



Zimbabwe Election Support Network

PROMOTING DEMOCRATIC ELECTIONS IN ZIMBABWE

**Preliminary Report on the Legal and Statistical
Analysis of the ZEC Preliminary Delimitation
Report in Zimbabwe**

January 2023

Table of Contents

A. EXECUTIVE SUMMARY

1.0 Introduction	3
1.2 Principles Guiding Delimitation	5
1.3 The System and Criteria of Delimitation in Zimbabwe.....	5
1.4 Consultations with Stakeholders and the Public	6
2.0 The Preliminary Delimitation Report	6
2.1 Findings and Observations form the Ad Hoc Committee of Parliament	7
3.0 Analysis of ZEC’s Method of Determining Voter Population Threshold For National Assembly Constituencies	9
3.1 Distribution of National Assembly Constituencies Across Provinces.....	9
3.2 Change in the population of registered voters across provinces over the years	11
3.3 Comparing number of constituencies across provinces for 2008 and 2023	11
3.4 Comparison of registered voters to the Zimbabwe’s census population	12
3.5 Constituency with conflicting registered voter population totals	13
3.6 Delimitation for wards within local authorities.....	14
3.7 Wards with incorrect averages, minimum and maximum thresholds	15
4.0 Key Implications of ZEC Preliminary Delimitation Report	16
Merging and Reconfiguration of Constituencies	Error! Bookmark not defined.
6.0 Recommendations	18

The delimitation of electoral boundaries into wards and constituencies is a critical aspect of constitutional states that follow the principle of representative democracy. The size of wards and constituencies can determine election outcomes, and this makes delimitation a contested political space. Between October and December 2022, the Zimbabwe Electoral Commission (ZEC) commenced the Boundary Delimitation process of demarcating electoral boundaries in Zimbabwe. The last delimitation exercise was conducted in 2007 in preparation of the 2008 harmonised elections. In this regard, certain fundamental changes had to be expected for the 2022 delimitation process in relation to boundaries, size of wards and constituencies and population figures. The delimitation process takes place once in every ten years and is done after the conducting of the Population census. Public debate ensued upon ZEC releasing the Preliminary 2022 Delimitation Exercise Report. This study adds to the public debate by making a critical legal and statistical analysis into the ZEC 2022 Preliminary Delimitation Report. ZESN believes in the integrity of the electoral process, and regards the delimitation exercise and its outputs as fundamental to the achievement of free, fair and credible elections. Further, it is the view of ZESN that subjecting public documents to critical scrutiny and comment is necessary in a constitutional society that is built on democracy, transparency, accountability, the rule of law and justice. Accordingly, this study provides key findings and recommendations and urges ZEC to consider these recommendations in developing the Final Delimitation Report for the 2023 general elections.

1.0 Introduction

Zimbabwe is scheduled to conduct general elections in mid-2023, following delimitation of constituencies by the Zimbabwe Electoral Commission (ZEC) in 2022. By definition, delimitation is the fixing of electoral boundaries, and involves dividing the country into voting districts, known as constituencies and wards in Zimbabwe, for the purposes of parliamentary and local authorities elections. ZEC itself describes the process as follows:

‘The process aims at ensuring the cohesiveness and integrity of administrative districts, including building political, social and cultural ties between voters and their representatives.’¹

The delimitation process is outlined in section 161 of the 2013 Constitution, as read with the Electoral Act Chapter 2:13. Elections are prepared for, conducted and supervised by the Zimbabwe Election Commission (ZEC) which is an independent state institution under Chapter 12 of the Constitution. The process is also guided by the Census and Statistics Act (Chapter 10:29). In the conduct of this exercise, provisions of Section 161 of the Constitution guide the Commission. Section 161(5) of the Constitution states that the Commission must ensure that no ward is divided between two or more local authority areas. The Commission must also ensure that no ward is divided between two or more constituencies.

Section 161(6) of the Constitution further states that in dividing Zimbabwe into wards and constituencies, the Zimbabwe Electoral Commission must in respect of any area, give due consideration to:

- *Its physical features*
- *The means of communication within the area*
- *The geographical distribution of registered voters*
- *Any community of interest as between registered voters*
- *Existing electoral boundaries*
- *Its population*

¹ ZEC Preliminary Report on the Delimitation Exercise 2022.

1.2 Principles guiding delimitation

In conducting delimitation exercises, there are certain key principles embedded in the Constitution that ZEC must implement and be guided by. These principles include the following;

- (a) equality of voting strength in constituencies and wards;*
- (b) the principle of derogation, which permits not more than 20% and not less than 20% voter strength disparity;*
- (c) principle of straddling, whereby a ward should be wholly contained in a constituency, and no ward is divided between two or more local authority areas;*
- (d) observation of physical features, the geographical distribution of voters; community of interest; consideration of existing boundaries and the general voter population of the area.*

1.3 The System and Criteria of Delimitation in Zimbabwe

In determining the population quotas for the 2022 boundary delimitation process, ZEC was guided by the Constitution of Zimbabwe and the Electoral Act. ZEC used voter populations from the Voters Roll as at 30 May 2022, which was the cut-off date for the 2022 Delimitation Process². Voters who registered after this date will however be eligible to vote in the upcoming 2023 elections. The new boundaries will be used for the 2023 Harmonised election. The figures are thus as follows:

Total voting population as at 30 May 2022 = 5 804 376³

Average voting population= 27 640

Upper limit (+20%) = 33 168

Lower Limit (-20%) = 22 112

Voting Populations by Province as at 30 May 2022

Province	Voting Population
Harare	952 102
Bulawayo	270 938
Mashonaland West	661 289

² <https://www.zec.org.zw//press-statement-on-delimitation-update/>. ZEC confirmed these figures in the 2022 Preliminary Delimitation Report, 2022.

³ <https://www.zec.org.zw/download/general-notice-delimitation-voter-population-figures-2022/>

Mashonaland East	641 668
Mashonaland Central	536 463
Matabeleland North	340 427
Matabeleland South	267 617
Manicaland	738 624
Masvingo	632 320
Midlands	762 928
Total	5 804 376

1.4 Consultations with Stakeholders and the Public

As per its mandate, ZEC conducted engagements with stakeholders between October and December 2022 at district and provincial level. These included both consultative and feedback meetings at district and provincial level. As per previous recommendations made by ZESN in a number of its publications, it was anticipated that the stakeholder engagement process would address the need to increase citizens' knowledge of delimitation. ZESN and a number of Civic Society Organisations (CSOs) had its community-based volunteers attend some of the meetings to gather information on the delimitation process.

Other stakeholders were also able to make oral and written submissions during the engagements. ZESN volunteers attended a total of 60 of the meetings that were held by the ZEC. ZEC held both District and Provincial meetings across the country. Most of the meetings were chaired by District and Provincial Elections Officers, with key stakeholders such as the National Statistics Office and Zimbabwe Republic Police (ZRP), Councillors, political party representatives, members and volunteers of civil society, Faith Based and Community Based Organisations in attendance. It is however noted that very few citizens participated in most of these meetings as notice of the meetings was usually very short. Participation was mainly by community-based volunteers that are based in the communities where meetings were held. ZEC in most instances gave a day or two's notice to the meetings. To this end the average number of participants at the district meetings was thirty participants.

2.0 The Preliminary Delimitation Report

Upon finalization of the delimitation exercise in 2022, the ZEC produced a Preliminary Delimitation Report (the Preliminary Report) on the Delimitation Exercise. The Preliminary Report was formally tabled in Parliament by the Minister of Justice, Legal and Parliamentary Affairs. On the 6th January 2023, Parliament's Committee on Standing

Rules and Orders appointed a special Ad Hoc Committee on the Analysis of the Preliminary Report. On 13 January 2023, the Ad Hoc Committee presented their findings and recommendations on the Preliminary Report to Parliament for debate. Consequently, the Ad Hoc Committee report was debated and considered by Parliament between 17 – 18 January, 2022. Thereafter, Parliament submitted its findings and recommendations to the President for onward submission to ZEC. On 20 January 2022, ZEC received the report from the President, and committed to address the concerns raised by Parliament. It must be noted that these processes are to be completed within 14 days in terms of section 161 (8) of the 2013 Constitution.

On the sidelines, certain developments took place regarding the submission of the Preliminary Report to Parliament. A Memorandum dated 6 January 2023 purporting to be drafted by ZEC Commissioners and addressed to the President of Zimbabwe, the Minister of Justice, Legal and Parliamentary Affairs and the Chief Secretary to the President and Cabinet emerged in the public domain. It was signed by seven (7) of the nine (9) ZEC Commissioners. The two Commissioners who did not sign the Memorandum was the Chairperson of ZEC and the Deputy Chairperson. Significantly, the Memorandum expressed concern that the Draft Delimitation Report did ‘not meet minimum standards expected regarding transparent procedures that strengthen stakeholders’ confidence or dispel potential gerrymandering allegations.’

Another development concerned potential litigation against the ZEC Preliminary Report. On 7 January 2023, a formal letter of complaint against the Preliminary Report had been addressed by a constitutional expert lawyer, Professor Lovemore Madhuku to the Speaker of Parliament, Advocate Jacob Mudenda. The letter claimed that the ZEC Preliminary Delimitation Report was not signed by ZEC Commissioners, and was thus not an act of ZEC. The letter further made reference to the Memo by the ZEC Commissioners requesting the setting aside of the Preliminary Delimitation Report. Despite these two related but separate developments, the Ad Hoc Committee of Parliament did not provide a response to the lawyer’s letter which threatened litigation. At the date of this Brief, there was also no response to the Memo from its addressees, namely the President of Zimbabwe, the Chief Secretary to President and Cabinet and the Minister of Justice, Legal and Parliamentary Affairs.

2.1 Findings and Observations form the Ad Hoc Committee of Parliament

The Ad Hoc Committee was a specialized committee which came up with key observations, findings and recommendations on the Preliminary Report. It must be noted that the delimitation exercise was the first delimitation exercise after the enactment of the 2013 Constitution of Zimbabwe. The last delimitation was conducted in 2007 for the 2008

general elections. In essence, the Ad Hoc castigated several key aspects of the Report, and pointed to fundamental flaws such as the following:

- 2.1.1 ZEC relied on the 2022 Population and Housing Census Preliminary Report on Population Figures to collate the registered voters population figures, and not the final census report as envisaged by section 161 of the Constitution of Zimbabwe. The final census report was not yet available at the time of producing the Delimitation Report.
- 2.1.2 There was evidence of violations of sections 161 (3) and 161(4) of the Constitution which provides for equal number of voters in the boundaries of Constituencies and wards, as there were instances where some constituencies and wards had more registered voters than others within the same province. In this regard, there was possible misinterpretation of the minimum and maximum threshold. Related to this, there was no justification given by ZEC in collapsing (merging) constituencies and local authority wards
- 2.1.3 There was possible misinterpretation by ZEC of the twenty percent variance provision in section 161 (6) of the Constitution, as some wards and constituencies ended up having a variance of up to 40%.
- 2.1.4 Stakeholder consultations were not done in a fair manner since there were certain areas where key stakeholders were not consulted, and this was in breach of section 161(6) (d) of the Constitution.⁴
- 2.1.5 The coordinate system used by ZEC was too complicated for ordinary citizens and stakeholders to understand and interpret spatial data represented on the maps. The Committee stated that ZEC had an option to use a simpler geographic coordinate system that represents location in terms of degrees, minutes, and seconds, such that users can simply enter the coordinates on google maps to identify locations in their respective wards and constituencies.
- 2.1.6 Section 161(12) of the Constitution requires that if there is a discrepancy between the description of any ward or constituency boundaries and the map or maps prepared by the ZEC, the description prevails. ZEC neither provided any description of the scale in its report nor did it indicate or specify the scale on the actual map.

⁴ This allegation is not proved by facts by the Ad Hoc Committee Report. The Report states (at para 4.1.1.5) that 'This issue of non-involvement of key stakeholders is drawn in areas wherein registered voters were moved from their traditional leaders. To this end, the Committee's view is that, if stakeholder consultations were widely conducted, the community of interest issues should have been avoided.'

- 2.1.7 ZEC provided descriptions that referred to topographic features that were not indicated on the map, making it difficult to relate their descriptions with the physical features on the ground. This was in violation of section 161 (12) of the Constitution of Zimbabwe.
- 2.1.8 As part of its maps or descriptions, ZEC did not provide information about population density and distribution making it difficult to relate population figures, their distribution and how they affected specific boundary or polling station decisions, in violation of section 161 (6) of the Constitution.
- 2.1.9 Polling stations were not indicated on the maps.

3.0 Analysis of ZEC’s Method of Determining Voter Population Threshold for National Assembly Constituencies

In order to determine the voter population thresholds permissible in line with section 161(6) of the Constitution, the ZEC divided the total number of registered voters at the national level by 210 constituencies resulting in a national average of 27 640 voters per constituency. Thus, using a 20%, the maximum registered voter threshold was 33 169 and the minimum 22 112 voters per constituency. Using the same formula, ZESN had also previously sought to determine the distribution of national assembly constituencies across the ten provinces in the country.

3.1 Distribution of national assembly constituencies across provinces

Using the same formula as ZEC, and with reference to registered voters as at 30 May 2022, ZESN sought to determine the distribution of the 210 constituencies across provinces. The results are present in the table below.

Table 2: Distribution of constituencies across provinces by registered voters

	Registered voters (30 May 2022)	Constituencies per province using formula	Constituencies per province as a result of delimitation	Difference	% Difference
Bulawayo Metropolitan	270 938	10	12	2	20%
Harare Metropolitan	952 102	34	30	-4	12%
Manicaland	738 624	27	26	-1	4%
Mashonaland central	536 463	19	18	-1	5%

Mashonaland East	641 668	23	23	0	0%
Mashonaland West	661 289	24	22	2	8%
Masvingo	632 320	23	26	3	13%
Matabeleland North	340 427	12	13	1	8%
Matabeleland South	267 617	10	12	2	20%
Midlands	762 928	28	28	0	0%
Total	5 804 376	210	210		

The distribution of these constituencies is shown in the column 'constituencies per province using the formula'. Thus, ZESN divided the total number of registered voters in a province by the national average of 27 640 voters per constituency. The results show a discrepancy between what ZESN gets using the formula and what ZEC reported. For example, the formula resulted in 34 constituencies for Harare Metropolitan, 10 for Bulawayo, 23 for Masvingo and 10 for Matabeleland South. But according to ZEC, Harare Metropolitan 30 constituencies instead of 34. The other provinces with less than expected number of constituencies are Manicaland, Mashonaland West and Central. There was a notable increase in the number of constituencies allocated to Masvingo (from 23 to 26), Bulawayo Metropolitan (from 10 to 12) and Matabeleland South (from 10 to 12), for example.

Further examination of ZEC's report shows that ZEC applied this formula inconsistently across provinces. For example, in Bulawayo, ZEC divided the total number of voters in the province (270 938), by the national minimum number of registered voters permissible in terms of the constitution (22 112) and rounded off the result to the nearest whole number resulting in 12 constituencies being allocated to the province regardless of its population of registered voters. This gave the province the same number of consistencies as allocated to it in 2007/8. In Harare, the Commission chose to divide the total number of registered voters (952 102) by 29 (number of Constituencies Harare was allocated in 2008) 'to ascertain whether the average voter population for a constituency in the Province adhered to the constitutional thresholds.' This approach and inconsistent in the application of the formula by Commission had the effect of taking back the recently completed delimitation exercise to 2007/8 (see Table 4).

It is not immediately clear, however, how other provinces like Manicaland, Mashonaland Central, East, West, Midlands and others maintained the same number of constituencies as allocated to them in 2007/8.

While all constituencies fall within ZEC’s calculated range of 22 112 to 33 169, Harare has the largest constituencies by voter population compared to all other provinces. For example, most of the constituencies in Bulawayo, Masvingo and Matabeleland South are close to the minimum threshold while 25 out of 30 constituencies allocated to Harare have at least 31 000 registered voters.

3.2 Change in the population of registered voters across provinces over the years

Table 3: Change in the provincial population of registered voters from to 2008 to 2023

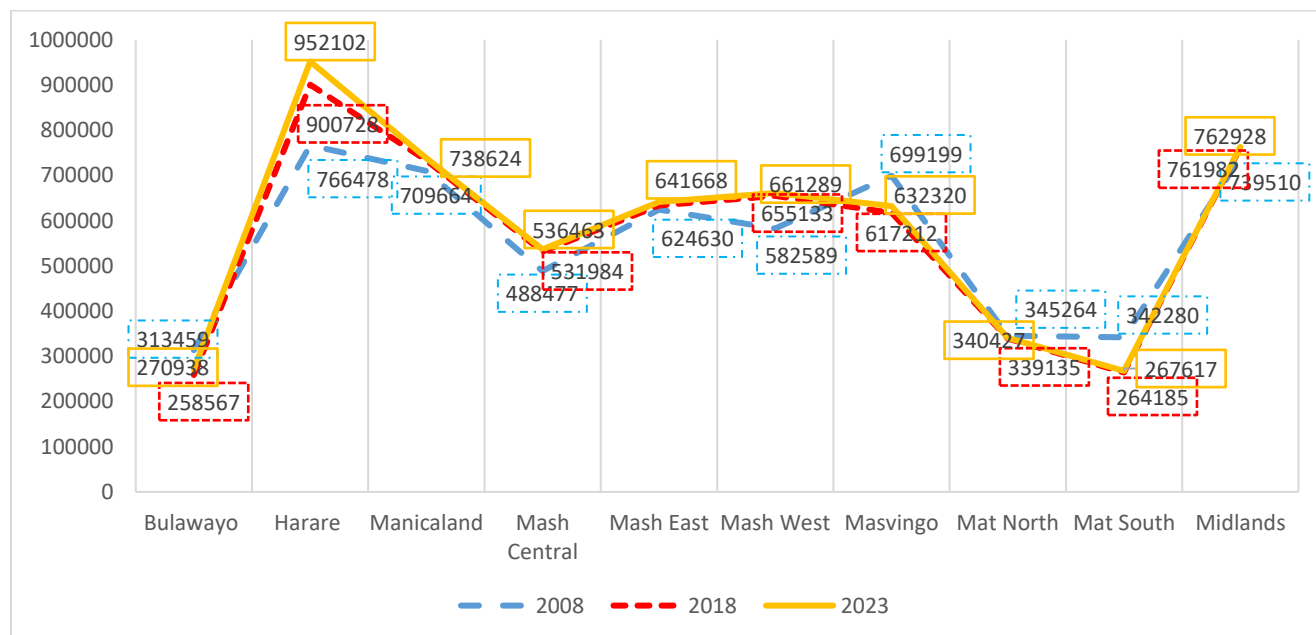


Table 3 shows the change in the population of registered voters across province from 2008 to 2023. The change varies across provinces. While other provinces show a steady increase in registered voters (Harare) others fluctuate (Masvingo; Matabeleland South (Mat South)). Below, ZESN examines how the number of constituencies allocated to these provinces responded to the shift in the number of registered voters. The focus is on the years during which the delimitation exercise was conducted.

3.3 Comparing number of constituencies across provinces for 2008 and 2023

Table 4: The number of Constituencies across provinces for 2008 and 2023

	Registered voters		Percentage Change in voters	Constituencies	
	2008 (ZESN, 2008)	30 May 2022 (ZEC, Preliminary)		2008	2023

Bulawayo Metropolitan	313 459	270 938	-0.8%	12	12
Harare Metropolitan	766 478	952 102	3.3%	29	30
Manicaland	709 664	738 624	0.5%	26	26
Mashonaland central	488 477	536 463	0.9%	18	18
Mashonaland East	624 630	641 668	0.3%	23	23
Mashonaland West	582 589	661 289	1.4%	22	22
Masvingo	699 199	632 320	-1.2%	26	26
Matabeleland North	345 264	340 427	-0.1%	13	13
Matabeleland South	342 280	267 617	-1.3%	13	12
Midlands	739 510	762 928	0.4%	28	28
Total	5 611 550	5 804 376	3.4%	210	210

Table 4 shows that ZEC maintained the 2008 distribution of the number of constituencies across the provinces despite variable changes in the voting population observable across these provinces. We have provinces that maintained the same number of constituencies despite the decrease in the registered voters such as Bulawayo (-0.8%) and Masvingo (-1.2%). Only Matabeleland South (-1.3%) has seen the number its national assembly constituencies marginally reduced from 13 in 2007/8 to 12 in 2023. The reason given by ZEC is that the province recorded a low number of registered voters and therefore failed to maintain the 13 constituencies it was allocated in 2007/8. While the explanation by ZEC is plausible, it seems to have been applied selectively and only to Matabeleland South province.

Provinces that have recorded increase in registered voters such as Mashonaland East (1.4%), Mashonaland Central (0.9%), Manicaland (0.5%), and Mashonaland East (0.3%), still maintained the number of constituencies allocated them in 2007/8. The real increase in registered voters is in Harare (3.3%), but whose national assembly constituencies marginally increased with only one instead of four as already proposed in this report. Overall, the Commission made only two minor adjustments to the number of National Assembly constituencies across provinces and these adjustments are in Harare Metropolitan and Matabeleland South.

3.4 Comparison of registered voters to the Zimbabwe's census population

There were also concerns that ZEC did not give due consideration to the Zimbabwean population, a critical factor in attaining equal number of voters in a constituency or ward. Instead of comparing the number of registered voters to the whole population as per the preliminary census data, ZEC used the adult census population. This observation by the Ad Hoc Committee is consistent with the law which mentions the Zimbabwean population as one of the factors ZEC must, in respect of any area, give due consideration. In table 5, ZESN compares the preliminary census population figures to the number of registered voters as at 30 May 2022.

Table 5: Comparison of registered voters to the Zimbabwe’s census population

	Total population (2022 Preliminary census data)	Registered voters (30 May 2022)	Percentage
Bulawayo	665 940	270 938	2.60%
Manicaland	2 037 762	738 624	8.56%
Mashonaland Central	1 384 891	536 463	5.59%
Mashonaland East	1 731 181	641 668	7.18%
Mashonaland West	1 893 578	661 289	8.12%
Matabeleland North	827 626	340 427	3.21%
Matabeleland South	760 345	267 617	3.25%
Midlands	1 811 908	762 928	6.91%
Masvingo	1 638 539	632 320	6.63%
Harare	2 427 209	952 102	9.72%
Total	15 178 979	5 804 376	61.76%

A comparison of the voter population figures and the preliminary National Population and Housing Census figures shows that the total number of registered voters represent approximately 62% of the Zimbabwean population. In contrast, ZEC’s comparison of the adult census figures with registered voters showed that the total number of registered voters was roughly 72% of the adult population. Thus, giving a 10-percentage point difference between the two approaches.

While ZEC made reference to a segment of the preliminary census population (adult population), it is not clear how this helped inform the attainment of equal number of voters in a constituency or ward in order to address the Ad Hoc Committee’s concerns that non-voters and children should be considered because they are also affected by delimitation of electoral boundaries in respect of service delivery.

3.5 Constituency with conflicting registered voter population totals

ZESN identified a case where ZEC figures did not tally. The Buhera Central Constituency, which is reported in the text to have a registered population of 24 493, while the subsequent table with the list of the wards incorrectly shows a total registered voter population of 25 296 is a case in point.

3.6 Delimitation for wards within local authorities

In delimiting the wards, ZEC used registered voters per polling station area and ensured, to the extent possible, 'wards have more or less equal numbers of registered voters across the local authority'. The Ad Hoc Committee has already done a good job in determining whether

- a) There were no wards with registered voter population below the minimum threshold,
- b) All wards had registered voter population within the local authority threshold,
- c) There were no wards registered voter population above the maximum threshold.

In the analysis, ZESN, has confirmed that, a) there are number of wards with registered voter population below the minimum threshold, b) there are number of wards with registered voter population above the maximum threshold. The results are summarised in tables below;

Table 6: Wards delimited above maximum threshold

Province	Authority	Constituency	Ward	Maximum Threshold	Above Maximum threshold
Matabeleland North	Tsholotsho RDC	Tsholotsho North	8	2086	2096
	Victoria Falls municipality	Hwange West	4	2400	2416
	Hwange RDC	Hwange West	2	2188	2267
	Hwange RDC	Hwange East	17	2188	2213
	Hwange RDC	Hwange East	11	2188	2390
Mashonaland West	Zvimba RDC	Zvimba East constituency	1	3,912	4,675
Mashonaland East	Marondera Municipality	Marondera	9	3051	3057
Manicaland province	Makoni RDC	Makoni West	16	3,185	3226
	Makoni RDC	Makoni West	13	3,185	3202
	Makoni RDC	Makoni West	12	3,185	3 274
	Makoni RDC	Headlands	8	3,185	3,231

Table 7: Wards delimited below minimum threshold

Province	Authority	Constituency	Ward	Minimum threshold	Below threshold
Manicaland	Makoni RDC	Makoni West	25	2123	2111
Mashonaland Central	Bindura Municipality	Bindura North	4	1570	1559
Mashonaland Central	Pfura RDC	Mt. Darwin West	19	2033	2028
Matabeleland South	Gwanda RDC	Gwanda South constituency	20	1585	1524
	Matobo RDC	Matobo	14	1105	1104

3.7 Wards with incorrect averages, minimum and maximum thresholds

ZESN was also able to confirm that in Matabeleland North's Hwange RDC, ZEC used an incorrect average resulting in incorrect minimum and maximum threshold. With a registered population of 36 481 and a total of 20 wards, Hwange RDC should have an average of 1824 voters per ward, with a minimum threshold of 1459 and maximum of 2189, using ZEC interpretation of the 20% variance. Instead, ZEC reported an incorrect average of 1 842 voters per ward a maximum voter threshold of 2 211 and a minimum threshold of 1 474 voters per ward for the Rural District Council. The commission then proceeded to delimit the wards on the basis on these incorrect figures.

4 0 Merging and Reconfiguration of Constituencies

The Delimitation Report showed that some constituencies were merged. The same finding was made in this Report, and ZEC does not dispute merging or reconfiguring certain constituencies. The implications of this merging are as follows:

- 4.1 The merging/collapsing of some voting districts has massive implications on voting patterns and representativeness. There is no doubt that if the merging was done correctly, it enhances representativeness and adequately reflects voting strength in line with constitutional standards.
- 4.2 Unjustified merging means two or more constituencies are now fused into one constituency without just cause. This means voters who were in two constituencies now vote in one constituency. It also means that there are less constituencies in a certain district than previously.
- 4.3 The implication for this is that voting patterns may be distorted in favour of particular candidates. In the same vein, voting patterns may be distorted against

certain candidates. Merging of constituencies therefore assists certain candidates whilst endangering others. To further buttress this point, the Report of the Ad Hoc Committee of Parliament asserted as follows:

'The collapsing of constituencies and wards affects the legitimate expectations of stakeholders who may be adversely affected by that decision. The explanation by ZEC during the oral evidence was that Constituencies with fewer registered voters were collapsed to give in registered voters to the Constituencies which had more numbers of the registered voters.'

However, in some instances, the formula was not applied consistently as wards or constituencies with more registered voters were collapsed to boost numbers in wards of constituencies with fewer numbers. The case in point is Chikomba Central which had 16 611 voters which was collapsed to cede voters to Chikomba East and Chikomba West which had 14 240 and 30 187, respectively.'

On the basis of the above, this means that the voting characteristics of Chikomba Central shall be drowned and suppressed upon its voters being divided between Chikomba East and Chikomba West. To exemplify the point, it is easy to imagine a scenario where voters in Chikomba Central prefer Party A, and voters in Chikomba East and Chikomba West prefer Party B. If Chikomba Central is merged by dividing its voters by two, and allocating them to Chikomba East and West, it means they are a minority in their new constituency. Being a minority, they are submerged by the majority and are ultimately outvoted. It must be observed that there is no logical formula that can reasonably justify ZEC collapsing Chikomba Central, and the decision is irrational and in violation of the principles of fairness and administrative justice.

Another direct implication is that this gimmick can be used to destroy strongholds of certain political parties in favour of others. By merging, there is a risk of submerging opposing voice, or forced alignment of voting attitudes out of fear and intimidation by the dominant party.

5.0 Key Implications of ZEC Preliminary Delimitation Report

5.1 Overall, the findings of the Ad Hoc Committee of Parliament pointed at critical flaws in the ZEC Preliminary Report. The identified flaws are of such nature as to necessitate conducting a new delimitation exercise altogether since the formulae used, the manner the formulae were applied and some conclusions made are not correct.

- 5.2 ZEC appointed the majority of its Commissioners in June 2022, and began conducting delimitation soon after. This means that there was no experience whatsoever in handling delimitation issues, or in supervising the process. The lack of experience and technical capacity suggests that there was an opportunity to use experts and consultants, which may not have been taken by ZEC.
- 5.3 The absence of Delimitation Regulations is not justified, particularly in view of the general principle that constitutional provisions need to be comprehensively given effect to by implementing legislation. The constitutional provisions on delimitation are not exhaustive, and leaves ZEC with so much discretion and free-will, which creates room for errors.....
- 5.4 A full inquiry must be conducted on the ZEC commissioners who signed off a protest against the submission of the Report to the President. The protestations by these majority commissioners point to ZEC admitting to the fundamental mistakes made in the Report, and the fact that the Report does not meet the constitutional standards. Such an inquiry can determine whether ZEC Commissioners were impartial throughout the process.
- 5.5 In view of its mandate, ZEC has to finalise the delimitation exercise in time for elections. Failure is not an option since it would directly mean failure by a constitutional body to deliver on its mandate.
- 5.6 The President referred back the ZEC preliminary delimitation report to the Commission so that it gives further consideration to the issues concerned. In terms of the Constitution, the Commission's decision on the Report is final. This means the Commission can decide to ignore the issues raised and stick to the contents raised.
- 5.7 The involvement of the Commission, the Parliament of Zimbabwe and the President creates a convergence between the Executive, the Legislature and an independent Chapter 12 institution. Accordingly, there is a real attempt at insulating the Commission from the politics of parliamentarians who are clearly conflicted as they stand to benefit or lose from the shape of constituency boundaries.
- 5.8 From a constitutionalism perspective, the Commission is mandated to deliver a correct, adequately reflective and representative Delimitation Report. The principle of adequate political representation is expressed in section 3 (2) (b) (iii) of the Constitution, and is an element of the principle of good governance. In this regard, proceeding to elections on the basis of a Delimitation Report with so many critical errors, is in breach of the principle of good governance, and in particular, adequate representation.
- 5.9 Upon considering the issues, the ZEC is obliged to submit a final delimitation report to the President, and the President, within fourteen days after receiving the Commission's final report, must publish a proclamation in the Gazette declaring

the names and boundaries of the wards and constituencies as finally determined by the Commission.

- 5.10 There are no constitutional provisions for legal protest against the ZEC Delimitation Reports. In addition, the Electoral Act is silent on the question of challenging the ZEC Report. It is submitted, however, that the final ZEC report can be challenged on several grounds from the perspectives of administrative justice. Further, citizens can challenge the use or adoption of a flawed ZEC Report as an infringement of their constitutional rights and freedoms in Chapter 4 of the Constitution, and in particular, political rights. Citizens may, for instance, legally challenge the ZEC Report on the basis that there were no adequate stakeholder consultations that were conducted by ZEC. In its Delimitation Notice,⁵ ZEC clearly indicated that it 'shall, so far as is practicable, entertain representations from voters, political parties and other interested persons and bodies at national, provincial and district level through the various committees that have been established at each level.' It must be stated that ZEC convened stakeholder consultations for the purpose of conducting the consultative process.

6.0 Conclusion and Recommendations

It is clear that the delimitation exercise is vital for the integrity of the electoral process. To this extent, delimitation exercise is no longer a closed door process conducted by hired technocrats whose reports are beyond the public eye. A scrutiny and analysis of the delimitation exercise and the Delimitation Report is in the public interest as it promotes transparency, accountability, citizen information and institutional integrity. Accordingly, in view of the observations made in this Report, the following Recommendations are made:

- 6.1 ZEC must expeditiously and comprehensively address the fundamental flaws pointed in its Preliminary Report so that the Final Report to be gazetted by the President is a true reflection of voter representativeness. What this implies is that ZEC must not ignore the several flaws and inconsistencies pointed by stakeholders, including a special committee of Parliament. In specific terms, ZEC must take into account and consider recommendations from stakeholder consultative process.
- 6.2 ZEC must develop Delimitation Regulations and submit these to Parliament for debate so that several issues not covered in the Constitution are comprehensively provided for and addressed. These issues include the exact meaning and scope of principles for delimitation, the nature of stakeholder consultations, protest or

⁵ General Notice 1147B of 2022.

- legal redress mechanisms, the meaning of processes such as geo-referencing; digitizing and ground-truthing.
- 6.3 In November 2022, ZESN developed model Delimitation Regulations for submission to ZEC. The Regulations are comprehensive and must be considered by ZEC since they reflect the constitutional standards, but give blood and flesh to the bare bones on delimitation in the Constitution. Further, ZESN drafted a Comprehensive Electoral Amendment Bill and submitted it to Parliament of Zimbabwe for consideration in the amendment of the Electoral Act. This model electoral law has comprehensive provisions on delimitation that are guided by international best practices, including the SADC Principles and Guidelines for Governing Democratic Elections and the African Charter on Democracy, Elections and Governance. Both the model Delimitation Regulations and the model Electoral Bill are available upon request.
- 6.4 ZEC is urged not to use and adopt the 2007-2008 delimitation report for the 2023 general elections. The 2008 Report is based on old data, and cannot in any way reflect current voting patterns and representativeness. It is our submission that ZEC has capacity to correct and address the identified errors and mistakes in time for the gazetting of the Final Report for the 2023 general elections.
- 6.5 To instil public confidence and trust in the delimitation process, ZEC should make available the electronic voters' roll to enable stakeholders to compare the data used by ZEC in compiling the Preliminary Delimitation Report, to the statistics in the voters' roll.
- 6.6 In future, ZEC must hold the delimitation exercise guided by final census reports, not the preliminary reports, which are yet to be validated. The Constitution does not explicitly require ZEC to use census data, but states that the delimitation must occur 'as soon as possible after a population census'. Preliminary reports often contain errors and mistakes that are corrected upon validation and prior to the production of the Final Report. The preliminary census report may not lead to results that reflect reality, thereby distorting representativeness.
-

END