

An Overview of Electoral Laws and Procedures in Zimbabwe

To educate, enlighten and empower!

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1.1 Introduction

Exciting times lie ahead as Zimbabwe looks to the upcoming 2023 harmonised General elections. As we enter into the phase of elections it is important to know our rights to active and passive suffrage. Passive suffrage is the right to run for office, whilst active suffrage is referred to as the right to vote.¹ Elections generally promote democracy. In an election, the public expresses itself by selecting representatives to advance their interests in local authorities, parliament and government by voting them into public offices. This also is an opportunity for those interested in holding public office to offer themselves for the same.

The right to active and passive suffrage² is firmly established by the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.³ It is crucial that these rights are acknowledged in national existing legislation. Electoral laws are fairly complex and broad. To understand these laws, the article will discuss the fundamental right to vote and be voted for, election administration and management. This includes the need to determine eligibility to vote and be elected, the qualifications needed to become a Member of Parliament, matters involving delimitation, the registration of political parties, and the remedies available to an aggrieved party.

1.2. Function of Election Laws

Election law is a combination of political science and constitutional law. Who votes, when and how they vote, for whom they can vote, how campaigns are run, and how votes are recorded, counted, distributed and announced are the main

¹ Platform, European Liberties. "What Is Active and Passive Suffrage? How Does the Electoral System Work?" Liberties. Eu, <https://www.liberties.eu/en/stories/xxx/44206>. Accessed 1 July 2022.

² "Suffrage" or "electoral legislation" refers to all the legal rules that specify how democratic elections must be conducted. Thus, it sets rules for who is eligible to vote and run for office, as well as for how often elections should be held

³ Constitution of Zimbabwe Amendment (No 20), (2013).

concepts in election law.⁴ In order to effectively implement the constitutional principles of the right to active and passive suffrage, electoral laws must provide a comprehensive scope of procedural rules.

2. Regulations

2.1. The Constitution

The Constitution governs the Zimbabwe Election Commission (ZEC), which oversees the conduct of elections in Zimbabwe.⁵ The Constitution of Zimbabwe⁶ and the Electoral Act⁷ both outline certain political and electoral rights. Zimbabweans have the freedom to create their own political parties and to join any political party they choose, pursuant to Section 67(2) (a) of the Constitution. According to the guiding principles entrenched in section 155 of the Constitution, elections must be held on a regular basis. Referendums to which the Constitution applies must be peaceful, free, and fair, conducted by secret ballot; based on equal voting rights for all eligible adults; and free from violence and other electoral irregularities.⁸ The State is required to take all necessary steps, including legislative ones, to guarantee that the principles outlined in the constitution are implemented.⁹ The statute enacting these principles must be the Electoral Act.

⁴ "Elections." TheFreeDictionary.Com, <https://legal-dictionary.thefreedictionary.com/Elections>. Accessed 26 June 2022.

⁵ The Zimbabwe Electoral Commission (ZEC) is an independent institution established in terms of Section 238 of the Constitution of Zimbabwe; which is responsible for the management and administration of Zimbabwe's electoral processes.

⁶ The principles of Zimbabwe's election system are collectively outlined in Sections 67 and 155 of the Constitution. Accordingly, Citizens over the age of 18 have the right to free, fair, and regular elections and referendums. If elected, they are permitted to run for and hold public office.

⁷ Electoral Act [Chapter 2:13]

⁸ Section 67(3) of the Constitution of Zimbabwe Amendment (No 20), (2013)

⁹ Section 155 (1) (c) of the Constitution of Zimbabwe guarantees that all eligible political parties and candidates running for office or taking part in a referendum have fair and equal access to all information and materials needed for them to participate effectively; provide for their fair and equal access to

2.2. The Electoral Act [Chapter 2:13]

The electoral legal framework in Zimbabwe is almost entirely governed by the Electoral Act. It covers every aspect of exercising one's right to vote. It serves as the framework for putting the electoral system's constitutional provisions into action. It specifies the periods of office, conditions of service, qualifications, and resignation of members of the Zimbabwean Electoral Commission, as well as the process for nominating, electing, and filling vacancies in Parliament among its other functions. It also established the Electoral Court and specified its duties.

2.3. The Electoral Court

The Electoral Court was created in terms of section 162(1) of the Electoral Act.¹⁰ This Act confers exclusive jurisdiction on the Electoral Court to hear appeals, applications, and petitions filed under the Electoral Act; to review any decision made by the Zimbabwe Electoral Commission or by anyone else under the Act; and to issue judgments, orders, and directions in those matters that may be issued by the High Court. No criminal case may be tried by the Electoral Court.

The Electoral Court judge may use his or her authority while seated alone or alongside one or more assessors. Electoral Court decisions, orders, and directives are equally enforceable as High Court decisions, orders, and directives. A judge of the Electoral Court may exercise its jurisdiction while sitting alone or with one or more assessors.

2.4. The Electoral Court Rules of 1995

The Electoral Court Rules of 1995 govern how election petitions are handled before the Electoral Court.¹¹The Constitution, Electoral Act, Electoral Court Rules,

electronic and print media, both public and private; and ensure the prompt resolution of electoral disputes.

¹⁰ Section 162(1) of the Electoral Act [Chapter 2:13].

¹¹ "Electoral (Applications, Appeals and Petitions) Rules, 1995." *IFES*, <https://www.ifes.org/election-materials/electoral-applications-appeals-and-petitions-rules-1995>. Accessed 28 June 2022.

and Constitutional Court Rules read together constitute a compass that directs the Electoral Court and the Constitutional Court. When a party is aggrieved by a decision relating to elections, it is important to adhere to the court rules. In the case of *Muthinhiri v Chiwethu*, the petitioners were seeking the setting aside of the electoral results on account of irregularity. The petition was however dismissed by Bhunu J, who held that a deliberate failure to comply with the Electoral Rules was no excuse for not complying with the law, for ignorance of the law is no excuse. The Electoral Court has powers similar to those exercised by the High Court.¹² This means parties aggrieved by Electoral court decisions can seek remedies in the Supreme Court.

2.5. The Zimbabwe Electoral Commission (ZEC)

ZEC was established in accordance with Section 238 of Zimbabwe's Constitution. Their duties, which are outlined in section 239, include organising, conducting, and supervising elections for the House of Representatives. The role of ZEC is to ensure that referendums and elections are carried out effectively, freely, fairly, transparently, and in accordance with the law.¹³ Additionally, the ZEC is responsible for overseeing the Speaker and Senate President elections and making sure they are performed legally and effectively. It maintains and protects voter registration and rolls, creates and distributes ballots.

The ZEC also assembles voting machines, and positions polling places, among others.¹⁴ Elections are protected throughout the country by the Election Commission. The function of ZEC is to also delimit constituencies, wards and other electoral boundaries. Before every election, it releases a Model Code of

¹² Section 162(1) of the Electoral Act [Chapter 2:13].

¹³ Section 238 and 239 of the Constitution of Zimbabwe.

¹⁴ Zimbabwe Electoral Commission. <https://www.zec.org.zw/pages/functions.php> . Accessed 26 June 2022.

Conduct for Political Parties and Candidates in a bid to conduct elections in a free and fair way.¹⁵

2.6. ZEC Provincial Electoral Officers

The role of Electoral Officers is to manage and or supervise polling processes at Polling Stations to ensure that elections are conducted in terms of the Constitution and Electoral Law. ZEC has a prescribed manual which provides instructions on the duties and responsibilities of Electoral Officers on the relevant legal provisions and procedures that must be followed.¹⁶

Election Officers are appointed in terms of section 52(1) of the Electoral Act¹⁷ for the purposes of the poll. The Commission will select, screen and train the Electoral Officers, enabling them to perform their functions and duties according to the Constitution and Electoral Law. For the period of an Election, every person seconded to the Commission will be under the Commission's direction and control in every respect.¹⁸

3. Composition of the Parliament.

The Constitution of Zimbabwe requires the election of 350 Members of Parliament. The Parliament is divided between the Senate and the National Assembly, which consist of 80 and 270 members, respectively.

3.1. The National Assembly.

The National Assembly, which is the lower chamber has 270 members, and is set up according to Section 124 of the constitution.¹⁹ Of these, 210 are elected from

¹⁵ A Model Code of Conduct is a set of guidelines and instructions on campaigning, general conduct, meetings, etc. during elections.

¹⁶ <https://www.zec.org.zw/final/files/ZEC%20Election%20Officers%20Full%20Manual.pdf> Accessed on 27 June 2022

¹⁷ Section 52(1) Of the The Electoral Act [Chapter 2:13]

¹⁸ [Electoral Act Section 10(3)]

¹⁹ Section 125 of the Constitution (2013)

single-member constituencies. The remaining 60 seats are reserved for women, and are elected by proportional representation from the ten constituencies corresponding to the country's provinces.²⁰ Proportional representation is an electoral system in which the number of seats held by a political group or party in a legislative body is determined by the number of popular votes received.

3.2.1. Qualifications to the National Assembly

The requirements for election to the National Assembly are outlined in Section 125 of the Constitution. A person is eligible to run for office if he or she is at least 21 years old and registered to vote.

3.2.2. Disqualifications

If a candidate has been disqualified from voting or has abandoned a seat in the Senate or the National Assembly within five years of the election due to a criminal conviction, they are unable to run for election as a Member of the National Assembly. A party must have submitted nomination papers for an election under the proportional representation system in order to be eligible.

3.3. National Assembly Proportional Representation System

The National Assembly Proportional Representation System is used to elect six representatives from each of the ten provinces that make up the National Assembly. 60 members from the Women's Quota, are chosen through party-list proportional representation.²¹ A Quota is an equal opportunity measure designed to address the slow pace of change in the participation of women where they are historically under-represented. The number of seats to be

²⁰ <https://www.zec.org.zw/final/files/Electoral%20Systems%20in%20Zimbabwe%20.pdf> Accessed 27 June 2022.

²¹ The Zimbabwean constitution under section 124 (1) (b) provides for an additional sixty women members.

distributed to each party is based on the results of the votes cast in the provinces for the parties' running candidates in the National Assembly elections.

3.4. System of First-Past -The -Post

The lower house of Parliament (the National Assembly) and local authority elections both use the First-Past-the-Post system, which simply means that the candidate who gets more votes than any of the other candidates will be declared the winning candidate. The nation is divided into 210 electoral seats and 1958 wards under this election system, each of which is represented by a candidate. The candidate who earns a minimum of one vote more than the opposing candidate wins in each constituency.

3.5. The composition of the Senate

The Senate, which is the upper chamber, is set up in terms of section 120 of the Constitution. Party-list proportional representation is used to elect the 60 senators. Party-list proportional representation is a method of voting for several electoral candidates, usually members of the same political party, with one mark of the ballot. Six from each of the 10 provinces are elected to the upper House of Parliament.

Party-list proportional representation involves each party presenting a list of candidates to the electorate in each electoral district. Voters vote for a party, and parties receive seats in proportion to their overall share of the vote in the electoral district. Winning candidates are taken from the lists in order of their position on the lists. Male and female candidates are alternately included on each party list for the Senate, with a female candidate at the top of each list (Zebra list). The President and Vice President of the National Council of Chiefs, as well as the Chiefs, people with disabilities, and the remaining 20 Senate seats are allocated among them.²²

²² Section 120 of the Constitution (2013)

3.5.1. Qualifications of Senators

The requirements for election to the national Assembly are outlined in Section 120 of the Constitution. A person is eligible to run for office if he or she is at least 40 years old and registered to vote.

3.5.2. Disqualifications

A person is disqualified for election as a Senator if, within five years before the election, he or she vacated a seat in the Senate or the National Assembly in terms of section 129(1)(i) of the Constitution through having been convicted of an offence.²³ A person is also disqualified for election at a by-election in the Senate if he or she is a Member of Parliament.

1. Registration of political parties

A political party is specifically described as "*an association of persons of which the principal goal is to gain the election of one or more of its members to a local government or Parliament*"²⁴ There are no laws in Zimbabwe that compel political parties to register in order to legally exist. The only time registration is obligatory in Zimbabwe is during elections when a party wants to contest by fielding a candidate/s. That is, a candidate is required by law to be proposed and endorsed by a certain number of registered voters in his/her constituency. A cursory look at the Political Parties Finance Act framework also indicates that political parties are free to regulate their affairs as they deem fit. The state does not interfere at all in the running of the 'domestic' affairs of these parties.²⁵

²³ Section 129(1)(i) provides that the seat of a Member of Parliament becomes vacant, if the Member is convicted in Zimbabwe of an offence of which breach of trust, dishonesty or physical violence is an essential element

²⁴ The Political Parties Finance Act of (Chapter 2:11)

²⁵ The Political Parties Finance Act.

5. Delimitation

Delimitation is the process of dividing constituencies for the purposes of elections. It divides the country into constituencies and wards in order to elect persons to constituency seats in the National Assembly and of councillors to local authorities.²⁶ Once every ten years, 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. To ensure there are little to no issues of conflicting district, province, and constituency boundaries, boundaries must be made explicit. This is provided for under s61 (1) of the Constitution.²⁷

The process of delimitation has already begun. The General Notice 1147B of 2022 served as a notice of the beginning of delimitation.²⁸ The process is provided for in terms of section 161(1) of the Constitution, along with section 37A (1) of the Electoral Act.²⁹

After delimiting wards and constituencies, the Zimbabwe Electoral Commission must submit to the President a preliminary report containing a list of the wards and constituencies, a description of their boundaries, a map or maps showing the wards and constituencies and any further information or particulars which the Commission deems necessary. The President must lay the preliminary delimitation report before Parliament within seven days. The President has

²⁶ Section 160 and 161 of the Constitution (2013)

²⁷ It is provided in terms of section 161(1) of the Constitution that, once every ten years, on a date or within a period fixed by the Zimbabwe Electoral Commission so as to fall soon as possible after a population census, the Zimbabwe Electoral Commission must conduct a delimitation of electoral boundaries into which Zimbabwe is to be divided

²⁸ General Notice 1147B of 2022.

²⁹ Electoral Act [Chapter 2:13]

discretion to report back to the Zimbabwe Electoral Commission for further consideration of any matter or issue.³⁰

As soon as possible, the Zimbabwe Electoral Commission must submit a final delimitation report to the President. 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.

5.1. Why the delimitation process matters in elections.

Any election's success depends on the delineation of precise boundaries. The Delimitation process therefore needs to be done carefully. Election boundaries must, to the greatest extent practicable, produce equally-represented districts with common community interests. One person, one vote is founded on the fundamental idea that every vote must be equal to every other vote.³¹ While the Constitution and the Electoral Act go some way to advance the principles which underpin delimitation, more can be done to ensure that the delimitation process is open, efficient, effective and independent.

5.2. Challenges for Constituency Delimitation Exercise.

There are limited provisions to ensure participation of stakeholders in the delimitation process. There are also no provisions on handling complaints or appeal processes. Moreover, there are no referrals to judicial authorities in cases of an unresolved dispute in the process of delimitation. Further, Urban and Rural Council Acts are not aligned to the Constitution as they contain provisions allowing the President to divide local authority into wards. Citizens largely lack knowledge of the delimitation process. ZEC should ensure consultation with

³⁰ Section 162(7-12) of the Constitution(2013)

³¹ “ *Electoral Boundary Delimitation*”https://www.ifes.org/sites/default/files/electoral_boundary_delimitation_in_zimbabwe_online_pager_september_2019.pdf Accessed on 2 July 2022

stakeholders on delimitation, and the government ought to provide adequate financial resources.³²

6. Dispute Resolution in Zimbabwe

Chapter 7 of the Constitution provides for the complete code in terms of principles governing the electoral system for Zimbabwe.³³ The principles include expeditious resolution of electoral disputes, including disputes challenging the result of an election. In Zimbabwe, a number of institutions, with the court playing a key role, share jurisdiction for the resolution of election disputes and the prosecution of election offences. However, the way election disputes are handled overall shows that more work has to be done to ensure that everyone has access to an effective legal remedy.

In the case of *Nkojana v. Nduna* (SC 5 of 2021)³⁴ The ZEC mistakenly declared Dexter Nduna as the winner and he was then elected as Member of Parliament for Chegutu West. Before the Electoral Court, the appellant sought the correction of the erroneous declaration. However, it was held that the time limits imposed by that provision on the determination of election petitions and appeals were mandatory and must be strictly complied with. Although Justice Patel acknowledged that the appeal had merit, the legal system and judges delayed the matter so much that the matter could no longer be considered. This indicates some shortcomings of procedural rules intended to protect law-abiding citizens, but resultantly fail them. As such, it is important for the State to be better in "ensuring the speedy resolution of election disputes," according to the enshrined principles of the electoral system.³⁵

³² Ngandu, Elington. *Factsheet Delimitation -FINAL.Cdr*. Accessed 1 July 2022.

³³ Chapter 7, Constitution (2013)

³⁴ *Konjana v Nduna* (SC 5 of 2021)

³⁵ section 155 of the Constitution(2013)

6.1. The role of the Zimbabwe Election Commission in Election Dispute Resolution in Zimbabwe.

While the Zimbabwe Electoral Commission (ZEC) is empowered by the 2013 Constitution to receive and address complaints, a thorough administrative dispute resolution procedure is not included in the Electoral Act. Rather, the courts have jurisdiction over various pre- and post-election complaints and infractions. It is crucial to establish a ZEC-led administrative complaints mechanism that enables timely and effective remedies for voters and candidates, particularly in the pre-election phase, and for the ZEC to fully embrace its constitutional election dispute resolution mandate. The absence of a clear administrative process in the law challenges the ZEC's constitutional mandate to resolve disputes and ensure the integrity of the election.

7. Conclusion

This article has explained electoral laws and administrative procedures for prospective Members of the National assembly and election management systems. It has done so by defining the fundamental rights to active and passive universal suffrage, election management systems and administration, delimitation, the registration of political parties, and which courts to go to when aggrieved. One can thus conclude that the right to vote and to run for office, although a constitutional right, is not cut and dry. It has limitations that one ought to be wary of, especially if one has a desire to represent the country as a Member of Parliament.

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