

**ANALYSIS OF THE AMENDMENTS TO THE ELECTORAL LAW INTRODUCED BY
STATUTORY INSTRUMENT 58 OF 2013 THE PRESIDENTIAL POWERS
(TEMPORARY MEASURES) (AMENDMENT OF THE ELECTORAL ACT)
REGULATIONS, 2013**

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2013

INTRODUCTION

The Electoral Act [Chapter 2:13] has gone through several amendments during its lifetime as part of continuing efforts to ensure that it is consistent with international and regional normative standards such as the SADC principles and Guidelines governing Democratic elections.

The most recent amendments to the Electoral Act were, unusually, done through the Presidential Powers (Temporary Measures) Regulations via **Statutory Instrument (SI) 85 of 2013**. It had been expected that any electoral law would have been passed through the normal legislative route. Indeed, various pronouncements by the responsible minister had been made to the effect that a Bill had been tabled before cabinet and awaited transmission to parliament for debate and passage. This seemed consistent with the New Constitution that stipulated that, under Section 157, an Act of parliament must provide for the conduct of elections and referendums to which this Constitution applies. However this could not be done as the life of Parliament came to an end through the effluxion of time with no Bill ever being tabled before it.

While debates continue on whether the President could use his powers under The Presidential Powers (Temporary Measures) Act to create electoral laws in this manner, the fact remains that the amendments made via the presidential powers are part of our law and the forthcoming election will be held under the Electoral Act as amended by **SI 85 of 2013**. The initial intention of this paper was to critique the Electoral Bill which was anticipated to be tabled before parliament after the signing of the New Constitution. However no such Bill was ever tabled and in fact the Bill was never put into the public domain. Consequently the focus of this paper has been on **SI 85 of 2013** that was promulgated on 13 June 2013. The statutory instrument sought to re-align the electoral law with the provisions of the New Constitution. It is those efforts that are the subject of discussion in this paper.

The analysis done in this paper is broken down into three sections. The three sections are as follows:

1. Section A: Alignment of electoral laws with the New Constitution
2. Section B: ZESN Reform Agenda: Minimum conditions incorporated into the Electoral Act via SI 85 of 2013
3. Section C: Gaps that remain in the Electoral law requiring future Advocacy activities

SECTION A: ALIGNMENT OF ELECTORAL LAWS WITH THE NEW CONSTITUTION

Item	Amending Section/ Amended Section	Summary of Amendment	Analysis
I	Section 1 Title-	The Presidential Powers (Temporary measures) (Amendment of Electoral Act) Regulations, 2013	The title of the Statutory Instrument is The Presidential Powers (Temporary measures) (Amendment of Electoral Act) Regulations, 2013. It shows that the Electoral Amendments were executed via the use of the presidential powers. This is unusual. It would have been expected that the amendments would be done via an Act of Parliament as envisaged by Section 157 of the New Constitution. This has been however justified by the Presidency that has argued that the exigencies of the matter required urgent attention due to a Constitutional order directing the country to go for elections before 31 st July 2013.
II	Section 2 Preamble	A new Preamble is introduced replacing substituting for the Preamble of Cap 2:13.	<ul style="list-style-type: none"> The Preamble starts by justifying why resort had to be made to the Presidential Powers (Temporary Measures) Act [Chapter 10:20]. The SI states that it was in the public interest of Zimbabwe that the President exercises these powers in terms of Section 2 of the Presidential Powers (Temporary Measures) Act [Chapter 10:20] as it required urgency and this could not be dealt with through any other law. Reference is made to the case of <i>Jealous Mawarire vs. Robert Gabriel Mugabe and others</i> (Judgment CCZ 1/13) as the trigger of the intervention by the President. That judgment compelled the President to issue the

			<p>necessary proclamation for Presidential, Parliamentary and local authority elections to take place no later than the 31st July, 2013. The Preamble acknowledges that certain amendments to the Electoral Act [Chapter 2:13] were needed to bring it in line with the New Constitution that came into force on the 22nd May 2013. The Preamble outlines the major provisions that have been introduced by the New Constitution which did not feature in the previous Constitutional dispensation. These include the system of proportional representation, the conduct of elections to provincial and metropolitan councils, the election of representatives of persons with disabilities and the seats reserved for women in the National Assembly. As will be shown below SI 85 of 2013 goes to a great extent to bring the electoral laws into conformity with the New Constitution.</p>
III	Section 3 Section 2 -	Substitutes section 2(b) and makes the Act apply to ' <i>elections to provincial councils and the governing bodies of councils</i> ' for the purpose of the Rural District Council Act and the Urban Councils Act.	<ul style="list-style-type: none"> This amendment brings the Electoral Act in conformity with the New Constitution. The New Constitution provides for what are called Provincial Councils and Metropolitan Councils, under Section 268 and Section 269 respectively. However the amendment to the Electoral Act does not make specific reference to the Metropolitan Council. This could have been an oversight by the drafters, and this needs to be rectified as the Constitution clearly distinguishes Provincial Councils from Metropolitan Councils.
IV	Section 4 Section 3-	Section 4 relates to the General Principles governing democratic elections	<ul style="list-style-type: none"> This section is broadened to include entitlement of every political party and candidate to fair and equal access to public and private electronic and print media. It provides that political parties and individual candidates are entitled to reasonable access to all material and information for effective participation in elections.

			<ul style="list-style-type: none"> • The new Section 3(c) (iv) of the Electoral Act refines and gives more specificity to its predecessor which provided that every political party has the right, "to have reasonable access to the media." Such wording was clearly weak, as what is reasonable is purely a subjective issue and such a right could not be easily enforced. The new provision specifically gives every political party a right to fair and equal access to electronic and print media. This is a good amendment which gives effect to Section 67 of the new Constitution that establishes political rights for all citizens in the country. The provision in the Electoral Act goes further to extend the enjoyment of such rights to both public and private media. This is a remarkable departure from the previous constitutional dispensation where rights could only be asserted against public institutions. It is quite conceivable under the new constitution that a political party can pursue an action against a private media house that is not giving fair and equal access. It has to be said that this is consistent with modern principles of good governance, democracy and elections. It is commendable. • In similar vein, the new Section 3(c) (v) of the Electoral Act gives political parties the right to access to information to enable them to participate effectively in an election. This is in conformity with Section 62 of the New Constitution that now guarantees the right to Access to Information. This is another commendable provision guaranteed by the New Constitution which was not there in the Lancaster House Constitution. • Section 3(d) affords the same rights given to political parties as mentioned above to the candidates themselves. This is commendable as a particular candidate may require certain information peculiar to
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			<p>her constituency. She does not need her political party to represent her rights. Further there are certain candidates who stand as independents. The distinction is therefore necessary, progressive and consistent with the new constitutional dispensation</p> <ul style="list-style-type: none"> • There is a new provision that has been added {Section 3(e)} that provides that voting methods must be simple, accurate, verifiable, secure and transparent. This provision gives effect to the political rights envisaged under Section 67 of the New Constitution. The provision specifically reproduces Section 158(a) of the New Constitution. This pronouncement is desirable as it speaks to the credibility or otherwise of an electoral process. The security and transparency of an election process cannot be overstated. In the same vein an efficient electoral process has, as its hallmarks, simplicity and accuracy and it should be easily verifiable.
V	<p>Section 5 Section 4 –</p>	<p>Section 5 is the Interpretation section. It enunciates definitions of new terms</p> <p>Constituency means a constituency into which Zimbabwe is divided in terms of Section 160 of the New constitution for the purposes of</p>	<ul style="list-style-type: none"> • Section 5 of SI 85 of 2013 introduces a number of new definitions in order to align the Electoral Act with the New Constitution. The following terms require further comments: • The new definition a “Constituency” is particularly important to take note of. Firstly it gives effect to Section 160 of the New Constitution and clarifies that the term “Constituency” refers to one of the two hundred and ten constituencies that the Zimbabwe Electoral Commission must divide the country into. Secondly and more importantly it must be noted that all the seats that have been allocated for proportional representation and for the reserved quota for women are based on the total number of votes a party gets in the constituencies of each particular province. It is the number of votes

		<ul style="list-style-type: none"> • Disciplined force means the defence force, the Police Force and the Prison Service • Polling date for Senators representing people with disabilities • Voters roll has been redefined to generally 	<p>that each political party gets in the Constituency elections that will determine the number of senatorial seats, provincial council seats and the seats reserved for women overall.</p> <ul style="list-style-type: none"> • The definition of the disciplined forces has been extended to include the Prison Service. This mirrors Section 207 of the new Constitution that includes the Prison Service as part of the Security service. The predecessor provision in the Electoral Act only recognised the Defence Force and the Police as disciplined forces. This means the Prison Service can now also be considered for special voting as part of the disciplined forces. • The amendments to the Electoral Act set out the polling date and process for the people with disability. More will be said about the process later in this paper. What is important to note, at this stage, is that this provision has been necessitated by the introduction of reserved seats for people with disabilities, in the New Constitution. Section 120(1)(d) of the New Constitution provides that an electoral law should provide for a process of voting for two persons representing people with disabilities into the Senate. This is obviously a progressive provision as it allows for issues of people with special needs to be kept on the agenda in the Senate through their chosen representatives who appreciate their peculiar needs. However there is need for a more transparent and inclusive process ensuring that all those working with people with disabilities participate in the process of electing the representatives to Senate. • This definition seems to be consistent with the voting system of the
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		<p>means the voters' roll for any ward</p> <ul style="list-style-type: none"> • Other definitions for the new terms created by the New Constitution worthy taking note of include, "constituency candidate", "constituency member," the "electoral province", "the metropolitan province", "the provincial Council" and the "party list" 	<p>country, which is ward based. The Zimbabwe Electoral Commission is still obligated by law to keep a copy of the consolidated national voters' roll at its office.</p> <ul style="list-style-type: none"> • There is an apparent drafting mistake in the interpretation clause that makes reference to Section 45D as the reference section for the definition of the terms, "Electoral Province", "party-list", "constituency candidate," "constituency member," "party-list candidate." These terms are actually defined under the new Section 45B. This could be one of the number of mistakes contained in the new amendments that were hurriedly promulgated through the use of the presidential powers. These terms are necessitated by the new constitutional provisions that introduce new electoral features such as the proportional representation system for some senate seats, the female quota for some national assembly seats and the provincial and metropolitan councils that are also a new feature in the New Constitution and consequently requiring alignment of the electoral laws.
VI	Section 6 <i>Section 6 - Terms and conditions of commissioners</i>	Section 6 deals with issues relating to terms and conditions of ZEC	<ul style="list-style-type: none"> • The section relates to the removal of a Commissioner from office. The procedure for such removal is the same as that for a judge, and is provided for under Section 187 of the New Constitution. The security of tenure of a Commissioner is thus constitutionally guaranteed unless in exceptional circumstances of gross misconduct, incapacity and incompetence as envisaged by section 187 of the New Constitution. This is commendable as Commissioners are supposed to independently exercise their mind to issues without fear of facing adverse consequences for decisions they make.

		Section 6A specifies the procedure for removal of a Commission	<ul style="list-style-type: none"> • There is a new requirement under the new Section 6A that parliament should be furnished with the report of the findings of the tribunal set up to remove a Commissioner. This is possibly a measure designed to ensure security of tenure for commissioners through parliament oversight. However there seem to be no specific provisions empowering parliament to deliberate and make a determination on the issue. At best parliament can only 'take note' of the findings of the Tribunal. The decision seems entirely in the hands of a single person, the president. To this extent this provision provides weak checks and balances to unilateralism and is therefore undesirable.
VII	Section 7 Section 7 -	This Section empowers Commissioners to adopt and adapt procedures set out in the Sixth Schedule to promote fairness and transparency in electoral processes.	<ul style="list-style-type: none"> • Through this Section ZEC is empowered to adopt and adapt procedures to be followed in its meetings. The sixth schedule to the Act gives the broad parameters within which ZEC should operate. The added section clearly states that the procedures adopted by ZEC in accordance with the sixth schedule should be in a manner that promotes fairness and transparency in the performance of its functions. This is consistent with the functions given to ZEC under Section 239 of the New Constitution relating to the conduct of elections in an efficient, fair, free and transparent manner. The guiding principle introduced by this amendment is therefore commendable. • It is important that ZEC be well-resourced and draw funds directly from the Consolidated Revenue fund in order to ensure the body is effective and independently carries out its duties.
VIII	Section 8 Section 10	This provision empowers ZEC to draw from its own	<ul style="list-style-type: none"> • The minor amendment that aligns this provision with the Constitution is the deletion, in the principal act, of any reference to an election officer

	– <i>Staff of Commission</i>	staff or from various statutory bodies and/or employees to act as constituency election officers during elections	for senatorial elections. This is so because under the new dispensation elections will only be for the National Assembly seats with the senatorial seats being allocated through proportional representation on the basis of the votes for the National Assembly seats.
IX	Section 9 Section 11 – <i>Independence, impartiality and professionalism</i>	This section introduces a new definition of the term, “political office” expanding the classes of persons falling within the ambit of “political office.”	<ul style="list-style-type: none"> This amendment expands classes of persons who fall within the definition of a “political office.” Over and above the previous class the definition extends its parameters to include members of provincial and metropolitan councils. This brings the definition in conformity with the New constitution that introduces new public offices (mentioned above) that were previously not there. This is consistent with the constitutional ethos that underscores the importance of the existence of independent and impartial Commissions.
X	Section 12 Section 37C – <i>Electoral centres</i>	This provision outlines the framework and nature of the various electoral centres that will be set up across the country and outlines how the various centres will transmit results in between the various electoral centres	<ul style="list-style-type: none"> In accordance with the New Constitution, section 12 of SI 85 of 2013 establishes the type of electoral centres that will be set up to handle electoral processes and the results that will be coming from the voting process. The new provision introduces electoral centres that conform with the new constitutional dispensation. The introduction of the quota system in the National Assembly and the proportional representation for the senate in turn affects the electoral centres set up to accommodate the new electoral system. To deal with the new electoral system, SI 85 of 2013 creates 6 electoral centres, namely the National Command Centre, the provincial command centre, the presidential command centre, the constituency command centre, the district centre and the ward centre. Each of the electoral centres has certain responsibilities. The ward centre collates polling station results for President, National Assembly and Ward adding special votes and

			<p>postal votes that will be counted at the ward. The ward centre announces the outcome of ward elections and transmits collations of presidential and national assembly to the presidential constituency centre and the constituency centre respectively. The presidential constituency centre in a province collates the ward collations for the presidential election and incorporates these into a return; distinctly indicating the results obtained in each ward in the constituency, and transmits these results to the provincial command centre. The National Assembly constituency centre collates the ward collations in respect of the National Assembly constituency election and incorporates into a return distinctly indicating the results from each ward within the constituency. The centre then announces the result of the constituency election. It must transmit the collation return to the provincial command centre. The provincial command centre collates the returns from the National Assembly constituency and the presidential constituency centre and incorporates these into a provincial return. It is also must transmit to the National Command Centre the duplicate copies of the National Assembly constituency and presidential constituency returns in the province. The National Assembly results in a province are used to allocate the proportional representation seats in the Senate, the National Assembly and the Provincial Council. The National Command Centre has the overall control of the whole election. The district centre's role is to facilitate for the special voting in accordance with Section 81A of the Electoral Act. The district centre appears to be oddly placed here as it is the only one of the six electoral centres that has no role relating to transmission of results. It would seem, it should have been properly placed in section 81 that deals with special voting.</p>
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			<p>results having to be collated and sent to various centres. It does not seem to conform with the simplicity principle envisaged by section 156 the New Constitution.</p> <ul style="list-style-type: none"> • The new Section 37C4(f)(ii) of the Electoral Act may give ZEC an excuse to delay the release of results on the pretext that they are collating and reconciling the polling station data before announcing verified and accurate results. This is most likely to be the case for presidential results. • The new Section 37C4(f)(ii) of the Electoral Act provides as follows: <i>"The final result of the presidential election shall, after reconciling the provincial returns with the polling station returns and presidential constituency returns referred to in the provisos to paragraphs (b) and (d) respectively, be reflected in a return that distinctly reflects number of votes cast for each presidential candidate at every polling station, ward centre, presidential constituency centre and provincial command centre."</i> Section 110(3)(f)(ii) provides that the Chairperson of ZEC shall, <i>"where there are more than two candidates, forthwith declare the candidate who has received more than half the number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration."</i> • There appears to be some conflict between the two sections above, with one providing for the declaration of results immediately after the addition of the presidential returns and the other providing for an elaborate process of verification before the results are actually announced. It would be desirable for the results to be announced immediately in terms of section Section 110(3) (f)(ii).
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XI	Section 16 Section 40G Functions of accredited observers	This provision widens the functions of accredited observers to include giving the Commission a comprehensive review of the election, taking into account a number of factors.	<ul style="list-style-type: none"> This expanded role of observers is consistent with the New Constitution that provides, under section 155, for a peaceful, free and fair election. It is common cause that an enhanced role for observers contributes towards the holding of a free, fair and credible election. In terms of the new section 40G of the Electoral Act, some of the things that observers can take note of and bring to the attention of the Commission include the degree of impartiality of the Commission, degree of freedom of political parties to organise, move assemble and express their views publicly, the fairness of access afforded to political parties to the national media, the proper conduct of the polling and the counting of the votes at the election centres and any issues related to freedom and the fairness of the election. The reports by accredited observers on these and other issues will certainly contribute towards the declaration on the credibility or otherwise of an election held under the new constitutional dispensation
XII	Section 17 Section 40H – Observers Accreditation Committee	The accreditation committee now has 3 commissioners instead of one member of the commission designated by the commission. As a result five Commissioners sit in the accreditation committee.	<ul style="list-style-type: none"> Section 239 of the Constitution of Zimbabwe mandates ZEC with the responsibility of conducting and supervising all national elections in Zimbabwe. The increment of number of commissioners forming the Observers Accreditation Committee (OAC) to three via Section 17 of SI 85 of 2013 represents a positive move in ensuring that ZEC has control over all aspects related to election management including accreditation of observers. This is a good provision, consistent with the new constitutional ethos. However it still remains a concern that within the committee are some presidential appointees that could pose an obvious threat in influencing the decisions of the Committee. They are appointees of a party that is potentially an interested party to the election that may be happening. Chances are high that the nominees in the OAC from the political party may be biased against perceived hostile observers. The nominees are unlikely to exercise their minds

			<p>objectively as they will have already a biased view due to their political inclination. This is undesirable and it can be argued that the provision in the electoral act retaining presence of persons who are not Commissioners within the OAC is unconstitutional. The OAC, as a sub-committee of the Commission should be comprised of Commissioners themselves. The inclusion of nominees of the executive within the OAC may result in undue interference of activities of a Commission that should act independently of any other state body.</p>
<p>XIII</p>	<p>Section 18 Section 40I –</p>	<p>This provision sets out the procedure for Applications for election observation</p>	<ul style="list-style-type: none"> • The decentralisation of accreditation application is a move in the right direction and consistent with the new constitution that promotes the holding free and fair election. Applications for accreditation for local observers can be submitted to the appropriate provincial elections officer in which the observers propose to discharge their functions. As already pointed out above any process that enhances the capacity of observers to be part of an election process indirectly contributes towards the holding of a free and fair election as envisaged under the New Constitution. Section 40I (7) of the Section needs to be relaxed to allow for a simpler process of accreditation. Presently where an organisation successfully applies for its members or employees to accredit, the individual members/employees are then required to present themselves at the designated stations to be issued with an accreditation certificate. This is unnecessarily laborious. The process should be much simpler for local observers. Organisations should be allowed to furnish their members with the certificates their observers' list is approved. This is what is done with party agents and it is consistent with international best practices.

			<ul style="list-style-type: none"> • In terms of Section 120(2)(b) of the New Constitution the party-list that will be submitted for the senatorial seats must take the zebra format and be headed by a woman. That way any party will inevitably have at least fifty percent representation for these seats. The electoral law reflects this position via section 45E(2)(f) of SI 85 of 2013 • Similarly Section 268(3) of the New Constitution provides that for the seats for the provincial councils that are to be allocated from the submitted party list that, they must have an alternating male-female list with a female at the top. Section 45E(2)(f) of the amendment to the Electoral Act reflects this position • The strong gender emphasis of the New Constitution is further reflected in Section 45E(2)(f) of SI 85 of 2013 which reinforces the quota system where sixty seats are reserved for women in the National Assembly as envisaged by Section 124(1)(b) of the New Constitution. • The process of nomination and publication of the party-lists of those that will be in consideration for the proportional representation and the quota system has been laid out clearly to ensure that there is no doubt of who will be sworn in once counting of votes has been done. The provision has put in a good mechanism to promote transparency on the electoral process. The three party-lists of the Senate seats, the women quota and provincial council are made public via the government <i>gazette</i> and they will also be available at the appropriate provincial centre accessible to the public before the election. That way people will know the potential candidates in their particular province. This is consistent with the new constitution that has as one of its cores, promotion of a transparent electoral process • This section sets out the process of determining the candidates elected
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	<p>Section 45F- <i>Publication and printing of party- lists</i></p> <p>Section 45I- <i>Determination of election result of party-list</i></p>		<p>from the party-lists to be Senators, members of the National Assembly or members of the provincial council as the case may be. A formula and an example of how these seats will be allocated to the “participating parties” is given under Schedule seven of the amended Electoral Act. It has to be said that the formula does not look straight forward and it could take quite some time to calculate and eventually figure out all the seats allocation for the three classes to which such seats will be allocated</p> <ul style="list-style-type: none"> • A positive provision is the requirement under Section 45I (2)(b) that once the results have been collated and the candidates ascertained the list of the successful candidates must be affixed outside the provincial centre so that this is visible to the public. This provision creates transparency in accordance with the ethos of the New Constitution. It is therefore plausible that a party with an efficient system of voter tabulation and has its party agents across all polling stations in the country can actually produce all the results from all constituency ahead of the formal announcements process that are centralised at the National Command centre
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XV	Section 20 Section 46- <i>Nomination of candidates</i>	Section 20 of SI 85 of 2013 Changes the name of House of Assembly to National Assembly. Reduces number of registered voter required to endorse the nomination papers of a candidate for the constituency of the national assembly to five from ten.	<ul style="list-style-type: none"> • This provision brings the Electoral Act into conformity with the New Constitution that limits, for the legislature, candidates for direct election only to the National Assembly. However the 60-seat quota for women in the National Assembly is still elected via proportional representation. There will be no direct election to seats in the Senate. • The provision substitutes the previous required number of signatories required to validate a nomination paper from ten to five. Whilst the burden on candidates to secure people to endorse their candidature is reduced it must be said that a person who struggles to find at least ten people to endorse his candidature may not stand any chance to win the actual election. The provision is however consistent with the new constitution that provides for a simple electoral process.
XVI	Section 24 Section 55 – <i>Conduct of poll</i>	This provision increases the number of party agents that can represent a party at a polling station from two to three	<ul style="list-style-type: none"> • This provision guarantees that each participating political party has consistent presence at any polling station. A party is allowed to have one person at any given time during the election process within the polling station. It is also entitled to have two further people who remain in the vicinity of the polling station who act as substitutes to the one inside, in the event that the principal agent needs to leave the polling area for one reason or another. This provision enhances transparency and credibility of the voting process in accordance with the recognised principles of election provided for under Section 155 and Section 156 of the New Constitution.

XVII	Section 25 Section 56 – <i>Entitlement to vote, number of votes and identification</i>	This section deals with the issues of who is entitled to vote and how the voting is actually done.	<ul style="list-style-type: none"> • In accordance with the new Constitution an eligible voter is entitled to vote, in the ward he is registered, for a presidential candidate, for a constituency candidate and for a candidate councillor. This provision confirms the ward-based voter system used in Zimbabwe. A voter cannot vote in a different ward from the one he is registered in. The ward-based system can however disenfranchise those people who may not be in their ward due to commitments such as work, at a time the election is done. The only exception to this rule relates to those eligible to vote through the special voting and postal vote procedure. This is generally restricted to members of the disciplined forces, who may be on duty on the day of elections and the embassy staff that are not in the country at the time of the voting. It can be argued that a person should be able to vote from wherever he is at the time of the election, especially where he wants to exercise the right to vote for a president whose constituency is the whole country. In the ward-based electoral regime this will not be possible as the voters' roll is also ward based and a voter's name will only appear in the ward he or she is registered to vote. • There are also other classes of voters who may not be able to vote under the current law even though they may wish to exercise their right to vote. Nowhere in the Electoral laws is provision for people in remand prison awaiting trial or convicted prisoners made for them to vote. This anomaly is potentially unconstitutional. There are also other people who may be old and frail to be able to get to polling stations especially in rural areas where transport is not always readily accessible. ZEC should make special arrangements on how such people can be catered for if they want to exercise their right to vote. The new constitution via
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			<p>section 67 guarantees political rights for all Zimbabweans without any distinction to their current status. To this extent the electoral Act seems not to comply with the constitutionally guaranteed rights. There is need for a broad-based consultative process that takes into account best practices from other regions on how voters' right have been recognised for all the different classes of persons as alluded to above.</p> <ul style="list-style-type: none"> • There is also a provision allowing those who find themselves not on the voters roll at the time of voting to be allowed to vote upon production of the voters' registration certificate and proof of identity. This may be easier for first time voters that may have recently registered. This however may not be the case for those who registered a long time ago who may have lost the slip required for voting. This may potentially disenfranchise a lot of voters, especially in Zimbabwe where the voters roll has been known to be in shambles for a very long time. One solution to this potential problem for those who want to ensure that they are not disenfranchised, is to go and check their details in advance of an election and get a certificate confirming they are on the voters roll.
XVIII	<p>Section 26 Section 57 – <i>Manner of voting</i></p>	<p>Section 26 removes the requirement to raise the ballot paper, after voting, to the presiding officer</p>	<ul style="list-style-type: none"> • In the previous provision of the Electoral Act a voter was required to hold up the ballot paper so that the presiding officer could recognise the official mark. Against the background of the culture of fear and intimidation in virtually all national electoral processes in Zimbabwe, this requirement seemed to put fear in most voters, especially in the rural areas. There were reported cases of people who threatened potential voters suggesting this process was used to reveal the choice a voter would have made in the privacy of the voting booth. Its removal is welcome as it really serves no purpose once a voter has exercised

			her/his right in the voting booth. The removal of the requirement resonates with the provisions in section 155(1)(b) of the New Constitution which stipulates that voting must be done in secrecy.
XIX	Section 28 Section 62- <i>Procedure after sealing of ballot boxes</i>	This procedure outlines who can be inside the polling station after voting.	<ul style="list-style-type: none"> This provision extends the list of people who can be inside the polling station for counting of votes, to include the political party's agents including those roving agents who were in the vicinity of the polling station during the voting process. The provision is commendable. It ensures that the electoral process is open and transparent to all concerned and is consistent with the 'free and fair' provisions in the New Constitution.
XX	Section 29 Section 64	Section 29(a)(iv) of SI 85 of 2013 amends Section 64 of the principal Act regarding the display of results outside the polling station	<ul style="list-style-type: none"> The new provision mandates the presiding officer at a polling station to affix results outside the polling station and ensure that the results remain there so that all members of public who wish to do so may inspect and record its contents. This provision is important as it ensures transparency and reduces opportunities of voter manipulation once the results are being compiled and tabulated at the National Command Centre. In the 2008 elections most of the polling station based results disappeared from the place they had been affixed within moments of being put up. This made it easier for results to be manipulated. The procedure of displaying the results at the polling Centre is repeated at every level as the collation and transmission continues up the chain, from the polling station to the ward centre, to the constituency centre and then to the Provincial centre. The requirement remains at all levels. This procedure enhances transparency.

<p>XX1</p>	<p>Section 30 Section 65-</p>	<p>Section 30 provides for the procedure on receipt of polling station returns at ward centre</p>	<ul style="list-style-type: none"> • This procedure is important as, at this stage, a number of things are done at the ward centre. It is at the ward centre that postal votes and special votes for the specific ward are brought and counted. It is also at this stage that results on the polling returns from the various polling stations in a particular ward are brought, verified and collated. The ward elections office should give reasonable written notice to all political parties and candidates for the particular ward and observers to be present at a particular ward centre for the procedures of collating, verifying and counting all the ward votes that come from the polling stations in that ward. Once the process is completed the agreed results shall be affixed outside the ward centre and a copy of the ward returns are transmitted to the constituency centre in which the ward is situated. • This process is in conformity with the ward based voting system in place and the constitutional provisions requiring some seats of the national assembly and the senate to be allocated through the quota system and the proportional representation system. • Once the ward returns have been transmitted to the constituency centres in which the wards fall into the process of collation, verification and counting is repeated at constituency level. Once the ward returns have been collated and counted, each candidate, election agent or observer if he so requests, shall be furnished with a copy of the completed constituency return. The constituency return shall be affixed outside the constituency centre and a copy transmitted to the provincial command centre.
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			<ul style="list-style-type: none"> • The same procedure is repeated in the chain at the provincial command centre. • At this stage and once the counting process is complete, political parties should be able to know the winning candidates in the wards, the national assembly candidates and the provincial council seats for a particular province. • These amendments are all in line with the new constitutional provisions under chapter 7 relating to elections.
XXII	Section 32 Section 66A –	This new section deals with the issue of publication of election results prior to official announcement. The section seeks to limit the extent to which unofficial results can be announced by an individual other than the election management body	<ul style="list-style-type: none"> • The previous wording of Section 66A of the Electoral Act made it virtually impossible for anyone to announce unofficial results of the election without facing arrest. That section has been repealed and substituted by a new Section 66A that seems to lower the burden of criminality. The new section now prohibits the announcement of unofficial results as the true or official results of an election or to announce a candidate as duly elected. However a person is not precluded from announcing results of a candidate or political party as long as it is based on polling station returns and constituency returns from the election concerned. This is more liberal than the previous section which was highly restrictive. It is therefore perfectly legal and conceivable that a political party that has collated all its results from all its constituencies can actually proceed to announce all of the results. These should be the same as the official results as the source of the data would be the same. The only difference would be that they will not have been announced officially as envisaged by the electoral laws. This is consistent with the right to freedom of expression guaranteed under

			<p>Section 61 of the New Constitution. However the penal provisions should be done away with in line with international standards where results, projected results and exit polls are done to stimulate discussion and debate on the emerging patterns. There is no need to curtail such discussions through provisions of penal provisions such as the one in the Act.</p>
XXIII	<p>Section 36 Section 93A</p>	<p>Section 36 provides for the appointment of a roving political party election agent</p>	<ul style="list-style-type: none"> • In terms of Section 36 of SI 85 of 2013 which introduces a new section, section 93A to the Electoral Act, a party is entitled to appoint a roving electoral agent who has the authority to enter and move through a polling station to observe the conduct of the election within that polling station and confer with any chief election agent or election agent of his/her own party. • This is a crucial role that can be utilised effectively by political parties as this person can be able to confer with authorities and his/her principals where there are any irregularities reported without the polling station based agent having to move away from his/her station. It is a role that enhances the transparency and credibility of the whole election process
XXIV	<p>Section 36 Section 94 -</p>	<p>This section deals with the issue of Chief Elections Agents. Under this provision the constituency elections officer is no longer required to give notice to the public of the full names and address of the chief election</p>	<ul style="list-style-type: none"> • In past elections cases of harassment, persecution and even abductions of chief elections agents have been reported after the announcement of their full details by the elections officer. The amendment removing the requirement of the constituency elections officer to give public notice of the full names and address of the chief election agent gives security and protection to the chief election agents who are always targeted by supporters of opposing candidates.

		agent	<ul style="list-style-type: none"> • However in practice it is always easy to know who a party's election agent is due to the prominent role he plays in ensuring that his principal is adequately represented. Ultimately in the absence of an effective policing system that protects all from unruly elements of society, agents that take frontline roles during elections will always be targeted by some errant opposing party members and remain in line of harm.
XXV	Section 39 Section 110 –	The section deals with the determination and declaration of results of election of President.	<ul style="list-style-type: none"> • This provision substitutes the chief election officer with the Chairperson of the Commission as the officer responsible for processes relating to the conduct of presidential elections. The Chairperson will be responsible for announcing the Presidential results. • This amendment makes it clear that the Chairperson of the Commission shall be directly responsible for the electoral process, in particular the election of a key office, that of the President.
XXVI	Section 40 Section 111 –	The Provisions relates to the procedure of Election Petitions in respect of election of President .This provision aligns the principal electoral Act with the New constitution that vests the constitutional court with jurisdiction to determine a dispute arising out of the presidential election	<ul style="list-style-type: none"> • Section 93 of the new constitution provides that any aggrieved candidate may challenge the validity of an election of a president before the Constitutional Court. This is a departure from the previous position under the Electoral Act that gave the Electoral Court the jurisdiction to determine the electoral dispute. The amendment to the electoral Act via section 40 of SI 85 of 2013 brings it into conformity with the New Constitution. This is desirable as it allows the highest court of the land sitting as a nine-member bench to determine what is a crucial matter of the country-the destiny of the presidency of the country. • The petition has to be filed within seven days as opposed to the

			previous thirty days. This is commendable since it is undesirable to have a long period of uncertainty especially surrounding the highest public office of the land.
XXVII	Section 46 Seventh Schedule –	Creates the seventh schedule that sets out procedure of the election of senators to represent people with disabilities	<ul style="list-style-type: none"> The seventh schedule to SI 85 of 2013 sets out the procedure of the appointment of representatives of people with disabilities in the Senate. This is in accordance with Section 120(1)(d) of the New Constitution. The reservation of seats in Senate for people with disabilities is commendable as it ensures that special interest groups have people who are knowledgeable and sensitive about their peculiar needs representing them at that policy level.
SECTION B	ZESN Reform Agenda: Minimum conditions incorporated into the Electoral Act via SI 85 of 2013		
Number	Issue	Comment	
I	Recognition of role of observers	<ul style="list-style-type: none"> One of the issues that ZESN has been calling for has been the need to strengthen the role of observers as part of strengthening the integrity and credibility of an electoral process. ZESN has noted that observers are an important part of any election. Election observation by both internal and external observers helps to give credibility to the whole governance and democratic framework of a country. The new constitution reinforces the importance of holding of free and fair elections (Section 155). SI 85 of 2013 has sought to give effect to the new constitution by expanding the role of observers. ZESN has consistently advocated for greater recognition of the role of 	

		<p>observers in a democracy. The new Section 40G(1)(d) is consistent with the calls that ZESN has been making and is thus commendable. In terms of that provision the accredited observers can now provide the Commission with a comprehensive review of the election taking into account all relevant circumstances, including–</p> <ul style="list-style-type: none"> (i) the degree of impartiality shown by the Commission; and (ii) the degree of freedom of political parties to organise, move, assemble and express their views publicly; and (iii) the opportunity for political parties to have their agents observe all aspects of the electoral process; and (iv) the fairness of access afforded to political parties to the national media and other resources of the State; and (v) the proper conduct of the polling and the counting of the votes at the election; and (vi) any other issue concerning the essential freedom and fairness of the election <ul style="list-style-type: none"> • Such an extensive report from the observers should help the Commission to assess the credibility or otherwise have an electoral process and hopefully result in appropriate action being taken, where necessary.
II	Observers Accreditation Committee	<ul style="list-style-type: none"> • Section 40H of the Electoral Act deals with the composition of the Observers Accreditation Committee (OAC). This Observers Accreditation Committee has the role of vetting the applications of observers and making recommendations to the Commission that has the ultimate power and responsibility of making the final decision. After the amendments of Act 3 of 2012, the composition of the OAC was as follows: 3 members (including the Chairperson and deputy Chairperson) from the Commission plus a further four who were essentially direct political nominees - one person nominated by the Office of the President and Cabinet; one person nominated by the Minister; one person nominated by the Minister responsible for foreign affairs and one

		<p>person nominated by the Minister responsible for immigration.</p> <ul style="list-style-type: none">• ZESN observed then, that the Commission was actually outnumbered in terms of members of the OAC by presidential appointees. In that setup, In addition to the nominee of the President's Office, the other nominees are from Ministries that are controlled by one political party (ZANU PF) – except that the Ministry of Home Affairs controlling immigration is currently shared between ZANU PF and the MDC-T. A suggestion was made to expand the OAC, to include more non-political appointees such as members of the civil society and members of other professions. The new amendments via Section 85 of 2013 have gone some way to give effect to the ZESN recommendation.• Section 239 of the Constitution of Zimbabwe mandates ZEC with the responsibility of conducting and supervising all elections in Zimbabwe. It is therefore logical that ZEC has more representatives in the OAC. This has been achieved via a new Section 40H (1) (c) that has increased the numbers of the commissioners in the OAC from one to three. This has tilted the number in favour of the Commissioners within the OAC. There are now five commissioners opposed to the four political appointees. The increment of the number of commissioners forming the Observers Accreditation Committee (OAC) to three via Section 17 of SI 85 of 2013 represents a positive move in ensuring that ZEC has control over all aspects related to election management including accreditation of observers. This is a good provision, consistent with the new constitutional ethos. However it still remains a concern that within the committee are some presidential appointees that could pose an obvious threat in influencing the decisions of the Committee. They are appointees of a party that is potentially an interested party to the election that may be happening. This is undesirable and it can be argued the provision in the electoral act retaining presence of persons who are not Commissioners within the OAC is unconstitutional. It is desirable to have the OAC made up of Commissioners only.
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III	Runoff period	<ul style="list-style-type: none"> ZESN pointed out that there was a discrepancy in the statement of the period within which the runoff election must be held. Section 110(3)(f)(iii) of the principal Act referred to the period as being "a fixed date not less than twenty-one and not more than sixty-three days after the polling day or last polling day". However, the "sixty-three days" here seemed to be out of place as both section 38(1) (a)(iii) as amended by Act 3 of 2013 referred to "forty-two days" and indeed the explanatory note to the Bill made reference to "forty-two days". As suggested by ZESN the apparent mistake has been rectified by SI 85 of 2013. It is now clear that where there are more than two candidates and no candidate has received more than half the number of votes a runoff has to be held on a date to be fixed by the President which date should not be less than twenty-eight days and not more than forty two days after the polling day or last polling day of the original election. The new Section 110(3) (f)(iii) is now consistent with Section 38(1)(a) of the Principal Act.
IV	Pre-emption of Results announcement	<ul style="list-style-type: none"> ZESN has previously raised concern around criminalisation of the announcement of projected results. Act 2 of 2012 introduced Section 66A that sought to prohibit any person from pre-empting the official announcement of the results of an election. Persons who purported to announce the results of an election before they were officially announced by an electoral officer would be subject to criminal prosecution. Official declaration and announcement of results of an election is the sole preserve of electoral officials. In order to prevent pre-emption of results as envisaged in the Act, ZESN called for the Commission to ensure that results are declared forthwith after counting and without any delays to prevent any anxieties or concerns. In the past pre-emption of the official declaration has occurred as a direct response to failures to declare results promptly. ZESN noted that this penal provision could pose risks and challenges particularly given that polling stations and constituency returns will be made public at the relevant stages of the process. Many people who are merely members of political parties are at risk of contravening this provision even if they are simply stating what is apparent from the

		<p>posted returns. Journalists in the media especially, will be at greater risk though it could be argued to be outside the reach of these provisions as they appear to cover members of the public and office-bearers of political parties.</p> <ul style="list-style-type: none"> • Section 85 of 2013 largely responds positively to the concerns raised by ZESN. The amendment seeks to create the balance between respecting the integrity of the official announcement of results and the constitutional right to freedom of expression and freedom of the media as envisaged by Section 62 of the New Constitution. The old section 66A entitled “purported publication of results prior to official announcement” is wholly repealed. In its place it is substituted by a new Section 66A now entitled “Unofficial or false declaration of results prohibited. The burden and criminal threshold seems reduced in the new provision introduced by SI 85 of 2013. A closer reading of the new provision expunges any doubts about this. Section 66A (1) (a) penalises a person who, “purports to announce the result of an election as the true official results. “The section is further clarified: Section 66A (3) provides that Section 66A(1) shall not be construed as preventing any person from reporting the number of votes received by a candidate or political party in an election, where the report is based on polling-station returns and constituency returns from the election concerned. It would therefore appear that any person can actually announce the results as they come out subject to two qualifications: He must not purport to be declaring such results to be the official results and the announcements must be based on actual polling-station returns and constituency returns. More crucially the media can now report more freely on the results that come out, even in the absence of “official” announcement without any fears of reprisals.
V	Election Agents	<ul style="list-style-type: none"> • ZESN has highlighted the important role of having election agents of candidates allowed at the polling station to ensure that they observe the electoral process and ensure that elections are held in a transparent manner. Consistent with the call by ZESN, the new amendment (introduced via SI 85 of 2013) has enhanced the capacity of electoral

		<p>agents to monitor electoral processes on the polling day. Previously a political party was permitted to have one election agent inside the polling station and another one present within the vicinity of each such polling station. This has been changed. SI 85 of 2013 introduces a new Section 95(1) (b) that allows two electoral agents to be present in the immediate vicinity of each polling station. Either one of the two election agents in the immediate vicinity of the polling station may relieve the election agent entitled to be present in the polling station. This is consistent with the call by ZESN to have a transparent electoral process. Having more election agents who can relieve each other certainly contributes towards a more transparent voting process.</p>
SECTION C	Gaps that remain in the Electoral law requiring future Advocacy activities	
Number	Issue	Comment
I	The Diaspora Vote	<ul style="list-style-type: none"> ZESN has been advocating for the recognition of the people living in Diaspora to be allowed to vote. The Electoral laws, in the past have limited that right to special categories of persons. Section 72 of the Electoral Act limits the right for a person to vote whilst outside the country only to persons on duty in service for the government and their spouses. This section has remained unaffected by the latest amendments to the Electoral Act via SI 85 of 2013. Section 72 was consistent with the resident qualification in Section 3 of schedule 3 of the Lancaster House Constitution. However the New Constitution has removed this limitation. Section 67 of the New Constitution introduces an expansive list of political rights that a Zimbabwean is entitled to enjoy. It is quite apparent from its reading that any Zimbabwean citizen regardless of location should be allowed to exercise the right to vote in elections and referendums of the country. This interpretation is supported by Section 1 of Schedule 1 of the New Constitution that provides that an Electoral Law may provide for certain residential requirements that ensure voters appear on the appropriate

		<p>roll. This Electoral Law must however be consistent with the Constitution. To this extent it would appear that Section 72 of the Electoral Act as amended by SI 85 of 2013 is inconsistent with the New Constitution and therefore void. This issue should be put on the legislative agenda of the new parliament so that the Electoral Act can be aligned with the New Constitution. The right for Diasporans to vote has been recognised and afforded to citizens in a number of jurisdictions. This is the case in regional peers such as Mozambique and South Africa. There is no reason why Zimbabwe should not also follow suit.</p>
II	Cleaning of voters roll	<ul style="list-style-type: none"> • An accurate voter’s roll is at the heart of a credible and transparent voting process. It is for this reason that many stakeholders including ZESN have advocated for an accurate, up to date and clean voters roll. The voters’ roll in Zimbabwe has been criticized for being perpetually inaccurate and outdated. Studies done at one stage revealed the existence of more than a quarter of a million people on the voters roll who were deceased. One of the reasons for this sad state of affairs has been the absence of a strong legislative framework providing for the constant reviewing and updating of the voters roll to make it contemporaneous. The procedure for removal of absent or deceased persons provided for under Section 27, 33 and 37B goes a long way to ensure that the voters’ roll is up to date. However this is not enough as the process is not systematic. • ZESN has previously recommended that there be a procedure whereby custodians of national records such as the Registrar General’s office give information on any deaths recorded, to the Commission on a monthly basis, so that these can be removed from the voters roll. Such a system is used effectively in countries like Mozambique. Despite calls for the legislature to provide for this, the current electoral laws do not place such an obligation on any of the state institutions. It is hoped that calls for clean voters roll will be heeded through implementation of some of the steps suggested here.
III	Responsibility for voter Registration	<ul style="list-style-type: none"> • One of the most contentious issues has been the role played by the Registrar-General of voters (RGV) in Zimbabwe. That office has been held by one person for the past three

and custody of the voters roll

decades. There have been serious complaints about his impartiality or absence thereof in the management of the voters roll. Such suspicions have not been helped by the failure of the RGV to keep a clean accurate and credible roll since time immemorial. After negotiations between the political parties, efforts were made to address the complaints through the amendment of the Electoral Act. Act 17 of 2007 introduced Section 18(2) to the Electoral Act which brought the office of the RGV under the direct control of the Commission. That the Commission is the custodian of the voters roll, and the ultimate authority of election management in Zimbabwe has been reinforced by Section 239 of the New Constitution. Among other things, section 239 of the New Constitution empowers ZEC to register voters, compile voters roll and registers and ensure the proper custody and maintenance of the voters' rolls and registers. The problem is that the Act provides for an office of the RGV, who, although under the supervision of the Commission, seems to independently carry on with his functions without direct control from the Commission. The Commission has to rely on the RGV to have the voters roll which should be kept and updated by the Commission. This is undesirable. The Commission should have ultimate control and responsibility of the voters' roll.

- The current situation in Zimbabwe is certainly undesirable. There are four different offices that have been created by Acts of parliament providing for Registrar-Generals. These are Registrar-General of Births and Deaths, the Registrar-General of Citizenship, and the Registrar-General of Elections. There are two problems that currently obtain in Zimbabwe. Firstly all the four posts mentioned above are currently held by one person. Secondly the post of Registrar-General falls under the Public Service Commission, a different body from ZEC. Yet the RGV is supposed to be under the direct supervision of ZEC. It is submitted that the current state of affairs is not desirable and this could not have been the intention of legislature to have an RGV who is accountable to another state body.
- The recommendation therefore, which remains outstanding is that ZEC should take control

		<p>of the electoral management process as envisaged under Section 239 of the New Constitution. Secondly if there has to be an RGV, he should not be part of the Public Service Commission. And such a person must not be the same person who has the three other roles outlined above. Surely the key role of ensuring an effective, credible and transparent electoral management system cannot be burdened on one single person who already has three other portfolios under his belt. It is also worthy noting that the other three acts administered by the RGs mentioned above currently fall under the Ministry of Home Affairs. The Electoral Act which the RGV manages falls under the Ministry of Justice. It is quite obvious that there is something wrong in this situation where one person is managed by ministers from two different ministries depending on which hat he is wearing. This is clearly unsatisfactory. It is therefore recommended that ZEC should have its own structures separate from other commissions and RGs, if it is to have true oversight and control of the electoral management system.</p>
IV	Polling Station Voters' Roll	<ul style="list-style-type: none"> • One of the latest amendments brought in by Act 3 of 2012 introduces one of the most revolutionary provisions in the life of electoral laws in Zimbabwe. Section 22A of the Electoral Act seeks to introduce the polling station based voters' roll. This narrows even further the options of stations at which a voter can exercise his right to vote. With the polling- based voters roll you can only vote at one specific polling station where your name appears in the voters' unless where exceptions apply. Currently, a voter can go to any polling station as long as it is within the ward from which his name appears on the roll. The rationale behind the current status has been articulated as the necessity of the vote for the ward councillor. • The rationale behind the proposed polling station based voters' roll, via Section 22 is to reduce the possibility of a person voting twice in one election. This method makes of voting makes it easier to know how many ballot papers are required for a particular polling station and it is to come up with an accurate voters' roll for each polling station. • On the other hand there are strong factors weighing against the polling-station based voters roll and ZESN has previously highlighted these: Because the boundaries of those

		<p>falling in a particular polling station are much smaller it becomes easier to identify communities that would have voted for or against a particular political party or candidate. If the results overwhelmingly favour a particular candidate, the risk is that the local community will become an easy target for post-election violence.</p> <ul style="list-style-type: none"> • The other downside of the polling-station specific voters roll occurs where voters are otherwise displaced during elections. Incidents of voter displacement occurred in the 2008 election. If unable to access the specific polling station such voters would be unable to exercise their right to vote. This can become a problem where there is a concerted and organised effort aimed at displacing voters from areas close to their specific polling stations or to bar them from voting altogether. • It is therefore proposed that the polling station based voters' roll be adopted together with necessary reforms that ensure that people are not victimised for exercising their constitutionally guaranteed right to elect leaders of their own choice. • <i>It must be pointed out, at this juncture, that these electoral landscape-changing provisions will not come into operation immediately, but only when the Commission has prepared all the polling-station voters rolls. The Commission will publish a notice in the Gazette commencing the operation of Section 22A. So far this has not happened. The forthcoming elections will therefore be held under the current ward-based voters' roll system.</i>
V	Settling the presidential run-off election	<ul style="list-style-type: none"> • The latest amendment to the Electoral Act, SI 85 of 2013, leaves the proviso to Section 110(3)(g)(iii) unchanged. This provision stipulates that in the event of an equal number of votes for the candidates in a the runoff election, parliament shall as soon as practicably possible meet as an electoral college and elect one of the two candidates as President. ZESN had previously called for the proviso to be repealed and be substituted by a provision that is similar to the one in the Ghana Constitution that leaves the voting to the electorate until a winner is found. It has been said that the election of the Presidency is

		<p>too important a process to be delegated to Parliament. As this provision has been retained, lobby efforts to have it revisited should be continued. It must however be said that the chances that an election can produce an equal number of votes for the two presidential candidates are highly unlikely.</p>
VI	Computation of days within which election results are announced	<ul style="list-style-type: none"> Concern has been previously raised regarding the days within which the election results of the Presidency should be announced. In particular, ZESN was concerned by the extra five-day period, which is given to the Commission to announce results in terms of Section 110(3)(h)(ii). This five day-period is over and above the initial period within which an election result should have been announced. ZESN had noted that it would be desirable to announce the results immediately after the recount has been finished. It was noted that there was hardly any point or rationale for potentially waiting for a further 5 days from completing the recount before the result is declared. It only breeds anxiety, uncertainty and fears of rigging that the statute is trying to minimise. Ideally, the vote-recount must be declared as soon as it is completed. It was recommended that if any limit must be imposed, it should be no more than 24 hours after the completion of the recount. Notwithstanding the amendments introduced by SI 85 of 2013, this provision has remained unchanged. It is desirable that the announcement of results be done as soon as practicably possible. This is especially more so in light of the other amendments allowing results to be displayed on the outside of polling stations. With the advent of technology political parties can add up and easily collate all the results within one day. A highly undesirable scenario can arise where the actual results and figures are out in to the public domain within one day whilst the official results are withheld for a period beyond ten days. Such a scenario is undesirable and the law must restrict the period within which results can be announced to stem public anxiety.
VII	Potential lacuna between	<ul style="list-style-type: none"> One concern previously raised centred around the holding of a runoff under circumstances where the incumbent is not one of the two leading candidates. Under the Lancaster House

	<p>Presidential election and presidential runoff</p>	<p>Constitution, the incumbent remained in office until a new president is sworn in. The suggestion had been made to ensure that a person with no prospect of being a president holds office after the declaration of the first result of the presidential election and before the completion of the runoff process. Unfortunately this situation will continue to obtain as the new constitution provided for it. Section 94(2) of the constitution provides that the incumbent President shall continue in office until the assumption of office of the President-elect.</p>
<p>VIII</p>	<p>Restrictive provisions on voter education</p>	<ul style="list-style-type: none"> • Act 3 of 2012 introduces a new chapter, Chapter 9 to the Principal Act, dealing with voter education. <ul style="list-style-type: none"> • The section sets out under Section 40B, the functions of the Commission and under Section 40C persons that are entitled to conduct voter education. The following are permitted under the Act to conduct voter education <ul style="list-style-type: none"> - The Commission - A person permitted (by the Commission) to assist the Commission under section 40B(3) and - Political parties - Other persons satisfying conditions outlined under paragraphs (d) to (j) <p>Section 40B (3) provides that the Commission <i>"may permit any other person to assist it in providing voter education"</i>. The use of the word <i>"may"</i> as opposed to the more peremptory <i>"shall"</i> means the inclusion of other players in the provision of voter education is left to the discretion of the Commission. There has been concern that the Commission may limit activities of organisations willing to conduct voter education through a narrow interpretation of the Act. Concern has been raised regarding the penal provisions under Section 40C(3) that can be resorted to, to punish those alleged to have failed to comply with one or more of the requirements set out in Section 40C. The first concern was the around the fact that the provision may limit academic freedom where the lines between voter education as envisaged under the</p>

		<p>Act and general voter education given in the course of academic studies become blurred. It must however be noted that such fears are clarified by the definition of “voter education” in the Act. Section 40A defines “voter education” as “any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law or civics or any other subject for students at an educational institution.” The definition seems to address any fears that academic freedom is limited, as it is clearly excluded from the scope of the Electoral Act.</p> <ul style="list-style-type: none">• The real fear lies in the broad and sweeping nature of this definition. It is suggested that the Act should restrict its application to voter information and not voter education or civic education as it is generally understood. The Building Resources in Democracy, Governance and Elections (BRIDGE) handbook defines voter education, also known as electoral education, as programmes aimed at people of the voting age and over and addresses voters’ motivation and preparedness to participate fully in elections. The manual further explains that voter education is concerned in giving the types of electoral systems and electoral process and concepts such as basic human rights and voting rights, the role, responsibilities and rights of voters, the relationship between elections and democracy, conditions necessary for democratic elections, secrecy of the ballot, why each vote is important and its impact on public accountability and how votes translate into seats. Civic education includes both school and community based education and deals with all aspects of human rights, active citizenship, systems of governance and elections. These two should not be conflated with voter information or awareness (more accurately referred to as voter awareness or information programs) that happens just before an electoral event. Usually they are one-off events and dwell on how to, where to and when to vote. They aim to provide basic information enabling qualified citizens to vote, including the date, time, and place of voting; the type of election; identification necessary to establish eligibility; registration requirements; and mechanisms for voting. It is this narrow aspect that the Electoral Act should prescribe.
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		<p>There is need for the Act to be amended in line with modern trends of election standards and good practices of electoral processes.</p> <ul style="list-style-type: none"> • Another issue of concern around the voter education requirements relates to the arduous requirements provided for under the Act that a person or entity requiring to conduct voter education has to for fulfil. Some of the requirements outlined under Section 40C include: <ol style="list-style-type: none"> 1. the person must be a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe 2. If it is an association it must be registered in terms of the laws of Zimbabwe and 3. The entity must be mandated by its constitution or trust deed, as the case may be, to provide voter education 4. The person or entity must conduct voter education in accordance with a course or programme of instruction furnished or approved by the Commission 5. The voter education is, subject to section 40F, funded solely by local contributions or donations 6. If there is a foreign contribution or donation for the purposes of voter education it shall be channelled through the Commission, which retains discretion on how such funds would be used(Section 40F) 7. The Commission requires any individual or entity to furnish it with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted 8. The Commission also requires to be furnished with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education and disclosure of the manner and sources of funding of its proposed
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		<p>voter education activities.</p> <ul style="list-style-type: none"> • These requirements are clearly onerous and seem to go beyond what the Act should provide for, regard being had to the New Constitution that recognises the rights to freedom of assembly and association (section 58) and freedom of expression (Section 61). For example, if a focus group in a community that is not registered comes together and discusses issues concerning the voter-related process, they would easily fall foul of the provisions of the Act and face arrest notwithstanding the constitutional rights they have. The restrictive provisions are inconsistent with the provisions of the Constitution. These provisions should be relaxed to ensure the full realisation of the rights to freedom of association, assembly and expression provided for in the New Constitution. • Another concern is captured in Section 40F of the Act, directing that all funding received for purposes of voter education should be channelled through the Commission. The Commission is given power to allocate such funds to any other organisation that may not necessarily have been responsible for the fund-raising initiatives. This provision limiting the receipt of foreign funding unless as otherwise provided for here is unconstitutional and unreasonable. The provision has no place in the new constitutional dispensation where individual rights and liberties have been strengthened as stated above. The provision presents an illogical and unjustified intrusion into activities done by civic organisations. It should be a target should be repealed.
IX	Observers Accreditation Committee	<ul style="list-style-type: none"> • It has been observed, above, that the increment of the number of commissioners forming the Observers Accreditation Committee (OAC) from three to five via Section 17 of SI 85 of 2013 represents a positive move in ensuring that ZEC has control over all aspects related to election management including accreditation of observers. However it still remains a concern that within the committee are some presidential appointees that could pose an obvious threat in influencing the decisions of the Committee. The OAC as set out under Section 40H of the Electoral Act is not entirely satisfactory. For example it is not

		<p>clear what role or purpose should a person nominated by the Office of the President and Cabinet play in the OAC. There are appointees of a party that is potentially an interested party to the election that may be happening. This is undesirable and it can be argued the provision in the Electoral Act retaining presence of persons who are not Commissioners within the OAC is unconstitutional. The issue of the composition of the Commission should therefore be revisited with a view to lobby for the reconstituting of the Committee. An ideal situation is to have all members of the OAC coming from the Commission itself.</p>
X	Accreditation of Observers	<ul style="list-style-type: none"> • The new Part IXB makes provision for the accreditation and role of election observers. This is an important institution in any election process as it ensures that there are both local and external observers to ensure that the election is conducted in a manner that is not only free and fair but is seen to be free and fair. • The power of accrediting observers is given to the Observers' Accreditation Committee. It has the role of vetting the applications of observers and making recommendations to the Commission which shall have the ultimate power and responsibility of making the final decision. The concern here is that the OAC has, as one of its members a nominee from the ministry of foreign affairs. The same ministry may, in terms of Section 40I (4) of the Act lodge an objection to the accreditation of a "foreign individual or eminent person" and states that the OAC "shall pay due regard to the objection" in its decision-making process. The fact that an entity with a nominee on the OAC has a right of objection could compromise the impartiality of the OAC in respect of the applicant. It would seem that it is not desirable for the ministry to have it both ways, that is, have a nominee on the OAC and still have the right to lodge an objection to an application. It may be necessary to have a provision within the law stating that where such an objection is lodged the Foreign Affairs Minister's nominee should recuse himself from the decision-making process in such circumstances. • Section 40I (5) ensures that the Commission is the ultimate decision-making body in respect of accreditations since the OAC is only a recommending body. It has been suggested by ZESN that the Act should clarify on the nature of the 'recommendations' that the OAC is entitled to issue – are they recommended names of accredited observers or do they include a list of applicants that have been rejected? The risk here is that whilst it

		<p>appears that the Commission is the ultimate deciding body it is not clear that it has the power to revisit the applications that have been rejected. If it does not have sight of these rejected applications, then its role as the ultimate decision-making body is in reality very limited, with greater power resting in the OAC.</p> <ul style="list-style-type: none"> • Also of concern is that there is no provision for the rejected applicants to seek recourse against the decision of the OAC. This may lie with the courts under the normal laws of the country but it would be lengthy and time-consuming, especially given the urgency of such matters in periods leading up to elections. It would be better to have clear provisions enabling an appeal process against the decision of the OAC, in particular given that the Ministers have the right of objection against specific applicants whereas there is no provision for hearing the side of the applicants in such circumstances. SI 85 of 2013 did not affect these provisions and it is necessary to explore further ways to have the law amended and bring clarity to the “grey areas.” • Overall, as previously pointed out, it is not desirable to have the Observers’ Accreditation Committee (“OAC”) that is responsible for the accreditation of both local and foreign election observers comprised of a high number of political nominees. ZESN recommends that the composition of the OAC be exclusive decision of the body charged with running elections, i.e. the Commission. Ministers, who are usually also contestants in an election, should have no role in the accreditation of observers since all other candidates in an election who are not Ministers do not have the same facility. Likewise, it is not necessary to give power to the Ministers of Government to invite persons to apply for accreditation to observe elections. Indeed, on the same basis, Ministers’ right of objection against certain observers is not justified given that other contestants or parties with an interest in an election do not have the same facility of objection. All this should be the exclusive domain of the Commission. The offending provisions under Section 40H have remained on the Statute book notwithstanding the amendments brought by SI 85 of 2013. Further review of these provisions is necessary to bring them into conformity with the New Constitution.
XI	Setting of election (runoff) dates	<ul style="list-style-type: none"> • Section 110(3)(iii) gives the incumbent president power to set the election runoff date. ZESN has argued that the power to set all election dates be bestowed with the Commission as opposed to giving such powers to an incumbent President. The alternative

		<p>may be to have the date set by law. Either way, the power to set election dates would be removed from a person who will also be a candidate in the election and is therefore an interested party. The Commission must be in full control of the election process, and this should include setting the polling dates in consultation with relevant parties and state authorities. Fixing the election by law may present challenges in terms of implementation – for example poor preparations and other factors might cause delays which could make it difficult to meet a date set by law. ZESN believes that the power should be given to the Commission and not leave it with the President who, along with the ruling party, is an interested and therefore biased party. Section 85 of 2013 has left this provision as is. IT should therefore be revisited and reviewed as suggested above.</p>
XII	Postal voting	<ul style="list-style-type: none"> • Part fourteen of the Electoral Act deals with the procedure for postal voting. ZESN has raised some concerns on the postal voting process to the extent the security of the vote may be compromised. The term “official electronic mail address” was a cause of concern as it was not properly defined. This remains the case despite the new amendments introduced by SI 85 of 2013. • Another issue raised was the limitation placed on those allowed to exercise their right to vote through postal voting. Section 72 of the Electoral Act limits the postal vote to only two categories, namely a person on duty in the service of the Government; or the spouse of a person referred above. • It has previously been noted that it is not just persons on government duty who find themselves outside the country on critical voting days. There is no good reason why, if postal voting is available to those on government duty, it cannot be available to them too. For example, it discriminates against those in business who may have to be away to do business during election days. Postal voting does contain risks but it should be more widely available than it is at present. It has already been noted above how Zimbabwe lags behind other countries in the region such as South Africa and Mozambique which permit Diaspora voting and in the case of Mozambique, have taken active steps to register voters in the Diaspora to ensure that they exercise their right to vote. Zimbabwe needs to adopt a similarly open approach to ensure it has a truly representative government. As things

		stand the people outside the country cannot exercise their right to vote with the exception of the two categories stated above. In accordance with the new Constitution granting expanded political rights it should be possible for people in the Diaspora to vote.
XIII	Special Voting	<ul style="list-style-type: none"> Act 3 of 2012 introduces the special voting procedure in section 81 of the Electoral Act. This procedure as already stated above is restricted to members of the disciplined forces that will be on duty during the elections. The suggestion made by ZESN was to expand this to include people who may have good reason to not be able to exercise their vote through the normal way to be allowed to do so through the special vote. It has been recommended that just as the state has made special procedures for those who cannot be physically present on government business, it must also account for the voting rights of those who cannot be present by reason of old age, physical incapacity or generally ill-health. At present the voting procedures which effectively limit the participation of the aged could be seen as discriminatory on the grounds of ageism and therefore potentially in violation of Section 56 of the New Constitution. It is recommended that special voting procedures set out legal provisions to enable the elderly, physically-incapacitated and ill to exercise their voting rights. SI 85 of 2013 has not addressed this and it should be considered when the law is revisited in the future.
XIV	Conduct of news media during election period	<ul style="list-style-type: none"> Section 160J provides for certain benchmarks that broadcasters and the print media should abide by to ensure an election is held in a free, fair and harmonious manner. Section 160J (g) lists the nature of news dissemination that should be avoided, including language that incites violence and encourages racial, ethnic, or religious prejudice. Because of the pervasiveness of gender based, election-related violence, ZESN had called for the inclusion of gender on the indices listed. Unfortunately that opportunity was missed once again in the latest amendments via SI 85 of 2013. Mechanisms should be put in place to address this issue in light of the continued harmful effects stemming from gender-insensitive pronouncements through the media.

XV	Monitoring the Media	<ul style="list-style-type: none"> Section 160K provides for the monitoring of the news media during an election period by the Zimbabwe Media Commission to ensure political parties, candidates and broadcasters and journalists observe the tolerant attitude enunciated in party twenty of the Electoral Act. It has however been previously pointed out that the biggest problem with this part is the lack of specific and effective sanctions for breaches of these requirements by both print and broadcast media. The position is particularly significant in respect of the publicly funded broadcasters whose conduct has always been the subject of criticism by opposition political parties and civil society. This part needs to be strengthened to ensure that broadcasters and the print media can be held to account directly under the Act for breaches of the stated rules and requirements. This has not been addressed under the latest amendment of the Electoral Act (SI 85 of 2013).This should be addressed by the legal framework, going forward.
XVI	Electoral Court	<ul style="list-style-type: none"> Section 161 provides for the establishment of the Electoral Court to deal with all electoral disputes. Such judges will be appointed from the High Court. The issue of independence and impartiality has been raised vis-a-vis the current bench. The New Constitution goes a long a way to address this by providing for a new procedure for appointment of judges that include public interviews (Section 180 of the New Constitution.) It is the hope that the new constitutional dispensation will give an opportunity for the appointment of judges who have integrity, competence and impartiality.
XVII	The Role of Police Officers during election	<ul style="list-style-type: none"> The role of the police during an election is set out under Section 56 of the Electoral Act, as amended. Section 55(2)(b) lists a police officer as one of the limited class of persons that can be allowed inside a polling station by the Presiding Officer. Section 55(6) of the Electoral Act empowers the presiding officer to call upon a police officer for assistance in keeping order at the polling station and the area surrounding it. The critical provision regarding the role of the police is Section 55 (7) that provides as follows: <i>The Commissioner-General of Police shall ensure that sufficient numbers of police</i>

officers are available in the immediate vicinity of each polling station to provide immediate assistance if called upon to do so in terms of subsection (6)

Two things can be discerned from this provision. Firstly, a police officer is not supposed to be in the polling station during the voting process. He should be in the **immediate vicinity** where he can easily be called upon if needed inside the police station. Secondly, when he is at the polling station he is under the command and direction of the presiding officer. He can only enter the polling station if he is summoned by the presiding officer to do a specific task, and he should immediately leave once that task is completed. For example, section 59(1)(b) allows for an assisted voter who has not brought a person of his choice to assist him in voting, to be assisted by the electoral officers and the police officer on duty.

The role of the police officer is restricted to in an election as set out in Section 55 of the Electoral Act [Chapter 2:13] as amended. Under Section 7a, police officers are prohibited from interfering with the electoral process at any polling station. It is notable that the language used is peremptory and does not offer discretion to the police. It says, police officers, **“(b) shall not interfere with the electoral processes at a polling station.”**

These provisions must be read in the political context of Zimbabwe where the members of the security sector have been accused of partisanship politics. Fears of intimidation and coercion cannot be discounted when voters enter the polling station and see a police officer inside. This explains the amendments to the law restricting the role of the police.

ZEC has produced several manuals that give guidelines to various stakeholders during the election. In one of the manuals, entitled **“Manual for presiding officers and election officer conducting ordinary poll Harmonised Elections 2013,”** ZEC has put a provision that clearly goes beyond what is provided under the Electoral Act. Section D(5) of the manual provides that:

		<p><i>One police officer should be stationed inside the polling station close to the entry door and one police officer should be outside the station to keep order outside the station and to ensure that voters queue in an orderly fashion.</i></p> <p>In the same manual there is a diagram showing the positions of various office bearers within the polling station and it has a police officer inside. This is clearly <i>ultra vires</i> the Electoral Act and defeats the whole purpose behind the amendment excluding the police from the polling station. If the legislature intended to have a police officer inside the polling station it would have clearly said so. This provision must therefore be realigned with the intention of the legislature in the Electoral Act and in accordance with the Constitution.</p>
<p>XVIII</p>	<p>CONCLUSION</p> <p>After the disputed election of 2008, the three main political parties, ZANU PF, The MDC-T and the MDC-N entered into the inclusive government (IG) after the signing of the Global political Agreement (GPA) on the 15th September 2008. One of the commitments made by the political parties was to push for a legislative Agenda that promoted a culture of human rights, good governance and democratic elections as provided for by the GPA. It was important that the legislative framework around elections be revisited and strengthened in order to ensure that chaotic elections as those seen in 2008 would not be repeated again. In September 2012, the three parties to the GNU agreed to some electoral amendments which saw the passing of Act 3 of 2012 which introduced a few positive amendments as noted above. This was however not comprehensive and many gaps remained in the electoral architecture requiring strengthening.</p> <p>In May 2013, the historic New Constitution was signed into law by the President of Zimbabwe. The Constitution brought with it new provisions that recognised the inalienability of fundamental human rights including political rights encompassing the entitlement to a free and fair election. As a consequence of the new constitutional dispensation there was need to again realign the electoral law, <i>inter alia</i>, with the New Constitution. Unfortunately due to a combination of factors the life of parliament of the Inclusive Government expired without a proper debate and subsequent passing of an electoral law that was underpinned by the universally recognised, constitutionally protected ethos of good governance and elections. An opportunity was missed.</p> <hr/>	

Instead, the realignment of the electoral laws was done through the use of the presidential powers (temporary measures), via **SI 85 of 2013**. As noted above the Statutory Instrument did in fact bring with it a few positive provisions that strengthened the electoral framework. However there is still more that needs to be done. It is now apparent that the forthcoming elections will be held under the electoral laws that presently subsist with the latest amendment being **SI 85 of 2013**. It is hoped that the new parliamentarians that will be voted into office will prioritise the electoral laws in their legislative agenda. There are good international and regional standards that provide blueprints and model provisions that can be used to draw inspiration from. One of these is the SADC Principles and Guidelines on Democratic elections which Zimbabwe ascribes to. Beyond the good laws being passed through the legislature is the need to have the requisite political will. A good law without the requisite political will serve no purpose. A combination of good laws and political will ultimately see Zimbabwe emerge from the abyss the country has been stuck in, over the past decade. It is hoped that the recommendations captured here will be taken on board by the legislative authority as part of a process to restore the country onto a democratic path underpinned by good governance, and the holding of free and fair elections.