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## **What Needs to be Done Prior to Elections in Zimbabwe?**

The referendum on a new constitution for Zimbabwe took place on March 16, 2013, and the result was an overwhelming “YES” in favour of the proposed new basic law of the land. This result was not surprising, but the high turnout was. The constitutional draft has now been gazetted and when the formal gazette period has come to an end, the document will be presented in Parliament, where it will be passed easily. From there, it will eventually get the presidential signature and only then will Zimbabwe formally have a new constitution.

At that point, elections conducted according to the new constitution will be on the agenda. On what date the elections can take place is presently unclear. What is clear, though, is that the Electoral Act must be amended before many election preparations can even begin. The reason is that the constitution – when finally in force – will change the way Parliament, provincial councils and local councils are elected.

Prior to the implementation of the constitution, a number of politically delicate issues must be looked into. Decisions on these issues will be a precondition for organizing the new elections. To name a few of these examples, it is unclear as to what proportional representation (PR) system shall be used. It is also unclear how many candidates that political parties will be required to have on their party lists and whether those candidates will be allowed to stand in one or more races.

Moreover, some PR systems tend to be better for larger parties than for smaller one, while it is the other way round for other PR systems. Other PR electoral systems tend to be more balanced. As opinion polls indicate that the next election might be a tight race, the choice of PR system might decide who will control the next parliament!

This situation can best be characterised as unfinished business by the politicians and it means that political parties in Zimbabwe cannot hold their primaries and decide on their candidates until they know what the rules of the game(s) will be. It will also not be possible to hold Nomination Courts and the Zimbabwean Election Commission (ZEC) cannot seriously start to prepare for the election, including the procurement of ballot papers!

The many radical changes in the entire electoral machinery will also put a lot of pressure on ZEC, as well as civil society, because there is a burning need to provide information about the new electoral systems. One example will be voters asking, “*Why will we not be voting for Senate in the way we used to?*” or “*Why is there no ballot papers to use in the contest for Senate?*”

The next section of the article digs a little deeper into why the Electoral Act has to be amended, and then a subsequent section details what should be considered before deciding on a PR system. Other important issues, like multiple candidacies and the election of persons with disabilities, are discussed in the later sections.

### **What Changes Are Necessary?**

All the issues touched upon below must somehow be regulated in the Electoral Act through amendments to be passed by Parliament as a matter of urgency. However, some might argue that Parliament should only start working on this piece of legislation when the new constitution is formally in place and one therefore will know for certain what the new political dispensation actually is.

In the upcoming harmonized election, the 210 National Assembly seats are to be elected the very same way as they were in 2008; one representative elected in a first-past-the-post electoral system. However, when it comes to the Senate, the newly introduced 60 women seats in National Assembly and the eight provincial councils, the new constitution has created a unique system. The combination of plurality in single-member constituencies and election by proportional representation (PR) is not a Zimbabwean specialty, but the way it is done is to the best of my knowledge not seen elsewhere.

For the proportional representation seats, the basic idea is that the sum of votes cast for all National Assembly candidates of one party in a particular province – together with the sums of votes for the other parties' candidates in that province – will be used as key for the allocation of seats in the three political bodies mentioned above:

- Six women members of the National Assembly (only for the first two assemblies elected under the new constitution) will be appointed from each province based on the vote distribution in the province's ordinary National Assembly elections (excluding votes for independent candidates).
- Six senators will also be appointed from each province on the basis of votes cast for National Assembly candidates. They will be the province's senators, together with – in the case of the non-metropolitan provinces – the two chief senators, who will be indirectly elected (i.e. not by the voters).
- Ten councillors in each of the eight non-metropolitan councils will also be appointed on the basis of the votes cast for party candidates in the ordinary first-past-the-post National Assembly election

The table below gives an overview of what the new constitutional bodies at the national and provincial levels will look like. On these two politico-administrative levels, there will only be ballots for the presidential tickets and for the ordinary members of the National Assembly. There will not be ballots to cast for Senate or for Members of the Provincial Councils.

<b>Presidency</b>	President and two vice-presidents	One ballot paper
<b>National Assembly (271 members)</b>	Speaker	Elected by MPs, from among the Members or from outside
	210 single-member constituencies	One ballot as before
	60 women members (six from each province)	Appointed on the basis of PR computations, see text
<b>Senate (80 members)</b>	President of Senate	Elected by Senators from among the Senators or from outside
	60 senators (six from each province)	Appointed on the basis of PR computations, see text
	16 senator chiefs, two from each of the eight non-metropolitan provinces	Elected by the Provincial Assembly of Chiefs
	President and Vice-President of the National Council of Chiefs	<i>Ex officio</i>
	Two elected to present persons with disabilities	Election/appointment procedure not yet contemplated.
<b>Metropolitan Councils</b>	All councillors are so-called <i>ex officio</i> -members. This means that they become members because they are either Members of Parliament (National Assembly or Senate) from the province or mayors or chairperson of local authorities in the metropolitan province	No elections by ordinary voters will take place
<b>Non-metropolitan councils</b>	Ten persons in each of these councils	Appointed on the basis of PR computations, see text
	All Members of Parliament (National Assembly and Senate) elected or appointed in the province + mayors and chairpersons of local authorities	Chairman elected by council

*\*As at the time of writing is unclear how local elections are to be conducted, they will not be dealt with here.*

### **Selecting a PR Seat Allocation System**

The constitution does not indicate what kind of proportional representation system is to be used for the allocation of the 60 women members of the National Assembly, the 60 senators, and the 80 provincial councillors. This is very unfortunate since there are many different varieties of systems to allocate seats, and an individual cannot honestly say that one of them is clearly better than the other. Countries using PR have opted for different systems, primarily because they have tried to obtain different objectives and different social and political challenges. So, unfortunately, political science cannot give a clear answer on what PR system to choose. The only selection criterion one can mention in an unbiased way is that the system should be as simple as possible, so that it is easy for voters – or at least for politicians, election administrators, and political commentators – to understand and appreciate how it actually works.

The choice between the different PR systems depends very much on what one wants to achieve when applying a PR seat allocation system. It is primarily a political issue and parties will normally opt for a PR system they expect will be to their own benefit, not only in the first election under the new dispensation, but also in future elections.

Thus, the first important decision for Zimbabwe to make is what PR system to use and whether the same system shall be used in all three PR seat allocations referred to above. This is not a necessity, but it would be very practical to use only one system. Voters are of course only indirectly allowed a say in these seat allocations; it should nevertheless at least be part of the voter education program to explain to voters why their vote for Senate has been taken away from them since the last election! In addition, why is the electorate not electing their representatives to the newly created 60 women seats in the National Assembly via a ballot, which the Kenyan voters could do in March this year?

The other decisions to be taken might look more technical, but they also have potential political consequences. These decisions are related to all kinds of issues, such as what rules should be put in place regarding the party lists needed for all three kinds of seat allocation; where and how should nomination take place; what should happen if a list runs out of available names during the parliamentary term; and, shall multiple candidacies be allowed? Moreover, what shall happen in case of a National Assembly by-election (if anything)?

### **Choosing a PR System**

Shall one choose a divisor system (and then which divisor system?) or a quota system (and then what quota system?). If a quota system is chosen, shall it have an electoral threshold – and then what shall the threshold be?

When choosing a PR system, the key point to remember is that proportional representation is a principle that can be implemented in different ways and, consequently, can have different outcomes.

**Quota systems** work on the basis of an (electoral) quota, which is usually the overall sum of valid votes for candidates standing for political parties, divided by the number of seats to be allocated. (The new constitution effectively prevents independent candidates from becoming senators or allotted the set-aside seats for women in National Assembly.) The actual working of a quota system is illustrated with the example in the table below.

**Allocation of six seats in an imaginary province, using four different proportional representation seat allocation systems:**

### How Does PR Work? 6 seats

Parties in NA race in province	Parties votes in NA elections	Votes / quota	Seats allocated by full quota	Add. seats allocated on the basis of LR	Total number of seats allocated	Full quota as electoral threshold	D'Hondt formula (1, 2, 3 ..)	Ste.-Laguë formula (1, 3, 5,..)
A	107,349	2.722	2	+ 1	3	3	4	3
B	77,687	1.970	1	+ 1	2	3	2	2
C	21,547	0.546		+ 1	1			1
D	11,864	0.301						
E	2,345	0.059						
F	15,642	0.397						
G	209	0.005						
<b>Total</b>	<b>236,643</b>	<b>6.000</b>	<b>3</b>	<b>+3</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>
<b>Hare quota</b>	<b>39,441</b>							



The sum of valid and relevant votes in this imaginary province is 236,643. The quota used most often is the so-called Hare quota, which is this number divided by the number of available seats. In this example, there are six seats to allocate because that is the number of seats to be allocated in each Zimbabwean province for both the senatorial and National Assembly women seats. The result of this calculation is then (in all cases) increased to the next integer, which provides our scenario with a quota number of 39,441.

The sum of votes for each party is then divided by 39,441 and the resulting quotients are compared. Parties with a quotient of 1 or more are then allocated as many seats as the full number they have in their quotient. Normally, that number will not add up to the number of parties contesting, so the remaining number of seats – about half the number of contesting

parties, as the three unallocated seats in this example – will have to be allocated by some other system. The remaining unallocated three seats are then distributed in the declining order of the decimals in the quotients. This system is usually known as the Hare system (after its best known advocate) with largest remainders (LR).

Parties A, B and C have the three highest remainders, and the seats are allocated in declining order to B, A and C. The resulting seat allocation is then seen in the column marked “Total seats allocated”. The Hare + LR system is generally considered a very fair form of proportional representation (at least if the mathematically closest possible correspondence between distribution of votes and distribution of seats is the yardstick). In addition, it is considered fair because neither large nor small parties are particularly favoured in the allocation of seats (since the size of the remainders does not follow from the size of the parties’ sum of votes).

However, some argue that parties with fewer votes than the Hare quota should not be entitled to any seats at all (since they have not earned enough votes to win even one seat). In the present example that would lead to only the two largest parties (A and B) winning seats, and in this case they would get three each (not four and two), as indicated in the next column.

Six is a relatively small number of seats to have for proportional seat allocation, and it’s a well-established fact that with few seats for proportional allocation, it might be difficult to reach a high level of proportionality. In any case, though, the Hare + LR system is one of the PR systems best approaching full proportionality, even with as few as six seats at disposal for allocation.

However, proportional representation is also achievable through the use of a so-called **divisor/highest average system**, where the parties’ sum of votes are all divided by a string of divisors and the resulting quotients then indicate – in declining order – which party is to be given seat no. 1, seat no 2, etc. An often used system is the d’Hondt system (named after its inventor, a Belgian mathematician), where the string of divisors is 1, 2, 3, 4, etc. This system is known to be biased in favour of the largest parties; in constituencies with only six seats this will normally significantly affect the actual results, which will diminish the achievable level of proportionality. In the current example, this seat allocation system would lead to Party A getting four seats and Party B getting two seats, while the remaining five parties would get nothing.

Another system is the St. Laguë-system (also named after its inventor), where the string of divisors is 1, 3, 5, etc. It will in almost all cases – at least nine out of ten – lead to the same seat allocation pattern as the Hare + LR-system, and it is therefore much to be preferred to d’Hondt *if the objective is to reach a decent level of proportionality*. Whether one prefers a quota system (as Hare + LR) or a divisor/highest average system (as St. Laguë) is, therefore, normally inconsequential as far as seat allocation is concerned. In the example above, one sees that the three largest parties get 3, 2 and 1 seat, respectively, i.e. the same allocation as under the Hare + LR system.

The example is on purpose kept simple and is only based on one province (functioning as a multi-member constituency). But it should be remembered that the effects of the various PR systems on the overall composition of Parliament is what happens in one constituency – as in the example used here – multiplied by ten, as there are ten constitutionally defined provinces in Zimbabwe.

Some political systems allow parties to form electoral alliances for the purpose of avoiding losing out in the seat allocation game. Such alliances can be formed either by parties on the basis of ideological sympathies or because they all are small and want to join forces to get at least one of the small parties represented. For the sake of simplicity and transparency of the seat allocation process, one could argue that it would be best not to allow the formation of electoral alliances, as that might be one way of attempting to circumvent the system introduced in the Constitution (even though it would not be against the letter of the Constitution).

### **Delaying Effects of Election Disputes?**

The election results for a province can only be computed when the validated vote counts from **all** the constituencies in the province are available. The results – and the details of the computations – must then be published immediately for the sake of full transparency and to secure confidence in the results and, more general, political legitimacy.

If a dispute arises over the result from one or more constituencies in a province, according to Zimbabwean law, it can take up to six months before the final sum of votes from the concerned provinces can be completed. It will therefore be impossible to calculate the number of women seats and senatorial seats from the province according to the constitutional provisions. It will also be impossible to finalise the computation of the number of provincial councilors in the province in question. Procedures to be followed in such situations do not currently exist and must be drafted and included in the Electoral Act. If several constituencies' election results are disputed, in particular, it does not make sense to go ahead calculating how women seats and senatorial seats should be distributed. If that is the case, are these seats then to be left open until the relevant authorities have settled the disputes?

### **Casual Vacancies?**

The rules to be followed in cases of casual and other vacancies must also be spelled out. Normally, vacancies in the set-aside women seats will not create problems if the party list is long enough, but procedures to be followed should be spelled out in the Electoral Act. For example, how is a substitute informed of her elevation to become a member of the National Assembly, etc? And what happens if no substitute from the party is available and, in relation to the senatorial seats,

what happens in that rare situation where no substitute of the right gender and/or the right party is in place?

### **Party Lists Are Required – But What Is Required of the Party Lists?**

All three kinds of seat allocation –for women seats in the National Assembly, for senatorial seats, and for elected councilors – require that lists of candidates for each party (hereafter: party lists) must be put together at provincial (and council) level as a precondition for allocating seats to individual candidates. The political parties might of course have different rules for how this should be done.

For the senatorial lists, it is further required (Art. 120(2) (b)) that both male and female candidates must be on the list for the list to be valid, with a woman first, then a man, then a woman, etc., a system which is often called **a zipping system of candidate ordering**. It is very commendable that Zimbabwe has chosen to require a woman candidate on top of all the lists for Senate as that will in and by itself increase women representation in the Senate compared to what would otherwise have been the case. Other countries could learn from this.

Before the electoral campaign starts, all party lists must be validated by the election authorities, which normally occurs in some kind of nomination court at the provincial level. Following this, the lists should be published, so that voters can learn what the complete political package is when they vote for a particular candidate/party in their single member constituency.

It should be noted that Article 124(1) (b) of the Constitution does not mention party lists for the election of the women candidates, but seat allocation under a proportional representation system presupposes lists of candidates. This is probably an oversight by the drafters of the constitution, which should not give rise to any problem at this point in time.

ZEC and other authorities should not interfere with how political parties find/appoint their candidates in the various provinces, but it must be completely clear when and where the parties' office-bearers must hand in the lists for scrutiny, approval and subsequent publication.

### **Multiple Candidacies?**

The next question is if multiple candidacies should be allowed, so that, for example, a female candidate in a constituency can also be on her party's list of women candidates? If so, shall that only be allowed in the province where her constituency is situated, or can it also be in another province? If elected in the constituency, she is automatically stricken of the party list and the next available women on the list will take her place, if the party is entitled to a woman seat. It should

be noted that this requirement is not the same as what is aimed at by Article 120(5) of the Constitution. Decisions must also be taken about whether or not this woman might also be on her party's list of senatorial candidates in the province – or in another province if triple candidacies are allowed. And what about the councils?

It must be made clear that a candidate can only be a candidate for one party. Violations of this should mean that he or she would immediately have to step down from all candidacies, political posts obtained, etc. This must also be in the amendment to the Electoral Act.

### **How Many Candidates on a Party List?**

Shall the amended Electoral Act require parties to put up a specific number of candidates on the party lists? Vacancies are likely, so there must be a sufficient number of possible substitutes available. The candidates on a list are to be ranked (by the party) in the order that they will be appointed to the National Assembly/Senate/Provincial council and that they – if not appointed in the first round – will function as substitutes. This order cannot be changed after the publication of the composition of the list, something which must also be said in no uncertain terms in the amended Electoral Act.

It must be clarified what the nomination staff must check when they receive the party lists, which are in effect the nomination papers. What personal and what contact information must the lists contain, apart from each candidate's personal signature, which signifies that the candidate accept to be a candidate on this particular list for this particular party? It must also be made clear that the signature also signifies that the candidate will obey the electoral code of conduct for candidates and parties.

Shall the Electoral Act require a certain number of candidates on each and every party list or shall it be left to the parties themselves to decide how many candidates they want to field? If there are too few names, vacancies may empty the list before the end of the electoral term – especially for women candidates for Senate as there will be more of them elected (because they always will have a party's first seat). It is also hard on small parties to require a full list of six or seven names, as some of them might never get even one of their candidates appointed.

It appears to follow from the Constitutional draft (Article 121) that one cannot require that candidates for Senate must be residents of the province where they stand for election.

### **Representation of Persons with Disabilities?**

How shall the two senators representing people with disabilities be chosen? That must also be regulated before the elections. Perhaps some inspiration could be found in the rules regulating the way the two senatorial chiefs are identified. And what shall the definition of a “person with disabilities” look like? The Constitution’s Article 121(3)? There is a need for producing a satisfying definition, since that is also required by the Constitution (Art. 120(1) (d), 121(3), 157(1) e)).

### **Local Authorities?**

Articles 274 and 275 of the Constitution must also be looked at and substantiated so that it becomes clear what electoral system is to be used, and when elections will be in wards and when in the entire council area. The number of votes is also unclear so the entire local authority election area is in need of a general overhaul. It is not yet ready for conducting elections in conformity with constitutional requirements.

Not only elected persons, but all candidates must have their number of votes published to increase legitimacy. Now, only the vote totals of elected persons are to be published.

It also needs to be made clear how the election of chairpersons in rural local authorities is to be conducted (Const. Art. 275(2) (c)).

### **Conclusion**

All the many questions raised above must to be looked into very carefully by all political parties in Zimbabwe and then discussed at the relevant levels in the parties. The reason is that these questions might all have political consequences for the parties’ respective strengths in Parliament, when the votes have been cast for the ordinary National Assembly seats.

Since all issues might have direct political and /or personal consequences, they should be debated in the parties, among the parties, and among the many Zimbabweans with a genuine interest in their country’s future political development. They are also of direct interest for all who hope to obtain a place on a party list for the National Assembly, Senate, or provincial council.

Therefore, these highly political decisions should not be left to legal drafters or political pundits in a drafting committee. Political leaders should have an opportunity to study the issues and agree on how the Electoral Act amendments will look. These amendments must be addressed before even essential planning for the harmonized election can begin, let alone the election actually being held.