**ELECTION WATCH11/2018**

**[15th May 2018]**

**The African Charter on Democracy, Elections and Governance**

**Signature of the Charter by the President: 21st March 2018**

President Mnangagwa signed the African Charter on Democracy and Governance *[*[*link*](http://veritaszim.net/node/878)*]*at the African Union Extraordinary Summit in Rwanda on the 21st March 2018. This was well received by civil society organisations in Zimbabwe and regarded as welcome evidence in support of the President’s repeated affirmations of his determination to ensure that the coming election is free, fair and credible.

**Follow-up to Signature Now Needed**

Signature of the Charter did not make Zimbabwe a State party to the Charter nor establish a binding obligation under international law to comply with the Charter’s terms. Unless followed up speedily and meaningfully, the President’s signature of the Charter runs the risk of being adjudged little more than a PR exercise, a signal of good intentions on the part of Zimbabwe to counterbalance the controversial events of last November that resulted in the early termination of former President Mugabe’s tenure of office.

The necessary follow-up action to make Zimbabwe a State party to the Charter and as such legally bound to implement the Charter’s terms can be relatively easily completed before the coming election. All that is needed is for the President to ensure that there is no delay in taking the following steps:

* *the passing of a resolution approving the Charter in both the Senate and the National Assembly, as required by section 327(2) of the Constitution; and*
* the preparation and signing of Zimbabwe’s instrument of ratification of the Charter and the deposit of the instrument of ratification at the African Union headquarters in Addis Ababa.

*Note: The Minister of Justice, Legal and Parliamentary Affairs tabled the Charter in the National Assembly on Tuesday 8th May, citing section 327(2) of the Constitution. This must mean that the Minister will soon be asking both Houses to approve the Charter and its ratification on behalf of Zimbabwe.*

As soon as the instrument of ratification is deposited with the Chairperson of the AU Commission, Zimbabwe will immediately become a State party to the Charter. Zimbabwe and its Government would then be legally bound under international law – and under our own Constitution – to implement the Charter. That would require, among other things:

* *domestication of the Charter which requires State parties to take legislative, executive and administrative actions to bring their national laws and regulations into conformity with the Charter [Article 44].*
* implementation of the Charter which also requires State parties to: ensure the wider dissemination of the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles; promote political will as a necessary condition for the attainment of the goals set forth in the Charter; incorporate the commitments and principles of the Charter in their national policies and strategies [Article 44].
* reporting to the AU every two years on the “legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter”.

**Overview of the Charter**

The Charter *[*[*link*](http://veritaszim.net/node/878)*]* was adopted by the African Union in 2007 as a roadmap to promote better governance in Africa. It required 15 countries to ratify it in order for it to become operational [Article 48], which did not occur until February 2012. States parties to the Charter now number 31 out of 55 African countries; Mozambique is the newest State party, its instrument of ratification having been deposited only a few days ago on 9th May 2018. *[Note: there is no time limit laid down in the Charter for signing and ratification.]*

The scope of the Charter scope is broad indeed, as indicated by its title and also by its Chapter headings, which include:

 Democracy, Rule of Law and Human Rights

 The Culture of Democracy and Peace

 Democratic Institutions

 Democratic Elections

 Sanctions in Cases of Unconstitutional Changes of Government

 Political, Economic and Social Governance.

A frequently recurring theme is the necessity to eliminate unconstitutional changes of governments, which the Charter’s Preamble condemns as *“one of the essential causes of insecurity, instability and violent conflict in Africa”*.

**The Charter’s Chapter on Democratic Elections**

As the AU seems to have accepted Zimbabwe’s controversial change of government in November last year, and as the current national focus is on the coming elections, the rest of this bulletin will deal briefly with what the Charter has to say about elections.

**The Preamble**

The preamble sets the tone by spelling out the concerns that led to the Charter’s adoption, including the following relating to elections:

*“Seeking to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies,*

*Convinced of the need to enhance the election observation missions in the role they play, particularly as they are an important contributory factor to ensuring the regularity, transparency and credibility of elections.”*

**Provisions of the Charter in relation to elections**

Articles 2and 3 set out in general terms objectives and principles of the Charter, some of which relate to elections:

* To promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments.
* Promote best practices in the management of elections for purposes of political stability and good governance.
* Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law

Chapter 7 of the Charter [Articles 17 to 22] deals exclusively with elections, which must be "regular, transparent, free and fair. These six articles cover three aspects:

* Requirements for a transparent, free and fair election, to meet which State parties must:
* establish and strengthen *independent and impartial national electoral bodies* responsible for the management of elections.
* establish and strengthen *national mechanisms that redress election-related disputes* in a timely manner.
* ensure *fair and equitable access by contesting parties and candidates to state controlled media* during elections.
* ensure that there is *a binding code of conduct governing legally recognized political stakeholders, Government and other political actors prior, during and after elections.* The code shall include a *commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.*
* AU “electoral observer missions” – which a State party must allow, not only *during the election period, but also during the period prior to elections [“exploratory missions”].*
* Independent and impartial national monitoring or observation mechanisms, for which a State party must *“create a conducive environment”*

**How Does Zimbabwe Measure Up to the Charter Provisions?**

It is probably safe to say that our Constitution itself complies with the Charter provisions on democratic elections. Unfortunately, however, the Constitution has still not been fully implemented, and the Electoral Act still requires further work to complete its alignment with the Constitution – although this position will be improved if the current Electoral Amendment Bill in its revised and enlarged form becomes law, there will still be parts of our electoral law that are not aligned with our Constitution. Moreover, there are also other Acts of Parliament that that impinge on elections and the electoral environment – POSA, AIPPA, for example – which remain unaligned with the Constitution. *[See Veritas Election Watch bulletins 15/2017 [*[*link*](http://www.veritaszim.net/node/2197)*] and 16/2017 [*[*link*](http://www.veritaszim.net/node/2223)*] pointing out the problems with, respectively, the Electoral Act and other Acts.]*