



# Addressing Election Disputes and

# Election Offenses in Zimbabwe

Challenges around an election should not necessarily be perceived as weakness in the system, but as evidence of the strength and openness of the political system.<sup>1</sup> The International Covenant on Civil and Political Rights (ICCPR) requires that any person whose right to vote and be elected has been violated must have an effective remedy.<sup>2</sup> Because elections are a process, complaints and violations can occur throughout the electoral cycle (as illustrated in Figure 1 below), and the effective resolution of these complaints is integral to the integrity and legitimacy of an election. According to international standards,<sup>3</sup> if the rules governing the resolution of election complaints are unclear or do not provide for effective remedies,<sup>4</sup> or if arbiters are not independent and impartial,<sup>5</sup> the adjudication process can destabilize governments, undermine public trust and engender violence.<sup>6</sup>

In Zimbabwe, jurisdiction for the resolution of election disputes and the prosecution of election offenses is shared among several institutions, with the judiciary playing a primary role. The establishment of a permanent Electoral Court is a positive step in

terms of specialist expertise and timely adjudication of complaints, and the special procedures put in place for offenses of politically motivated violence and intimidation led to more effective referrals for these offenses during the 2018 election process. However, in 2018 international observers also noted, “The overall... handling of election disputes highlights that the right to an effective legal remedy is not adequately provided for,”<sup>7</sup> which suggests room for further improvements. Several parts of the electoral process in Zimbabwe also lack a clear complaints and appeals mechanism under the law, including the delimitation of constituencies, political party registration and the polling and counting process.<sup>8</sup> The legal framework needs a clear right of appeal for all parts of the electoral process.<sup>9</sup>

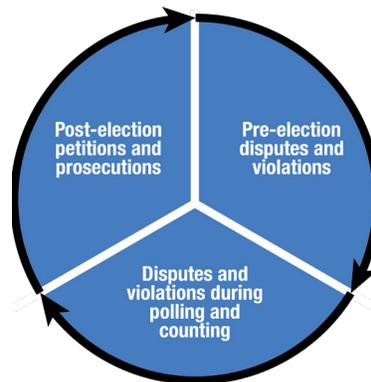


Fig 1: Disputes and violations throughout the electoral process

## Role of the Zimbabwe Election Commission in Election Dispute Resolution

In Zimbabwe, while the 2013 Constitution gives authority to the Zimbabwe Electoral Commission (ZEC) to receive and resolve complaints,<sup>10</sup> the Electoral Act does not provide for a comprehensive administrative dispute resolution process.<sup>11</sup> Rather, different types of pre- and post-election complaints and violations fall under the jurisdiction of the courts, as outlined in the table below. The lack of a clear administrative process in the law challenges the ZEC’s constitutional mandate to resolve disputes and ensure the integrity of the election, and as international observers noted in 2018, “election-related disputes are resolved only by the judiciary, resulting in protracted adversarial processes which...do not always ensure a timely and effective legal remedy.”<sup>12</sup> As observers have recommended, it is important to institute a ZEC-led administrative complaints mechanism that allows for timely and effective remedies for voters and candidates, particularly in the pre-election phase, and for the ZEC to fully embrace its constitutional election dispute resolution (EDR) mandate.<sup>13</sup>

1 Denis Petit, 2000, Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System, OSCE/ODIHR, page 5

2 International Covenant on Civil and Political Rights (ICCPR) Article 2(3)

3 International standards for EDR are set out in Vickery, C. Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections, 2011 as follows: (1) a transparent right of redress; (2) clearly defined election standards and procedures; (3) An impartial and informed arbiter; (4) a system that judicially expedites decisions; (5) established burdens of proof and standards of evidence; (6) the availability of meaningful and effective remedies; and (7) effective education of stakeholders.

4 Steven H. Huefner, Remedying Election Wrongs, 44 Harv. J. on Legis. 265, 288 (2007).

5 ICCPR, Article 14, § 1. The language used in the ICCPR can be traced back to Article 10 of the Universal Declaration of Human Rights.

6 Electoral Justice: The International IDEA Handbook (2010), p. III, <https://www.idea.int/sites/default/files/publications/electoral-justice-handbook.pdf>

7 European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), page 40

8 A review of the Electoral Act reveals that appeal provisions for these parts of the process are missing from the law. See also European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), page 9

9 The right to an appeal is a key component in ensuring access to an adequate remedy. International human rights conventions all recognize, implicitly or explicitly, the fundamental value of an appeals mechanism. See ICCPR, Article 14, § 5; American Convention, Article 8(2)(h); Protocol No. 7 to the European Convention for

the Protection of Human Rights and Fundamental Freedoms, Art. 2, Nov. 22, 1984. The Venice Commission code of good practice also provides (at paragraphs 92 and 93) that individual citizens and candidates should be able to fully challenge any electoral irregularities, before an election tribunal, electoral commission or regular court.

10 Constitution of Zimbabwe 2013, Article 239 (k)

11 Section 190 of the Electoral Act does provide that a person aggrieved by a decision of the ZEC or its employees may file a complaint and the ZEC can order “appropriate remedial action.” The law does not clarify what this action might be.

12 European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), page 40

13 Ibid.

## ***Jurisdiction for Election Complaints and Violations in Zimbabwe According to the Constitution and Electoral Act***

<b>Category of Dispute</b>	<b>Jurisdiction According to Legal Framework</b>
Voter registration appeals	Jurisdiction resides with the “designated magistrate” (Electoral Act, Part VI). The law does not clarify who designates magistrates for voter registration appeals; however, the designated magistrate is likely to be in the locality of the voter registration officers.
Candidate nomination appeals	Jurisdiction resides with the Electoral Court (Electoral Act, Parts XIA and XII). The Electoral Court is a division of the High Court, and judges are appointed by the chief justice after consultation with the Judicial Service Commission and judge president of the High Court (Electoral Act, Sections 161 and 162)
Campaign disputes or violations	Jurisdiction resides with Multi-Party Liaison Committees, which are established by the ZEC six months prior to an election to assist with conflict management and to support compliance with the Code of Conduct under the Fourth Schedule of the Electoral Act.
Campaign expenditure disputes	Jurisdiction for expenditure disputes resides with any “competent court” (Electoral Act, Part XVI). A competent court is not defined in the law but may be determined by geography and cause of action – for example, a local Magistrates Court.
Polling and counting	No specific complaints process is set out in the Electoral Law, although a political party or candidate may request a recount under Section 66A of that law. The First Schedule to the Electoral Act also sets out a Code of Conduct for election agents and observers but does not set out an enforcement mechanism for breaches of the code.
Petitions against results	Jurisdiction resides with the Electoral Court (same court as described above under “candidate nomination appeals”) for parliamentary and local elections (Part XXIII) and with the Constitutional Court for presidential elections (Electoral Act, Section 111).
Election offenses	Jurisdiction resides with the director of public prosecutions and the High Court. Offenses are designated throughout the Electoral Act, along with specific chapters on intimidatory practices (XVIII A), violence and intimidation (XVIII B), corrupt practices (XIX) and illegal practices and other offenses (XX).

### **Role of the Judiciary on Election Dispute Resolution**

Given the significant role of the judiciary for all types of pre- and post-election disputes and violations in Zimbabwe, it is important that judges are impartial and informed<sup>14</sup> and that the judicial system expedites decisions.<sup>15</sup> International observers in 2018 noted concerns regarding the independence of judges, transparency in judicial appointments and the opaque system of allocation of election-related matters to judges.<sup>16</sup> There is also inconsistency between the High Court and the Electoral Court’s handling of disputes,<sup>17</sup> although based on the International Foundation for Electoral Systems’ (IFES) decades of support to EDR bodies globally, the establishment of a permanent Electoral Court is a positive

14 ICCPR, Article 14, § 1.

15 ICCPR, Article 14, § 3(c)

16 European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), page 40

17 Ibid, page 42

step in terms of specialist expertise and timely adjudication of complaints. It is important for judicial rules of procedure for electoral disputes to be updated to align with the Electoral Act,<sup>18</sup> to clarify the burden of proof and standard of evidence<sup>19</sup> and to ensure procedural justice is preserved through the adjudication process.<sup>20</sup>

### **Role of Multiparty Liaison Committees on Election Dispute Resolution**

The Fourth Schedule of the Electoral Act sets out a Code of Conduct for political parties, candidates and other stakeholders. Ensuring compliance with the code is the responsibility of Multiparty Liaison Committees,

18 Ibid, page 45

19 Barry H. Weinberg, *The Resolution of Election Disputes: Legal Principles That Control Election Challenges* 16, 2nd ed. 2008

20 For a discussion on the components of procedural justice and how they apply to election cases, see IFES, ‘Elections on Trial: The Effective Management of Election Disputes and Violations’ [https://www.ifes.org/sites/default/files/ifes\\_managing\\_electoral\\_disputes\\_and\\_violations\\_final.pdf](https://www.ifes.org/sites/default/files/ifes_managing_electoral_disputes_and_violations_final.pdf)

which are formed six months before an election, chaired by the ZEC and made up of party representatives. Committees can refer disputes to the ZEC – although the law does not set out what action the ZEC can take – and can request mediation of disputes. The committees allow direct communication between the ZEC and political parties and provide a vehicle to resolve disputes at the national, regional and local levels. While international observers in 2018 noted that these committees functioned well at the district and constituency levels, they were less effective at the higher levels, for reasons that included inadequate ZEC leadership.<sup>21</sup> It is important that these alternative dispute resolution processes complement but do not replace a formal appeals process.<sup>22</sup>

21 European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), pages 10 and 19

22 ICCPR, art. 14, § 5; General Comment No.32, pages 47- 50. International human rights conventions all recognize, implicitly or explicitly, the fundamental value of an appeal mechanism.

## Election Offenses

The Electoral Act criminalizes many actions during the electoral process and imposes heavy sanctions. However, because prosecutions for these offenses are subject to criminal procedure under the Criminal Procedure and Evidence Act, many offenses are never brought to trial either due to insufficient evidence for conviction or because a prosecution is dropped after the electoral process is completed. This results in a climate of impunity and could be mitigated by the classification of administrative offenses that are easier to prosecute and sanction in a timely manner.<sup>23</sup> Politically motivated violence and intimidation is a special category of offense under the Electoral Act that is subject to special expedited procedures, including through the appointment of special police liaison officers and designated magistrates. While observers in 2018 noted that referrals under this procedure were generally effective,<sup>24</sup> it is important to preserve due process protections<sup>25</sup> and ensure special procedures are not misused to suppress the opposition.<sup>26</sup>

### Additional IFES Resources

1. [Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections \(GUARDE\)](#)
2. [Elections on Trial: The Effective Management of Election Disputes and Violations](#)
3. [When Are Elections Good Enough? Validating or Annuling Election Results](#)

23 See, for example, Simeon Nichter, "Vote Buying in Brazil: From Impunity to Prosecution," (2011) [https://projects.iq.harvard.edu/files/ruling-politics/files/nichter\\_-\\_vote\\_buying\\_in\\_brazil\\_-\\_from\\_impunity\\_to\\_prosecution.pdf](https://projects.iq.harvard.edu/files/ruling-politics/files/nichter_-_vote_buying_in_brazil_-_from_impunity_to_prosecution.pdf)

24 Ibid, page 42.

25 OHCHR, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers," (2003) Chapter 6, 218, <http://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>

26 For example, international observers in 2018 noted: "it would appear there was a serious clampdown on people from the opposition political parties." European Union Election Observation Mission (EU EOM) Final Report, [https://eeas.europa.eu/sites/eeas/files/eu\\_eom\\_zimbabwe\\_2018\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/eu_eom_zimbabwe_2018_-_final_report.pdf), page 46

### About IFES

The International Foundation for Electoral Systems (IFES) supports citizens' right to participate in free and fair elections. Our independent expertise strengthens electoral systems and builds local capacity to deliver sustainable solutions.

As the global leader in democracy promotion, we advance good governance and democratic rights by:

- Providing technical assistance to election officials
- Empowering the underrepresented to participate in the political process
- Applying field-based research to improve the electoral cycle

Since 1987, IFES has worked in over 145 countries – from developing democracies, to mature democracies.