CISOMM PRE-ELECTION REPORT
JULY 2013

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National Office
[+ 263-4] 705370 / 708188
Hotline: [+263] 772 257 247
Email: infor@zlhr.org.zw

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This publication was primarily researched by CISOMM member organizations through their thematic clusters. It was compiled by Mr Mike Davies and edited by ZLHR Lawyers Irene Petras, Dzimbabwe Chimbga and David Hofisi.
ABOUT CISOMM

CISOMM is a group of Civil Society Organisations which, through shared and agreed benchmarks, focuses on monitoring and assessing the adherence to and implementation of the Interparty Political Agreement (IPA) by those bound to its provisions through the work of five (5) main Thematic Clusters. These are Economy and Development (incorporating Economic Recovery, Land, Humanitarian and Food Assistance), Constitutional Reform Process, Political Transition and Justice (incorporating Equality, National Healing, Cohesion and Unity, Traditional Leaders, and National Youth Programme), Institutional Transformation (incorporating Rule of Law, State Institutions, Legislative Agenda, the Media and National Institutions) and Respect for Human Rights and Operating Environment (incorporating Rule of Law, Freedom of Expression and Communication, Free Political Activity, Freedom of Assembly and Association, and Security of Persons and Prevention of Violence). These clusters were revised for the Electoral Period to Media Reform, Electoral Process and Management, Rule of Law, Legislative Reform and the Actual Election. Zimbabwe Lawyers for Human Rights (ZLHR) is the secretariat of CISOMM.
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INTRODUCTION

The Civil Society Monitoring Mechanism (CISOMM) is a non-partisan collective of non-governmental organisations dedicated to monitoring and evaluating implementation of the Zimbabwe Global Political Agreement (GPA).

The GPA provided a transitional mechanism of power-sharing after the failure of the 2008 elections to deliver a legitimate and universally accepted result. The current electoral process is the culmination of five years of unsettled governance based on the GPA. The harmonised elections scheduled for the 31st July 2013 are expected to finally bring to an end an often acrimonious five year relationship between the Zimbabwe African National African Union Political Front (ZANU PF), led by President Robert Gabriel Mugabe, the Movement for Democratic Change (MDC), led by the Prime Minister, Morgan Tsvangirayi and the MDC led by Professor Welshman Ncube. With the election looming, questions still remain concerning the credibility of the electoral process and whether it will deliver a legitimate outcome acceptable to the parties involved and to the people of Zimbabwe.

The 31 July 2013 Harmonised Elections will be to choose Local Authority Councillors, Provincial Councillors, members of the National Assembly, Senators and the President. The new constitution that came into force on the 22nd of May 2013 significantly changed the electoral environment in a structural and procedural sense. The 31 July 2013 Harmonised Elections will be the first to be held under this new constitution. The New constitution brought several far-reaching changes to the distribution of power particularly through the creation of Provincial Councils as well as more independent commissions such as the Zimbabwe Gender Commission, the National Peace and Reconciliation Commission and the Zimbabwe Land Commission.

1 http://www.cisomm.org/ for members of CISOMM see here.
2 Provincial Councillors and Senators and sixty of the seats reserved for women in the National Assembly will be chosen through a system of proportional representation rather than being directly elected.
3 Although the Zimbabwe Land Commission is not listed under the Independent Commissions and is appointed entirely and exclusively by the President, see Section 296 of the Constitution of Zimbabwe.
However, to align the laws of Zimbabwe with new constitution, an agenda for legislative reform was required. This was then ostensibly superseded by the ruling of the newly established Constitutional Court in the case of *Jealousy Mbizvo Mawarire v. Robert Mugabe and Four Others*. Through that case, the 31st of July 2013 was set as the deadline by which elections should have been held and this was the reason given to amend the electoral laws through a statutory instrument from the President rather than through the legislative arm of government, that is, to meet a very tight deadline. As such, the country was galvanised to the elections without the reforms to key laws and sectors whilst leaving very little room for voter registration, voter education and dissemination of voter information.

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*Const. Application No. 146/2013*
1. DEMOCRATIC CONTESTATION

The multiplicity of political players involved in the election presents the visage of an open and rigorously competitive democratic electoral process. A quantitative analysis of the various nomination lists issued by the Zimbabwe Electoral Commission for the five contests (Local Authority, Provincial Council, National Assembly, Senate and President) shows a diversity of parties and candidates.

Five candidates – all males - will contest the presidential election while 852 candidates from 20 parties and independent candidates will contest the 210 constituencies of the National Assembly. Pelandaba-Mpopoma Constituency in Bulawayo has no fewer than 11 contestants while Bulawayo East Constituency has 9 vying for the same seat. In addition, there are 60 seats reserved for women in the National Assembly and five parties have submitted 201 candidates for these seats (AKE; MDC; MDC-T; ZANU-PF; ZAPU).

The Senate is elected through proportional registration based on provincial voting results and candidates are nominated via the party list system. Six parties have successfully nominated candidates but proportional representation means that there are no independent candidates for the Senate. This may be regarded as a democratic deficit.

The new Constitution introduced Provincial Councils for 8 provinces (excluding Harare and Bulawayo). Ten councillors in each province are elected through proportional representation. Four parties have submitted party lists for these positions. Local Government elections will also take place in 90 Local Authorities for 1955 Wards. Ninety wards were uncontested – 84 went to ZANU-PF and 6 to MDC-T. 4740 candidates will contest for the balance of 1875 Wards.

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2 AKE; MDC; MDC-T; MKD; ZANU-PF; ZAPU
3 MDC; MDC-T; ZANU-PF; ZAPU
Since 2008, three new local authorities have been created. These are Mhondoro-Ngezi (Rural District Council, Mashonaland West), Mbire (Rural District Council, Mashonaland Central), and Mvurwi Town Council (Mashonaland Central). While the two Rural District Councils feature in the Nominated Candidates lists, there is no mention of Mvurwi Town Council, raising question as to how these seats will be filled. Further, members of Chirundu Local Board are appointed by the Minister of Local Government, Public Works and Urban Development thus denying its residents their democratic rights.
2. GENDER

All five presidential candidates are male.

Table 1 shows the gender distribution amongst National Assembly candidates. There are 110 females (13%) competing with 742 males. The percentage of female candidates is lowest in Masvingo (8%) and Matabeleland South (9%) and highest in the two Metropolitan provinces, Harare (19%) and Bulawayo (17%). Of the three main parties, MDC has the highest percentage of female candidates with 20% of its contestants being women followed by ZANU-PF (12.3%) and MDC-T (9.4%)

<table>
<thead>
<tr>
<th>Province</th>
<th>F</th>
<th>M</th>
<th>Females as % of candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulawayo</td>
<td>15</td>
<td>73</td>
<td>17%</td>
</tr>
<tr>
<td>Harare</td>
<td>27</td>
<td>114</td>
<td>19%</td>
</tr>
<tr>
<td>Manicaland</td>
<td>11</td>
<td>86</td>
<td>11%</td>
</tr>
<tr>
<td>Mashonaland Central</td>
<td>6</td>
<td>51</td>
<td>11%</td>
</tr>
<tr>
<td>Mashonaland East</td>
<td>11</td>
<td>72</td>
<td>13%</td>
</tr>
<tr>
<td>Mashonaland West</td>
<td>8</td>
<td>65</td>
<td>11%</td>
</tr>
<tr>
<td>Masvingo</td>
<td>7</td>
<td>80</td>
<td>8%</td>
</tr>
<tr>
<td>Matabeleland South</td>
<td>5</td>
<td>52</td>
<td>9%</td>
</tr>
<tr>
<td>Matabeleland North</td>
<td>8</td>
<td>53</td>
<td>13%</td>
</tr>
<tr>
<td>Midlands</td>
<td>12</td>
<td>96</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>110</strong></td>
<td><strong>742</strong></td>
<td><strong>13%</strong></td>
</tr>
</tbody>
</table>

There are an additional 60 seats reserved for women in the National Assembly elected by proportional representation.
In the Senate, 60 Senators are elected by proportional representation (6 Senators from each Province), 16 Chiefs elected by each provincial Assemblies of Chiefs (2 from each non-Metropolitan Province) plus the President and Vice-President of the Council of Chiefs and 2 Senators representing people with disabilities (elected in terms of the Seventh Schedule of the Electoral Act). The Party List Nominations show an equitable gender distribution amongst the candidates (Table 2).

Table 2 Senate Candidates by Gender

<table>
<thead>
<tr>
<th>Province</th>
<th>F</th>
<th>M</th>
<th>Total</th>
<th>Females as % of candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulawayo</td>
<td>19</td>
<td>15</td>
<td>34</td>
<td>56%</td>
</tr>
<tr>
<td>Harare</td>
<td>8</td>
<td>12</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>Manicaland</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td>Mashonaland Central</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td>Mashonaland East</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td>Mashonaland West</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td>Masvingo</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td>Matabeleland North</td>
<td>12</td>
<td>12</td>
<td>24</td>
<td>50%</td>
</tr>
<tr>
<td>Matabeleland South</td>
<td>12</td>
<td>12</td>
<td>24</td>
<td>50%</td>
</tr>
<tr>
<td>Midlands</td>
<td>9</td>
<td>9</td>
<td>18</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>105</td>
<td>105</td>
<td>210</td>
<td>50%</td>
</tr>
</tbody>
</table>

Only 18% of the 4830 candidates for the Local Authority elections are female. Some prospective candidates faced challenges at the Nomination Court. MDC-T candidate Eulitah Govo submitted papers to contest Ward 21 Chikomba District, but these were rejected on account of a variance between the surname on her birth certificate and that on her national identity card. She explained that she had changed her surname when she got married, but was told to bring a copy of her marriage certificate despite

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1Chiefs Charumbira, Khumalo elected, Herald, 22 July 2013
this not being a requirement in terms of the Electoral Act. Upon furnishing a copy of
the marriage certificate, she was advised that she was out of time, and as such her
nomination papers had been rejected. This conferred an unfair advantage on the male
contenders for political office who had not been asked to produce the same. After
intervention from ZLHR lawyers, Justice S. Mavangira granted an order confirming Ms
Govo as the duly nominated candidate. If Ms Govo had been refused the order, the
Ward would have been uncontested and the ZANU-PF candidate would have been
elected unopposed.9

9Eulithah Govo v Zimbabwe Electoral Commission & Minister of Justice and Legal Affairs
Justice
3. THE ELECTORAL ENVIRONMENT

The GPA provided for extensive reforms meant to ensure the next elections were credible and the outcome acceptable to all the political parties involved. This section looks at the anticipated reforms and whether or not these have been achieved.

i. MEDIA REFORM

Access to information is essential for free and fair elections and media reforms were a key component of the GPA. However, Zimbabwe is ranked 133rd of 175 countries on the 2013 World Press Freedom Index (midway between 117th in 2011-2 and 2008’s 151st). While there were some changes in the operation of the media, these proved to be superficial as many of the same authoritarian controls on the media have been maintained and personnel remained in place. The primary legislation governing the operations of the media, the Access to Information and Protection of Privacy Act (AIPPA), was not amended in any significant way, despite commitments by the MDC-T to liberalise media laws.

No compromises were made during the period of the GPA by ZANU-PF to allow the creation of a non-partisan State media. The former editor-in-chief of ZIANA, Henry Muradzikwa, was appointed CEO of the ZBC holding company, Zimbabwe Broadcasting Holdings (ZBH) in 2009 as part of a new board without consultations between the GPA Partners. Muradzikwa also sits on the Zimbabwe Media Commission and chairs the Zimbabwe Media Council. A new Broadcasting Authority of Zimbabwe Board chaired by ZANU-PF stalwart, Tafataona Mahoso, was unilaterally appointed by Webster Shamu in 2009. As pointed out elsewhere:

“Although there was nothing in the GPA requiring that the Board of BAZ be reconstituted, as with the ZMC, the establishment provision of the Act was amended as part of the 2007 reforms. It appears that a new Board was not, thereafter, immediately appointed in accordance with the new requirements. However, in October 2009, the ZANU PF Minister of Media, Information and Publicity, Webster Shamu, announced his (sic) appointment of a new Board. The Shamu-appointed board comprised ZANU PF loyalists, with Tafataona Mahoso (see above) as chair. However, the Minister has the power only to fill

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11“I have no doubt that the current session of Parliament will deal with the issue of media laws”
See this interview with Jameson Timba carried on the PM’s website
12 Other ZMC Commissioners include CEO Tafataona Mahoso see the full list here ZMC Commissioners
vacancies on the Board, and not to appoint it. The twelve-member board is appointed by the President, nine 'after consultation' with the Minister and the Committee on Standing Rules and Orders (CSRO), and three from a list of six submitted by the CSRO. As presidential appointments, the GPA and Constitution require Tsvangirai’s consent to them (see below). The Board was thus not legally constituted, having been appointed neither by the President, nor with Tsvangirai’s consent.

No new Trustees were appointed to the Mass Media Trust (MMT). However, this Trust appears to be dormant despite its pivotal role in administering government media interests.

Two licences for radio broadcasting were issued in May 2011 (out of 14 applications), both of which went to ZANU-PF aligned entities. The fees for broadcasters were so expensive as to be prohibitive, thus preventing new players from entering the sector.

Licences for four major newspapers (and several smaller papers) were issued in May 2010 (including The Daily News which had been banned in 2003) but the print media has a limited market penetration and TV and radio remain the primary media for most Zimbabweans.

The absence of fair and balanced electronic media in the country led to the popularity of externally-based broadcasters which broadcast into Zimbabwe. Two foreign-based radio stations, Short Wave Radio Africa and Studio Seven continue to broadcast into the country while a new TV channel, 1st TV, started broadcasting via satellite on 19 July 2013 using the Wiztech decoders which are widely owned by Zimbabweans.

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13 Paragraph 5 of the Third Schedule to the Act.
14 Section 4(2) of the Broadcasting Services Act.
16 MMTZ is supposed to manage government shareholdings in ZIANA, and Zimpapers as well as commercial companies such as Kingston’s.
17 Government-owned Zimpapers’ Talk Radio and AB Communications, owned by journalist and ZANU PF supporter SupaMandiwanzira. See also BAZ ‘shuts out’ independent players, Daily News, 6 July 2011
18 Two radio broadcasters, Short Wave Radio Africa and Studio Seven, were joined on 19 July 2013 by a television broadcaster, 1st TV much to the chagrin of BAZ. See http://www.zbc.co.zw/news-categories/top-stories/34663-baz-speaks-on-illegal-tv-channel.html
The Media Monitoring Project of Zimbabwe continued to report on hate speech in the media and their May 2013 report “Hate Speech In The Media” documents the latest incidents. It is clear from the report that the largest source of hate-speech in the media originates from ZANU-PF or organisations under its control.

MMPZ’s Electronic Media Report for Friday, July 19th 2013 states that “ZTV allocated 25 minutes 56 seconds to ZANU-PF campaign activities in its main evening news bulletin, while allocating only 3 minutes 50 seconds to MDCT activity” pointing out that this bias contravenes Section 160J(a) of the Electoral Act. Previous and subsequent reports also point to a similar illegal bias. For instance, from the 15th to the 22nd of July 2013, 124 minutes was dedicated to ZANU PF on ZBC News, most of this was in promotional material. However, only 10 minutes 9 seconds was accorded to the MDC-T through mostly negative reportage whilst only 5 minutes was accorded to the other political parties.

ZBC flights advertisements from several political parties. However, despite a commitment by the CEO of ZBC to provide equal coverage to all political parties, a recent video report by a group called Zimages quantifies the bias of State media. Their most recent report states that 71% of ZTV’s news coverage in July has been pro-ZANU-PF while 20.5% reflected an anti-MDC-T perspective.

Journalists continue to be subjected to harassment. In April 2013, the Editor of the Zimbabwe Independent and a reporter were arrested and charged with contravening section 31A.3 of the Criminal Law (Codification and Reform) Act after reporting that MDC-T leaders had met with security chiefs.

On 7 June 2013 a journalist from the Zimbabwe Independent journalist was allegedly attacked by MDC-T members while covering a demonstration at the party’s Harvest House headquarters. The day before on the 6th of June 2013, a Chronicle reporter was harassed by Tsvangirai’s bodyguards.

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19 Available at http://www.mmpz.org/sites/default/files/articles/Hate%20Speech%20in%20the%20Media-May%202013.pdf
20 MMPZ Daily Election Report No.6-2013, 20 July 2013
21 http://vimeo.com/zimagesofficial
22 http://vimeo.com/70821992 claims that 71% of recent coverage by ZTV has been pro-ZANU-PF
23 MDC-T Engages Army Chiefs, Independent, 26 April 2013
24 MDC-T barbarism, intolerance reach alarming levels, Herald, 19 June 2013
There continues to be bias in the access to State media by political parties. While ZBC covers rallies of ZANU-PF on news bulletins, they recently demanded payment from the MDC-T to cover an election rally thereby denying voters a balanced access to information.  

II. ELECTORAL REFORM

Elections take place within the context of the legal framework, premised primarily on the Electoral Act [Chapter 2:13]. President Mugabe, in order to align the Electoral Act with the New Constitution, issued a series of Statutory Instruments (see section THE RULE OF LAW) which affect the electoral environment.

Section 40 (C) (1) (g) of the Electoral Act requires that those wishing to carry out voter education are approved by the Zimbabwe Electoral Commission (ZEC). Many non-State actors have been arrested for carrying out voter education.  

From one report, “681 human rights defenders were detained and/or arrested between October 2012 and April 2013. Of the total, 360 were from CSOs, and only 20 were prosecuted.” This suggests that the arrests were used as a means of harassment rather than legitimate prosecutions.

ZEC failed to deploy adequate numbers of voter educators. ZEC deployed two voter educators per ward during the mobile voter registration exercise. Given the sheer size of a ward, this fell far short of the required personnel for the exercise. With the introduction of a limited system of proportional representation, voter education has assumed an increased importance for the election. In the absence of such comprehensive and extensive voter education exercise, citizens can be the victims of false information and consequently fail to exercise their democratic rights.

The voter registration exercise was characterised by inordinate delays in urban areas, with some voters spending 10 hours or more queuing. This was because mobile

25ZBC demands US$165 000 from MDC-T, Standard, 7 July 2013
27ZEC Seeks to Reassure Civil Society on Voter Education, Zimbabwe Election.com, 6 June 2013
28Broke ZEC urged to rope in NGOs for voter education, SWRA, 9 May 2013
29http://www.newsday.co.zw/2013/06/06/no-date-yet-for-voter-registration/
registration centres in the urban areas were ‘clustered’ meaning one centre served several wards. This was different in the rural areas where registration was a simple and quick process. Final figures are awaited but according to a recent study of the voters roll by the Research & Advocacy Unit, there are nearly 2 million potential voters aged below 30 who are unregistered, indicating a failure by ZEC to reach these citizens. The study also found that over one million people on the roll are either deceased or are outside the country while 63 constituencies have more registered voters than inhabitants. The study shows serious irregularities regarding the number

RAU (2013) Key Statistics from the 2013 Voters Roll Audit, Harare, 5 July 2013.pdf; Statement on the end of the 30 day mobile voter registration exercise, ZESN, 10 July 2013
of voters in certain constituencies that are outside the maximum or minimum (a 20% variation is allowed) permitted during the delimitation process. Whilst the registration process was painstaking and slow, some people did manage to register and to inspect the roll. However ZEC failed to provide an online verification service and the only service available was provided by an anonymous source.\(^{31}\)

Several other irregularities in registration were apparent. For example, one Primrose Matambanadzo was a registered voter, having participated in electoral processes since 2005. While her marriage was solemnized in terms of the Marriages Act, she still retains the use of her maiden name. However, upon inspecting the voters roll on 20 June 2013 she discovered that her surname had been altered from Matambanadzo to Kanongevere. She was advised that it was uncertain whether or not she would be able to cast her vote due to this disparity. Only after the intervention of her lawyers did the Registrar General of Voters correct the name to her maiden name.\(^{32}\)

The RAU study\(^{33}\) clearly demonstrates the deficiencies in the voters roll. Instead of engaging with these independent analysts to address the issues, the Registrar General insists that the roll is “world-class.”\(^{34}\) An Israeli company has been assisting with the preparation of with the voters roll.\(^{35}\)

The MDC-T has alleged that the Registrar General has several versions of the voters roll which will be used to rig the elections.\(^{36}\)

While the new Constitution restores citizenship to those formerly classed as aliens, these citizens were required to apply for new national identity documents and the time frame was inadequate for this process to take place. Further, in some instances the former ‘aliens’ faced administrative hurdles at the Registrar General of Voters’ office, sometimes being told they had to fork out US$ 5000-00 before being given

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\(^{31}\)http://www.myzimvote.com/

\(^{32}\)ZLHR

\(^{33}\)Available online at http://www.researchandadvocacyunit.org/index.php?option=com_docman\&task=doc_details\&gid=234\&Itemid=90

\(^{34}\)Zimbabwe Electoral Register Is World Class-Mudede, ZimEye, 18 June 2011

\(^{35}\)Israeli elections rigging machine exposed, Independent, 18 July 2013; Rigged poll claims ‘just politicking’, Mail & Guardian, 19 July 2013

\(^{36}\)Biti claims Mudede created four different voters rolls, SWRA, 19 July 2013
regularised identity documents. Consequently substantial numbers of potential voters remain disenfranchised.

Polling stations have been increased by 672 to 9670 compared to 2008. The number of these polling stations must be sufficient as to avoid long queues and delays on 31 July 2013. The failures of the Special Voting exercise held from the 14th to the 15th July has implications for voters who had applied for a special vote but failed to vote since they are ineligible to vote on 31 July. ZEC proceeded to approach the Constitutional Court for an order that those who failed to cast their ballots during the special vote are allowed to do so on the 31st of July 2013. This follows the dismissal of the MDC-T’s high Court application for the nullification of the special vote. The MDC-T had argued that the National Treasury only pays 44 113 police officers and yet about 69 000 had been authorised to vote.

The National Association of Societies for the Care of the Handicapped (NASCOH), the umbrella body for people with disabilities, maintains that electoral laws fail to address the special needs of People living with Disabilities (PWDs). They implored ZEC to recommend changes to the law that improve routes to the polling station, furniture and structure of polling stations and the voting procedures to be more conducive to the needs of PWD’s.

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37 ZLHR
38 Parties hail move to increase polling stations, Herald, 11 July 2013
39 See for example Special Voting a Sham, ERC, as well as Special voting system rig proof: ZEC, Independent, 9 July 2013
40 See ZEC and Another vs The Commissioner General of Police and 11 Others CCZ 62/13
42 See NASCOH’s report of a workshop with ZEC at http://www.nascoh.org.zw/?page_id=209
4. THE RULE OF LAW

President Mugabe used the Presidential Powers (Temporary Measures) Act (PPTMA)\(^{43}\) to issue several statutory instruments to determine not only the date of the election and to amend the Electoral Act, but also administrative details including the accreditation of observers.\(^{44}\) This was in violation of the Constitution which states that these changes to the electoral law must be in terms of an Act of Parliament.\(^{45}\) However on 4 July 2013, the Constitutional Court dismissed a challenge to the use of the PPTMA without providing its reasons.\(^{46}\)

\(^{43}\)Chapter 10:20.

\(^{44}\) The relevant Statutory Instruments are 85/2013 amendments to the Electoral Law; 86/2013 Proclamation of the Election; 87/2013 Electoral (Amendment) Regulations 2013; 88/2013 Electoral (Nomination of Candidates) Regulations; and 89/2013 Electoral (Accreditation of Observers) Regulations

\(^{45}\) MDC-T’s (sic) statement regarding the Use of presidential powers to amend the Electoral Act, Buawayo 24, 15 June 2013

\(^{46}\) ConCourt rules July 31 poll date, News Day, 4 July 2013
The ZRP provided support at ZANU-PF primary elections at unknown cost to taxpayers and without indication that ZANU-PF would be charged for such services.

Two senior police officers, Senior Assistant Commissioner Ronald Muderedzwa (Buhera Central) and Assistant Commissioner Oliver Mandipaka (Buhera West) are ZANU-PF candidates in the National Assembly elections. The Police Act\textsuperscript{47} bans ZRP members from active political participation or overtly displaying their political allegiance in any way but it is not apparent that the two have resigned from the ZRP.\textsuperscript{48}

On the other hand in May 2013, a Chiredzi police constable appeared before an internal disciplinary hearing for driving a car belonging to former Central Chiredzi MP Moses Mare, a member of the MDC-T on the ground of contravening the same Act. Further in May 2013, 3 police officers were sentenced to 14 days detention by an internal police hearing for attending an MDC rally. The three were found guilty of “acting in a manner which brought disrespect to the police.”\textsuperscript{49}

On 1 May 2013, the Police Commissioner General publicly stated that the security forces would never meet with Tsvangirai to discuss security reforms and that anyone who reported on or raised the issue, risked arrest.\textsuperscript{50}

It is clear from the above, that the new constitution and other legislation which require the impartiality of the security sector are being ignored. For further consideration of the challenges posed by the Security Sector, see the report from Human Rights Watch (2013) The Elephant in the Room: Reforming Zimbabwe’s Security Sector Ahead of Elections.

The partisanship of the police is also apparent in their manner of operation in the pre-election period. Non-ZANU-PF candidates continued to be harassed by militias and ZRP. Prominent lawyer Arnold Tsunga was arrested with 49 MDC supporters while campaigning in Dangamvura Chikanga constituency in Mutare on 19 July 2013. The 50 paid “admission of guilt fines” of $20 each but ZLHR is challenging these. Further,

\begin{enumerate}
\item \textsuperscript{47} Paragraph 48 of the Schedule to the Police Act, Chapter 11:10.
\item \textsuperscript{48} Police continue to disregard Police Act, \textit{Standard}, 30 June 2013
\item \textsuperscript{49} http://www.myzimbabwe.co.zw/news/5415-3-police-officers-arrested-for-attending-prime-minister-morgan-
tsvangirais-rally.html
\item \textsuperscript{50} Security chiefs won’t meet Tsvangirai: Chihuri, \textit{The Herald}, 30 April 2013
\end{enumerate}
lawyers attending to their clients were chased away from the police station by an armed police. Another MDC-T candidate was barred from holding a rally in Harare South. On 11 July 2013, the Deputy Minister of Mines was attacked while campaigning for the MDC-T in Mbare, Harare. Two youths were arrested the following day. On 12 July 2013, police blocked the MDC-T’s “walkabout” campaigns in Zvimba. During the same week, suspected ZANU-PF supporters disrupted the MDC-T campaign rallies in Mvurwi and intimidated participants in Glendale and Mt Darwin, without any action taken by the Police. On 9 July 2013, the MDC’s candidate for Ward 12 in Chikomba West was arrested during the voter registration exercise. On 16 July 2013, an MDC supporter, Johannes Chipadaza, was arrested and detained at Rusape police station, accused of defacing a political poster. He appeared at Rusape magistrate court on 19 July 2013 and was released on $100 bail.

While all the main parties have issued calls for peaceful elections, incidents of violence continue to be reported. HEAL Zimbabwe has detailed incidents of violence between January and June 2013 in a recent report.

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51 Police Arrest Tsunga And Scuttle Mafume Rally, VOP, 20 July 2013
52 MDC-T deputy minister’s campaign team attacked, SWRA, 11 July 2013
53 Chikomba West council candidate arrested, MDC, 9 July 2013
54 Mohadi calls on Zimbabweans to vote peacefully, Chronicle, 15 July 2013; Robert Mugabe fighting fit and talking peace ahead of Zimbabwe election, Guardian, 12 July 2013; Political parties call for peace, News Day, 11 June 2013
55 Political violence rocks Chitungwiza, News Day, 18 July 2013; Minister beaten in Mbare violence, News Day, 11 July 2013
5. LEGISLATIVE REFORM

One of the agenda items for the Inclusive Government was the legislative Reform agenda as envisaged under Article seventeen of the GPA. The Inclusive Government was supposed to amend or repeal various laws that limited the enjoyment of freedoms. However most of the repressive laws have remained on the legislative books with the lifespan of parliament having come to an end on 29 June 2013. Legislative instruments such as the Public Order and Security Act (POSA), the Access to information and Protection of Privacy Act (AIPPA) and sections of the Criminal Law (Codification and Reform) Act that limit enjoyment of fundamental freedoms remain on the statute book. Some examples of these laws include the infamous Section 121 of the Criminal Procedure and Evidence Act. This section allows a prosecutor to circumvent an order by a judicial officer granting bail by giving notice of intention to appeal against such a ruling. Despite the apparent unconstitutionality of this section, it has not been repealed.

Another provision that has been abused by the state machinery is Section 33 of the Criminal Code that relates to the undermining authority of or insulting the President. The police have increasingly applied this provision to arrest persons who criticize the president. Overall there was very little done by the last Parliament to amend or repeal laws that affected the enjoyment of fundamental rights such as freedom of expression, assembly and association, despite the MDC’s combined majority in parliament. This was made worse by the fact that the Supreme Court of Zimbabwe ruled that parliament could not seek to amend laws through Private Member’s Bills.

Some of the significant amendments done during the life of the last Parliament related to the electoral laws. The amendments brought by Act 3 of 2012 include the introduction of the special vote. The Electoral Act makes provision for early voting by officials who will be occupied away from their respective wards on the election-day by reason of work. The special vote is limited to either an electoral officer or a member of the disciplined force who will be performing security duties during the election.

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57 ZLHR has documented more than fifty cases where Section 33 of the Criminal Code has been applied. There are pending applications before the Constitutional Court challenging the constitutionality of the section.
58 See Ignatious Chombo v. Parliament Of Zimbabwe And Five Others SC 107/12
59 Section 81 of the Electoral Act Chapter 2:13 as amended by Act3 of 2012 and SI 85 of 2013
60 Section 81(a) of the Electoral Act Chapter 2:13 as amended by Act3 of 2012 and SI 85 of 2013
61 Section 81(b) of the Electoral Act Chapter 2:13 as amended by Act3 of 2012 and SI 85 of 2013
first time the special vote process was used was characterised by a lot of chaos throughout the country. It is apparent that the special vote was not adequately prepared for by ZEC. According to ZEC, 63 268 of the 65 956 special votes were successful and duly authorised to participate in the Special Vote. However, the Minister of Finance contended that only 44 113 police officers are on the records of the Salaries Services Bureau. 37 108 (53%) of these cast their votes while 23 160 failed due logistical challenges that ZEC encountered. ZEC believes that those who failed to vote due to the fault of ZEC should be allowed to vote on 31 July 2013. A court case was brought by the MDC-T to verify the actual numbers of police employed by the ZRP but this was dismissed by the High Court. ZEC has also brought an application before the Constitutional Court to seek an order to be allowed to make fresh arrangements for the members of the disciplined forces who failed to vote.  

\[62\]

\[62\]ZEC v. The Commissioner General of Police and Others CCZ 64/13
6. THE HUMAN RIGHTS & OPERATING ENVIRONMENT

As already mentioned, the date of the election was determined unilaterally by the President and proclaimed by statutory instrument. This perhaps summarises somewhat the blatant violation of the spirit of the GPA throughout the life of the Inclusive Government.

Cases of intimidation and harassment of the Civil Society and political activists have been on the increase in the run up to the election. The harassment has been targeted at organisations working on election related activities, civic education, governance and human rights.

On 17 June 2013, ZESN employee, Amon Chitando, was arrested and charged with the crime of criminal nuisance. He was accused of harassing people during the voter registration exercise, but contended that as he was waiting to register, a police officer demanded to search his bag and found ZESN observation forms, leading to his arrest. He was detained beyond the legal limit of 48 hours and only appeared in court on 21 June 2013. On 12 July 2013, he was acquitted.63

On 7 July 2013 in Highfield Harare, ZANU-PF members disrupted a concert organized by the Election Resource Centre (ERC) to encourage young people to register. The ZANU PF members demanded to be allowed to host their own political rally at the same venue as the ERC. The police were engaged as they had received notification of the concert and confirmed that it could proceed as planned. The police urged the parties to reach a compromise so that both could take place. It was agreed that the concert would take place first. In the midst of the concert, ZANU-PF hijacked the concert and turned it into a rally. ERC opted not to pursue any further action in the short term as a security measure on their part.64

On 6 July 2013 Sydney Chisi, Kingstone Taziva Machiwana, Tichafara Musana, and Matthias Masimba Nyamanhindi were arrested on Saturday 6 July 2013 and charged with contravening Section 40 (c) of the Electoral Act for allegedly conducting voter education at a concert that was held in Mutare, without clearance from the Zimbabwe

63ZLHR
64ZLHR records
Electoral Commission. They were brought to court on 8 July 2013. They were each granted bail and remanded to 22 July 2013. The Zimbabwe Electoral Commission Provincial Elections Officer, Mr. Masabaya wrote to the police on the same day they were brought to court confirming that the organization employing the four did in fact have permission from ZEC to hold a road show in Mutare where voter education could be given.

On 10 July in Glen Norah Harare, MDC-T activist Sitembile Muchenjewa arrested and charged with participating in an illegal gathering with the intention of promoting public violence after the aspiring MP for Glen-Norah distributed campaign materials and MDC-T T-shirts at her house. Police claimed that a 12-year-old child had been assaulted by some of the people, but the parents of the child themselves disputed this and advised the investigating officer accordingly. Despite this information, the police kept Muchenje in custody until 10pm when she was released after giving a “warned and cautioned” statement.

On the weekend of 14 July 2013, the ZRP blocked meetings in Gweru, Plumtree, Tsholotsho and Lupane organised by Bulawayo Agenda as part of their Election Debate Series which are intended to stimulate interaction between candidates and voters. An application to challenge the unlawful conduct of the police was filed before the courts of law.
7. THE ZIMBABWE ELECTORAL COMMISSION (ZEC)

In 2004, ZEC superseded the defunct Electoral Supervisory Commission as the election management body responsible for the conduct of elections in Zimbabwe.

Section 160B (1) of the Electoral Act directs ZEC to establish national multi-party liaison committees at national, provincial, constituency and local authority levels as soon as possible after the close of nominations in an election. The National Multi-party Liaison Committee structures were created on 16 July but local committees were yet to be established.65 The Liaison committees are meant to “hear and attempt to resolve any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code (The Electoral Code of Conduct for Political Parties and Candidates)”66

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65ZEC establishes multiparty committee, Chronicle, 17 July 2013
66Electoral Act Section 160(C) (1)(a)
The Nomination Court sat on 29 June 2013. 47 challenges were filed emanating from
the process. The challenges were mostly dealt with swiftly by the courts.

The Chairperson of ZEC stated that the results of the 31 July Elections will be announced
no later than the 5th of August 2013. However, the Electoral Act still permits Electoral
Court to extend this period on application from ZEC based on “good cause.”

The March 2008 results were announced after nearly 5 weeks while the 27 June 2008 run-off
results were announced 2 days after the election. The March Referendum results
were announced 3 days later.

Accreditation began on 23 June 2013. ZANU-PF announced that it would not allow
observers from countries that had imposed “illegal” sanctions attempting to usurp
the powers of ZEC. There is no legal provision for contesting parties to oppose
accreditation but despite protests by the MDC-T, and in an apparent acceptance
of the pre-emptive move by ZANU-PF, ZEC rejected an application from the Carter Centre
for accreditation on 9 July 2013. A SADC Observer Mission arrived in the country on
10 July 2013. 50 countries have been invited to send missions. On Tuesday 23 July
2013, ZEC announced that it had approved 7,561 local and foreign observers for
accreditation. From that number, 6,650 were local observers; 589 foreign observers,
294 local journalists and 28 foreign journalists.

Tobaiwa Mudede has been Registrar General of Voters for three decades. Despite being
70 years old and thus beyond the normal retirement age for the civil service, he
continues in his post where he has demonstrated not only his partisan bias but also
a wilful refusal to accept criticisms of the Voters Roll. Under the amended Electoral

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67Electoral Court receives 47 nomination challenges, Herald, 9 July 2013
68Zimbabwe presidential election results to be announced on August 5, Bulawayo24, 13 July 2013
69See Section 110 3(f)(ii) of the Electoral Act (Chapter 2:13)
702008 Presidential run-off, EISA, 14 July 2008
71Zimbabwe referendum results announced, Nehanda Radio, 19 March 2013
72ZEC invites local, foreign observers, Herald, 20 June 2013
73ZEC, Not Mugabe, to Decide on Election Observers – MDC-T, Zimbabwe Election.com, 11 June 2013
74Carter Center Denied Accreditation to Observe Zimbabwe’s Elections, Carter Center, 9 July 2013
75SADC Parly Forum Observers Arrive, Herald, 11 July 2013
77See for instance Mudede registers as Zanu PF delegate, News Day, 22 October 2012
78Zimbabwe’s voters roll perfect: Mudede, New Zimbabwe, 7 March 2013
Act, he is subordinate to the directives of ZEC yet, as a manifestation of continuing to arrogate powers to himself he does not have, he applied for an injunction to prevent RAU launching an audit of the voters roll, apparently without the knowledge of ZEC’s Commissioners. The Registrar General of Voter’s officer has remained the de facto custodian of the voters’ roll in spite of the fact that the Constitution names ZEC as the custodian of the voters’ roll. As such, the voters’ roll was yet to be made public at the time of sending this report to print.
8. THE POST-ELECTION ENVIRONMENT

There is considerable concern regarding the immediate post-election environment, regardless of the election result.

While ZEC has given assurances that the results will be released by 5 August as required by the amended Electoral Act, the five week delay in 2008 does not encourage confidence. The provisions do not proscribe any action in the event of ZEC claiming technical or logistical difficulties and delaying the release of results. It is also apparent that ZEC is not in full control of the electoral process and that the Registrar General operates with significant discretion.

If the results lead to run-off vote, the threat of violence looms large in the minds of all Zimbabweans, given the experiences of the inter-electoral period in 2008. This was a brutal process of murder, beatings, displacements and intimidation carried out by ZANU-PF members and militias, war veterans and members of the Security Forces intended to punish voters for their support of the opposition. The operation was code-named “Operation Mavhotera Papi” or “Operation Who Did You Vote For?”

If the election results are favourable to ZANU-PF and accepted as legitimate by international observers, there is concern that a victorious ZANU-PF will engage in retributive attacks upon opposition members and be emboldened to re-establish the political pre-eminence they enjoyed prior to 2000.

The largest question pertains to the possible scenarios in the event of an outright MDC-T win in the Presidential elections or after a run-off election. There is a widespread perception in civil society that ZANU-PF will simply refuse to hand over power and backed by the Security Sectors will remain in government albeit in a constitutional limbo. ZANU-PF has made no commitment to accept a victory by Tsvangirai while the loyalties of the Security Chiefs have been repeatedly stated and are well documented.

Whatever the election result may be, it is clear that the post-electoral period poses serious risks to the Zimbabwean polity and to its citizens. It is essential that these risks are recognised and efforts are made to minimise any negative impacts.

80 Indeed Section 110(3)(9)(iii) permits the Electoral Court to extend this period in the case of the presidential results at ZEC’s request.
CONCLUSIONS

It is the opinion of CISOMM that the possibility of a truly free and fair election in Zimbabwe next week remains as remote as in any election period in the last ten years. Despite some legal reforms and procedural adjustments, the realities of our history, including significant factors such as the attitudes of the incumbents and their well-documented subversion of State power and resources to service their partisan interests, coupled with the shockingly limited access of people to a diversity of opinion, lead to a conclusion that the immediate future may be fraught with danger for the Zimbabwean people.

In light of the foregoing, CISOMM makes the following recommendations:

To all Political Parties:

- To refrain from all acts of violence and to move swiftly to censure party members who engage in violence or threats to others
- To commit themselves to accepting the results of a “reasonably” free and fair election
- To use established methods of resolving electoral disputes through the Courts

To the ZRP:

- To respond swiftly to reports of election violence and to curtail these irrespective of the party affiliations of the instigators
- To behave in a professional and non-partisan manner throughout the election period, ignoring the biased declarations of allegiance by their senior commanders
- To recognise that they have a duty to protect all the people of Zimbabwe from criminal activity
To the Security Forces

• To act impartially as the defenders of the Zimbabwean people and to ignore the partisan pronouncements of their commanders

• To respect the outcome of the election

• To defend the Constitution of Zimbabwe as the ultimate law of our country

To International Observers

• To carry out their duties fairly and without bias irrespective of their personal or political sympathies.

• To protect local observers and polling agents who may be subjected to intimidation, particularly when reporting the polling station results to their election officials.

• To ensure that the ZRP and other State officials behave professionally and impartially throughout the election period

• To remain in Zimbabwe until such time as the election results are announced and accepted by all parties.

• In the event of a run-off for the Presidential elections to remain in Zimbabwe to minimise the possibilities of violence and intimidation

• In the event of an opposition victory to encourage the incumbents to accept the result and to promote the peaceful transition of power

To Civil Society Organisations

• To continue to participate in the political processes of the country despite the intimidation and persecution to which they have been subjected
CISOMMBENCHMARKS

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MEDIA REFORM

a) Access and ability to impart relevant information (SG)
   - Appointment of new board of Zimbabwe Broadcasting Corporation (RM)
   - Appointment of a new board for the Broadcasting Authority of Zimbabwe (RM)
   - Media is liberalised through licensing of new broadcasters (RM)
   - Appointment of new Trustees for the Mass Media Trust (RM)
   - Measures to provide all political parties and candidates contesting with fair and equal access to electronic and print media, both public and private (C)

b) All state owned media of communication afford fair opportunity for the presentation of divergent views and dissenting opinions (C) and equal opportunity for all political parties to access state media (SG)(ACDEG)

c) End to hate speech (RM) and refrain from broadcasting and publishing abusive language, incitement to hate and other forms of provocative language that may lead to violence (AUPrinciples)

d) End to violations against media practitioners and swift action taken against perpetrators of violations(CoC)
ELECTORAL PROCESSES AND MANAGEMENT

a) Impartiality of electoral institutions – including ZEC and RG’s office (SG)
   - Measures to ensure all political parties and candidates have reasonable access to all material and information necessary to participate effectively (C)

b) Adequate, impartial and informative voter education is conducted in accordance with the law, is widely advertised and is far reaching (C)(RM)(SG)

c) Enabling and transparent system of voter registration is conducted, that is widely advertised and is far reaching (C)(SG)
   - Inspection of Voters’ Roll is conducted in accordance with the law (C)(RM)
   - Clean up Voters Roll and produce final voters roll (RM)
   - Measures to ensure all eligible citizens are registered as voters (C)

d) Measures to ensure every citizen has an opportunity to cast a vote, including diaspora vote (ACHPR)

e) Encourage the participation of women, disabled and youth in all aspects of the electoral process in accordance with the national laws (SG)

f) Measures to ensure the availability of mechanisms for effective and timely resolution of electoral disputes (C)(ACDEG)(SG)

g) Measures and precautions to prevent perpetration of fraud, rigging and other illegal practices (SG)(C)

RULE OF LAW

a) All state actors uphold the Constitution and adhere to national laws and regional and international standards (C and SG)
   - Independence and effectiveness of the judiciary (SG)
   - Uniformed forces act in non-partisan manner (C)
   - Elimination of all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance. (ACDEG and SG)

b) Free association and unhindered participation in public meetings and debates (SG)

c) Political parties campaign freely and peacefully and political meetings/rallies without undue hindrance (C)(SG)
- Party directives forbidding intimidation and education of party members against violence, vandalism and public disorder (CoC)

LEGISLATIVE REFORM

a) Full participation of the citizens in the political process;
- Amend Section 121 of the Criminal Procedure and Evidence Act to confine to prescribed offences (RM)
- Abuse of insult provisions and other criminal provisions which affect participation
- Realign laws with the new Constitution (RM)(C)

ACTUAL ELECTION

a) Adequate security is provided to all parties participating in elections (SG) Presidential proclamation in consultation with Prime Minister (RM)
- Activation of liaison committees particularly at local level (RM)
- Nomination of candidates in terms of the Electoral Law (RM)
- Announcement of election results as soon as possible after close of polls (RM)(C)
- Voting method to be used is simple, accurate, verifiable, secure and transparent (C)
- Systems and mechanisms put in place to eliminate electoral violence and other electoral malpractices and to ensure the safekeeping of electoral materials. (C)

b) Facilitate deployment of representatives of political parties and individual candidates at polling and counting stations (SG) (Electoral Act)

c) Timely accreditation of national and other observers/monitors in accordance with the law, and ability to observe pre- and post-election processes unhindered (SG)
- Easy access to polling stations and all other centres involved in results collation and transmission (SG)

d) Orderly transfer of power following elections (C)(ACDEG)(SG)

CIVIL SOCIETY MONITORING MECHANISM (CISOMM)
REFERENCES AND FURTHER RESOURCES


MDC-T Website http://www.mdc.co.zw/

MDC http://www.mdc-zim.net/

Media Monitoring Project Zimbabwe (MMPZ) especially http://www.mmpz.org/election-watch/election-watch-2013


MMPZ (2013) Hate Speech in the Media, May 2013


Sokwanele (2012) Zimbabwe’s media landscape

ZANU-PF http://www.zanupf.org.zw

ZEC (2013) Registration Centres for Registration of Voters

ZEC (2013) National Assembly Nomination Results.pdf

ZEC (2013) Party-List Nomination Court Results.pdf

ZEC (2013) Results of Nomination Court Presidential Election 2013.pdf

ZEC (2013) Results of Nomination Courts for Local Authorities.pdf

ZESN, Statement on the end of the 30 day mobile voter registration exercise, 10 July 2013

PARTICIPATING ORGANISATIONS

1. Bulawayo Agenda (BA)
2. Centre for Community Development in Zimbabwe (CCDZ)
3. Centre for Research and Development (CRD)
4. Christian Alliance (CA)
5. Civic Education Network Trust (CIVNET)
6. Crisis in Zimbabwe Coalition (CZC)
7. Election Resource Centre (ERC)
8. Female Students’ Network (FSN)
9. General Agriculture and Plantation Workers Union (GAPWUZ)
10. Justice for Children Trust (JCT)
11. Legal Resources Foundation (LRF)
12. Mass Public Opinion Institute (MPOI)
13. Media Institute of Southern Africa – Zimbabwe Chapter (MISA-Zimbabwe)
14. Media Monitoring Project Zimbabwe (MMPZ)
15. National Association of Non-Governmental Organisations (NANGO)
16. National NGO Food Security Network (FOSENET)
17. Oxfam International (OI)
18. Progressive Teachers’ Association of Zimbabwe (PTUZ)
19. Research and Advocacy Unit (RAU)
20. Restoration of Human Rights Zimbabwe (ROHR)
21. Save Zimbabwe Campaign (SZC)
22. Students Christian Movement of Zimbabwe (SCMZ)
23. Students Solidarity Trust (SST)
24. Transparency International
25. Veritas
26. Voluntary Media Council of Zimbabwe (VMCZ)
27. Women’s Coalition
28. Women of Zimbabwe Arise (WOZA)
29. Youth Agenda Trust (YAT)
30. Zimbabwe Association of Doctor for Human Rights (ZADHR)
31. Zimbabwe Coalition for Debt and Development (ZIMCODD)
32. Zimbabwe Election Support Network (ZESN)
33. Zimbabwe Human Rights Association (ZimRights)
34. Zimbabwe Human Rights NGO Forum (ZHRF)
35. Zimbabwe Lawyers for Human Rights (ZLHR)
36. Zimbabwe National Students Union (ZINASU)
37. Zimbabwe Peace Project (ZPP)
38. Zimbabwe Women Lawyers Association (ZWLA)
39. Zimbabwe Young Women’s Network for Peace Building (ZYWNP)