

ZIMBABWE ELECTION SUPPORT NETWORK



ARGUMENT FOR DELIMITATION OF BOUNDARIES IN ZIMBABWE IN 2018

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Introduction

The purpose of this policy brief is to discuss the timing of the process of delimitation of electoral boundaries. It articulates why it is more desirable to have the delimitation exercise before the 2018 elections.

The delimitation of electoral boundaries, which maps out the constituencies and wards in which people exercise their right to vote is a key aspect of the electoral process. This process, which is universally acknowledged, is based on provisions of the Constitution of Zimbabwe, which is the supreme law of the land.

The last delimitation exercise in Zimbabwe was carried out in 2008, shortly before the harmonised elections held on 29 March. Although the Constitution which applied at the time required delimitation to take place every 5 years, no delimitation exercise was carried out before the 2013 general elections. Therefore, by the time the 2018 elections are held, Zimbabwe would have gone 10 years without any delimitation of electoral boundaries.

The country faces the risk of going into a second election without a delimitation of electoral boundaries. It is good practice to periodically and regularly review electoral boundaries. It is argued that failure to perform a delimitation exercise before the 2018 elections is likely to affect the credibility and legitimacy of the electoral outcome.

The Problem

The major problem is that unless Zimbabwe undertakes a delimitation exercise before the 2018 election, the credibility and legitimacy of that election will be put at risk. This will affect Zimbabwe's ability to resolve its long-standing political problem.

However, the relevant data such as the population census data, which is necessary for purposes of carrying out a proper delimitation exercise is also fast losing reliability with the passage of time since the last census was conducted in 2012.

It is critical therefore, for the generation of a new data set which can be used to complement and fill gaps in the census data, in order for a proper delimitation exercise to be undertaken. It will be critical however, to ensure that the 2018 elections are held on the basis of a new delimitation exercise.

Why delimitation process matters in elections

Delimitation is an important process which maps out electoral boundaries of voting zones – constituencies and wards. This exercise is critical in a jurisdiction where the predominant system of voting is the First-Past-the-Post system based on voters electing their representatives based on constituencies and wards. Those voting zones have to be accurate and representative.

The delimitation of accurate boundaries is critical to the success of any election, but it also requires careful management as it can easily be manipulated. If electoral boundaries are poorly drawn, it can lead to under-representation of the people in some constituencies which would have more people, while creating over-representation in other constituencies with fewer people. The fundamental principle is that electoral boundaries must as far as possible create equally-represented constituencies with shared community interests. The principle of one person one vote is based on the core value that each vote must be equal to the other.

However if constituencies with fewer numbers of people are permitted to elect the same number of representatives as constituencies with larger numbers of people, the notion of one person one vote is undermined as it would mean other votes carry more weight than others.

However, in previous years, the delimitation exercise has neither been transparent nor timely in relation to the elections. The process has also been at risk of political manipulation, with the ruling party and President usually having greater and earlier access to and control over delimitation data and therefore enjoying an unfair advantage over other candidates. There was also a problem in respect of the lack of independence of the authority which was charged with the mandate of carrying out delimitation, which was wholly appointed by the President, who was also a candidate in elections.

Setting election boundaries is also important as it affects the allocation of polling stations in the different wards of a constituency. Where the delimitation exercise is done late, this will also mean the late publication of the list of polling stations with the resulting associated problems where errors might have occurred and this could disenfranchise voters¹.

Overall, delimitation can be manipulated by an interested party to sway an election in their favour, by creating and strengthening favourable constituencies, while undermining constituencies perceived to be in opposition. This is why the process of delimitation must also be watched carefully.

Impact of migration

One population dynamic which affects electoral boundaries and requires regular review is the migration of people, the most critical of which is rural to urban migration and vice-versa. The push and pull factors for these migration patterns are varied – they can include incentives such as the free provision of urban housing stands to the homeless, as a legitimate empowerment mechanism but also probably a bait to populate and dilute urban constituencies with a new set of voters. In one case, Harare North Constituency in 2008, the voters' roll indicated 8450 voters registered under the name of a housing co-operative but the location was actually deserted.

Migration can also be due to forced displacement during or after election periods. There is documented evidence of large-scale displacement of rural citizens between the 29 March elections and 27 June elections in 2008. Operation Murambatsvina in 2005 and demolitions in 2015/16, saw the violent displacement of new urban dwellers after their homes were destroyed by government on the grounds that they were illegal structures.

Such migration results in vast changes to population distribution in wards and constituencies, affecting their numbers and therefore representation. When voters have been forcibly displaced due to political violence and intimidation, they have been dislocated from their natural constituencies and they have not been able to vote. Furthermore, some constituencies have become under-represented as they have gained more people than a reflected on the

¹ Previous elections such as in 2008 demonstrate the myriad of problems arising from the late completion of the delimitation exercise. In some cases, processes have been hurriedly done, with subsequent distortions to the voters' rolls and ward boundaries where family members using the same address have been registered in different wards.

electoral map while others have become over-represented as they have lost people in the interim but can still elect the same number of representatives based on an old data set.

Current legal framework

The current legal framework for the delimitation process is governed mainly by the Constitution and the Electoral Law. There is also other legislation such as the Census and Statistics Act [Chapter 10:29] which helps in the process of determining electoral boundaries. However, as the Constitution is the supreme law of the land, all other laws, rules or legal instruments must conform to its terms.

The Constitution creates the institutional mechanism for carrying out the delimitation process. The mandate for this is vested in the Zimbabwe Electoral Commission (ZEC), the electoral body which is charged with the management and supervision of the electoral processes. The reasoning behind giving this role to ZEC was that as the only body in charge of elections, it must be given all the powers to deal with all issues pertaining to elections. Therefore, functions such as voter registration and maintenance of the voters' roll, previously exercised by the Registrar-General, were transferred to ZEC. Likewise, the process of delimiting constituencies, was also given to ZEC.

Apart from the institutional set-up, the Constitution also deals with several issues relating to delimitation. These issues include the nature and extent of ZEC's mandate of delimiting boundaries, the frequency of the delimitation process, and some (but not all) timelines for producing the delimitation report. It also provides guidance on the factors that must be taken into account when determining electoral boundaries. It is not necessary for purpose of this brief to go into much detail on those factors.

Weaknesses of the legal and administrative framework

The legal framework for the delimitation process has weaknesses.

- While there are provisions to promote the independence of ZEC, in the past there have been allegations by various stakeholders that ZEC lacks independence, particularly on the operational side. In particular, there have been allegations that ZEC is a militarized institution, with ex-military and security personnel holding key roles in its operations. Although the process of appointing commissioners has theoretically improved, the results in practice have been disappointingly similar to the past, with the same old personnel being recycled through re-appointments. ZEC did not do its reputation any good when it endorsed the violent and discredited 27 June 2008 presidential run-off election as a free and fair when virtually everyone, including neutral observers, dismissed it as a sham election.
- Delimitation has not been done according to set timelines and in most cases it has been done very shortly before the elections, making the exercise less useful to candidates and parties contesting in elections and in some cases, it has confused and disenfranchised voters who have found on polling day that they are wrongly registered in different wards or constituencies². The late provision of the delimitation

² The authority for delimitation has not been timeous in its work with the 2000 exercise being completed just 5 days before the nomination of candidates. There were concerns of manipulation, with the 2000 delimitation

reports has made it difficult, if not impossible, for interested parties to scrutinise the maps and boundaries. The result is there have been no serious formal challenges to the delimitation of electoral boundaries, despite the problems around it. However, while these weaknesses exist, there have not been any successful formal challenges to the delimitation exercise in the courts of law or any other channels³.

- Lack of transparency and secrecy in the delimitation exercise. There has never been transparency in how delimitation is carried out, with allegations of too much control by the President and the executive over the authority charged with delimitation.
- Some of the provisions of the Electoral Law are still outdated in light of the new Constitution.

The delimitation process

It is not necessary to go into the nitty-gritties of the delimitation process as described in the Constitution and the Electoral Law, except to point out that in terms of timing, ZEC is required to determine electoral boundaries after every 10 years. This is designed to fall as soon as possible after a population census has occurred, which is also done every ten years. This 10 year interval is an extension of the period as previously delimitation was required every 5 years. There is criticism that the 10 year-interval is too long given the migration patterns in the country and that this could result in distorted electoral boundaries. This is a legitimate criticism. Since elections are held every 5 years it seems better that delimitation is aligned with the timing of elections. However, this would require a constitutional amendment, but there is no appetite to amend the Constitution so soon after its adoption. Indeed, that would not be desirable.

When should the next delimitation exercise take place?

The core question in this paper is when, in light of the above, should the next delimitation exercise take place?

It is submitted that for the credibility of the 2018 elections, the delimitation process must be carried out before that election. There is a view that the delimitation exercise should wait until 2023, that being 10 years after the new Constitution came into force. While there is some merit in that view, the costs of not having a delimitation exercise before the 2018 elections far outweigh the benefits of waiting for 2023. I will set out the case for and against both:

exercise leading to loss of urban constituencies and rural provinces gaining more constituencies despite the high rate of rural-urban migration.

³ Following the 2013 election an MDC-T Candidate for Mount Pleasant, Jameson Timba tried to challenge the redrawing of the constituency. The Court stated that the evidence was inadequate, although one of the challenges that Timba faced was the problem of accessing election-related data which the courts also refused to sanction.

Delimitation in 2023

This is based on the view that since the Constitution allegedly silent on the commencement of the 10-year duration, then 2013 is the correct date for the next delimitation exercise that being 10 years after the adoption of the new Constitution in 2013. However, this view overlooks the fact that the new Constitution did not commence in a vacuum. The new Constitution recognises the principle of succession in sections 9, 10 and 11 of the Sixth Schedule. Where the Constitution did not include previous terms or events before its adoption, it states so clearly. Where it is silent, the terms served or past events should be computed from when they occurred. On that basis, the fact that the last delimitation exercise was performed in 2008 must be taken as the starting point, in which case 2018 would be the next natural date for the delimitation exercise.

The second advantage of having 2023 as the date for the next delimitation exercise is that it would align the delimitation process with the population census which is next due in 2022. It will also align with the next elections after 2018, which are due in 2023. On this basis, waiting for 2023 would seem to be a perfect scenario to align delimitation not only with the election but also with the census which would have taken place a year before. This is a significant point, but it would mean going into the 2018 elections without any delimitation having taken place. It also overlooks the fact that by the time the 2028 elections are held, there delimitation won't be due until 2032. There is therefore no unique advantage in the alignment of the census, delimitation and elections in 2023.

Delimitation in 2018

As pointed out above, an interpretation which takes into account what happened before the new Constitution came into force would recognise that the last delimitation process was in 2008 and therefore, 10 years afterwards would be in 2018. This interpretation will dislocate the delimitation process from the 2023 elections but this is a natural consequence of the fact that the delimitation is now coming at 10 year intervals, rather than 5 years. On this interpretation, the next delimitation process after 2018 would be in 2028 which is also consistent with the elections of that year.

Secondly, and perhaps more importantly, the country has already gone through one election without a delimitation exercise. There was cause for concern that the electoral boundaries in the 2013 elections were not accurate or representative of the population distribution. That risk will be higher in the 2018 elections, leading to gross distortions in the electoral outcome. It would be undesirable for Zimbabwe to go into another election without a proper delimitation of electoral boundaries, particularly given the migration patterns between 2008 and 2018.

Outdated census data?

One weakness with carrying out delimitation in 2018 is that population census data will be outdated given that the last census was carried out in 2012. 6 years between the census and the delimitation exercise is a long period and that data may not be reliable. However, while population data is an important factor in the delimitation process, it is by no means the only data set. More significant is the data on voter registration and the voters' roll. If that data can be captured in time for the 2018 elections and there is a credible and trusted voters roll, that should be a good data set to complement the census data for purposes of carrying out the

delimitation process. This means there is a need to focus strongly on the establishment of a new and credible voter' roll.

The problems with Zimbabwe's voters roll are well-known. There is a serious lack of transparency and stakeholders have long complained that the voters roll is in a shambolic state. When the opposition parties and civil society demanded a copy of the electronic copy of the voters roll before the 2013 elections, ZEC and the Registrar General failed and/or refused to comply, contrary to the law and court orders. This severely damaged the legitimacy of the election outcome. Thus if ZEC is to use the voters roll to delimit electoral boundaries, it would have to revamp the entire system to ensure credibility and trust.

In this regard, ZEC is mulling the introduction of bio-metric voter registration (BVR), which could vastly improve the voters roll but it would also require time and resources. However, considering the pressing need for a delimitation exercise, investment in the BVR system would be good use of scarce resources. If done properly, this new data set will provide the material for a delimitation exercise before the 2018 elections.

Recommendations

In light of the above, a number of recommendations can be made to the relevant authorities:

- The next delimitation process should take place before the 2018 elections to help promote their credibility and legitimacy. Current electoral boundaries are distorted and unreliable.
- ZEC must roll out the new voter registration system, based on BVR or any other system, as soon as possible to ensure that there is a credible and trusted voters roll which can be the basis of the delimitation process.
- Provisions of the Electoral Law which are no longer consistent with the new Constitution must be amended.
- The Electoral Law must specifically include factors such as the principle against non-discrimination of minorities among factors to consider when drawing electoral boundaries. The ease and convenience of travel to polling stations within a delimited area is an important factor of consideration in the delimitation process.
- While the Constitution and the Electoral Act go some way to advance the principles which underpin delimitation, more can be done to ensure that the delimitation process is open, efficient, effective and independent.
- While ZEC has discretion on the choice of methods it can use for carrying out the mapping and delimitation exercise, it is encouraged to adopt and use new computer-based and digital technologies which is more accurate, faster and easier to audit. Such a move would be a worthy investment and would give confidence to stakeholders.

- The Electoral Law must also provide guidance of a reasonable time within which ZEC must produce a delimitation report
- The law must provide for provisional delimitation maps to be advertised widely to ensure their accuracy to enable interested parties to properly scrutinise the maps.
- Accreditation of observers must be extended to cover other electoral processes, such as registration of voters, or the delimitation of constituency boundaries.