



## ELECTION • TALK

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### **Zimbabwe's Constitutional & Legal Framework**

*By Grant Masterson*

ZIMBABWE'S constitutional and legal frameworks define the country as a constitutional democracy. Legal provisions require that regular elections are conducted in accordance with the requirements laid down in the constitution. Presidential elections, held separate to other elections, are conducted every six years, whilst nominations to the national legislature are conducted every five years. Zimbabwe's constitution is the result of an amendment to the Lancaster House agreement of 1979. The agreement, amended in 1987 by President Robert Mugabe, remains the basis for the conduct of the country's institutions during elections. Since 1979, the country has made significant progress towards institutionalizing acceptable democratic standards, although recent legal amendments can not be said to comply with these standards and norms.

According to the Principles for Election Management, Monitoring and Observation (PEMMO), a country's legal and constitutional framework is meant to provide the basis for the conduct and delivery of free, fair and credible elections. Since the 2001 Parliamentary elections, some of the legislation passed by the government has been criticized by observers as not meeting the standards of PEMMO and other electoral principles, such as the Southern African Development Community (SADC) Principles & Guidelines for Electoral Management.

Although the constitutional and legal framework sets the parameters within which the elections take place, there are several areas in which Zimbabwe's legal provisions fall short of the standards set in PEMMO.

PEMMO outlines the need for fundamental human rights to be protected by the constitution, including the right to freedom of association. The Public Order & Security Act (Chapter 11, section 17) requires government permission for any public gathering of larger than four people, and has been used regularly in the run-up to the elections to cancel and disperse opposition political party rallies. The Non-Governmental Organizations Bill will further undermine the

right to freedom of association if it becomes law prior to the election.

PEMMO calls for legal protection of the right to freedom of expression. The Public Order & Security Act (Chapter 10, section 27) has been used to justify the imprisonment of numerous local and foreign journalists, the confiscation of cameras and the banning of the *Daily News*, Zimbabwe's only independent newspaper. The act has also restricted the access of foreign journalists in the country, as only citizens can be accredited journalists for more than thirty days.

PEMMO also states that constitutional and legal amendments should ensure that credible mechanisms are in place to deal with appeals by aggrieved persons. However, since 2001, the Executive has consistently interfered with and circumvented the judiciary to the point that Supreme Court judges resigned en masse in protest at the Executive's interference. The 2005 Zimbabwe Electoral Act has commissioned a special Electoral Court to deal with disputes, however, with less than two months to the elections, the court is still non-existent. Opposition grievances, which by law should be dealt with by the Electoral court, cannot as yet be processed in the courts absence.

The most significant problem facing the upcoming elections, however, is that the Electoral Act, which by and large complies with the letter of PEMMO, is that the legislation, if it is to be implemented, has come into existence too late to make any significant impact on the constitutional and legal framework of the Parliamentary elections to be held on 31 March 2005. Although some countries have successfully implemented constitutional reforms on short notice, such as South Africa in 1994, the unsettled political environment in Zimbabwe has undoubtedly had an adverse effect on the implementation of the 2005 Electoral Act. Important elements of the elections, such as the delimitation of constituencies and the updating of the voters roll, have been conducted by largely partisan government structures, and there is simply insufficient time for the newly formed Electoral Commission to ensure that these processes have complied with SADC regional standards.