



**PRESS STATEMENT**

**17 April 2008**

**INTENTION OF THE ZIMBABWE ELECTORAL COMMISSION  
TO CONTINUE WITH PROPOSED RECOUNTS WILL BE  
UNLAWFUL AND IN CONTEMPT OF COURT**

Zimbabwe Lawyers for Human Rights (ZLHR) has today urgently written to the Chairperson of the Zimbabwe Electoral Commission (ZEC) to highlight concerns with the legality of ZEC's actions in the event that ZEC proceeds with recounts in 23 constituencies on 19 April 2008.

A "**Notice to Local and Foreign Observers on Vote Recount**" was published in *The Herald* on Tuesday 15 April 2008, through which ZEC advised that recounts will be carried out in 23 constituencies on 19 April 2008, commencing at 08:00hrs. The intention expressed in the Notice is to recount votes for Presidential, House of Assembly, Senatorial and Local Authority elections in these 23 constituencies. Such recounts are said by ZEC to have been requested by affected candidates.

In terms of section 67 A (1) and (2) of the Electoral Act, the procedure for recounting of votes on the written request of a candidate for a constituency is that such recount must be done **within 48 hours of the declaration of a candidate to be duly elected**. ZEC has publicly averred that such requests were received within the stipulated time period. However it has not provided any documentary evidence thereof. Without such evidence, ZLHR considers the requests for recounts and the intended recounting of votes for Senatorial, House of Assembly and Local Authority seats to be unlawful.

Even in the event that ZEC attempts to argue that it has itself ordered the recounts, it is ZLHR's considered view that the need for certainty and finality of the electoral process would require that this, too, be done within 48 hours of the declarations made to duly elect candidates at ward, constituency, senatorial constituency and national level, and therefore they are out of time.

In relation to the "recounting" of presidential votes, ZLHR has previously advised its position that this is unlawful and unprocedural. There are no provisions for a presidential recount in the Electoral Act. Even were ZEC to follow the practice used for recounts of parliamentary constituencies, **it must first announce the result of the presidential election, and then await a request for a recount from one of the candidates affected**. The Second Schedule (Section 110) of the Electoral Act, as amended, stipulates that once the votes from each constituency have been added together, the Chief Elections Officer shall **forthwith** declare the winning candidate to be duly elected.

It is only **after** such a declaration that a request for a recount can be made, if it can be made at all. ZLHR therefore considers the intended recounting of presidential votes to be unlawful.

Further, there is a pending court application challenging the intended recount. An interim order has been granted in terms of which ZEC has been ordered not to engage in recounts of specified constituencies until a final judgment has been handed down and then, only if the judgment is in its favour. We do not foresee such an outcome from an independent court, as the law is very clear in relation to the process to be followed. Thus, not only would ZEC's actions again be unlawful, but also in contempt of court.

The ZEC has previously refused to answer allegations put to it in writing about why extra ballot papers were printed indicating only that it "*is under no legal obligation to provide the information*". It has not denied that extra ballot papers were printed. As also previously raised with ZEC but never explained, ZLHR considers that inadequate security measures have been put in place by ZEC to ensure the integrity and security of the ballot boxes which would prevent tampering, especially during this inordinate delay in completing verification and tabulation and announcing the presidential results.

It is therefore our considered and reasonable belief that the security and integrity of all the ballot boxes for all the elections have been compromised and that tampering may have occurred, wherein such extra ballot papers may have been inserted, to the prejudice of one or other of the candidates concerned. Any result arising from this illegal recount will therefore be disputed.

ZLHR has advised ZEC to urgently reconsider its intention to proceed with the recounts. Should ZEC refuse to halt these unlawful proceedings, and in any event, ZLHR's accredited observers shall be present at all the recounts as allowed in terms of the law and will formally lodge their protest in person before the proceedings commence. Our accredited observers will remain in attendance throughout the recount, but under protest. Their presence there should by no means be construed as an acceptance of the legality or legitimacy of this entire charade which ZEC characterises as a lawful recount. It is merely a means of complying with obligations of observers under national and international law and for the purposes of documenting the ongoing abuse of the electoral process.

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