

# UNIVERSITY OF ZIMBABWE



## FACULTY OF LAW

**Census and Delimitation of Constituencies; a condition precedent to democratic process.**

**By**

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## DEDICATIONS

“For thy beginning was small but your end shall be great.” *Konke kuyenzeka kokholwayo*. I thank my Heavenly Father for being with me this entire journey through. It was not easy but the Lord made it to fruition.

To my wife, **Rose**, thank you for the support. I present this dissertation as a token of appreciation for your tireless efforts in supporting and encouraging me. To my daughters, **Samukeliso, Sandile** and son, **Tinenyasha Mduduzi**, you are my world.

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# **Chapter One (1)**

## **Introduction**

### **Introduction**

The feasibility of a countries' legal framework governing elections which ultimately gives indicators on a society's democratic strength emanates in the effectiveness of management of the electoral system. It is through elections that the electorate's voice may be heard and political power maintained or pursued through the electoral processes. Resultantly, if not appropriately administered, elections may be a source of conflict and violence. In addition, elections are the part of society that mostly reflect its democratic sphere in bringing about sovereignty of the people. However, this in itself is not a guarantee for democracy. This study bridges this knowledge gap, looking at how delimitation of electoral boundaries can be a cause of violating the democratic space. The contents of this chapter include the research background, statement of the problem, research objectives and questions as well as limitations and delimitations of the study.

### **1.1 Background of the study**

Boundary delimitation as described by Chimhini (2010) refers to the process of depiction electoral constituencies. It can also be described as the process of determining boundaries where elections are likely to be held for examples, wards, polling stations and districts. In other words, delimitation can be described as a scenario whereby the country is divided into some reasonable parts for the purpose of elections, and thus done in terms of statistics produced from Census.

Before Zimbabwe attained its independence in 1980, the indigenous Zimbabweans were denied their right to elect their leader of their choice, and this among other reasons propelled the indigenous people to declare war against the colonisers. When it comes to the formation of political parties, the local people were banned, worse still from joining any political party of their choices. However, as a result of the war, the Zimbabwean managed to recover their country from the hands of the colonisers, and to prove their allegiance and sovereignty, the held their first democratic elections in the year 1980. On those elections, Robert Mugabe was elected into power as the first Prime Minister of the Republic of Zimbabwe. In those elections,

the system which was used was the Proportional Representation System (PRS) (Sachikonye, 2003)<sup>1</sup>. Three political parties grabbed seats in the National Assembly and these were ZANU PF, PF ZAPU as well as the United African National Congress. Of interest the electoral system used in 1980 was such discriminatory to such an extent that the Lancaster House Constitution had made provision for two separate rolls. There was only roll called the Common Constituency roll for the blacks and the white Roll reserves for the white minority. The Common Roll had eighty Constituencies while the White roll had twenty seats.

The newly elected government under the new administration of Zimbabwe, introduced seemingly new electoral framework, which was balanced in its operations. According to Musanhu (2005)<sup>2</sup>, this structure was made up of the Electoral Supervisory Commission, the Registrar-General of Elections, the Delimitation Commission, and the Election Directorate. The Lancaster House constitution which has reigned the country since the colonial powers, had been amended in the year 1987, when the executive president was elected. The previous electoral system was abrogated and new system introduced. The First-Past-The-Post System was introduced as asserted by Sachikonye (2001)<sup>3</sup>, however, the advent of this system seems favourable to the ruling party.

### **First - Past-the- Post System**

The First-Past-The-post electoral system (FPTP or FPP) which used to be referred to as the Single-Member Plurality voting (SMP). This type of electoral system was more concerned about whenever there are candidates in an election, one who has grabbed more votes than all other, will be declared a winner. It has nothing to do with whether, the winning candidate has gunned more than 50 % as illustrated by the The-First-Past-The- Post system. FPTP is a plurality voting method, and is primarily used in systems that use single-member electoral divisions (Sachikonye, 2001). FPTP is used as the primary form of allocating seats for legislative elections in about a third of the world's countries, mostly in the English-speaking world.

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<sup>1</sup> Sachikonye L. Zimbabwe. Constitutionalism, the electoral system and challenges for governance and stability (2004)

<sup>2</sup> Belinda Musanhu, Examples of internal elections in emerging Democracies (2012)

<sup>3</sup> *ibid*

However, supporters of the FPTP system argued that the system is easy to understand. On the other hand, it allows the management to collate the election results at the polling station where the elections have been conducted. They also argue that it shows the majority of people electing their leader as compared to the predecessor which tend to have minority leaders maneuvering into leadership. As a result of majority votes, voted leaders would have the ability to lead the country or their constituencies.

However, there are some who argue against the First-Past- The-Post system that it tend to be discriminatory to the small political parties, and also that the aspect of 50% threshold is a matter of policy which has nothing to do with the reality on the ground (Sachikonye, 2010). On the other hand, the critiques argue that FTFP system had failed in the aspect of representing the majority of the voters. The results thereof were regarded as false majorities thereby manipulating the election process, thereby over- representing seats to any political party and on the other side under representing the little political parties.

Supporters of FPTP went on to critique that the Proportional Representation (PR) was made to propel the small parties into enjoying the benefits of leading the countries using statistics of just small size or population, thereby leading to introducing leaders who can be corrupt and incompetent in the leadership styles. They argue that FPTP generally reduces this possibility, except where parties have a strong regional basis. Ndoro (2010) argues that it affords much power to small political parties and thus creating political blackmail.

Allowing people into parliament who did not finish first in their district was described by Musanhu (2005) as creating a Parliament full of second-choices who no one really wanted but did not really object to either. Churchill (1998) criticized the alternative vote system as determined by the most worthless votes given for the most worthless candidates.

The Proportional Representation system was later abandoned and the country adopted First-Past-the-Post system which tend to favour the ruling party. The Government of Zimbabwe also adopted the SADC Guidelines and Principles Governing Democratic Elections<sup>4</sup> in the year 2004 (Musanhu, 2005)<sup>i</sup>. Some of changes introduced by the new electoral system were the

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<sup>4</sup> SADC Guidelines and principles governing democratic elections. Article 4 of the treaty of the SADC of 1992 stipulates that human rights, democracy and rule of law' are the principles guiding the acts of its members. Article 5 commits states to promote common political values, systems and other shared values.



issues of conducting elections in a single day as well as the counting process done at the places where the elections had been conducted. The country also introduced new Commission to handle issues of elections that is Election Court, Electoral Commission (Zimbabwe Electoral Commission). The new system under the new Commission first worked in 2005 for Parliamentary elections.

The constituency based voting system necessitated a delimitation process. Delimitation can be described as an important system, which had been adopted by so many countries in mapping out their electoral boundaries. The FTFP system is most workable in situations where elections are conducted in wards and constituencies. However, these demarcations has to be accurate and not discriminatory. Those voting zones and areas should be in equal representing and in a transparent manner. However, critiques have already argued that, delimitation process has been manipulated by those in power in ensuring that those aliened to the opposition are subsequently left out. The fundamental principle in the delimitation process adduce that the boundaries should equally representative to all citizens and should serve the interest of the community, for example, the distance from the polling stations, transport system among other factors.

However, other scholars criticised that if constituencies with fewer citizens are allowed to compete with those with the majority, the principle of one- person –one-vote would be undermined as it would give an impression that other votes carry more weight than the other. But the system has been subject to manipulation by those in leading position due to lack of specificity in the Constitution of Zimbabwe as to which data must be used to delimitate the electoral boundaries.

Comparing the new electoral system introduced by Zimbabwe with the International election practices, wherever, the issues of delimitation system is carried out, it was supposed to be done independently, should not be done according to the interest of any political party, as well as being carried out by an independent entity. Independent stakeholders are supposed to have access to the delimitation system process and outcomes should be made public to any interested parties. This process should not have approval of ether the President or parliament, for the majority in the Parliament is made up of a certain political party, hence, can be subject to manipulation.

The principle of separation of powers which illustrate that the arms of the government should be independent from each other (Lisa, 2007). In respect of elections, those involved in handling elections disputes should be independent courts. In Zimbabwe, the 2013 Constitution had given powers of handling elections and delimitation process to Zimbabwe Electoral Commission commonly known as ZEC. The President of the Republic of Zimbabwe has been given powers to appoint the eight commissioners as well the Chairperson of the electoral Commission in consultation with Parliament. However, this has been criticised by the Scholars as the breach of the principle of separation of powers (Lisa, *ibid*). it has also been noted that, the system has never allowed International Observers to monitor the voting process, hence had been termed abusive and corrupted system.

The constituency based voting system necessitated a delimitation process. 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. Poorly drawn electoral boundaries can lead to under-representation of 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.

Problems identified with previous delimitation process have included; lack of transparency, absence of involvement of interested stakeholder; lack of public participation; inadequate publicity; independence of the previous delimitation Commission and inadequate time for the delimitation process (Sachikonye, *ibid*.) In 2000, delimitation was conducted well after the five-year interval set in terms of section 59(4) of the Old Constitution. The Delimitation Commission divided the country into 120 constituencies.

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 due to lack of specificity in the Constitution of Zimbabwe as to which data must be used to delimitate the electoral boundaries. Other shortcomings included late appointment of the commission; the voters roll was not provided on time; late submission of the report and lack of public participation (Sachikonye, 2003).

Setting election boundaries is very crucial 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 voters. In 2005 delimitation process was condemned for manipulating electoral boundaries (Crisis Coalition, 2005). Ndoro (2005) further points out that allegations of gerrymandering of election boundaries were made and areas that lost constituencies were strongholds of the opposition, while the ruling party strongholds gained seats, contrary to census statistics and the theories of rural to urban migration. 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. That is why the process of delimitation must be watched carefully and done by professional and independent commission.

The legislative framework for conduct and managements of elections should seek to guarantee that electoral units are demarcated in a way as to ensure that the primary objective of according equivalent weight to the greatest degree possible to ensure effective representation is met. At a glance of the current Zimbabwean scenario, it will be found that Zimbabwe has a complex body of law which goes ahead to describe the electoral process as complex and befuddling.

The current legal framework for the delimitation process is governed mainly by the Constitution of Zimbabwe (Amendment No. 20) Act of 2013 and the Electoral Law. There is also other legislation such as the Census and Statistics Act,<sup>5</sup> which helps in the process of

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<sup>5</sup> Census and Statistics Act, [Chapter 10:29

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<sup>6</sup> 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 it is 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.

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 constituencies. The late provision of the 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 channels.

Constitutional Amendment Act No. 18 of September 2017, among other issues increased the number of constituencies in the country from 120 to 210, and empowered the Zimbabwe Electoral Commission (ZEC) to delimit constituents and wards. ZEC's way of conducting

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<sup>6</sup> Constitution of Zimbabwe (Amendment No. 20) Act, 2013

delimitation process was marred with inconsistencies and lacked transparency and tends to be pro- ruling party. ZEC produced the report so late, leaving no time for debate in Parliament, opening the ZEC to accusations of favouring the ruling party (Human Rights Watch, 2008).

Knowledge of the new constituencies and wards was not made public and widespread prior Election Day. Allocation of polling stations was done too late, in contravention of the Electoral Act calling for information about polling stations to be provided at least 21 days prior to the polling date (Sachikonye, 2003). This led the voters to face difficulties in locating their wards and constituencies boundaries and subsequently inspect the voters roll.

Lack of transparency and secrecy in the delimitation exercise. There has never been transparency in how delimitation is carried out. Some of the provisions of the Electoral Act<sup>7</sup> are still outdated in light of the new Constitution. The delimitation process should be as transparent and accessible to the public as possible. Stakeholders are more likely to accept the outcome of the process—and the subsequent election results if they are aware of and can scrutinize the delimitation exercise at various stages during the process.

Section 160 and 161<sup>8</sup> are the supreme clauses on delimitation. The two provisions are couched provides as follows;

#### *‘DELIMITATION OF ELECTORAL BOUNDARIES*

##### ***160 Number of constituencies and wards***

*(1) For the purpose of electing Members of Parliament, the Zimbabwe Electoral Commission must divide Zimbabwe into two hundred and ten constituencies.*

*(2) For the purpose of elections to local authorities, the Zimbabwe Electoral Commission must divide local authority areas into wards according to the number of members to be elected to the local authorities concerned.*

##### ***161 Delimitation of electoral boundaries***

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<sup>7</sup> Electoral Act, [Chapter 2;13]

<sup>8</sup> n 7, section 161 and 162

(1) *Once every ten years, on a date or within a period fixed by the Commission so as to fall as soon as possible after a population census, the Zimbabwe Electoral Commission must conduct a delimitation of the electoral boundaries into which Zimbabwe is to be divided.*

(2) *If a delimitation of electoral boundaries is completed less than six months before polling day in a general election, the boundaries so delimited do not apply to that election, and instead the boundaries that existed immediately before the delimitation are applicable.*

(3) *The boundaries of constituencies must be such that, so far as possible, at the time of delimitation equal numbers of voters are registered in each constituency within Zimbabwe.*

(4) *The boundaries of wards must be such that, so far as possible, at the time of delimitation equal numbers of voters are registered in each ward of the local authority concerned.*

(5) *In delimiting* □

(a) *The boundaries of wards, the Zimbabwe Electoral Commission must ensure that no ward is divided between two or more local authority areas;*

(b) *The boundaries of constituencies, the Zimbabwe Electoral Commission must ensure that no ward is divided between two or more constituencies.*

(6) *In dividing Zimbabwe into wards and constituencies, the Zimbabwe Electoral Commission must, in respect of any area, give due consideration to* □

(a) *Its physical features;*

(b) *The means of communication within the area;*

(c) *The geographical distribution of registered voters;*

(d) *Any community of interest as between registered voters;*

(e) *In the case of any delimitation after the first delimitation, existing electoral boundaries; and*

(f) *Its population; and to give effect to these considerations, the Commission may depart from the requirement that constituencies and wards must have equal numbers of voters, but no constituency or ward of the local authority concerned may have more than twenty per cent more or fewer registered voters than the other such constituencies or wards.*

(7) *After delimiting wards and constituencies, the Zimbabwe Electoral Commission must submit to the President a preliminary report containing—*

*(a) a list of the wards and constituencies, with the names assigned to each and a description of their boundaries;*

*(b) A map or maps showing the wards and constituencies; and*

*(c) Any further information or particulars which the Commission considers necessary;*

*and the President must cause the preliminary delimitation report to be laid before Parliament within seven days.*

*(8) Within fourteen days after a preliminary delimitation report has been laid before Parliament—*

*(a) the President may refer the report back to the Zimbabwe Electoral Commission for further consideration of any matter or issue;*

*(b) either House may resolve that the report should be referred back to the Zimbabwe Electoral Commission for further consideration of any matter or issue, and in that event the President must refer the report back to the Commission for that further consideration.*

*(9) Where a preliminary delimitation report has been referred back to it under subsection (8), the Zimbabwe Electoral Commission must give further consideration to the matter or issue concerned, but the Commission's decision on it is final.*

*(10) As soon as possible after complying with subsections (7) and (9), the Zimbabwe Electoral Commission must submit a final delimitation report to the President.*

*(11) Within fourteen days after receiving the Zimbabwe Electoral Commission's final report, the President must publish a proclamation in the Gazette declaring the names and boundaries of the wards and constituencies as finally determined by the Commission.*

*(12) If there is a discrepancy between the description of the boundaries of any ward or constituency and the map or maps prepared by the Zimbabwe Electoral Commission, the description prevails.'*

The above cited provision clearly mandates Zimbabwe Electoral Commission 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<sup>9</sup>. This ten (10) year interval is an extension of the period as previously delimitation was required every five (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.

Further, the interpretation of the above cited provisions<sup>10</sup> leaves everyone with doubt as to which data exactly must ZEC use to delimitate the electoral boundaries. The Constitution creates latitude for ZEC to choose between number of eligible voters and number of registered voters. There is very wide disparity between number of eligible and registered voters. At a glance the number of registered voters in 2013 was five million, eight hundred and seventy-four thousand, one hundred and fifteen <sup>11</sup>(5,874,115) whereas the number of adult population was six million, six hundred and forty-seven thousand and seven hundred and seventy nine (6,647,779)<sup>12</sup>. The variance is indeed a cause of concern and there is need for a well-informed position as to which data the delimitation process must use as a pillar of the electoral process leading to democratic rule. It is undeniable that the proper delimitation of constituencies fundamentally leads to democratic governance and rule of law.

A comparison of the census adult population in 2012 and the voters roll in 2013 as it more appear below shows a substantial disparity between the two figures. This is a clear indication that the two variables cannot be used together or rather cannot be substituted with another without a thorough research as to the integrity of each.

Table 1

<b>Age bands</b>	<b>Adult population</b>	<b>Registered Voters</b>	<b>Numerical Difference</b>	<b>% Registered</b>
18-19 years	524,142	46,506	477,636	8.87%
20-24years	1,154,669	225,787	928,882	19.55%
25-29 years	1,063,852	549,946	513,906	51.69%
30-34 years	830,324	881,149	-50,825	106.12%
35-39 years	674,638	899,362	-224,724	133.31%

<sup>9</sup> ibid

<sup>10</sup> ibid

<sup>11</sup> 2012, Zimbabwe National Statistical Agency Census Preliminary Report. The number of all person who were aged 18 and above correlates to the number of persons who were eligible to vote in 2013.

<sup>12</sup> Zimbabwe Electoral Commission Report accessed on 10.5.2022.



40-44 years	467,057	759,189	-292,132	162.55%
45-49 years	363,267	480,961	-117,694	132.40%
50-54 years	389,214	214 463	-74,364	119.11%
55-59 years	337,319	390,734	-53,415	115.84%
60-64 years	259,476	296,487	-37,011	114.26%
65-69 years	181,633	217,402	-35,769	119.69%
70-74 years	129,738	193,434	-63,696	149.10%
75-79 years	116,764	128,577	-11,813	110.12%
80 + years	155,686	341,003	-185,317	219.03%
<b>Totals</b>	<b>6,647,779</b>	<b>5,874,115</b>	<b>773,664</b>	<b>88.36</b>

Prima facie there is a worrisome variance between person who had attained legal voting age in 2012 and those who were actual registered in 2013 general elections.<sup>13</sup> The key observations is there are more than two million (2, 000, 000) people aged below 30 years who were not registered and conversely the number of registered voters for the aged is more than the legal voting population which is a clear indication that some persons who were in the roll were either deceased or departed. In a nutshell, the data from census and voter registration reflect variance and it is necessary that a thorough research be made to ensure that the law is crafted in a way that delimitation of constituencies is done from the data that gives confidence to the electorate that their will is not altered anyhow.

The importance of proper delimitation in the creation and maintenance of a proper democracy mainly raises from the fact that these boundaries affect the way in which parliament is elected which is responsible for setting out the legislations in the country. While it may be noted that Zimbabwe's delimitation and its determination of disputes arising from delimitation is at its infancy stage, there is need to plan towards the next process of delimitation by enhancing capacity and setting up mechanisms on how to serve Zimbabwean's better. It should be noted that pursuant to section 161 ZEC is mandated to periodically delimit or review the boundaries of constituencies and wards. Old data which does not represent the constituencies current population s has been used in the past hence given the limited time between the census and the elections an efficient method of

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<sup>13</sup> Kubatana Research and Audit Unit, an audit of Zimbabwe's 2013 Voters roll.

delimitation needs to exist which will delimit electoral boundaries accurately and according to the law.

## **1.2 Statement of the problem**

The last delimitation was conducted in terms of the Old Constitution and was based on the voters' roll and made no linkage to the census (Schachter, 2009). For the first election after the new Constitution was promulgated, the new Constitution had a transitional provision that provided for the electoral boundaries to apply as they were for the purposes for the first elections, hence the 2008 delimitation was used for July 2013 elections (Human Rights Report, 2016).

The current provisions of the constitution on delimitation of electoral boundaries create a fertile area and possibility for electoral disputes. The provisions of the constitution are not explicitly as to which data the country must use between census data and number of registered voters. The Constitution is explicitly that the delimitation must be conducted as soon as possible after a population census. However, the same constitution clearly provides that the delimitation of constituencies must be such that, so far as possible, at the time of delimitation, equal number of voters are registered in each constituency in Zimbabwe. Similarly, the boundaries of wards must be such that, so far as possible, at the time of delimitation, equal number of voters are registered in each ward in Zimbabwe.

The wording of the Constitution is problematic in this area and the interpretation given is a cause of concern. While there is a mention of a population census, there is no corresponding provision which regulate that census data must be used to delimitate electoral boundaries. The meaning that has been given suggest that the delimitation must be done as soon as possible after a population census, the data that is used to delimit electoral constituencies is that of registered voters. There is also a need to align the Electoral Act with the provisions of the Constitution or delimitation to address gaps in the legal framework. There are no provisions that enhance participation of stakeholders that is political parties, the public, Civil Society Organisations among others. Yet participation goes a long way in enhancing transparency, confidence, trust and integrity of the process. Provisions on handling boundary disputes or complaints and appeals are missing and need to be legislated to improve procedures for handling disputes.

Section 235 of the Constitution and section 10A of the Electoral Act(Chapter 2:13), provide for the independence of the ZEC. However, the involvement of the Ministry of Justice in the approval of regulations adopted by the Commission undermines its independence to some extent (ZESN, 2019). On the other hand The Urban Council Act and the Rural District Councils Act still contains provisions purporting to allow the President to divide local authority areas into wards and to alter the wards from time to time (Veritas, 2008). This hereby held section 4 of the Urban Councils Act, inconsistent to section 160(2) of the Constitution to the extent that it allows the President to divide a local authority's area into wards. It is therefore of major cause of concern that the with the current provisions create a fertile soil for electoral disputes

### **1.3 Research Questions**

1. What is the legal framework regulating the delimitation process of electoral units in Zimbabwe?
2. Is the institution mandated to delimit electoral boundaries in Zimbabwe appropriate in comparison with other jurisdiction.
3. Which process leads to a democratic outcome in delimitating the electoral boundaries between the uses of population census data and used of number of registered voters?

### **1.4 Objectives of the study**

#### **1.4.1 General Objective**

The general objective of the study is to examine the impact of delimitation of constituencies and recommend the best method of delimitation which result in a democratic conduct of elections.

#### **1.4.2 Specific Objectives**

1. To explore the legal framework on the review of boundaries and how it influences review of Zimbabwe electoral units.
2. To investigate how delimitation affect the democratic process of elections?
3. To establish which process of delimitating electoral boundaries between the uses of population census data and used of number of registered voters' leads to a democratic outcome?

### **1.5 Limitations of the study**

Some information and data that the researcher may want to utilise may not be readily available or may be privileged in terms of security. Inadequate data may be collected due to biasness of the respondents or ignorance. Despite the significance of this research, very few researchers who have carried out similar research. Studies indicated that the academic researcher is often left with little time to compile the study. The researcher had spent a lot of money on transport due to the geographical coverage between home and the case study hence financial resource limitation were a challenge. Also, expenses included seeking assistance of a research assistant, as well as printing and binding the document.

### **1.6 Significance of the study**

The findings of this study may be used to assist the Zimbabwean population to advocate the legislature to make a constitutional amendment on the provisions relating to delimitation process. The study will further assist in academic broadening the curriculum with respect to the elections and the influence of politics as a mechanism for resolving disputes arising from delimitation of electoral boundaries. In this regard the study will generate some new literature in the field of academia.

This study will further enhance the knowledge of the readers and members of the public and will generate critical thinking in regards to the findings of the study, which will give knowledge to the reader about their constitutional rights and how they may or are breached or enforced through the judicial processes of the country.

### **1.7 Gaps in Literature**

In conducting this study it is noted that frequent references are made, in the growing literature on political modernisation and nation building, to the “natural” and “natural” qualities of electoral units and the absence of careful general studies of this subject have been noted.

### **1.8 Assumptions of the study**

The study was based on the assumption that:

- The respondents in the study would provide accurate and reliable data.
- The sample used was adequately representative of the research population.

- The response rate was 100%
- The respondents would give unbiased and truthful information.
- It is also assumed that the researcher herself is also free from bias

## 1.9 Synopsis of Chapters.

### 1.9.1 Chapter one (1)

This chapter gave the preliminary of the whole study that is the general overview of the research, the underlying principles being explored and the object of the research. The statement of the problem which currently affects our delimitation process were explored.

### 1.9.2 Chapter two (2)

In this chapter the researcher looked at the literature that has been contributed so far by others in the area of delimitation as a pre-condition for a democratic process.

### 1.9.3 Chapter three (3)

In this chapter, the researcher explored the legal framework and process of delimitation of electoral boundaries for other jurisdictions which also use the electoral system used in Zimbabwe.

### 1.9.3 Chapter four (4)

This chapter outlined the legal framework and analyse shortfall of the Zimbabwe law on delimitation as it affects total attainment of democracy.

### 1.9.4 Chapter five (5)

This chapter outlined the findings and set out the recommendations which may inform law reform on the delimitation process as a precondition to democratic process.

## **Chapter Two (2)**

### **Literature Review**

#### **2.1 Introduction**

This chapter focused on reviewing literature related to democracy, democratic elections, and census and delimitation process. Literature review refers to text of other scholars who have traversed the same path which include current existing knowledge including substantial findings as well as theoretical and methodological contributions to the subject matter. It is an overview of the previously published scholarly work on a specific topic. Basically, it comprises secondary sources that do not report original work experimental work.

#### **2.2 Theoretical framework**

Robson, (2002) accessed that, in order to understanding the reasons why crimes of property are in the increase in households, it was important to define and discuss the different theories and perspectives. Theories of causation aid the understanding of prevention, prediction and treatment of crimes of property. Theories that provide information on crimes of property will provide a framework for understanding and responding to the problem and identification of risk factors. The purpose of this section was to elucidate the key literature that offers information, insight and understanding into the issue on increase of crimes property.

### 2.2.1 The concept of democracy

Various scholars have attempted to define what exactly democracy entails. According to Longley<sup>14</sup> democracy refers to that form of government that empowers its citizen to exercise political power and limits the powers of the president. The scholar further asserts that democracy means the ‘rule by people’. However, the oxford English dictionary<sup>15</sup> defines democracy as a typical system of government by the whole population or rather all the eligible members of the country or state through elected representatives. It is a distinct form of governance contrasted with autocracy which is system whereby governmental power is concentrated in the hands of one person. Therefore, it appears more clearly that the concept of democracy entails that every person in the state exercises the governmental function although not directly by themselves but through others who they would have elected. Fundamentally, democracy entails the notion that every citizen has a right to make a decision either by himself or through someone they would have elected.

Democracy has however not remained fixed; it has since evolved with time from the early days to the present moment. According to Adranik<sup>16</sup> the early form of democracy was the direct representation. It entailed the individual making their own choices on every aspect of life. It was not realistic form of democracy. Currently, the most accepted form of democracy is the representative democracy where by individuals elect others to represent their affairs like the election of councillors, parliamentarians and president. In a democratic state, the democratic ways are obtained through majority decision.

According to John Lockie<sup>17</sup>, there is no practical means or alternative process to majority rule which entails accepting the consent of the majority as the will or act of the whole and having a binding effect to every individual. It is conceived that rationality desires that majority must constitute and make decision for the good of the country that society make not make as one. In essence, representative democracy involves the people electing government officials.

The election of government officials may be done by a number of mechanisms. The widely used mechanisms are those whereby the elected individual must be with majority or what is known as a plurality of votes. The elected officials become either representative of particular

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<sup>14</sup> Robert Longley, The essence of democracy

<sup>15</sup> Oxford English dictionary

<sup>16</sup> Tangian, Andranik (2020). *Analytical Theory of Democracy: History, Mathematics and Applications*. Studies in Choice and Welfare. Cham, Switzerland

<sup>17</sup> Locke, John. *Two Treatises on Government: a Translation into Modern English*

areas, districts, wards or constituencies or they represent the entire electorate through proportional representation system. In dealing with elections, the International Covenant on Civil and Political Rights <sup>18</sup>provides that every person has the right to:-

*“To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”*

At the same time, Article 13 of the African Charter on Human and People’s Rights provides that every citizen has the right to participate freely in the Government of his country, either directly or through freely chosen representatives according to the provisions of the law.

Scholars have advanced a number of justification for the need of democracy as a mechanism for governance. The first validation for democracy is that it brings about legitimacy of the elected. According to John Lockie’s<sup>19</sup> social contract theory, the legitimacy of any government is hinged on the consent of the governed and therefore, it is imperial that the political decisions must reflect the general will.

Condorcet advances a theory that democracy is the logical proof if each decision maker has a better than chance probability of making the right decision, then by representative democracy and having a large number of decision makers, thus the end result is guaranteed of the best decisions. However, this justification is highly criticised by other theories of the wisdom of the crowd.<sup>20</sup>

The other theorists assert that democracy warrants economic success. The pronouncers of this theory include Aron Acemoglu and James A. Robinson<sup>21</sup>. The theory from Aron Acemoglu and James A. Robinson is rooted on the understanding that democracies become more economically successful due to the fact that undemocratic political systems have a tendency to limit markets and favour monopolies at the expense of the creative destruction which is a necessary tool for economic growth. It is therefore undeniable that any country that used the representative system must have a properly defined delimitation of boundaries.

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<sup>18</sup> Article 25, ICCPR

<sup>19</sup> Locke, John. *Two Treatises on Government: a Translation into Modern English*

<sup>20</sup> The **wisdom of the crowd** is the collective opinion of a diverse independent group of individuals rather than that of a single expert.

<sup>21</sup> Why Nations Fall



### **2.2.2 Delimitation Process**

Delimitation is a process of drawing electoral boundaries which denote the practice of drawing electoral areas and election precincts. Delimitation of electoral boundaries is essential or more precisely obligatory in a state which used representative system as opposed to those who utilise that proportional system. The learned author emphasises that the periodic drawing of electoral boundaries is very crucial and cannot be dispensed with in any representative electoral system where single-member districts are used. It is common cause that if delimitation is not periodically undertaken, population inequities may develop across constituencies, wards and districts.

Delimitation methods vary from one country to another but countries the delimitate constituencies must put in place formal structures in the legislation specifying the methods and rules of conducting the delimitation processes. There are certain countries whereby the method is simply a matter of respected historical tradition. However, the drawing of electoral boundaries may also be based of some other wide range of factors which may include the geographical size of the country, its physical features or its financial resources. There are certain countries that have physical features which make it impossible to adhere to a set form of delimitating the country as the concept of representation may be distorted. However, the underlying principle that must be observed is that different sets of constituencies are capable of producing different election outcomes even if the primary voting patterns remain constant. Conclusively, it is undeniable that the choice of delimitation practices or method is of paramount importance.

Systems that heavily rely on single member constituencies (plurality or majority systems) commonly use delimitation to draw electoral boundaries. Therefore, the electoral boundaries must be periodically redrawn to reflect changes in the population. However, it has to be noted that it is not plurality and majority systems that require periodical redrawing of districts, but also some other mixed and proportional representation systems including those systems that use single transferable vote system. Therefore, the importance of delimitation process depends on the electoral system that a country uses. It is very important on system who uses plurality and majority systems but less important on those that use mixed or proportional representation system.

Countries that delimit constituencies must put in place legislative framework which provide for formal delimitation. The legislation must provide as to who or which organisation will draw

the electoral boundaries. It must also spell out as to who has the ultimate authority to draw the final electoral boundaries plan. The Election Support Network<sup>22</sup> advances the notion that, the person or organisation which conducts delimitation must be neutral and independent from political proponents. The boundaries drawn must be politically neutral. There is also another submission that the public must have an input in the delimitation process so that the process is owned by the governed. The legislation must also be very clear on the periodicity of delimitation process.

Drawing of electoral boundaries has a number of advantages which can be enumerated as simplicity, stability and the strong link between the electorate and the elected. Where electoral boundaries are drawn, voters tend to understand the voting process and rules easily. It is perceived that simplicity is a significant advantage especially with countries which have a high illiterate rate. Electoral constituencies promote stability within a country by facilitating strong, single party government. This is obtained because electoral constituencies voting tend to produce election outcomes which the majority party being over represented. On the same note, electoral zones provide strong constituency representation in which the elected member will be easily identifiable so that the electorate can appeal or present their issues for service. This also make accountable easy as voters they are clear as to who must be held accountable for the affairs of the electoral zone that they are in. this tend to also positively affect the feelings of political efficacy which may in turn increase the voter turnout and also foster legitimacy which promotes national peace of a country.

The 2013 Constitution requires the ZEC to delimit electoral boundaries every ten years, as soon as possible after the census (Constitution of Zimbabwe, 2013). Constituencies and wards are to contain so far as possible an equal number of registered voters, and may not have more than twenty per cent more or fewer registered voters than other such constituencies or wards. Constituency and ward boundaries have not been redrawn since shortly before the 2008 elections and therefore do not take into account the most recent census (2012). By the 2018 elections, there were significant variations in the size of constituencies, with deviations in the number of registered voters of more than 20 percent in 106 of the 210 constituencies. The

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<sup>22</sup> Election Support Network in Zimbabwe.

Handley, Lisa, "Challenging the Norms and Standards of Election Administration: Boundary Administration," in *Challenging the Norms and Standards of Election Administration* (IFES, 2007), pages 59-74, at [https://ifes.org/sites/default/files/4\\_ifes\\_challenging\\_election\\_norms\\_and\\_standards\\_wp\\_bndel.pdf](https://ifes.org/sites/default/files/4_ifes_challenging_election_norms_and_standards_wp_bndel.pdf)

largest constituency (Harare South), with 76,425 voters, was more than five times larger than the smallest constituency (Gutu North), with 14,198 voters (UN Report, 2012).

On the other hand, electoral zones have their disadvantages. They tend to over-represent majority political party at the expenses of other parties thus leading to disproportional election outcomes. The problem with disproportional election results is that they may be difficult in accepting them in a country that has several political parties who represent wide disparate interests. The results may be very difficult to accept if deep cleavage exist in the county. For example, if there is a comparatively large, politically cohesive ethnic, racial, or religious minority group that has consistently been denied what it perceives as fair representation, elections could lead to conflict, possibly even violence and instability.

Traditionally, legislatures have been tasked with delimitation of electoral boundaries. This has resulted in malapportioned or ‘gerrymandered’ constituencies drawn to the advantaged of one political party at the expense of others. These abuses led to a number of countries adopting reforms around delimitation in an effort to remove politics from delimitation. It is ideal that a non-partisan commission be appointed to draw constitutional boundaries following prescribed set of rules. The members of the public must not be left out in this process but must assist especially through the public inquiry process. Electoral disputes must be avoided at costs especially when it is clear that the source of dispute may emanate from the reading of the; law itself. What has been worrying the world over is that the electoral disputes have always been difficult to resolve. In the history of electoral disputes, the majority have been won by the ruling parties.<sup>23</sup>

### **2.2.3 Principles of Delimitation**

Bandanaïke<sup>24</sup> explains the principles of delimitation which she asserts that they are critically important and there is always need to implement them. The first principle is that of consideration of population and land. It is ideal the delimitation process must consider the population with regard to their diversity in terms of their needs taking into consideration natural land boundaries recognising terrain differences and the need all environmental resources. The other principle that must be highly recognised is that of representativeness

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<sup>23</sup> In the case of *Mudzingwa v Madhuku and Another*, wherein the Electoral Court dismissed a petition that had been filed way after the mandatory 14 days period. The Court held that once one has failed to file his election petition within the stipulated time, the electoral court did not have jurisdiction to condone late filing of electoral petitions.

<sup>24</sup> Anias Bandanaïke, *Serving citizens through effective dilatation of geographical areas in Sri Lanka*

and inclusiveness. In this regard, delimitation must address the well-being of everyone and conserving each unit of land. The process of drawing electoral boundaries must also not be biased towards any population or piece of land. There must be recognition of multicultural and plurality of person staying in a particular geographical area. The needs for diverse communities must be respected and efforts made to achieve them to the best extent possible. However, the delimitation commission must not compromise other aspects of equitable representation.

One of the most crucial principles of delimitation is that it must be founded or based on consistent set of data for both population and land that are comparable across the country. It is therefore appropriate that the set of data that shows consistent must be used as the basis for delimitation.

The above principles are based on the notion that the primary objective of elected representatives is to improve the wellbeing of each and every citizen and conserve each land unit within their boundary and therefore the delimitation process must ensure that everyone is represented equitably.

The process of drawing electoral boundaries must avoid at all costs safeguarding the power and privileges of political parties as conceived by many but must endeavour to meet the needs of people and land. The process must strive to archive electoral boundaries that will ensure differing needs of different people in that country are represented. In his words Bardamike<sup>25</sup> had this to say;

*‘The delimitation process should strive for electoral boundaries that will enable representation of differing needs in different parts of the country, such as: the safety and security of communities of interest (minority groups by race or religion, female-headed households, disabled, etc.) to live in peace and harmony with others; the health and welfare of the vulnerable (differently-abled, infants and elderly), the quality of school facilities and teachers; access to employment and economic activities; infrastructure for commerce, industrial and agricultural activities; environmental protection against floods, erosion, landslides and other natural calamities.’*

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<sup>25</sup> ibid

#### **2.2.4 Factors to be considered for the electoral boundary delimitation process**

The delimitation process must as far as possible ensure equal voting strength for each person within the constituency. This creates inclusiveness, representativeness and removes bias. The census data includes information for persons below the voting age and those who have reached the legal voting age. As adult population make political choices which also affect persons who are below the legal voting age. It is ideal that sight be not lost that adult choices represent to a large extent the choices of persons below voting age. It is therefore submitted that total population must be used to delimit electoral boundaries as opposed to voter population. This submission now brings a third set of data for consideration in delimiting the constituencies. The first set of data is that of registered voters.

The second information is that of person who have reached the legal voting age regardless as to whether they are registered or not registered. The third refers to that of the whole population. The justification for the third appears to be a right centered approach to say even if the young persons would not have reached the legal voting age, they also have a right to be represented and thus the voting population to some extent exercises that right on their behalf. Therefore, delimitation should result in equal population per electoral boundary, however as it is common cause that this is not always possible, the average population per each elected member must be attained. Thus it is ideal that a pre-specified tolerance level of plus or minus five percent of the average population be allowed.

The other area or factor for consideration is the need for recognition of existing geographical boundaries or features. These may include administrative boundaries like roads or natural boundaries caused by mountains, water bodies, ravines or big rivers. The recognition of natural boundaries is based on the principle that the governed must be able to meet the government from time to time. Simply put, the elected must be easily accessible and physical barriers must be taken care of during the delimitation exercise. They must be ease access to communication networks and road network.

It is imperative that the delimitation of electoral boundaries must take care of ‘community of interest’. Communities may share some common interests emanating from such things like

shared ethnic background, culture, religion, language, economics activities of any other differentiating factors.

The Electoral Knowledge Network advances the point that delimitation process must use data from the most recent population census conducted in a country and that data must be consistent and unbiased. Data consistency is obtained from using prescribed methodologies. The use of census data appears to be most recommended by countries as unbiased data set. Concussively, delimitation conducted with recognition of these factors and within clearly established legal framework can go a long way in raising confidence of the people in the electoral process and hopefully attract critical population to also come on board.

### **Representativeness.**

Constituencies should be drawn taking into account cohesive communities of interest, defined by such factors as administrative boundaries, geographic features, and communities of interest (Lisa, 2007). Any deviations in equal population should be explained with reference to these criteria. The 2013 Constitution identifies a number of criteria the ZEC should consider when delimiting constituencies and wards: physical features, the means of communication, the geographic distribution of voters, communities of interest, and the existing electoral boundaries (Constitution, 2013). In the past, accusations of gerrymandering have been levelled against the boundary authority in part because too few constituencies were assigned to some urban areas and a number of constituencies combined urban and rural areas together in a manner that may have diluted the voting strength of urban voters (ZESN, 2019).

### **Equality of voting strength**

The voting populations of electoral districts should be as equal as possible (UN Report, 2007). Malapportioned constituencies or constituencies that vary greatly in population can be a product of either drawing districts with unequal numbers of persons (or of registered voters, depending on the population base used) or failing to redraw boundaries in a timely manner to reflect population shifts. Malapportionment may suggest to stakeholders that intentional bias has been introduced into the delimitation process.

### **Improving the legal framework for delimitation**

The legal framework for delimitation in Zimbabwe complies with international best practices in important respects: electoral districts of equal population are required (and the degree to

which constituencies can deviate from equality is clearly defined), and additional criteria for the ZEC to take into account, such as physical features and communities of interest, are identified. However, the framework could be improved, particularly with regard to ensuring transparency and public access to all phases of the delimitation process. Identifying a clear path for resolving delimitation disputes would also be an important improvement.

### Transparency

The delimitation process should be as transparent and accessible to the public as possible. Stakeholders are more likely to accept the outcome of the process and the subsequent election results if they are aware of and can scrutinize the delimitation exercise at various stages during the process. A public awareness program designed to educate stakeholders about delimitation is important when it first commences to ensure the process is well understood (Lisa, 2007). Public consultations should be scheduled with stakeholders to solicit their comments and concerns regarding the placement of electoral boundaries when the boundaries are finalized, they should be well publicized so that voters are aware of the boundary changes.

A final report justifying the choices made by the boundary authority (particularly if stakeholders objected to the alternatives chosen) should be prepared and disseminated. There are no provisions in the Constitution or electoral law requiring transparency or public access to the delimitation process in Zimbabwe. The most recent delimitation exercise, conducted in 2007-2008, was criticized for lack of transparency (ZESN, 2019). The ZEC was criticized for not having educated the public in a timely manner about the changes to the constituency and ward boundaries, which was especially problematic as this led to insufficient time to inspect the voters' roll and confusion as to where to cast a vote on polling day. In addition, civil society organizations and other stakeholders felt they had limited access to information about the process for the purposes of voter education and to review and analyze the process and its outcome.

### Challenges facing the ZEC in upcoming delimitation exercises

Boundary delimitation is a technically complex and time-consuming process. The repeal of Section 37B of the Electoral Act in 2018 means that the President no longer sets the date for the delimitation exercise to commence (Electoral Act). While this change aligns with

international best practices (the executive should not play a role in the delimitation process), it leaves open the question of what body has the statutory authority to initiate the delimitation of electoral boundaries. As the ZEC is best positioned to determine the time needed to complete the delimitation exercise to ensure that it is not rushed, it is in accordance with international best practices for the ZEC to make that decision. According to the Constitution, delimitation requires both voter registration and census data (Constitution, 2013). The next census is scheduled for August 2022 and the ZEC is unlikely to acquire the population data from this census in sufficient time to use it to delimit preliminary electoral boundaries; incorporate comments from the public, the President, and Parliament; and finalize the boundaries at least six months before polling day in 2023.

Moreover, the role of the census data in the process is less than clear as deviations from equality are measured using numbers of registered voters. A solution to the dilemma of time constraints and linked population and registration data would be to use the most current voter registration figures in conjunction with the 2012 census data to delimit the electoral district boundaries. This approach would require the ZEC to have an as accurate and up-to-date voters' list as possible for drawing electoral boundaries. If the continuous voter registration process has not been utilized to its fullest, a registration top-up exercise prior to beginning delimitation may be needed.

### **2.2.5 Population Census**

A population census consists of a complex series of interrelated steps, and constitutes perhaps the single most extensive, complicated and expensive operation that any country undertakes. There are three major phases of inter-related phases of a population census are, pre enumeration, enumeration and post enumeration phase. The main activities undertaken during the enumeration phase are normally the field mapping exercise and pilot census. Accordingly, Census field mapping exercise constitute a crucial phase of the population census. The exercise involves subdividing the whole country into small geographical units called enumeration areas which usually constitute between 80-100 households. This exercise is of paramount importance as it ensures that the whole country and everyone is enumerated with minimal over or under counting. This exercise must be completed before the commencement of the actual enumeration period.



According to the international recommendations,<sup>26</sup> the purpose for any country in conducting a population census is to enable the decision makers to give evidence based decisions, rather than to enable evidence-based decisions. Evidence based decisions are universally recognised paradigm of efficient management of economic and social affairs and of overall effective governing of societies in the modern world. In this context, generation of relevant, accurate and timely statistics is a sine qua non of this model. Therefore, the role of the population census is to collect, process and disseminate such small area called enumeration area detailed statistics on population, its composition, characteristics, spatial distribution, age distribution and organisation.

Censuses are conducted periodically in the majority of the countries in the world; they have been promoted internationally since the end of the nineteenth century, when the International Statistical Congress<sup>27</sup> recommended that all countries in the world conduct them. Since 1958, the United Nations has also been actively promoting the population and housing census by compiling the principles and recommendations for population and housing censuses.

The population and housing census plays an essential role in public administration. The results of a census are used as a critical reference to ensure equity in distribution of wealth, government services and representation nationwide: distributing and allocating government funds among various regions and districts for education, health services, delineating electoral districts at the national and local levels, and measuring the impact of industrial development, to name a few. Establishing a public consensus on priorities would be almost impossible to achieve if it were not built on census counts. A wide range of other users, including the corporate sector, academia, civil society and individuals, make use of census outputs.

The census also plays an essential role in all elements of the national statistical system, including the economic and social components. Census statistics are used as benchmarks for statistical compilation or as a sampling frame for sample surveys. Today, the national statistical system of almost every country relies on sample surveys for efficient and reliable data collection. Without the sampling frame derived from the population and housing census, the national statistical system would face difficulties in providing reliable official statistics for use by the Government and the general public. The basic feature of the census is to generate

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<sup>26</sup> Principles and recommendations on Population and Housing Census, Revision 2.

<sup>27</sup> *ibid*

statistics on small areas and small population groups with no/minimum sampling errors. While the statistics on the small areas are useful in their own right, they are important because they can be used to produce statistics on any geographical unit with.

The essential features of a census are individual enumeration, universality within a defined territory, simultaneity and periodicity. Individual enumeration entails that separate information is collected regarding each individual. Information may be reported by proxy. Where the cycle does not cover all persons, it could be considered that each record is not for an individual but the group that the individual represents through the individual's selection in the sample. Universality within a defined territory means that every person in the proportion is enumerated. Simultaneity refers to a system that a range of mathematical techniques (for example, averaging and/or projections and/or interpolation) may be employed so that the data are a statistical depiction of the average situation as of a period of time. Periodicity means that information is collected at regular brief intervals. For very small geographic areas, periodicity of dissemination will be determined to some extent by the rate of sample accumulation.

According to the recommendations<sup>28</sup> on censuses, censuses are conducted on the basis of a recognition that one of the most important assets in the whole world is the human capita which to a larger extent cannot be replaced in totality. It is submitted that it is very essential to assess the quality and quantity of this asset at a small area, regional and national level as a component of modern government. A census goes further than giving an answer as to 'how many are we' but it also provide information as to the question 'who are we'. This information is provided in terms of age, sex, education, occupation, economic activity and other very important characteristics. A census also goes further and determines 'where do we live'. This part of information seeks to inform in terms of housing characteristics and availability of essential amenities like water, electricity and many others.

The information obtained from these questions provide numerical profile of a country which is the sine qua non of evidence-based decision at all levels. Therefore, the decision as to how the electoral boundaries must be drawn cannot be left out. It cannot be done without such crucial numerical profile of the country. Most countries produce and base their decision on data produced by traditional consensus as opposed to data generated for small specific areas. The

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<sup>28</sup> Principles and recommendations on Population and Housing Census, Revision 2.

main advantage of a census is that it in principle entails canvassing the whole country capable of reaching every single household and collecting information for every person simultaneously within a short space of time.

On the other hand, census is very expensive to conduct. It is complex and massive projects a country can undertake. Some say it's second to war in terms of intensity of resources employed and method of operation to accomplish the task. The exercise require mapping of every square each of the country, mobilizing, training of enumerator, collecting individual information and completion of vast questionnaires. The recommendations further state as follows;

*‘For many people the census may be the only time that the State reaches them and asks them a question. In addition, successfully conducting a census becomes a matter of national pride for many countries. Ensuring confidentiality is crucial for the census to succeed. Thus, it has to be made clear that the only reason for collecting individual data is for the production of statistics and that there will be no dissemination of individual information or any non-statistical linkage with existing records in other government databases and data collections.’*

Indeed, principle 6 of the Fundamental Principles of Official Statistics provides as follows;

*‘Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.’*

The United Nations<sup>29</sup> recommends that all countries or areas of the world produce detailed population and housing statistics for small area domains at least once in every ten years. Censuses in Zimbabwe have been conducted in 1982, 1992, 2002, 2012 and 2022 the most recent one. According to Census Guidelines<sup>30</sup>, the population census represents one of the major's pillars of statistical system and data collection. Population census is part of an integrated national statistical system.

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<sup>29</sup> Supplement number 9 (E/1994/29)

<sup>30</sup> 2022 Population and Housing Guidelines

### **2.2.6 Voter registration**

Voter registration is a system that an eligible voter must be added on the voters roll in order for them to cast a vote on the polling day either for constituency or presidential election. Registering voters does not follow the same prescription in every country but varies widely from one country to another. In some jurisdictions, voters are automatically added in the voters roll as soon as they attain legal voting age whereas in other systems, eligible voters are required to apply in order to be added to the roll. There are no much formalities associated with voter registration.

### **2.2.7 Chapter Summary**

This chapter has touched on the literature reviewed by various scholars as well as related literature, the theoretical framework, the empirical literature review, explaining democracy, delimitation process and factors to be considered on delimitation process.



## Chapter Three (3)

### A comparative with other jurisdictions

#### 3.1 Introduction

Different sets of electoral district boundaries can produce different election outcomes, even if the underlying vote patterns are identical. Electoral abuses such as malapportioned constituencies (electoral districts that vary substantially in population) and electoral districts that have been ‘gerrymandered’ (constituency boundaries intentionally drawn to advantage one political group at the expense of others) can have profound effects on the outcome of an election and the composition of a parliament. If voters and other stakeholders suspect that the electoral boundaries have been unfairly manipulated to produce a particular political outcome, this will affect the credibility of the delimitation process.

The legitimacy of the electoral outcome itself could be questioned. Despite the possible political ramifications of the process, and the fact that the majority of the world’s countries undertake periodic delimitations of electoral districts, little in the way of international standards has been proposed. But such standards are important: they direct public expectations, serve as a target for reformers to aspire to and a benchmark for stakeholders in an electoral process to gauge the fairness of the delimitation practices of a given country. This chapter looked at the legal framework of delimitation process of other countries. Specifically, the legal position of South Africa, Zambia and Sri Lanka was reviewed.

#### Proposed International Standards for Delimitation

Some international election standards have been proposed by regional and nongovernmental organizations to guide the delimitation process. These organizations include the OSCE, the European Commission for Democracy Through Law, the Commonwealth Secretariat, and the Electoral Institute of Southern Africa (EISA). The appendix to this paper—“Proposed International Standards for Delimiting Electoral Boundaries”—provides a list of the standards and guidelines suggested by these entities. A number of the proposed guidelines are narrowly focused and less than universally

applicable. In other instances, important guiding principles have been neglected. Underlying many of the proposed standards are the following fundamental principles:

- Impartiality: The boundary authority should be a nonpartisan, independent, and professional body;
- Equality: The populations of constituencies should be as equal as possible to provide voters with equality of voting strength;
- Representativeness: Constituencies should be drawn taking into account cohesive communities, defined by such factors as administrative boundaries, geographic features, and communities of interest;

### **3.2 Delimitation in Kenya**

In Kenya, the process of delimitating electoral boundaries is enshrined in the Constitution.<sup>31</sup> According to article 88 of the Kenya Constitution, there shall be two hundred and ninety constituencies for the purposes of electing members of the National Assembly. Thus in this respect, Kenya used the first-past the post electoral system.<sup>32</sup> The Constitution of Kenya establishes an Independent Electoral and Boundaries Commission. It is worthy to note that the delimitation and electoral process are done by the same commission. The Constitution spells out the requirements for a person to be appointed as a Commissioner in the Electoral and Boundaries Commission.

Persons who within the preceding five year stood public office or stood an election are excluded from appointment into the Independent Electoral and Boundaries Commission. In this same vein, members of Parliament or member of the governing body of a political party are excluded from appointment. Clearly, the Commission is mandated to conduct delimitation of constituencies and wards in accordance with the supreme law of Kenya.<sup>33</sup> The drawing or review of Electoral boundaries in terms of the Constitution shall be done at intervals of not less than eight years but not more than 12 years.

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<sup>31</sup> Constitution of Kenya.

<sup>32</sup> Article 88 as read with Article 97 of the Constitution.

<sup>33</sup> Article 88 (4) (d)

The Constitution further clarifies that a delimitation process in order to be used in a general election, it must be completed twelve months before that general election.<sup>34</sup> Of particular importance, the Kenyan law agrees with other vast literature which provides that the boundaries of each constituency shall be such that the constituencies are equal to the population quota. Further the Constitution specifies that delimitation must take into account the geographical and urban centres. The commission must also the following features into account be cognisant of community of interest, historical, economic and cultural ties that may bind a particular community. The Constitution further prescribe that the variance of inhabitants in a constituency or ward to a margin of not leers or more by 40 percent for cities or sparsely populated areas or thirty percent for other areas. The Constitution further provides for procedural issues that must be followed when conduction a delimitation process. Section 89<sup>35</sup> provides as follows;

*'7. In reviewing constituency and ward boundaries the Commission shall--*

*(a) consult all interested parties; and*

*(b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.*

*(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.*

*(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication*

*(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.*

*(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.*

*(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.'*

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<sup>34</sup> *ibid*

<sup>35</sup> *ibid*



### **Key considerations from Kenya**

The principle of public participation and involvement is running throughout the Constitution Kenyan delimitation process involved public outreach mechanism for delivering delimitation agenda to the stakeholders namely:

- (a) A communication strategy
- (b) Civic education
- (c) Public awareness

The issues conversed in the public strategy included: crafting a corporate image that gives prominence to the boundary review; publishing of a brochure outlining the boundaries mandate; sensitization meetings with the media; social and electronic media coverage and schedules for the exercises and media monitoring.

### **3.3 Delimitation in India**

India has to date set four Delimitation commissions in 1952, 1962, 1972 and 2002. It appears the pattern on the onset was to conduct delimitation in ten years intervals. However, this process was suspended in 1976 to 2001 to allow family planning programs not to be disturbed by India has two separate bodies with one responsible for conducting the delimitation process and the other for elections. The body charged with delimiting electoral boundaries is called Delimitation Commission or Boundary commission of India<sup>36</sup>. This body is established by the legislation<sup>37</sup>. According to the Delimitation Act of India, the main function of the Commission is to redraw the boundaries of various assemblies and constituencies based on the Information obtained from the recent census. The Act<sup>38</sup> specifically provides as follows;

*‘1) The readjustment made, on the basis of the census figures as ascertained at the census held in the year 1971 by the Delimitation Commission constituted under section 3 of the Delimitation Act, 1972 (76 of 1972), of the allocation of seats in the House of the People to the several States and the total number of seats in the Legislative Assembly of each State shall be deemed to be the readjustment made by the Commission*

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<sup>36</sup> Section 3 of Delimitation Act, 2002 (India)

<sup>37</sup> Delimitation Act, 2002

<sup>38</sup> Section 4, *ibid*

*for the purposes of this Act. 1. Subs. by Act 3 of 2004, s. 2, for the Explanation. 135 Delimitation Act, 2002 (PART II. — Acts of Parliament) (2) Subject to the provisions of sub-section (1) and any other law for the time being in force, the Commission shall readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year 1 [2001]:' the underlining is mine.*

According to the Delimitation Act,<sup>39</sup> the Commission is a powerful and independent body whose orders cannot be challenged in a court of law. More specifically, section 7<sup>40</sup> provides that the Commission may also act as a civil court on delimitation matters and it can regulate its process.

In India, the recent delimitation Commission was set on 12<sup>th</sup> July 2002 just soon after the population census<sup>41</sup>. The Commission was chaired by retired judge of the Supreme Court, Justice K. Singh. The Commission conducted its process and submitted the delimitation recommendations which were not implemented until December 2007. The implementation of the recommendations was only undertaken after an order of the Supreme Court giving notice to the central government of India asking for reasons for non-implementation. Consequentially, the President of India Pratibha Patil approved the recommendations on 19 February 2008 opening a new chapter that all future elections in India will be conducted under the new electoral boundaries which were informed by the data from 2001 population census. To note also is that the Constitution of India was amended<sup>42</sup> in 2002 to bar any delimitation up to 2026. That being the case, the electoral boundaries of India will remain as they were determined by the delimitation process of 2002 which was based on the population census data of 2001.

### **3.4 Delimitation in Sri Lanka**

The delimitation of electoral constituencies in Sri Lanka is directly provided for in the Constitution. In terms of the Constitution, Sri Lanka should consist of two hundred and five seats- that is two hundred and twenty-five constituencies. The Constitution provides that the

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<sup>39</sup> Section 7

<sup>40</sup> *ibid*

<sup>41</sup> Election

<sup>42</sup> 84<sup>th</sup> Amendment, Constitution of India

delimitation of electoral boundaries must be done by a body called Delimitation Commission. It is clear that there is another commission called election commission. It therefore suffice to mention that there are two separate bodies for elections and delimitation in Sri Lanka.

The first delimitation Commission was appointed in 1978 and it produced its first report in 1981 where it divided the country into 22 districts which most were more alike to the existing administrative district. However, what is very key about Sri Lanka is that subsequent delimitations were informed by house to house enumeration – that is in a sense the census.

The voters roll or electoral register is updated annual using a house to house enumeration. The Civil war, however disturbed the house to house enumeration and the elections commission had to take the register and add all those who had attained 18 years which is the legal voting age of the citizens of Sri Lanka. Further, the civil war created significant population displacement due to emigration both internally and to neighbouring countries. The elections commission thus explains that these artificial movements caused the electoral register for Northern Region to be overstated for some years until in 2010 when the electoral register was informed by the house to house enumeration. This caused more than 300,000 people to be deleted for the Northern Region. This further caused the reduction of the number seats from 8 to 6.

Explaining on the relationship between census and delimitations Explaining in detail Mohideen stated as follows;<sup>43</sup>

*“The Election Commissioner must use a current census and reflect the percentage of the population showing the eligible voters. All the people of a certain population are not eligible to vote. If we got a population of 20 million, the voters will amount to 15 million. It must be allocated according to the population so that we can determine how the people voted in order to make any adjustment. The present electoral system created seats in Colombo West, where the population was only 52,000. Where as in some other majority of the minority-areas, where, the population amounts to about 128,000 there are no seats. No two electoral districts are equal. For example, in Kandy the number of voters in 1983 was 602,232 for 12 members or 50,186 voters per member. However,*

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<sup>43</sup> Quoted from Sri Lankan Muslims and Electoral Reforms, 2012

*in the Vanni District there were 128,000 voters for five members or 25,718 voters per member. Thus, one voter in Vanni is equal to nearly two voters in Kandy”*

The law in Sri Lanka also recognises the need not to tear apart communities who may have ties or those communities whereby it is impossible or difficult to be drawn into different constituencies. There are many factors which on their own makes the electoral process difficult to the citizen. An example is given of a community which is allocated to a constituency which on economic status is far poor to it making it difficult to secure resources which for a very considerable time, people have been used to be belonging to such.

This principle is enshrined in Section 3A (4) (b) (ii) of the Provincial Councils Elections (Amendment) Act<sup>44</sup> No.17 of 2017. For example, we cannot expect citizens on one side of a mountain or deep ravine to travel to the other side to meet their elected representative – citizens should have representatives on either side. Further, all demographic information in Sri Lanka is collected within the smallest administrative units, namely, Grama Niladari Divisions (GNDs). Hence, it is practically important to use these GNDs as the geographical basis for delimitation, and combine them, without splitting, to form electoral boundaries. Since GNDs combine to form Divisional Secretariats (DSs) within Districts (Table2), it is best to try and keep DSs intact, to the extent possible. However, if DSs are required to be split to meet other specific criteria, they should be divided into groups of contiguous GNDs to form an electoral boundary. This principle is enshrined in Section 3A (4) (a) of the Provincial Councils Elections (Amendment) Act No.17 of 2017.

In this context, efforts should be made to ensure that these communities of interest have equitable representation in any elected body commensurate with their concentration in the population of that district, through the effective demarcation of electoral boundaries in those areas. For example, in the Batticaloa District, the people along the coast are mainly engaged in trading and business, whereas those living inland from the lagoon are mostly agriculturalists. Hence their needs vary, and in a best-case scenario, each should have their own representative. Similarly, in areas where there are a significant number of the population linked by a common religion, race or cultural tradition, but remaining a minority in the district, it would help for

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<sup>44</sup> Section 3A (4) (b) (ii), Provincial Councils Election (Amendment) Act No 17.

them to be geographically grouped to have a representative in the elected body to see to their needs.

### **3.5 Delimitation in the United States of America.**

In the United States of America, delimitation of the House of Representatives of the Congress and redrawing the districts always bases on the population count obtained from the Census. The number of seats is dependent on the population size as given by the statistical office called census Bureau responsible for population census. In terms of the United States of America Constitution, the census Bureau must conduct enumeration for the entire population once in every ten years.

Ordinarily, the United States of America conduct a national census on the 1<sup>st</sup> April of the first year for each decade. This means that for the USA, census is conducted on 1<sup>st</sup> April 1980, 1990, 2000, 2010 and 2020. The next census for USA according to its calendrer will be on the 1<sup>st</sup> April 2030. Although the Census Bureau collects data on a large number of population characteristic++s, only a few items are included in the data files sent to the states for delimitation activities. Ordinarily, the following information is sent for the for the purpose of delimitation;

- i) Total population;
- ii) Population of those who have reached the legal voting age;
- iii) Subtotal for those person of Hispanic origin and for the other five racial groups which include white, Asian, Pacific Islander, Eskimo and other races

The need to identify other races is based on the recognition that some communities forming minorities must not be divided by the electoral districts.

In comparison, US approach differs with United Kingdom in that US population data which include children and many other people who for one reason or the other, are not eligible to vote whereas UK strictly used the number of qualified voters and not the total population. The use of eligible voters eliminates children and non-citizens from the calculations. The US approach makes sense from the perspective of democratic representative.

On the other side, the use of census data in drawing up of electoral boundaries has its own share of disadvantages which include obsolescence of census data, inaccuracies of census data

and the obvious fact that population equality does not necessarily produce an equal electorate.

Inaccuracy of census data may cause a certain community to lose a seat or constituency as was in the US where the census bureau estimates that it undercounted the population by 1, 6 percent. This is a major concern as it in the ordinary course of things will affect the drawing of the electoral boundary.

Like United States of America, Canada used the population census data for allocation of seats in 2011. The Minister responsible for introducing the legislation stated as follows:

*“In determining the actual populations of the provinces, we’re using the population estimates. These are the same numbers, the same population estimates, which are used for the federal-provincial equalization program, the same numbers that are used for the Canada health transfer, the same numbers used for the Canada social transfer. So this is the best data available for the population figures for the provinces themselves.” The estimates correct for net under-coverage in the census and provide a more accurate representation of total provincial population.*

Census data may be accurate on its own but it can rapidly become obsolete. This means that the data while correct during the enumeration may change due to population growth, immigration and other factors that changes population of a particular place rapidly. New economic activities or discoveries may cause people to dislocate at a very fast rate to other place.

The other impediment with use of census data suggests that even if equal number people are there in the district of constituency or ward that does not in the course of things guarantee that the number of voters will be also exact. The numbers would differ greatly due to the fact that census data contain a number of people who are not eligible voters.

### **3.6 Approach in Australia**

Australia has adopted an interesting and unique method which may be a solution to the problem of ever changing population. Australia uses registration figures or what is called enrolment figures. However, the electoral boundaries are drawn from projections of the population on what is likely to be the figures in two years if the election is to be held in two

years' time registration figures.<sup>45</sup> Henry<sup>46</sup> in his book entitled *The Impact of New Technology and New Census Data on redistricting in the 1990s* states;

*“Redistricting based on registration data is likely to produce districts that are more equal with regard to the number of voters contained in them. But are voters the only persons deserving of representation? From the point of view of democratic theory, an argument could be made that all persons, and not simply voters, should be represented. If a broader definition of "representation" is adopted--one that views representatives as acting on behalf of all his or her constituents, non-voters as well as voters--then the justification for the use of total population is that it produces equal constituent representation in a more expansive sense”<sup>47</sup>*

### **Delimitation in Zambia**

It has been conducted from July to November 2019 in preparation for 2021 elections. Constitutional Amendment No. 2 of 2016 increased the number of constituents from 150 to 156 (Phiri, 2019). The delimitation process addressed factors such as increase in the population, long distance covered by voters to access polling stations, Developmental and new settlement patterns (Ncube, 2019).

The Electoral Commission of Zambia (ECZ) was mandated by article 229(2)(g) of the Constitution of Zambia to conduct delimitation process (Constitution of Zambia, 2016). It conducted delimitation process for constituents, wards, councils and polling stations for the purposes of conducting elections for National Assembly and councils (ECZ, 2019). The process is to be done after not more than 10 years.

According to Constitution of Zambia, the following were taken into account:

1. History, diversity and cohesiveness of the constituency or ward.
2. Population density, trends and projection
3. Ensuring that the number of inhabitants in each constituents is reasonable, taking into consideration the means of communication and geographical features.

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<sup>45</sup> See case study on Australian delimitation.

<sup>46</sup> Carlton Henry "The Impact of New Technology and New Census Data on *Redistricting in the 1990s*," in *Redistricting in the 1990s*:

<sup>47</sup> William O'Hare (Population Reference Bureau, Inc., 198

4. Ensuring that constituents and wards are wholly within the districts
5. Seeking to achieve an approximate equality of constituents and ward population, subject to the needs to ensure adequate representation for urban and sparsely populated area.

### **Factors considered**

Factors that were considered for the delimitation of polling stations and districts are : availability of suitable venues for the polling stations, number and distribution of eligible voters, accessibility of polling stations to voters, district and provincial boundaries and cultural diversity.

The ECZ considered the following factors when relocating polling stations; number and distribution of eligible voters in a polling district; availability of suitable venues for polling stations ; distance to be traveled by voters ; access routes and availability of transport system ; traffic density at or near the polling station.

### **Key considerations from Zambia**

The ECZ has been endeavoring to ensure greater quality of the vote, hence boundary delimitation has been conducted 3 times since 2011. Some of the considerations from Zambia include:

1. ECZ produced a detailed 2019 delimitation booklet and road map with all the essential information on the delimitation process. The information includes the objectives and importance of the delimitation process, types of delimitation processes to be conducted factors to be considered ; activities that will be undertaken and detailed schedule for the delimitation sittings. The road map provided that the public and stakeholders are provided with adequate and detailed information and are hence able to meaningfully contribute towards the process.
2. The delimitation process is being guided by the principles of impartiality, representation and nondiscrimination, public trust confidence. These principles are aimed at providing a standard benchmark for stakeholders to scrutinise the process.
3. The ECZ to engage the stakeholders throughout the process. Pre-delimitation briefings were convened with traditional chiefs, political parties, civil society organizations and members of parliament.



4. Zambia has got a detailed legal framework on delimitation of boundaries. Both Electoral Act and Constitution contain adequate and comprehensive provision for delimitation.
5. The delimitation process is being conducted in good time way before the election date.

### **3.7 Voter Registration Data**

The use of number of registered voters also possess a number of problems. The inaccuracies that affect census data may also be found in the voters rolls. The voters roll may be inflated by the failure to remove deceased persons or person who would have moved to other constituencies or even the diasporas. The voters roll may also omit a lot of people if the updating is not done frequently. There is also fears that the Commission charged with voter registration may be biased in registration exercise in one place due to known political lines. This can be done by placing registration centers at places that are inconvenient for the communities targeted. Eligible voters may not take part if they are to travel long distance for voter registration purposes.

### **Conclusion**

Ultimately, the basis of data to be used for delimitation may be guided by either practical or other theoretical frameworks. Reliable data may be very difficult to obtain from either of the models. Data obsolescence' affects all data be it national registration or voter registration. Census data may also be absolute over a very short space of time. However, the use of census data as soon as possible after the enumeration appears to be the best solution to resolve the complexes associated with data.

## Chapter four (4)

### Legal Framework and Practice in Zimbabwe

#### 4.1 Introduction

The legal framework for delimitation includes the Constitution of Zimbabwe, the Electoral Act and the Census and Statistics Act. The ZEC has a mandate to conduct delimitation in accordance with section 239(f) of the constitution of Zimbabwe. Delimitation is done in every 10 years after the population census as provided for in the Constitution. In accordance with the provisions of the Electoral Act section 37A, the ZEC should publish in a Gazette and in any other appropriate manner notification for the delimitation process.

Since Zimbabwe has a history of contested elections, the constant reviewing of boundaries is crucial. This is more important also because the last redrawing of boundaries was in 2008, almost twelve years ago. Since then, some constituencies have ballooned while others have shrunk or remained small. Section 161(1) of the Constitution of Zimbabwe defines the relationship between delimitation and the population census. The Constitutional Amendment Bill No. 2 of 2020 proposes the delink between the two processes, with the argument that the 2022 census would be too close to the 2023 elections, leaving inadequate time between for the census report to be used for the Delimitation process. In the Amendment Bill ZESN proposes that the census be done earlier instead of the processes to be delinked, and that government has conceded to this position and have had the proposal withdrawn.

The first panelist to be given the platform was Chimhini, who noted that Delimitation is one of the most crucial processes necessary for free and fair elections. He started off by defining delimitation as the drawing of electoral boundaries for the election of representatives into wards and constituencies. He explained that different jurisdictions have different stipulations on when delimitation should be done, and that for Zimbabwe, it is after every ten years. Key considerations in Delimitation he noted include population size, geographical features, existing patterns of human settlement and community interest.

## 4.2 International and Regional Instruments

Political participation is rooted in the Universal Declaration of Human Rights (UDHR) 1948 and the International Covenant on Civil and Political Rights, 1966 (ICCPR). Article 21 of the UDHR provides that everyone has the right to take part in the affairs of his country. The will of the people shall be the basis of governmental authority and this shall be expressed in periodic and genuine elections, which elections shall be by universal and equal suffrage and these elections shall be held by secret vote. Article 25 of the ICCPR is similarly worded to Article 21 of the UDHR. The only difference is that the ICCPR unlike the UDHR which says ‘everyone’, it says “every citizen” has the right to participate politically. These two international instruments provide for the rights of every person to equal participation in public affairs, the right to vote and to be elected and the right to access to public service.

The African Charter on Human and Peoples’ Rights, 1981 (the ACHPR) also known as the Banjul Charter, is a regional instrument that provides for political participation by citizens. Article 13 provides that every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives in accordance with the provisions of the law. Article 8(2) obligates State Parties to adopt legislation and policies that guarantee the rights of PWDs. This is an acceptance that PWDs are part of governance structure.

In a nutshell what all these international and regional instruments say is that PWDs are entitled to participate in the electoral process of their country, just like non-disabled people because political participation is a fundamental aspect of democratic governance, the rule of law and social inclusion.<sup>48</sup>

State Parties have a general obligation upon ratification of these conventions to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in these conventions. Zimbabwe ratified all these international and regional instruments and in terms of the Constitution<sup>49</sup> it has an obligation to incorporate them into domestic law.

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<sup>48</sup> N 2 above, 3.

<sup>49</sup> S 34 of the Constitution of Zimbabwe, 2013

## **4.2 Domestic Law**

The Zimbabwean constitution and the Electoral Act provide for the laws that govern electoral processes in Zimbabwe. The Constitution being the supreme law, any law that is inconsistent with it is invalid to the extent of its inconsistency.<sup>50</sup> This means that the electoral and delimitation processes as reflected in the Electoral Act and Delimitation Act should be consistent with the law as provided in the Constitution.

## **4.3 Constitutional provisions**

According to Chimhini (2010), the three building blocks for delimitation are, the quality of voting strength, the voter register and the independence of the delimitation authority. These are premised on that data from the census must be reliable, citizens must have confidence in the voter register itself and that the delimitation authority must be non-partisan, professional and not under the influence of any institution or body. The scholar added that to deal with the problem of the failure by many people to register to vote, there is need to come up with acceptable threshold of rate of registration. This calls for a targeted voter registration blitz so that the underegistered areas boosts their numbers and Delimitation is not done based on warped registration details.

The Constitution of Zimbabwe, 2013 contains provisions that address issues to do with rights to political participation as well as the subject matter of this dissertation, which is delimitation process of electoral boundaries. In the Zimbabwean context, the Constitution is the supreme law. The constitution is express that it is the supreme law of Zimbabwe and any law, practice, custom or conduct that is inconsistent with it is invalid to the extent of its inconsistency<sup>51</sup>. Thus the supremacy clause in the constitution is the basis of what has been termed Constitutionality of legislation or provision. Generally and in the ordinary course of things, if a provision is consistent with the constitution or rather if it is constitutional, there arises no problem.

However, there is need to go beyond the constitution and make a test of constitutionalism. Constitutionalism is an idea propounded by theories including John Lockie and the founders of American republic that says that governmental power should limited in terms of fundamental and that its authority or legitimacy depends upon observing or respect of the law. Constitutionalism goes beyond constitutionality, it seeks to find out if the law conforms to the

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<sup>50</sup> N 17 above, section 2.

<sup>51</sup> N 46 above, section 2

concept of rule of law and respects basic minimum rights of people. Therefore, it may be very correct that the provisions relating to delimitation are enshrined in the constitution and the subsidiary legislation is consistency with legislation, the test of constitutionalism will be the final standard of measure.

The constitution provides for founding values that Zimbabwe is founded upon. These include value and respect of supremacy of the constitution, rule of law, fundamental human rights and freedoms, and recognition and the respect for the liberation struggle among others. The constitution further provides for principles of governance which include an electoral system that is based on universal adult suffrage, equality of votes and adequate representation of the electorate. It is on this basis the Zimbabwe conducts elections periodically using the first past the post system for members of the national assembly and local authorities.<sup>52</sup>

In terms of the Constitution,<sup>53</sup> the national assembly of Zimbabwe consists of two hundred and ten members who are elected by a secret ballot from the two hundred and constituencies which Zimbabwe is divided into. Whereas the current Constitution further provides for the life of first two Parliaments, since 2013, for an additional sixty women members, six from each of the countries ten provinces into which Zimbabwe is divided. The sixty women are chosen under a party-list system of proportional representation based on the votes cast for candidates representing the political parties that would have contested in the elections. This means that total number of all votes casts for the members of the political party would determine the number out of six of the women who would be elected under the party-list. Each party would submit a list of six women and depending with the proportion that it gets the first woman on the list would be the first to be elected and so on.

The two hundred and ten constituencies that Zimbabwe is divided into are drawn through a legislative process that is called Delimitation. This process is enshrined in the Constitution of Zimbabwe. The Constitution expressly prescribe that for election of members of parliament (National assembly) the country must be divided into two hundred and ten constituencies.<sup>54</sup> However for the local authorities, the constitution provides these must be divided into wards

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<sup>52</sup> Section 66, Electoral Act, [Chapter2:13]

<sup>53</sup> Section 124

<sup>54</sup> n 50, sec 160 (1)

according to the number of members to be elected to the authorities concerned.<sup>55</sup> Therefore the number of wards was left to subsidiary legislation to prescribe.

#### **4.4 Commission for delimitation**

According to Sachikonye (2003) also recommended that the authority responsible for Delimitation in Zimbabwe, the Zimbabwe Electoral Commission (ZEC), should consult more and build consensus with stakeholders on the delimitation process. The scholar also noted that there are some rumours pertaining to some preliminary work by the Ministry of Local Government on the redrawing of boundaries in the country. He however explained that he is not privy to any information regarding whether the Ministry is consulting the ZEC or other stakeholders. Asked how the Ministry of Local Government comes in on the issue of Delimitation when it is not the responsible authority, he noted that this may be because the Ministry is the one responsible for the current geographical boundaries, therefore has a stake in the redrawing of boundaries.

On the other hand Zimbabwe Election Support Network gave a brief historical narrative of how delimitation was conducted in the past in Zimbabwe. It was noted that the process, which was undertaken by the delimitation commission in the year 2000 was largely non- inclusive which led to lack of trust on the outcome (Sachikonye, 2003). There were many allegations of gerrymandering and manipulation of electoral boundaries and the report was contrary to census statistics. In 2008, delimitation was undertaken by the Zimbabwe Electoral Commission following a Constitutional Amendment. The process was not sufficiently consultative and participatory. The report was finalized late, leaving no time for discussion and voter education before the elections.

Previous researches conducted by ZESN to determine citizens' perceptions on delimitation in Zimbabwe; the study revealed that citizens largely lack knowledge of the delimitation process and recommended that the ZEC should ensure consultation with stakeholders on delimitation, government must provide adequate financial resources for the process and that a roadmap is needed for delimitation. She also noted that ZESN, like other stakeholders, supports the adoption of the Census Bill instead of delinking the census from Delimitation.

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<sup>55</sup> n 50, section 161 (2)

Findings further expounded that the research clearly showed, demographic changes which have left the 2008 delimitation irrelevant with large variations in constituencies, leaving 106 out of the 210 constituencies not conforming to the acceptable  $\pm 20\%$  variation. Examples include Harare South which has over 70 000 registered voters (+280%), Goromonzi South also has over 70 000 voters (+269%) and on the other extreme, Wedza South and Gutu North with about 14 000 (-53%) (Chimhini, 2010).

The most important values underpinning delimitation given by the ZESN representative were; representativeness, equality of voting strength, accuracy, timeliness, participation and service mindedness, reciprocity and non-discrimination. It was emphasized that any compromise on any of these values would affect the results of delimitation process (Chimhini, *ibid*).

In terms of the Constitution,<sup>56</sup> the mandate to delimitate constituencies is placed on the Zimbabwe Electoral Commission. The Zimbabwe Electoral Commission is one of the independent commissions in Zimbabwe commonly known as Chapter 12 commissions.<sup>57</sup> The chairman of the Commission is appointed by the President after consultation with the judicial service commission and the committee on Standing Rules and Orders. The other eight members are also appointed by the President from a list of not fewer than twelve members submitted by the Committee on Standing Rules and Orders.<sup>58</sup>

The constitution goes further to make mandatory that the chairperson must be a judge, former judge or any other person who is qualified for appointment as a judge. The qualifications for one to be a judge in Zimbabwe are enshrined in the constitution itself. Apart from being a fit and proper,<sup>59</sup> the constitution qualifies person who are or have been judges of a court with unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roma-Dutch law or English and English is the official language used. There are other qualifications for person who are or have not been judges but they have practised law in a jurisdiction in which the common law is Roman Dutch law or English and English is the officially recognised language. Thus on these basis, it can be discerned that the legislature was cognisant of the need to appoint a person who is fit and proper for the management of elections as a process precondition for democracy.

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<sup>56</sup> *ibid*

<sup>57</sup> Chapter 12 of the Constitution

<sup>58</sup> n 50, section 238

<sup>59</sup> *ibid*, section 179

In comparison, other jurisdictions like Kenya and India, have separate bodies for management of elections and delimitation of electoral boundaries. The justification behind the separation is for checks and balances and to avoid a situation whereby one commission perpetuates a certain agenda from delimitation up to the process of announcement of results. If delimitation is not properly conducted, the whole electoral process becomes a shame. Gerrymandering may take toll thereby subverting the will of the electorate.

#### **4.5 Delimitating the Constituencies**

Delimitation is the process of dividing constituencies for the purposes of elections. It divides the country into constituencies and wards for the purposes of elections of persons to constituency seats in the National Assembly and of councilors to local authorities. It is important to note that delimitation is a fundamental process of the Electoral Cycle. The importance of demarcating boundaries is important in ensuring fair representation of the electorate. Delimitation is a technical process hence it is important that it is understood by all stakeholders. It is imperative that principles of the delimitation process which include; impartiality, equality of the vote, nondiscrimination, representativeness and transparency are embedded in the legal framework, process and procedures of delimitation of electoral boundaries

Delimitation and demarcation are terms used to describe aspects of the process of boundary definition. Traditionally, delimitation has been used to refer to the definition of a boundary in a treaty or other legal instrument, while demarcation refers to the physical marking of the boundary on the ground. However, in the preparation of this book, it became clear that:

a) in different languages and cultures the terms are interpreted slightly differently, and

they are only two of several terms used to describe boundary-making practices. Other relevant terms include: abonnement/ born age, maintenance, reaffirmation, recovery and delineation. Whichever terms are used, the goal remains the same: international boundaries need to be defined as unambiguously as possible, made sufficiently visible on the ground and maintained on an on-going basis in order to prevent misunderstandings that lead to disputes



The process of delimitating the constituencies is provided for in terms of section 161 of the Constitution of Zimbabwe. The delimitation is done once in every ten years. The actual timing of the date of delimitation is fixed by the Zimbabwe Electoral commission, the commission mandated with organising the election. However, the date for delimitation must be as soon as possible after the country has conducted the national population census.<sup>60</sup> In terms of the Zimbabwean law, there is no justification as to why population census and delimitation must be conducted close to each other. In other countries with similar provisions, it is clear that the proximity of these two processes is hinged on the basis that delimitation process is conducted using data from population census. This position is well settled in other jurisdiction like India and Kenya. Be that may, in Zimbabwe, delimitation must be done as soon as possible after the census but there is no mention of census data being used for delimitating the electoral boundaries but voter registration data.

The procedure to be adopted in delimitating the electoral boundaries is provided for in the Electoral Act.<sup>61</sup> The delimitation commences with the publication in the gazette of a notice of intention to delimit electoral boundaries. The manner of the notice is left to the commission to do it in the manner it deems fit. The legislation mandates the Commission to entertain representatives from voters, political parties and other interested parties who are likely to be affected by the decision of the Commission.

It was argued that if all things being equal, Zimbabwe can take lessons from the region on the conduct of Delimitation. Cited as examples were Zambia and Malawi as good examples. It was noted that in Zambia, the Delimitation authority consulted widely all the relevant stakeholders, including chiefs in rural areas, citizens and members of parliament. The authority also provided a roadmap for the exercise timeously, and made use of preferential data and annual projections of the census for the exercise. All this helped to build confidence in all stakeholders involved including political parties.

#### **4.6 Voter Registration in Zimbabwe**

As delimitation in Zimbabwe is based on the data obtained from the number of registered voters, it is pertinent that an analysis of the law- pertaining to voter registration be conducted.

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<sup>60</sup> N 50, section 161 (2)

<sup>61</sup> Sections 37A, 37B and 37C of the Electoral Act [Chapter 2:13]

In terms of the Electoral Act<sup>62</sup>, voter registration shall be conducted continuously so as to keep the voter registration up to date. The registration of voters which was under the ambit of the Registrar-General was moved to Zimbabwe Electoral Commission with effect from 22<sup>nd</sup> May 2013. The voter registration is conducted by the Commission through its employees or any other person that the Commission may appoint.<sup>63</sup> The voter registration contains names, date of birth, sex, national registration number, place of residence and such other information that the Commission may consider appropriate.<sup>64</sup> Any person is allowed to inspect every voters roll and every consolidated roll free of charge.

#### **4.7 Population Census**

Population census is mentioned in the Constitution of Zimbabwe obiter in relation to conducting of a delimitation exercise<sup>65</sup>. A population census is conducted in terms of Census and Statistics Act. In terms of the said Act, census is conducted by an agency called Zimbabwe national Statistics Agency. Zimbabwe National Statistic Agency is a corporate body entity established in terms of Census and Statistics Act<sup>66</sup>. The relevant provision provides as follows;

*‘(1) a national census shall be taken every ten years of–*

- (a) the number of persons in Zimbabwe or of any class of persons in Zimbabwe or any part thereof; and*
- (b) the number of households and dwelling units in Zimbabwe or of any class of households and dwelling units in Zimbabwe or part thereof; and*
- (c) such other particulars whatsoever;*

*as shall be prescribed.*

*(2) The Agency shall take the census referred to in subsection (1) on such day or during such period as the Minister may fix by notice in a statutory instrument.*

*(3) A census may be conducted by the Agency on any other matter as may be specified by the Minister.’*

Census is therefore conducted under the specification of the Minister responsible for statistics in Zimbabwe. It appears more fully that delimitation and census are both conducted once in

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<sup>62</sup> Section 17A, Electoral Act

<sup>63</sup> Section 19, Electoral Act

<sup>64</sup> N60, Section 20

<sup>65</sup> N50, section 161

<sup>66</sup> Section 3, Census and Statistics Act, [Chapter 10:29]

every ten years. The Minister gives specification in a statutory instrument. In the instance of the recent census, it was gazetted in statutory instrument 205 of 2022. The Statutory instrument states the date for conducting the census by prescribing census night. Census night is the date which enumeration is based upon when applying the defector method. The process is designed to count every person as at a particular moment called census night. Thus enumeration no matter how long it takes, the questions will relate to one specific date as defined to be the census night.

#### **4.8 Data for Delimitation**

In accordance with the provisions of the Constitution of Zimbabwe, the delimitation process must be conducted on the basis of number of registered voters. The relevant provision appears more clearly as it is couched in the following manner;

*‘(3) The boundaries of constituencies must be such that, so far as possible, at the time of delimitation equal numbers of voters are registered in each constituency within Zimbabwe.*

*(4) The boundaries of wards must be such that, so far as possible, at the time of delimitation equal numbers of voters are registered in each ward of the local authority concerned.’*

The meaning of the above provision has been clearly to the effect that the Commission delimiting the electoral constituencies must use the number of registered voters as a basis for delimitation to the extent that as far as possible that the equal number of voters are registered in each constituency within the country. This therefore means that the number of total population obtained from the population census is irrelevant to determine constituency boundaries. On the same vein, the population figures of persons who have reached the legal voting age obtained from population census is immaterial to inform the delimitation process. The data that forms the basis of decision-making process for delimitation is the number of registered voters.

#### **Challenges for Constituency Delimitation**

Exercise Legal framework not being comprehensive: There are limited provisions to ensure participation of stakeholders in the delimitation process, no provisions on handling complaints / appeal process and no referral to judicial authorities in case of an unresolved dispute in the

process. Urban and Rural Council Acts are not aligned to the Constitution as they contain provisions allowing the President to divide local authority into wards.

### **Citizen Perceptions:**

Citizens largely lack knowledge of the delimitation process, ZEC should ensure consultation with stakeholders on delimitation, and government to provide adequate financial resources and roadmap is needed for delimitation.

### **Timeframe of Delimitation**

The Constitution provides for delimitation to take place immediately after a census. The census is conducted every 10 years and the last census was undertaken in 2012 with the next one being planned in 2022 leaving very limited time for ZEC to undertake Constituency Delimitation, which as per the Constitution needs to be completed 6 months before the Election Day. This requires bringing the census earlier than the 2022 enabling ZEC to undertake the process well within the time frame.

## Chapter Five (5)

### Findings and Recommendations

#### 5.1 Introduction

This chapter summarized the findings made in the whole dissertation and also make recommendations for the Zimbabwe Legal system on the course of action to take in as far as delimitation of electoral constituencies is concerned.

#### 5.2 Findings

- i. In Zimbabwe the mandate for delimitation of constituencies and wards is the mandate of the same commission that manages the whole electoral process, that is, the Zimbabwe electoral Commission.
- ii. In other jurisdictions, two separate commissions are established, one for the delimitation process and the other one for the management of the whole electoral processes. Examples of such jurisdiction include Kenya and India
- iii. From the three types of data that a delimitation process can use as a basis for delimitation; that is total population figures, population of legal voting age and the number of registered voters, Zimbabwean law prescribe the use of number of registered voters.
- iv. The total population figures and population of those person who have attained the legal voting age are obtained from census which is an independent process conducted by Zimbabwe National Statistics Agency while the number of registered voters is obtained through voter registration, a process undertaken by the same commission Electoral Commission an organization charged with the mandate to conduct the electoral processes and the delimitation.
- v. From the 2013 registered voters and 2012 census data, there was a wide disparity between number of population of persons registered to vote and those that have attained the legal age of voting.
- vi. Delimitation of electoral constituencies is used for National Assembly seats, Local Authorities and the Presidential election.

- vii. Both census data collection and registration of voters are currently done manually and there has been no online registration although both processes use computer assisted personal interviews.

### **5.3 Recommendations**

In light of the findings as enumerated in 5.2 above and cognisant for the desire to attain democracy in the political sphere, it is recommended that;

- i. The Constitution be amended to pave way for establishment of Zimbabwe Delimitation Commission as an independent body like Zimbabwe Electoral Commission. The Delimitation process must be managed by another Commission as opposed to the current scenario whereby Zimbabwe Electoral Commission manages the two inter-related processes.
- ii) The Constitution be amended to repeal the current provisions in section 161 (3) and (4) and provide that the total number of person who would have reached the legal age of voting be used as a basis for delimitation as opposed to the number of registered voters.
- iii. The The Constitution be amended and be specific that census data be used for delimitation of electoral boundaries for constituencies and wards.
- iv. The Electoral Act to provide for mini-delimitation process undertaken after five years for those places where it apparent that there has been growth of the population after the previous delimitation exercise.
- v. The electoral Act must be amended to provide for voting for the presidential candidate to be national based for every citizen regardless of place of stay as opposed to constituency based or residence approach. This may go a long way in also addressing the diaspora vote.
- vi. Both census data collection and voter registration must be done online in light of the advancement of technology
- vii. Delimitation Linked to Registered Voters: As delimitation is based on the number of registered voters as per the Zimbabwe constitution, therefore, low levels of registration

in Bulawayo, Matebeland North and Matebeland South will result in loss of seats thereby effecting citizens' representation in Parliament. There will be a need to undertake a renewed registration drive to enhance registration in under-registered provinces.

- viii. There should be provision for mandatory enforcement of timeliness or durations to be introduced in the legislation to ensure that the delimitation process is completed in time.
- ix. . The legal framework to provide for the conflict resolutions mechanisms in case of boundary disputes. The mechanism to provide specific time frames for handling complaints and appeals.
- x. The Electoral Act to incorporate provision which promote public and stakeholders participation.
- xi. The law to provide for the provisional delimitation maps to be advertised widely to ensure their accuracy to enable interested parties to properly scrutinize and give feedback on the maps. The delimited maps must be made available to the public at ward level and constituents' level and the public must have access to them.
- xii. there is need to strengthen, guarantee and commit to put in place mechanism that further promotes the independence of Electoral Commission.
- xiii. Zimbabwe Electoral Commission to put in place regulations for accreditation of CSOs to observe delimitation to enhance transparency
- xiv. The Rural District Councils Act and the Urban Councils Act to be amended to align their electoral provision with sections 160 and 161 of the Constitution

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