

# **ZIMBABWE ELECTION SUPPORT NETWORK**



## **ARGUMENT FOR DELIMITATION OF BOUNDARIES IN ZIMBABWE IN 2022**

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## **Executive Summary**

The process of delimitation of electoral boundaries remains critical to any electoral outcome in Zimbabwe. In the past, this process has not been conducted in a timely and transparent manner. It has also been open to political manipulation, with one political party having more access to information and also directly and indirectly influencing migration of voters ahead of the delimitation exercise, or before the actual polls, in its favour. Forced migration through displacement as a result of forced demolitions as well as political violence, for example, has led to rural to urban migration. Those displaced have not been accurately reflected in polls and have been unable to vote due to an inefficient voter registration system. There are also a number of gaps in the legal framework on boundaries as it exists today. In spite of these challenges, and the great implication delimitation processes have on electoral outcomes, the outcomes of delimitation have never been formally challenged in the courts or through any other formal process. While there is no certainty on the timing of the next delimitation, the Zimbabwe Election Commission must rely on information such as population data that is produced by other government departments. There is also need to have a reliable, accurate voters roll in place in order for the process to produce accurate electoral boundaries. This process can however only be conducted subject to adequate legal and administrative reforms and the finalisation of other electoral related process that produce information for fair redistricting and delimitation of electoral boundaries to take place.

## **1. Introduction and background**

Over the last thirty-five years of Zimbabwe's existence as an independent country, electoral boundaries have always been a critical factor to the electoral outcome. The predominant electoral system in place in Zimbabwe for some time has been the First Past the Post, is greatly impacted by the demarcation of boundaries and numbers of registered voters. Also, the requirement for voter registration and actual voting to take place within a specified constituency, has led to electoral processes that have been contested. The determination of electoral boundaries is an important factor that has to be managed properly as it can easily be manipulated if one contesting political power has undue influence to the exclusion of others. This can also have unintended consequences whose negative impact can continue to be felt long after the ballots have been counted and stored away. In Zimbabwe this has been particularly true when it comes to forced evictions of people from settlements in the period leading up to polling day. In most such instances boundary delimitation has led to an increase in voting numbers in particular places, as well as dilution of certain votes, swinging the outcome in favour of certain parties. Settlements of displaced persons have commonly arisen near sparsely populated low-density areas that are close to rural constituencies, or where there is open land that can be inhabited. These settlements have been subjected to the emergence of unscrupulous housing cooperatives, land barons and subsequent forced demolitions when the inhabitants cease to be of value to those seeking to manipulate these vulnerable populations for political gain.

## **2. Historical perspective**

Since the emergence of a strong political opposition in Zimbabwe, there have been numerous allegations of manipulation of electoral boundaries by the ruling party – Zimbabwe African National Union Patriotic Front (ZANU PF). This perception, that the process is flawed and subject to manipulation, has been fueled by the general lack of transparency and lack of independence of the institution involved in spearheading the process given its control by the ruling party. In spite of these shortcomings, the process has never been properly challenged in the courts of law. Following the 2013 elections, the Movement for Democratic Change (Tsvangirai) MDC-T candidate for Mount Pleasant Constituency, Jameson, unsuccessfully attempted to challenge the unconstitutional redrawing of boundaries of his

constituency.<sup>1</sup> Due to lack of adequate evidence, he failed to prove how boundaries had been redrawn to incorporate some voters from a farming community that fell under another constituency. Opposition political parties have also not prioritised advocating for reform measures to be implemented in electoral boundary determination, as a pre-requisite for participation in elections.

Before the 2013 Constitution came into force, there were a number of problems with delimitation of boundaries. Firstly, the independence of the Delimitation Commission responsible for this process was questionable. All the members of the Delimitation Commission were appointed by the President, who was also an interested party and candidate in the pending elections. There were also a multiplicity of election bodies that had a role to play in delimitation, and a number of government departments directly or indirectly involved in the process. The Delimitation Commission relied on the Electoral Supervisory Commission, and the Registrar General's office for information to conclude its work. The frequency of the delimitation exercise as provided in the law was a five-year interval,<sup>2</sup> which was not adhered to. Generally there was no access to relevant information and maps for stakeholders. Indeed the whole process was not transparent or accessible to interested stakeholders.

Another recurrent challenge, though not directly linked to the authority responsible for delimiting boundaries, has been the phenomenon of forced evictions of large numbers of people before or after elections. Forced rural-urban migration has also occurred as a result of pre-election violence or economic challenges – resulting in the electorate moving to different constituencies. In other instances, there has been increased cross border migration to neighbouring countries such as Botswana and South Africa.

In 2000, delimitation was done well after the five-year interval set in terms of section 59(4) of the Constitution. The delimitation exercise was predicated on the number of registered voters at the time, including those who were on the supplementary voters roll. This voters' roll was not provided on time hence the

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<sup>1</sup> See *Jameson Timba v Jason Passade* Unreported Electoral Court judgment 74/2014

<sup>2</sup> Section 60 (8) of the Constitution.

Delimitation Commission did not have adequate time to complete the delimitation process. The number of those registered to vote was divided by 120 constituencies to provide the average number of voters per constituency. At that time, the Constitution also provided that the variations of the total number of voters for each constituency should not exceed plus or minus 20%. The methodology used was to treat the provinces as administrative entities. Constituencies allocated per province were established by dividing the total number of registered voters per province by the average number of voters per constituency and then rounded off.<sup>3</sup>

Interestingly, provinces of Bulawayo, Harare and Mashonaland West each lost one constituency, while provinces of Mashonaland Central, Matabeleland South and Midlands each gained one constituency by 2000.<sup>4</sup> This is in comparison to the number of constituencies that existed in 1995. In its 2000 delimitation report, the Delimitation Commission stated that it had endeavored to ensure equal numbers of voters in all constituencies and had, as far as possible, sought to preserve communities of interest, avoiding combining rural and urban areas. Nevertheless it is not clear how urban areas lost constituencies, considering the extent of rural-urban migration.

In 2000, the interim report was submitted on 12 May, and the final report only on 24 May, five days before the nomination of candidates. Although opposition parties objected to some constituencies losing seats and other gaining<sup>5</sup> – with a noticeable trend of rural gaining and urban losing – no tangible action was taken to rectify this.

The Movement for Democratic Change (MDC) had to petition the court to have nomination day moved as the delimitation report had been received late. Complaints were also raised by other political parties that ZANU PF had information on constituency boundaries earlier than other parties.<sup>6</sup> In this instance, a ZANU PF Minister of Justice, had access to the delimitation report before it was transmitted to

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<sup>3</sup> Available at <<https://www.eisa.org.za/wep/zimdelimit.htm>> Last accessed 9 December 2015.

<sup>4</sup> As above.

<sup>5</sup> Zimbabwe elections observer mission report, The Electoral Commissions Forum of SADC Countries page 28.

<sup>6</sup> Cheater A 'Human rights and Zimbabwe's elections' – A Report produced by the Zimbabwe Human Rights NGO Forum Research Unit, January 2001.

the President. Consequently, other political parties were not able to meticulously verify the proposed boundaries, and compare this information with proposed wards against the voters roll. ZANU PF had an unfair advantage of having access to the delimitation report ahead of other political parties.

Eight years later, during the 2008 harmonised elections, the Delimitation Commission conducted a process that was heavily criticised. It was carried out in terms of section 4(1)(h) of its enabling Act. Of particular concern was the failure by ZEC to carry out its educative mandate after the boundaries were set. The public was not adequately and timeously informed about the delimitation of constituencies and the comprehensive changes in boundaries. Knowledge of the new constituencies and wards was not widespread prior to polling day. The Delimitation Commission reported to the President on 14 January 2008. The President promulgated the boundaries on 1 February 2008 despite the fact that copies of the proposed boundaries had not been made available to the public beforehand (or even to members of the House of Assembly and the Senate, who could only have access to one copy) for inspection and comment.<sup>7</sup> This left inadequate time for voters to establish their ward and constituency boundaries and subsequently inspect the voters' roll. For other stakeholders such as civil society, there was limited access to information about delimitation of boundaries that was insufficient for purposes of comprehensive voter education and review/analysis.

The setting of election boundaries is critical as it also affects the allocation of polling stations in the different wards. If delimitation is carried out late, the list of polling stations will inevitably be published late with no time to sort out mistakes, or adequately review and rectify any anomalies.

In 2008, this was done on 8 March 2008 – 20 days before polling day - in compliance with section 51 of the Electoral Act requiring information about polling stations to be provided at least 14 days prior to the polling date. Although ZEC had promised to set up 11 000 polling stations, the location of only 8 212 were published on that day. Information was jumbled, and incorrect in some cases, and amendments had to be

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<sup>7</sup> See SI 11/2008.

made subsequently.<sup>8</sup> Upon changes having been made to the delimitation of constituencies, changes were also purportedly automatically made to the voters' roll. In other instances, although several people had registered to vote, it became apparent that ZEC had not ensured that the names of voters were entered in the proper ward. In extreme cases, family members, residing in the same house, who had used the same address as proof of residence during registration, discovered that their names had been entered in two different wards. As a result, some of the family members were not able to cast their votes and choose a local government representative. A glaring example includes the experiences of two families in Manicaland.<sup>9</sup> It is clear from some events that occurred before the 2008 elections that delimitation of constituencies, especially ward boundaries, was done in haste. It remains a puzzle how people residing in the same house, who registered using the same address, could end up with their names appearing on registers of different wards. ZEC did not adequately ensure that ward boundaries were properly and widely advertised during the run-up to the elections: and their efforts to do so were thwarted by the fact that most of these "maps" were barely decipherable, with very poor picture quality.<sup>10</sup> Additionally, the maps did not have any road names or visible and identifiable landmarks.

Anomalies in delimitation of constituencies was also observed by other external independent observers ahead of the March 2008 elections; for instance the Pan African Parliament election observation team, after reviewing the information contained in the '2008 Delimitation Report' observed the following;

- One ward in the Harare North constituency of ward 42 had a block that purportedly had 8450 voters, many of whom were registered under the names of cooperatives.
- This was a deserted location that had some residential stands with a few scattered wooden shacks.
- 8450 was almost a third of the so-called registered voters from Harare North.

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<sup>8</sup> Zimbabwe Lawyers for Human Rights *Zimbabwe geared for another election? Then and now: 2008 elections in retrospect* (2010) p 8.

<sup>9</sup> Some of the disenfranchised are members of Zimbabwe Lawyers for Human Rights.

<sup>10</sup> 'Mashonaland central ward, house of assembly, senate constituency boundaries for the 2008 elections *The Herald* 24 March 2008 E.8

The Harare North 2008 scenario clearly shows how stand allocations, especially under housing cooperatives, have been easily manipulated in the past. This has resulted in inflated numbers of registered voters in certain areas, where ordinarily the population density would be low. In this case, those registered under the housing cooperative did not even reside at the locations identified in the voters' roll.

While this process of delimitation has not been managed well in the past, conducted in haste, and shrouded in secrecy, which has led to chaos and confusion for voters during the polls, the process of demarcating boundaries has never been challenged in courts. This has also provided room for gerrymandering. Generally, the delimitation reports have been provided late, making it virtually impossible for the proposed boundaries and maps to be scrutinised by interested parties.

Other than processes relating to boundary determination carried out directly by ZEC, forced evictions have also been regularly experienced in the period leading up to elections, or after elections, as mentioned above. This has led to internal displacements. In 2005, Operation Murambatsvina, resulted in forced demolitions of structures and houses that had been built without the approval of the local authorities. Those affected were widely perceived to have been Movement for Democratic Change MDC supporters. After the 2013 elections, some forced demolitions have occurred in some suburbs of Harare, especially in the high-density areas. These demolitions have continued to occur in spite of a number of court orders preventing council officials from demolishing houses and evicting residents without court orders.<sup>11</sup> In some of these cases the houses have been demolished after being constructed on undesignated land that would have been allocated to the residents by housing cooperatives.

### **3. Principles of boundary delimitation and best practices**

There are five internationally-accepted principles that are proposed to guide

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<sup>11</sup> See the case of *Jean Pierre Dusabe and another v City of Harare and others* High Court Harare Unreported Court Order 820/2016; *Peter Makani and 5 Others v Epworth Local Board and 4 Others* Unreported High Court Harare Judgment 8596/2014.

delimitation processes, which include:<sup>12</sup>

- i. *Representativeness*: Boundaries must create an opportunity for the electorate to elect candidates they feel truly represent their interests. Boundaries must coincide with communities of interest as much as possible; administrative boundaries, or physical features such as mountains, or “communities” that share a common race, ethnic or tribal background, or same religion or language. Such factors when taken into account could enable the chosen representatives to serve the constituency well.
- ii. *Equality of voting strength*: Districts must be relatively equal in population with equally weighted votes to prevent "malapportionment" with voters able to cast votes of equal weight. According to the UN Committee on Human Rights (UNCHR)<sup>13</sup> the principle of one person, one vote must apply. The vote of one elector should be equal to other elector's vote. Boundaries must not distort the distribution of voters or discriminate against any group and should not exclude or unreasonably restrict the right of citizens to choose their representatives freely.
- iii. *Independent, impartial boundary authority* (or, at a minimum, reciprocity): Persons or institutions responsible for drawing electoral boundaries must be independent and impartial. Recommendations of a boundary authority should not be subject to modification or veto by government officials or legislature. There must be clear rules, and reciprocity must apply. If procedures are in place to address political party concerns, these concerns must be equally weighted with no bias. Rules must be clearly understood and acceptable to all major political parties and participants.
- iv. *Transparency*: The process must be as transparent as possible. Methodology and guidelines should be clearly established and publicised in advance. Incorporating public hearings into the process, to allow stakeholders to input for further consideration by the relevant authority, is important.
- v. *Non-discrimination*: Boundaries must not result in discrimination against any

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<sup>12</sup> Available at

<[http://ifes.org/sites/default/files/4\\_ifes\\_challenging\\_election\\_norms\\_and\\_standards\\_wp\\_bndel.pdf](http://ifes.org/sites/default/files/4_ifes_challenging_election_norms_and_standards_wp_bndel.pdf)>

<sup>13</sup> UN Committee on Human Rights, General Comment 25, “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service”)

particular minority group. However, this must also not allow for active discrimination against a majority group.

#### **4. Analysis of legal framework on delimitation of election boundaries**

The current framework for determining and reviewing electoral boundaries is provided in a number of laws that include the Constitution of Zimbabwe Amendment No. 20 (the Constitution) as read together with provisions of the Electoral Act [Chapter], and the Census and Statistics Act [Chapter 10:29]. There have been recent amendments to the Electoral Act that have been passed by parliament as provided in the Electoral Amendment Bills of 2014 as well as the General Laws Amendment Act. The Constitution came into effect on 22 May 2013. It is the highest law of the country, and all other laws must comply it. In the event that other legislative provisions are inconsistent with the Constitution, they are invalid to the extent of the inconsistency.

##### **4.1 The Constitution of Zimbabwe**

The Constitution addresses issues relating to the institution with the mandate of delimiting boundaries, the frequency of the delimitation process, and timelines for producing the delimitation report. It also sets out a number of factors that must be taken into account that influence the determination of boundaries.

###### *4.1.1 Mandate to delimit electoral boundaries*

ZEC now has the sole mandate of delimiting electoral boundaries,<sup>14</sup> unlike the position a decade ago. In order for ZEC to discharge its delimitation function effectively, it is a pre-requisite that other provisions on the independence of ZEC and the principles of electoral system are respected, observed and protected by the three arms of government, as provided in section 155(1-2) of the Constitution. The 2013 Constitution establishes ZEC as an independent commission in Chapter 12 that is not subject to the direction or control of anyone.<sup>15</sup> ZEC is supposed to act without fear or

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<sup>14</sup> Section 161 of the Constitution

<sup>15</sup> Section 135(1) (a) of the Constitution.

favour.<sup>16</sup> Overall, it is trite that as an institution ZEC must not only be independent but also impartial in all its operations. In the past, concerns over ZEC's independence have however repeatedly been raised by a number of stakeholders. There have been allegations of militarisation of ZEC officials,<sup>17</sup> partiality of some key ZEC officials, and executive interference in its operations.<sup>18</sup>

#### 4.1.2 *Frequency and other timelines for the process*

ZEC must determine electoral boundaries every ten years, so as to fall as soon as possible after a census has occurred.<sup>19</sup> The delimitation of boundaries must be completed at least six months before elections for the new boundaries to apply.<sup>20</sup> Once ZEC has completed the delimitation of wards or constituencies, a preliminary report must be submitted to the President.<sup>21</sup> The Constitution does not provide a timeline within which ZEC must produce a preliminary report. Information to be provided in the delimitation report includes the list, names of wards and constituencies, description of boundaries, map or maps showing delimited zones and any further information of particulars considered necessary.<sup>22</sup> This gives ZEC the discretion of determining information that will be included in this report, and gives it some measure of independence in terms of what it chooses to disclose to the executive given that the report goes to the President. Unfortunately this does not eliminate the advantage that has historically been given to the political party from which the President hails, of obtaining information ahead of others. When seized with the preliminary delimitation report, the President must cause the report to be laid before Parliament within seven days.<sup>23</sup> Within a further fourteen days, the President may refer the report back to ZEC for further consideration of any matter or issue, or either House may resolve that the President refer the report back to Parliament, and

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<sup>16</sup> Section 135(1) (c) of the Constitution.

<sup>17</sup> See J Makumbe Zimbabwe's highjacked elections 13 Journal for democracy Volume 4 (2002) p 97; Zimbabwe Lawyers for Human Rights *Zimbabwe geared for another election? Then and now: 2008 elections in retrospect* (2010) p 48.

<sup>18</sup> As above.

<sup>19</sup> Section 161(1) of the Constitution.

<sup>20</sup> Section 161(2) of the Constitution.

<sup>21</sup> Section 161(7) of the Constitution.

<sup>22</sup> Section 161(7)(c) of the Constitution.

<sup>23</sup> Section 161(7) of the Constitution.

this has to be done.<sup>24</sup> Then ZEC may give further consideration to the matter or issue but ZEC makes the final decision on the report.<sup>25</sup> The report must then be sent back to the President as soon as possible who is obliged to publish a proclamation in the Gazette within fourteen days of receiving the report declaring the names of relevant wards and constituencies, and their boundaries.<sup>26</sup>

Other than the timeframe for feedback by the President and parliament, there are no timelines for ZEC to complete the preliminary report. The absence of timelines is not peculiar to the Zimbabwean legal framework, but common in other countries.

It would appear that the involvement of the executive and legislature in the formulation of the delimitation report is of no consequence as ZEC still has the final say. In fact the requirement that the report is presented, or laid before, these two arms of government just further lengthens the timeframe within which the report can be finalized, given that ZEC is not obliged to take into consideration their views or concerns. While this conforms to the principle of independence of ZEC, it creates unnecessary bureaucratic procedures.

#### 4.1.3 *Factors to be considered during delimitation process*

The Constitution further provides that the number of voters must be equal in every constituency as far as this is possible.<sup>27</sup> However, while ZEC may depart from this requirement to a reasonable extent, no ward or constituency may have more or less registered voters than the 20 percent margin.<sup>28</sup>

Section 161(6) of the Constitution further provides guidance on factors that ZEC must take into consideration when conducting the delimitation process that include;

- physical features
- means of communication
- geographical distribution of voters

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<sup>24</sup> Section 161(8) of the Constitution.

<sup>25</sup> Section 161(8) of the Constitution.

<sup>26</sup> Section 161(11) of the Constitution.

<sup>27</sup> Section 161(3) of the Constitution

<sup>28</sup> Section 161(6)(f) of the Constitution.

- community interest between registered voters
- existing boundaries, in case of first delimitation
- population

#### *4.1.3 Production and finalisation of delimitation report*

The current legal framework has extended the interval between delimitation processes from five to ten years. Voting areas may need to be redrawn periodically because of population changes or changes to administrative or electoral boundaries. For example, it may be necessary to redraw a voting area if the area's population has grown too large for a single polling site or, alternatively, if the voting area has lost population and it is no longer cost effective to keep the polling site operational. Many countries redraw voting areas on a regular basis while some countries redraw voting areas on an *ad hoc* basis, whenever the voting areas become too large or too small.

Ten years may be a very long time for the redrawing of boundaries in Zimbabwe given the push and pull factors that cause regular voluntary or involuntary movement of people within and outside the country. Over the years, there has been population migration from rural to urban areas and vice versa due to a number of factors. This has been caused by political and economic factors as people seek greener pastures or flee political violence. Be that as it may, delimitation has not taken place within the set timeframe in the past. There is a need for ZEC to ensure that delimitation is carried out at the set intervals to avoid the development of population inequities<sup>29</sup> in the different wards and constituencies.

The Constitution does not make it a requirement for ZEC to take into consideration other features such as availability of transport given that some constituencies in Zimbabwe do not have good road networks or availability of a suitable venue for a voting station. Further, other factors such as race, ethnic and tribal background are not a factor. Nevertheless, the Constitution does acknowledge community interest as a factor, which may ensure that the representativeness principle is achieved.

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<sup>29</sup> Ace p 10

Generally, based on experiences from other countries, information that is needed when delimiting is ‘*Population data*’ and *maps*. *Population data* can be from a census or voter registration exercise, and is required to ensure that the constituencies created have equal numbers of people. This must relate to specific geographic areas, and be as accurate and up-to-date as possible. Maps are needed to ensure that only contiguous geographic population units are assigned to districts. Political data - being election results tabulations of votes for candidates and ballot measures from previous elections by voting area – also allows line drawers to produce a political profile of proposed districts and to predict, to some degree and reflect on the partisan implications of a redistricting plan.

The Constitution considers population data in the form of a census to be critical in determining electoral boundaries. Once a census has been conducted, delimitation must be done as soon as possible thereafter. The last delimitation was done in 2008, while a census was conducted in 2012 before the Constitution was adopted. This data can easily change depending on the growth rate within a certain place and quickly become obsolete, due to the push and pull factors within the constituencies and the rural urban divide.

Other factors requiring close attention provided in section 161 of the Constitution, relate to the geographical distribution of voters and community of interest between registered voters. At the moment, the state of the voters’ roll is unknown, and it very likely that there have not been any significant improvement to its shambolic state as admitted by the ZEC Chairperson before the 2013 elections. It has been very heavily contested with its accuracy being challenged by various stakeholders within civil society and opposition political parties. It has also not been accessible for meticulous auditing. Provisions of the Electoral Act on voter registration have also not been fully aligned to the Constitution.

#### **4.2 Electoral Act provisions on delimitation of boundaries**

The Electoral Act elaborates on the mandate of ZEC to conduct delimitation and is also supposed to provide for voter registration processes and other related election issues. Since the coming into force of the Constitution, the Electoral Act has been amended two times. According to section 37A of the Electoral Act, the delimitation of

constituencies and electoral divisions has to be conducted openly and with consultation. ZEC must also gazette a notice of its intention to review or fix electoral boundaries, in a manner that ZEC deems appropriate.<sup>30</sup> As far as possible ZEC must entertain representations from voters, political parties and other interested persons and bodies likely to be affected by decisions made by the Commission.<sup>31</sup> The provisions facilitating consultation are in line with the principle of transparency, however the fact that ZEC is not obliged to take into consideration such representations defeats the purpose of these provisions.

The Electoral Act still provides that the President has to notify ZEC of the date on which they must commence the determination of limits of wards and constituencies.<sup>32</sup> In terms of section 37B of the Act, the President must also consult ZEC and fix dates in such a way that there is adequate time to prepare a final report *in terms of section 100J of the [old] Constitution*. This exercise enables ZEC to fix the election centres. These provisions were drafted in terms of the old Constitution, but now violate provisions of the current Constitution on the independence and impartiality of ZEC. The current Constitution also no longer requires the President to give dates of when ZEC is to determine electoral boundaries. Section 37B, applying section 100J of the old Constitution, was introduced by the Electoral Amendment Bill of 2011, and is clearly now outdated and *ultra vires* the Constitution. The legal framework does not address the issue of non-discrimination of minority groups in the delimitation of constituencies. The Constitution has general non-discrimination clauses in the bill of rights that apply to everyone.

Although the Electoral Act elaborates on the nitty-gritties of mapping, constituencies and wards for elections, the provisions have not yet been fully aligned with the Constitution. While these two documents contain provisions that seek to advance the five principles highlighted in section 3, there is still an opportunity to enhance these provisions to enable the delimitation process to be transparent, efficient, effective and independent.

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<sup>30</sup> Section 37A(1) of Electoral Act.

<sup>31</sup> Section 37A(2) of Electoral Act.

<sup>32</sup> Section 37B of Electoral Act.

### **4.3 Administrative issues relating to delimitation**

The Constitution gives ZEC the discretion of determining the techniques it can use when delimiting boundaries. In practice this can be manual or computerised - with geographic information systems (GIS) software being used. When delimitation is computer based, the process is more accurate and efficient. In countries where digital technology is used, it has been hailed as assisting in fast map production through a simple process of a single computer command and this allows for consideration of a wider range of district plan options. It also permits interested parties, both inside and outside of the process, to evaluate the redistricting plans more easily and more thoroughly. Zimbabwe has some of its maps digitized, as can be found on Google maps. Computer-assisted delimitation can be worth investing in as this will instill confidence of stakeholders in the process.

ZEC also decides on the voting areas within the delimited boundaries. These must ordinarily enable voters to travel as conveniently and safely as possible to a polling site to cast their ballots. There is a need for this to be taken into account during the next delimitation exercise.

### **5. Political context impacting on delimitation**

Since the 2000 elections, political developments have influenced a number of factors that impact on delimitation of constituencies and influence adherence to the five universal principles on boundary review and design. Due to problems of bad governance, there has been continued economic decline that has led to rural and urban migration. It is also highly likely that the 2015 Supreme Court decision that upheld the right of employers to terminate employment on three months' notice led to unprecedented levels of urban to rural migration as thousands of employees were dismissed on three months' notice. An estimated 15 000 people were affected by this decision. Economic migration has been very common since 2000. Political violence erupting after elections has also led to migration of communities from rural to urban areas. These internal displacements have also at times been spearheaded by state actors, as was the case with Operation Murambatsvina, which to some was targeted at perceived MDC supporters who had voted in their members of parliament in urban areas.

This trend has continued after the 2013 elections, with forced demolitions and evictions occurring in Harare high-density areas as well as a number of former farm workers being displaced from their home. Some of the former farm workers have also been prosecuted for violating the Consequential Provisions (Gazetted Lands Act).<sup>33</sup> As a result, forced internal displacements have been either through forced demolitions, or prosecution. This tactic, which has been used by ZANU PF, has remained largely in the control of the Ministries on Local Government, with most of the new farmers benefitting from the allocation of farms also being affiliated to ZANU PF.

The political party that is in control of land can easily manipulate its distribution in its favour to win support even through housing cooperatives. One recurring promise in ZANU PF electoral campaigns since 1990, 1996, 2000, 2004, 2008<sup>34</sup> and even 2013 elections has been the promise of land and access to housing. Even though MDC has made inroads by winning most of the local council seats in major cities such as Harare, it has never really controlled the distribution of land. ZANU PF has largely remained in control of key ministries such as the Ministry of Local Government, Public Works and National Housing.<sup>35</sup> Land has been distributed just before elections as a way to garner support by the government and this has mainly been done through housing cooperatives, resulting in their politicisation.<sup>36</sup> This has inevitably influenced data required for determination of election boundaries as names on the voters' roll have been used to decide on the boundaries of constituencies. However, in some instances, after elections, there have been exercises to regularise the housing cooperative settlements, further distorting the population density in certain wards, and constituencies. Since November 2014, the ZANU PF government's position on housing cooperatives has been shifting. Poor financial management, and involvement of land barons who have allocated undesignated land, or have failed to develop the

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<sup>33</sup> Zimbabwe Human Rights Lawyers, *Protection of Human Rights Defenders Monthly Reports (2012, 2013, 2014, 2015)* unpublished.

<sup>34</sup> Boone C Zimbabwe in comparative perspective *Property and political order: land rights and the structure of politics in Africa* (2013) p 382.

<sup>35</sup> Chirisa I et al Distributive politics at play in Harare, Zimbabwe: case for housing cooperatives *Bandug Journal of Global South* (2015) 2:15 p 2.

<sup>36</sup> As above p 1-2; see also See The Herald *2600 housing cooperatives registered (12 March 2014)* highlighting how housing cooperatives is a priority in the ZANU PF winning election manifesto. available on <http://www.herald.co.zw/2-600-housing-co-operatives-registered/>

land in a timely manner, have been cited as some of the reasons for abandoning housing cooperatives.

As a result the executive has largely remained influential to population growth and migration. Information about growth patterns and migrations is vital to political parties' campaign strategies, hence such information should always be accessible to all electoral contestants.

## **6. Timing of the next delimitation exercise**

Although the 2018 elections are fast approaching, at the moment, there is no clarity on timing of the next delimitation processes. The Constitution only states that delimitation must be carried out once every ten years. There appears to be no obligation for ZEC to take into consideration the last delimitation exercise in computing the ten-year period. The transitional provisions in the Constitution do not address the issues of delimitation for the purpose of the first elections. In the event that the last delimitation exercise is taken into consideration, then this process must be conducted in 2018. It is highly unlikely that the delimitation process will be completed in time for the report and maps to be adopted for use in the 2018 elections, as the delimitation process must be completed six months before any election. Another challenge will be availability of the new maps and boundaries to all stakeholders including civil society organisations in time for adequate voter education.

Another problem presented by timing the next delimitation exercise based on the last exercise in 2008, is that the population information that will be used will be from the 2012 Census, which will be very outdated. It is good practice to rely on statistics from a recent census for the delimitation process to produce accurate allocation of voters to certain voting areas. The next census is only due in 2022 according to the Census and Statistics Act.<sup>37</sup> Any delimitation exercise that is carried out before the next census will lead to all other processes relying on census reports that will be more than four years old unless the census and delimitation timelines are harmonised. This can only

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<sup>37</sup> [Chapter 10:29] Section 12(1) provides that census is only conducted every ten years.

be achieved through harmonisation of the Census and Statistic Act to the Constitution, or through a Constitutional Amendment, possibly reducing the timeline for delimitation from 10 to 5 years to synchronise delimitation and with future census exercises. There is likely to be resistance to amending the Census and Statics Act since a census is not just conducted for the purpose of delimiting boundaries.

An early delimitation process presents additional challenges as this process also relies on information provided in the voters roll, more particularly the registered number of voters. At the moment, ZEC has indicated that they are going to update the voters roll to become a biometric voters' roll. No timelines have been confirmed for this exercise. Any delimitation process that is done before this exercise is complete will rely on the old voters roll that has been criticised as being inaccurate and highly unreliable.

## **7. Challenges and recommendations relating to the Delimitation Process**

### **7.1 Independence of ZEC and fulfilment of delimitation mandate**

The Constitution still creates room for the involvement of interested parties in delimitation, being the executive and legislature. This affects the independence of ZEC. ZEC does not necessarily have to disclose its budget for delimitation in terms of the laws.

- Ideally, the Constitution must bestow the sole responsibility of delimiting constituency boundaries to ZEC and exclude candidates such as the President and even members of parliament.
- ZEC must set its delimitation budget in consultation with relevant stakeholders and all its operations during the delimitation process must be as transparent as possible.

### **7.2 Timing**

In the past, demarcation of boundaries has failed to be done within the set timeframes as provided by the law. Although Zimbabwe is said to be experiencing a slow population growth rate, social, economic and political factors continue to cause significant changes in rural to urban migration and vice versa. While the Constitution

does not address the computation of the ten-year period, and in particular is silent on whether the ten-year period starts counting from the last delimitation exercise, the presumption is that the ten-year period starts running from the date the Constitution came into force. Conducting a delimitation period before 2023 means that the population data to be used will be outdated for all subsequent processes. Timing will also depend on when the process of upgrading voter registration to biometric is completed.

- Delimitation must be carried out at set intervals of ten years as provided in the Constitution to reflect the changes in population to electoral boundaries.
- The next delimitation must be carried out in 2023 soon after the 2022 Census and in accordance with the updated voters roll that will be used in 2018 elections, which must be regularly updated thereafter.

### **7.3 Delimitation process**

The delimitation process relies on information of registered voters. The accuracy of the voters' roll has remained a challenge. While the Constitution makes ZEC responsible for maintaining and keeping the voters' roll, the laws are yet to be fully aligned with the Constitution to operationalise this. ZEC has informed the public that it is in the process of revamping voter registration to become biometric. The law does not provide for provisional delimitation maps to be advertised widely to ensure their accuracy, so that those interested can properly scrutinise the maps. When allocating voting areas, there is no obligation for ZEC to ensure accessibility to people living with disability and that safety and security of voters is considered. There is no timeframe for ZEC to produce a preliminary report of the delimitation exercise.

- The biometric voter registration model must be operationalised first, and the voters roll updated for accurate information to be available for delimitation.
- The Electoral Act must provide guidance of a reasonable time within which ZEC must produce a delimitation report.
- The delimited maps must be made available to the public at ward level and at constituency level and the public must have access.

- 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.
- Additional factors to be considered when delimiting boundaries must include; consideration of accessibility of proposed boundaries and the facilities for those with disabilities, and issues of safety and security must also be considered to curb incidents of politically motivated violence.
- Redistricting must be computer-assisted to instil the confidence of stakeholders in the process, as it is efficient and is likely to produce more accurate results.

#### **7.4 Transparency of the delimitation process**

The Constitution is silent on the involvement of other stakeholders in the delimitation exercise. It only provide for the roles of the executive and legislature. The Electoral Act provides for involvement of other stakeholders. The provisions of the Electoral Act must be maintained but need to be further enhanced to facilitate adequate participation by all who have an interest in the delimitation process other than executive and legislature. There is no provision allowing civil society organisations or other stakeholders to observe the delimitation process.

- ZEC is encouraged to formulate delimitation procedures that facilitate the involvement of other critical stakeholders such as civil society organisations and even the electorate as they have a substantial interest in the delimitation of boundaries.
- Accreditation must be extended to cover other electoral processes, such as registration of voters, or the delimitation of constituency boundaries.

## **7.5 Conclusion**

Although the maps available delimiting electoral boundaries in Zimbabwe are presently outdated, it will not be possible for ZEC to conduct a delimitation exercise that will produce accurate maps with voting boundaries that will be accurate and acceptable to all stakeholders prior to the next elections. ZEC still has to reform and update voter registration processes for an accurate voters roll to be produced. Delimiting boundaries also relies on population data which is produced by the Census and Statistics department. Unless there is a reform to the Census and Statistics Act, the next census will only be conducted in 2022. Any delimitation conducted before then will therefore rely on statistics that are outdated. It will not be feasible to carry out a delimitation exercise in time for the information to be used during the 2018 election, given the challenges relating to the availability of accurate information on registered voters as well as population data. There is also need for all provisions of electoral laws that have a direct and indirect bearing on the delimitation process to be aligned with the new Constitution and this process is progressing at a very slow pace.