Statutory Instrument 85 of 2017: An analysis of new voter registration regulations

1. Introduction

The Zimbabwe Electoral Commission (ZEC) gazetted Statutory Instrument 85 (S.I. 85) of 2017 on the 21st of July 2017 which outlined voter registration regulations in preparation for the 2018 harmonized elections. Below is an overview of new provisions for voter registration introduced through the statutory instrument. The analysis will make highlights of progressive aspects of the regulations (green zone) as well as gaps requiring further attention by electoral authorities.

2. Summary of regulations introduced through S.I. 85 2017

The ZEC initiated regulations introduced nine fundamental issues as outlined below;

2.1. **Proof of identity and citizenship**—This clause emphasises the fact that citizenship is a key determinant to one’s eligibility to register as a voter. The provision also lists the national identity document (metal or plastic), a green waiting pass and a valid Zimbabwean passport as only documents acceptable for proof of identity.

2.2. **Proof of residence**—This provision lays down documents which may constitute proof of residence. Critically the clause allows for use of “residence affidavits” by persons who might fail to obtain a residence documents. The clause also provides for punitive measures on those who make false statements on their affirmations for residence.

2.3. **Registration offices and centres**—Following ZEC’s take-over of the voter registration function from the former Registrar General of Voters, this clause designates all ZEC offices at national, provincial and district level to become registration centres. The clause also provides for possible set up of non-permanent mobile registration centres.

2.4. **Procedure for registration** - This clause outlines the procedure for biometric registration of voters based on completion of a VR Form, taking a passport size photograph and fingerprint of the claimant. It further opens up for voter registration officers to capture any other biometric data besides that mentioned above. The clause also mandates ZEC to ensure accuracy of data captured by insisting on a match between data in the voters’ roll and that on a voter’s identity document.

2.5. **Control of persons in premises used for registration of voters** - The clause empowers designated voter registration officers with discretionary authority to maintain order in the premises used for the purposes of registering voters. The section further lays down penalties for those who might disobey instructions from the voter registration officer which may include a fine or jail sentence.

2.6. **Voters’ rolls** - The clause maintains ZEC’s Chief Electoral Officer as one responsible for compiling the resultant voters’ roll.

2.7. **Inspection of voters’ rolls** - Reiterates provisions in the Electoral Act, Section 21(1) insisting on the voters’ roll being open for inspection by the public, free of charge during ordinary hours of the Commission’s District and Provincial Offices where such rolls are kept. This clause further provides for establishment of mobile and static inspection centres during any election period.

2.8. **Certification of voters’ rolls** - The clause obligates the ZEC Chief Elections Officer to authenticate or certify the subsequent voters’ roll following closure of the register for a given
electoral event. This clause clarifies the features which must be present to verify whether a voters’ roll has been certified or not. These include a dated stamp, watermark or seal containing the signature of the CEO.

2.9. **Provision and cost of voters’ rolls and maps** - This clause clarifies that interested citizens are allowed to apply for any copy of the voters’ roll through the ZEC CEO. Costs for purchasing voters’ rolls at polling station, ward, constituency and national level were laid down.

3. **What is the problem? Is this the correct dosage?**

   a) **Progressive green zone (opportunities)**

   i. The consultative nature by ZEC in coming up with these regulations was commendable. Before promulgation, draft regulations were shared amongst electoral stakeholders and the electoral commission called for recommendations from stakeholders. There was notable uptake of feedback from stakeholders in several clauses.

   ii. The regulations expand the scope of proof of residence thereby enhancing inclusivity and access of voter registration services.

   iii. Regulations establish both permanent and non-permanent registration centres.

   iv. Voter registration regulations mandate ZEC to ensure accuracy of the voter register to be compiled.

   b) **The enduring red zone (gaps)**

   i. The continued use of Section 192 of the Electoral Act to pass regulations in the realm of a Constitutional Court challenge on the same.

   ii. The regulations leave a lot of issues at the discretion of ZEC which opens management of elections to possible maladministration and weakens oversight on ZEC.
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<td>Proof of identity and citizenship¹</td>
<td>This clause emphasises the fact that citizenship is a key determinant to one’s eligibility to register as a voter. The provision also lists the national identity document (metal or plastic), a green waiting pass and a valid Zimbabwean passport as only documents acceptable for proof of identity.</td>
<td># Maintains citizenship as a key determinant for one’s participation in elections</td>
<td># The regulations make no attempt to recognize citizens of Zimbabwe, formerly deemed “aliens” owing to situations where at least one of their parents is of foreign descent. The citizenship of such persons was upheld through the 2013 Constitution. However in practice such citizens, despite recognition by the Constitution are still required to regularize their citizenship and get their identity cards changed before they exercise their right to vote. The process of regularization is fraught with administrative challenges which hinder most affected citizens from enjoying their right to vote. # It is recommended that, ZEC facilitates “ease of registration” for such citizens who could have failed to regularize citizenship due to varying constraints. ZEC’s acceptance for former “aliens” to register must be premised on the Constitution which already recognizes them as citizens. One’s enjoyment of constitutional rights must not be undermined by administrative obstacles.</td>
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<tr>
<td>Proof of residence²</td>
<td>This provision lays down 13 documents which may constitute</td>
<td>#The revised provision appears to have been informed by wide ranging feedback from electoral stakeholders on the</td>
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1 Proof of identity and citizenship

4. For the purposes of registering as a voter any one of the following documents which legibly show that the claimant is a citizen of Zimbabwe of or over the age of eighteen years shall constitute proof of identity and citizenship- (a) a national identity document, that is to say, an identity document in terms of section 7(2) of the National Registration Act [Chapter 10:17]; or (b) a “waiting pass” that is to say, a notice in writing in terms of section 7(1) of the National Registration Act [Chapter 10:17] which includes a photograph of the bearer; or (c) a valid Zimbabwean passport.

2 Proof of residence

5. (1) For the purposes of registering as a voter the following documents shall constitute proof of residence- (a) title deeds or a certificate of occupation; (b) a lodger’s permit issued by the relevant local authority; (c) rates, water, electricity, telephone or credit store statements on which is shown the claimant’s name and physical address; (d) a statement from the landlord, parent or friend of the claimant confirming that the claimant resides at the stated place of residence accompanied by any of the documents in paragraph (a), (b) or (c) in the name of the landlord, parent, friend or such other person at whose residence the claimant resides; (e) a statement confirming that the claimant resides at the stated place of residence made by the head of a school, hospital or other public institution where the claimant resides; (f) a statement confirming that the claimant resides at the stated place of residence made by or on behalf of the person in whose name a mining location is registered in the area where the claimant resides; (g) a statement by the claimant’s employer confirming his or her address; (h) a confirmation letter by the relevant councillor, Village head, headman or Chief confirming that the claimant resides in the ward he or she claims to reside in; (i) a confirmation letter by farm owner or resettlement officer confirming that the claimant resides in the ward he or she claims to reside in; (j) an offer letter proving that the claimant is in lawful occupation of the land to which the offer letter relates; (k) a hospital bill or a clinic or hospital card or an envelope with post office markings reflecting the claimant’s address.
proof of residence. Critically the clause allows for use of “residence affidavits” by persons who might fail to obtain residence documents.

- The clause also provides for punitive measures on those who make false statements on their affirmations for residence.

draft ZEC Voter Registration Regulations. The draft regulations were not exhaustive in terms of documents acceptable as proof of residence. However, the promulgated regulations contain a progressively detailed outline of what would constitute proof of residence.

# Most commendable were the regulations’ relaxation of the initial requirement for proof of residence which was restrictive to some disadvantaged groups. Allowing those who might fail to obtain proof of residence to register through sworn “residence affidavits” is a progressive promotion of the principles of accessibility and inclusivity in voter registration.

# In arriving at these regulations, the electoral commission seems to have acceded to recommendations from civic society groups and other political actors.

# The regulations also impose penalties on anyone intending on giving false statements which potentially opens loopholes for multiple voting. This is commendable as possible prosecution might deter would-be offenders.

Registration offices and centres

- Following ZEC’s take-over of the voter registration function from the former Registrar General of Voters, this clause designates all ZEC offices at national, provincial and district level to become registration centres.

# The clause marks departure from possible reliance on the Registrar General offices for ZEC to execute its mandate.

# The regulations however lack necessary emphasis on time and days when such ZEC offices shall be open to the public. The clause gives little detail, but leaves it to ZEC discretion.

# It remains unknown whether ZEC has functional, decentralized offices across all districts and constituencies to enable easy access by citizens intending to register as voters.

(2) A voter registration officer shall-

(a) require a claimant to swear/affirm a residence affidavit if the residence document produced to the officer is illegible or if there is any reasonable doubt as to the document’s authenticity or validity,

(b) in the case of a claimant who says that he or she is unable to obtain any residence document, accept from the claimant a residence affidavit.

(3) Any person who makes a false statement in a residence affidavit shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding a year or to both.

Registration offices and centres

6. (1) For the purposes of voter registration, every provincial and district office of the Commission shall be a registration office. (2) The Commission may set up mobile registration centres.
### Procedure for registration

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<th>The clause also provides for possible set up of non-permanent mobile registration centres.</th>
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<td>This clause outlines the procedure for biometric registration of voters based on completion of a VR Form, taking a passport size photograph and fingerprint of the claimant. It further opens up for voter registration officers to capture any other biometric data besides that mentioned above. The clause also mandates ZEC to ensure accuracy of data captured by insisting on a match between data in the voters’ roll and that on a voter’s identity document.</td>
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<td># The regulations put any doubts to rest on whether the impending voter registration exercise will adopt use of biometrics. This is crucial in stopping speculation swirling around the planned voter registration drive by ZEC. # The emphasis on accuracy of data captured by ZEC is a welcome move introduced by the regulations. This, if followed appropriately goes a long way in ensuring conformity to the principle of accuracy which is fundamental in ensuring credibility of the voter registration process.</td>
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<td># The regulations fell short in terms of addressing issues of access by persons with disability, infirm and the elderly who might be unable to visit ZEC designated registration offices and centres. # Regulations doesn’t also explain fully the procedure of registration for persons with disability. Such individuals might not have limbs for finger prints or are visually impaired. Leaving this to administrative discretion by the Voter Registration Officer defeats the principles of inclusivity and access to voter registration.</td>
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### Control of persons in premises used for registration of voters

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<td># The regulations empower a Voter Registration Officer (VRO) with powers similar to those of a presiding officer on polling days.</td>
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<td># Lacks clarity on role to be played by police during the voter registration process. Opens for potential conflict in the event that the police is later included to be present at voter registration centres.</td>
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4 **Procedure for registration**

7. (1) If a voter registration officer to whom a claim has been made determines that the claimant is qualified for registration as a voter he or she shall register the claimant by- (a) filing a completed VR Form; and (b) taking a passport size photograph of the claimant; and (c) taking the fingerprints of the claimant (except in cases where by reason of physical injury or illness this is not possible); and (d) capturing other additional biometric features of the claimant as the Commission may, from time to time, determine by notice in the Gazette. (2) For the avoidance of doubt, the names of an applicant to be entered on the VR Form and subsequently on the voters’ roll shall be identical to the names on the document tendered by the claimant as proof of identity.

5 **Control of persons in premises used for registration of voters**

8. (1) A voter registration officer shall maintain order in the premises used for the purpose of registering persons as voters and shall regulate the number of persons to be admitted at a time to such premises. (2) Any person who disobeys an instruction of a voter registration officer given for the purpose of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding a year or to both. (3) The powers conferred by this section shall not be exercised so as to prevent any person from having an opportunity to make a claim to be registered as a voter.
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<th>Instructions from the voter registration officer which may include a fine or jail sentence.</th>
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**Voters’ rolls**

- The clause maintains ZEC’s Chief Electoral Officer as one responsible for compiling the resultant voters’ roll.

# The clause progressively places the burden of accountability for compiled voter register on the ZEC CEO.
# The clause commendably specifies what personal information and data will be publicly listed on the voter register.

# The regulations failed to explain the administrative process to be undertaken by the commission in both compiling the voter register and subsequent measures of ensuring accuracy of the compiled voters’ roll.
# That data cleaning and compilation process must be open to stakeholder scrutiny, however the regulations are not clear as to the expected degree of involvement in the compilation process by citizen observers, political parties or the media. Transparency mechanisms need to be enhanced during the process of compiling the voters’ roll.

**Inspection of voters’ rolls**

- Reiterates provisions in the Electoral Act, Section 2(1) insisting on the voters’ roll being open for inspection by the public, free of charge during ordinary hours of the Commission’s District and Provincial Offices where such rolls are kept.
- This clause further provides for establishment of mobile and static inspection centres during an election period.

# The insistence on public access to the voters’ roll is commendable and promotes both transparency and accountability in voter registration.

# The regulations failed to state the sanctions for misuse of information obtained from voter registers by members of the public during inspection. In particular the regulations should state whether the information may or may not be used for the campaign activities of political parties and candidates, for police investigations or for commercial and other purposes.

**Certification of voters’ rolls**

- The clause obligates the ZEC Chief Elections Officer to authenticate or certifies the voters’ roll as the voters’ roll for that polling station.

# Certification engenders accountability and locates the office responsible for the state of voters’ roll used for any

# In order to deal with the growing fears on possible use of the 2013 voters’ roll, this clause ought to have clearly stated the fate of the pre-existing 2013

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6 **Voters’ rolls**

9. The Chief Elections Officer shall compile a voters’ roll for each polling area showing, in relation to each voter (a) the voter’s first and last names, date of birth, sex and national registration number and (b) the place where the voter ordinarily resides; and (c) the voter’s photograph.

7 **Inspection of voters’ rolls**

10. (1) In terms of Section 21(1) of the Act, the voters’ rolls shall be open to inspection by the public, free of charge during ordinary office hours of the Commission at any of the Commission’s District and Provincial Offices where such rolls are kept (2) The Commission may also establish mobile and static inspection centres during an election period where the public may inspect the voters’ rolls, and in so doing may determine the period within which the voters’ rolls may be inspected at these centres.

8 **Certification of voters’ rolls**

11. (1) The Chief Elections Officer shall, where the preparation of any voters’ roll for any polling station is completed and closed for the purposes of any election, certify the voters’ roll as the voters’ roll for that polling station. (2) Certification of a voters’ roll for the purposes of this section shall be evidenced by a dated stamp, watermark or seal.
| Provision and cost of copies of voters’ rolls and maps<sup>9</sup> | This clause clarifies that interested citizens are allowed to apply for any copy of the voters’ roll through the ZEC CEO. Costs for purchasing voters’ rolls at polling station, ward, constituency and national level were laid down. | The regulation sustains citizen access to the voters’ roll. This could have clarified provisions of Section 36A of the Electoral Act which requires ZEC to take a position about the pre-existing voters’ roll. | # The regulation fails to state the timeframe upon which a requested voters’ roll is to be delivered to the requestor. Lack of clarity opens the provision to administrative abuse by electoral officials. |

<sup>9</sup> **Provision and cost of copies of voters’ rolls and maps**

12. (1) Any interested person may apply to the Chief Elections Officer for a copy of the voters’ rolls listed in subsection (2), and the Chief Elections Officer shall, upon payment by such person of the prescribed fee, supply such copy to such person. (2) The cost of—

- (a) an electronic copy of the voters’ roll shall be as follows—
  - (i) polling station US$1,00
  - (ii) ward US$2,00
  - (iii) constituency US$10,00
  - (iv) national US$20,00;
- (b) a hard monochrome copy of the voters’ roll shall be ten cents per page of the national voters’ roll, a polling station voters’ roll, a ward voters’ roll or a constituency voters’ roll, whichever one is sought. (3) Any interested person may apply to the Chief Elections Officer for a copy of any polling area, ward and constituency map and the Chief Elections Officer shall, if such copy is available and upon payment by such person of the prescribed fee, supply such copy to such person. (4) The cost of an electronic copy of a map shall be as follows—
  - (a) polling area US$1,00
  - (b) ward US$2,00
  - (c) constituency US$10,00.