



DEFEND • PROTECT • EMPOWER



Implications of the by-election in Zimbabwe on Political Parties Financing and Quota System Representation

**Commissioned By
Citizen in Action Southern
Africa.**

April 2022

Implications of the by-election in Zimbabwe on Political Parties Financing and Quota System Representation

Copyright © 2022 Citizen in Action Southern Africa. All Rights Reserved

Citizen in Action Southern Africa (CIASA)
10 Plantation Drive, Morningside
Mutare
Zimbabwe

Recommended Citation

Citizen in Action Southern Africa (2022). *Implications of the by-election in Zimbabwe on Political Parties Financing and Quota System Representation*. CIASA Publications, Zimbabwe

Open access document

This is an open access document distributed which permits any non-commercial use, distribution and reproduction in any medium, provided the original author and source are credited.

Produced by CIASA, Zimbabwe with contributions from Chibango C, April 2022

Introduction

By-Elections have come, and they have gone. Their effect will long be felt beyond this generation. Laws will be scrutinized and revisited to address the unforeseen effects of a mass by election process which culminated in a new party taking a significant portion of the vote. Decisions made to address this conundrum, will affect generations who might never see implementation of the decisions including this generation. In effect, the elections are past, and the changes made to our law will never apply in retrospect. Should changes in the legal framework be considered? The Citizen Coalition for Change (CCC) has entered the stage but will they be considered for political parties financing in the last year to the next harmonized election? Should they be considered for funding and is there a legal basis? To compound the conundrum, in view of the recent results, the allocation to the quota system representation effectively changes, can quota system MPs that were seconded to the Parliament of Zimbabwe to replace those that were recalled by MDC-T be recalled and be replaced by CCC MPs? Is there a legal basis? So many questions, some answers will be provided in this brief, some will remain and the debate will go on long after.

Starting with end

The demise of Morgan Tsvangirai in 2014 initiated a series of events that has led country to this juncture. It resulted in the takeover by Nelson Chamisa of the Movement for Democratic Change-MDC-T, the formation of a splinter group by Thokozani Khupe again called MDC-T, leading to Chamisa's party contesting elections as the MDC-Alliance with six other parties. Khupe contested elections under MDC-T. A High Court ruling, in 2019, declared the ascendance of Chamisa unconstitutional, ordering the party to go back to its 2014 structures and status and giving back MDC-T leadership to Thokozani Khupe as president and Douglas Mwonzwora as Secretary General. MDC-Alliance had since mutated by way of congress in Gweru 2019, into a fully-fledged party under the leadership of Chamisa. This made them refuse to accept the High Court ruling and defiantly dismissed the possible effects it would have. But the effects were huge, unanticipated and disastrous.

Those who openly declared allegiance to MDC-Alliance and Chamisa were recalled from Parliament in no particular order and *en-masse*. Eventually, the number reached 20 Members of the House of Assembly and more proportional representatives. Councillors were also recalled in large numbers in the different cities controlled by the MDC-Alliance.

COVID-19 pandemic then happened and by elections were halted, while recalls continued for the two years. The net effect were 28 vacancies in the House of Assembly and 122 in the local authorities (some vacancies were a result of death). Eventually, as COVID-19 eased and pressure mounted for by-elections to be conducted, the President gazetted the elections for the 26th of March 2022. As the election loomed, the MDC-T, now led by Douglas Mwonzwora, claimed rights to the MDC-Alliance name to further scuttle any hopes of election revival for the Chamisa led group. In response, Chamisa formed a new party, the Citizen Coalition for Change (CCC), contested the election and won 19 of the House of Assembly seats and 75 of the local authority's seats. Effectively, there is a new party in the Parliament of Zimbabwe and local authorities. A party now eligible to political parties financing and proportional representation. Here, at the end of how it started, is where we begin!



The conundrum

No one envisaged rebranding and or formation of a new party and the implications thereof. The law also did not seem to have anticipated this kind of situation, where several seats become vacant, a new party is formed and grabs them in one by-election. The challenge thereof manifests in the reconfiguration of the political parties financing. The law did not anticipate the possibility of emergence of new political party, several by-elections and change in representation mid-term.

The MDC-T replaced proportional representation MPs immediately after recall in accordance with law. Replacement of party list MPs is immediate, whereas that of MP took longer. The law should have envisaged a situation where if more House of Assembly MPs are recalled, replacement of quota system MPs should be halted, waiting for the by-election. It should take the same time or should wait to see if by-election causes changes in configuration.

The recall law, Section 129(k) of the Constitution of Zimbabwe is the root cause to the challenge the country finds itself in today. The law empowers only the political party represented to be able to recall the member as and they see fit. The reasons can vary but are largely when they seize to be a member of the party or when they cross the floor. This law, has been abused, or overused to the extent of suffocating or diverting the wishes of citizens in an election. More stringent conditions must be put for recall purposes, and should be such that no one individual can recall a party member without the blessing of their national management committee of politburo.

THE CAUSE

Proportional representation

Proportional representation is a product of the 2013 constitution wherein women's quota and senators are allocated using a proportional system after the election. Constitution of Zimbabwe Section 157 (d) a system of proportional representation for the election of persons to the seats in the Senate referred to in section 120 (1) (a) and the seats reserved for women in the National Assembly referred to in section 124 (1) (b), and the procedure for filling vacancies in those seats, which vacancies must be filled by persons— (i) belonging to the same political parties as those who previously held the seats; and (ii) of the same gender as the persons who previously held the seats.



Filling in of vacancies

38 (3) In the event of a vacancy occurring among the party-list members of the Senate or of the National Assembly, otherwise than through a dissolution of Parliament, the President of the Senate or the Speaker, as the case may be, shall notify the Commission of the vacancy, in writing, as soon as possible after he or she becomes aware of it. (4) Upon being notified of a vacancy in terms of subsection (3), the Commission shall without delay— (a) notify the public of the vacancy by notice in the Gazette ; and (b) invite the political party in writing to submit the name of a qualified person to fill the vacancy, for which purpose the political party must lodge with the Commission a nomination paper in the prescribed form referred to in Section 45E(2), countersigned by any two of the designated national office-bearers of the party referred to in section 38A(1)(a) (or by such other two office-bearers of the political party whom the Commission is satisfied are duly authorized to make the required countersignatures).

Was there scope for CCC to submit its party list for Proportional Representation?

Given the magnitude of the recalls in provinces such as Harare province where there were elections in 12 constituencies out of the total of 29 constituencies, there should have been scope for submission of party lists for proportional representation. However, at this juncture, there seems to be no room for CCC to second women candidates for proportional representation. In future, the election administration body, the speaker and lawmakers must anticipate possible reconfiguration of numbers in cases where large numbers are recalled from parliament.

Public Political financing

Section 3(3) of the Political Parties Finance Act states that “for the purpose of subsection (2), each political party whose candidates received at least five per centum of the total number of votes cast in the most recent general election shall be entitled to the same proportion of the total moneys appropriated as the total number of votes cast for its candidates in the election bears to the aggregate of votes cast for all political parties that qualify to be paid moneys in terms of this subsection”

The amount allocated to parties being determined in the annual budget submitted to parliament, and is paid as soon as is practicable thereafter (Political Parties (Finance) Act 2001, 3(1), (6), 5). The budget lays down the amount which each party must receive, and this is determined by the proportion of votes it received in the previous general election (Political Parties (Finance) Act 2001, 3(2), (3))

By-election results must be used to recalculate the proportions of the parties every year (Political Parties (Finance) Act 2001, 3(4)). Section 3(4) states that “Whenever a by-election to fill a vacancy in Parliament is held after a general election, the Minister shall adjust the amounts payable to political parties in respect of the Parliamentary year following that in which the by-election was held, having regard to any changes in the total number of votes cast consequent upon such byelection”

Is the law strict on new parties joining after the “general election”? unless any change was made to amend Section 3(4) of the Political Parties Finance Act to the effect of saying the Minister shall not add a new political party, nothing directly seems to prohibit the Minister allocating the CCC share.

Is CCC eligible for funding in terms of the Political Parties Finance Act?

Section 4 of the Political parties Finance Act stipulates that whenever a by-election to fill a vacancy in Parliament is held after a general election, the Minister shall adjust the amounts payable to political parties in respect of the Parliamentary year following that in which the by-election was held, having regard to any changes in the total number of votes cast consequent on such by-election. It is evident from this Section that the recalculation will pay due regard to the fact that there is now a new political party which garnered 19 seats in parliament, and 126 000 votes in the just ended elections. This will entitle the CCC to a reasonable proportion of the funds allocated in terms of Section 3 of the Political parties Finance Act.

However, it appears as if the recalculations provided for in Section 4 is only done to ascertain the current actual percentages of funds accruing to political parties which contested in the most recent by-elections and not necessarily creating room for new entrants such as CCC. This is because in terms of Section 3, only political parties that participated in the most recent general elections and which got at least 5 % of the votes are entitled to funding. CCC did not participate in the most recent general elections. The Minister of Justice can thus use his power in terms of Section 4 (2) of the Political Parties Finance Act to reject CCC application for funding.

The intention of the law maker when crafting Section 3 of the Political Parties Finance Act was to promote democracy by ensuring that political parties which have a sizeable proportion of Zimbabweans which support them as evidenced by the number of votes they get, should have access to financing. When political parties which have the support of the people fail to thrive, democracy cannot prevail. When the law makers selected the most recent general election as a yardstick to determine which political party has what size of following or support for purposes of receiving funding was inspired by the lawmakers lack of anticipation that there could be a by election which can tilt the configuration of political party's support bases. Even so, they did not anticipate that a new political party can be formed in between general elections and win such large numbers of votes as to warrant them support in terms of the Political Parties Finance Act. To promote democracy, Section 3 of the Political Parties Finance Act must be amended to remove the most recent general elections as the yardstick to measure the size of support a political party has and be replaced with "the most recent elections".

Remedies

Parties qualifying for funding must make application to the Minister administering the Act by the end of the financial year and the Minister may reject the application if it seems that the party does not qualify for funding (Political Parties (Finance) Act 2001, 4(1), (2)). Appeals against a decision of the Minister may be made to the High Court and appeals to the Supreme Court may be made against decisions of the High Court (Political Parties (Finance) Act 2001, 4(3)-(7))

EISA, 2005, Zimbabwe: Party Regulation and Financing, <https://www.eisa.org/wep/zimpartiesc.htm>

CITIZEN IN ACTION SOUTHERN AFRICA



Citizen in Action Southern Africa (CIASA) is a registered apolitical and citizen's rights focused organisation established by a group of young human rights defenders and activists coming together to defend, promote and empower marginalised and disenfranchised community groups in its diversity to fully enjoy their rights. The organisation was registered in 2020 as a Trust. The **CIASA** formation was meant to tackle important issues at a scale where it can achieve significant and measurable impacts. The **CIASA** was formed after the realisation that marginalised community groups are being left behind in the empowerment, democracy and governance, and national development discourses of several Southern African countries owing to lack of specific targeted interventions and investments for vulnerable groups particularly youth and women. The team who established **CIASA** also recognised the solidarity and movement building crisis ailing countries in addressing national crisis especially lack of proper democratic and economic governance interventions targeting diverse youth and, women and girls in marginal setups such as hard-to-reach rural areas, resettlements and other economically excluded areas. **CIASA** was established immediately to provide oversight and think tanking around the welfare and rights of marginalised groups with a sole purpose of ensuring progressive realisation and enjoyment of rights by all. The organisation work with citizens in low living standards where social harmony for marginalised women is threatened. Access to basic social services such as water and sanitation, health and education have turned out from being a right into a privilege in both rural and urban areas. **CIASA** is therefore influencing the policies as it relates to the rights of women and girls in their diversity and advance the rights-based and pro-people approach to political, social and economic empowerment through well-thought citizens or community-driven and led reforms premised under the principles of transparency, accountability, democracy and good governance. The organisation is there to create and facilitate space for citizens and communities to have a collective voice to challenge oppressive systems and structural barriers and in turn effectively participate in key decision making processes across the cultural, political, social, environmental, technological and economic spectrum. **CIASA** communicates and measure its results based on its theory of change framework which seeks to defend, promote and empower citizens in all spheres of life.



DEFEND • PROTECT • EMPOWER

CIASA Contact Details

10 Plantation Drive, Morningside, Mutare, Zimbabwe

Cell: +263778548471 / +263774974230

Email: info@ciasouthernafrica.org

Regional Address

8 McGhie Road, Rhodene,

Masvingo, Zimbabwe

www.ciasouthernafrica.org



Account: [Citizen in Action Southern Africa](#)



Twitter Handle: [@CiasaOfficial](#)