introduce provisions allowing citizens and civil society organisations to file petitions against the results under reasonable conditions** (Rec. #22), although not supported by ZEC in its proposals, is reflected in the model IMT Electoral Amendment Bill, as it extends the right to file election petitions to “any other person who can demonstrate a substantial interest and particular public interest in the outcome of the petition.” It remains to be seen if it is retained in the draft bill that will be submitted to Parliament.; if adopted as such, it would fully implement the EOM recommendation.

Finally, the 2018 EU EOM proposed to “**Revise the Electoral Act Applications, Appeals and Petition Rules of 1995 and align them with the Electoral Act**” (Rec. #23). To the EFM’s knowledge, this recommendation has not been considered.

V. ONGOING AND PLANNED DONOR SUPPORT TO ELECTORAL REFORM AND FUTURE ELECTION PROCESSES

Following the finalisation of the first Phase of the *Zimbabwe Electoral Commission Capacity Building Project (ZIM-ECO)* by UNDP in April 2022, the Phase II (*ZIM-ECO2*) is planned to commence in July 2022 and to last until 31 December 2024. During the first Phase of the project which was focused on capacity-building and voter registration, several technical assistance providers collaborated with UNDP, notably the Electoral Institute for Sustainable Democracy in Africa (EISA) and the International Foundation for Electoral Systems (IFES). Being funded, among others, by the European Union (EU) as part of its Action to “*Support to the consolidation of the democratic process in Zimbabwe*”, ZIM-ECO also worked closely with civil society partners that were funded under the same Action. ZIM-ECO also coordinated its actions with other UNDP projects in the area of governance whereas UN Women has been an important partner leading gender equality efforts in the electoral process through technical and financial support.

ZIM-ECO2 project, if and when adopted, will continue to support ZEC through four areas: a) enhance ZEC’s effectiveness by strengthening its capacity to run electoral processes effectively and in a credible manner, through capacity-building and technical assistance to voter registration,

boundary delimitation and results management, b) enhance accountability and inclusion in the electoral process through continued ZEC voter education and stakeholder engagement and strengthened capacity of the media, the Media Commission and ZEC to provide and monitor equitable coverage of the electoral process; c) improve participation and representation of women, youth and persons with disabilities through the implementation of ZEC's gender equality and inclusion policy, further making the electoral processes more accessible and inclusive as well as preventing violence against women in elections; d) increase election stakeholders' access to justice and reduced election-related violence through strengthening the different mechanisms that identify potential sources of conflict and mitigate against the risks by continuing to facilitate collaboration between the relevant institutions and organisations, notably the Chapter 12 Commissions.

Another EU funded project is the *Support to the Zimbabwe Human Rights Commission (ZHRC)*, seeking to strengthen the ZHRC's capacity to carry out its mandate to promote and protect human rights. The project focuses on access to national documentation among communities experiencing challenges, a human rights based electoral process through improved redress mechanisms for electoral-related human rights and administrative justice violations and good governance in the conduct of state affairs through strengthening its Public Protector function.

VI. CONCLUSIONS

The 2018 EU EOM recommendations offered several actions to improve the conduct of elections in Zimbabwe, notably in regards to aligning the Electoral Act with the 2013 Constitution, strengthening the independence of the ZEC and increasing its transparency and effectiveness, creating a level playing field and a conducive environment for the election campaign, reforming the media environment and regulations to fully guarantee the freedom of expression and of the media as well as the independence and impartiality of state-owned media, promote transparency in the results management process and to fully provide for the right to an effective legal remedy.

A limited number of these recommendations has been partially implemented by the relevant institutions so far, while many others necessitating legal reforms are currently pending in the legislative drafting process. The majority of the EU EOM recommendations remain pertinent and are yet to be addressed. Some of these draw attention to systemic problems related to the legacy of the past in the country, such as the persistent link between party and state structures resulting in largely tolerated abuse of state resources, partiality of state structures as well as lack of regulations on campaign expenditure. A firm commitment by all political parties to address the need of level playing field and endorse accountability and transparency in the political competition would significantly improve the campaign environment in future elections.

To date, the consultative process of amendments to the Electoral Act has been overall inclusive and participatory. CSOs actively engaged in the process and were afforded the opportunity to articulate the views during several stakeholder consultations. The EFM considers that the proposed amendments included in the model IMT Electoral Amendment Bill and the model draft bills offered by CSOs would address most of the key recommendations of the 2018 EU EOM, provided that no significant changes are introduced during the Cabinet and Parliamentary review process. If the proposed amendments are broadly supported by political parties and addressed holistically and transparently, they could lead to the adoption of reforms that would enhance the integrity of the electoral process, increase voter participation and improve political representation.

Some other EU EOM recommendations that require administrative reforms can still be addressed before the 2023 elections. These include increased transparency of ZEC through regular external stakeholder consultations and information sharing with the electorate, improvements to the accuracy of the VR, continuous voter education and enhanced credibility of the results management process. Increased attention needs to be given to the ongoing boundary delimitation process, that is likely to be contentious and might have ramifications for the upcoming elections.

The recently formed opposition party CCC can use the momentum of its competition in the 26 March by-elections to engage in a constructive dialogue with the electoral management body, authorities and other opposition parties. It is critical that, despite of the short time left, the political parties represented in Parliament can engage in constructive parliamentary debates during the review process of the amendments to the Electoral Act. This depends to a great extent on the political will of the government to reach the broadest possible cross-party consensus before the enactment of the bill, which would contribute to increasing the integrity of the electoral reform process.

The Government has also the opportunity to enhance the democratic space and create a conducive environment for media, civil society and political activities by endorsing proportionate and equitable application of the law and undertake dissuasive action against human rights abuses and excessive use of force by security agencies. This would reduce the potential of violence, restore trust in national institutions and encourage citizens to engage in elections and the democratic process in general.

VII. ANNEXES

A. Press Release

B. Matrix on the implementation status of EOM recommendations

ANNEX A



EUROPEAN UNION ELECTION FOLLOW-UP MISSION ZIMBABWE 2022

PRESS RELEASE

Harare, Zimbabwe

20 May 2022

The EU Election Follow-up Mission urges authorities to address key recommendations in due time ahead of the 2023 elections

A European Union Election Follow-up Mission has been deployed to Zimbabwe to assess the status of implementation of the recommendations of the EU Election Observation Mission (EOM) of 2018 and discuss ways to achieve further progress on electoral reform in view of the 2023 elections. The mission was headed by Mr. Elmar Brok, former Member of the European Parliament and Chief Observer of the EU EOM of the 2018 Harmonised Elections in Zimbabwe. The Follow-up Mission met with the Zimbabwe Electoral Commission (ZEC), the Zimbabwe Media Commission, several ministries, political parties, civil society organisations, media and the international community.

The 2018 EU EOM proposed 23 recommendations, including 10 priority ones, aiming at aligning the Electoral Act with the 2013 Constitution, strengthening the independence of the ZEC and increasing its information-sharing throughout the electoral process, improving voter registration as well as the transparency, verifiability and integrity of the results management process, introducing legal measures to mitigate abuse of state resources, developing regulations on political party financing, reforming the state-owned media to fully guarantee their independence and impartiality, and holding regular meetings of the Multi-Party Liaison Committees throughout the electoral process.

In a press conference in Harare on 20 May, Mr. Brok stated: *“We strongly encourage all political parties, in consultation with civil society, to engage in good faith deliberations to amend the electoral legislation well in advance of the 2023 elections to avoid uncertainty and allow sufficient time for implementation and voter education. The government and the Parliament carry here special responsibilities. The goal must be free, transparent, credible and impartial elections.”*

To date, progress on the implementation of the EU EOM recommendations has been limited, with the majority of the priority ones not yet adequately addressed. The EFM welcomes that stakeholder consultations on some legal reforms have taken place or are ongoing but notes with concern that the adoption of important reforms, such as amendments to the Electoral Act, remain outstanding. Furthermore, the Mission appreciates initiatives made by the ZEC to increase its engagement through the Multi-Party Liaison Committees at district and provincial level but considers that further determined efforts are needed to fully respond to its role as an

independent and transparent election management body. This includes that there is more transparency on every step of the electoral process on local, regional and national level.

Mr. Brok further emphasised *“If the authorities and the legislators do not address recurring problems related to voter registration, constituency delimitation, level playing field in the campaign, partisan behaviour of traditional leaders and public administration, freedoms of expression, assembly and of the media, they will undermine progress towards achieving an environment conducive to a greater level of public trust in the electoral process and peaceful elections.*

“We are concerned that if the Private Voluntary Organisations (PVO) Amendment Bill is adopted, it will severely impact the freedom of association and restrict legitimate activities of civil society organisations. Therefore, we urge the authorities and the legislature to reconsider, keeping in mind Zimbabwe’s international commitment. We heard also concerns from part of the opposition and civil society that amendments to the Criminal law might be introduced which would endanger the freedom of expression” noted Mr. Brok.

The EU Follow-up Mission will publish a final report with conclusions in the beginning of June 2022. The full archive of EU election observation reports can be found at <http://database.eueom.eu>

ANNEX B

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
1	2018	<p>Priority recommendation: 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.</p>	Legal Framework	<p>2</p> <p>Activity ongoing</p>	<p>The implementation of this recommendation necessitates the amendment of some provisions of the Electoral Act. The draft IMT Electoral Amendment bill includes provisions to expand postal ballot to anyone not able to vote physically on a polling station, in particular to people managing essential services, and those hospitalised and living with disabilities. The IMT bill also includes provisions to reinforce ZEC's independence. However, it is unknown if these provisions would be retained after the Cabinet and parliamentary review processes.</p>
2	2018	<p>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.</p>	Legal Framework	<p>1</p> <p>No change</p>	<p>The delimitation process will start on 1 June and continue until the drafting of a preliminary report or until 31 December 2022. Therefore the process is scheduled to be finalised by December 2022, which is only seven months before the 2023 elections. Still, the timeline for the delimitation exercise which is per se complex and time-consuming, remains ambitious.</p> <p>In addition, no law on boundary delimitation has been adopted. The model IMT Electoral Amendment bill proposes to empower ZEC to adopt regulations on the manner that boundary delimitation is conducted and on the procedure for determining relevant complaints; this suggested provision would clarify some ambiguities in the legal</p>

					framework but it does not include provisions for consultations with stakeholders, as recommended. Furthermore, even if the bill is adopted as such, it would be after the delimitation exercise.
3	2018	Priority recommendation: ZECs independence needs to be strengthened, free from governmental oversight in the approval of its regulations.	Electoral Administration	2 Activity ongoing	The model IMT Electoral Amendment bill proposes the removal of the requirement for ministerial approval of ZEC regulations, and also contains some other provisions reinforcing ZEC's independence. Therefore, if enacted as such, it would implement this recommendation.
4	2018	Priority recommendation: 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.	Electoral Administration	5 Too early in electoral cycle to determine	The ZEC expressed the intention to keep MPLCs activated for the boundary delimitation exercise with a monthly meeting. This could be a positive development; however, it is early yet to determine whether this recommendation has been implemented.
5	2018	Priority recommendation: 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.	Electoral Administration	1 No change	The implementation of this recommendation has not been fulfilled. Several EFM interlocutors lamented the absence of responses by ZEC in requests for clarifications regarding inconsistencies on the VR, and that ZEC did not make the VR available to all stakeholders ahead of the 26 March by-elections.
6	2018	There needs to be a longer and more comprehensive implementation of voter education activities.	Electoral Administration	5 Too early in electoral cycle to determine	Assessment to be made closer to the 2023 elections.

7	2018	Priority recommendation: Ensure enhanced voter registration in “under registered” districts of the country to ensure universal and equal suffrage.	Voter Registration	1 No change	Although ZEC conducted two voter registration blitzes, it did not foresee a geographical target of the exercise that would put special focus on the under-registered urban areas. On the contrary, ZESN and ERC indicated in their observation report of the Phase 1 voter registration blitz that there were more registration centres in rural areas and that urban registration centres were open for “an insufficient number of days compared to rural registration centres to provide individuals in urban areas an equal opportunity to register to vote”.
8	2018	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.	Voter Registration	5 Too early in electoral cycle to determine	ZEC informed the EFM that it is currently reviewing the voters’ addresses, for which it created an “Alpha List” following the first biometric voter registration (BVR) exercise. As this is a dynamic list, the implementation of this recommendation is ongoing and should be fully assessed when the last updated VR for the 2023 elections is released.
9	2018	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.	Voter Registration	1 No change	No such clarification were provided despite repeated requests for electoral stakeholders and civil society.

10	2018	Priority recommendation: 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.	Political Parties and Campaign Environment	1 No change	The ongoing electoral reform process does not address the abuse of state resources in the campaign.
11	2018	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.	Political Parties and Campaign Environment	2 Activity ongoing	The amendment of the Traditional Leaders Act seeks to provide compliance with the 2013 Constitution. If enacted, the amendment bill will establish the constitutional Integrity and Ethics Committee of Chiefs, which will deal with complaints related to the behaviour of traditional leaders. It is uncertain to what degree this measure will present an effective mechanism to insure impartiality of chiefs in the campaign. The partisan behaviour of civil servants has not been addressed.
12	2018	Priority recommendation: Promote accountability and transparency of campaign finance and expenditure by introducing explicit 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 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.	Political Parties and Campaign Environment	1 No change	The ongoing electoral reform does not address the regulation of campaign expenditure.

13	2018	Liberalise the electronic media sector, including issuing licenses for community radio stations.	Media	2 Activity ongoing	The Broadcasting Authority of Zimbabwe (BAZ) opened procedures for licence applications. So far, six private TV stations and 14 community radios have been awarded licenses. However, a liberalisation of the media in terms of diversity and pluralism has not been achieved so far.
14	2018	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.	Media	3 Partial implementation	Access to Information and Protection of Privacy Act (AIPPA) was repealed in 2019 and replaced by three other laws, namely the Freedom of Information Act (FIA) 2020, the Data Protection Act (DPA) 2021, and the Zimbabwe Media Commission (ZMC) Act 2021. There is a certain progress towards the harmonisation of existing media regulations with the Constitution, however it is too early to assess the impact on the media environment.
15	2018	Priority recommendation: 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.	Media	2 Activity ongoing	The draft Broadcasting Service Amendment bill is reportedly aiming to align the broadcasting sector with the 2013 Constitution. It is uncertain if the bill will be adopted and, if so, if it will address the need of independency and impartiality of the Zimbabwe Broadcasting Corporation.
16	2018	Incorporate the Convention on the Rights of Persons with Disabilities into domestic law.	Participation of Persons with Disability	2 Activity ongoing	Work to address the EU EOM recommendation has been initiated through the drafting of a new bill at the initiative of the Ministry of Public Service, Labour and Social Welfare that was submitted to Attorney General's Office in 2020. Its finalisation and subsequent submission to Parliament is still pending.

17	2018	Priority recommendation: 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.	Polling, Counting, Collation and Results	1 No change	No concrete steps have been taken by ZEC to establish appropriate procedures for management of ballot security. It remains to be seen if ZEC takes any action towards implementing this recommendation ahead of the 2023 elections.
18	2018	Priority recommendation: 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.	Polling, Counting, Collation and Results	5 Too early in electoral cycle to determine	ZEC is considering to enhance, through continuous voter education, the population's knowledge and understanding of the legal time frames of the results management process. However, the issue of human and financial resources remains a challenge. Therefore, it is unsure at this stage how continuous voter education would be implemented.
19	2018	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.	Election Results and Post-Election Environment	3 Partial implementation	POSA was repealed in November 2019 and replaced by the Maintenance of Peace and Order Act (MPOA). The new Act introduced some positive changes, which partially address the EOM recommendation. A selective application of MPOA has been observed in the 26 March election. Excessive use of force has been brought to accountability.
20	2018	Incorporate provisions for an administrative complaint mechanism within ZEC which will enable voters to seek protection of their rights.	Electoral Disputes	2 Activity ongoing	The IMT draft Electoral Amendment bill repeals section 190 of the Electoral Act that limits the submission of administrative complaints only to those related to voter registration and provides for " <i>any person aggrieved by a decision or conduct of any employee of the Commission in the discharge of his or her functions</i> " to lodge a complaint with ZEC. If this provision is

					retained as such in the bill when enacted, it would address this recommendation.
21	2018	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 Disputes	2 Activity ongoing	The IMT draft Electoral Amendment Bill introduces a section providing that “matters brought before the Electoral Court during an election period shall be determined within such time as may be prescribed in rules of court but in any event, well in advance of polling day or, the first polling day, as the case may be (...)”. If this provision is retained as such in the bill when enacted, it would address this recommendation
22	2018	Introduce provisions allowing citizens and civil society organisations to file petitions against the results under reasonable conditions.	Electoral Disputes	2 Activity ongoing	The IMT draft Electoral Amendment Bill extends the right to file election petitions to “any other person who can demonstrate a substantial interest and particular public interest in the outcome of the petition.” If this provision is retained as such in the bill when enacted, it would address this recommendation
23	2018	Revise the Electoral Act Applications, Appeals and Petition Rules of 1995 and align them with the Electoral Act.	Electoral Disputes	1 No change	This recommendation has not been considered.

Category	Description	Guidance
1	No change	No action has been taken to implement this recommendation.
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed	Examples may include the formation of a working group to review legislation, or the preparation of a legislative bill of reform, but the change has not yet been confirmed by legislative change.
3	Partial implementation of recommendation	The recommendation has been addressed/implemented in part, but other elements of the recommendation have not been addressed.
4	Full implementation of recommendation	The recommendation has been implemented in full e.g. electoral legislation has been amended and all aspects of the recommendation have been addressed.
5	Too early in electoral cycle to determine	Some recommendations may relate to administrative action/practice which can only be assessed at a later stage i.e. strengthening of civic/voter information
6	Recommendation is no longer relevant	For example, a change in the electoral system may make redundant a recommendation on candidate registration under the old electoral system.

