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CONTENTS

BRIEFING
ZIMBABWE'S 2013 ELECTIONS
Two Constitutional Controversies and Comments on Some Structural Matters

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ABSTRACT

*Zimbabwe's 2013 elections were tainted with illegality. This article focuses
on two constitutional issues: the election date controversy and the use of
the Presidential Powers (Temporary) Measures Act to effect amendments to
the Electoral Act. It is argued that the language of the Constitution was not
followed. An artificial interpretation of the relevant constitutional provisions
undermined the rule of law and the separation of powers. This is disturbing,
since the meaning of the constitutional provisions concerned is not obscure.
The article also describes some of the 'structures' under which the election
was conducted. The powers and composition of the Zimbabwe Electoral
Commission, the impact of proportional representation on the legislature
and the rules governing the election of the president are therefore outlined
and explained.*

INTRODUCTION

This article has two main purposes. The first involves examining the correctness
of the Constitutional Court's decision concerning the date of the 2013 elections.
The second is to consider the constitutionality of the use of the Presidential Powers
(Temporary) Measures Act to amend the Electoral Act. These are both vital issues
because they are at the heart of the debate about whether the 2013 elections really
were free and fair. Of course, the elections were adversely affected by a number of
irregularities, but it is not possible to discuss them all in a short article like this one.

In addition to addressing the controversies referred to above I have thought
it necessary to say something about three 'structural' matters. These are the

Zimbabwe Electoral Commission (ZEC), the body that administers elections; proportional representation and the rules concerning the election of the president. The advent of proportional representation is a new development in Zimbabwe's electoral history. An understanding of the structure and functions of the ZEC and of how proportional representation affects the composition of Zimbabwe's legislature is helpful in forming a picture of the country's electoral framework. In the previous presidential election, in 2008, there was considerable controversy over whether the rules relating to the election of the president were complied with. Indeed, the controversy extended into a debate over what those rules were. Accordingly, I thought it necessary to state the current rules clearly.

THE ZIMBABWE ELECTORAL COMMISSION

The Zimbabwe Electoral Commission, in its current form, was established by section 238 of the new Constitution. It consists of a chairperson and eight other members (s 238(1)). The chairperson is appointed by the president, who must first consult the Judicial Service Commission (JSC) and the Committee on Standing Rules and Orders (a parliamentary committee (s 238(1)(a)). The other eight members are chosen by the president from a list of at least 12 nominees produced by the Committee on Standing Rules and Orders (s 238(1)(b)). The committee cannot, however, simply put any names it likes on the list. It must first advertise the positions and 'invite the public to make nominations' (s 237 (1)(a) and (b)). The committee must then interview prospective candidates in public (s 237(1)(c)). Only then will the committee be entitled to come up with a list for the president (s 237(1)(d) and (e)).

Both the committee, in preparing the list, and the president, in appointing the members, must be mindful of the fact that ZEC members have to be Zimbabwean citizens (s 238(4) of the new Constitution). In addition, they must be 'chosen for their integrity and experience and for their competence in the conduct of affairs in the public or private sector' (s 238(4)). Members of Parliament, provincial or metropolitan councils, local authorities and 'government controlled entities' (s 320(3)) are not entitled to become members of the ZEC (s 320(3)). Also excluded are public officers (but not judges) and employees of state or state-controlled bodies (s 240).

The president's discretion with regard to the appointment of the chairperson is limited by the fact that the appointee must be a person who is, or was, a judge, or is entitled to be appointed as one (s 238(2)). In making the appointment the president is not bound by any recommendation made by the JSC. This is the effect of the words 'after consultation', as they appear in s 238 (1)(a) of the new Constitution. However, if the president does not adopt such a recommendation,

he 'must cause the Committee on Standing Rules and Orders to be informed as soon as practicable' (s 238(3)). The committee is not given specific powers to take any action in such a situation. The implication appears to be that where a recommendation is not followed the committee may 'question' the president's decision. This may 'embarrass' the president, so that normally he will only ignore a recommendation if he has good reason to do so.

Members of the ZEC may serve for a maximum of two six-year terms (s 238(5)). A member may only be removed from office for:

(a) inability to perform the functions of the office, either because of physical or mental incapacity;
(b) gross incompetence;
(c) gross misconduct; or
(d) becoming ineligible for appointment to ZEC (s 237(2)).

A special tribunal must be established in order to determine whether any of these grounds exists. The tribunal is appointed by the president, who may only do so if he receives advice to that effect from the JSC (s 187(3)). The procedure adopted is, in fact, identical to that used to consider whether a judge ought to be removed from office. If the tribunal recommends that a member be removed, the Minister of Justice must submit copies of the tribunal's report and advice to each house of Parliament 'as soon as practicable … and … no later than seven sitting days of whichever House meets first after the date on which the report and advice were delivered to the president' (s6A of the Electoral Act). It is the president who formally removes a member, but he must act in accordance with the recommendation of the tribunal (s 187(8) of the new Constitution).

Commissioners must disclose any pecuniary or property interests that may be in conflict with their duties as members of ZEC (ss 237(3) and 187 of the new Constitution). This measure is, of course, designed to enhance the independence of the ZEC. In fact, the ZEC is one of the commissions described as 'independent' by section 232 of the new Constitution. Section 235 of the new Constitution stipulates that:

1. The independent commissions
(a) are independent and are not subject to the direction of control of anyone;
(b) must act in accordance with this Constitution;
(c) must exercise their functions without fear, favour or prejudice; although they are accountable to Parliament for the efficient performance of their functions.

2. The state and all institutions and agencies of government at every level, through legislative and other measures, must assist the independent commissions and must protect their independence, impartiality, integrity and effectiveness.
3. No person may interfere with the functioning of the independent commissions.
4. Members are precluded from acting in a 'partisan manner' when exercising their functions (s 236(1)(a)) and must not 'further the interests of any political party or cause' (s 236(1)(b). The rights, freedoms and lawful interests of persons and political parties must be respected by members (s 236(1)(c) and (d)).

The functions assigned to the ZEC are set out in section 239 of the new Constitution. Basically, its task is to 'prepare for, conduct and supervise elections' (s 239(a)). This means ensuring that elections are conducted 'efficiently, freely, fairly, transparently and in accordance with the law' (s 239(b)). Voter registration and the compilation of voters' rolls fall under the control of the ZEC, as does voter education and dealing with complaints from members of the public (s 239(c), (d) and (e)). The ZEC must report to Parliament on the conduct of every election (s 241). Part 1 of Schedule Six of the new Constitution confers certain additional powers on the ZEC for the purpose of enabling it to perform its functions effectively. The commission is also empowered to carry out and facilitate research into matters concerned with elections (s 5(a) of the Electoral Act). It must also inform the public about where to register as a voter, and related matters (s 5(d) of the Electoral Act).

PROPORTIONAL REPRESENTATION AND THE STRUCTURE OF ZIMBABWE'S PARLIAMENT

The new Constitution restructured Zimbabwe's Parliament. This, of course, meant that amendments had to be made to the Electoral Act. The bicameral legislative system was retained, but membership of the two houses – and the way in which members are elected – was changed. Some senators and members of the National Assembly are now elected through a system of proportional representation.

According to section 120 of the new Constitution:

1. The Senate consists of 80 senators, of whom
   a. six are elected from each of the provinces into which Zimbabwe is divided, by a system of proportional representation conforming with subsection (2);
   b. sixteen are chiefs, of whom two are elected by the Provincial

> Assembly of Chiefs from each of the provinces, other than the metropolitan provinces, into which Zimbabwe is divided;
> c. the President and Deputy President of the National Council of Chiefs; and
> d. two are elected in the manner prescribed in the Electoral Law to represent persons with disabilities.
>
> 2. Elections of Senators must be conducted in accordance with the Electoral Law, which must ensure that the Senators referred to in subsection (1)(a) are elected under a party-list system of proportional representation which is based
> a. on the votes cast for candidates representing political parties in each of the provinces in the general election for members of the National Assembly; and
> b. in which male and female candidates are listed alternately, every list being headed by a female candidate.

The National Assembly is made up of 'two hundred and ten members elected by secret ballot from the two hundred and ten constituencies into which Zimbabwe is divided' (s 124(1)(a) of the Constitution). In addition there are 60 women members, six from each of Zimbabwe's provinces, 'elected through a system of proportional representation based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces' (s 124(1)(b)). However, the membership of these additional women will not extend beyond the life of the first two parliaments following the commencement of the new Constitution (s 124(1)(b)).

The introduction of an element of proportional representation into the Zimbabwean electoral system is a novelty. All previous post-independent legislative elections have been based exclusively on the first-past-the-post constituency system. The proportional representation formula used for the election of party list candidates was[1] set out in the Eighth Schedule to the new Constitution. Section 45C (5) of the Electoral Act stipulated that the formula was 'calculated on the basis of the total number of valid votes cast for all the constituency candidates in the electoral province concerned'. However, votes cast for constituency candidates who did not belong to a political party were excluded, as were votes cast for such candidates belonging to a party that did not field any party list candidates (s 45C 5)).

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1   The past tense is used because the provisions relating to proportional representation, having been brought into force through the Presidential Powers (Temporary) Measures Act, have now expired.

THE ELECTION OF THE PRESIDENT

In order to qualify for election as president (or vice-president) a person must be a citizen by birth or descent (s 91(1)(a) of the new Constitution). So a person who has acquired citizenship through registration or naturalisation will not qualify. In addition, he or she must be at least 40 years old, a registered voter and ordinarily resident in Zimbabwe (s 91(1)(b)). Unlike the old Constitution, the new Constitution contains a term limits provision. A person who is elected president may serve a maximum of two five-year terms (s 91(2) as read with section 95 of the new Constitution). However, this provision only applies *prospectively* (s 91(2) as read with section 95). In other words, time spent serving as president under the old Constitution is not taken into account.

Section 92 of the new Constitution is headed 'Election of President and Vice-Presidents'. It is contained in Chapter 5 of the new Constitution, a chapter that was in operation during the 2013 election. In spite of this, however, most of section 92 was overridden by paragraph 14 of the Sixth Schedule of the new Constitution. Subparagraph (1) states that

> notwithstanding section 92, in the first election and any presidential election within ten years after the first election, candidates for election as President do not nominate persons in terms of that section to stand for election as Vice-Presidents.

Paragraph 14(2) of the Sixth Schedule maintains the situation that prevailed under the old Constitution, whereby the person elected as president must 'without delay' appoint up to two vice-presidents. The vice-president holds office 'at the pleasure' of the president (para 14(2)). This simply means that the president is free to dismiss the vice-president at any time.

A presidential election is only required where two or more candidates are validly nominated (s 109(1) and (2) of the Electoral Act). Where this is the case, a poll will be held in each constituency (s 110(2) of the Electoral Act). The previous presidential election, held in 2008, was marred by (among other things) the presence in the same Electoral Act of two conflicting provisions concerning the number of votes a candidate had to obtain in order to win. One provision required the successful candidate to obtain more than half the votes cast. The other stipulated that the winner simply needed more votes than the next candidate (see Linington 2009, pp 98-118 for a discussion of this issue).

The new Electoral Act has at least dealt with this problem. Section 110(f)(i) of the Act provides that 'where there are two candidates … the candidate who has received the greater number of votes [will be] elected president.' If there are

more than two candidates, the one who received more than half the votes cast will be president (s 110(f)(ii)). If no candidate receives more than half the votes cast, a run-off election will be required. This was a controversial issue in the 2008 election but in 2013 the need for a run-off did not arise.

THE ELECTION DATE CONTROVERSY

Section 158 of Zimbabwe's new Constitution deals with the timing of elections. However, the provision only came into force *after* the 2013 election.[2] Accordingly, the date of the election was to be determined by s 58(1) of the old Constitution, which stated:

> A general election and elections for members of the governing bodies of local authorities shall be held on such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under section 63 (7) or, as the case may be, the dissolution of Parliament under section 63 (4) as the president may, by proclamation in the Gazette, fix.

Section 63 (4) provided that:

> Parliament, unless sooner dissolved, shall last for five years, which period shall be deemed to commence on the day the person elected as president enters office in terms of section 28 (5) after an election referred to in section 28 (3) (a), and shall then stand dissolved:
> provided that, where the period referred to in this subsection is extended under subsection (5) or (6), Parliament, unless sooner dissolved, shall stand dissolved on the expiration of that extended period.

Section 63 (7) stated:

> Subject to the provisions of subsection (4), any prorogation or dissolution of Parliament shall be by proclamation in the Gazette and, in the case of a dissolution, shall take effect from the day preceding the day or first day, as the case may be, fixed by proclamation in accordance with section 58 (1) for the holding of a general election.

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2   Paragraph 3(1)(e) of the Sixth Schedule of the new Constitution expressly states that it did not come into force with the bulk of the new text, on 22 May 2013.

The 'life' of Parliament came to an end on 29 June 2013. In other words, Parliament was automatically dissolved on that date because it could not continue beyond the five-year period stipulated in section 63(4). In the opinion of the present author, s 58(1) was not a difficult provision to understand. It did not give rise to any ambiguity. The purpose of the provision was to establish when elections had to take place. The date chosen, however, had to be '… within a period not exceeding four months after the … dissolution of Parliament.' Moreover, it has been argued (Veritas Court Watch 7/2013) that the president's discretion was limited by article 20 of the Inter Parties Agreement, incorporated into the old Constitution by constitutional amendment number 19.[3] That provision stipulated, '… by implication if not by express words' (Veritas Court Watch 7/2013) that the prime minister's consent was necessary when deciding the election date. In other words, the president and the prime minister had to agree on the election date. A further limitation on the president's discretion was the fact that various steps mandated by law had to be taken before an election could lawfully be held. These concerned the preparations necessary to hold the elections. What needs to be made clear is that these steps precluded the holding of an early election. Thus, the election would have had to be held in the latter part of the four-month period.

Notwithstanding all these considerations, a Mr Jealousy Mawarire filed a constitutional application in the Supreme Court on 2 May 2013 (before the automatic dissolution of Parliament on 29 June), in which he argued that the meaning of sections 58(1) and 63(4) were ambiguous. The objective of the proceedings was to secure a court order compelling the president to call an election that would have to take place on 30 June at the latest. The hearing – it was an urgent matter – took place on 24 May, two days after the gazetting of the new Constitution. Obviously it was now too late to hold an election on 30 June. Mr Mawarire therefore amended his application so that the order sought now requested that the election take place by no later than 25 July.

The applicant based his constitutional application on the assertion that his right to the protection of law contained in section 18(1) of the old Constitution had been violated. The essential core of the applicant's argument is reproduced on pages 5-6 of the Constitutional Court's[4] judgment in *Mawarire v Mugabe N.O. and Others* (not yet reported, judgment no. CCZ 1/13). The applicant said:

> The first respondent [i.e. the president] for reasons that I am not
> clear about, has not carried out his functions in fixing a date for

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3   Act 1 of 2009, which came into force on 13 February 2009. Article 20 is contained in Schedule 8 of the old Constitution.

4   By the time of the hearing, the bulk of the new Constitution had come into force. In accordance with the provisions of that Constitution, the case was dealt with by the new Constitutional Court instead of by the Supreme Court.

the elections, even as the expiry of Parliament looms dangerously close. His inaction will lead to a state where Zimbabwe may, in fact, run unconstitutionally. The misleading signals that have been sent by some of the respondents cited herein have been the cause for great concern and may be an indication, coupled with [the] first respondent's inaction, that come June 29, 2013, a general election will not have been called, and Zimbabwe will be hobbling along illegally, without a Parliament.

No interpretation whatsoever of the Constitution could ever validate the existence of a situation of the State without the legislative arm of government. Such an unprecedented situation would be a crippling negation of a fundamental tenet of our democracy which is a sine qua non of our constitutional order.

So, according to the applicant, it was unacceptable – and unconstitutional – for Zimbabwe to be without a Parliament at any time. One Parliament must immediately follow another in order to avoid any 'gap'. The president, therefore, had to set an early election date. The applicant attempted to reinforce this aspect of his argument by referring to section 18(1a)[5] of the old Constitution, which read: 'Every public officer has a duty towards every person in Zimbabwe to exercise his or her functions as a public officer in accordance with the law and to observe and uphold the rule of law.' Section 115 (1) of that Constitution defined 'public office' as 'a paid office in the service of the state', while a 'public officer' was 'a person holding or acting in any public office'. The president was (and is) – obviously – a 'public officer' and was therefore bound by section 18(1a). Therefore, in terms of the applicant's argument, if an early election date was legally required, the president was bound to uphold and comply with that requirement.

The applicant's argument about the need for something like a continuous Parliament was not – as will be made clear later – a good one. However, before one even gets to that issue, it is important to understand that the applicant's case depended on a particular interpretation of section 58(1). This must now be addressed.

As I have indicated above, section 58(1) was not a difficult provision to understand. Its meaning was clear. However, a majority of the Constitutional Court arrived at a different conclusion. They adopted the stance that there were *two* possible ways of reading the section, which they referred to as 'Reading A'

5   A subsection inserted by s 4 of Act No. 1 of 2009, Constitutional Amendment No. 19, which came into force on 13 February 2009.

and 'Reading B'. In accordance with this approach the majority judgement sets out the text of s 58(1) in two formats, both of which are different from the layout used in the Constitution itself. The two readings are set out below.

Reading A

>   (1) A general election and elections for members of the governing bodies of local authorities shall be held on:
>   (i) such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under section 63(7), or,
>   (ii) as the case may be, the dissolution of Parliament under section 63(4) as the President may, by proclamation in the Gazette, fix.

Reading B

>   (1) A general election and elections for members of the governing bodies of local authorities shall be held on such day or days within a period not exceeding four months after:
>   (i) the issue of a proclamation dissolving Parliament under section 63(7), or,
>   (ii) as the case may be, the dissolution of Parliament under section 63 (4) as the President may, by proclamation in the Gazette, fix
>
>   Judgment no. CCZ 1/13, pp 10-11

Commenting on the two readings, the majority judgement said (p 11):

>   Both Reading 'A' and Reading 'B' answer the question when elections are to be held but with one putting the emphasis on the preposition 'on' and the other on 'after'. Both interpretations are compelling. Adopting one interpretation or the other results in starkly different outcomes. In one case elections must be held within the life of Parliament. In the other case, elections may be held up to four months after the dissolution of Parliament.

Because of the – supposedly – 'competing' readings, the majority proceeded to cast about for 'principles' to assist in arriving at the 'correct' interpretation. One of these was that 'S 58 (1) must be examined, not in isolation, but having regard to the overall context in which it appears' (Judgment no. CCZ 1/13, p 12). A number of other constitutional provisions were then referred to for the purpose of providing a 'context' that would give section 58(1) its true meaning.

The majority also decided that an interpretation that would result in Zimbabwe being without a Parliament for up to four months would be an 'absurdity' that would create a 'deformed state' (Judgment no. CCZ 1/13, p 15). For all these reasons the majority held that 'Reading B' would lead to such an absurdity. 'Reading B' was therefore rejected and 'Reading A' adopted as the correct enunciation of the meaning of section 58(1).

However, as Derek Matyszak (2013) has shown, 'Reading A' is in fact a complete distortion of the meaning of section 58(1). He notes that Chief Justice Chidyausiku (who wrote the majority judgement) 'inserted colons into the section (where none existed in the original), ostensibly to highlight what he claimed was the ambiguous nature of the provision, but in fact creating an ambiguity that did not exist before' (Matyszak 2013, p 2). In this way, s58(1) was given a new meaning. 'That meaning is that the president must have set the election date within a period of four months *before* the dissolution of Parliament and that an election should be held upon the dissolution of Parliament' (Matyszak 2013, p 2). However, the ordinary – and correct – reading of s 58(1) leads inescapably to the conclusion that the election was to take place during the four-month period after the automatic dissolution of Parliament (Matyszak 2013, p 2).

A word now about the majority judgement's view that it would be an 'absurdity' to be without a Parliament for up to four months. This issue has also been dealt with emphatically by Matyszak. As he notes, 'The date for an election has *always* been announced AFTER, and not BEFORE, dissolution of Parliament which has meant that the president previously has continued to be in office without a parliament' (Matyszak 2013, p 2). So the absence of Parliament for a few months – at most – does not constitute an absurdity.

Deputy Chief Justice Malaba produced a strong, well-argued dissenting judgment. He emphasised that the date of the election was something the executive was supposed to determine. Section 58(1) vested the power to make the decision in the executive, so that the executive had a discretion (*Mawarire*, p 3 of the dissenting judgement). Malba (*Mawarire*, p 3) said:

> The court cannot get involved in determining for the president the manner in which he should exercise his discretion. It cannot tell the president which day or days he should fix or that he was wrong in fixing a certain day. It is not the function of a court of law to substitute its own wisdom and discretion for that of the person to whose judgment a matter is entrusted by the law. Whilst a court can review a public officer's action for legality it cannot act as if it were the executive.

He dismissed the applicant's argument that the absence of Parliament for a few months after the automatic dissolution would be a constitutional absurdity. He cited examples (*Mawarire*, p 7) from other countries where a dissolution meant the absence of a legislature for a short period. It was therefore not an unusual situation. He said (*Mawarire*, pp 7-8):

> It is clear … that the principle that there can be a period following automatic dissolution of Parliament when the affairs of a country are run by the executive and judiciary is recognised. It is interesting to note that whilst the applicant is concerned about the fate of Parliament he does not seem to be interested in the need to comply with the requirements of the new Constitution designed to ensure that the electorate plays a meaningful role in the electoral process.
>
> There is no doubt in my mind that these requirements of the new Constitution are designed to ensure that the first elections are truly a legitimate democratic instrument for the people to choose and control the authorities that will act in their name. Taking into account the importance of the elections the new Constitution tries to guarantee the democratic character of the decision making on the date of the election.

Judge of Appeal Patel also wrote a dissenting judgement in which he arrived at the same conclusion as Malaba. Justice Patel said (*Mawarire*, p 32):

> Elections must be held within a period not exceeding four months after the dissolution of Parliament. [They] … need not be held immediately after such dissolution, so long as they are held on a day or days within the four month period after dissolution.

But the decision of the majority was in favour of the applicant. As indicated above, the applicant's amended application sought an order that the election take place no later than 25 July 2013. However, the chief justice added six days to that date, so that the order stipulated that the election must take place before 31 July 2013. This was '… to compensate for the period between the hearing of [the] appeal and the handing down of [the] judgment' (*Mawarire*, p 24). This led the deputy chief justice to comment as follows in his dissenting judgement (p 8):

> Once it is accepted that the date of the first election can be fixed to take place after 29 June 2013, the whole basis of the applicant's argument collapses. He then clearly falls in the 'within four months after the automatic dissolution of Parliament argument'.

It also defeats logic for the majority to find that the president has broken the supreme law of the land and at the same time authorise him to continue acting unlawfully. That is a very dangerous principle to apply as it has no basis in law. The principle of the rule of law just does not permit such an approach.[6]

To say that the tight deadline imposed by the Constitutional Court created difficulties would be an understatement. The pressure to get everything ready in time obviously had an adverse impact on the fairness and efficiency of the election. The curious behaviour of the first respondent in the case (President Mugabe) also deserves comment. In fact, it is only with some hesitation that I describe him as a 'respondent' at all. This is because, far from opposing the application, he (or at least his lawyer) argued in favour of it! Of course, the outcome suited the president, who was anxious for the election to be held at an early date. Moreover, getting the court to set the election date (or at least the period within which the election must be held) relieved the president of the need to secure the agreement of the prime minister (or anyone else).

THE AMENDMENTS TO THE ELECTORAL ACT

Because the 2013 election was to be held under a new Constitution, extensive changes were required to the Electoral Act. However, the required changes were not effected through a Bill passed by Parliament. Instead, the president used the powers conferred upon him by the Presidential Powers (Temporary) Measures Act to amend the Electoral Act. The constitutionality of the procedure adopted by the president is doubtful.

Before proceeding further it is necessary to say something about the structure and purpose of the Temporary Measures Act (to use its abbreviated title).[7] As set out in the preamble of the Act, which came into force in 1986, the purpose is to 'empower the president to make regulations dealing with situations that have arisen or are likely to arise and that require to be dealt with as a matter of urgency'. Basically this is a statute that confers upon the president the power to enact unilaterally *primary* legislation (ie, legislation equivalent in status to an Act of Parliament) when this is necessary to deal with an urgent situation.

Regulations[8] created by the president under the Act are temporary in nature. They expire after 180 days and may not be re-enacted until after the passage of a further 180 days (s 6(1) of the Act). If there is any inconsistency between a presidential regulation and an existing Act of Parliament, the regulation will override the Act concerned (s5 of the Act).

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6   A subsequent application to change the date of the election to a later date was unsuccessful.

7   For a more detailed analysis of the Act see Linington 2001, pp 79-84.

8   A regulation is usually a form of subsidiary legislation. However, in the context of the Temporary Measures Act, regulations are primary legislation.

In 1994 the constitutionality of the Temporary Measures Act was challenged before the High Court in *S v Gatzi and Rufaro Hotel (Pvt) Ltd 1994 (1) ZLR 7 (H)*. It was argued that the Act was inconsistent with the separation of powers doctrine built into the fabric of the Constitution. Parliament alone, it was argued, has the power to create *primary* legislation, although it may delegate the power to enact *subordinate* legislation to other persons and bodies. The court did not accept this view. In arriving at its decision the court noted (*Gatzi*, p 17) that presidential regulations have to be laid before Parliament 'no later than the eight[h] day on which Parliament sits next after the Regulations were made' (s4 (1) of the Act). Section 4(2) of the Act stipulates that 'if Parliament resolves that any regulations that have been laid before it … should be amended or repealed, the president shall forthwith amend or repeal the regulations accordingly.'

The presiding judge, Justice Adam, held that the 'tabling procedure' was a mandatory, not a directory, requirement. Thus, the failure on the part of the president to 'table' a regulation would automatically result in the invalidity of the regulation concerned. The court therefore decided that Parliament had not abrogated or abandoned its legislative duties. The tabling procedure meant that it still retained – in an overall sense – control of the legislative function (*Gatzi*, p 17). The constitutionality of the Temporary Measures Act was therefore upheld.[9]

Zimbabwe's new Constitution contains a provision – section 134 (9) – which prohibits Parliament from delegating its primary law-making power. Thus, although the Temporary Measures Act is still in force, it is clearly unconstitutional. However, s 134 was one of those constitutional provisions which came into force at a later date than the bulk of the new Constitution. It was not in force during the election. Nevertheless, the constitutionality of the president's *use* of the Temporary Measures Act to amend the Electoral Act is, as stated above, doubtful. Section 157(1) of the new Constitution states that 'an *Act of Parliament* must provide for the conduct of elections' (author's emphasis; a similar provision existed in the old Constitution [s 58(3) and (4)]). An 'Act of Parliament' is defined in section 332 of the new Constitution as 'an enactment that has been passed by Parliament and then assented to and signed by the president in accordance with this Constitution'. Section 157 also refers to 'the Electoral Law'. According to section 332, 'Electoral Law' is 'the Act of Parliament that regulates elections in terms of this Constitution'.

This shows that 'Electoral Law' can *only* be created by an Act of Parliament. Thus the president cannot use the Temporary Measures Act to amend the Electoral Act. Only Parliament can make 'Electoral Law'. The Temporary Measures Act itself states in s2(2)(c) that 'regulations … shall not provide for … any … matter

9   But see *Executive Council of the Western Cape Legislature and Others v president of the Republic of South Africa and Others 1995 (10) BCLR 1289 (CC)*, a decision of the Constitutional Court of South Africa, where the court, faced with similar facts, arrived at a completely different conclusion.

or thing which the Constitution requires to be provided for by, rather than in terms of, an Act.'

In 2002 Zimbabwe's Supreme Court was faced with a similar – but not identical – issue to the one discussed in the preceding paragraphs. At that time section 158 of the then Electoral Act conferred upon the president the power to unilaterally amend Electoral Law. In *Tsvangirai v Registrar General and Others 2002 (1) ZLR 268 (S)* Judge of Appeal Sandura said (p 278):

> It was submitted by counsel for the applicant that in terms of the Constitution Parliament did not have the power to delegate to any person its constitutional function to make the Electoral Law, and that the power given by Parliament to the president to amend the Electoral Law by regulations in terms of s. 158 of the Electoral Act was unconstitutional. I think there is merit in counsel's submission.

Although that case did not involve the Temporary Measures Act, the principle enunciated by Justice Sandura – that Electoral Law must be made by an Act of Parliament – applies equally to the Temporary Measures Act.

On 24 June 2013 the then prime minister, Morgan Tsvangirai, submitted an application to the Constitutional Court challenging both the constitutionality of the Temporary Measures Act and its use to amend the Electoral Act. The matter was argued on 4 July. Later the same day the court issued an order dismissing the application. No reasons were given for the decision. At the time of publication of this article a reasoned judgement had still not been handed down.

It is hard to see how the court managed to uphold the use of the Temporary Measures Act to amend the Electoral Act. For the reasons given above the adoption of this procedure was blatantly unconstitutional. The issue is an important one because if the amendment of the Electoral Act was unlawful then the election itself – carried out under the 'amended' Act – must also have been unlawful.

CONCLUSION

This article has argued that the Constitutional Court 'got it wrong' with regard to the election date issue and the question of whether the president was entitled to use the Temporary Measures Act to amend the Electoral Act. What does this mean? Well, it would appear to mean that the legality of the election is questionable. Although only parts of the Electoral Act were amended by the president, the parts concerned were not unimportant. Elections can only be lawful if conducted in accordance with the law. But if the electoral provisions governing the election are not valid laws, how can the election itself be valid?

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LAND, INDIGENISATION AND EMPOWERMENT
Narratives that Made a Difference in Zimbabwe's 2013 Elections

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ABSTRACT

The 2013 harmonised elections held in Zimbabwe after the termination of the SADC- facilitated Government of National Unity elicited unprecedented comment following another resounding 'win' by the Zimbabwe African National Union-Patriotic Front (Zanu-PF). This article reflects on the election and argues that while competitive authoritarianism contributed significantly to the party's 'landslide victory', it is slipshod to ignore the centrality to its electoral success of Zanu-PF's populist stance with respect to land, indigenisation and empowerment. The article also examines the significance of hate speech as a negative campaign strategy employed by Zanu-PF to portray the main opposition party, the Movement for Democratic Change (MDC) in the most negative light. It concludes that the election was reduced to 'fantasies of salvation' by President Robert Mugabe as a charismatic leader, primarily because the electorate was seduced into viewing Zanu-PF as the most credible party to pull the country out of the economic quagmire through its land, indigenisation, empowerment, 'pro-poor' and anti-Western policies. These policies resonated well with the growing numbers of wage-less youthful voters,[1] who constitute more than 60% of the country's population.

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1   A wage-less youthful voter is someone between the ages of 18-25 who does not have any reliable source of income. What distinguishes this group from the rest of the population is that it is generally 'preoccupied with finding its role and station in life, seeking gainful employment, looking for decent housing and starting up families' (*Zanu-PF Manifesto* 2013, p 26).

INTRODUCTION

President Robert Mugabe's controversial re-election in July 2013 for a sixth term as president and seventh term as head of government has drawn renewed attention to the issue of competitive authoritarianism in Zimbabwe and the populist discourse surrounding it. The election elicited unprecedented comment from both within and outside Zimbabwe.[2] Whether by hook or crook, the fact is that in 2013 Zanu-PF, as a populist party, gained a sizeable share of the vote and, by extension, power, much to the fascination and chagrin of political observers and the majority of the opposition parties and their supporters.[3]

According to the Zimbabwe Electoral Commission (ZEC) Mugabe won 2 110 434 votes, or 61.09% of the votes of about 3.48-million registered voters, compared to Morgan Tsvangirai's 1 172 349 (33.69%). While Zimbabwe boasts a very high literacy level (above 90%) compared to the rest of Africa, 206 901 people were assisted with their vote, according to official figures released by the ZEC. A total of 304 890 people were turned away for various reasons. Both figures are unprecedented in Zimbabwe's electoral history and the question is: how can this be explained?

While not directly relevant to the present analysis, it is interesting that in the small town of Chegutu in Mashonaland West province about 500 abandoned identity cards were found in various locations a few days after the election.[4] Many people from surrounding resettlement areas are reported to have failed to vote, primarily because they could not locate their identity cards. These developments indicate the extent to which the election may have been marred by irregularities.

John Godfrey Saxe's classic Indian adage of a proverbial elephant touched by six blind men, whose account of its structure differed significantly depending on where they touched it, parallels the different constructions of this plebiscite by academics, political analysts and pundits. This article refers to the Indian folktale in its endeavour to complement the seemingly dominant narrative that Mugabe won the election through well-orchestrated and oiled rigging machinery put in place by a shadowy Israeli security company called Nikuv International Projects Ltd. Its thesis is that while competitive authoritarianism indeed contributed to Zanu-PF's 'landslide victory' it is naïve to ignore the centrality to its electoral success of the

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2   While a special issue of the *Journal of Southern African Studies* 39(4) dwells on politics, patronage and violence in Zimbabwe in general, it also analyses the 2013 election in greater depth.

3   A sombre mood enveloped the nation as the results of the election began to trickle in. Surprisingly, supporters of the supposed victor were shell shocked to hear how 'resoundingly' their party had won, to the extent that to this day there have been none of the serious celebrations that usually characterise any small victory by Zanu-PF. The party's propensity to turn molehills into mountains became a thing of the past. The party was simply not in a celebratory mood. Why was this so? (Interview, Trymore Mamombe, 5 August 2013).

4   This author was in Chegutu when the identity cards were found and witnessed the development.

party's populist stance vis-à-vis land, indigenisation and empowerment and to conclude that Mugabe's 'victory' was the result of a combination of interrelated factors that acted in concert to secure a parliamentary majority for Zanu-PF and attendant control of the executive arm of the government (see also Raftopoulos 2013a and Raftopoulos 2013b, pp 971-972).

It is against that background that this article seeks to provide a complementary and alternative narrative of why and how Zanu-PF resoundingly 'won' the 2013 elections. The focus of the analysis, therefore, is on the centrality to the party's electoral success story of land, indigenisation and empowerment. The article also sets the stage for a debate about the strategies employed by Zanu-PF to metamorphose miraculously and survive without losing political popularity in an era characterised by harsh free market policies, unemployment and increasing inequality.[5]

This author contends that from the start of the government of national unity facilitated by the Southern African Development Community (SADC) by means of the Global Political Agreement (GPA), it seems that Zanu-PF never lost its focus on regaining total control of the levers of political power by reversing the March 2008 electoral defeat at the hands of the Movement for Democratic Change (MDC), which was the result of a phenomenon known as *bhora musango* (kick the ball off the playing field), instituted by a faction of sitting Zanu-PF legislators in the 2008 election who urged party supporters not to vote for Mugabe as president to punish him for, among other reasons, refusing to relinquish power and choose a younger presidential candidate. The 2013 election presented a different scenario altogether in the sense that a united Zanu-PF (Raftopoulos 2013a)[6] was guided by the values of *bhora mughedhi* (forward with winning elections as a united and patriotic front)[7] while concomitantly rewarding its supporters through empowerment measures.

The article consists of six main sections. The first analyses clientelism and populist mobilisation in semi-peripheral polities, the second and third sections examine how Zanu-PF empowered the electorate through 'Maussian Gifts' of land, indigenisation and empowerment policies. The centrality of hate speech as a negative campaign strategy employed by Zanu-PF against the opposition is addressed in the fourth section. The fifth refers specifically to the role played by the Zanu-PF commissariat in rejuvenating the party's structures as well as mobilising

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5   This construction is based on the blurb on the back cover of Demmers, Fernández Jilberto & Hogenboom 2001.

6   The central thesis of the edited volume *The Hard Road to Reform: The Politics of Zimbabwe's Global Political Agreement* is that the Government of National Unity (GNU) rejuvenated and gave Zanu-PF a new lease on political life. Related arguments advanced in this paper build, *inter alia*, on this book and the special issue of the *Journal of Southern African Studies* 39(4) mentioned in footnote 2.

the electorate. In the final section an attempt is made to show how Zanu-PF abused the country's nationalist historiography for electioneering purposes.

CLIENTELISM AND POPULIST MOBILISATION IN SEMI-PERIPHERAL POLITIES

It is worth pointing out from the outset that the twin strategies of clientelism and populism lie at the very core of this present inquiry, that is, how they structure and reconfigure state-society relations bearing in mind the blurred distinction between government and party in Zimbabwe. It is instructive to note that when populism and clientelism are defined generically they tend to lose their heuristic value and utility (Mouzelis 1985, p 342), hence this analysis attempts not to fall into that trap. This article demonstrates that political inclusion premised on these two notions can potentially lead to notable changes in state-society relations. As Sorauf (1960, p 28) argues, 'patronage is best thought of as an incentive system – a political currency with which to purchase political activity and political responses'. To that end, one of the chief functions of patronage is to attract voters and supporters.

Following Levitsky & Loxton (2013, p 108) this article argues that Zanu-PF's populist stance with respect to land, indigenisation and empowerment was the 'primary catalyst for the emergence of competitive authoritarianism' in Zimbabwe that found its concrete expression in the outcome of the 2013 elections. Competitive authoritarian regimes create uneven political playing fields detrimental to opposition forces by subverting and politicising formal democratic institutions (for example, the judiciary and electoral bodies) in order to gain unfair advantage during elections.

Given that basic definitions of populism are usually contested (Weyland 2001, pp 1-22) there is a growing consensus about embracing the notion of populist mobilisation as a new and nuanced theoretical approach to the study of populism (Jansen 2011, p 81). Jansen (2011, p 82) argues that populist mobilisation is

> any sustained, large-scale political project that mobilizes ordinarily marginalized social sectors into publicly visible and contentious political action, while articulating an anti-elite, nationalist rhetoric that valorizes ordinary people.

In essence, people are politically mobilised to support, as De la Torre (2000, p 1) suggests, 'redistributive, nationalist, and inclusionary state policies'. Leaman (2004, p 319) summarised the four features of populism as: 'an us / them discourse, a saviour leader, a coalition of emergent elites with masses, and a relationship with democracy that emphasizes inclusion but not liberal procedures.'

De la Torre's notion of populist seduction, which is similar to populist mobilisation, is worth mentioning, given that it consists of elements of extreme economic, nationalist and authoritarian thought by a political entity struggling to secure political legitimacy. In the case of Zimbabwe, a wage-less population (defined by Denning [2010, p 79] as 'those without wages, those indeed without even the hope of wages') reeling under economic hardship became susceptible to 'populist seduction' (De la Torre 2000, p 1) and attendant 'fantasies of salvation' (Tismaneanu, 1998) from economic problems; fantasies encouraged by Zanu-PF elites.

It should, however, be noted that this article is not suggesting that Zanu-PF populist supporters are gullible – far from it! This is so because, as De la Torre (2000, p xv) argues, 'populism as lived is liberating and empowers the poor and the non-white as the essence of the nation'. What is clear from the outcome of the 2013 election is that Zanu-PF did a cogent politico-economic analysis of a shifting social class that informed the party's populist economic and campaign policies.

I argue here that the deep economic malaise that engulfed the country between 2007 and 2008 contributed significantly to the entrenchment of both populist seduction and competitive authoritarianism in Zimbabwe. Available evidence suggests that during that period a number of populist initiatives such as Basic Commodities Supply Side Interventions (BACOSSI) and provision of farming inputs and equipment as part of post-resettlement support were launched by the Reserve Bank of Zimbabwe (RBZ). The idea was to spruce up the party's bad boy image and project the Zanu-PF government to the electorate in a good light, as caring and responsive to the needs of the poor majority. In order to understand how both populism and clientelism become modes of mobilising and incorporating people into political affairs (Mouzelis 1985, p 331), the next section draws on Marcel Mauss's idea of the *Gift* in order to make sense of state society relations in Zimbabwe.

LAND, INDIGENISATION AND EMPOWERMENT AS 'MAUSSIAN GIFTS'

In recent years a number of political anthropologists and other interdisciplinary scholars have demonstrated a keen interest in appropriating Marcel Mauss's idea of the *Gift* when explaining contemporary social and political phenomena (see, for example, Kiernan 1988, pp 453-468). This paper also draws on Mauss's approach to exchange, derived from his classic anthropological text entitled *The Gift*.

According to Carrier (1991, p 123), Maussian gift transactions are obligatory in a special way – a conception that deviates from the Western academic view that when a gift is voluntarily given the giver must not expect compensation. What is suggested here is that gift transactions that take place in the context of

political relationships, especially in Africa, are governed by mutual obligations or indebtedness (Carrier 1991, p 123). For Schwartz (1967, p 8) gifts impose a form of identity on both the giver and the recipient and exchanges of gifts are governed by the norms of reciprocity. For example, in the case of Zimbabwe, beneficiaries of the Zanu-PF-driven land reform programme are called new farmers-cum-small-scale miners and a majority of them are identified as Zanu-PF supporters. Thus political developments in Zimbabwe are in line with the universal nature of the norms of reciprocity that, for example, demand that: (1) 'people should help those who helped them, and (2) people should not injure those who have helped them' (Gouldner 1960, p 171). In a way, gift exchange also generates a sense of eternal indebtedness on the part of the recipients, who are morally obliged to return a favour. As summed up by Adloff & Mau (2006, p 100), gifts 'establish and perpetuate relations of mutual indebtedness' and attendant binding obligations.

Political clientelism underlines the fundamental character of Zanu-PF as a political party. The hallmark of political clientelism is the distribution of material resources on a *quid pro quo* basis to party supporters. Ordinarily the development prompts political parties to promulgate public policies that will, potentially, boost their votes. Zanu-PF, as a predominant party, applies a dyadic exchange of resources (for example land and broadcasting licences) in return for political support, especially votes.

The party generally favours its supporters with respect to state-led empowerment schemes in return for votes and financial kickbacks (see Mugabe 2001, p 123).[7] Thus, redistributive policies become a new election-winning formula for the party, among other unorthodox strategies such as intimidation and violence. For Eisenstadt & Roniger (1980, pp 49-50) patron-client relations act as a vehicle for structuring the social exchange of resources, be they 'instrumental, economic or political (support, loyalty, votes, protection)'. Relations between political patrons and their clients are, as stated above, based on the norms of reciprocity and promises of solidarity and loyalty. Drawing on policy developments in Zimbabwe since 2000 with respect to land, indigenisation and empowerment as gifts, this article essentially vindicates Downs (1957, p 137), who argues that:

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7   For example, Mugabe once said: 'Let MDC supporters get allocated land in Britain where they have been getting pounds and politics. They cannot benefit from policies they have rejected and even opposed.' What is telling about populism and clientelism in Zimbabwe is its often exclusionary nature. Zanu-PF's pursuit of identity politics is anchored on an essentially Manichean-style narrative that relies on the patriots and sell outs/ heroes and villains distinction. It seeks to exclude opposition sympathisers and, as a result, people seeking to benefit from Zanu-PF policies have to demonstrate their patriotism by supporting the party that played a role in liberating Zimbabwe.

> Political parties in a [pseudo] democracy formulate policy strictly as a means of gaining votes. They do not seek to gain office in order to carry out certain preconceived policies or to serve any particular interest groups; rather they formulate policies and serve interest groups in order to gain [political] office. Thus their social function – which is to formulate and carry out policies when in power as government – is accomplished as a by-product of their private motive – which is to attain the income, power and prestige of being in office.

'Maussian Gifts' of land, indigenisation and empowerment doled out by Zanu-PF to the electorate created binding obligations. As a result, beneficiaries of land reform, indigenisation and empowerment deals have become vital cogs in the party's re-election bids since 2000. Constructing a theory of government action without acknowledging the ulterior motives of those in power must be regarded as 'inconsistent with the main body of economic analysis' (Downs 1957, p 136). From the point of view of economic theory, political parties carry out social functions such as gift-giving primarily to attain their own private ends, such as income, prestige and power. Downs (1957, p 136) further stresses that:

> Every agent in the division of labour [including political parties and governments] has both a private motive and a social function. For example, the social function of a coal miner is removing coal from the ground, since this activity provides utility for others. But he is motivated to carry out this function by his desire to earn income, not any desire to benefit others.

Be that as it may, the state-owned media conveniently ignore the private motive and give prominence to the social functions of political parties. It is against this background that the media become a very powerful vehicle for selling the party policies of their choice and also of shredding the policies of political rivals in a manner that significantly determines electoral outcomes. In other words, party-aligned media play a central role in the electoral agenda-setting process for political parties they want to see in power. Evidence of agenda-setting by the media in foreign affairs, moral code, economic and social policies found concrete expression in the way the state-controlled print and electronic media in Zimbabwe covered the 2013 election, as the fourth section of this article demonstrates.

The Zimbabwean case reveals that mass media driven by technocrats are also a powerful political agenda-setter in pseudo-democracies. The power of the media, conjoined with technocracy, leads to what Centeno (1993, p 308) calls the 'scientification of politics', which often inadvertently begets authoritarianism.

The role of technocrats in the Zanu-PF 2013 manifesto is evident. It is clear that the party's manifesto and an attendant economic blue print, dubbed *Zim Asset*, were crafted by parties deeply knowledgeable about public policy and project management issues.[8]

The author(s) of the manifesto seem to have read and comprehensively mastered Charles Lindblom's 1959 science of 'Muddling Through'. One of its key features is an emphasis on the centrality of dwelling on policies that slightly or marginally differ from the status quo, or, in Lindblom's own words, 'the branch method – continually building out from the current situation' (1959, p 81). The 'branch method' contrasts sharply with the 'root method', which involves 'starting from fundamentals anew each time' (Lindblom 1959, p 81).

What is being suggested here is that Zanu-PF did not deviate from policies that had been its core campaign tools since 2000, rather it went on to add more sweeteners to the land question that came in form of policies 'meant to empower indigenous entities to hold 100 percent of equity to start up or take over strategic enterprises across the economy' (*Zanu-PF Manifesto* 2013, p 8). This article contends that the 'diversification' of the empowerment process from agriculture into other sectors of the economy such as banking and mining was meant to buy votes (see also Magure forthcoming). In the next section I seek to understand the salience of land, indigenisation and empowerment to Zanu-PF's controversial electoral victory in the 2013 elections and why it is arguable that party-driven economic empowerment policies opened up new channels for vote-buying in Zimbabwe.

HOW ZANU-PF EMPOWERED THE ELECTORATE

In this section I seek to answer the question: did Zanu-PF empower the masses? In other words, were the party's ideals of indigenisation, empowerment, development and employment realised in practice? If so, how? It is worth pointing out from the outset that the discourse surrounding the centrality of land, indigenisation and empowerment in Zimbabwean political affairs must be located in the negative legacies of settler colonialism. British colonialism gave rise to a path-dependent process of political and economic development in Zimbabwe that legitimately saw Zanu-PF seeking to address colonially-induced inequalities in the ownership of the means of production.

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8   Jonathan Moyo is likely to have played a leading role in drafting the manifesto – the politician taught a course called Theory and Practice of Public Policy at the University of Zimbabwe in the 1990s. In his book, *The Politics of Administration: Understanding Bureaucracy in Africa,* Moyo essentially argues that the crisis of the African state can only be remedied by technocratic interventions. See also *Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset) 'Towards an Empowered Society and a Growing Economy'* October 2013-December 2018

Given that the legacies of settler colonialism continue to shape state-society relations in Zimbabwe, attendant emotive issues such as land can only be legitimately addressed by means of a raft of affirmative action policies. This state of affairs accounts for the controversy and intense politicisation often associated with indigenisation policies in many settler colonies (Andreasson 2010, p 425). The politicisation of indigenisation and economic empowerment was also a direct consequence of the economic decline that followed the collapse of productive sectors of the economy.

Accordingly, Zanu-PF's resounding 'victory' cannot be explained by reference to the three classic predictors of voting behaviour – ethnicity, class and religion – but by economic factors tied to material deprivation and the attendant 'salvation' from it. While both gross economic mismanagement by the Mugabe government and the economic structural adjustment programmes inspired by the World Bank and International Monetary Fund collectively damaged the once vibrant and diversified economy, it is outside the scope of this paper to disaggregate their contribution.

But what is telling about Zimbabwe's economic collapse as a result of these factors is that it provided Zanu-PF with an opportunity to appropriate successfully the discourse of economic empowerment in return for votes, to lure the youthful wage-less population to the party. As indicated below, the MDC participated in the 2013 election with meagre campaign funds in comparison to Zanu-PF's vast resources. It is on that basis that I argue that the development made it easier for the party to lure youths to vote for its candidates. While the evidence is not conclusive, I argue that money was a very important factor in this election and, accordingly, votes were sold to the highest bidder – in this case, Zanu-PF.

It is noteworthy that many people became heavily involved in the informal sector, especially after a spate of company closures in 2007 that accompanied the introduction of price controls by the Zanu-PF government (Magure 2014, pp 1-17). Some people tried farming in order to deal with the economic quagmire in which they found themselves – a development that increased the demand for arable land. According to Moyo (2011, pp 506-507) the Zimbabweans' hunger and demand for arable land was a response to rising unemployment and a decline in wages as a result of the economic structural adjustment programmes of the 1990s.

The land issue and deepening poverty presented Zanu-PF with a golden opportunity to use the populist rhetoric of indigenisation, empowerment, development and employment to lure, particularly, youthful first-time voters.[9] 'Team Zanu-PF' claims that it used the demographic stratification approach

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9   The composition of the population categorised by age group and sex presented in the Zimbabwe National Population Census 2012 report (by province) confirms that Zimbabwe's population is very young and the population pyramids by province are all 'bottom heavy'.

to address the empowerment needs of the youth, who make up 60% of the population, and that close to a million youths who had not reached voting age in 2008 voted in 2013 (*The Herald*, 8 August 2013).

This article does not suggest that there is something wrong with indigenisation and economic empowerment but simply reiterates the fact that the country's economic challenges were a boon that paid huge political dividends to Zanu-PF. That observation is in line with Downs's argument that every government promulgates policies with a view to maximising its electoral support.

Economic challenges wrought by mismanagement and the reckless implementation of neoliberal policies made Zimbabwe's wage-less population susceptible to populist mobilisation and attendant economic millenarianism. This economic millenarianism, which inspired the voting behaviour of poverty-stricken Zimbabweans, was also, in part, a positive response to Zanu-PF's propaganda, which claimed that targeted sanctions imposed by America and its Western allies at the instigation of the MDC destroyed the economy. Through its ostensibly people-centered economic policies, Zanu-PF was therefore duty bound to 'save Zimbabweans' from the perceptibly racist and imperialist West, which sought to demonise Zimbabwe for correcting an historical injustice wrought by settler colonialism (Interview, Jones Mutasa, 5 August 2013).

Millennial thought, especially of an economic type, became an endemic feature of Zimbabwe's body politic following the unprecedented economic decline of 2008. In any case, 'who does not want to take over a strategic enterprise in the economy or own a business following the loss of a job or having never worked after finishing elementary school?'(Interview, Memory Sithole, 29 July 2013). Thus, the objective reality is that Mugabe's populist rhetoric struck a chord with voters who subscribe to nationalistic values and the mantra of patriotism espoused by Zanu-PF as a party.

An analysis of the content of the state-controlled print and broadcast media after the 2013 election results were announced reveals a nuanced picture of the centrality of land, indigenisation and empowerment to what was said to be one of the most hotly contested elections in Zimbabwe's history. The state-controlled media were adamant that Zanu-PF's indigenisation and empowerment programme resonated with poor people and had paid huge political dividends. Paul Chimedza, who was elected on a Zanu-PF ticket, even went as far as claiming that '[o]ur victory was always guaranteed' (*The Chronicle*, 2 August 2013). In short, President Mugabe's support is tied to the electorate's perception that Zanu-PF is responsive to its needs.

What is interesting about policy development in Zimbabwe is that Zanu-PF has always created crises through a cycle of policy blunders that have often led to economic dead ends. For example, the BACOSSI facility, driven by the Reserve

Bank of Zimbabwe, was introduced in 2007 to provide vulnerable Zimbabweans, especially in rural areas, with affordable basic commodities in the formal market in light of runaway inflation and price controls (Gono 2008).

But in no time, the central bank of Zimbabwe became severely under-capitalised following sustained periods of engaging in quasi-fiscal activities intended to sustain the Mugabe regime (Magure 2012, p 75). These quasi-fiscal activities were sustained by the massive printing of local currency, among other unorthodox macroeconomic management practices that fuelled hyperinflation. This was eventually remedied by the dollarisation of the economy. Strangely enough, in its 2013 election manifesto, Zanu-PF claimed the introduction of the multicurrency system as one of its achievements and policy measures intended to alleviate the plight of the poor, conveniently ignoring why the local currency was dumped in favour of the USA dollar in the first place!

The presidential agricultural input support scheme launched in 2007 is another quasi-fiscal activity that became a vital cog in Zanu-PF's militarised patronage machinery and was disguised as empowerment. The centrality of the provision of post-resettlement support to boost declining agricultural productivity on nationalised farms forced the ruling party, through the Reserve Bank of Zimbabwe, to unveil a five-phased Farm Mechanisation Programme earmarked for both communal and commercial farmers. This genre of agro-based economic empowerment involved the distribution by the military of ploughs, combine harvesters, tractors, planters, disc harrows, agricultural chemicals, fertilizer, seeds, fuel, scotch carts, portable fumigation tanks and cultivators through Zanu-PF structures in an operation codenamed *Maguta*.

Some of the ox-drawn farm implements were imported from China under the auspices of Zimbabwe's Look East policy. The millenarian component of Zanu-PF-led economic nationalism that found its concrete expression in the party's 2013 election manifesto demonstrates how populist politics is built around a saviour leader – in this case, Robert Mugabe. Zanu-PF propagated the myth that Mugabe was on a divine mission to empower the people who had been disadvantaged as a result of settler colonialism. A cursory look at the party's 2013 manifesto reveals a disturbing picture of Mugabe as the saviour of poor Zimbabweans. Four presidential initiatives were detailed in the manifesto: the presidential agricultural input support scheme, the presidential scholarship programme, the presidential youth initiatives and the presidential chiefs support programme (*Zanu-PF Manifesto 2013*, pp 105-106).

It is noteworthy that, at its 11th National People's Conference, held in Mutare in December 2010, and titled Total Control of our Resources through Indigenisation and Empowerment, Zanu-PF resolved to accelerate and broaden the indigenisation and empowerment programme Thereafter, calls for speedy implementation

of the employee and management share ownership scheme in foreign-owned companies under the auspices of the Indigenisation and Economic Empowerment Act grew louder. The arrangement was meant to ensure that local employees and managerial staff own and control key productive sectors of the economy.

Among the companies that have implemented the share ownership schemes are Schweppes Zimbabwe, which disposed of a 51% stake to employees and management, and Meikles Limited, whose employees received a 20% stake in the company (Zimbabwe Broadcasting Corporation News, 30 November 2011). Similarly, on 8 October 2012, South Africa's *Business Day* reported that British American Tobacco Zimbabwe had offered a 21% stake to its employees and local groups in compliance with the indigenisation policy.

Another way Zanu-PF ostensibly empowered the electorate is through community share ownership schemes. According to the state-controlled *The Herald*, as at September 2013 Mugabe had launched 59 such schemes around the country (*The Herald*, 18 September 2013). Section 14B of the Economic Empowerment (General) Regulations of 2010 provides that local communities whose natural resources are being exploited must receive shares in the business entities that are exploiting them. Prominent examples of community share ownership schemes countrywide are the Zvishavane Community Share Trust (Mimosa Platinum Mine), Chegutu-Mhondoro-Ngezi Zvimba Community Share Ownership Trust (Zimplats Mine) and the Tongogara Community Share Ownership Trust (Unki Mine).

There is no doubt that such schemes have transformed the lives of people located in places where natural resources are found and the transformation is linked to Zanu-PF in a manner that often translates into political support. In its manifesto the party stated that it sought to give people sovereignty over their natural resources with a view to bringing development closer to the people.

Clearly those scholars and MDC supporters who argue that Zanu-PF rigged the election cannot be oblivious to the fact that the same people found in mineral rich areas were also probably beneficiaries of the land reform programme. Thus the community share ownership scheme worked in favour of the party primarily because in some areas development was finally brought to resettled people who were disgruntled about the party's failure to provide schools, clinics, roads and boreholes.

In a way, service delivery became an electoral issue, particularly in those natural resource endowed rural areas where, for a long time, Zanu-PF has battled to bring development to the people. The new development initiatives bankrolled by mines located along the mineral rich Great Dyke of Zimbabwe inadvertently became conduits for sprucing up Zanu-PF's image as a party responsive to people's needs. For instance, in Shurugwi, the construction of a school, a mortuary and

a maternity ward, refurbishment of roads and the drilling and refurbishment of boreholes were funded by the Tongogara Share Ownership Trust (*The Herald*, 18 September 2013). The initiatives made it easier for Zanu-PF parliamentary candidates in mineral rich areas to campaign for votes, given that they were talking about empowerment through land reform and share ownership, with which people could readily identify. In other words, there was tangible evidence of indigenisation, empowerment and development. It is noteworthy that all these developments began while the inclusive government was still in power. As stated above, Zanu-PF's campaign did not start on the eve of the election but began after its humiliating defeat in 2008 and gathered momentum during the constitution-making process.

According to Moyo (2011, p 502), the land reform programme also opened new avenues for income generation such as small-scale gold mining, since it entailed the 'liberation of mineral resources, which had been hidden under the monopolistic LSCF [large scale commercial farms]'. While in certain areas, such as Chegutu, there were intermittent clashes between new miners and new farmers, both parties were united by the umbilical cord of empowerment.

Moyo's salient observation that much more was gained from redistributing land , primarily because it also led to increased access to other natural resources on the same land, is noteworthy. It is suggested that this dual access to land by both new miners and new farmers also boosted Zanu-PF support in both rural and peri-urban areas. As Saunders (2008, p 76) argues, 'the mining sector became a critical battleground for the hearts, minds and pocketbooks of key business and political constituencies related to Zanu-PF'. A number of new land barons and Zanu-PF local structures made representations to the police to 'stop undermining the country's indigenisation and empowerment process by arresting artisanal gold miners' (Interview, Tinotenda Madhochi, 29 March 2013). Previously, small-scale gold miners were forcibly evicted by police from both state and privately owned land but during the period of the government of national unity evictions were stopped. In the new free-for-all dispensation, well-planned syndicates involving Zanu-PF leaders, small-scale gold miners and the police looted Mother Nature in the name of indigenisation and empowerment.

It can therefore be concluded that the Zanu-PF government constantly shifted goal posts when it came to small-scale mining, be it diamonds or gold, in response to the prevailing political environment. Its ambivalence towards small-scale gold or diamond panners can be attributed to powerful and contradictory interests within Zanu-PF as a party. For politicians vying for office in areas with natural resources, minerals became a powerful patronage tool and, by extension, a conduit for getting votes.

For example, Nyamunda & Mukwambo (2012, p 148) argue that 'state actors

encouraged free mining for all inhabitants of Marange and surrounding areas in 2006. They espoused a discourse of indigenisation and black empowerment in search of votes.' In other words, political expediency explains why politicians tacitly approved free-for-all mining of diamonds in Chiadzwa. In a sense, what was once defined as the illegal exploitation of mineral resources prompting military operations such *Hukudzokwi Kumunda* (Operation You Would Never Go Back to the Diamond Fields) (Magure 2012, pp 144-145) became legitimate, particularly during the course of the unity government.

An independent newspaper (*Newsday*, 16 January 2012) aptly summed up the existing state of affairs as 'official [sanctioned] lawlessness'. A highly publicised case of such lawlessness is that of a gold rush that took place between December 2011 and January 2012 in the Sherwood Park farming area in the city of Kwekwe, located along the Great Dyke. Zanu-PF loyalists made claims of ownership of the gold rich area, based on the flimsy reason that it was the party's military wing, the Zimbabwe African National Liberation Army (ZANLA), that had liberated the country from settler colonialism (*Newsday*, 7 January 2012). *Newsday* (7 January 2012) further reported that Owen 'Mudha' Ncube, the provincial security officer of Zanu-PF Midlands, directed that: 'Only the sons of Midlands will be allowed to enter the [gold] fields and they will [only] do so through party structures, those that are not known within the party will not have access [to the gold fields] and those from outside the Midlands will not be allowed here.' To that end, a register was compiled of card-holding Zanu-PF members who were eligible to enter the gold fields. The development saw the Zanu-PF Kwekwe District office selling a whopping 3 500 party cards within a space of two days (*Newsday*, 12 January 2012). All these developments indicate how the narrative of land, indigenisation and empowerment undoubtedly resonated well with the growing population of wage-less Zimbabweans.

It is noteworthy that the party heavyweights and their relatives were prime beneficiaries, while supporters distantly connected to the party were secondary beneficiaries of the militarised patronage machinery. Zanu-PF also empowered its leaders, who all had reasons to campaign vigorously for the party in 2013. The aspiring legislators demonstrated to the electorate how sweet Zanu-PF-driven empowerment was and what it meant to be empowered. For example, 2011 saw corporations aligned to Zanu-PF being given preferential treatment by the Broadcasting Authority of Zimbabwe (BAZ). The authority gave the first two commercial private radio licences to former Affirmative Action Group (AAG) president and ZBC news anchor Supa Mandiwanzira's[10] Zi Radio and

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10 Mandiwanzira contested and won the Nyanga seat in the 2013 election on a Zanu-PF ticket and President Mugabe recently appointed him Deputy Minister of Information and Broadcasting Services.

to Zimpapers' Star FM ahead of applicants not linked to Zanu-PF (*Zimbabwe Independent*, 25 November 2011).

Musician Oliver Mtukudzi, who applied for one of the two commercial radio station licences, was passed over in favour of the Zanu-PF-linked companies. In a public lecture Supa Mandiwanzira (2011) conceded that not everyone would benefit from the indigenisation policy. The former journalist said Hobbesian egoistic psychology is the norm when it comes to issues of indigenisation. Consequently there would be losers and winners given that:

> There is no democracy in business, to be able to get into business, you need to be clever and wise, possess the ability to work very hard, to be strong such that you are able to rise again if you fall. There is no democracy in business because it's highly competitive thereby it's individualistic in nature. We shall not lie to people that everyone will benefit from the 51% policy because there is indigenisation; it is only the clever ones that are near the opportunities and have the knowledge of the companies that will benefit.

The fact that in the same lecture Mandiwanzira predicted that the MDC president would lose votes in the 2013 elections because 'his supporters are eager to benefit from the [indigenisation] Act' (2011) bears testimony to the centrality of land, indigenisation and empowerment in the election. The warning statement by the former AAG president was also indicative of the way the MDC was slandered not only in the media but in Zanu-PF campaign rallies and structures as being against the empowerment policy.

However, economists; the country's former central bank governor, Gideon Gono; and the MDC, led by former Prime Minister Morgan Tsvangirai, were on record as saying they were not against indigenisation *per se* but believed that a one-size-fits-all approach to all economic sectors would potentially scare away much-needed foreign direct investment. Gono's stance on indigenisation deeply angered his political rivals in Zanu-PF, leading to public spats in the media between him and the then minister responsible for indigenisation and empowerment, Saviour Kasukuwere.

It is worth noting that at the time of writing the new minister responsible for indigenisation and empowerment, Francis Nhema, is now also saying a one-size-fits-all approach will not work (*The Herald*, 14 October 2013) despite the fact that it was the MDC's stance on the issue that prompted Zanu-PF to claim that the MDC was against the empowerment of indigenous Zimbabweans and was making frantic efforts to derail the programme.

It should also be pointed out that two months after the election Zanu-PF

backtracked on the promise contained in its manifesto that it would create 2 265 000 jobs in five years. The party's secretary for Youth Affairs, Absolom Sikhosana, told the media that the government will not be able to create the jobs because of the economic sanctions Western countries have imposed (*Newsday*, 3 October 2013). These bait and switch strategies are indicative of the populist and chameleon-like elements inherent in Zanu-PF as a party.

The next three sections of this article analyse the role played by hate speech, the abuse of collective memory and the rejuvenation of party structures in enhancing the party's electoral victory.

THE CENTRALITY OF HATE SPEECH

Hate speech is '[t]he use of words which are deliberately abusive and/or insulting and/or threatening and/or demeaning directed at members of vulnerable minorities, calculated to stir up hatred against them' (Waldron 2012, pp 8-9). Noriega & Iribarren (2009) identify false facts, flawed argumentation, divisive language and dehumanising metaphors as constituting four types of hate speech that engender a climate of fear and prejudice in a given population. *False statements* are used to validate a political player's point of view and to promote favourable public opinion. Simple falsehoods, exaggerated statements and decontextualised facts are used to promote a favourable public opinion of the collective 'we'.

Flawed argumentation includes 'ad hominem attacks, guilt by association, appeal to fear and misrepresentation of an opponent's position' with a view to gaining cheap political mileage. *Divisive language* entails placing social agents in a 'Manichean' framework that creates binaries of 'us' and 'them'. The use of *dehumanising metaphors* involves dominant players evoking warfare, enemies, biblical characters (eg, Judas Iscariot), criminality, corruption, evil, animality[11] and conspiracy to draw sharp contrasts between the target and values and positions the perpetrators espouse.

In this regard, since 2000, Zanu-PF has continually focused on issues that are advantageous to it as a party such as sanctions, gay marriages, land, indigenisation and empowerment, whereas opposition parties, led by the MDC formations, were, by and large, forced to respond to the issues Zanu-PF raised. Since 2000 the opposition parties and Zanu-PF have constantly engaged in parliamentary and media debates over these policy issues both during and outside election campaign periods.

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11   An article in *The Herald*, for instance, proclaimed that: 'While Zanu-PF did their homework and studied voting trends so as to target areas where their vote was low, he [Tsvangirai] was busy chasing teenagers like a horny toad on steroids'(*The Herald*, 5 August 2013).

It is noteworthy that during the tenure of the inclusive government Zanu-PF continued to behave like a wounded buffalo – it launched a media offensive that sought to denigrate the two MDC formations as Western lackeys, while endlessly sprucing up its image as liberator and saviour. The Media Monitoring Project of Zimbabwe documented numerous instances of Zanu-PF disrespecting democratic procedures and the rights of political rivals. While the use of extensive quotes is seen in a bad light in some scholarly circles, this article will unapologetically do so because a content and interpretive analysis of election manifestos and newspapers articles[12] is a *sine qua non* for pinning down the subject under consideration.

These quotations indicate the hegemonic constructions of 'Team' Zanu-PF mouthieces in Zimbabwe's public discourse. When one examines the content of Zanu-PF manifestos and official party documents as well as the writings of columnists and the general content of the state-controlled print and broadcast media it is abundantly clear that they are all framed in terms of hate speech directed at the MDC formations.

What emerged from a qualitative content analysis of news items in the state-controlled media is that Zanu-PF successfully manufactured the consent of the population to vote for it by creating folk devils and moral panic. Identity formation tied to moral panic intended to instil a deep sense of fear in people (McRobbie 1994, p 199) was harnessed through recourse to attacking perceivably alien practices like homosexuality and gay marriages, which are allegedly supported by the MDC.

Allied to moral panic is the social construction of a group or class of people as folk devils. Goode & Ben-Yehuda (1994, p 28) define a folk devil as 'the personification of evil'. Similarly, Cohen (1972, p 9) defines it as a person or group of persons who are deliberately painted 'as a threat to societal values and interests'. This perception of the threat posed by folk devils demands that 'something should be done' (Goode & Ben-Yehuda 1994, p 30) to rectify the situation.

By and large, a threat may be manufactured, or the actual threat may be exaggerated with a view to engineering social control, as was the case with characterising MDC supporters as sell-outs who dined with imperialists and sabotaged the agrarian reform programme. Moral panic and the attendant folk devils arise when a dominant group's political power is threatened by

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12   The revolutions in communications technologies shape and reshape society and, by extension, data collection techniques. Many newspapers and magazines have gone digital and some carry a commentary section after every story. The online debates that follow some newspaper headlines offer an invaluable window on public opinion, as do social media such as Facebook and Twitter. In a few instances I draw on online debates that follow some headlines about Zimbabwean politics carried by both domestic and international online newspapers. This technique was used successfully, for example, by the anthropologist James Ferguson (2006) in the piece 'Chrysalis: The life and death of the African Renaissance', in a Zambian internet magazine. Good (2009) eloquently defends the same method.

the opposition. In its 2013 manifesto, couched in soccer terms – Team Zanu-PF portrayed the MDC formations negatively as '[t]hreats to winning the goals of the people (*Zanu-PF Manifesto 2013*, pp 43-53). The next sub-section presents a sample of statements made by Zanu-PF loyalists in support of their party policies. Some of the statements bordered on negative campaigning and, by extension, constituted hate speech.

In their own words

Zanu-PF as saviour and MDC as villain

Martin (2004, pp 449-550) argues that negative campaigns mobilise voters, especially when opponents are painted in the worst possible light as threats to a society's way of life or economic position. A recurring message in Zanu-PF campaigns during the periods between elections since 2000 has been that the MDC wants to reverse the land reform programme and has promised former white commercial farmers that they will get back their farms once the party is elected as a government. At a rally Mugabe said: 'That promise is what we want to prevent. We should defend our land and sovereignty' (*The Voice*, 30 March-5 April 2007).

> We know that there are certain elements in the MDC formations that want to reverse our gains from the empowerment initiatives and we should guard against that by ensuring that Zanu-PF and President Mugabe win the [2013] elections' – Bright Matonga.
>
> *The Herald*, 9 April 2013

> The black [economic] empowerment revolution is now at an irreversible stage and the imperialists are desperately pushing for the protection of their interests through advocating an impossible MDC victory.
>
> *The Voice*, 30 March-5 April 2007

> The solution to Zimbabwe's current [economic] difficulties can only be found inside Zanu-PF. That solution can only be built on the consolidation of the land reform programme [and] economic indigenisation.
>
> *The Herald*, 26 March 2008

> We can deliver to the people the benefit of our policies. We delivered land to the people through the land reform programme and using that experience we are delivering the economy to the people.
>
> *The Herald,* 6 May 2013

Zanu-PF is people's party driven by the needs and dictates of the people hence its unwavering stance in relation to the empowerment of Zimbabweans.

The Voice, 23-29 December 2007

On the new Constitution
In 2009 the Constitutional Parliamentary Committee (COPAC) was mandated by the unity government to come up with a new constitution for Zimbabwe that would replace the 1979 Lancaster House Constitution. When Parliament adopted the draft constitution, which took four years to be completed, political parties started to educate their supporters about the contents of the draft. Both Zanu-PF and the MDC mobilised their supporters to endorse the draft constitution in a referendum that was eventually held in March 2013. During their rallies Zanu-PF convinced their supporters the draft constitution was 'more of a Zanu-PF baby' (*Manica Post*, 15 February 2013).
Zanu-PF National Secretary for Women Affairs, Oppah Muchinguri:

This constitution is ours because 75 percent of the content came from Zanu-PF contributions. We want to say well done to our members for this remarkable achievement. We also want to hail members of the Copac select committee that were seconded from our party for working tirelessly in representing the party's interests.

Manica Post, 15 February 2013

Former Justice Minister, Patrick Chinamasa:

I urge you to be united and endorse the draft because it safeguards the values of the liberation struggle and states that we should be masters of our destiny.

The Herald, 10 February 2013

Zanu-PF Manifesto (2013, p 67):

The Party was vigilant throughout the constitution-making exercise to guard against treachery and to protect the process from being hijacked by foreign or regime change interests. More importantly, and specifically, Zanu-PF ensured that the New Constitution enshrines the following provisions that not only guarantee that Zimbabwe will never be a colony again but which also protect the values and dignity of the people against such evils as homosexuality.

Muchinguri's statement insinuated that representatives of the two MDC formations on the COPAC select committee were there for ceremonial reasons. It can also be interpreted to mean that they did not have the political clout to advance their parties' contribution ahead of that made by Zanu-PF members. When the party mobilised for a 'Yes' vote in the constitutional referendum that spin took centre stage – 'vote yes because this is a Zanu-PF product and like we indicated to you when we joined the unity government – Zanu-PF as a party is the one in charge' (Interview, Jones Mutasa, 5 August 2013).

This article claims that the new Constitution adopted in 2013 and the Zanu-PF 2013 election manifesto are conjoined like Siamese twins. There is overwhelming evidence that Zanu-PF as a party simply plagiarised and regurgitated the contents of the new Constitution in its manifesto. The development must not be misconstrued as a technocratic glitch or oversight, rather it was intended to serve a political purpose. The idea was to demonstrate that the party is in charge politically. The major issues that went on to become the cornerstones of Zanu-PF campaign message were found in the new Constitution. These are clauses relating to economic empowerment, the land reform programme, the welfare of war veterans and war collaborators and the non-recognition of gay and lesbian rights.

While it is beyond the scope of this article to delve deeper into gay rights, passing reference is made to the contentious issue insofar as it is presented in a manner that constitutes hate speech against the MDC. For instance, section 78(3) of the Constitution provides that '[p]ersons of the same sex are prohibited from marrying each other'. It is important to note that the general representations of homosexuality in Zimbabwean public discourse are that it is totally unacceptable, un-African and un-Godly. The state-controlled media ensured that the portrayal of the MDC as a sell-out and pro-gay party become so entrenched that it became difficult to challenge the notion in the deeply polarised and conservative society that is Zimbabwe. The flip-flops and gaffes made by MDC president Tsvangirai when interviewed by the international media about same sex marriages did not help the situation.

Foreign direct investment-driven job creation
Zanu-PF realised that it would be impossible to create jobs overnight against a backdrop of unprecedented industrial decline and capacity underutilisation. In addition to its promise to create 2 265 000 jobs, Zanu-PF also pledged to empower the wage-less population immediately by ensuring that they received a major stake in existing companies. A Zanu-PF legislator, Jaison Passade, summed the party's efforts up this way: 'The party's empowerment drive has won us this [Mount Pleasant] seat. The people of Mount Pleasant chose to be empowered ahead of being promised jobs' (*The Chronicle*, 2 August 2013). Zanu-PF chided

the MDC formation led by Morgan Tsvangirai for emphasising a job policy predicated on foreign direct investment. According to Zanu-PF, the MDC was convinced that Zimbabweans are 'jobs people and not investors or a people capable of running businesses' (*The Herald*, 30 May 2012). The MDC manifesto and economic blueprint, titled JUICE (Jobs, Upliftment, Investment, Capital and the Environment), was equated with a poisoned chalice by Zanu-PF loyalists, particularly Jonathan Moyo and other party-aligned public intellectuals:

> They spent the last four years in Government thinking about themselves, they are buying expensive cars, houses and are doing nothing about the lives of millions of Zimbabweans. They are more concerned with salaries and positions for themselves. They came up with their programme JUICE and no-one is drinking it because it is poisonous.
>
> *The Herald*, 6 May 2013

> While evidence abounds showing how Zanu-PF has and continues to address poverty, inequality and unemployment through the land reform, indigenisation programme and various other strategies aimed at making the black man the master of his own resources, the MDC-T has on the other hand premised the revival of the economy on the creation of jobs precipitated by foreign direct investment.
>
> *The Sunday Mail*, 30 June 2013

> Who told the MDC-T that a tenant is better than his landlord? What makes these people think driving a car is far much better than being the owner of the same? What joy is there in being a farm worker when the chance is there to own the farm? … the MDCs need to put themselves together and seek lasting solutions to the problem of jobs, not the piecemeal job creation project they have anchored on foreign investment … Without having to work for someone, if Zimbabweans heed Zanu-PF's message, they can organise themselves into groups to run successful businesses which can help shore the country out of poverty.
>
> *The Sunday Mail*, 6 December 6

From the examples detailed in this section, it is clear that the MDC's electoral prospects were severely compromised by the way the party was represented, particularly in the state-controlled media – as sellouts and, by extension, as an imminent threat to Zimbabwe's sovereignty, land reform and indigenisation

programme. This article is suggesting that while the MDC might have been able to counteract Zanu-PF hate speech it was never given a platform in the state-controlled media from which to do so. It is therefore evident that language can be a powerful hegemonic tool used by political elites to influence societal thinking, attitudes and ideologies. The propaganda against the MDC was used to indoctrinate part of the electorate and this process was successfully carried out using rejuvenated Zanu-PF structures, as detailed in the next section.

THE ROLE OF THE COMMISSARIAT IN MOBILISING THE ELECTORATE

Zanu-PF used the period of the inclusive government to rejuvenate its structures and also took a collective decision to contain factional rivalries, which had cost the party significant votes in the 2008 elections. The party also came up with a revamped election-winning formula sensitive to the prevailing macroeconomic conditions in Zimbabwe. For instance, unemployed urbanites were promised controlling stakes in the economy through the indigenisation policy, while a government directive ordered that outstanding utility bills be slashed.

There was something for everyone as the party sought to seduce the electorate. For example, Tendi (2013, pp 969-970) refers to what he calls Mugabe's considerable campaign largesse, which made it possible for Zanu-PF to hand out regalia emblazoned with the party's campaign message: 'indigenise, empower, develop and employ'. Tendi (2013, p 965) also contends that Zanu-PF's commissariat department was a vital cog in the election campaign directed by the military and intelligence personnel, who played a central role in reinvigorating 'party structures and a quiet but intensive programme of registering its supporters on the voters' roll', especially in the run-up to the constitutional referendum.[13]

As Raftopoulos (2013b, p 974) observes, the large voter turnout that characterised the constitutional referendum indicates the extent to which Zanu-PF mobilised and encouraged its supporters to register in preparation for the 2013 general elections. Traditional leaders, who are appendages of Zanu-PF, also worked tirelessly with grassroots structures to deliver the rural vote, in exchange for continued development services and material goods doled out by Zanu-PF (see Bratton & Masunungure 2011, p 30).

Murisa (2009, p 340) tells how Zimbabwe's fast track land reform programme dramatically changed rural social organisation and the agency of beneficiaries. According to Murisa, the state was actively involved through land committee functionaries such as 'local government ministry officials, traditional leaders,

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13   Normally those who need to register to vote are first-time voters or those who have changed their constituencies; all other people only need to check whether their names appear on the voters' roll. Thus it can be concluded that the voter registration exercise mainly targeted youthful first-time voters.

the ruling party, security organs and war veterans' (2013, p 263). These local structures went on to become political mobilisation platforms for Zanu-PF and, as Murisa (2013, p 252) further notes, beneficiaries of land reform are united in their common need to defend their newly found access and right to arable land.

Chaumba, Scoones & Wolmer (2003, p 589) assert that a number of occupied farms were not only militarised by Zanu-PF-aligned war veterans who declared them their party territories but were also no go areas for MDC formations, or any other opposition party for that matter. According to Chaumba, Scoones & Wolmer (2003, p 599), Zanu-PF committees are usually tightly disciplined, autocratic and hierarchical. They are also powerful vehicles for transmitting alarmist Zanu-PF campaign messages that, as stated above, border on hate speech directed at the MDC formations.

As indicated above, beneficiaries of many empowerment programmes are expected to demonstrate their unwavering support for Zanu-PF. With respect to the land reform programme, Human Rights Watch (2002, p 4) was probably correct in concluding that Zanu-PF essentially created 'infrastructure for rural violence and intimidation that subordinates development plans to political ends'. Come election time, voters who were suspected of being opposition sympathisers were forced to feign illiteracy, injury or blindness and were assisted to vote, in total violation of the secrecy of the ballot. A polling officer at a resettlement area in Kadoma remarked that he heard many assisted voters whispering '*paMasvingo*' (I'm voting for Zanu-PF) (Interview, Mike Banda, 1 August 2013).

By acting against the letter and spirit of the SADC-brokered GPA President Mugabe demonstrated to his supporters that he remained at the helm of Zimbabwean politics. His flagrant disregard for the GPA was a clear indication that the other members of the coalition, the two MDC formations, were nothing more than junior partners. According to one interviewee:

> Mudhara Bob ndiye ane matomu kwete zvimbwasungata zveMDC [Mugabe is the one in charge not the MDC puppets]. What we wanted to see in the Constitution is what is there. The new Constitution equals Team Zanu-PF manifesto. It does not enshrine gay rights but indigenisation and empowerment through land reform and majority stakes for indigenous Zimbabweans in all foreign-owned businesses. While the new Constitution protects our rights as resettled farmers it is not enough because if the MDC wins the coming election they will have a two-thirds majority that allows them to change the Constitution with a view to reverse the land reform programme. That puppet party is dangerous to have in the corridors of power – it spells doom and gloom for Zimbabwe.
>
> Interview, Tinotenda Madhochi, 29 March 2013

In an editorial, an independent paper, *The Standard*, had this to say about Zanu-PF's election strategy:

> Zanu-PF began to reconnect with the masses during the constitutional outreach programme. The March 2008 harmonised elections had shown them they had lost the masses' support. During the outreach they spelt out policies that resonated with the people while the MDCs concentrated on abstract issues such as international best practice in drafting constitutions. Zanu-PF spoke to the people's desire for a piece of the national cake; land and indigenisation resonated with the people's needs and the party impressed upon them that all these could only be secured if the country's sovereignty was secure. They were able to whip up anti-West sentiment, which translated into an anti-MDC feeling because the MDC was portrayed as an agent of the West.
>
> *The Standard*, 9 April 2013

The themes of economic empowerment and land reform[14] and how the MDC ostensibly wanted to derail these, featured during many state functions, party meetings and speeches. On every occasion the state-controlled media and party leadership reminded the population that it was Zanu-PF that had brought in the multicurrency system (*The Herald*, 29 July 2013). Zanu-PF also took advantage of the opinion surveys (see, eg, Booysen 2012) that had revealed an increase in the party's popular support in sharp contrast to a decline in support for the MDC.

During meetings held at cell, ward and provincial levels, there was an emphasis on the outcome of the opinion polls – that Zanu-PF would win the elections as a result of its people-centred policies (Interview, Luke Jesa, 29 July 2013). According to the Zanu-PF national chairman, Simon Khaya Moyo, 'Even the United Kingdom media has predicted victory for Zanu-PF, these are informed people who do [cutting edge] research and I can assure that we are winning these elections' (*The Herald*, 29 March 2013). The objective reality is that Zanu-PF was visible on the ground, especially in rural and peri-urban areas, where marathon daily meetings were held in various cells, wards and provinces. The countless indoctrination meetings held during the period preceding an election are part of the strategy employed by Zanu-PF since 2000 to make its presence felt, especially in rural areas.

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14 See, for example, 'Address by his Excellency president RG Mugabe on the occasion of the official opening of the 5th Parliament of Zimbabwe', 30 October 2012.

As Aldrich & Griffin (2003, p 240) note, the strategies candidates 'choose in an election campaign and what they emphasise and what they ignore have important effects on vote choices and therefore on outcomes'. This author adds a voice to Zamchiya's salient observation that during his rallies the MDC president generally neglected political issues relating to indigenisation, targeted sanctions and the centrality of the war of liberation, all of which took centre stage in Zanu-PF's campaign (Zamchiya 2013, p 958).

Be that as it may, any party's campaign agenda must be premised on political issues that promote its strength and avoid issues that undermine its political standing. For example, while the issue of participation in the liberation war was not a strong campaign point for the MDC it could have done better on indigenisation by spelling out the need for affirmative action that is not premised on a one-size-fits-all pattern. From an issue theory point of view, 'voters identify the most credible party proponent of a particular issue and cast their ballots for that issue owner (Be'langer & Meguid 2008, p 477). This probably led Raftopoulos (2013b, p 971) to conclude that the MDC's emphasis on democratisation and Western-backed neoliberal programmes 'was always found wanting, against the redistributive logic of ZANU (PF)'s land reform process, the ideological legacies of the liberation movement, and the discourse of state sovereignty'.

Tsvangirai and his party also failed to counter other elements of Zanu-PF propaganda, for example, that the party's representatives in COPAC had tried, unsuccessfully, to smuggle a provision for gay rights into the new Constitution. The MDC was also portrayed as unfit or not credible enough to lead Zimbabwe, with Zanu-PF alleging that the labour-backed party had failed come up with a homegrown election manifesto. There is also a sense in which Zanu-PF as a party gained electoral mileage because the political and economic gains of the inclusive government were attributed to it, despite the fact that the MDC was in charge of important but troubled ministries such as health, finance and education.

As a result, Bratton & Masunungure (2012, p 8) concluded that in a way the MDC-T 'failed to get out a message, or to convince diehard supporters of the old regime, of its own contributions to better governance under the IG [inclusive government]'. This takes us back to the issue of closely-knit Zanu-PF structures when it comes to campaign issues and the attendant positive portrayal of the party as the saviour of Zimbabwe. Given that the war of liberation took centre stage in Zanu-PF's campaigns and in the constitution-making process, the next section examines how its ideological legacies were used as a campaign tool in a manner that was detrimental to the MDC.

ABUSE OF THE NATIONALIST HISTORIOGRAPHY

Collective memory relating to land dispossession and the liberation struggle is central to the construction of political discourse as elites invoke it in contemporary power struggles to galvanise political support (Magure 2010, pp 100-103). Collective memory gains currency or sinks into oblivion in response to the power dynamics of the societies in which it circulates. In its 2013 manifesto Zanu-PF celebrated the fact that the new Constitution institutionalises the obligation of any future president to be guided by the legacy of the liberation struggle, with section 90(1)(b) providing that 'The President must recognise and respect the ideals and values of the Liberation struggle'.

The important political changes that occurred in Zimbabwe following the emergence of the MDC led to a vast change in celebratory styles and meanings of independence for Zanu-PF as political party. As indicated above the changed political landscape led to a Manichean-style struggle between Zanu-PF (as representing good intentions for the country) and the opposition MDC (personifying evil and neo-colonial intentions) in a battle that has deeply polarised Zimbabwe. For Zanu-PF independence was to be defined not only in political terms but in terms of sovereignty over economic issues such as land, minerals and the ownership of the means of production.

The party's maintenance of a stranglehold on the rural vote can be attributed to collective memory relating to the war of liberation that was fought in the countryside for, among other things, equitable land distribution. The majority of rural class forces were totally opposed to settler colonialism, primarily because the system was not only brutally repressive it also led to increased levels of abject and dehumanising poverty wrought by land dispossession (Phimister 1987, p 53). This colonially induced land hunger enabled Zanu-PF and Mugabe to use land, indigenisation and empowerment consistently and instrumentally to connect with the rural electorate, particularly after 2000.

More often than not, Zanu-PF used the narrative of brutal colonial land dispossession to make gratuitous comparisons between the party and the MDC and its alleged Western political allies. The subtext of Zanu-PF's comparisons is that the MDC is guilty by association, while the erstwhile colonisers are guilty of human rights violations that far outweigh any accusations of human rights abuses levelled against Mugabe and his party.

It is against this background that, in 2011, a shadowy group of Mugabe party loyalists, called the Fallen Heroes of Zimbabwe Trust, intensified its drive to exhume and re-bury the remains of individuals allegedly killed by the Rhodesian Forces and buried in shallow graves across Zimbabwe. For example, in 2013, Mashonaland Central province, a Zanu-PF stronghold, was targeted by the party to demonstrate the brutality that spurred the liberation struggle. One highly

publicised exhumation and reburial took place in Mt Darwin at Chibondo mine, where, *The Herald* sensationally claimed, '... over 2 000 bodies came from one of the shafts and with five more shafts yet to be ripped open, Chibondo exudes an aura of the brutal killings of blacks by the Rhodesian Selous Scouts' (*Herald*, 17 April 2013).

As Fontein (2010, p 423) argues, bones of fallen heroes and ordinary people (politics of the dead) play a central role in discourse surrounding political loyalties and struggles in Zimbabwe's postcolonial milieu. In the final analysis collective memory, conjoined with Gramscian cultural hegemony, demonstrates how Zimbabwe's nationalist historiography was abused for electioneering purposes with a view to undermining the MDC as a social-political actor. The strategy cost the party a significant number of votes.

CONCLUSION

This article has sought to provide a complementary and alternative account of why and how Zanu-PF 'won' the 2013 elections resoundingly. It argues that while the rigging thesis is equally plausible, the discourse on land, indigenisation and empowerment was an electoral boon for the liberation-based party. In a nutshell, the article does not totally dismiss claims by some observers as well as the opposition MDC leadership and its supporters that Zanu-PF used its well-oiled competitive authoritarian structures to rig the 2013 election in its favour. What it essentially does is go a step further and suggest that Zanu-PF's dream of seizing total control of the country's resources through indigenisation and empowerment, though marginally achieved, was welcomed, especially by a wage-less population desperate for some form of 'salvation' from economic challenges.

Thus the 'fantasies of salvation' that underpinned the party's campaign message –'indigenise, empower, develop and employ' – resonated with huge segments of impoverished and unemployed Zimbabweans who were eager to become masters of their own destinies, courtesy of Zanu-PF's 'people-centred' policies. What is telling about the party's campaign messages is that they were couched in terms of hate speech against the opposition as personifying evil and neo-colonial intentions.

In the final analysis it can be concluded that other factors outside the scope of this article, for example, the continuing legacy of Zanu-PF's competitive authoritarianism, the challenges and limitations of the political opposition, as well as the regional and international influences on the elections,[15] acted in concert to give Zanu-PF an electoral advantage over its main opposition, the MDC.

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15   Raftopoulos (2013b, pp 971-988) examines some of these factors in greater depth.

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THE YOUTH FACTOR IN ZIMBABWE'S 2013 HARMONISED ELECTIONS

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ABSTRACT

The youth in Zimbabwe have often been described as disenfranchised, corruptible and susceptible to manipulation by politicians. This narrative assumes that the youth are a homogenous group, uniform in their grievances and consensual about strategies to resolve them. Analysing the case of youth participation in the 2013 harmonised elections in Zimbabwe, this article challenges that assumption by arguing that the youth are polarised and struggling to articulate a national objective that might be able to shift the country's political discourse. It contends that the majority of Zimbabwean youth act as loosely affiliated individuals seeking personal rather than group benefits. At the same time, by assessing the engagement of youth within political parties either as supporters or officials, the article further argues that the structural dynamics of these political parties deny the youth agency and make them conform. It therefore concludes that participation by the youth in the 2013 elections was mainly driven by individual interests rather than collective grievances or political identity.

INTRODUCTION

The political discourse related to the youth in Zimbabwe and across the African continent is dominated by narratives of disenfranchised and corruptible young people who 'are unwittingly conscripted into armed struggles, used to settle political scores and are exposed to various negative media that erodes their positive heritage' (African Union 2011, p vii). Yet experiences in Tunisia, Libya and Egypt seem to contradict that narrative, expounding the agency of the youth and hailing their efforts in organising and participating in revolutions that changed the political trajectory of their countries.

Despite being contradictory, both narratives assume that the youth are a distinct collective group, uniform in their grievances and consensual in strategies to resolve them. Analysing the case of youth participation in the 2013 harmonised elections in Zimbabwe, this article challenges that assumption. It argues that the political terrain in Zimbabwe is characterised by youth that are polarised and struggling to articulate a national objective that can shift the country's political discourse. It contends that the majority of Zimbabwean youth act as individuals, loosely affiliated and seeking personal rather than group benefits. At the same time, by assessing the engagement of youth within political parties either as supporters or officials, the article also argues that the structural dynamics of these political parties deny the youth agency and demands that they conform.

THEORETICAL FRAMEWORK: SELF-INTEREST AND PERCEIVED IDENTITY

As its theoretical framework, this article assumes that the individual is the basic agent in society and that given options during elections the individual will choose the one with the highest expected utility. However, such options are not limited to the post-election period but also exist in the pre-election period. For instance, a youth may decide to support a political party or election candidate not on the basis of what he or she stands to gain (self-interest) if the candidate or political party wins the election but on the immediate benefits that might be gained from support in the pre-election period.

These assumptions reflect the Rational Actor Theory, which 'adopts a methodological individualist position and attempts to explain all social phenomena in terms of the rational calculations made by self-interested individuals' (Scott 2000, p 136) and therefore argues that 'individual behaviour is motivated by self-interest, utility maximisation, or more simply put, goal fulfilment' (Petrecca 1991, p 289). On its own, however, the rational actor theory fails to account adequately for individual voting behaviour because individuals do not usually possess extensive information about the different options they are offered, let alone fully comprehend the consequences of the choices they make during an election.

Without extensive information about the promises made during election campaigns and whether these will actually be fulfilled if the party or candidate wins the election and about how voting for a certain candidate or political party will benefit them, individuals cannot be fully rational in their choices. Because of this lack of information, individuals may engage in political activities such as elections on the basis of their 'perception of self in relation to others; this perception effectively delineates and sets the domain of choice options perceived as available to an actor, both in an empirical and a moral sense' (Monroe & Maher 1995, p 12).

This leads young people to pursue 'self-mastery', that is, 'the conscious attempt by the individual to define and control his or her behaviour and identity' (Hodgkinson 2013, p 866). In essence, elections become a springboard used by individuals to define their identity and assert their interests; hence, apart from acting in self-interest, individuals may participate in elections on the premise of their perceived identity in relation to others and also on the basis of how others perceive them – their identity being defined through their self-interest. In this respect, self-interest, which is based on one's identity in relation to others, will be used to explain the participation of the youth in the 2013 elections in Zimbabwe.

DECONSTRUCTING THE YOUTH CONCEPT IN ZIMBABWE

'Youth' is a complex social construct that is difficult to define (Hodgkinson 2013, p 866). There seems to be no consensus even with regard to the age group referred to. For instance, the United Nations (2007; see also World Bank 2007) defines a youth as an individual aged between 15 and 24 years; for the African Union (2006) and the Zimbabwean government (2013) it is 15 to 35 but for the Movement for Democratic Change led by Morgan Tsvangirai (MDC-T) the range is between 16 and 35 (MDC 2011). In the Zimbabwe African National Union-Patriotic Front (Zanu-PF) the youth are between the ages of 15 and 30.

To avoid complicated generalisations and bloated research this article inclines towards the African Union and the government of Zimbabwe's definition of youth as any individual aged between 15 and 35 years of age, with a deliberate focus on young people of voting age, that is, those above the age of 18. This not only provides a logical and convenient conceptualisation of youth, it also helps to streamline and nuance the study.

Youth can also be defined in terms of social status and level of adulthood. It can be argued that due to poverty, bad governance and failed economies many people 'have had to delay their entry into adulthood: they feel excluded and powerless, and struggle to survive [independently]' (Abbink 2005, p 6). Acinda Honwana (2012) describes such people as being in a state of 'waithood' between childhood and adulthood and not able to participate fully in their governance.

This situation is common in Zimbabwe, where it is possible to find children under the age of 14 heading families (children with adult roles) and people above the age of 35 (adults with youth characteristics) who, as Abbink (2005, pp 6-7) writes,

> have not completed their education, have no job, are not in a
> position to raise a family, [and] indeed sociologically resembling the

biologically younger people with whom they share a life defined by poverty and deprivation.

From this, it is clear that the concept of the youth cohort is not simple; the socio-political and economic context in Zimbabwe compels the youth to be characterised not just in terms of age but also in terms of their state of 'waithood'.

The discourse of the youth and elections in Zimbabwe cannot be separated from the socio-political and economic grievances that have come to define age groups. With 72% of the people living under the national poverty line (World Food Program 2012), poor service delivery, a failing economy and political disenfranchisement emanating from elitist politics and a civil society separated from the general populace (Masunungure 2011, p 126), children, the youth and adults alike find themselves confronted by the same issues.

The youth are by no means a homogenous group: the socio-political and economic concerns differ among professionals, rural youth, urban youth, unemployed youth (rural or urban) and those in the diaspora. For instance, while the majority of urban youth were concerned with service delivery, access to financial loans and secure employment, the youth in the diaspora were concerned with the state of the economy and their right to vote.

These factors affected the way young people of voting age interacted with the 2013 electoral process.

CENSUS AND VOTERS' ROLL STATISTICS

The population of Zimbabwe is approximately 12 973 808 (ZimStats 2012). The adult population (18+ years of age) is about 6 647 779, constituting 51.23% of the country's total population. The youth (18-35 years) population is around 3 572 987, which is 27.54% of the total population and 53.74% of the country's adult voting population. Based on these figures, the youth are a significant constituency for national agenda-setting, electoral mobilisation and political participation. But the state of the voters' roll, if it is to be regarded as a standard for gauging how politically engaged the youth in Zimbabwe are, suggests otherwise. According to the Research and Advocacy Unit's (RAU) audit report on the 2013 voters' roll, only 8.87% of youths in the age group 18-19 were registered to vote; 19.55% of those between 20 and 24 and 51.69% of those between 25 and 29. According to the same report, the number of registered voters in the age group 30-34 years exceeded the population in that age group by 6.12%: 106.12% were registered as voters. What are the reasons for this 'under-registration' in the 18-29 year group and the 'over-registration' in the 30-34 age group?

Several explanations have been given. The first is that the over-registration in the 30-34 age group could be explained by the excessive numbers of people within that age group who emigrated from Zimbabwe to neighbouring countries because of economic hardship and the deceased, whose names were not deleted from the voters' roll (Merz 2013). Since their names still appear on the voters' roll the population figures recorded in the 2012 census were lower than the number of registered voters. Secondly, Transparency International Zimbabwe (TI-Z 2013) reported that 'there were over 300 000 duplicated names on the voters' roll'. In addition, complaints of voters' roll manipulation were raised on several occasions – people who had never registered as voters found their names on the roll. The under-registration of the 18-29 age group was, to a large extent, caused by the chaotic registration process conducted by the Zimbabwe Electoral Commission (ZEC) and will be discussed below.

VOTER REGISTRATION: THE YOUTH AS 'SWING VOTERS'

The youth in Zimbabwe represent an important constituency for mobilisation by political parties and senior politicians because the majority were regarded in the 2013 election as 'first-time-voters', inexperienced in the electoral process and therefore 'swing' voters worth competing over. Because of this perception the youth became the target of political party mobilisation campaigns and of non-governmental organisations (NGOs) that implemented voter education and registration campaigns.

The media and political analysts reiterated the significance of capturing the youth vote, identifying them as the ultimate determinants of the victor in the July 2013 elections (Fox News 2013). Given the perceived centrality of the youth vote, voter education and registration became the subject of a political contest among the major political parties. Central to that struggle was the accreditation of civil society organisations to provide voter education alongside that offered by the ZEC. With significant financial resources compared to those of the ZEC, civil society organisations were widely seen as aligned to the MDC-T and therefore likely to use voter education as a political campaign and youth mobilisation exercise for that party at the expense of Zanu-PF.

In terms of Section 40B of the Electoral Act (Chapter 2:13), the ZEC has the primary responsibility to provide voter education. Any other organisations wishing to provide voter education and information on voter registration must be registered with and accredited by the ZEC. The accreditation process for NGOs was fraught with challenges. First, the ZEC advertised for organisations to apply weeks before the elections and then imposed stringent conditions such as disclosure of funding sources, conditions with which most organisations were

unwilling to comply. The main reason for that is that most organisations were funded by foreign donors who preferred anonymity, partly for fear of being targeted by state security agents and mainly because foreign funding for voter education was outlawed unless the funds were directed to the ZEC (Electoral Act chapter 2:13, s 40F).

The effect was to delay the accreditation process as organisations sought ways of meeting the ZEC's requirements without disclosing their funding sources. By the time the organisations were accredited the political parties had already started campaigning – shrinking their operation space and rendering their efforts futile. As a result, several organisations conducted voter education illegally under the guise of civic education, which is not regulated. The risk of arrest was significant. For instance, the Election Resource Centre, a local non-governmental organisation, was charged by the Zimbabwe Republic Police (ZRP) with conducting voter education without the ZEC's authorisation in contravention of section 40 (C))1) (g) of the Electoral Act (Amnesty International 2013); other organisations, such as the Zimbabwe Election Support Network (ZESN) and the Zimbabwe Human Rights Association (ZimRights), were raided by the police, who alleged that they were engaging in illegal voter education and mobilisation campaigns. This severely affected their operations.

Nevertheless, two voter registration exercises were conducted by the ZEC in the run-up to the harmonised elections of 31 July 2013. The first was conducted between 29 April and 19 May. The second took place between 10 June and 10 July 2013 after the signing of the Constitution of Zimbabwe Amendment (No 20) Bill into law on 22 May 2013. The new Constitution provided for a mandatory 30-day voter registration exercise before the elections were held (Sixth Schedule, Part 3, Article 6(3) of the Constitution of Zimbabwe Amendment (No. 20) Act 2013). However due to a lack of funding, the ZEC

> deployed only two people per ward (some of them geographically huge) to undertake the exercise. The poor delivery of voter education was evidenced by the 56,627 voters who spoilt the ballots out of the 3,259,454 who voted.
>
> ZHRC 2014, p 9

With limited support from civil society organisations both voter registration exercises were inadequate. The Common Market for Eastern and Southern Africa (COMESA 2013) Observer Mission observed that 'comprehensive voter education may have been constrained by the limited time available before the holding of polls, in order to adequately educate citizens on the electoral reforms brought about by the new Constitution'. This view was reiterated by the African

Union Election Observation Mission (AUEOM 2013, p 13), which concluded that 'thousands more Zimbabweans were unable to register due to the expiry of the 30 day prescription period'.

Youth within the 18-29 age group were most affected by voter registration requirements such as production of proof of residence and the limited time allowed for registration. Proof of residence included utility bills, tenants' agreements and title deeds, so young people who neither rented nor owned property found it difficult to register. As a result,

> hundreds of potential voters were turned away for not possessing relevant documents, in particular proof of residence which is required to register as a voter. In addition, aliens were denied registration even though they possessed Zimbabwean identity documents.
>
> <div align="right">Hodzi 2013</div>

The Zimbabwe Human Rights Commission (ZHRC 2014, p 8) also noted that 'the mobile voter registration exercise failed to facilitate for a majority of "aliens" to get documents to enable them to register as voters provided for by the new constitution'. When the conditions were relaxed and affidavits accepted as sufficient proof of residence the Registrar-General Office's personnel conducting the registration exercise were overwhelmed by the turnout and few people were registered by the time the registration process ended.

These challenges raised concerns among human rights activists and political parties such as MDC-T, who complained that the registrar-general had neglected areas known to be non-Zanu-PF strongholds in an effort to systematically disenfranchise potential opposition supporters from registering as voters (Hodzi 2013).

The ZESN (2013) suggested that 'urban voters had systematically been denied the opportunity to register to vote. A total of 99.97% of rural voters were registered while only 67.94% of urban voters were registered.' It therefore concluded that more than 750 000 eligible urban voters were not registered, compared to about 1 200 eligible rural voters. Essentially, the youth in urban areas had been disenfranchised because of their perceived identity as potential supporters of MDC-T. The youth in rural areas were regarded as potential Zanu-PF supporters.

URBAN YOUTH DEFIANCE

Regardless of the structural challenges imposed on voter registration, youth organisations and individual activists devised web-based platforms and made use of social media to encourage the youth to register, check their names on the

voters' roll and eventually go out and vote. For instance, a consortium of youth organisations launched a first-time voters' registration campaign.

The First Time Voter Campaign, branded X-1 Generation, was targeted at youth between 18 and 35 years of age, most of whom would vote for the first time in the 2013 election, to encourage them to participate effectively in the electoral process. It was coordinated by the Election Resource Centre (ERC) and included organisations such as the Youth Forum. Through social networking sites and private radio stations the campaign provided information about voter registration centres, required documents and other relevant information which was otherwise difficult for the youth to obtain. Although the campaign's message was aimed at young first-time voters it also resonated well with older potential voters who had not participated in previous elections.

Internet-based platforms were also used. These included platforms such as the www.myzimvote.com and www.zimvoices.co.zw, which enabled Zimbabwean youth to check the voters' roll for such information as their names, their polling station, ward and constituency. This provided a reprieve for mainly urban youth who could not verify with the Registrar General's Office due to long queues and the bureaucracy involved. Crowd-sourcing platforms such as www.zimelections2013.com provided the youth with the opportunity to share their observations of the electoral environment through social networks, voice calls and SMS.

Most of the platforms were initiatives of politically unaffiliated youth who sought to circumvent the structural challenges that inhibited them from registering as voters, verifying their voter registration details and obtaining essential information about where they should vote and their nearest polling station. But the challenge was lack of coordination, duplication of effort and the concentration on urban and semi-urban youth with access to the internet. Youth in rural areas were largely neglected.

As a result, promoters of the various initiatives competed for the attention of the youth, rendering their efforts less effective. Furthermore, because of their focus on urban and semi-urban youth and perceived Western funding the campaigns were viewed by state security agents and state media as pro-MDC-T (Kuvirimirwa 2013). To curtail their impact the government banned the sending of bulk SMSs and increased its monitoring of the internet (MISA-Zimbabwe 2013).

To enhance their mobilisation of first time voters, political parties and youth organisations engaged in door-to-door voter mobilisation campaigns, which, in turn, were banned, this time by the Zimbabwe Republic Police Officer Commanding Harare Sub-Region (Zhangazha 2013). Despite the ban Zanu-PF enlisted its youth, affiliated students, the Women's League and war veterans to implement its door-to-door voter mobilisation campaign across the country (*The*

Daily News 2013). While these organisations faced no hindrance from the police, MDC-T campaign volunteers who attempted to do the same were arrested for impersonating government officials and for conducting voter education without the authorisation of the ZEC.

In rural areas Zanu-PF aggressively used the traditional leadership structures to ensure maximum registration; the focus was not just on the youth but on the whole adult population. In addition, the ZEC focused more on rural communities during the registration process, arguing that the majority of the population lived there. As a result, the registration rate in purely rural constituencies, from which Zanu-PF is believed to draw the bulk of its support, was considerably higher (94%) than that in purely urban constituencies (74%), from which the MDC formations draw most of their support (RAU 2013, p 7).

In a statement published by ZESN (2013) at the end of the ZEC's mobile voter registration and voters' roll inspection exercise the organisation suggested that 'the 3 days spent per ward by the teams was inadequate given the huge turnout of potential voters in various parts of the country, especially urban areas'. Calling for the ZEC to extend the registration exercise, the ZESN argued that there was

> under-registration of eligible voters in urban wards with approximately 750 000 missing urban voters and under-registration of youth voters in urban and rural wards with approximately 400 000 missing voters … these youth voters [under 25] are only 5% of registered voters compared to 20% in the Zambian election held in 2011.
>
> ZESN 12 July 2013

The ZEC refused to extend the exercise and the net effect was that a significant proportion of the youth, especially first-time-would-be-voters, failed to register and remained outside the electoral processes.

YOUTH ENGAGEMENT IN FORMAL POLITICS

Youth participation in Zimbabwean political parties is difficult to determine because there is a lack of age-disaggregated data in political party membership registers. However, political party structures follow the same vertical structure of leadership and decision-making. 'The structures are the framework of committees and offices that organise the party's ranks' (Wilkins 2013, p 891). In almost all major political parties in Zimbabwe the low-level workers and volunteers tend to be the youth, while the leadership is dominated by older people. In most cases the youth are confined to party youth leagues or their equivalents. Even in the opposition political parties, such as MDC-T, youth appear to be excluded from

mainstream politics, confined to youth wings and left out of decision-making and agenda-setting processes in a move that Maureen Kademaunga (2011, p 157), a youth activist and member of the MDC-T National Youth Assembly, has described as 'institutionalised marginalisation'.

> They have been disenfranchised from mainstream politics at all levels, from the party political level to the national electoral level. They have largely been disregarded in electoral calculations because they are viewed as an insignificant group in terms of decision-making processes.

She further argues that

> the structure that you find in all of Zimbabwe's political parties has what is called a youth wing … this is a strategy to keep young people content and yet far from actual decision making structures; that is exclusion by inclusion because the youth wing and the women's wing are sub and all decisions are made by the main wing.
>
> Interview, 6 January 2013

Another activist described the youth wings of political parties as mere support bases for senior politicians (Interview, Gladys Hlatywayo, 19 December 2013). The main wing that Maureen Kademaunga referred to is the National Executive Council in the case of MDC-T and the Politburo in Zanu-PF.

The youth assemblies are considered by mainstream politicians as a reservoir of foot soldiers used to mobilise support for the political parties (interview Gladys Hlatwayo). This is made possible by the fact that, 'almost all of the MDC-T's youth activists are unemployed and most have never known formal employment (Wilkins 2013, p 891). The same is true of Zanu-PF's youth activists. In cases of internal political dissent within political parties these youth assemblies have been used to legitimise the leadership and its political decisions. For instance, when the MDC-T highest decision-making body resolved that its National Youth Leader, Solomon Madzore, should stand uncontested for the Dzivarasekwa constituency seat in the 2013 elections, the party's national youth spokesperson said:

> Who will stand in Dzivarasekwa is a national resolution. The youth are the eyes of the party and we agreed as a party … I am simply announcing the resolution. Who are you *kupikisa Save* [who are you to go against Morgan Tsvangirai]?
>
> Mahove 2013

Similarly, the Zanu-PF Youth League has, on numerous occasions, endorsed Robert Mugabe's candidature and has rarely offered opinions that differ from those of the Politburo.

Youth exclusion from mainstream politics was most prevalent in the selection of party candidates for the 2013 elections. In the MDC-T candidates were selected at National Executive level, which determined that some constituencies would hold primary elections while others would hold confirmation polls for incumbent members of Parliament. The rationale behind this arrangement was twofold: to avoid internal conflicts resulting from primary elections and to protect senior politicians from losing primary elections.

However, after members complained, primary elections were eventually conducted in almost all the country's constituencies. Zanu-PF, on the other hand, delayed primary elections until the week before the national elections and allegations of vote-buying, rigging and a chaotic voting process dominated the party's primary election narrative. In both parties the Politburo (Zanu-PF) and the National Executive Council (MDC-T) dominated the determination of the final candidate list, further alienating the youth from active participation as candidates. Demands for a constitutionally mandatory youth quota along the lines of the women's quota were largely ignored by the leaders of both major parties.

The new Constitution provides for a hybrid system of first-past-the-post (FPTP) and proportional representation (PR) system. FPTP is applicable to the 210 National Assembly seats, while the 80 members of Senate and the 60 seats reserved for women in the National Assembly and the provincial councils are filled by means of a PR system. Invariably,

> [t]he proportion of votes each party receives in the National Assembly election in each province will determine the number of seats that party receives in the Senate, in the women's list for the National Assembly and in the Provincial Council.
>
> African Union Commission 2013, p 9

The effect of these provisions is that although there was a quota for women candidates there was no quota for the youth, forcing them to contest against veteran politicians for nominations for National Assembly seats. Because of the importance of the National Assembly all parties fielded their strongest candidates, which largely excluded the youth. In most cases, the youth were relegated to constituencies where they had no chance of winning. For instance, the majority of youth candidates in Zanu-PF were fielded in urban areas, where their chances of winning against MDC-T candidates were slim.

The primary elections and selection of party candidates in both the MDC-T and Zanu-PF was mostly characterised by internal violence, imposition of

candidates by the leadership and patronage, further disenfranchising the youth, who largely lack the financial and political muscle of older politicians. There were a few notable exceptions. Youth candidates who stood for National Assembly seats included Varaidzo Carol Mupunga (25), Zanu-PF candidate for Harare West, and Acie Lumumba (25), Zanu-PF candidate for Hatfield. Other youths, such as Tendai Wenyika (28), Zanu-PF; Maureen Kademaunga (28), MDC –T and Tionei Melody Dziva (29), Zanu-PF, were on their parties' proportional representation women's quota list.

However, as mentioned above, most of these young people stood in areas where their parties had no chances of winning. None of the Zanu-PF youth candidates who stood in urban areas and none of the MDC-T youth candidates who stood in rural constituencies won a seat.

In reality, none of the parties seems interested in having young people as active participants although they are happy to have their backing as voters, vigilantes and campaigners – an attitude that is bound to limit the enthusiasm of young people for political participation (ActionAid Denmark 2013, p 22).

The situation is even more precarious for the youth in underdeveloped rural areas and areas outside of major urban centres; in most cases they have been excluded from the democratic reform agenda, which is dominated by elite activists and middle-class co-opted youths in Harare. Furthermore, the nature of politics within political parties in Zimbabwe does not 'develop critical political minds that could challenge their policies and ideologies' (Honwana 2013, p 112). According to Gladys Hlatywayo, Executive Director of the Zimbabwe Civic Education Trust (ZIMCET), the lack of financial independence of young people in Zimbabwe makes them and party youth wings subject to the will of political 'godfathers' who provide them with direction and resources (interview 19 December 2013). In Zanu-PF 'the dominant power structure and patronage networks are rigid, conservative and often vertically organised' (Abbink 2005, p 11). The situation in MDC-T is similar. Since its inception in the late 1990s the MDC-T has been the only viable alternative for youths who could not join Zanu-PF, as the older generation clung to power. But even so, increased disenfranchisement of the youth in the MDC-T and concerns over increased centralisation of power by Morgan Tsvangirai and his allies within the party, which resulted in the split in the MDC-T in April 2014, suggest that the MDC-T has gradually gravitated towards a situation where

> established systems of patronage, engendered by new but often inconsistent demands for 'good governance' and political accountability by donor countries and international organisations, were redefined, allowing many old-style elites (as well as new ones) to reinstate or reshape neo-patrimonial rule
>
> Abbink 2005, p 14

As stated above, this manifested itself in the imposition of candidates, structural exclusion of the youth by outlawing primary elections in several constituencies and a lack of political and financial support for those young people who stood for election. The result was that young people who stood for election fared badly compared to their older compatriots.

POLITICAL CAMPAIGNS AND YOUTH CLIENTELISM

The economic hardships that resulted from the land reform programme in 2000 and from years of corruption, poor economic performance and decaying infrastructure, persistent strikes by teachers and doctors, poor health and service delivery as well as political repression left the country's population, particularly the youth, disenchanted.

The once-vibrant student movement was dissipated by infiltration by state agents and interference by political parties and ruthlessly crushed by the police. With no avenues for voicing dissent many left Zimbabwe for South Africa, Botswana, the United Kingdom and other countries. The cumulative effect of these socio-political and economic problems was that the focus of citizens moved from political issues such as elections to economic survival. As a result, elections were characterised by increased voter apathy, particularly from the youth. Accordingly, political parties were confronted with the need to restore confidence in the electoral process and encourage the youth to vote, while providing solutions to the myriad challenges the youth faced.

To a large extent, the political campaign in the 2013 election was dominated by grandiose, yet vague, promises of millions of jobs and economic empowerment projects for the youth. The MDC-T manifesto promised a million jobs by 2018 and Zanu-PF promised to establish a US$5 900 498 National Presidential Youth Initiative. According to the Zanu-PF manifesto people between the ages of 18 and 35 constituted 61% of the eligible voters in Zimbabwe; therefore it pledged to protect the youth from 'external political, cultural and information manipulation which, if left unchecked, often results in the youth becoming politically apathetic or misguided' (Zanu-PF 2013, p 26). Again, the assumption was that the youth are supposed to be protected rather than allowed to exercise their agency.

The party further promised to establish a new youth policy that would institute a 25% quota threshold for youth participation in all sectors of the government and economy. Yet still, the message from the political parties and their manifestos failed to articulate the economic and social problems the youth were facing and the political message was often overshadowed by smear campaigns. Hence, it can be argued that

> [t]hese economic and social considerations were set out hazily [in political party programmes] with general statements … and without any analysis of the origin of this situation, systematic critiques of past options, or concrete proposals to address socioeconomic demands in depth.
>
> Hibou, Meddeb & Mohammed 2011, p 92

The generalised and abstract statements made at political rallies, which failed to cater for the youth because of their focus on economic empowerment or creation of jobs, without effectively articulating how these would be attained and what role the youth would play in resolving these problems and the negotiated settlements between political parties in the run-up to the constitutional referendum left the youth feeling neglected by parties that were more concerned with securing political power than with addressing their problems.

The failure of the parties to address issues of the diaspora vote and the chaotic voter registration and voter education processes made the youth sceptical about the election process and unsure of how different it was going to be from previous ones. Because the campaigns failed to articulate youth issues they also failed to ignite the interest of the youth in participating in the elections.

Coupled with a non-responsive political message from political parties was the commodification of youth electoral participation by most NGOs. Youth participation projects organised by NGOs were predominantly donor funded, with most of the funding released a few months before the elections, posing serious challenges to the quality of project implementation.

Of particular significance was the fact that as soon as the NGOs realised that the donor community was focusing on the youth, numerous youth-targeted projects emerged, while the number of associations claiming to target the youth and mobilising them to participate in the July 2013 elections surged. The majority claimed to provide platforms from which young people could articulate their views and express their demands to political parties and the level of duplication and concentration of activities in urban areas was tremendous.

According to Eldred Masunungure (2011, p 127),

> the sad truth about Zimbabwe's civil society is what may be characterised as a high, if not overdeveloped, sense of 'organisational sovereignty', by which I mean oversensitivity to organisational turf and the felt need to defend such territory. This organisational psychology militates against effective and sustained collaboration among civil society organisations as each wants to do its own thing in its own way with little 'interference' from others.

The result was that donor-funded projects were widely regarded as lacking transparency and the youth who participated were usually members of other civic organisations and political parties such as the MDC-T. Consequently, neither the civic organisations nor their youth-targeted projects were anchored in 'domestic constituencies' (Masunungure 2011, p 126), who, in this case, were the youth. Most of the participants would get per diems, hotel accommodation and transport cost reimbursements. Inevitably, the youth who were excluded from these campaigns saw them as a means of legitimising the abuse of donor funds, hence their participation was half-hearted and the projects had little impact. For these reasons, particularly the commodification of political processes, the youth in Zimbabwe lacked coordination and a unified voice. Youth organisations and NGOs sought to maximise funding opportunities offered by Western donors, whilst the ordinary youth sought to gain as much financial and material benefit from the organisations as they could.

YOUTH-POLITICAL PARTY LINKS: COMMODIFICATION OF THE YOUTH VOTE

The influence of self-interest and the perception of the youth as 'swing voters' is best illustrated by the patron-client relations narrative. In most cases youth links with politicians were mainly based on 'direct material inducements targeted to individuals and small groups of citizens whom politicians know to be highly responsive to such side-payments and willing to surrender their vote for the right price' (Kitschelt & Wilkinson 2007, p 2).

These material inducements ranged from party regalia to financial loans and employment. For instance, the small emerging youth middle class in Harare and a few other major towns, who were beginning to enjoy the benefits of economic stability under the Government of National Unity, were largely uninterested in voter registration processes and elections and tended to focus on the gains political parties offered in the immediate term. This group of young people was interested in the government's *Ukondla/Kurera* Youth Fund, an economic empowerment fund established several months before the elections (*The Zimbabwean*, 3 October 2012; *NewsDay*, 1 February 2013). The Zanu-PF manifesto also promised to establish a National Presidential Youth Initiative worth almost US$6-million as one of its key post-election deliverables.

The majority of young people were sceptical about the ability of the future government to implement promises such as improved job opportunities and economic empowerment and sought to take advantage of instant and personal benefits rather than wait for the benefits of long-term policies. According to Kitschelt & Wilkinson (2007, pp 25, 26):

> Poor people cannot wait for material rewards and therefore prefer
> targeted hand-outs to the distant benefits of policy change …
> poor people may have less education and therefore less capacity
> to understand and trace the lengthy causal process linking policy
> changes to personal benefits. This may make them ignore or
> understate the value of large-scale club or collective goods

Where Zanu-PF could not offer financial resources it offered government jobs to the youth. For instance, despite a government ban on new civil service recruitment, the Zimbabwe National Army and the Ministry of Home Affairs continued to recruit. The then finance minister, Tendai Biti, stated in Parliament that

> between January and May 2012 there has been an unlawful increase
> of about 10 000 employees in the Public Service Commission … the
> two chief culprits are the Ministry of Defence, which employed 4 600
> personnel since January 2012, and the Ministry of Home Affairs,
> which has recruited 1 200 personnel without Treasury approval.
>
> *NewsDay* 2012a

In response, the Minister of Defence, Emerson Munangagwa, argued that the Zimbabwe Defence Force needed to recruit continuously to maintain its strength. However, the majority of those recruited were youths from rural areas who lacked significant employment opportunities and educational qualifications. The army's Chief of General Staff, Major General Martin Chedondo, was quoted by the media as saying 'now that soldiers are being recruited from every village, we want to see a village that will go against national values' (*NewsDay* 2012b).

The newly-recruited youth played a crucial role in the special voting by the police and army that was widely criticised for being chaotic and susceptible to rigging by Zanu-PF. Instead of being used to perpetrate acts of violence against the populace and perceived supporters of MDC-T, they were allegedly used to rig the elections, first during the special vote and then on election day, when most of those in the army and the police voted again. One local election observer noted trucks bringing soldiers to vote at several polling stations in Mutoko.

The then Minister of Youth Development, Indigenisation and Empowerment, Saviour Kasukuwere, defended his ministry's recruitment of 7 000 youths as ward youth officers – 5 000 more than the number that had been approved by the Treasury, arguing that he needed to recruit at least 15 000 youths as part of his ministry's youth development and empowerment drive (*Herald* 2011). With the looming or imagined threat of losing their jobs if Zanu-PF lost the elections, the employed youth focused on protecting their jobs by obeying the demands of Zanu-PF politicians.

Unemployed urban youth, who lacked the financial means and options of those in employment also saw the elections as an opportunity for a better future. In addition, there were part-time jobs as party campaigners, free food handouts, allowances for attending meetings and small-scale projects offered by campaigning politicians in their constituencies. These unemployed young people were the focus of the major political parties, whose manifestos contained promises of jobs and economic empowerment.

For the youth in rural areas, largely unemployed and living in grinding poverty, promises of jobs and economic empowerment compelled them to participate in large numbers. Yet the youth in the diaspora, who had supported the economy and their families during the economic difficulties of 2008, were denied the right to vote and were largely excluded from the political processes in the country (Ndlovu 2013).

As the youth positioned themselves within political parties that they believed would satisfy their immediate needs, a disjointed youth movement lacking a national thrust was solidified; consequently, the youth emerged as polarised as the mainstream political parties they belonged to and were indistinguishable from those parties and their ethos.

What was lacking was the conglomeration of different classes of youth to form a national movement unified by similar objectives or, at least, a resolve to address the common problems of governance in the country.

High levels of poverty, unemployment and commodification of the electoral process by both politicians and the youth in the Zimbabwean context suggest that

> [s]ocial structure is an interactive whole where the actions of individuals and minor groups play a role and 'realise' as well as transform structures. Youth are neither universally manipulated nor passive actors in a world designed by others but individuals who are trying to chart their own course. The dynamics of collective movement is incomplete without a realist perspective on individual agency.
>
> Abbink 2005, p 9

As political parties and senior politicians used party structures to limit pressure by the youth for more inclusion, significant numbers of young people were motivated by the desire to resolve their grievances, not as a coordinated uniform movement, but as individuals.

This attitude was not peculiar to the youth, older citizens attended rallies and professed support for the parties that offered more material benefits. For instance, although people were largely forced to attend Zanu-PF rallies, many villagers

who faced starvation attended the rallies addressed by Robert Mugabe in order to get food parcels that were handed out by Grace Mugabe. It can therefore be argued that partisan attachment in the July 2013 elections was not mainly driven by support for the policies represented by the parties but by the material benefits they offered.

THE YOUTH FACTOR THAT NEVER WAS?

The net effect of the youth on the 2013 elections is difficult to determine. As the results of the elections were announced, with Zanu-PF and Mugabe emerging as winners, both non-governmental organisations and the MDC-T disputed the results, alleging manipulation of the voters' roll, vote rigging, particularly on the special vote, and disenfranchisement of potential urban voters who failed to register during the two voter registration exercises.

In its preliminary report the ZESN argued that more than 750 000 urban voters were missing from the voters' roll and that 304 890 (8.7%) voters who were on the voters' roll had been denied the right to vote. There were several reasons for this (ZHRC 2014, p 13), the major one being that they were attempting to vote in the wrong ward. The ZESN argues that 'while at 39% of rural polling stations ZESN observers reported more than 25 potential voters being turned away and not permitted to vote, at 82% of urban polling stations more than 25 potential voters were turned away and not permitted to vote' (ZESN 2013).

While there is no evidence to suggest that only the youth were affected, what these statistics do suggest is that more urban voters were affected than rural voters. In rural areas reports of significant proportions of voters needing assistance raised concerns that even literate people were intimidated and forced to request assistance as a means of proving that they voted for Zanu-PF. The ZESN (2013) argues that 'at 49% of rural polling stations more than 25 people were assisted to vote as opposed to only 5% of urban polling stations'. The ZHRC also raised concern about 'the large number of assisted voters as indicated by ZEC. It was reported that a total of 206 901 (5.9%) people were assisted to cast their votes' (ZHRC 2014, p 14). It can be argued that different methods of vote rigging were employed depending on whether or not people were voting in rural areas and whether or not they were likely to vote for Zanu-PF.

Before the 2013 elections the dominant view among civil society organisations was that the youth would be the game changers and would ultimately determine the winner. However, this turned out not to be the case because of manipulation of the voters' roll, poor voter education, flawed voter registration processes and the turning away of mostly urban voters from polling stations (Youth Forum 2013). The Election Resource Centre reiterated that due to the large number of

urban voters who were turned away and the manipulation of the voters' roll, urban voters, particularly the youth, were disenfranchised, hence they declared that the election was not fair. However, what was consistent in all the reports was that there were few incidents of physical violence.

CONCLUSION

In the past the youth in Zimbabwe have played a significant role in mobilising and campaigning for their respective political parties to the extent that, in previous elections, particularly those in 2008, they committed atrocities at the behest of their political leaders. But the scenario in 2013 was different – despite isolated cases of violence, the youth were largely invisible.

The 2013 election also challenged the assumption that the youth are largely homogenous, collaborative and uniform in their grievances. It became clear that they are largely polarised, either with regard to political affiliation or on the basis of socio-economic status. The concerns and interests of unemployed youth and the way they participated in the elections differ from those of emerging middle-class youth who benefited from the economic stability during the course of the Government of National Unity and from those of the youth in the diaspora.

Within political parties a significant proportion of the youth contested the elections either as candidates for the National Assembly or through the proportional representation system. However, they faced significant structural challenges from their parties – the imposition of candidates, patronage and vote-buying were prevalent in both Zanu-PF and the MDC-T. Young people who contested the elections found themselves struggling to raise financial resources to compete against senior politicians and were mainly posted to constituencies in which their parties had no chances of winning. They therefore continued to be structurally sidelined from active politics.

The differences in the socio-economic status of the youth, coupled with the commodification of political participation, hindered the effectiveness of youth initiated projects aimed at effective participation in the elections. Duplication of effort and activities targeted at the youth were largely tainted by a lack of transparency in the utilisation of donor funding, resulting in the extension of clientelism. As a result, youth participation in the 2013 elections was dominated by individual interests driven by the need to gain from material and financial goods distributed by political parties during the electoral period. Hence, although the youth attended political rallies, the number of registered youth voters remained lower than it is in other countries in the region.

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CIVIL SOCIETY'S CONTESTED ROLE IN THE 2013 ELECTIONS IN ZIMBABWE
A Historical Perspective

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ABSTRACT

This article is a critical and historical assessment of the contribution of Zimbabwe's bourgeoning civil society to the restructuring of political and social relations in post-colonial Zimbabwe. The general objective is to contribute to the debate about how Zimbabwe's post-colonial civil society has theorised about change and, importantly, the deeply contested nature of the agency that this has generated. The article concentrates on how civil society structured itself and acted before the elections on 31 July 2013, which the ruling Zimbabwe African National Union-Patriotic Front (Zanu-PF) 'won resoundingly'. What emerges is that while the economic despair of the 1990s and the breakdown in the national consensus mobilised an almost 'popular democratic front' this changed course in the subsequent decade, weakening the 'popular' and 'democratic' nature of civil society agency. The foundation of 'liberal rights' and 'democracy' and 'good governance' powerfully amalgamated in the National Constitutional Assembly (NCA) and the 'No Vote' in 2000 became theoretically feeble and revealed a debilitating post-colonial impasse – an interregnum during which an urban-based intelligentsia-led theorisation and agency was momentarily checkmated by a violent nationalist authoritarianism.

THE HARMONISED ELECTION IN ZIMBABWE: THE PROLONGED INTERREGNUM

On 21 February 2014, his birthday, Robert Gabriel Mugabe, now 90 years old, declared that the 'regime change agenda' was dead and that the Movement for Democratic Change (MDC)[1] and the 'West' had been shattered by 'Chaminuka's lightning'.[2] Mugabe's invocation of the legend of Chaminuka was in keeping with what has been called 'patriotic history', which favours Zanu-PF and Mugabe (Ranger 2004; Tendi 2010). The insidious intention of that patriotic history however is to separate 'liberators' (read Zanu-PF) from 'sell outs' (read MDCs and civil society allies).

Before the harmonised election it was generally assumed that 'Zimbabwe was in transition' (Murithi & Mawadza 2012), was 'mired in transition' (Masunungure & Shumba 2012), on a 'hard road to reform' (Raftopoulos 2013) or in some sort of 'chaos and transition' (Kagoro 2008), or there was a 'transition to democracy' (Rupiya 2013). The result of the 2013 elections showed otherwise and it seems Mugabe and Zanu-PF continued to 'defy the winds of change' (Masunungure 2009).

How Zanu-PF managed to 'zig-zag' through questions of democratisation is the focus of our analysis. However, we do not necessarily analyse Zanu-PF and its apparatus for retaining power, instead we turn our attention to the contested terrain of 'civil society' because it is here that post-colonial political and social forces for democratisation have dominated and emerged. Civil society has become an important piece of the puzzle for the student of political change who wants to understand how such change evolves in post-colonial societies in general and in Zimbabwe in particular.

Zimbabwe's changing political landscape cannot be fully comprehended without taking into consideration the momentous yet contested role its 'sophisticated civil society' (Moore 2006, p 120) has played. We do not attempt to discount the rapaciousness of the state and the everyday violence with which civil society has had to deal since the 1980s but take a closer look at the terrain of civil society in Zimbabwe.[3] Our intention is to look more closely at the terrain (civil society) which gave birth to the opposition and how its evolution (theory and agency) has contributed to the current state of affairs – a painful interregnum in which the old refuses to die and the new struggles to emerge (Moore 2008).

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1   Here 'MDCs' will refer to all the factions. In cases where we need to delineate, the following will be used: Movement for Democratic Change-Tsvangirai (MDC-T); Movement for Democratic Change-Mutambara (MDC-M); Movement for Democratic Change-99 (MDC-99)

2   See www.newzimbabwe.com/news-14549-MDC-,+West+hit+by+lightning+Mugabe/news.aspx. Here 'JUICE' refers to the MDC Manifesto entitled 'Jobs, Upliftment, Investment Capital and Environment'.

3   For an exploration of 'violence' and 'governing' in Zimbabwe, see Sachikonye 2011.

In order to set the stage for our analysis of how civil society has evolved and its contested role in the 2013 elections we take an historical perspective and revisit the concepts of the 'Unresolved National Question' (Moyo & Yeros 2005) or 'Zimbabwe's Unfinished Business' (Hammar, Raftopoulos & Jensen 2003) as they played out in those elections. It is this unfinished business that became central to the battles over the trajectory of the post-colonial polity, defined and determined state-civil society relations from the early 1980s, spurred the formation of the MDC and looks poised to continue haunting Zimbabwe long after Mugabe is buried.

The contradictions and contestations that emerged are considered from an historical perspective so that they are not stripped of their historical context. In this particular case the focus is on the 2013 elections to reveal how Zimbabwe's civil society became blind to historical questions of dispossession, dislocation and domination. On the other hand, Zanu-PF appropriated that history, combined it with authoritarianism and, in the process, stalled a transition to a more democratic Zimbabwe.

The approach of this article is intentionally historical in order to use theoretical lenses to further our understanding of the present 'moment'. An historical exposition is necessary as a starting point because it raises interesting questions about the 'time and space' within which political ideologies and political action evolved and how this crystallises into four phases: the formation of the MDC in 1999; the triumph of the National Constitutional Assembly (NCA)-led 'No' vote in February 2000; the half-abandoned March 2008 election and the consummation of the Government of National Unity (GNU) and, finally, the advent of a new Constitution and the 2013 elections.

After the historical exposition we focus on the 2013 elections because they raise important questions about the analyses, strategies and actions of Zimbabwe's civil society in its attempt to resolve the 'Zimbabwe Crisis'. We set the stage with an historical perspective because, in a way, we are arguing for *history*, taking note of Hobsbawm's warning against being 'ahistorical' or even 'anti-historical' (1998, p 29).

EARLY INDEPENDENCE, CIVIL SOCIETY AND THE RISE OF THE WOMEN'S MOVEMENT

In the early 1980s civil society was generally focused on 'development' or 'welfare' – examples included the Association of Women's Clubs (AWC) and the Organisation of Rural Associations for Progress (ORAP). There were also white-dominated organisations like the Commercial Farmers Union (CFU), the Confederation of Zimbabwe Industries (CZI) and the Employers' Confederation of Zimbabwe (EMCOZ), which wielded a strong policy influence over the state

(Moyo 1993; Dorman 2001). The shift in civil society-state relations from this phase to tensions and eventual confrontation can be partly traced to the brutal suppression of what the government called 'dissidents' in the Matabeleland and Midlands regions, starting in the early 1980s.

In the guise of suppressing 'dissidents', the government deployed the 5th Brigade of the Zimbabwe National Army (ZNA) in a campaign which is now infamously called *Gukurahundi* (meaning to clear the chuff). More than 20 000 civilians are reported to have been murdered and the Catholic Commission for Justice and Peace (CCJP) and the Legal Resource Foundation (LRF) exposed the brutality and provided the basis upon which other civil society organisations would extensively document, expose and challenge the post-colonial government's record on human rights and the rule of law.

Apart from the suppressed and dissenting voices in the Matabeleland and Midlands regions, and the Zimbabwe African National Union (Zanu) Ndonga, largely dominant in Chipinge, limited voices opposed Zanu-PF's hegemony. The emphasis was *Gutsaruzhinji* ('Socialism') and *Gwara Remusanagano* (Zanu-PF's Path), with the prime minister promoting a 'one nation', 'one party' and 'one country' policy. Moyo (1993, p 7) argues that, 'all legitimate organisations were challenged by Zanu-PF to join the ruling party as a way of proving their revolutionary and patriotic commitment'. Overall, Moyo (1993, p 7) sums up the early independence period as follows:

> Civil Society groups, such as trade unions and student movements, which had operated underground during the days of settler government and which had hoped to attain legitimacy after independence were left bleeding by the ruling party's tactics, and some organisations bled to death because they failed to find any political space for independent policy action arising from self-management and self-organisation without state tutelage.

This power construct by Zanu-PF was short-lived, as the women's movement rose to challenge the state's double standards on women's rights. When the Zimbabwe Republic Police (ZRP) rounded up and beat up women because they were 'loitering' as 'prostitutes' during operation 'Chinyavada/Scorpion' incensed women activists promptly formed the Women's Action Group (WAG) to challenge the state's paternalistic and patriarchal treatment of women.

The formation of WAG and many other women's organisations that would follow was almost inevitable because, after independence, the social and political progress that had been made during the liberation struggle when it came to women's rights quickly faced a conservative backlash. This was effected 'through

the powerful invocation of counter-revolutionary cultural-nationalist discourses, which portrayed women's organising as feminist, and feminism as anti-nationalist and pro-imperialist' (Essof 2013). The newly-formed WAG openly:

> criticised government for violating rights of its own citizens as well as government policies and actions, thereby setting a stage for direct confrontation with the state and making a departure from supporting government and non-political engagement.
>
> <div align="right">Mapuva 2013, p 265</div>

WAG's social and political action emboldened women and accelerated the emergence of other women's organisations so that, by the end of the 1990s, one could clearly identify the presence of a powerful 'Zimbabwean women's movement' (Essof 2001, p 1). WAG clearly blazed the trail and as the 1990s began and the government implemented the Economic Structural Adjustment Programme (ESAP) more women's organisations emerged, openly identifying themselves as feminist. Despite the growing tensions and battles led by women, the Zimbabwe Congress of Trade Unions (ZCTU), students, church organisations and some emerging human rights organisations, some argued that the prospects for civil society were 'gloomy' (Moyo 1993). This was clearly off the mark.

BREAKDOWN IN THE NATIONAL CONSENSUS: THE FAILED ONE-PARTY STATE AGENDA

The end of the 1980s heralded a breakdown in a very tenuous 'national consensus' during which state-civil society relationships were generally non-confrontational. The fissures opened up when Zanu-PF, having coerced the Patriotic Front-Zimbabwe African People's Union (PF-Zapu), at gun point, wanted to create a 'one-party state'. Dominant political elites under Zanu-PF argued that the 'one-party state' was 'African in character' and asserted that multipartyism was anti-development (Makumbe 1998).

   Students at the University of Zimbabwe (UZ) opposed the one-party state agenda, arguing that it would lead to 'a one man fascist dictatorship, a brutal, tyrannical, murderous, fossilised, bureaucratic political system' (UZ SRC, cited in Moore 2006, p 23). Church groups like the Catholic Bishops, the Zimbabwe Council of Churches (ZCC) and the Catholic Commission for Justice and Peace (CCJP) also opposed the creation of a one-party state (Dorman 2001, p 83). When the one-party state agenda was abandoned it was partly because of the strong opposition from civil society and the Zimbabwe Unity Movement (ZUM) (Sachikonye 2011).

   By the end of the 1980s, with Zapu swallowed up by the Unity Accord of

1987, the women's movement, church affiliated groups, the student movement and the labour movement became increasingly critical of Zanu-PF, leading others to point out that the 'elite cohesion' had cracked (Makumbe & Sithole 1997). As the 1980s ended the state of affairs could only be summed up in these brilliant words:

> Inside the new regime, however, there are various degrees of enrichment and acquisitiveness ... Favors abound, corruption triumphs, and morals decline. ... The party helps the State keep its grip on the people. It is increasingly an instrument of coercion and clearly antidemocratic.
>
> Fanon 1961, p 116

The stage was set for further alienation and confrontation, a confrontation that was to be further deepened by the introduction of the Economic Structural Adjustment Program as the government abandoned the welfarist approach that had seen rapid expansion in education, health and social service delivery, and made a neo-liberal turn. Issues of the rule of law, governance and corruption became crucial, especially after the Willowgate Scandal (which involved government officials buying and selling cars for personal gain). The scandal led to the establishment of the Sandura Commission, with Thomas Mapfumo penning a popular song, 'Corruption in Society', and Lovemore Majaivana's, 'Love and Scandals', which reflected the public outrage at the abuse of public officials by government bureaucrats and party apparatchiks. The independence dream was clearly coming unstuck.

'LAST MAN': CIVIL SOCIETY IN THE STRUCTURAL ADJUSTMENT ERA

The turn from the 1980s to the 1990s was also associated with a global 'neo-liberal turn' and in the 'developing' countries the International Monetary Fund (IMF) pushed for structural adjustment programs (SAPs). The Zimbabwe government, under pressure to meet rising social and economic demands, introduced ESAP, which was aimed at liberalising the economy. The effect of ESAP was devastating, with Saunders (1997, p 18) pointing out that one result of the programme was that:

> workers' real incomes have plummeted by 60%. According to the ZCTU most workers' real wages are now only one-quarter of what they were at independence in 1980. Worse still, formal sector employment has been stagnant since 1990, if not shrinking.

The 1990s saw increased nationwide strikes by workers and students, leading Bond & Manyanya (2002) to call it the 'decade of IMF riots. In addition, the student

movement, mainly under the leadership of the University of Zimbabwe Students Union and the militant Zimbabwe National Students Union (ZINASU), protested perennially and opposed privatisation (Zimunya 2007; Zeilig 2007). ESAP was a disaster and was given the mocking name, 'Extended Suffering of African People'.

The labour movement, opposed to ESAP, became an increasingly militant voice outside the state and was identified as the most powerful single non-state force (Bond & Saunders 2005). The ZCTU argued that ESAP was characterised by a complete 'market failure' and sought an alternative policy direction under what it called 'Beyond ESAP: Framework for a Long Term Development Strategy for Zimbabwe' (Kanyenze 2011).

The process of economic liberalisation had a contradictory corollary: on the one hand structural adjustment effected a liberalisation of the economy, on the other, the pressures it generated provoked the ruling elites to use force increasingly to silence the unsettled population (Bond & Manyanya 2002). The 1990s could be called the 'civil society decade' because in that decade opposition parties were weak, disorganised and lacked a social base and the burden of confronting the state was taken up by civic organisations led by the ZCTU; leading some to note that civil society was the most powerful opposition to the ruling hegemony (Sachikonye 2005).

By the end of the 1990s there was enough outrage against the government to give rise to the formation and collation of civil society coalitions, fulfilling Polanyi's prediction of a 'double movement', in which the expansion of the 'self-regulating market' also generates its opposition (Polanyi 2001, p 76). These coalitions included the Zimbabwe NGO, the Human Rights Forum; the Women's Coalition of Zimbabwe (WCZ), formed in 1999; the National Constitutional Assembly (NCA), formed in 1998, and the Zimbabwe Election Support Network (ZESN), formed in 1999. The most powerful of these was the NCA, which became an important platform for advocacy of a new democratic constitution.

Ideologically, the introduction of ESAP, or Zimbabwe's 'neo-liberal turn', achieved another feat – it insidiously fed civil society with a 'neo-liberal' discourse and the logic of 'free markets', 'de-regulation', 'anti-statism', 'privatisation' and a belief in 'small' government. Effectively the 1990s achieved a dramatic shift in three ways:

- The political logic of 'structural adjustment' (re)presented the state and its apparatus as the guarantor of the 'rule of law', 'property rights' and 'markets' – what Harvey (2002) calls the 'neo-liberal state'. At the same time, the political ideology pushing structural adjustment strategically delegitimised the same state's capacity to be either 'interventionist' or '(re)distributionist' – Keynes was effectively killed. The state was recast

as a threat to 'freedom', 'individual liberty' and 'creative entrepreneurial activity' – and yes, sometimes it was definitely so. The conceptualisation of this sort of democracy, as Dansereau (2003) argued, is deliberately very narrow.

- Civil society internalised, with minimum challenge, an ideology which separates politics from economics and instead motivates limited battles over 'human rights', 'governance' and the 'rule of law', while quietly discarding the glaring inequalities in the economy often tied to historical processes of colonialism, imperialism, domination and dispossession. However, and this becomes glaringly obvious in an analysis of the role of civil society in the 2013 elections, the ruling elites have partially retreated and have become re-distributionist (if we are to count indigenisation and 'fast track land reform'); while civil society has remained stuck in analyses and activism which seek to separate politics from economics.

- Intensified global capitalist relations of production (what others call time-space compression) seems to have overwhelmed the 'nation-state' and, in its wake, supra-national institutions (World Trade Organisation, International Monetary Fund, etc) now decide economic policies. Those nation-states that wanted to be interventionist and redistributionist were threatened with 'capital flight', reduced 'foreign direct investment' and restricted access to global 'capital markets'. Some even argued, rather prematurely, about the 'death' of the nation-state. The net effect ideologically stifled civil society contestations as it seemed 'there was no alternative', and it is this state of delirium which haunted civil society organisations in the 2013 elections.

Zimbabwe's civil society thus found itself in a terrain in which its agenda was driven not only by local demands but by 'universalism'. However, this universalism dragged civil society political action and thinking into a pernicious situation where its demands were being disciplined to reflect a limited agenda of 'good governance' and 'democracy', which skirted contemporary and historical economic relations. The gap this created was filled by a liberation movement which pretended to be a party of 'revolution' and seemed to be solving historical questions, leading to Robert Mugabe being greeted with 'wild cheers' in South Africa and other African countries, while, at home, opponents were being murdered, jailed and excluded.

THE BATTLE FOR CONSTITUTIONAL REFORM: ENTER THE NATIONAL CONSTITUTIONAL ASSEMBLY

The convergence of civil society forces led to the formation of the National Constitutional Assembly (NCA) in 1998 and Zimbabwe's crisis was immediately

categorised as being the result of 'bad governance', with the solution, to guarantee 'good governance', being a new 'democratic constitution'. This was a half-valid analysis because the social and political forces challenging and confronting the state were driven by material demands as well as by questions of civil and political rights.

Through the NCA, understood here as a process of struggle and contestation, the demands of the social and political movements which had 'revolted' in the 1990s were (re)presented through a very limited 'ideology of human rights'. This is important to note because by the time of the 2013 elections civil society was generally not debating any material issues. This shift also permanently afflicted the MDC, which, in its attempt to be a modern post-nationalist movement, ignored policies that could be seen as 'interventionist' or 're-distributionist', leading Bond & Manyanya (2002, p vii) to caution that the MDC was 'a false start'.

Something else happened as the NCA tussled with the government. In a momentous move Zanu-PF broke its alliance with 'white agriculture' by inserting section 57 into the proposed Chidyausiku Draft Constitution, which pushed for the compulsory acquisition of land. This process pushed the white population back into the political process, forcing them to embrace and support the possibility of 'democratic change' under the MDC. Just as Zanu-PF intensified its onslaught on the 'colonial architecture' of white domination in land ownership, by rhetoric, corruption and much coercion, the MDC and civil society in general were retreating from this sphere, preferring a limited conception of 'democracy' and 'good governance'. When Zanu-PF further upped the ante to include 'indigenisation' in the 2013 election civil society was unable to build a cohesive counter-movement capable of mobilising a social base to sustain popular challenges to Zanu-PF.

In February 2000 the government was defeated by an NCA-led campaign for a 'No' Vote – a humbling moment for Robert Mugabe and the ruling Zanu-PF, which had never suffered such a humiliation. The NCA brought together on one platform a plethora of civil society organisations, forming a formidable 'united front'. Constitutional reform was viewed as a powerful process of disciplining the state, making it more democratic and less authoritarian (Kagoro 2008; Sachikonye 2011).

This united front was both a positive and a negative aspect of the constitutional reform movement. As a positive it presented a powerful amalgamation of social and political forces rooted in the community and thus had actual political and social power to act, including through collective action, when needed. However, negatively, in the process the more radical social and economic demands, including those for land redistribution, were drowned as the NCA's intellectual output shifted to 'liberal' university academics and lawyers.

The emphasis on 'constitutionalism', 'democracy', 'good governance' and 'human rights' had severe limitations, becoming an uncontested truth. Critical activist/scholars, like Professor Mukau Mutua, a former student activist at the University of Nairobi, has warned about the limitation of this particularised 'human rights ideology', stating:

> The bias towards civil and political rights favours vested narrow political interests and kleptocracies which are entrenched in the bureaucratic, political and business sectors of society and represent interests that are not interested to challenge economic powerlessness of the masses in postcolonial Africa. Yet the human rights movement assumes the naturalness of the market and the inevitability of the employer-employee, capitalist-worker, and subordinated labour relations. It seeks the regulation of these relationships, but not their fundamental re-formulation.
>
>   Mutua 2008, p 34

As this 'ideology of human rights' took over, political analyses of the economy were drowned and civil society organisations (like the Women and Land Lobby Group) that were interested in historical inequities became ephemeral. The demand for a progressive land policy or for economic (re)structuring to de-colonise the economy were largely ignored within civil society, dismissed as 'a smoke and mirror issue' intended to divert attention from the increasing corruption and economic crisis from the late 1990s.

By the time Morgan Tsvangirai left the NCA to lead the MDC and write its manifesto, the 'social and economic' justice components had been whittled away. In addition, civil society split, as the indigenisation lobby groups, war veterans' movement, rural associations and landless people movement were captured by Zanu-PF, thus undermining the unity and coherence of civil society to put pressure on the state (see, Sadomba 2011; McCandless 2011). This split in civil society became crucial in the later preceding elections, until the 2013 elections; in particular the war veteran's movement became a vital cog in the Zanu-PF election machinery and 'Fast Track Land Reform' the epicentre of Zanu-PF's manifesto.

LAND REFORM, THE MDC AND CIVIL SOCIETY: NOW YOU SEE IT NOW YOU DON'T

When Zanu-PF responded with *Jambanja* (violent land invasions) the opposition MDC and the majority of civil society criticised its actions as a gimmick aimed at retaining power and deliberately targeted at white farmers. Zanu-PF's campaign, 'The Land is the Economy and the Economy is the Land' was rubbished as

ineffective and yet, in the process, Zanu-PF managed to re-ignite and use state power to organise what some have called the 'uncivil society', mainly comprising members of the Zimbabwe National War Veterans Association. On the other hand, civil society was not intensely interested in the land question, reflecting its urban bias, with Moyo (2004, p 11) noting that the demand for radical land reform was 'submerged, especially in recent struggles for democratization, by the proceduralist thrust of civil society activism, much of which is ensconced within a neoliberal economic framework'. MDC T-shirts carrying the slogan 'Land to the People and Not to Politicians' disappeared at the very moment that Zanu-PF was re-invigorating the 'unfinished business' of the liberation war.

The fact that Morgan Tsvangirai was captured by Zimbabwe Broadcasting Corporation Television (ZBC-TV) newsmen on video during the 2002 presidential elections campaign receiving signed bank cheques and money from white farmers at a political rally in Banket did not help. It perpetuated ZANU-PF's propaganda that the MDC was a front for white farmers and Western interests. On the other hand, calls from radical groups like the International Socialist Organisation (ISO), led by lawyer and Member of Parliament (MP) Munyaradzi Gwisai, to support radical land reform were ignored. While the MDC declared it would re-distribute '6-7-million' hectares, its plan was dependent on 'donor aid' and 'the willing buyer-willing seller' model, which had failed.

This fissure has continued to be an Achilles heel in the discourses of change and transformation in Zimbabwe because civil society's conceptualisation of democracy was pre-dominantly a battle over 'good governance' and 'human rights', narrowly defined and consistent with the global 'neo-liberal' framework. From 2000 to 2008 civil society discourse was dominated by the focus on political and civil rights as both a response to the deepening economic crisis in Zimbabwe and an attempt to challenge Zanu-PF's increased authoritarianism, if not outright militarism.

THE 'NEW' CONSTITUTION AND REFERENDUM: TAKE CHARGE OR TAKE PART[4]

The major political parties – Zanu-PF, MDC-T and MDC-M – signed a Global Political Accord (GPA), which resulted in a Government of National Unity (GNU)

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4   Civil society in Zimbabwe was divided mainly into two camps. One camp was strongly aligned to the MDC-T and supported its participation in the Government of National Unity. This camp was called 'take part', in reference to its support of the MDC-T's participation in the GNU. The second camp, called 'take charge', was aligned to the NCA position of not supporting the MDC's participation in the GNU, for this group felt that the MDC had betrayed it by agreeing to a GNU with ZANU-PF. The, along with those civil society organisations and individuals who supported its position, launched a campaign alled 'take charge and complete the change', which became known as 'take charge'.

or an Inclusive Government (IG), with the specific objectives of reform and policy implementation. In the process CSOs generally became close to the government, especially the two MDCs. Constitutional reform, a key component of the roadmap to 'transition' and democratic government, which had been guaranteed by the Southern African Development Community (SADC) was supposed to be carried out before any election was held. The parties to the GPA announced that the process would be handled by a government-controlled Constitution Select Committee (COPAC) and the draft Constitution was passed in a referendum. The process of publishing the draft Constitution and organising the referendum was very hurried, leading some to say that the Constitution had been 'rammed down our throats' (Whande 2014).

Only a weak NCA, a faction of ZINASU, the ISO and a faction of the ZCTU rejected the process and the outcome, arguing that politicians could not be in charge of constitution-making. The NCA and its allies did not differ with the civic and political rights discourse, their objections related to procedural matters regarding the process of writing a new Constitution. They were financially weak, and money from donors poured into those organisations that seemed to support the position adopted by the MDC-T. However, the civic organisations in general, whether or not they agreed with both the content and the process, were more concerned about the technical procedural aspects of the process leading to the referendum.

For example, the only major dispute over the draft Constitution emerged when ZIMRIGHTS was barred from being an 'observer', with civics threatening to 'boycott observing the actual referendum'; yet such radical positions were absent when the content was being debated. The NCA protested, making valid points, among them the fact that '95% of those who voted yes neither saw nor read the draft constitution, 95% of the "Yes" voters knew nothing about the contents of the Draft Constitution' (NCA Press Statement 2013). The process was railroaded, giving no opportunity for people to 'look at the bigger picture' (Magaisa 2013) and the principals themselves did not hesitate to point out that the Constitution might have to be tinkered with again after the election.

Those within the GNU and COPAC campaigned for a 'Yes' vote, with Theresa Mugadza, a commissioner in the GNU, arguing that she was voting 'Yes' because it was a 'better constitution' and because the government could not spent a lot of money and 'show nothing for it' (Mugadza 2013). The NCA's 'take charge' campaign was weak, under-resourced and easily sidestepped, as Zanu-PF, the MDCs and the dominant civil society organisations formed a 'united front'. Those who were critical of this new-found friendship felt that it pointed to the emergence of a 'permanence of elitist politics' (Zhangazha 2013).

CIVIL SOCIETY AND THE GNU: PLAYING RUSSIAN ROULETTE DOES 'KILL'

As the blame game played around the economy shifted within the GNU, civil society in general was almost paralysed, either unable or unwilling to build grassroots campaigns to make the GNU accountable and responsive, check the abuse of power and force Zanu-PF to carry out the reforms outlined in the roadmap.

For example, the think-tank, the Institute for a Democratic Alternative for Zimbabwe (IDAZIM) was reduced to a technical partner in the prime minister's office, while the Zimbabwe Institute (ZI) played the same role within the MDC-M. Civil society mobilisation was feeble, coalitions became weaker and, in certain cases, the MDC-T played an active divisive role, with the result that the ZCTU and ZINASU split into factions. It seemed MDC-T had absorbed the lessons of the politics of divide and rule.[5] Civic organisations that had coalesced in the NCA had long historical relationships with the MDC-T since a dominant section of the MDC leadership had emerged from civil society.

Furthermore, it seemed that a record of activism in the civil society arena was a stepping stone to the MDC leadership structures and many indeed used it as one. A very unhealthy revolving door now existed between the MDCs and organisations like the ZI, the Crisis in Zimbabwe Coalition (CZC) and IDAZIM. By the time the election was called these civil society organisations, including one faction of the ZCTU, led by George Nkiwane,[6] was thoroughly embedded in the GNU and lacked an independent agenda.

In the pre-election period civil society organisations concentrated on the procedural and technical aspects of the election rather than on debating the substance of party manifestos. Prominent campaigns included 'Feya-Feya', headed by the CZC, which aimed to ensure the election was free and fair. The Elections Resources Centre (ERC) organised the 'XIG Voters' campaign, which aimed to make sure that first-time voters were registered. There was an obsession with the date of the election, the registration process, the composition of the ZEC, the state of the voters' roll, who was printing the ballot papers and how the counting was to be done.

In an interview, Dr Godfrey Kanyenze argued that 'the problem also with

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5   Interestingly, Zanu-PF had constantly used this tactic. It had created the Zimbabwe Federation of Trade Unions to counter the Zimbabwe Congress of Trade Unions, the Zimbabwe Congress of Student Unions to counter the Zimbabwe National Association of Student Unions and the National Development Association to counter the National Constitutional Assembly. The MDC, it seems, had learnt spectacularly well.

6   The Zimbabwe Congress of Trade Union elections were disputed and there was an 'invisible' hand of the MDC-T in the split as the MDC-T pushed to control who was elected (the matter was only resolved by a Supreme Court ruling).

donors is they were all focusing on elections, all the money was going towards the election. They forgot about the grassroots, building the grassroots, we forgot the basics that to win an election … there must be a demand from below' (Kanyenze 2013).[7]

ZANU-PF VERSUS THE MDC-T ELECTION MANIFESTO

The MDC-T's manifesto, entitled 'JUICE', centred on the challenge of 'unemployment'. To meet this challenge the party, together with Morgan Tsvangirai's 'international friends', would create 'one million jobs in 5 years'. The manifesto was ahistorical, ignored the liberation struggle and instead focused on: (i) resuscitation of industry and trade; (ii) attracting foreign direct investment (FDI) and donor assistance; (iii) 'free market'-related reforms and (v) the rule of law (MDC-T 2013). On the other hand, Zanu-PF's manifesto, 'The People's Manifesto', centred on 'Taking Back the Economy' by broadening the 'indigenisation' programme and was rooted in a radicalised, nationalist and anti-imperialist rhetoric (Zanu-PF 2013).

The MDC-T and its CSO allies formulated a message designed for a formal economy and not for a highly informalised economy, for which the authority rested either with local government officials aligned with Zanu-PF or even militias of sorts. In some cases, operating a business, owning a mining claim, access to community share ownerships schemes and the opening up of flea markets in Mbare, for example, were now directly approved and authorised by militias like Chipangano (Mawowa 2007; Biti 2014).

For instance, when President Mugabe made calls to decriminalise 'illegal gold mining', popularly known as *chikorokoza*, the MDC-M argued that 'unless this practice is brought to an end, Zimbabwe is going to be transformed into a wasteland and desert' and this would lead to 'long term ruin of our beloved nation' (Coltart 2012).

The informalisation of the economy had clearly escaped the MDCs. The Environmental Management Agency (EMA) estimated that about 500 000 illegal miners (EMA 2010) in Zimbabwe relied on being *makorokoza*. Zanu-PF realised that parcelling out land, giving people mining claims and protecting these miners would create thicker lines of clientelism, while, for the MDCs, such a system represented chaos and could not be allowed in a modern economy. Zanu-PF was not only 'tapping into the chaos' (Mawowa 2007) but was deliberately crafting that chaos. A significant chunk of the rural political economy (land and mining)

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7   See Dr Godfrey Kanyenze interview, available at: www.solidaritypeacetrust.org/1369/an-incredible-election

has been incorporated into these networks of clientelism and voting for a Zanu-PF government guarantees the protection of the 'bounty'.

In addition, Zanu-PF became more populist before the election, with the Minister of Local Government, Dr Ignatius Chombo, suddenly realising that 'people are suffering' and directing local authorities and parastatals involved in basic service delivery (like electricity, water and rates) to cancel debts owed by residents (Matenga 2013). The response from the CSOs and MDCs was predictable, with the MDC-T mayor for Masvingo and president of the Urban Councils Association of Zimbabwe (UCAZ), Femias Chakabuda, dismissing the directive and arguing that all local authorities should defy it (Mpofu 2012).

Mirroring the MDC-CSO alliance, Combined Harare Residents Association (CHRA) chairperson, Simbarashe Moyo, said the minister was 'just politicking. This is a populist statement that is not worth celebrating' (Mpofu 2012). A civil society activist, Masimba Kuchera, criticised the directive, saying that what 'the government should be doing is creating jobs and more industries, luring more investors so that people can earn and honour their obligations' (Moyo 2013). Civil society organisations failed to produce a *popular* counter-hegemonic front and message, while Zanu-PF (re)presented itself as a champion of the poor by 'cutting debts', providing land for urban resettlement, pushing for indigenisation and intensifying radical land reform. Professor Brian Raftopoulos, who previously chaired the management committee of the Crisis in Zimbabwe Coalition, stated that:

> The deconstruction of former white-owned, large-scale commercial farms and their replacement by a preponderance of small farm holders has radically changed the social and political relations in these areas. The new forms in which Zanu PF and the state have penetrated these new social relations have affected the forms of Zanu PF dominance in these areas. The rapid expansion of small-scale, 'informal' mining companies has also brought a larger number of workers into the fold of Zanu PF's accumulation and patronage network. When these factors are combined with the greater political cohesion of Mugabe's party since the divisions that marked its campaign in 2008 – and the resonance of its messaging around empowerment and indigenisation particularly amongst the youth, it is apparent that there are multiple reasons for the political resurgence of Mugabe and his party.
>
> Raftopoulos 2013

The lessons apply to civic organisations because they have to recognise the new shifts in the political economy and how those have created new social relations and

that any political or social mobilisation and collective action has to be informed by methodical rethinking. There has been an intense debate about the 'Zimbabwe crisis', which has pitted what Moore called the 'agrarian patriots' against the 'critical cosmopolitans' (2012, p 8). Uncritical arguments glorifying a 'revolution' or a 'radicalised state', pushed by the agrarian patriots, gloss over the *democratisation* part of the National Democratic Revolution (NDR), as argued by Thabo Mbeki (cited in Moore, 2012) and ignore the way the state has been captured by an elite which uses state apparatus for coercive accumulation.

Mawowa (2007) and Zamchiya (2013a) have argued that the state has now become central to the facilitation of the coercive and illicit forms of accumulation that contribute to producing and re-producing networks, sites and thick lines of patronage and clientelism. With the intensified push for indigenisation these forms of illicit and coercive accumulation, especially in mining, are set to continue, and democratisation seems to have been abandoned. In that sense, Thabo Mbeki's support of Zanu-PF as the only party capable of advancing the NDR, becomes flimsy. 'Democratisation' must be situated, Wilfred Mhanda style, as the process of 'broadening of popular participation' in all spheres including the economy, politics, culture and social institutions (cited in Moore 2012). The post-colonial process of change cannot ignore democratisation, although it must be more broadly interpreted and applied, as Shivji (2003, p 12) points out:

> There is no doubt that democracy is the central question of the African revolution today, but the question is how it is related to, or configured with, the national and social questions. Neither the National Question nor the Democracy Question can be addressed or interrogated outside of its social character.

The centrality of democracy is indispensable, yet it must be broader if it is to be useful in disciplining a state whose art of 'defying the winds of change' has shifted beyond Zanu-PF's technical manipulation of the electoral process. The sooner Zimbabwe's civil society realises this, the better it will re-configure its 'weapons of theory' and perhaps a useful *agency* will emerge. Perhaps this agency will deliberately re-join politics to economics because the process of separating the two was never inevitable, it was a consequence of a neo-liberal turn of mind which imposes its logic not only through and by the state but also through and by civil society, with the intention of entrenching and sustaining a particular hegemon.

CONCLUSION: FUTURE POSSIBILITIES

The result of the 2013 election, 'won resoundingly' by Zanu-PF, has befuddled civil society and the opposition in general to the point where it has descended into a

debilitating paralysis. Tendai Biti, Secretary-General of the MDC-T, pointed out this sorry state of affairs when he wrote that Zimbabwe's 'democratic forces are on auto pilot to self-destruction' (Biti 2014). In the case of the MDC-T, violence and threats of expulsion from the party have been the response to questions about its manifesto, strategies and leadership capacity.

On the other hand, in what might be seen as a calculated climb-down, the 'West' in general, apart from the United States, has started to relax economic and travel restrictions on Zimbabwe's political elite. The European Union (EU), for example, condemned the election as lacking 'transparency, plagued with irregularities and incomplete participation', yet it has shifted towards engaging the government (EU 2013). This shift can be understood in the context of contestations in broader geopolitics, especially as China has accelerated its influence in Africa and in Zimbabwe in particular. In Africa Zanu-PF's triumph seemed to have rejuvenated a certain radical approach to land and resource redistribution, at least in South Africa, where the popularity of Julius Malema's Economic Freedom Front (EFF) among alienated youth and marginalised poor is increasing.

Zimbabwe is now a complex matrix where, it seems, democratisation in the liberal sense has been sidestepped, while the economic structure is being partially restructured and the urban-based intelligentsia are blind to the realities of an emerging political economy. While that political economy is a result of Zanu-PF extending its clientelism and networks of patronage through a rabid coercive accumulation project, in the process new realities are emerging.

Some civil society organisations once imbricated with the MDC-T, for example, the IDAZIM, have closed shop altogether and some are attempting to re-chart an independent path. Others, like the Zimbabwe Coalition of Debt and Development (ZIMCODD) and the Combined Harare Residents Association (CHRA), are attempting to re-mobilise around major issues like poor social service delivery. When news of what is now called Cashgate (in which the managers of some parastatals were exposed as paying themselves millions) started leaking, Zimbabweans were outraged, yet, surprisingly, only the Women of Zimbabwe Arise (WOZA), the Restoration of Human Rights (ROHR) and a single protestor turned up at Harare Town Council to protest.

Interestingly, ZIMRIGHTS, which, in the 1990s, had been on a confrontation path with the government, applied for permission to march and, when permission was denied, restricted itself to a few murmurs and went back to business as usual. The lack of collective action across the country is partially the result of fear of the violent state apparatus but it is also the result of a civil society embedded in a politics of elitism. Importantly, one cannot ignore the fact that civil society organisations have become 'class mobility vehicles' (Petras 1999) rather than sites of struggle and, in the process, their leaders have become a 'neo-comprador' class.

In order for Zimbabwe's civil society to play a meaningful and critical role, lessons from elsewhere might be helpful. Shivji (2007, p 47) pointed out this need for civil society to be introspective, stating that if 'NGOs are to play that role, they must fundamentally re-examine their silences and their discourses'. Furthermore, issues of how civil society is resourced will continue to be a challenge, with Makumbe (1998, p 311) noting that civics 'are not capable of sustaining themselves without the support of either the state or foreign international donors' and that, in the process, they become 'mere implementers of the donor agencies agenda'.

Beyond questions of resources, accountability and sustainability there is an immediate demand for theoretical rigour in analysing how the Zimbabwe political economy has been re-structured, especially since 2000. The relationship between the MDCs has also been an albatross for civil society and there has been a call for civics to build vibrant social bases and assert independence (Masunungure 2009). The role of civil society as a buffer against state authoritarianism has been influential in the evolution of states from dictatorships to multiparty democracies, yet, in the case of Zimbabwe, and perhaps Africa as a whole, civil society has to fashion its theory and agency within the existing political economy and this means not merely copying the concept of civil society as projected in Western liberal democracies, but consciously re-configuring and reconceptualising the prevailing limited concepts of 'democracy', 'good governance', 'rule of law' and 'ideology of human rights' to (re)project them more usefully and construct a more robust framework of challenging Southern Africa's largely atrophying liberation movements. Perhaps that way the historical 'unfinished business' of transformation, rooted in the incomplete liberation projects, will become more possible.

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THE 'MENU OF MANIPULATION' AND THE 2013 ZIMBABWE ELECTIONS
Towards explaining the 'technical knockout'[1]

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[W]hen all is said and done, the 2013 election are less likely to witness the menu of coercion (certainly not in the first round of presidential elections) and more likely to be characterised by the menu of manipulation.

Eldred V Masunungure, July 2013

Thousands of ordinary people walked distances of between 10 and 15 kilometres, some bare-footed, to attend the [MDC-T] rallies without coercion.

Phillan Zamchiya, 16 December 2013

That this week's general elections results were discreetly rigged through a chaotic and flawed electoral process, before you even factor in the decisive shenanigans of the shadowy Israeli security company, Nikuv International Projects, which deals with voters' registration and elections results, is as clear as an azure sky of deepest summer.

Dumisani Muleya, 2 August 2013

I have never seen an election that is perfect.

Olusegun Obasanjo, 2 August 2013

ABSTRACT

A year after Zimbabwe's July 2013 elections some are still mystified by the results, especially the overwhelming triumph of incumbent President Robert Mugabe and his Zimbabwe African National Union-Patriotic Front (Zanu-PF). The outcome seemed to go against the grain. Zanu-PF achieved a supermajority, capturing more than two-thirds of the parliamentary seats. Its chief rival, the Morgan Tsvangirai-led Movement for Democratic Change (MDC-T) only offered feeble competition and was left befuddled, wondering

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1   This term was used by Phillan Zamchiya in his article on the July 2013 elections.

what had hit it. To date, few know what exactly happened to the opposition forces and their 'pro-democracy' allies in civil society and how it happened.[2] However, there is anecdotal and circumstantial evidence that can be used to deduce what might have taken place. This article seeks to do that.

INTRODUCTION

The article zeroes in on the sly deployment of mechanisms for winning elections *without* undue coercion in a context in which maximum coercion was most expected. The fact that there was so little violence baffled many, most of who had declared that 'violence was in Zanu-PF's DNA'.[3] The reality is that a complex confluence of factors accounted for the electoral outcome and several writers have tried to unravel this complexity.[4] It is beyond the scope of this article to delve into each of the causes, thus it will focus on what it terms 'the menu of manipulation' and the extent to which this contributes to explaining the 'surprising' results.

THE SUPREMACY OF ELECTIONS

In his celebrated book *In Defence of Politics*, first published in 1962, British political scientist Bernard Crick (1982, p 56), wrote: 'Democracy is perhaps the most promiscuous word in the world of public affairs. She is everybody's mistress ...' One is tempted to say the same of elections: everyone claims to love them, yet many vitiate their central tenets, one of which is that they must be free and fair. Thus, Richard Snyder and David Samuels (2006, p 168) assert that: 'Although the exact definition of democracy is vigorously disputed, wide agreement exists that free and fair elections are the cornerstone of any democratic system of government.' It is therefore now universally accepted that although elections do not democracy make, democracy's core value is that only the governed should determine who shall govern them. And they do so via elections. Elections have not yet found a universally acceptable rival as the procedural core of democracy.

All regimes apart from a few rabidly autocratic ones now embrace and conduct elections to choose their leaders, though their motives for doing so differ.

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2   At the time of writing, President Mugabe hinted as much, but with reference to the British, the alleged masters of the MDC and civil society: 'The British up to now don't know what hit them on July 31' (see www.thezimbabwemail.com/zimbabwe/20410-british-don-t-know-what-hit-them-on-july-31-mugabe.html)

3   Pedzisayi Ruhanya, cited in Tichaona Sibanda, 'Zanu-PF is unelectable with Mugabe as presidential candidate'. Available at: www.swradioafrica.com/2012/12/19/zanu-pf-is-unelectable-with-mugabe-as-presidential-candidate/

4   The first systematic study of the 2013 elections was the special issue of the *Journal of Southern African Studies* 39(4).

Some choose the electoral method because of their belief in the intrinsic value of elections, that is, their inherent superiority over other methods of choosing leaders, while others do so for instrumental reasons, for example, to be accepted by the international community as democrats and therefore as legitimate and respectable. The now commonly used and agreed minimum condition for democratic elections is that they be 'free and fair'.

Since Samuel Huntington's 'third wave' of democratisation, elections in Africa have been one of the defining features of the process. And, according to Mike Bratton (2013, p 10), their quality – rather than their quantity – matters: 'only free and fair contests foster democratization, whereas elections on an unlevel playing field are an institutional recipe for disguised autocracy'.

THE MENU OF MANIPULATION

Niccolo Machiavelli, the Italian political philosopher of the Renaissance era, wrote the classic work on power politics, entitled *The Prince*. It was intended as a technical manual for princes or rulers on the logic of acquiring, retaining and expanding power. Part of the advice Machiavelli dispenses is that the Prince should govern by two sets of rules: the rules of violence/coercion and the rules of caressing/manipulation. While coercion entails musclepower, manipulation involves brainpower.

Among the rules of coercion are that violence must be used only when absolutely necessary but that when the decision has been made to deploy coercion it must be used quickly and mercilessly. The reason is that violence not only engenders violence, it also breeds resistance and hatred and a wise prince must avoid being hated at all costs. Caressing involves giving gifts and granting favours. Unlike violence, which must be used quickly, gifts and favours must be given 'little by little': 'injuries should be done all together so that being less tasted, they give less offense. Benefits should be granted little by little, so that they may be better enjoyed' (thoughts.forbes.com/thoughts/niccol-machiavelli). Moreover, stretching the period of dispensing benefits maximises the sense of dependency of the recipients on the giver. Also useful in the toolbox of manipulation are deceit, feigning and double standards. Whether the rules of violence or caressing are used, the overriding and supreme goal is to maximise the acquisition, maintenance and expansion of power.

Though *The Prince* was written some 600 years ago, it appears that today's leaders still find the advice handy; certainly in Zimbabwe. It is said that *The Prince* was intended to be a technical manual for Lorenzo de' Medici, the ruler of Florence, 'who almost certainly did not read it when it came into his hands in 1516' (Nederman 2009). Medici's counterpart in contemporary Zimbabwe, Robert

Mugabe, made no such mistake, however, he read the manual thoroughly and is guided by its precepts.

The contemporary version of Machiavelli's suggestions of caressing is the notion of a 'menu of manipulation', which, to my knowledge, was first articulated by Andreas Schedler in an influential article published in 2002. In the article Schedler essentially discusses how elections, and specifically their quality, can be used to differentiate between and among regimes that hold them.

Schedler proposes a four-fold typology: liberal democracy, electoral democracy, electoral authoritarianism and closed authoritarianism. The four are arranged in a continuum from liberal democracy at one pole to closed authoritarianism at the other. Of the four regime types, the first three hold elections, but the last, closed authoritarianism, dispenses with them. Schedler is particularly interested in the regimes between the two poles – electoral democracies and electoral authoritarianism – and what distinguishes them in terms of the quality of their elections. Like many others, he starts from the premise that elections are not all democracy is about: 'elections are a necessary but not sufficient condition for modern democracy' (Schedler 2002, p 37).

The distinction between liberal and electoral democracies is that the former

> go beyond the electoral minimum' while the latter 'manage to "get elections right", but fail to institutionalize other vital dimensions of democratic constitutionalism, such as the rule of law, political accountability, bureaucratic integrity, and public deliberation.
>
> <div align="right">Schedler 2002, p 37</div>

The distinction between electoral democracy and electoral authoritarianism is also based on the *quality* of elections. Electoral democracies pass the test of 'free and fair' elections while electoral authoritarianism fails it. Here is how Schedler (2002, pp 36-37) describes the latter:

> Electoral authoritarian regimes neither practice democracy nor resort regularly to naked repression. By organising periodic elections they try to obtain at least a semblance of democratic legitimacy, hoping to satisfy external as well as internal actors. At the same time, by placing those elections under tight authoritarian controls they try to cement their continued hold on power. Their dream is to reap the fruits of electoral legitimacy without running the risks of democratic credibility.

In short, authoritarian regimes hold elections which are neither free nor fair and have little bearing on the determination of who is in power. Such regimes 'carve the democratic heart of out of electoral contests' (Schedler 2002, p 42).

Table 1
The Chain of Democratic Choice

	Dimensions of choice	Normative premises of democratic choice	Strategies of norm violation
1	The object of choice	*Empowerment*: Democratic elections involve the delegation of decision-making authority	*Reserved positions*: Limiting the scope of elective offices *Reserved domains*: Limiting the jurisdiction of elective offices
2	The range of choice	*Freedom of supply*: Citizens must be free to form, join, and support conflicting parties, candidates and policies	*Exclusion of opposition forces*: Restricting access to the electoral arena *Fragmentation of opposition forces*: disorganising electoral dissidents
3	The formation of preferences	*Freedom of demand*: Citizens must be able to learn about available options through access to alternative sources of information	*Repression*: Restricting political and civil liberties *Unfairness*: Restricting access to media and money
4	The agents of choice	*Inclusion*: Democracy assigns equal rights of participation to all full members of the political community	*Formal disenfranchisement*: Legal suffrage restrictions *Informal disenfranchisement*: Practical suffrage restrictions
5	The expression of preferences	*Insulation*: Citizens must be free to express their electoral preferences	*Coercion*: Voter intimidation *Corruption*: Vote-buying
6	The aggregation of preferences	*Integrity*: One person, one vote. The democratic ideal of equality demands weighting votes equally – all votes have the same value	*Electoral fraud*: 'Redistributive' election management *Institutional bias*: 'Redistributive' electoral rules
7	The consequences of choice	*Irreversibility*: Elections without consequences do not qualify as democratic	*Tutelage*: Preventing elected officers from exercising their constitutional powers *Reversal*: Preventing victors from taking office, or elected officers from concluding their constitutional terms

Source: Schedler 2002, p 39

Schedler (2002, p 40) gives seven minimum conditions for effective democratic choice and seven corresponding tactics for engineering authoritarian elections. Table 1 summarises what the author calls 'the chain of democratic choice', a metaphorical chain, which, 'like a real chain, holds together only so long as each of its links remain whole and unbroken'.

Of interest to us are the 'strategies for norm violation' – see the last column of Table 1. Among the seven strategies, those numbered 3 to 6 are particularly relevant to Zimbabwe's 2013 elections. The article borrows this framework in its anatomy of the menu of manipulation employed during those elections. However, it disagrees with Schedler's inclusion of coercion (see row 5) in the menu of manipulation, instead it treats coercion as an ingredient in a different menu, which I call the 'menu of coercion'. This is a cruder menu, which, when applied heavy-handedly and extensively, has the effect of downgrading the offending regime from the ranks of electoral authoritarian regimes and placing it among closed authoritarian regimes.

The menu of coercion often defeats the very purpose of conducting elections, which is to derive a genuine measure of popular and international legitimacy. In some respects, the menu of manipulation (subtle and largely invisible) and the menu of coercion (overt and crude) can be regarded as substitutes for each other, that is, the existence of one tends to render redundant the need for the other. For instance, the June 2008 presidential run-off election was a cold-blooded display of coercion and cost the victor any semblance of legitimacy; few outside Zanu-PF recognised the outcome, and it was this perceived illegitimacy that necessitated the Government of National Unity (GNU) engineered by the Southern African Development Community (SADC).

The logic of both the coercive and manipulative menus is to inject into the electoral process a high measure of certainty of outcome by reducing the risk of failure. However, inherent in the coercive strategy is that it often produces the desired outcome, that is, victory, but at the cost of electoral democratic legitimacy.

In 2002 Schedler (2002) calculated that electoral authoritarianism was the most common regime type in the world outside Western industrial democracies (and Japan). It emerged as the most frequent regime type in sub-Saharan Africa, claiming over half (54%) of all countries. Though not mentioned by name, Zimbabwe must be among those.

The country still has the credentials of electoral authoritarianism, though Masunungure (2011) characterised it as 'militarized, electoral authoritarianism' in recognition of the prominence of the military factor in Zimbabwe's elections since 2000 and especially in the run-up to the June 2008 presidential run-off elections and thereafter.

THE MENU OF MANIPULATION ON DISPLAY

The menu of manipulation suggests a cunning that somehow hypnotises both the adversary and the electorate without the manipulator dispensing 'hard power'. It involves shrewd caressing and the deployment of smart or soft power such that even if the victory is instinctively questionable, there is no really 'hard' evidence that can be presented to diminish the legitimacy of the outcome. In the 2013 elections many, both inside and outside the country could 'feel' that the elections were not right, that something was amiss, but could not proffer tangible evidence to support the suspicion. That is how smart the Zanu-PF party and associated state organs had been.

As for the 2013 elections, few contested their freeness, but many disputed their fairness,[5] though even those in the latter group could not pinpoint with certainty and confidence the source of the unfairness. They could 'sniff' it in the air, but could not lay their hands on it.

It is to this that David Moore (August 2013) was alluding when he observed the following regarding Zanu-PF's sweeping victory in the 2013 elections:

> The ZANU-PF applied, Machiavellian-style, a classic Gramscian combination of forceful power and sly persuasion – the dialectic of coercion and consent – to confound the fourteen-year-old MDC challenge, along with most members of the Southern African Development Community (SADC), the African Union, and the western world.

Moore hit the nail on the head when he wrote (August 2013)

> The results [of the 2013 election] carefully pre-contrived by the ruling party and Nikuv, its electoral mercenaries from Israel ... with a myriad of tricks including a fantastical voters roll, and slanted in polling stations with such tricks as thousands of 'assisted voters' (instantly 'illiterate' voters being helped along by police officers, who in any case were overly-represented in the stations), will inevitably be proven fraudulent enough, but they will take months if not years to verify.

The thesis of this article rests on two legs. One is that the Opposition, especially the MDC-T, left itself open to being rigged; it was 'riggable', as it were. The second leg is that Zanu-PF – the alleged election rigger – did everything possible to make the 'rigged' result look credible and even inevitable. To this extent, Zanu-

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5   Freeness and fairness are contestable and subjective terms whose application at ground level is largely contextual. However, and as the Inter-Parliamentary Union (2006, p 73) asserts, ' "free" is about participation and choice', while ' "fair" is about equality of participation and of the vote, and about impartiality and non-discrimination; together, they imply respect for human rights at large and the absence of coercion'.

PF embarked on a two-track strategy whereby, while the menu of manipulation was being implemented behind closed doors during covert operations, the party simultaneously and publicly worked to make the manipulated result believable even by its most hardened detractors.

The latter aspect of the twin strategy involved systematically, consistently and deliberately exaggerating both the weakness of the MDC-T and the strength of Zanu-PF. The flaws of the MDC-T were portrayed as not only deep and getting deeper, but, and most importantly, as beyond easy and quick remedy.

Zanu-PF conveyed an elaborate and well-knit message of predestination, that is, that the MDC-T was predestined for massive defeat while Zanu-PF was predestined for massive victory. This was part of a sophisticated and well-orchestrated psychic and propaganda campaign targeted at both the Zimbabwe public and external 'detractors' and was designed to ensure that an overwhelming victory would not shock the nation and the international community. In short, the party wanted its victory to appear to have gone with and not against the grain. The reactions from various quarters (external and national – both opposition and within ZANU-PF) indicate that the campaign was not an entirely successful in persuading its target audiences.[6]

If my line of conjecture is correct, it suggests that Zanu-PF was acutely aware of the gap between its real or innate strength and the kind of strength that would be needed to deliver the envisaged resounding victory for the party. The psychic manoeuvres were designed to prepare the public to believe that the 'resounding' victory was in fact achievable and unavoidable given the decay and venality of the MDC-T on the one hand and the vibrancy and virtues of Zanu-PF on the other.

The task of filling the gap between the actual and the purported or desired strength of the party became an obsession, a frenzy of sorts. It reached a crescendo with the publication of the referendum results, whose meaning was deliberately twisted and interpreted to suggest that they were a harbinger of the outcome of the upcoming electoral contest. For instance, even before the full referendum results were released, *The Herald* (19 March 2013) surmised, in an article that was more about the presumed solid prospects of Zanu-PF winning the harmonised elections than about the referendum, that:

> With voting trends showing most Zanu-PF strongholds in rural areas recorded high turnouts to drive the 'Yes Vote' with MDC-T-dominated urban areas recording low endorsement in some areas, *analysts say if the referendum results mirror the impending harmonised elections then Zanu-PF is poised for a landslide victory* (my emphasis).
>
> Zvayi 2013

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6   ZANU-PF's counter-reaction to the voices of scepticism was to dismiss them as evidence of sour grapes.

A month later, in mid-April, *The Herald* carried the following under a long headline, stating: 'Zimbabwe: MDC-T Backers Jump Ship, Dispatch Envoy to President, Make Reconciliation Overtures, Move Read in Context of Poll Outcome' (Machivenyika 2013):

> Western media, among them CNN, The *Guardian* and *New York Times*, recently attacked Mr Tsvangirai, saying his public image had been soiled by his sexual escapades while corruption within the rank and file of the party would play against his party at the polls.
>   Several recent opinion polls pointed to a Zanu-PF victory in the harmonised elections.

Two days later, in the same paper, Share (2013) wrote: 'The overtures by Britain, the EU, US and their allies, analysts say, indicate that the MDC-T's handlers had realised that the regime change agenda has aborted and *MDC-T cannot form the next government*' (my emphasis).

    The trick was to present victory as a self-fulfilling prophesy. Public opinion surveys by independent institutions like the Mass Public Opinion Institute (MPOI) were craftily roped in too to fortify the narrative and provide alibis for Zanu-PF's overwhelming electoral triumph.[7] In the above-mentioned article, Zvayi (2013) found ammunition in surveys that had been favourable to Zanu-PF. His argument is worth citing at length:

> The view by analysts dovetails with several recent surveys that have given the revolutionary party the edge over its coalition government partner, the MDC-T.

> In September last year, the UK-based pro-MDC-T group, Zimbabwe Vigil, said the MDC-T was likely to lose the forthcoming harmonised elections because of rampant corruption within its top leadership among other issues.

> Zimbabwe Vigil's damning assessment of MDC-T's electoral chances came hard on the heels of two unflattering surveys by the US-based group, Freedom House, and Afrobarometer that said President Mugabe and Zanu-PF would win polls ahead of Mr Tsvangirai and the MDC-T. The Freedom House survey, that was released in August, said support for the MDC-T had fallen from 38 percent in 2010 to

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7   All bona fide political parties go into elections exuding confidence of victory but some fail to use favourable public opinion surveys deftly to prepare the public for their 'inevitable' victory and this has been the case with the MDC in previous elections.

20 percent this year while support for Zanu-PF grew to 31 percent from 17 percent, over the same period.

The survey also said that President Mugabe would command the support of 31 percent of voters in a presidential election, compared to 19 percent for Mr Tsvangirai.

The survey said Zanu-PF had clear programmes such as the land reform and other empowerment programmes to sell to the electorate while the 'Change' mantra pushed by MDC-T had lost steam.

The Afrobarometer survey, entitled 'Voting Intentions in Zimbabwe: A Margin of Terror?', also put Zanu-PF ahead of MDC-T, but said another coalition government was likely. Another survey carried out later in the year, in November, by the Mass Public Opinion Institute and released in February this year said Zanu PF would win the parliamentary elections with 33 percent of the vote to 32 percent for the MDC-T.

Then, just a day before the election, and in a blatant example of abuse of the public media, Zanu-PF actually invented a public opinion survey, supposedly carried out by Freedom House, whose results, the *Herald* claimed, had been suppressed. About the fictitious poll, the paper alleged that:

The United States has reportedly gagged one of its think tanks, Freedom House, from releasing its latest survey results that indicate a crushing victory for President Mugabe and Zanu-PF in harmonised elections due tomorrow.
…
Sources close to the US gag order said the Freedom House survey results give President Mugabe a 10 percent lead over Mr Tsvangirai of MDC-T and predicts a two thirds majority for Zanu-PF in the National Assembly where the revolutionary party is tipped to garner at least 140 seats in the 210 seat lower house.

Gumbo 2013

Susan Booysen, who allegedly supervised the bogus survey, denied doing so, but the concocted story was too juicy to drop. This was a deliberate act of what Robert Dahl (1976, p 46) calls 'manipulative persuasion', whereby 'A influences B by communication that intentionally distorts, falsifies, or omits aspects of truth known to A that if made known to B would significantly affect B's decision'. In short, manipulative persuasion means lying or misleading to get someone to do

something; this is unlike rational persuasion, which means telling the truth and explaining why someone should do something (also see en.wikipedia.org/wiki/Robert A._Dahl)

Many other stories from the domestic and international media were given maximum publicity in an effort to market the narrative of an inevitable and overwhelming Zanu-PF victory and an inevitable and disastrous MDC-T defeat. The following was typical (Huni & Muriro 2013)

> So many research organisations, including the Western media that had been vilifying Zanu-PF, have turned tables against the MDC-T and are now predicting Zanu-PF victory in the forthcoming plebiscite.
>
> They say Zanu-PF is a principled party whose support is now riding on the successful implementation of the land reform programme and some home-grown empowerment programmes.
>
> Opinion polls carried by a number of organisations, most of which have traditionally backed the MDC-T, indicate that the party would lose the elections due to its failure to articulate practical policies to shape a government.
> ....
> Corruption in MDC-T has alienated the party from voters and would negatively impact on its performance in the forthcoming elections.

The media accused the MDC-T of clamouring to delay the national elections, allegedly because the party had acknowledged the massive shift in support towards ZANU-PF:

> the MDC formations are making spirited efforts to delay elections beyond June 29. MDC-T is not interested in early elections after it was unnerved by recent assessments by its traditional allies that have pointed to a Zanu-PF victory.
>
> MDC-T recently admitted in its election strategy document that there had been massive voter apathy (in the referendum) in its perceived strongholds.
>
> <div align="right">Mugabe 2012</div>

RIGGING BY STEALTH?

The rigging thesis has been advanced with passion, but with little empirical evidence on which to anchor it. However, if it happened – and there is scope for

this, given the wild swings in voting preferences between March 2008 and July 2013 – it was done stealthily. For instance, it appears inconceivable that a party that won only six of 26 seats (27%) in Manicaland in March 2008 could have resurrected itself in five years to the extent that it could claim 22 of the 26 seats (85%), probably earning a place in the *Guinness Book of Records*.

The same could be said of Masvingo, where, in 2008, Zanu-PF won only 12 of 26 seats compared to the MDC-T's 14, but, in 2013, Zanu-PF snatched all 26 seats. No change of tectonic proportions took place in that province to explain the massive reversal of fortunes and misfortunes. When Freedom House analysed the results of the 2008 elections with the intention of identifying swing constituencies that were narrowly won by either ZANU-PF or the MDC-T, it found that of 26 constituencies in Masvingo three had been won narrowly (less than 5% of the valid votes in the constituency) by the MDC-T and might go to ZANU-PF at the next elections, while ZANU-PF had narrowly won one. The MDC-T had also won another two by less than 10%, while ZANU-PF had one seat in this category. This means the party had won the other nine seats with convincing and solid majorities, which had presumably melted away by the time of the 2013 elections. This is possible, but improbable, under normal circumstances.

To the extent that the rigging thesis is valid, the voters' roll must have been the centrepiece of the chicanery. However, it was not and could not have been the only instrument in the rigging toolbox. Rigging must have been a sophisticated multipronged and multistage process. And it was done craftily and with very few involved at the core of the drama.

But stealth in rigging also means the victory has to be made believable. In this respect, Zanu-PF went out of its way to make its victory credible, even to the most sceptical eye. The rigging thesis argues that Zanu-PF went the extra mile – in the words of its party spokesman, Rugare Gumbo, it worked 'meticulously' – not so much to win but to make its win believable and even inevitable. It did this by simultaneously besmirching its key rival – the MDC-T, especially its leader, Morgan Tsvangirai, while sanitising Zanu-PF, especially its leader, Robert Mugabe.

To this extent, it used (or rather abused) the public media with devastating effectiveness – particularly the Zimbabwe Broadcasting Corporation (ZBC) and *The Herald*, the most widely accessed media outlets in the country.[8]

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8   A survey conducted by the Mass Public Opinion Institute in October 2012 found that: at 42%, ZBC's Radio Zimbabwe was the one most commonly accessed for news on political and current affairs, followed by another ZBC station (Power FM, at 16%) and a distant third was the externally run VOA's Studio 7, at 8%. In terms of newspapers, *The Herald* commanded the largest proportion of readers (18%), followed by the privately run *NewsDay* (11%) and *Daily News* (7%). ZBC-TV also commanded 29% of viewership compared to SABC-TV (14%) for news on political and current affairs.

The fruits of its 'meticulous work' started filtering into public opinion polls by 2010. Table 2 provides a glimpse of this. The trend was clear. While the MDC-T's popular appeal – as reflected in voting intentions – was going down, that of Zanu-PF was going up. For instance, in May 2009 the MDC-T could have easily – even effortlessly – won the election, with nearly six in ten (57%) Zimbabweans preferring the party compared to only 10% who supported Zanu-PF. By November 2010 (barely one and a half years later), the MDC-T's popularity had precipitously fallen by 19 percentage points, to 36%, while that of Zanu-PF had increased by eight percentage points, to 18%. One and half years later, by July 2012, the MDC-T had been overtaken by its rival and was lagging behind by three percentage points.

Table 2
Zimbabweans' Voting Intentions, 2009-2013

	MDC-T	Zanu-PF	Other parties	Refused to answer	My vote is my secret/ Would not vote
May 2009 (AB)	57	10	-	25	5
November 2010 (AB)	36	18	2	32	7
December 2010 (FH)	38	17	3	8	30
June 2012 (FH)	20	31	2	8	34
July 2012 (AB)	30	33	2	24	9
November 2012 (NED)	32	33	4	10	20

Key: AB – Afrobarometer; FH – Freedom House; NED – National Endowment for Democracy

Question: 'If a House of Assembly election were held tomorrow, which party's candidate would you vote for?'
Note: In the May 2009 and November 2010 surveys, the question referred to 'presidential' election.

In short, Zanu-PF would have won *even without rigging*, though not with the margin of victory it finally achieved. Thus, any rigging that was done was in order to ensure that 'victory was certain' and to leave no stone unturned on the road to State House. Any rigging was therefore designed as a kind of insurance against any chance – however remote – that the MDC-T could win; it was meant to reduce that risk to no more than zero.

So, how was the menu of manipulation prepared and served? Many have commented on aspects. It appears this was a comprehensive and total strategy that left nothing to chance. This is how the editor of the influential weekly *Independent* put it (Muleya, 2 August 2013):

This whole election process, from preparations to voting day, was a big farce. It was a charade in which President Robert Mugabe and Zanu-PF were determined to win by fair means or foul.

There were a series of problems including the controversial fixing of the polling day, chaotic voters' registration process, a messy voters' roll, the turning away of registered voters and thus massive disenfranchisement.

There were also illegalities like registering people after official closure of the exercise and criminal voting through the back door.

Table 3 summarises some facets of the manipulation. The menu was served throughout the electoral cycle, from the pre-election period to election day and, finally, the post-election period. The table also shows beyond any shadow of doubt who in the GNU had the power to dictate the trajectory of the elections.

Table 3
Menu of Manipulation via Violations of the 2013 Elections

No.	Manipulative moves prior to the elections	Explanation
1	Unilateral proclamation of election dates	President Mugabe unilaterally declared election dates without consulting Cabinet and GNU partners as per Constitution.
2	Illegal amendment of Electoral Act	Amendment of Electoral Law through presidential proclamation in violation of both Constitution and Presidential Powers Temporary Measures Act.
3	Breach of Constitution and unfair registration of voters	2013 Constitution mandated a 30-day window for special and intensive registration after publication of new Constitution. This was not done; the truncated process took only 20 days and covered only about a third of the 1 958 wards. Skewed registration of voters; voters' roll of 19 June 2013 showed 99.97% of rural voters had benefited from the registration exercise compared to 67.94% of urban voters.
4	Unfair media coverage in breach of law	State media – radio, TV, newspapers – promoted Zanu-PF and excluded competing parties in violation of Electoral Act.

5	Partisan application of law on damage to campaign material	Selective application of law in respect of damage to campaign material; Zanu-PF agents not arrested for destroying campaign material of rival parties but MDC supporters arrested for doing same.
6	Manipulation of special vote	Facility allowed advance voting to security forces on duty during elections. Police allegedly abused this by granting 25 109 more officers special votes; about 28 000 failed to vote because of chaotic voting arrangements and the Constitutional Court violated the Electoral Act by allowing the 28 000 to vote on 31 July. Probability that the special voters would again vote on 31 July.
7	Failure to provide electronic copy of voters' role	ZEC failed to supply an electronic copy of the voters' roll to parties and candidates, in violation of s 21 (6&7) of the Electoral Act. The printed copy was only supplied the day before voting and only after a court order. ZEC blamed a 'technical fault' for its failure to supply an electronic copy, which, by law, should be in a searchable and analysable format.
		Election analysts allege the voters' roll was the most likely epicentre of any rigging that might have taken place. Some election observers also pointed to multiple acts of omission and commission involving the voters' roll, eg, inflation to facilitate multiple voting, massive disenfranchisement, deliberate removal of names from their proper ward to another far away within the same constituency, outright removal of names, retention of names of people in the diaspora and of deceased to facilitate multiple voting (thus inflating numbers for Zanu-PF).
8	Election-related intimidation	Intimidation by Zanu-PF activists invoking the ghost of '27 June' in reference to the massive wave of terror in April-June 2008; this was a very potent psychological tool even though no physical violence was unleashed.
9	Election-related bribery	Rampant vote-buying, eg, distribution of foodstuffs, agricultural inputs, caps, T-shirts, etc, in violation of s 136 of the Electoral Act and the Code of Conduct for Political Parties, with Zanu-PF as the chief culprit.

10	Excess ballot papers printed	8.7-million ballot papers were printed, 2.3-million more (35%) than required for the 6.4-million registered voters. International best practice allows for only 5% more. What were the extra ballot papers for?
	During Elections	
10	Presence of police, who carried out voting activities inside polling stations	In violation of ss 55(6) and 62 of the Electoral Act police were present inside polling stations – this was highly intimidatory; they carried out various voting activities, eg, transmitting information about votes cast, assisting some voters, turning away others. They were also present during vote counting.
11	Busing in of voters and allowing them to vote	Hundreds of voters not resident in some targeted constituencies were bused in to vote en masse.
12	Turning away of eligible voters	Thousands of registered voters were turned away in many constituencies – in total, ZEC says, 304 890 voters were turned away. The highest percentage (15.2%) from MDC stronghold Harare and the lowest (4.9%) from the Zanu-PF strongholds of Mashonaland Central and Mashonaland East. Main reasons were: improper identity documents, not being on the voters' roll, being below voting age.
13	Unusually high number of assisted voters in Africa's most literate country	ZEC recorded 206 901 voters assisted for various reasons, including high illiteracy among old voters. Critics and observers say many literate voters were compelled to seek 'help' at the instigation of Zanu-PF functionaries, who did the 'assisting'.
	Post-elections	
15	ZEC failure to provide details of voting patterns in presidential election	ZEC refused to supply details of presidential voting patterns by constituency and polling station.
16	Questionable court decisions	Widespread perception that election was 'conducted, won and lost in the courts': Constitutional Court ruled that the elections were held in accordance with the Constitution and the Electoral Act despite violations of both. Constitutional Court ruled that the election was free, fair, and credible and the result was a reflection of the free will of Zimbabwe's voters. High Court ruled that the ZECwas not compelled to provide the MDC-T with the final voting patterns (see 15 above), resulting in the withdrawal of the MDC-T's electoral court challenge for lack of evidence.

Compiled from: Solidarity Peace Trust 2013

In fact, and throughout the GNU, it appears the veteran Zanu-PF leader and his close lieutenants designed two games that were being played concurrently but in different arenas. The first was a public game played openly and with the GNU partners – this was the 'soft' game for public consumption; it was often high profile but served a decoy function. A high level of political symbolism was attached to this game, which, in reality, did not affect the strategic direction of the country. The Monday afternoon 'Principals Forum' was the most prominent symbolic expression of this soft power game. Here the two most prominent politicians, Mugabe and Tsvangirai, would meet weekly. It involved considerable Machiavellian deception.

For instance, in late 2012, Prime Minister Tsvangirai was invested with false power when he was put in charge of the supervision of the electoral processes that would lead to the 2013 elections. In that capacity he regularly 'summoned' officials in various strategic institutions ostensibly in charge of preparing for the elections, for instance, the leadership of the ZEC, especially the female duo of chairperson Justice Rita Makarau and her deputy, Joyce Kazembe, Ministers of Justice and Finance, and the Registrar General's Office. The latter would presumably brief the prime minister and a lot of media hype accompanied the meetings.

In reality, the meetings were full of sound and fury but signified little. In this context it should be noted that the Prime Minister's Office (PMO) was, itself, practically an empty shell in terms of power, even when the Global Political Agreement (GPA), a power-sharing agreement between the then ruling Zanu-PF party and its two MDC rivals, signed in September 2008, formally invested the office with the responsibility to ensure the implementation of GNU policies. By the middle of the GNU's lifespan the PMO had been reduced to a symbolic and ritual structure and few ministers took the PM and his office seriously. In short, the soft power game was a game for show. The real game was elsewhere and Tsvangirai was not there.

This second game was one of hard power and it is where the real subterfuge was played out, behind locked doors and without the non-Zanu-PF GNU partners. Especially telling is that Mugabe and his party deliberately, subtly and quietly transferred the arena for the real planning and organising of the elections from the institution constitutionally mandated to do so, the ZEC, to other players, away from the glare of both the GNU partners and the public. This essentially entailed doing things surreptitiously. In a casual conversation, one war veteran and Zanu-PF activist remarked: 'We pretended to the MDC that we were playing the game at the National Sports Stadium when we had moved it to Rufaro. They were at the National Sports Stadium; we were at Rufaro and that's where the game was being played!'

NIKUV AND THE HARD-POWER GAME

Central to the hard-power game was a shadowy Israeli security company, Nikuv International Projects (now just known as Nikuv). Apparently the company had been hired by the Registrar-General's Office as far back as 2000, ostensibly to upgrade the computers to be used for the computerisation of the central registry. A litany of its alleged sins includes:

- Producing a voters' roll riddled with duplicated names, names of people outside the country and names of dead people;
- Producing different copies of the voters' roll;
- Setting up hastily established and largely anonymous polling stations;
- Issuing fake voter registration slips – these were reportedly used by Zanu-PF supporters not on the voters' roll to vote at multiple voting stations;
- Diluting the indelible ink used for elections so it could easily be washed off, thus enabling people to vote more than once and in different constituencies;
- Supplying a special watermarked ballot paper used to give Mugabe a resounding victory.[9]

Apparently, Tsvangirai and his MDC party did not become conscious of the sophisticated game of trickery until well after the elections and only when they were trying to work out what had hit them. The MDC-T compiled a 54-page dossier in which they belatedly observed that:

> The national body [ZEC] tasked and mandated with running and conducting elections was reduced to a bystander in the electoral rigging fiasco and merely forced to play the rubber-stamping role as the secret structure of military and intelligence officials deployed to implement the rigging mission directed and controlled everything.
>
> Nehanda Radio, 6 November 2013

The dossier is obviously partisan and intended to serve partisan, self-serving purposes, yet it reads very coherently and cannot be summarily dismissed as a case

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9   See Mambo 2013. Sibanda 2013 reported that: 'There is growing speculation that Nikuv designed a special watermarked ballot paper that gave a resounding victory in areas where Mugabe has failed to win an election since independence. These unconfirmed reports allege that the ballot used on Wednesday had a clever water mark against Mugabe's name that was activated by any ink used against any other candidate, making him the winner.'

of partisan sour grapes. The details of the strategies, tactics, actors, institutions, and processes lend the dossier considerable credibility. Informal sources also corroborate most of the allegations.

VOTE-BUYING

Vote-buying is a rampant phenomenon in political campaigns almost everywhere, yet there is no systematic evidence that it produces the desired results. This is largely because of the commitment problem under conditions of elections in the modern era in which secrecy is one of the sacrosanct requirements to achieve the 'golden' standard of a free and fair election. According to Eric Kramon (2013, p 101): 'Where the vote is secret, politicians lack mechanisms to ensure voter compliance, while citizens cannot credibly commit to providing their vote after a gift or bribe is secret.' In short, the targeted vote seller gets the goods and services that are 'on sale', but this does not determine his or her conduct in the ballot box.

Vote-buying is not without effect, but the effect is not necessarily what the vote-buyers intended – it may increase voter turnout but it will not necessarily mean more votes for the vote-buyer. In his research into the 2002 Kenya elections Kramon (2013, p 102) found that individuals who had been approached by a vote-buyer were 'about 15 percentage points more likely to vote than those who have not been approached'. In another study, Pedro Vicente (2007, p 30) arrived at the same finding – that vote-buying increases voter turnout by 'energising' potential voters. So, the chief effect of vote-buying is to get the voter to the polling station rather than to determine where he or she puts the 'X' on the ballot paper.

It is not possible to estimate cause-effect relationships in the Zimbabwe case as no such systematic study has been done in respect of the 2013 elections.[10] What is indisputable, though, is that there was massive but asymmetrical vote-buying, with Zanu-PF pampering potential voters in both rural and urban areas and doing so on a large scale. The party was clearly well endowed and this did not escape the notice of voters. Solidarity Peace Trust (2013) cites several voters who acknowledged the power of material inducements:

> The other thing was the rice; the rice issue was a problem. You see
> food was used in campaigning and people had no choice. They ended

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10 In 2008 voters were ordered to bring their ballot numbers so as to ensure it could be verified that indeed they voted for Zanu-PF. Some went as far as suggesting that Zanu-PF would use 'binocular technologies' to find out how voters had voted – a tactic intended to instil fear, especially in the rural constituencies. Those constituencies that did not vote for Zanu-PF were subject to violent reprisals. It is reasonable to argue that this had a psychological impact on the 'gift receivers' and that, in 2013, many voted Zanu-PF fearing a repeat of the violence. This may help to contextualise the effect of gift-giving and voting patterns.

> up giving that bucket of rice an exaggerated value, maybe because it could have found them without mealie meal at home ... when election time comes they have no choice but to vote for that bucket of rice.
>
> Middle-aged man, Insiza, in Matabeleland South Province

> ZANU gave just anyone, if you happened to be near when they were passing by they would give you, either a cap, or a doek [scarf], to tie your head, they were not discriminating. Other parties did not have.
>
> Old Man, Umzingwane, in Matabeleland South

A keen observer summed up the asymmetry in resources between a visibly well-funded Zanu-PF and a meagrely funded MDC-T:

> the MDC-T had little campaign finance. Each aspiring councillor in the local government elections was given $100, which was supposed to pay for fliers, posters and all campaign-related expenses. Aspiring members of parliament (MPs) for rural constituencies were given 1,200 T-shirts each and aspiring MPs got 800 T-shirts each. Each MP was given $1,400 for the campaign and 1,000 campaign posters. The MDC-T had 300,000 T-shirts in total and by the third rally held in Masvingo the shortage of regalia was already evident. This affected the visibility of the party.
>
> Aspiring MPs from ZANU (PF) received a new double cab truck each from their party, whereas the MDC-T had one car for each province, serving an average of 20 aspiring MPs. In some constituencies the difference in resources was astonishing.
>
> Zamchiya 2013, p 961

Other vote-buying incentives were less direct but perhaps more significant, especially in urban areas. They included the cancellation of local authority rates and tariff bills by the Zanu-PF-controlled Ministry of Local Government a month before the elections, a move designed to endear the party to the pro-MDC urban electorate. According to the Zimbabwe Democracy Institute (ZDI 2013, p 19), 'The timing of the move clearly shows that ZANU-PF was on a serious vote-buying spree. This could be partly the reason why ZANU-PF got six seats in Harare'. The MDC acknowledged the efficacy of this move:

> We also lost on strategy, as technically ZANU-PF had an upper hand, they announced a cancellation of outstanding local authority bills,

> giving a tangible reprieve to the electorate and it won them some
> degree of support.
>
> MDC-T lawyer, Bulawayo, quoted in Solidarity Peace Trust 2013

Other goodies were also distributed by the Zanu-PF leadership elite, including by the First Lady, Grace Mugabe. At every rally addressed by the president just before the elections she donated large quantities of foodstuffs, including maize meal, sugar beans, cooking oil and salt. At one such rally, the state-controlled media reported that Grace Mugabe 'donated food stuffs worth thousands of dollars to the Madamombe community. Among the food stuffs were 10 tonnes of maize meal, 10 tonnes of sugar beans, 2 tonnes of salt and 560 cases of 12x2 litres cooking oil' (Chipunza 2013).

Zanu-PF's rivals complained bitterly about this unethical conduct, which violated the Code of Conduct signed by all political parties. More importantly, these actions also violated the legislation governing electoral conduct. For instance, Part XIX of the Electoral Act, section 136(1)(c) criminalises 'any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or endeavour to procure the return of a candidate at an election or the vote of a voter at an election'. Significantly, the complainants themselves had dirty hands too. For instance, Tsvangirai's wife, Elizabeth Tsvangirai, also donated goodies during the election campaigns. The difference was that Zanu-PF had a larger patronage cake, as ZDI (2013, p 19) notes: 'ZANU-PF, because of its access to state resources and possibly to diamond revenue, had more resources at its disposal.'

Part of the vote-buying paraphernalia was the US$20-million Presidential Well-Wishers' Special Agricultural Inputs Scheme (PWSAIS), ostensibly intended to benefit disadvantaged farmers during the 2012-2013 agricultural season. This was unveiled by the president and, on paper, was designed to benefit the poor, regardless of political affiliation. However, in practice, it became part of Zanu-PF's campaign strategy. The Zimbabwe Peace Project (2012, p 2), for instance, reported that:

> Zanu PF started distributing maize seed and fertilisers under the guise
> of the Presidential Inputs Scheme to mostly card carrying members
> of the liberation party and in exceptions to everyone present. In most
> cases recorded suspected MDC supporters were denied the farming
> inputs by the Zanu PF officials and soldiers who were controlling
> most distribution centres.
>
> Almost in all of the country's 210 constituencies there was distribution
> of maize seed packs and in some cases fertilizer. The distributed

packets had stickers with the image of the president. These stickers have been used to deny some villagers access to the inputs. The Presidential Inputs Scheme debacle may well have set the tone for the 2013 electoral campaign period with vote-buying emerging as one cornerstone of Zanu PF's electoral strategy.

ELECTION DAY IRREGULARITIES

Turned away

As Table 3 shows, many potential voters were turned away. ZEC statistics released in early August 2013 show a total of 305 000 (8.7%). Suspiciously, the highest numbers were in urban areas which were also the strongholds of the opposition parties and where only 68% of the electorate was registered, compared to nearly 100% registration in the rural areas. Up to 21% (64 483) of those turned away were in Harare alone.

According to the Zimbabwe Election Support Network (ZESN), a non-governmental election monitoring organisation, potential voters were turned away from 82% of urban polling stations, 'in sharp contrast to rural areas where only 38 percent of polling stations turned away many potential voters' (ZESN 2014, p 5). These glaring anomalies led many to suspect foul play. The African Union Election Observation Mission (2 August 2013, p 3) also noted 'with great concern the high incidence. According to the ZEC the reason was that people had arrived at polling stations without proper documentation or were not on the voters' roll.[11]

Assisted

In 2013 Zimbabwe was ranked the most literate country in Africa, yet as many as 206 000 people ostensibly needed to be assisted, according to the ZEC, because of 'a high turnout of the old-aged people in this election which category has a high illiteracy rate'. The ZEC also said there was a high turnout of physically challenged people. But sceptics were not convinced, especially since the assisted voters were concentrated in the Zanu-PF heartland of Mashonaland provinces. One young man in Inzisa South chronicled how it worked:

They would ask aged people, 'Gogo [grandmother] can I go with you inside so that I can assist you?' That was a plot. Aged people would want to go in, vote fast and go home. They would in the end

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11 Regrettably, and as the Solidarity Peace Trust notes: 'It is not possible to say much about these figures compared statistically to previous elections, as *reports for elections back to 2000 simply do not report the percentage of voters turned away*' (October 2013, 38, emphasis original)

agree, though not fully. Like being honest about who would they really want to vote for.

Solidarity Peace Trust 2013, p 3

In any case, 'the illiteracy rate is NOT equivalent to the number of people needing assistance in an election', as individuals who cannot read and write can easily recognise the symbol of their party on a ballot paper and place an X beside it (Solidarity Peace Trust 2013, p 39). The AU Mission (2 August 2013, p 4) also expressed concern at 'the occurrence of high number of assisted voters in many polling stations nation-wide'.

Bused

While some potential voters were being turned away there were reports of others being bused from far away constituencies to vote in what were perceived to be 'hostile' constituencies where Zanu-PF had only a slim chance of winning. Most such incidents were reported in targeted Harare constituencies including Mt. Pleasant, Mbare and Epworth, all of which were ultimately won by the party when, in previous elections, they had been comfortably won by the MDC.

Voter registration slips

The GNU partners had agreed on the eve of the election that those who had registered late and whose names were therefore not on the voters' roll would nonetheless be allowed to vote using temporary voter registration slips. It appears that this facility was grossly abused, with credible allegations of thousands of fake voter registration slips being produced and distributed to enable Zanu-PF supporters to vote in constituencies in which they were not registered. The Zimbabwe Congress of Trade Unions asserted that 'the arrest of people with fake registration slips means that there is a possibility of thousands of fake voters having voted throughout the country' (Election Resource Centre 2013).

Extra ballot papers

According to the voters' roll released by the ZEC on 19 June 2013 there were 5 890 169 registered voters out of a possible 6 651 858 adults as per the 2012 Census estimate. As indicated in Table 3, 35% more ballot papers were printed than the number of registered voters, presenting an opportunity for electoral malpractice via ballot stuffing. The AU Observation Mission expressed the hope that the ZEC would account for the unused ballots to the satisfaction of stakeholders; at the time of writing, this had not been done, further raising fears of electoral chicanery.

SADC AND AU VERDICTS: IS A 'NEW' ELECTORAL STANDARD EMERGING?

Article 22.6 of the GPA states that: 'The implementation of this agreement shall be guaranteed and underwritten by the Facilitator, SADC and the AU.' In that capacity, as third- party guarantors SADC and the AU played a potentially decisive role, thus their opinions about the elections were critical. For instance, two weeks before the election the European Union promised that it would lift 'our restrictive measures' if African observers declared Zimbabwe's elections to be free and fair and there were no protests by the opposition: '[W]ho are we as the EU to say "no, we know better than SADC?", the EU's Ambassador to South Africa, Roeland van de Geer, said (quoted at: african.howzit.msn.com/Article. aspx?cp-documentid=256338463).

Five days after the elections, the SADC facilitator to Zimbabwe, South Africa's President Jacob Zuma, congratulated Robert Mugabe on his re-election following 'successful harmonised parliamentary and local elections' which 'election observers reported to be an expression of the will of the people' (quoted in Nemukuyu & Murwira 5 August 2013). When pressed to explain what 'successful' meant and whether the congratulations implied the elections were free and fair, South Africa's then Agriculture, Forestry and Fisheries Minister, Tina Joemat-Pettersson, responded that 'we are in no way making a pronouncement on the elections, we are congratulating that the elections ran smoothly without violence and without any incident of severe violence' (quoted in *Mail & Guardian*, 13 August 2013).

In its summary statement on 2 September 2013, the SADC Electoral Observer Mission said:

> On credibility of the election process, a lot has been said to the negative. The SEOM, however, while agreeing that there were issues such as the delay of voters' roll and media polarisation, there were so many other elements that when put together elevated the election to a credible status: the free election environment, the peaceful environment in which election took place, unhindered and non-intimidation to candidates and voters, free expression and campaigns, transparency and free voting constitutes the credibility under the prevailing circumstances, *particularly when compared to 2008* [my emphasis].

The head of the SADC Mission, Tanzanian Foreign Minister Bernard Membe, urged those disputing the election results to reconsider: 'In democracy we not

only vote, not only campaign, but accept the hard facts, particularly the outcome'
(BBC, 2 August 2013).

The African Union, in both its preliminary and final reports, studiously
avoided passing an unambiguous judgement on the elections, preferring to
stress their peaceful nature and that they were 'professionally and successfully
conducted' by the ZEC. Significantly, even the 27-page final report does not say
that the elections were free or fair or credible. However, the head of AU Election
Observation Mission, Olusegun Obasanjo, had said two days after the elections
that they were free and fair 'from the campaigning point of view'. With regard
to allegations of fraud, he retorted: 'I have never seen an election that is perfect'
(BBC, 2 August 2013).

It was remarkable that neither SADC nor the AU gave their own electoral
guidelines and standards pride of place in passing judgement. Instead of assessing
the Zimbabwe elections with reference to the agreed SADC and the AU rules of
the game, they judged the contest with reference to the country's past elections,
especially the presidential run-off of 27 June 2008, thus virtually remaking the
rules.

Their logic was simple: there was no violence, therefore the elections were
free, fair and credible. And if you behaved badly yesterday and you behave less
badly today you pass the test. The two bodies, which were, in many ways, certifiers
of the elections, lowered the bar. If the elections are violence-free they must be
acceptable – no more, no less. This is clearly a dangerous precedent. With five
elections in the SADC region in 2014 it remains to be seen how the regional body
will conduct itself. It is, however, hoped that SADC's verdict on the Zimbabwe
elections will remain an aberration. Otherwise the region will surely find itself
on the path to democratic reversal. It would be a giant step backwards.

CONCLUSION

Elections in Zimbabwe since 2000 have unfailingly been hotly contested and
grossly lopsided; competitive and unfair. They have also been violent – to the
point where non-violent elections are regarded as an aberration. The July 2013
elections were one such aberration. Instead, however, they were a classic example
of the Machiavellian game of manipulation. Zimbabweans and other observers
were treated not to raw violence – Zanu-PF's trademark campaign tool – but to a
sly and bloodless electoral coup in which many tricks were unleashed, to dazzling
effect and with no tangible trail of subterfuge.

There also appeared to be an amazing synchronicity of both action and
inaction among electoral institutions and proximate stakeholders locally and
regionally. The incumbent, Robert Mugabe, clearly had more institutional

sympathy than his main challenger, Morgan Tsvangirai. The electoral body, the ZEC, was not a hindrance, neither were the various courts, from the Electoral Court to the High and Supreme Courts and right up to the Constitutional Court. And African observers and leaders felt compelled to pass a verdict of 'free, peaceful, and credible', though SADC stopped shy of calling the elections fair.

The salutary lesson of the 2013 elections is that such contests can be free in the sense of not being enveloped in violence and intimidation and may even be credible but without being fair. Just as elections do not democracy make, peace does not necessarily make for free and fair elections.

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REINFORCING AUTHORITARIAN RULE
Electoral Politics in Angola

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ABSTRACT

*In the aftermath of the conclusion of the peace process in Angola in 1992 the
Angolan government managed to establish formal democratic institutions.
Foremost on the agenda was the decision to allow for multiparty elections.
Yet the launch of electoral politics as part of the democratic landscape in
Angola has not led to the development of a culture of tolerance and openness
typical of democratic societies. On the contrary, the outbreak of a civil war
following the disputed elections in 1992 gave the Angolan government the
opportunity to revert to its authoritarian ways. The consequence of this
reversal was that the elections of 2008 have not led to the entrenchment or
the development of electoral democracy but rather to the reinforcement of
electoral authoritarianism. This article posits that while the foundation for
the evolution of electoral democracy has been laid, the Angolan government
can, at best, be described as an electoral authoritarian state that reinforces
its hegemony over Angolan society through electoral processes which do not
conform to democratic practices.*

INTRODUCTION

The end of the conflict in Angola in 1991 which resulted in the signing of the
Bicesse Accords between the Popular Movement for the Liberation of Angola
(MPLA) and the National Union for the Total Independence of Angola (Unita)
has seen the advent of a new phase in the history of that country. The daunting
challenge which awaited the country in the aftermath of the protracted war that
had raged since independence was profoundly embedded in the genesis of the
Angolan state.

Like other fractured states in the Southern African region, the Angolan state today bears the imprint of colonialism and authoritarianism. Moreover, the fractious nature of Angola's accession to independence, characterised by the polarisation between and among the liberation movements, arguably left deep footprints in the establishment of durable democratic institutions.

It is fair to argue that the social contract between the ruling elite and the general populace was never based on a solid edifice, primarily because of the historically ruptured nature of politics in Angola. Thus politics in the country is marked by a rupture between the political elite and the general populace and the end of the war has not necessarily resulted in the emergence of a democratic culture or a democratic tradition.

From the above reading, Angola, like most states in Southern Africa can, at best, be described as a dominant-party state. Dominant parties, Bogaards (2004) contends, are defined by four criteria: the urge for dominance, the inclusion/ exclusion of opposition features, the presence or absence of divided government and the ability of such a government to reproduce itself by winning consecutive elections.

Angola did not evolve from an authoritarian regime to a democratic one, as was generally expected. The problems of transition to a democracy are lucidly captured by Khabela Matlosa (2008, p 5), who asserts that

> embarking on a road to democracy is one thing and sustaining a democratic moment is quite another. Put somewhat differently, it is easy to put together a democracy roadmap and begin a journey on a democratic path, but rather difficult to ensure that the democratic moment is both sustainable and irreversible.

In the case of Angola it could be argued that the transition from authoritarianism to democracy has, in fact, stalled since the first democratic elections, in 1992.[1]
Michael Bratton and Nicolas van de Walle (1997, p 120) posit that

> a blocked transition is one in which political reforms were launched but never fully realized … rulers made insincere and tactical concessions aimed at buying time to shore up collapsing authority, with an apparent intention of implementing elections or surrendering power.

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1   The Angolan regime could best be described as an electoral authoritarian one, marked by a transition that took place, but not successfully, in part because of the lack of political stability (Matlosa 2008, p5).

Despite the fact that the transition to democracy in Angola has stalled, the MPLA government has been able to put up a façade of democracy by holding elections, albeit irregularly.

The institution of elections has allowed the government, like those in most authoritarian regimes, to develop strategies to contain and manage demands to democratise. For Carrie Manning (2005, p 708), this provides 'limited opportunities for the emergence of alternative power centres outside of the state'. Indeed, what will be illustrated is that the Angolan government uses the electoral arena to control forms of political contestation.

By holding elections that allow for a modicum of pluralism the government has ensured a degree of secured controlled representation, which does not fundamentally undermine its power (Magaloni 2006, p 258). In addition, the holding of elections has also had an impact on the relationship between the ruling party and the citizens. This is because elections, by their very nature, have the ability to generate public legitimacy (Schedler 2002, p 36).

This article first explores the differences between electoral democracy and electoral authoritarianism. Secondly it reflects on the management of elections in Angola. Thereafter, the outcomes of the elections that have been held are examined and the article concludes with an evaluation of the prospects for democracy in Angola.

CONCEPTUALISING ELECTORAL AUTHORITARIANISM AND ELECTORAL DEMOCRACY

The holding of elections by governments in Africa has not only been credited for the emergence of a democratic continent but is also considered to be of great significance (Lindberg 2006, p 139). The importance attached to elections as a progenitor of democratic legitimacy and, by extension, broader political participation and democratic accountability, has been questioned (Carothers 2002, pp 5-6). In particular, the postulate that multiparty election can provide the edifice upon which further democratic reforms can be built, has also received considerable scrutiny (Ake 1996; Bratton 1998; Carothers 1997).

Despite these divergent ideas about the feasibility of elections as a generator of democratic reform, the holding of elections is still seen as a central requirement for democratic qualification (Diamond 2005, p 14). Saheed Adejumobi (2000, p 60) contends that 'the role and essence of elections in a democracy are highly circumscribed in terms of expressing the popular will, engendering political changes and the legitimation of political regimes.'

Elections are, therefore, central to the renewal of the democratic system of any country, thus suggesting that regular elections bestow electoral legitimacy on any government.

A minimalist conception of democracy limits it to the holding of free and fair elections. However, a broad-based definition requires more. In this regard, Larry Diamond (2002, p 21) asserts that

> democracy requires not only free, fair and competitive elections, but also the freedoms to make them truly meaningful (such as freedom of organization and freedom of expression), alternative sources of information, and institutions to ensure that government policies depend on the votes and preferences of citizens.

This suggests that elections are a necessary but not sufficient condition for the proper functioning of democracy. So what, then, is the distinction between electoral authoritarianism and electoral democracy? Wolfgang Merkel (2004, p 34) asserts that: 'Electoral democracy merely entails that the election of the ruling elite be based on the formal, universal right to vote, such that elections are general, free and regular.'

The term electoral democracy is, therefore, theoretically incomplete and not very useful analytically. Electoral democracy

> reduces democracy to the correct procedure of democratic elections, but it does not include sufficient institutional guarantees that assure that those elections are 'meaningful', or that the democratically elected elites will rule according to the fundamental constitutional principles of democracy.
>
> <div align="right">Merkel 2004, p 37</div>

Electoral democracy also requires that the administration of elections is sufficiently autonomous and professional and that contending parties and candidates are sufficiently free to campaign that the political opposition has a fair chance of defeating the government in further elections (Diamond 2002, p 22; Levitsky & Way 2002, 2010, p 7). Arch Puddington (2007, p 3) contends that adherence to the following criteria ensures that a country qualifies as an electoral democracy:

> a competitive political system; universal adult suffrage for all citizens; regularly contested elections under a secure and secret ballot and the absence of massive, outcome-changing fraud; significant public access of major political parties to the electorate through the media and open campaigning.

Electoral democracies, by their very nature, concern themselves with civil liberties, while electoral authoritarian regimes view the functions of elections differently.

Andreas Schedler (2002, p 37) asserts that electoral authoritarian regimes hold elections: '… to reap the fruits of electoral legitimacy without running the risk of democratic uncertainty'. For Hadenius & Teorell (2007, p 154) 'multiparty regimes have become the most common form of authoritarian governments', while Andreas Schedler (2006, p 3) further postulates that

> [e]lectoral authoritarian regimes play the game of multiparty elections by holding regular elections for the chief executive and a national legislative assembly. Yet they violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections instruments of authoritarian rule rather than 'instruments of democracy'.

In short, electoral authoritarian regimes normally adopt the forms of democracy even as they resist substantive democratisation (Brownlee 2009). Fundamentally in such regimes the checks and balances needed for the proper functioning of democracy are undermined. From the above reading, electoral authoritarian regimes 'lack an arena of contestation sufficiently open, free, and fair so that the ruling party can readily be turned out of power if it is no longer preferred by a plurality of the electorate' (Diamond 2002, p 24).

In the case of Angola, '[e]lections have been an instrument of authoritarian control as well as a means of democratic governance' (Schedler 2002, p 37). This is because elections in Angola are contested in a lopsided political arena. In this context elections help rulers manage their opponents by co-opting them (Joseph 1997, p 377; Magaloni, 2006, p 44).

In addition to the above, under electoral authoritarian regimes electoral contests are subject to state manipulation so severe, widespread and systematic that they do not qualify as democratic (Schedler 2006, p 3). Moreover, the conduct of free and fair elections in such regimes is non-existent, despite the fact that they open up political society as well as limited forms of pluralism (Schedler 2006, p 3).

But even the opening up of political space for contending views fulfils a sinister purpose. Magaloni (2006, p 44) contends that the utility of elections under electoral authoritarian regimes could potentially serve as a divisive mechanism for opposition parties by inducing them to compete in such elections. The façade of democracy under electoral authoritarian regimes finds expression in the establishment of formal democratic institutions such as bodies to manage elections.

SETTING THE PATTERN FOR AUTHORITARIANISM IN ANGOLA: THE
1992 NATIONAL ELECTIONS

Changes in the international environment as well as a military stalemate (the battle
at Cuito Cuanavale) facilitated the New York accords relating to the independence
of Namibia that were linked to the withdrawal of Cuban troops from Angola. This
created pressure on the MPLA to begin negotiating with Unita.

The loss of the Cuban troops was exacerbated by the fact that the Soviet
Union ended its military aid to the MPLA and the international market price for
oil decreased considerably. The amendments to the constitution of the MPLA
government in 1990 signalled the end of the Marxist-Leninist party doctrine and
the advent of electoral democracy in Angola. The elections were the result of
negotiations between the two protagonists in the Angolan civil war, the MPLA
and Unita.

The negotiations for peace started in Bicesse, in Portugal, and lasted from
April 1990 to May 1991, with the involvement of Portugal and the two super-
powers (Ottaway 1998, p 133). The Bicesse Accords, signed by both parties,
provided for the holding of elections and the introduction of a multiparty system.

The first multiparty elections for both the president and the legislature were
held in Angola on 29 and 30 September 1992, overseen by the United Nations
Verification Mission (UNAVEM), which was also mandated to oversee the peace
process. As shown in Table 1, the MPLA won the parliamentary elections with
54% of the vote against the 34% won by Unita. The National Liberation Front
(FLNA) won 2.4%, with the remaining 9.8% divided among smaller parties. In the
presidential elections Jonas Savimbi of Unita took 40.1% while José Eduardo dos
Santos of the MPLA won 49.6%. The promise of a second round of presidential
elections never materialised, which resulted in another civil war (Orre 2010, p 5)
when Savimbi contended that the MPLA had committed electoral fraud.

The civil war enabled the MPLA to reinforce its control over both state and
society (Messiant 2001, p 290). The fact that Unita did not accept the outcome of
the 1992 elections also meant that it suffered from a 'democratic deficit', creating
circumstances that reinforced the legitimacy of the MPLA government. Christine
Messiant (2001, p 291) contends that

> these circumstances permitted the MPLA party to reinforce its grip
> on every organ of state, a party takeover underpinned by an absolute
> majority in parliament and domination of the government. Another
> trump card was international position, since the international
> community was now seeing the MPLA as the legitimate government
> of Angola, a position which was to be further strengthened by the
> United Nations' vote in 1997 of new sanctions against UNITA.

This external validation significantly increased the legitimacy of the MPLA both within and outside the country. Moreover, it set a pattern of politics marked by increasing tendencies of the Angolan state towards authoritarianism.

Table 1
The 1992 National Assembly Election Results

Party	Votes	% Votes	Seats
MPLA	2 124 126	53.74	129
Unita	1 347 636	34.10	70
FLNA	94 742	2.40	5
Nine other parties	333 554	8.43	16
Six other parties	51 219	1.32	0
Total	**3 951 277**	**99.99**	**220**

Source: Lodge et al 2002, p 28

The civil war which ensued lasted for another ten years, only stopping after the death of Savimbi in 2002. The war had implications for the emergence of a democratic state in Angola. The politicisation of political institutions by the MPLA after the 1992 elections meant it could use the election outcome to generate public legitimacy (Schedler 2002, p 36).

Inge Amudsen (2011, p 2) argues that it took the Angolan government six years to establish its hegemony over most of society and feel relatively secure in determining a date for the 2008 elections.[2] In the final analysis, the 1992 elections ensured a return to authoritarianism because of the regime's economic control, the politicisation of political institutions and the international legitimacy bestowed on the MPLA government by the international community.

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2   The Bertelsmann Stiftung (2012) report notes that the hegemonic control the MPLA gained over society derived from an 'authoritarian conversion'. 'Its main thrust was a consolidation of the macroeconomic situation, accompanied by a construction boom (infrastructure, housing, office buildings, hotels, etc), an expansion and diversification of the service sector, increased state efficiency, a number of social measures, and an administrative "deconcentration"' (2012, p 7). In this trajectory the three pillars of regime stabilisation – economic control, state capacity and international validation – all conspire to keep democratisation at bay in Angola.

REINFORCING AUTHORITARIANISM: THE GENERAL ELECTIONS
OF 2008

The outbreak of war after the 1992 elections created a propitious environment for
the MPLA to re-establish its hegemony over Angolan society. Both the internal
environment and the external validation the government received contributed to
the return to the politics of authoritarianism. As in other authoritarian states, the
upgrading of authoritarianism – to invoke Steven Heydemann's term – took place
in Angola in a number of phases. Heydemann (2007, p 1) posits that 'authoritarian
upgrading involves reconfiguring authoritarian governance to accommodate and
manage changing political, economic, and social conditions.'

In the build-up to the 2008 elections the mechanisms put in place by the MPLA
government meant that its hegemonic project was complete. The democratic gains
achieved through the 1992 elections were eroded by the government by a series
of actions. As has become the norm in authoritarian regimes, the government
prohibited Angolans living abroad from voting. It also used state resources for the
benefit of the ruling party (Amudsen 2011, pp 2-3). The absence of an independent
electoral body meant that the government, like most authoritarian governments,
made rules to suit it.

The ruling party also used economic resources to tighten its authoritarian
grip on power. The stranglehold that Dos Santos and his cronies have on the
Angolan economy is succinctly explained in the claim by Vines, Shaxson, Rimli
& Heymans (2005, p 6), who have noted that

> Angola's economy is strongly controlled by a presidency that wields
> power through personalized networks which, as in many African
> countries, can be more important than the ministers and other formal
> institutions.

The MPLA's complete control over state and society and the feebleness of the
opposition means expanded opportunities for economic and social elites. This
control is most pronounced in the oil sector. The Angolan president used and still
uses loans backed by Sonangol, a parastatal that oversees petroleum and natural
gas production in Angola, and the revenue they generate.

> through an extensive network of offshore accounts from which
> commissions were then paid to regime notables and foreign
> middlemen. While extremely onerous for the lender (the Angolan
> state), oil-backed loans provide the state elite with an easy source of
> money outside any sort of control.
>
> De Oliveira, 2007, pp 606-607 (see also Malaquias 2001, p 319)

To further assert its authority the MPLA government made efforts to control civil society. Among these efforts was the establishment of the Eduardo Dos Santos Foundation (FESA) in 1996 (Messiant 2001, p 287). The formation of this foundation, Christine Messiant argues (2001, p 289), represents 'a more general shift in the relationship between the Angolan regime and both national institutions and society'.

This assertion is premised on the conviction that the establishment of the foundation was aimed at further entrenching civil society under the influence of the ruling party in general and the presidency in particular. Moreover, it bears testimony to the constitution of political power and the way in which that power is exercised. For Messiant (2001, p 289), the formation of the foundation bears testimony to the fact that the

> tenure of actual power in Angola is thus increasingly centralized and, although power is exercised largely by ignoring or subverting the formal institutions defined by law, those who wield it are able to reinforce their control of such institutions at the same time as they maintain their grip over both legal and illegal sectors of the economy, thus acquiring a certain degree of penetration of society.

The 2010 Angolan Constitution and legal framework largely conform to international norms. However, there remains a huge gap between these constitutional provisions and the state's enforcement of fundamental freedoms. For instance, the country's legal framework establishes a number of restrictions on the rights to association and assembly. This is particularly relevant in the domains of human rights and advocacy.

The registration of NGOs in particular is characterised by a very cumbersome process. The organisation must first register at local level, after which it is required to seek permission from the Ministry of Justice or Provincial Commissioner. The Ministry of Justice can, in turn, request that the NGO seek approval from the national government body, the Technical Unit for the Coordination of Humanitarian Assistance (UTCAH), before issuing a certificate. UTCAH, in turn, may request authorisation from the Ministry of Justice or any other ministry before approving the application (http//www.usiad.gov/our-work/democracy-and-governance). Needless to say, this process can take years to finalise.

These constraints have hampered the ability of political parties and civic organisations to exercise their rights to the full. Also, the way in which the Angolan government treats NGOs illustrates the stifling domestic environment. A presidential decree of December 2002 seems to be an instrument with which to discipline NGOs. Amongst other things, it provides that they must not engage in

political activities and must work only as partners of government (Bertelsmann Stiftung 2012, p 20).

For all these reasons the 2008 elections, held on 5 and 6 September, took place on a very uneven playing field.

However, they were much more organised than the previous elections. For instance, a new legal framework saw the establishment of an Inter-ministerial Commission for the Preparations of Elections (CIPE), charged with the task of handling the technical implementation of the election process, and a National Electoral Commission (CNE) responsible for the conduct of elections and voter registration (Campos 2008, p 4). The power of incumbency and the authoritarian nature of the MPLA government allowed it to use the CNE to its advantage (Bertelsmann Stiftung 2012, p 12).

To prevent the mayhem which followed the 1992 elections the government also improved security, ensured the participation of women and came up with a voter registration roll deemed to be the best in Africa (BTI 2012, p 5). More significantly, greater political space was accorded to civil society in the build-up to the elections. Through the Electoral Platform of Civil Society for Elections (PNASCAE), civil society organisations were active throughout the registration process (BTI 2012, p 7).

The 2008 elections, like those in 1992, were won by the MPLA. The difference was the margin. The MPLA secured 81.6% of the vote as opposed to Unita's 10.4%. The rest of the votes were divided among the smaller parties (Amudsen 2011, p 5; Orre, 2010, p 9). The outcome of the 2008 elections – which were, to all intents and purposes, non-competitive (Levitsky & Way 2002, pp 54-55) – reinforces the claim that Angola is an electoral authoritarian regime – they failed to create the uncertainty that typifies democratic countries, instead reinforcing the power of the government (Magaloni 2006, p 258).

The margin with which the MPLA won the 2008 elections reflects the pattern of politics in Africa, which favours the incumbent, thus creating an 'uneven' playing field. Moreover, it accorded the MPLA government the legitimacy it did not receive in the 1992 elections. The advantage of incumbency and the system of patronage which allowed the MPLA its huge victory were the subject of lucid comments by two analysts.

For Fernando Pacheco (2009, p 133):

> The fusion between party structures and State administration remains. It was shocking to observe the way in which the public media was manipulated by the MPLA during the electoral campaign of August 2008 ... All over Angola, a significant number of civil servants did nothing in 2008 except to work for the MPLA's campaign. The Public

> Treasury should demand payment from the MPLA for at least part
> of the expenses incurred.

These sentiments were shared by Patrícia Ferreira (2009, pp 19-20), who posits that

> [t]he MPLA is perceived, directly or indirectly, as the political force
> that has most contributed to stability in the country, albeit by means
> of a military victory, bringing peace to the population. Angola's
> population became increasingly urbanised during the war and Unita
> bases were predominantly rural. The MPLA also benefitted from a
> weak opposition.

The outcome of the 2008 election also reinforced one of the hallmarks of
authoritarian regimes: that there is no future outside of the ruling party (Magaloni
2006, p 10).

Table 2
Results of the 2008 National Elections

Party	% Votes	Seats	% Seats
MPLA	81.64	191	86.82
Unita	10.39	16	7.27
Social Renewal Party (PRS)	3.17	8	3.64
FLNA	1.11	3	1.36
New Democracy (ND)	1.20	2	0.91
Other parties	2.49	0	0
Total		220	100

Source: Amudsen 2011

The MPLA's landslide victory can, by and large, be seen as a setback for democracy
in Angola. Since the election the MPLA government has shown a disrespect for
civil and political rights. In addition, there has also been an increase in harassment
and stricter control over the media, Parliament and the justice system.

The government has strengthened its control over civil society and the
churches, a control coupled with the promise to invest in these sectors. By and
large this attempt could be viewed as an effort to widen the client base of the
MPLA government.

The government also approved the new Constitution in January 2010, which provides for a single electoral system to replace the previous system, whereby there was both a presidential election and an election for the legislature. The Constitution also provides for a multiparty democracy and the division of power among the executive, the legislative branch and the judiciary.

While in theory it distinguishes between and among governmental branches and outlines their power, in reality it simultaneously reinforces the power of the president. The president of the Republic of Angola is not only the head of state, but also the head of government, the commander of the armed forces and the president of the ruling party (Amudsen & Abreu 2006, p 3; Vines & Weimer 2011, p 6). In addition, the president has the power to dissolve Parliament and call new elections.

The Constitution also gives the president the power to appoint a Cabinet which is accountable to him (Vines & Weimer 2011, p 6). Parliament cannot hold the president accountable nor can he or she be voted out or censured (Amudsen & Abreu 2006, p 3). This state of affairs suggests that 'the notion that constitutional norms and principles are binding on political leaders is still very much in doubt.' (Hyden 2006, p 18).

All these factors reinforce the notion of personal rule and accountability to the leaders as opposed to the people. Indeed, it also illustrates that formal rules enshrined in the Constitution do not have a constraining impact on the president. The entrenchment of authoritarian rule ensures that despite the mechanisms instituted to further mask the authoritarian nature of the Angolan regime, progress towards democratisation remains distant.

CONCLUSION: PROBLEMS OF AND PROSPECTS FOR DEMOCRACY IN ANGOLA

The introduction of a multiparty system in Angola following the signing of the peace agreement in 1991 did not lead to democratisation, consequently this article argues that the Angolan state can still be classified as an electoral authoritarian one. This contention is premised on the fact that the MPLA has been able to consolidate its grip on power since 1992. The fact that Unita, the major opposition party, did not accept the outcome of the parliamentary and presidential elections in 1992 and instead opted to go back to war has reinforced the authoritarian impulses of the Angolan government, which was able to consolidate its authoritarian regime under the façade of democracy through the establishment of democratic institutions.

While the 1992 elections were relatively competitive, the changes introduced by the government in the aftermath of the resumption of war meant that it was able

to consolidate its hegemony over Angolan society. Through attempts to control and regulate civil society, legislation introduced to circumscribe participation in national elections and its level of economic control the government strengthened its authoritarian rule. The constitutional changes introduced in 2010 as a result of the resounding victory of the MPLA not only point to a lopsided distribution of power in favour of the incumbent, they also mean that the prospect of the democratisation of the Angolan body politic remains slim.

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RIGGING THROUGH THE COURTS:
The Judiciary and Electoral Fraud in Nigeria

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ABSTRACT

*Since Nigeria's return to democratic rule in 1999 elections in the country
have been accompanied by reports of widespread fraud. A number of studies
have illustrated the many ways in which electoral fraud is perpetrated in
Nigeria. However, there is yet to be a serious study showing the judicial
dimension to such fraud. This study reveals the relationship of the
judiciary to electoral fraud. Analysing data sourced from written records
(newspaper reports, election observers' reports, law reports and political
party publications) and interviews, the study argues that the structure
and condition of the Nigerian judiciary can help to explain the incidence
of electoral fraud in the country. It also makes a new contribution to the
existing literature on the nature and causes of electoral fraud, showing that
non-electoral institutions, especially the judiciary, and non-political elites
can be relevant to the explanation of electoral fraud in a country.*

INTRODUCTION

In Nigerian [electoral] politics now, the wisdom is: Don't waste your
time campaigning. Don't waste your money printing billboards,
handbills or posters. Don't waste your time throwing away money
for mobilisation. Just keep your money in the bank and call a very
good lawyer and let him tell you the loopholes in the Constitution
or the Electoral Act. Memorise the loopholes and give all the money
you've saved to a judge. Tell him: 'I have gotten all the loopholes, they
[*the opponents*] have flouted it' [*and you shall win at the end of the day*].

Adekanbi 2012

137

Nigeria has earned itself a reputation for 'muddled elections' (Suberu 2007), 'criminal politics' (Human Rights Watch 2007) and 'garrison democracy' (Omotola 2009). Since the democratic transition in 1999 all the elections held in the country – in 1999, 2003, 2007 and 2011 – have been accompanied by reports of widespread electoral fraud. After the 1999 elections, for instance, the Transition Monitoring Group (TMG) – a coalition of local civil society groups – reported that 'the trend of awarding high votes, or votes in excess of the number of accredited voters, which had been observed during the National Assembly elections assumed much greater proportions during the Presidential elections' (TMG 1999).

After the 2003 elections the European Union Election Observation Mission (EUEOM) reported that 'in a number of states the conduct of the elections did not comply with Nigerian law and international standards. Various parties – mainly the established ones – were identified as being involved in malpractice' (EUEOM 2003, p 2). The outcome of the 2007 general elections was considered more fraudulent than the previous ones and, indeed, the worst in the contemporary electoral history of Nigeria (Suberu 2007; NDI 2008 Human Rights Watch 2007; Rawlence & Albin-Lackey 2007). For example, Rotimi Suberu (2007, p 97) argues that 'if the 2003 general elections were "hardly credible", the 2007 balloting was blatantly fraudulent'.

Although there were some positive comments on the outcome of the 2011 general elections, the widespread riots in the northern part of the country, which related to perceptions of electoral fraud in favour of the incumbent president (Goodluck Jonathan), as well as reports of various irregularities, should provide enough reason also to question the credibility of that process (USIP 2011; Project 2011 Swiftcount 2011; International Crisis Group 2011).

Many studies have analysed usefully the types and processes of electoral fraud in Nigeria (Adejumobi 2000; Agbaje & Adejumobi 2006; Ibrahim 2006; 2007). Of these, Ibrahim's study (2006), which identifies the pre-election rigging, polling-day rigging and post-election rigging methods as forms and stages of electoral fraud in the country, appears outstanding. The study shows that the common forms of electoral fraud include multiple and false registration, vote-buying, underage voting, multiple voting, voter intimidation, ballot stuffing and snatching, false declaration of winners and others, at different stages of the electoral process – before, during and after elections.

In addition to these popular forms of electoral fraud there have been increasing numbers of claims in several circles, especially among the political elite and public analysts, that there is indeed a new and sophisticated dimension to electoral fraud in Nigeria. This is the manipulation of the judicial process to produce false winners. These claims are also related to the recent internal wrangling in the hierarchy of the Nigerian judiciary over claims and counter-

claims of fraudulent court rulings on disputed elections. Clearly, the statement quoted above as a background to this article, which was gathered from our interview with a high-ranking politician in Ekiti State in the south-western region of Nigeria, better captures the phenomenon.

Against this background, this article offers a study of the relationship between the judicial system and the incidence of electoral fraud in Nigeria, arguing that the nature of the judicial system in contemporary Nigeria can certainly promote electoral fraud. This study has the potential to contribute in many ways to the general systematic studies of electoral fraud. Firstly, existing country-specific analyses of types of electoral fraud have not really captured the judicial dimension of such fraud. Secondly, current theoretical explanations of the causes of electoral fraud have focused only on the factors of elite competition, sociological conditions and electoral institutions.

The elite competition perspective explains electoral fraud as an outcome of the intense nature of the competition for power in a state (Argersinger 1986; Molina & Lehoucq 1999; Lehoucq & Molina 2002). This perspective oversimplifies electoral fraud by failing to take into account the factors that drive the intensity of the struggle for power among the elite in a state. Besides, the theory only perceives the perpetration of electoral fraud as an act of members of the political elite, without taking into consideration other members of society, including state officials and general members of the electorate.

The sociological explanation – which examines electoral fraud from the perspective of socio-economic inequality (Ziblatt 2009) – fails to account for the character of the state, its potential to shape electoral behaviour and the reason why political actors perpetrate electoral fraud. The institutional perspective only argues that the nature of the electoral system, especially the voting system and the electoral body, can explain the incidence of electoral fraud in a state (Molina & Lehoucq 1999; Lehoucq & Molina 2002; Hicken 2007; Birch 2007, 2008). Clearly, the institutional explanation does not consider other important state institutions such as the judiciary, which also have a relationship with the electoral process.

As its objective has been clearly stated, this study has the potential to address some of the limitations in the existing literature on electoral fraud. In this regard it will demonstrate that other state institutions – the judiciary in this instance – and non-political elites are also important to the explanation of electoral fraud.

It is worthy of note that this study forms part of a wider study of electoral fraud in Nigeria with the special case study of Ekiti State. Ekiti State has been in the news for the intense conflict after the 2007 elections, which saw the judiciary nullify its gubernatorial elections twice – in the 2007 elections and the 2009 re-run elections that followed. The judicial angle to the crisis in the state has been one of the major sources of the credibility crisis in the Nigerian judiciary today. For

this reason, the incumbent governor of the state, Kayode Fayemi, argued that 'Ekiti has become the metaphor for all that is wrong with the [Nigerian] electoral system' (Fayemi 2009).

This article has seven sections in addition to the introduction. The first discusses the concept of electoral fraud and its many forms in different countries, with the aim of highlighting the controversy surrounding the concept and also of demonstrating country-specific research into the problem. The second section discusses the theoretical framework employed for the study, which aims to establish a connection between the judiciary as a state institution and the phenomenon of electoral fraud. The third section provides an analysis of the structure and condition of the contemporary Nigerian judicial system. The section focuses on the role of the judiciary in the electoral process. The fifth analyses the increasing number of cases of a judicial dimension to electoral fraud in Nigeria, while the sixth interrogates this phenomenon in Ekiti State. The final section provides the conclusion of the study and an appraisal of the issue of the judicial dimension to electoral fraud in Nigeria.

ELECTORAL FRAUD IN THE LITERATURE: THE CONCEPT AND ITS FORMS

Judging by comments from election researchers, social scientists seem to be very cautious about studying the phenomenon of electoral fraud (cf Reynolds 1993; Molina & Lehoucq 1999; Posada-Carbó 2000; Lehoucq 2003). The reason appears to be the difficulty in defining fraud and providing evidence of its existence in an electoral system, which is exacerbated by the 'partisan nature of denunciations of fraud' by political actors (Molina & Lehoucq 1999, p 203; Lehoucq 2003, p 234). Although there seems to be no agreement on a universal definition of electoral fraud, attempts in the growing body of work on the subject to define the concept may be classified into two groups: legal and cultural.

The legal definition seeks to make sense of electoral fraud within the context of the existing electoral laws in a given state (Lehoucq 2003; Birch 2007; Minnite 2007; Nwabueze 2008). For example, Minnite (2007, p 6) notes the definition provided by the US Department of Justice: 'conduct that corrupts the process by which ballots are obtained, marked or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered'. Similarly, Nwabueze (2008, p 1) defines the concept as

> palpable illegalities committed with a corrupt, fraudulent or sinister intention to influence an election in favour of a candidate(s) by means such as illegal voting, bribery, treating, and undue influence,

> intimidation and other acts of coercion exerted on voters, falsification of results, fraudulent announcement of results, [and] fraudulent announcement of a losing candidate.

In addition, Nwabueze (2008, p 1) suggests that election rigging 'is a subversion of the Constitution and of the democratic form of government instituted by the Constitution'.

Although legal definitions may appear more useful with regard to measuring and easily detecting electoral fraud, there are problems with generalisations, as different states have different legal systems. In this light, Minnite (2007, p 6) argues that 'in fact, there is no single accepted legal definition of voter fraud [a sub-category of electoral fraud]'. In the case of the United States, where she studied, she notes that 'there are different states'. Sarah Birch (2007, p 1534) also notes the conclusion of the United Nations that:

> there is no single political system or election method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each state's sovereign right.

It must have been in recognition of the idiosyncratic nature of electoral systems that the culturalists advance their own argument. This is evident in the work of Ronald McDonald (1972), who postulates that cultural relativity should be central to the understanding of fraudulent and non-fraudulent electoral practices in different political environments. For him, electoral fraud represents a form of electoral control which 'can be rationally designed to influence and perhaps control the political consequences of elections, but like other controls it also can be culturally induced' (McDonald 1972, p 82). Thus, he argues that 'what is an "acceptable" or "fraudulent" practice in one culture need not be so considered in another, especially when environmental, political, and participatory practices vary so widely' (McDonald 1972, p 82).

If one relied only on the cultural explanation of electoral fraud it would be difficult to arrive at a general conclusion about what actually constitutes such fraud, given that acceptable norms usually vary across nations, as mentioned by McDonald himself. In addition, it would be difficult to provide useful criteria with which to measure the concept of electoral fraud even within a society, as norms (which are usually latent) rather than laws are emphasised.

A number of useful studies have further indicated that electoral fraud is, indeed, a common phenomenon which exists in various forms in different

countries, including the contemporary established democracies – especially in their early histories. In the case of the United States, for instance, some studies have noted the phenomenon during the 'Gilded Age' (1877-1893), which was notable for high levels of political corruption (Argensinger 1986; Reynolds 1993). Reynolds (1993, p 227) notes that a legislative panel commissioned to investigate allegations of electoral fraud in Jersey City concluded that '10 000 fraudulent ballots were cast that year (1889)', which represented more than one-third of the total votes. Although Reynolds challenges this finding as exaggerated and politically motivated, he shows, using statistical analysis, that there were certainly 1 500 cases of fraudulent votes. Fraud in the United States took the forms of bribery, vote-buying, intimidation, false counting, ballot stuffing, inflation of figures and impersonation.

In the British political system, Phillips (1979, pp 95-99) has reported rampant cases of vote-buying, treating (excess distribution of food and alcohol before and during the poll) and 'politically-motivated wholesale creations of freemen and honorary freemen' during the state's early elections. A market for votes was also reported to have flourished in the urban boroughs when more voters were enfranchised. This lasted until after the establishment of a secret ballot in 1872 in England and Ireland (Lehoucq 2003, p 239). As Phillips (1979, pp 77-89) observes, this development had some relationship with the system of political patronage predominant in the British politics of the period.

Elsewhere in Europe, the case of Germany is also well referenced by scholars (Anderson 2000; Lehoucq 2003; Ziblatt 2009). Electoral fraud was most prevalent in the imperial era, when the sources of wealth and societal prestige were premised on the ownership of land. The ownership structure of land was unequal, which gave landowners the opportunity to dominate society. Being the primary employers of labour, the landowners used coercion to force their subjects to vote for particular candidates and promote their economic interests (Anderson 2000; Ziblatt 2009).

In the category of developing countries, Latin American states have been much referenced in the literature (McDonald 1972; Hartlyn 1994; Molina & Lehoucq 1999; Posada-Carbó 2000; Lehoucq 2003; Kornblith 2005). In the case of Costa Rica, for example, Molina & Lehoucq (1999) offer a study of the country's electoral process between 1901 and 1948. Examining volumes of petitions alleging fraud, they were able to observe the nature and magnitude of the incidence of electoral fraud in the country during the period. The prominent forms it took include inappropriate exclusion of voters, expulsion of party observers, inflation of votes, underage voting, alien voting, altering of ballots, annulment of votes, and several others (Molina & Lehoucq 1999, pp 218-219).

Similarly, Posada-Carbó studied the 'comparative history of the corruption of suffrage in Latin America' in the period between 1830 and 1930. His study reveals the pervasiveness of fraud in the electoral processes of Argentina, Venezuela, Mexico, Chile and Colombia. In those states authoritarian regimes promoted 'uncontested official candidates', vote-buying, 'electoral tricks', bribery and intimidation of election officers, intimidation of voters and 'written elections' (Posada-Carbó 2000, pp 631-639).

Contemporary events in the region have been studied by Hartlyn (1994), Lehoucq (2003) and Kornblith (2005). Kornblith's work, for instance, concentrated on the elections in Venezuela between 1998 and 2004. He reports the role of the personalised rule of Hugo Chávez in promoting 'official manipulations' and 'stonewalling tactics' that frustrated voters in the country (Kornblith 2005, p128).

Arguably, quality scholarship on the incidence of electoral fraud in other regions with developing countries, especially Asia and Africa, is still evolving. Thus, these regions of the world are less mentioned in specialised review works on the universality of electoral fraud (Posada-Carbó 2000; Lehoucq 2003). Only a handful of studies is available on the prevalence and dimensions of fraudulent activities in the electoral processes of some countries of these regions. For the Asian countries, the studies of Callahan & McCargo (1996) on Thailand, Zafarullah & Akter (2001) on Pakistan and Bangladesh, and Wang & Kurzman (2007) on Taiwan, are noteworthy.

Callahan & McCargo (1996) shed some light on the frequency of vote-buying in elections in Thailand. Zafarullah & Akter (2001) advance a comparative study of the incidence of electoral corruption in Pakistan and Bangladesh. Their study presents the cases of these countries as a prime example of how military regimes in Third World nations employ unethical means to 'civilianise' their governments upon promises of return to civilian democratic rule. In these cases, different levels of restrictions, manipulation and intimidation are usually instituted in the electoral process, which eventually produces 'installed civilian' governments (Zafarullah & Akter 2001, p 90). The study of Wang & Kurzman (2007) demonstrates two issues surrounding electoral fraud in Taiwan: the prevalence of electoral clientelism and obstacles to non-compliance with clientelistic mobilisation in elections.

In the case of African countries, Adejumobi (2000) has commendably illustrated fraud in many flawed electoral processes on the continent. His study exposes the mechanisms of rigging by the regimes he has assessed. These usually take the form of manipulation of the established electoral laws and intimidation of political opponents (Adejumobi 2000, pp 66-70). The specific cases of Zimbabwe (Makumbe 2002), Kenya (Lafargue 2008), Madagascar (Marcus & Razafindrakoto 2003) and Nigeria (Ibrahim & Egwu 2005; Agbaje & Adejumobi 2006; Ibrahim

2006; 2007; Human Rights Watch 2007; Rawlence & Albin-Lackey 2007; Suberu 2007) have featured prominently in the literature.

In the Nigerian case – which is central to this study – studies have generally shown that central to its flawed elections is electoral fraud. There are clear similarities among the malpractices revealed in all the elections staged in the country since 1999. These include ballot box stuffing, snatching of electoral materials, underage voting, vote-buying, smashing of ballot boxes, inflation of votes, election violence and poor voter registration, among others.

It may be deduced from the examination of country-specific studies that the literature does not include much information about a judicial dimension to electoral fraud – probably because the phenomenon is rare in many parts of the world. Even specific studies of the Nigerian experience with electoral irregularities and fraud have not really captured the judicial angle (Agbaje & Adejumobi 2006; Ibrahim 2006, 2007; Collier & Vicente 2008; Bratton 2008; Omotola 2010). In the light of this, this study makes a significant contribution to the existing literature.

THE LOGIC OF STATE INSTITUTIONS AND ELECTORAL FRAUD

With the publication in 1985 of the book *Bringing the State Back In*, there was a remarkable resurgence of the state as a central unit of analysis in the social sciences. The principal authors of the book, Peter Evans, Dietrich Rueschemeyer and Theda Skocpol, aimed to advance a new theory of socio-political analysis that would be anchored in the centrality of the state.

They first came on to the scene with a critique of the society-centred approaches predominant in the 1950s and 1960s, especially the neo-Marxist class analysis of the state. They advance the argument that the state cannot simply be regarded as 'an arena for competing social forces', but rather as 'a set of organizations claiming control over territories and people' (Skocpol 1985, p 9; 2008, p 110). They further argue that the state is independent of other social forces and is able to make autonomous decisions. This suggests that the state has the capacity to formulate and pursue its goals without reflecting the interests of some social groups (Skocpol 1985, p 9). Another important element of their argument is predicated on the belief that states do not only matter because of their goal-oriented capacities, but also because of their 'organizational configurations, along with their overall patterns of activity, affect political culture, encourage some kinds of group formation and collective political actions' (Skocpol 1985, p 21).

In their useful contribution, Joel Migdal, Atul Kohl and Vivienne Shue led a scholarly project in 1994 to provide a critique of the state-centred approach. Although they concur with the position of state-oriented theorists on the significance of the state to social and political analysis, they argue that statist

scholars have overestimated the capacity and autonomy of the state (Migdal, Kohn & Shue 1994, p 14).

For them, it is not enough only to consider the organisational configuration of the state to explain politics and society. It is also important to consider the societal context in which the state operates. Hence, they argue that the state and society, notwithstanding their posture as independent entities, are interdependent (Migdal, Kohn & Shue 1994; Migdal 2001). With this argument the proponents of this perspective, otherwise known as the *state-in-society* approach, suggest that state institutions do not operate in isolation, they are also driven by some social factors that can determine the nature of the outcomes.

In this study we are especially attracted to the argument of the dynamics of state institutions and their relationship with political patterns and processes. In this case, we are interested in studying the relationship between the Nigerian judicial system and the phenomenon of electoral fraud in the country. It should be acknowledged that some empirical research has clearly demonstrated the link between electoral institutions and the incidence of electoral fraud (cf. Molina & Lehoucq 1999; Agbaje & Adejumobi 2006; Hicken 2007; Birch 2007, 2008; Omotola 2010). For example, Sarah Birch (2007) has shown that the electoral system of a country matters in explaining electoral fraud. She found that there is a higher likelihood of electoral fraud in single member district (SMD) electoral systems than in proportional representation (PR) systems, owing to their different requirements.

Similarly, Hicken (2007, p 47) has argued that electoral institutions have direct, 'predictable and discernible' links to electoral fraud. With particular reference to vote-buying, he proved that electoral systems dictate the kind of strategies political actors adopt to win votes. Omotola (2010, p 535) has proved that elections in Nigeria have been characterised by malpractice, largely because of 'the weak institutionalization of the primary agencies of electoral administration, particularly the Independent National Electoral Commission (INEC) and the political parties'.

While the judiciary plays an important role in the electoral process in a country, given its relevance to the settlement of electoral disputes, the institution is clearly still missing from the existing literature. Thus, we are concerned with studying the nature of the Nigerian judicial system with respect to elections and its potential to contribute to the explanation of the problem of electoral fraud. This study is not limited to the tradition of the existing analyses, which only focus on the institutional arrangements without interrogating the formation of the institutions themselves and how this can improve an understanding of their link with the phenomenon of electoral fraud. We are interested in examining the factors that inform the current judicial system in Nigeria and its present formation to find an explanation of the contribution of the judiciary to electoral fraud.

THE CONTEMPORARY NIGERIAN JUDICIAL SYSTEM

Modern Nigeria is a product of decades of military rule. Besides its previous experiences with military regimes it was, for 16 years, under the rule of a series of military governments before its return to democracy in 1999.[1] Given this fact, it cannot be gainsaid that the current institutional configuration of Nigeria not only derives its source from a militarised state, it is also a reflection of the major trappings of the politics of military regimes.

Certainly, the first step for military governments upon their seizure of power from civilian governments is the 'suspension, abrogation or modification' of the constitution, while giving primacy to their own formulated decrees (Oko 1997, p 259). For example, the Constitution Decree No.1 of the first military regime in 1966 (which was repeated by other military regimes) explicitly stated that:

> [T]his constitution shall have the force of law throughout Nigeria, [provided] that this Constitution shall not prevail over a Decree, and nothing in this Constitution shall render any provision of a Decree void to any extent whatsoever.
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> Cited in Oko 1997, p 259

This step affects, in no small measure, the existing political institutions in the state. Surely, political parties and 'para-political associations' are usually abolished in order to prevent political opposition and to legitimate military rule (Dudley 1982, p 85). The judiciary, ostensibly left to operate, is usually crippled and converted into an instrument for the perpetuation of the government.

In his useful study, Oko (1997, pp 267-286) illustrated clearly three salient institutional measures employed by the military to cripple the judicial system. Firstly, it established special tribunals with judicial powers, to duplicate the functions of the courts. These tribunals, consisting largely of military officers, not judges, had jurisdiction over a number of issues deemed to be serious and taken out of the regular courts, including corruption, armed robbery, examination malpractice, arson, civil disturbances, and treason. The tribunals undermined the regular courts as they introduced tougher penalties for offences and circumvented normal judicial procedures.

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1   After the overthrow of the democratic government of Shehu Shagari in 1983, the Muhammadu Buhari-led military regime ruled between 1983 and 1985. The government of Ibrahim Babangida followed and ruled between 1985 and 1993. Following the 12 June 1993 presidential election crisis the military government installed a short-lived and controversial interim government led by Ernest Shonekan, which lasted for three months (27 August-17 November 1993). General Sani Abacha's regime succeeded the interim government and ruled from 1993 until 1998, when Abacha died suddenly. Abdulsalami Abubakar's regime followed and handed over power to the democratic government of Olusegun Obasanjo in 1999.

Secondly, the military promulgated *ouster clauses*, which 'remove jurisdiction from the courts and curtail judicial review, in order to bar the courts from reviewing executive and legislative acts' (Oko 1997, p 274). With these in place, the courts were stripped of the power to adjudicate on matters concerning the decrees promulgated by the military governments.

Thirdly, the military established *retroactive laws*, which gave the special tribunals the power to deal with past issues and impose their accompanying new stiffer penalties, even though the laws had not been in effect when the acts were committed. Oko (1997, p 285) argues that this step

> reflects the military regime's authoritarian posture, its desire to advance social and political goals through the criminal law in contravention of established legal traditions, and its lack of respect for the rights of its citizens.

Apart from these measures, Olowofoyeku (1989, p 61) has added that the military rulers habitually dismissed judicial officers at will, especially when they were perceived to be too radical.

Not surprisingly, this created a judicial system that was not only incapacitated but was also subservient to the leadership of the military government. In this regard, Nwakwo (1997, pp 359-360) noted some interesting instances, including the shutting down of all the high courts in Lagos State to allow judges to pay a condolence visit to a certain military governor who lost his wife in 1990. In another incident, an acting chief judge of Lagos State referred to President Ibrahim Babangida as *Kabiyesi* (His Majesty, the Unquestionable One) when delivering judgement on a ruling affecting the legitimacy of Babangida's government in 1989, a clear indication of his subservience to the military leader.

Of course this sets the background for a judicial system that would be more vulnerable to manipulation by the political elite in the democratic era, which is still dominated by the military elite that dominated politics during the military era.[2]

The military-led constitution-making process in preparation for the present democracy further facilitated the creation of a judicial system which is prone to political manipulation. The process, which, it has been argued, was 'imposed, elite-driven, top-down and non-participatory', produced a Constitution that cannot 'serve as [an instrument] for guaranteeing the operations of a democratic order' (Ihonvbere 2000, p 346).

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2   For example, Adejumobi (1999, p 9) notes that '[i]t is estimated that no less than 130 rich, and influential retired military officers are members of the People's Democratic Party (PDP), the current ruling party in Nigeria at the Federal level.'

Ihonvbere (2000, p 346) further notes that:

> In an open demonstration of military arrogance and insensitivity to the popular will, the General Abdulsalam Abubakar junta refused to release the constitution even after the military ruling council spent three days 'putting finishing touches' to what was supposed to be a peoples' document and promulgated a decree to give legality to the document.

Similarly, Nigeria's Nobel Laureate, Wole Soyinka, described the current Constitution 'as a military document that was imposed upon the nation, forced down its throat, and was designed to concentrate power' (Soyinka 2006). Clearly, the institutions that would emerge from this controversial process can hardly possess true democratic credentials.

The 1999 Constitution appears to guarantee independence for the judiciary and does display better features than previous constitutions, especially with regard to the appointment, and administration, of the affairs of judicial officers following the innovative creation of the National Judicial Council (NJC). Section 153 of the Constitution created the NJC as one of the Federal Executive Bodies, with the principal objective of promoting the autonomy and independence of the judicial arm. The NJC, which is composed of the chief justice of the country (as the chairman) and 27 other high-ranking judicial persons (see s 20 of the 3rd schedule of the 1999 Constitution), is vested with the powers to make recommendations to the president and governors about the appointment and dismissal of principal judicial officers at both federal and state level. The council is also empowered to punish erring judicial officers and has the power to administer funds from the Consolidated Revenue Fund, including collection and disbursement for the judiciary, and to manage affairs related to the judiciary.

Despite the existence of the NJC, the executive and legislative bodies still have considerable influence over the judiciary. The Constitution empowers the president and the governors to appoint and dismiss judicial officers only with a *recommendation* from the NJC, which is subject to acceptance or rejection by the executive (s 21 of the 3rd schedule, 1999 Constitution). In terms of this statutory condition, the executive could easily appoint or dismiss judicial officers on the basis of primordial and personal interests (Alubo 2006, p 25).

The situation is even worse in the event that a particular party conveniently controls both the executive and the legislature (as has been the case since 1999), given that the Constitution requires the confirmation of the majority in the Senate

for the appointment or dismissal of senior judicial officers.[3] The appointment or dismissal process could certainly be driven by the ruling party's interests as well as by those of its patrons. A good illustration is the reaction of President Goodluck Jonathan to the decision of the NJC to reinstate the suspended president of the Court of Appeal, Justice Ayo Salami, following his clash with the then Chief Justice Aloysius Katsina-Alu.

On the basis of the interests of his party, the People's Democratic Party (PDP), the president declined to follow the council's recommendation and, rather technically, forced Salami into retirement, ostensibly because of his rulings on a number of election disputes that had ousted the PDP in some states (Ekiti, Oyo, Osun, Edo and Ondo) in the South.[4] In its 2012 report on the state of affairs in Nigeria, the US government referred to this particular event and remarked that: 'The case raised questions regarding the partisan nature and level of independence within the judiciary' (US Department of State 2012, p 17).

The financing of the judiciary is another critical area of concern with regard to the autonomy of that branch of government. Although the Constitution provides that funds for the judiciary should be paid directly to the NJC for disbursement to the heads of courts,[5] there are conflicts in the government over the budgetary allocations to the judiciary. The fact that the Constitution does not state clearly what allocation should be made from the public purse and, at the same time, demands that any withdrawals from the Consolidated Revenue Fund should be subject to the approval of the legislature, in a way hinders the autonomy of the judicial arm.[6] Illustrating the problems this process generates, the Chief Justice of the Federal High Court in Abuja, Justice Lawal Hassan Gumi, stated that:

> currently what happens is when they want to prepare the budget
> they send out what they call 'Court circulars'; they send them to the

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3 See s 231(1) on the appointment of the Chief Justice of Nigeria; s 238(1) on the appointment of the President of the Court of Appeal; s 250(1) on the appointment of the Chief Judge of the Federal High Court; s 256(1) on the appointment of a Chief Judge for the High Court of the Federal Capital Territory; s 261(1) on the appointment of a person to the office of the Grand Kadi of the Sharia Court of Appeal; s 266 (1) on the President of the Customary Court of Appeal; s 271 (1) on the appointment of the Chief Judge of a state; s 276(1) on the appointment of the Grand Kadi of the Sharia Court of Appeal of a state; s 281(1) on the appointment of the president of a state's Court of Appeal.

4   For example, the Osun State branch chairman of the party, Alhaji Ganiyu Olaoluwa, insisted that 'What was done at the NJC meeting of today simply amounts to an affront on the judicial system and the import is that, if members of the Bench could ignore pending court matters, other Nigerians will be right to do so, and the country will surely head for a state of anarchy.' See Chiedozie & Nwogu 2012.

5 Section 81(3) of the 1999 Constitution requires that: 'Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.'

6 Section 80(4) stipulates that: 'No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.'

Chief Registrars who are the administrative officers of the Court. The Chief Registrars are now supposed to call in for contributions from the various departments; they collect all these and then they come up and we sit down together and we say for this year we need a certain amount as a budget to run the Court. We now send this to the National Judicial Council (NJC). The NJC is the body now that will go to the National Assembly and negotiate for what is to be given to us. And at the National Assembly, what normally happens is that they give what they call 'an envelope'. If you open it, you find a figure there, so you go and tailor your needs to suit that figure. I find that to be very unsatisfactory.

Odimegwu 2012

Worse still, it is the practice of the executive, especially at the state level, to assume responsibility for administering funds for the judiciary. In all 36 states of the federation the governors determine the budgets of their judicial branches and disburse funds to them accordingly. This practice undoubtedly gives the governors the opportunity to exercise a certain control over the activities of the judiciary, which makes it subservient to them. Justice Jibrin Ndajiwo, then chief judge of Niger State, once lamented 'a situation where the Chief Judge, as the head of the court, will have to go to the executive begging for funds to carry out its functions is most unhealthy, humiliating and unconstitutional' (Dada 2012).

In September 2012 the current chief justice of the country, Justice Aloma Mariam Muktar, also protested that: 'it is regrettable that some state executives treat the judiciary as an appendage of the executive arm' (Adewole 2012). For this reason, the judiciary at the state and federal levels has experienced many strikes over remuneration and poor conditions of service for workers. Unhappy with the situation, the Judiciary Staff Union of Nigeria (JUSUN) announced on 23 October 2012 its decision to file a suit against the 36 governors, as well as federal and state attorneys-general and the NJC over issues relating to the financial autonomy of the judicial arm (Orintunsin 2012).

From these examples it is evident that the current Nigerian judicial system can be penetrated and manipulated to advance political interests. Through institutional procedures the political elite can intimidate, manipulate and, indeed, pressurise members of the judiciary to achieve their aims. This concern has occasionally been expressed by a few audacious judicial persons in a number of forums. For example, the chief registrar of the Lagos State High Court, Ganiyu Safari, revealed at a media roundtable discussion in September 2012 that:

There are serious pressures from prominent Nigerians, including lawyers. How many people can stand face to face with these people[?]

> Sometimes when they want to stand surety for their relatives, I asked them to appear personally, but they request that we should interview them on phone … They will threat [sic] that they will call on the governor who will direct the CJ [the Chief Justice] to influence it.
>
> Benson & Abdullah 2012

Clearly related to this is the threat made against judges by Atiku Abubakar, then vice-president, following the ruling by the election tribunal against his supposed 'political godson' relating to the disputed 2003 gubernatorial election in Adamawa State. Abubakar is quoted as saying: 'if the worst comes to the worst, I will insult any judge. It may not be only insults, but as well as beating up such a judge' (*ThisDay*, March 2004).

The influence of the political class over the judiciary is glaring and so overwhelming that it can sometimes predict the outcome of a judicial process. A prominent senior advocate of Nigeria, Afe Babalola, who is also the chairman of the Chartered Institute of Arbitrators of Nigeria, lamented that: 'Nowadays, politicians would text the outcome of the judgement to their party men before the judgement is delivered and prepare their supporters ahead of time for celebration' (cited in Oyetibo 2012).

This situation has made the judiciary another arena of Nigerian politics. The above-mentioned clash between Justice Salami and Justice Katsina-Alu is illustrative in this regard, especially when seen against the backdrop of the dimension the case later assumed – a PDP versus ACN (Action Congress of Nigeria) party conflict. Already aggrieved by a number of rulings made at the instance of Justice Salami in the Court of Appeal, which apparently affected its fortunes in the south, the PDP was determined to ensure the judge's dismissal and mounted a determined campaign to achieve that objective. The party queried the reasons of its main opposition, the ACN for fighting vehemently for the reinstatement of the embattled judge. At a press conference in May 2012 the PDP stated:

> The questions Nigerians must now begin to ask these ACN people are what their interest is in the Justice Salami issue? Why is it that they are the ones defending the suspended judge, organising protests and mobilising media support for him? ... Perhaps, Justice Salami is actually the ACN Deputy National Chairman.
>
> Olayinka 2012

Earlier the PDP had accused the ACN of 'crying more than the bereaved' on the issue (*The Nation* August 2011), to which the ACN responded: 'We are not crying

more than the bereaved. We are actually the bereaved, and we will cry for as long as it takes to restore strict adherence to the rule of law' (*The Nation*, August 2011). In fact, the ACN's response was a result of its conviction that the episode was the outcome of a 'PDP conspiracy', especially after the Court of Appeal under Salami had ruled in the ACN's favour in many states. The national leader of the ACN, Bola Tinubu, argued that: 'Nigerians know this is part of a larger script to end the career of a courageous judge and amputate justice and subvert the rule of law. Here the Presidency and the PDP are culprits' (Adeniji 2012). On 20 August 2012 the ACN urged the National Assembly to compel the president to reinstate the judge, arguing that the presidency had

> destroyed the principle of separation of powers as enshrined in our Constitution, reduced the National Judicial Council to an appendage of the executive arm of government and made an imperial President of Goodluck Jonathan in clear violation of the Constitution.
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> <div align="right">Channels Television 2012</div>

THE JUDICIARY AND THE ELECTORAL PROCESS

As in other democratic settings, the relevance of the judiciary to the electoral process is that it adjudicates disputes arising from that process, particularly those relating to electoral malpractice and violation of electoral procedures. Election petitions, in legal parlance, are considered *sui generis* because of their distinct nature 'compounded largely by issues of fact; with little or no law or the application of legal principles to facts', which makes them different from ordinary civil and criminal proceedings (Nwabueze 1985, p 433; also see Babalola 2007, p 297).

Section 285 of the 1999 Constitution provides for the establishment of special election tribunals to deal with petitions relating to the gubernatorial and legislative (federal and state) elections. However, section 239(1) provides that the Court of Appeal has exclusive jurisdiction over petitions relating to the presidential election. In addition, appeals against rulings by the tribunals (for gubernatorial and legislative house elections) are heard and limited to the Court of Appeal (s 246(3)) while the Supreme Court has the jurisdiction to hear appeals against rulings from the Court of Appeal in relation to the presidential election (s 235).

The fact that the normal courts are required to adjudicate in cases that are strictly political in nature has been a cause for concern in legal circles. Ben Nwabueze (1985, p 435), a prominent Nigerian constitutional expert, argues that

    [i]t is not only that the mandate conferred by an election is purely

political, not a legal, right, but also the question as to which of several contestants is entitled to it is so deeply entangled in the politics of the people to an extent that the question of the constitutional validity of a legislative or administrative act is not. It brings the courts into immediate and active relations with party interests and party contests.

Jelili Owonikoko, an expert on election petitions, states that there is the possibility of a conflict of interests between the executive and the judicial arms in this regard because

in the course of, for instance, challenging the election of a President, a vacancy may occur in the Supreme Court or in the Court of Appeal. To fill the vacancy, the law prescribes that a recommendation be made to the President – whose election is being challenged before the Supreme Court – before a substitute for the outgoing Judicial officer is appointed.

Nigerian Law Times, January 2011, p14

With regard to this particular argument, it is interesting that the courts have never ruled against an incumbent president on petitions challenging his election, despite clear and overwhelming evidence of electoral fraud. For instance, despite the fact that the main beneficiary of the 2007 presidential election, Umar Musa Yar'Adua, admitted that the election was generally flawed, the courts did not agree and confirmed his election. In the words of one of the judges:

For the avoidance of doubt, I am not saying by this judgment that all was well with the conduct of the Presidential election conducted in 2007. What I am saying is that there was no evidence before the Court of Appeal to dislodge section 146 of the Electoral Act. In the sum the appeal fails and it is dismissed. Accordingly, Umaru Yar'Adua and Goodluck Jonathan are the President and Vice President of the Federal Republic of Nigeria.

Nigerian Muse December 2008[7]

The judgement should be viewed in the light of the apparent institutional powers of the executive over the judiciary, as discussed above, and some other vexing

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7 However, it is important to note that the decision in the Supreme Court was split in this particular case. Of seven judges on the panel, only four upheld the election of Yar'Adua. Based on the majority decision, Yar'Adua was confirmed as the truly elected president of the country in spite of the malpractices in the 2007 presidential election.

issues with regard to the structure of election petitioning in Nigeria. In this regard, it is important to mention that the Nigerian courts do not only have the jurisdiction to determine the validity or otherwise of an election, they can also declare the winner in a disputed election.

The controversial matter of *who* actually wins an election is mostly classified in many established democracies as a form of *political question* which is not justiciable. As usefully argued by Nwabueze (1985, p 432), '[a] decision invalidating an election does not constitute the court an arbiter of who should govern; the choice is simply referred back to the electorate in a fresh election.'

Although there was a similar situation in the United States when its Supreme Court declared George Bush (Jnr) the winner against Al Gore in the 2000 American presidential election, American legal experts have argued that

> [t]here obviously was no precedent to support the extraordinary ruling by the United States Supreme Court deciding the 2000 presidential election … this is exactly why *Bush v. Gore* should have been dismissed as a political question.
>
> <div align="right">Chemerinsky 2001, p 1109</div>

In the Nigerian context, many of the prayers made by election petitioners at the tribunals are especially targeted at invalidating the election of their opponents and for their own declaration as the rightful winners. In 2007 five candidates in Rivers (Rotimi Amaechi), Edo (Adams Oshiomole), Ondo (Olusegun Mimiko), Osun (Rauf Aregbesola) and Ekiti (Kayode Fayemi) were declared the rightful winners in their respective gubernatorial elections. A study of 122 post-election petitions (excluding the gubernatorial elections) arising from the 2011 general elections indicates that 32 petitioners at different levels have requested to be declared genuine winners (see EUEOM 2011, pp 92-120). This might generate an unhealthy belief in the minds of some political elites in Nigeria, where politics is seen as a 'do-or-die' affair, that elections which cannot be legitimately won at the polls may be won in the courts with the aid of some manipulation of the judicial process.

The required time for election petitioning and the long delays in the process constitute another problem. Before its amendment in 2010 the Constitution was silent on a timeframe for hearings on election petitions and appeals. The Electoral Act of 2006 merely provided that an election petition should be presented within 30 days after the declaration of the result being contested. For that reason election litigation usually took many years to be settled, with attorneys using legal technicalities to frustrate the process.

Among the extreme cases are: *Buhari* v *Obasanjo* – 2003 presidential election (from April 2003 to November 2005); *Obi* v *Ngige* – 2003 gubernatorial election in

Anambra State (from April 2003 to August 2005); *Fayemi* v *Oni* – 2007 gubernatorial election in Ekiti State (from April 2007 to October 2010); *Ogboru* v *Uduaghan* – 2007 gubernatorial election in Delta State (April 2007 to November 2010) and *Aregbesola* v *Oyinlola* – 2007 gubernatorial election in Osun State (from April 2007 to November 2010).

The dangers inherent in overly long election litigation processes are obvious. They allow 'incumbents' whose election is being questioned not only to illegally occupy office and enjoy the full benefits of their position, but also to employ state machinery to intimidate or manipulate their opponents as well as the judges hearing the petitions.

In preparation for the 2011 general elections, the National Assembly made a bold move to correct this problem, following the recommendations of the 2008 Uwais Report. Section 285 of the Constitution was amended to introduce specific timelines, whereby tribunals are required to deal with election petitions within 180 days of the date the petition is filed, and appeals arising therefrom must be determined within 60 days. This new regime, although helpful, only has the potential to reduce the long years of litigation, it does not significantly solve the problem of false winners occupying office and using state power to defend their stolen mandates.

It is estimated that it will still take about eight months to deal with petitions. Obviously, this does not sufficiently address the general concern about election petition delays, especially as articulated in the Uwais Report, which explicitly suggested speedy adjudication 'before swearing-in of winners of the election' (FGN 2008, p 56).

ELECTORAL FRAUD IN THE JUDICIARY

Many would argue that corruption in the Nigerian judiciary is only a perceived phenomenon and that there is no concrete evidence of it. Understandably, this argument is advanced to protect the integrity of the judicial arm as well as to improve public confidence in that branch of government. For example, Justice Musdapher (then chief justice of Nigeria) said: 'we got complaints all the time about corruption but we ask for evidence and we don't get any. You accuse a judge of corruption without presenting evidence, what can we do [?] … Without the evidence, we do nothing' (Onabanjo 2012).

Contrary to this perspective, there is ample evidence that there is indeed corruption in Nigeria's judiciary. The intriguing aspect is that most of the corruption cases are related to election tribunals. Justice Kayode Eso, who is popularly acclaimed as the 'Father of Judicial Activism' in Nigeria, lamented in 2008 that Nigeria is now experiencing the emergence of 'billionaire election tribunal judges' (*The Punch*, September 2012). Ishola Williams, chairman of

Transparency International in Nigeria, remarked: 'All the Judges are just using the election tribunals to make money. All those who had gone through election tribunals are *millionaires* today. I challenge them to say *No*' (cited in Oyetibo 2012, emphasis added).

Increasing numbers of cases of bribery, aimed at influencing verdicts on election disputes are being reported. In January 2004, for example, the NJC suspended four judges over incidents bordering on the acceptance of bribes in litigation relating to the disputed 2003 gubernatorial election in Akwa Ibom State. Following a complaint from the petitioner, Ime Samson Umana, Nigeria's security agency discovered that the judges sitting on the tribunal received millions of Naira as a bribe from the governor, Victor Attah, whose election was being challenged. Ironically, the NJC also established that a judge from another state served as a conduit for the complainant/petitioner (Umana), offering 60-million Naira (approximately US$380 458) to members of the tribunal to rule in Umana's favour (CLO 2004, pp 245-246).

In another instance, in May 2005 the president, upon the recommendation of the NJC, dismissed two judges of the Court of Appeal following their acceptance of bribes to rule in favour of a particular candidate in the disputed 2003 Anambra South senatorial election. Upon investigation it was established that the judges received bribes of 15-million and 12-million Naira (approximately US$95 175 and US$76 141) respectively to rule in favour of the appellant (Fawehinmi 2007).

In July 2008 allegations surfaced in the news media of an unethical rapport between the members of the election tribunal and the principal attorney for the defendant over the disputed 2007 gubernatorial election in Osun State. *TheNews* magazine, in its edition of 14 July 2008, ran an interesting exposé of numerous telephone conversations (via short messages and voice calls) between the chairman of the tribunal, Justice Naron, and the lead attorney for the defendant, Olagunsoye Oyinlola (the incumbent whose election was being challenged) (Kolade-Otitoju 2008). For this reason, the magazine and the opposition party, the ACN, suspected that the tribunal had been manipulated, especially after its 15 July 2008 ruling favoured the defendant (Ugbagwu, Ikhilae, Yishau & Adeniyi 2008).

Given the apparent connection of this particular magazine with the patrons of the ACN, there might be a reason to suspect that the report was an instrument of political scheming in the struggle between the PDP and the ACN.[8] However, the fact that an investigation by the Nigerian Bar Association (NBA) showed

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8   In the book *Trials and Triumphs: The Story of TheNews*, which details the history of *TheNews* magazine, the author (one of the founding members of the magazine) acknowledged Bola Tinubu's many financial contributions to the magazine, hence his closeness to its management. Therefore, the magazine has established a sort of alliance with him, defending his political interests, especially when he was accused of certificate forgery as a governor of Lagos State in 1999 (see Adebanwi 2008, pp 187-188). In addition, a former editor of the magazine, Babafemi Ojudu, joined the ACN in 2010 and, on its platform, became the current senator representing Ekiti Central Senatorial District in the National Assembly.

that there was indeed professional misconduct on the part of the lead counsel for the defendant gives the allegation greater credibility (Akeredolu 2011). On 21 February 2013 the NJC announced the compulsory retirement of Justice Naron over matters related to professional misconduct (Ogundele, 2013).

With rampant bribery in the judiciary, especially in election-related cases, there is reason to argue that electoral fraud is also perpetrated at that level. This argument is consistent with the general feelings of Nigerians about the judiciary. The national chairman of the Nigerian Bar Association, J B Daudu, has stated that: 'there is a growing perception backed up by empirical evidence that justice is purchasable and it has been purchased on several occasions in Nigeria' (Nnochiri 2011).

Sam Nda-Isiah, columnist and publisher of *Leadership*, writes:

Had the judiciary in Nigeria been working, people would not be worried as they are today about next year's elections [in 2007]. There is apprehension and disquiet everywhere as we approach another election year. As it stands now, only a fool would proceed to the courts next year after being cheated or rigged out of any election … The 2003 elections effectively killed democracy in Nigeria, but it was the judiciary that buried it.

Nda-Isiah 2006

Otorofani (2010) stated:

This is the new generation rigging formula invented by the Nigerian judiciary to replace the old generation formula introduced by INEC that seemed to have outlived its usefulness in this digital era. The Nigerian judiciary has invented a modernized version to keep up with the times.

The European Union Election Observer Mission also noted in their report on the 2011 general elections that many complainants chose to lodge their complaints of electoral malpractice with INEC rather than petition the courts, which the observers attributed to the people's 'gradual loss of confidence in the judiciary' (EUEOM 2011, p 44).

A CASE STUDY: THE JUDICIARY AND THE 2007/09 EKITI STATE
GUBERNATORIAL ELECTIONS DISPUTE

In my own summary I call it 'judicial mathematical manipulation'. In pidgin parlance, we call it '*wuruwuru* to the answer'.

Olu-Ojo, July 2012

> Let us look at it critically. The judicial arm of government belongs to
> the Federal Government. The ACN is not at the centre. If there will
> be any manipulation at all, it should be against not in favour of ACN.
>
> Awe, July 2012

The above statements succinctly sum up the claims and counter-claims over an
alleged fraud perpetrated in the courts to produce the current regime in Ekiti State
following the state's notorious gubernatorial polls on 14 April 2007. Ekiti State, in
Yoruba-speaking south-western Nigeria, since its emergence as one of six newly
created states in 1996, has experienced many political crises.

After the PDP ousted the ruling AD (Alliance for Democracy) in all the
south-western states (except Lagos State) in 2003, Ekiti State, under the PDP-led
government of Ayo Fayose, immediately gained prominence in the media over
myriad controversies and political violence. The state especially became known
for unimaginable levels of corruption and political assassinations. This contributed
to the impeachment of the governor and his deputy by an absolute majority in
the state's legislature on 16 October 2006.

The intense crisis that followed the impeachment occasioned the declaration
of a 'state of emergency' by President Olusegun Obasanjo on 19 October 2006.
It was in the midst of this highly charged political atmosphere that the 2007
gubernatorial elections were held. It was also a period of an extreme power
struggle between the PDP and the AC (which metamorphosed from the AD and
is now the ACN) over control of the south-western region. For these reasons
the governorship elections were keenly contested by Segun Oni of the PDP and
Kayode Fayemi of the AC as the main candidates (see *Sahara Reporters* October
2006; Adaramodu & Jamiu 2011, pp 21-28).

In an election reportedly marred by violence and irregularities, the PDP
candidate was declared winner, having polled 177 780 votes against his main
opponent in the AC, who polled 108 305 votes (Adaramodu & Jamiu 2011, p 75).
Fayemi, the AC candidate, immediately cried foul, claiming that the election was
anything but free and fair and that he had been robbed of his mandate by the PDP
in collaboration with INEC. In one of his post-election interviews in the media,
Fayemi alleged that on election day,

> by 9a.m., voting had been completed in several parts of Ekiti. The
> papers had been thumb-printed. All thumb-printed PDP, before the
> election. And I had international observers with me. They could see.
> They were shocked. I was shocked. In other places where they could
> not do that, they had carted away the ballot boxes.
>
> Asoya & Olaosebikan 2007, p 28

Fayemi formally declared that he would contest Oni's election before the tribunal. In a petition filed on 11 May 2007 Fayemi requested the tribunal to re-examine and re-count the lawful votes, which would clearly indicate that he was the legitimate winner of the gubernatorial election. This move set in motion a tortuous judicial journey that lasted for three years. In summary, four different phases characterised the process:

- The Bukar Bwala-led Elections Petitions Tribunal (May 2007 to August 2008). This tribunal upheld Oni's election on the grounds that he polled 135 400 against Fayemi after a re-count of the general votes cast during the elections. Fayemi's petition was dismissed and Oni was returned as the duly elected governor.
- The first Court of Appeal phase (September 2008 to February 2009) following the appeal by Fayemi against the preceding tribunal's ruling. The court unanimously ruled that there was enough evidence to prove non-compliance with the Electoral Act in 10 of 16 local governments in the state, and that Fayemi legitimately polled 78 799 votes against Oni's 66 834 votes, after the re-examination of the votes in the non-contested voting units. For this reason a re-run was ordered in the 10 contested local governments within 90 days of the ruling.
- The Hamman Barka-led Election Petitions Tribunal (August 2009 to May 2010) which sat over the petition filed by Fayemi against his opponent. In a split decision, three members of the five-man panel ruled that the petitioner could not sufficiently substantiate his claims of electoral malpractice, while the two other members of the tribunal ruled in favour of Fayemi. Given the majority decision, Oni was returned as the duly elected governor of the state.
- The second Court of Appeal phase (June 2009 to October 2010) against the backdrop of another appeal filed by Fayemi given the preceding judgement on the re-run election. It was at this stage that the court unanimously pronounced Fayemi the legitimate winner of the gubernatorial election, having won both the 2007 election and the re-run, held in 2009.

see Olayinka, Olaniyi, Makinde & Aborishade 2008, p 7; Akaeze 2009, pp 19-21; Gbadamosi 2010, p 42; Oni 2010, p 25; Addeh 2010, p 6

An examination of the interactions between the contending parties during and after the judicial process indicates some attempts by both of them to manipulate

the process and influence court rulings in their favour. In November 2007 the parties accused each other of undue interference in the activities of the Bwala-led Elections Petitions Tribunal. The AC claimed in its press release on 9 November 2007 that the PDP, with the aid of a prominent lawyer in Ekiti State (also a PDP member), influenced the removal of two uncompromising judges from the panel. The party further argued that there was increased lobbying and pressure from the PDP on the NJC to transfer and replace some of the more inflexible judges (Akinmade & Falade 2007, p 4).

On the other hand, the PDP claimed that there was 'some close collaboration' between the AC and the tribunal, given the party's prior knowledge of many activities of the tribunal. One of its members asked:

> Why was it only the AC that is in the know of the internal workings of the tribunal? Are we to conclude that the AC was crying foul because it had already compromised the transferred judges and was now worried that its 'friends' were being transferred?
>
> Adeolu 2007, p16

Furthermore, Oni, in March 2011 (after the declaration of his opponent as the winner of the election), filed a new suit in the Court of Appeal asking that the court decision that removed him from office be reversed given that there was 'close affinity' between the members of the judicial panel, especially the President of the Appeal Court (Justice Salami), and the leaders of the ACN. Oni supported his application with a sworn affidavit by Senator Umaru Dahiru (chairman of the Senate Committee on the Judiciary), wherein the latter affirmed that Bola Tinubu (the national leader of the ACN) had once approached him to facilitate the appointment of Justice Salami as President of the Appeal Court during his screening by the National Assembly.

Oni also provided evidence to show that Tinubu had exchanged several telephone calls with Justice Salami while the election litigation was ongoing. Thus, Oni claimed, the October 2010 judgement ousting him was biased in favour of Fayemi of the ACN (*Nigerian Compass* June 2011; Irekpen 2011, p 22).[9]

The Ekiti State experience shows that Nigeria's political elites, given their capacity to manipulate the judicial process and the rate of corruption in the judiciary, have developed a distrust of decisions of the judiciary relating to election

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9   It is important to note that Oni's application for a review of the October 2010 ruling, in which he alleged that the judiciary was biased against him, was dismissed by the Court of Appeal on 27 February 2012. He headed to the Supreme Court for a review of the verdict of the Court of Appeal on the matter. On 31 May 2013 the Supreme Court ruled that it had no jurisdiction to hear the appeal. For details, see Ojo 2012; Chiedozie 2013; *The Punch*, 1 June 2013.

disputes. For example, the August 2008 ruling of the Bwala-led Elections Petitions Tribunal, which went against the AC, was described in a pro-AC report as 'judicial magic' because 'it ran contrary to legal expectations' (Adaramodu & Jamiu 2011, p 128). Similarly, Yinka Odumakin of the Yoruba socio-political group, *Afenifere*, ostensibly in support of the AC candidate, stated after the same ruling that 'the judgement confirmed that a lot more went on in the tribunal than Nigerians cared to admit' (Olayinka, Olaniyi, Makinde & Aborishade 2008, p 7).

However, after the October 2010 Appeal Court ruling, which favoured the party, one of its prominent members (Rauf Aregbesola, who later became governor of another state) remarked that 'by this judgement, our faith has been rekindled in the capacity of the judiciary' (Aregbesola 2010). Similarly, the PDP, when it benefited from the early rulings, maintained that 'we remain steadfast in our conviction in the integrity of the judiciary' (PDP 2010, p 48) and argued in one of its releases that 'unlike the AC, which has a habit of condemning the judiciary each time a judgement does not favour it, we are law abiding people, and our party believes in the rule of law' (Akaeze 2009, p 20), when the ruling went against it, alleged fraud in the judiciary and labelled the process a 'judicial mathematical manipulation'.

SUMMARY AND CONCLUSION

Within the framework of state-oriented theory this study has attempted to illustrate the dynamics of state institutions and political patterns and processes. In this case the study shows that the structure of the Nigerian judiciary has the potential to permit the perpetration of electoral fraud. Several examples were cited to show cases of compromises in the judiciary which promoted electoral fraud in the state.

The study further employed the special case of the election disputes arising from Ekiti State's 2007/2009 gubernatorial elections to demonstrate the possible judicial dimension to electoral fraud in Nigeria. In this regard, the study shows that the Nigerian political elites see the judiciary as another political arena. For this reason there was a struggle among them to manipulate the judicial process to perpetrate electoral fraud. The immediate implication of this is that there has been a high level of public mistrust of the judiciary in Nigeria, especially with regard to elections. Going beyond the existing theories of electoral fraud, the study demonstrates that the judiciary and non-political elites are relevant to the discourse on electoral fraud in democracies.

To address the issue would require two reforms: the strengthening of the independence of the judiciary and the redefinition and redesigning of its adjudicatory role in election disputes in the country.

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ETHNICITY AND/OR ISSUES?
The 2013 General Elections in Western Kenya[1]

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ABSTRACT

It is often assumed that Kenyans vote on the basis of ethnic identification rather than the socio-economic and political issues affecting their lives. However, experience from earlier elections shows that issues and interests are important drivers in giving form and expression to identity politics. This article examines the interaction between ethnic identification and issue differentiation in the March 2013 general elections in Western Kenya by identifying factors that influenced the outcomes in the six simultaneous elections. The article is based on observation, interviews and data collected in a survey of four constituencies inhabited by Luo- and Luyia-speaking people in Western Kenya during the campaign period and immediately

after the elections. The study suggests that while constituencies may have voted as a bloc along ethnic identification lines – especially with respect to national politics and the presidential election – their choices were also differentiated and informed by specific issues, especially at the county and constituency levels.

Ethnicity is a key factor in Kenya's political culture and democratic development. This is true of electoral behaviour and of everyday negotiations and conflicts. Nobody wanting to understand Kenya's modern history can neglect the significance of ethnic belonging. In the 2013 general elections ethnicity unfolded dramatically at the national level when the Jubilee Coalition brought together communities that had previously been at each other's throats, the Kikuyu and the Kalenjin, and when the Orange Democratic Movement (ODM) sought alliances, most importantly with the large Luyia community, in the Coalition for Reforms and Democracy (CORD).

The narrow victory by Jubilee leaders under Uhuru Kenyatta and William Ruto meant that the Luo- and Luyia-speaking constituencies were once again defeated in their reach for the leadership of the nation. At local levels there was also elite competition and politicisation of ethnicity, however, when it came to voting for political representatives at county level, the administrative unit resulting from devolution under the new 2010 Constitution, issues more narrowly connected to development, the local economy and previous political performance figured more prominently and led to more differentiated patterns of voting behaviour. How can the entanglement of issues, interests and identity in the outcome of the first general election after the introduction of the 2010 Constitution be unravelled?

Arguing against a simplistic understanding of 'ethnicity' and 'tribalism' in their analysis of the 1997 elections, Cowen & Kanyinga (2002, p 133) noted that 'in so far as communal politics do enter into explanations of electoral outcomes they do so as part of something else'. In their discussion of the relationship between identity and interest in Kenyan elections, Bratton & Kimenyi (2008, p 287) concluded from a representative survey undertaken before the 2007 elections that 'voting in Kenya is … defensively and fundamentally an ethnic census'. They also noted, however, that, as in Western democracies, policy and government performance matter. In this article we seek to take this argument further and, focusing on a selection of rural constituencies in Western Kenya, we show how considerations of ethnic belonging and of interests and issues interacted with each other in the March 2013 election.

The 2013 general elections, which required voters to elect no fewer than six representatives in each constituency, promised to provide a rare opportunity to analyse more systematically the factors that influence election outcomes and to

seek nuanced explanations of electoral behaviour in rural Kenya. As it happened, this opportunity was difficult to pursue, as the reporting of results broke down, and the Independent Electoral and Boundaries Commission (IEBC) was only able to provide detailed results at all six levels of the elections after considerable delay, which was unfortunate from all points of view. Comprehensive coverage of a number of important aspects of these elections is found in a special issue of the *Journal of Eastern African Studies* (8(1), 2014), which includes an important overview article by Cheeseman, Lynch & Willis as well as, *inter alia*, articles closer to our topic (Cornell & D'Arcy 2014; Carrier & Kochore 2014).

But before we begin to discuss voting patterns and motivation in the March 2013 elections in Western Kenya we should trace some of the lines along which ethnicity and politics in Kenya have previously been discussed.

ETHNICITY AND ELECTORAL POLITICS IN KENYA

The academic debate about ethnicity, politics and democracy in Kenya is rich and varied. In contrast to popular usage, there is little primordialism in the debate. There is also little by way of crude and dualistic use of modernisation theory or direct and simplistic identification of ethnicity with rural identity politics. There are, however, in some instances, echoes of Horowitz's general assumptions of identification between urbanity and cosmopolitanism and Mamdani's contrasting of urban citizens with rural tribalists (Horowitz 1985, pp 96ff; Mamdani 1996, p 18). There has been a stronger impact from constructionist arguments like that of John Lonsdale, setting histories of 'moral ethnicity' against forms of 'political tribalism', as well as from historical anthropological approaches like that of Cohen & Odhiambo (Lonsdale 1994; Cohen & Odhiambo 1989). In this view tribalism is not traditionalist, but modern – constantly re-invented, flexible and adaptable to a variety of instrumental uses.

In the post-1992 Kenyan elections literature inspiration from both Mamdani (1996) and Lonsdale (1994) is explicit in the writings of Klopp (2001; 2002) on Masaai-Kikuyu clashes in Narok in 1991-92 and violence in the Rift Valley in 1998. From this perspective, structures of rural authoritarianism and histories of displacement can be exploited from above by modern and urban-based politicians as exemplified by Moi's use of *Majimboism* to establish bastions of hegemony to counter the effects of multiparty elections after 1992. Lonsdale also informed the work of Lynch on ethnicity and politics in the Rift Valley and around Mount Elgon. Lynch (2006) underlined the flexibility and adaptability of ethnic identities as instruments that can be used differently by 'big' politicians and power brokers as well as by local groupings staking claims in struggles over land and other scarce resources.

The 'political tribalism' perspective was expanded by Cowen & Kanyinga (2002, p 169ff) in their argument that 'tribalism' operates both from above and from below, with the opportunist 'elite circulation' of politicians seeking power being matched by the communalist and 'territorial' strivings for delivery of development products. Cheeseman's work on the significance of coalitions for election outcomes also fits into this perspective, which explained the tribalist outcomes of coalitions in the form of vote banks and ethnic blocs (Cheeseman 2008). Such dynamics were convincingly demonstrated to be important in the context of presidential elections, but it was not clear how coalitions worked themselves out at lower election levels. This is one of the issues we examine in this article.

In a study of the 2007 elections Gibson & Long (2009, p 499) analysed the importance of 'swing groups' in Kenyan elections using the example of the Kalenjin and Luyia communities. They argued that

> [e]thnicity … remained relevant to the election. Both Kibaki's and Odinga's coalitions actively sought votes beyond their *Kikuyu* and *Luo* base to appeal to Kenya's many swing groups. High profile leaders from the same ethnic groups joined both parties, making it difficult to predict votes based on ethnicity alone. For example, Kibaki, Odinga and Musyoka all chose members of the *Abaluyia* community as vice-presidential candidates.

MacArthur (2008, p 228) dug deeper into the functioning of the 2007 ODM election campaign among the Luyia-speakers of Western Province, who downplayed ethnicity in favour of 'regional issues of resource distribution and equitable development and the national concerns of constitutional reforms and power-sharing'. At the same time, appeals were made to the 1960s prophecies by Elijah Masinde that 'a Luo president was the necessary precondition for the ascendancy of Luyia leadership in the country' (On the Prophet's joining the Kenya African National Union – Kanu – in 1962, see also Simiyu 1996, pp 28ff). Thus, even with the focus on issues, appeals were made to the Luyia to come together as an ethnic voting bloc. Such attempts seem to have been continued in the campaign of Mudavadi and the Amani coalition in the 2013 elections. A key question here is thus the extent to which the Luyia this time around succumbed to the pressure to vote as an ethnic bloc for 'their own' presidential candidate.

Finally, the contribution by Bratton & Kimenyi – also from the special issue of the *Journal of Eastern African Studies* on the 2007 elections – provides us with a set of direct findings and hypotheses on ethnicity, politics and democratisation with which to engage. Bratton & Kimenyi examined the extent to which the 2007 elections were characterised primarily by either 'ethnic' or 'policy voting'. An

important finding was that in their self-understanding only 20% of respondents would see their primary identity as 'ethnic', while 37% would see it as 'Kenyan' and 43% as 'non-ethnic'.

At the same time, they found that 'Kenyans also regard ethnicity as a source of political and economic division' and that especially those with a Luo or Luyia background would feel themselves exposed to 'ethnically based discrimination' by the central government. The analysis of the 2007 elections as an 'ethnic census' therefore needed to be supplemented by one of 'policy issues' to explain patterns of voting. When contrasting different groups of voters, Bratton & Kimenyi (2008, pp 274f, 277, 287 and 288) found that 'ethnicity' was more significant for 'homebodies' than for 'migrants', but not more significant for rural than for urban voters. They therefore concluded that 'further social structural change, including greater contact and integration among ethnic groups', would eventually bring policy issues to overrule ethnic concerns in deciding voting patterns. In the present article we try to examine to what extent this resonates with the results of the 2013 elections in Western Kenya.

THE STUDY UNDERTAKEN

This article uses primary data collected through a limited exploratory survey of voting patterns and motivations carried out in Western Kenya in February and March 2013. The study was confined to the administrative regions of former Western and Nyanza provinces inhabited by Luo- and Luyia-speakers. As a kind of pilot study, these two communities and a selection of administrative areas within them were purposively sampled without any pretention to full representivity. The aim was to get an impression of and compare not just the influence of the two ethnic identities on electoral outcomes, but also the persistence of what has, since independence, been a seemingly more homogenous political affiliation among the Luo than the more heterogeneous one among the Luyia (MacArthur 2008, p 230). This exploratory investigation is intended to give depth and perspective to a discussion of the results of the six simultaneous elections in the selected constituencies.

The choice of the two communities and the area was also informed by the fact that they both had presidential candidates in the 2013 general elections. From among the Luo-speakers, Raila Odinga was contesting the presidency on the ODM ticket, while Luyia-speaker Musalia Mudavadi was vying for the presidency on behalf of the United Democratic Front (UDF). Given the centrality of the presidency in Kenyan politics, it was expected that this would polarise the two communities in support of their own candidates, thereby illustrating the overriding significance of ethnicity for electoral outcomes in Western Kenya.

Following the structure of the new system of government, the former Western province is now administratively divided into four counties, as is the Luo-speaking region of the former Nyanza province. Two counties from each of the former provinces were sampled for the study, one being where the presidential candidate came from, the other a random choice located further away from the presidential candidate's county. This gave us Siaya and Vihiga as the two presidential candidates' counties, and Homa Bay and Busia as the counties furthest removed from the presidential candidates' homes.

One constituency from each of the selected counties was randomly sampled for the study. This gave us Ugenya, Sabatia, Ndhiwa and Funyula constituencies. Going further down the electoral levels, two County Representative wards from each of the sampled constituencies were randomly sampled to constitute the study area. The four constituencies and eight wards sampled are summarised in Table 1. It should be pointed out again here that this study area may not be representative of Western Kenya, but it is sufficient to provide some insight into the factors that informed choices in the region in these elections.

Table 1
Electoral Units Sampled

County	Constituency	Region	County Rep wards
Siaya	Ugenya	Nyanza	Ukwala
			North Ugenya
Homa Bay	Ndhiwa		Kabuoch North
			Kanyikela
Vihiga	Sabatia	Western	Chavakali
			West Sabatia
Busia	Funyula		Nangina
			Namboboto/Nambuku

Twenty opinion leaders, five from each constituency, purposively sampled on the basis of their perceived knowledge of local politics, were interviewed during the political parties' primaries and the campaign period of the general elections. After the elections 25 voters were sampled from each ward, using a simple random sampling method, yielding a sample of 200 respondents. A semi-structured questionnaire was used for the interviews. Thus, 220 respondents from the study area were interviewed to generate the qualitative and quantitative data that inform our discussion.

This was supplemented by observation in person by authors and research assistants of primary elections in some of the constituencies. While the sample is limited and may not be sufficiently representative of constituencies in Nyanza and Western provinces, the combination of observation, newspaper reports, interviews with key informants and a survey based on random sampling gives us important insights that might inform the direction of further research and put existing studies into perspective.

THE SOCIO-ECONOMIC AND POLITICAL CONTEXT

Western Kenya is home to people from diverse social backgrounds. Though Luo-speakers are predominant in the former Nyanza province, there are also Gusii, Kuria and Suba communities in the region. Similarly, while Luyia-speakers are predominant in the former Western province, there are also Teso and Sabaot communities. Whereas the structural bases of social organisation among Luo and Luyia are similar and the clan, structured on strong patrilineal kinship ties, is the highest level of social organisation, there are no sub-ethnic groups among the Luo. There are, however, 17 sub-ethnic groups among the Luyia, consisting of clans that share the same dialect, but have diverse origins as well as social and political organisation (Were 1967; Fedders & Salvadori 1979).

Economically, there are three main activities in the region: agriculture, fishing and commerce. Agriculture is the main activity, though farming is largely subsistence in the lowlands surrounding the lake following the collapse of cotton production in the 1990s. Sugarcane is the only surviving cash crop, but returns from the crop have been dwindling due to poor marketing channels. Fishing has been the main source of income around the lake region, though the fish catch and the income it produces have diminished over the years. With members of the Asian community dominating large commercial activities, the majority of the people have turned to small-scale enterprises as a survival mechanism. The economic situation is aggravated by the lack of industries to provide employment opportunities, which has increased migration to urban areas in search of wage employment. In the midst of a poor socio-economic infrastructure characterised by few and inadequately equipped hospitals and health centres, poor schools and colleges, lack of clean water and poor roads, the economic situation has created serious development challenges for the region. An outline of prominent issues of contestation and concern can be found in the profiles of the four counties published by the *Daily Nation* newspaper on 13 December 2012 (Vihiga), 15 December 2012 (Siaya), 12 January 2013 (Busia), and 17 January 2013 (Homa Bay).

Though Luo- and Luyia-speakers share socio-economic challenges, their responses in the form of political organisation have been different. Luyia-speakers

have been struggling to solve these challenges by forging diverse political affiliations and choosing alternative leaders who could address them. This has perhaps been aided by the fact that Luyia-speakers were not a homogeneous political entity, for there was never a central authority. There was collective authority in each clan, which jealously guarded its independence and sovereignty to such an extent that, in reality, every major clan was a sovereign state.

This form of political organisation arguably contained a high degree of freedom and independence, which might have been extended to the political orientations of Luyia-speakers since independence (Katumanga 2001, pp 513-525). Consequently, Luyia-speakers have tended to be politically heterogeneous and relatively 'liberal' in their political affiliation.

Conversely, Luo-speakers have largely been politically homogeneous, but this is a recent development. Like the Luyia, Luo-speakers did not traditionally have a central authority. They had a segmented political formation, consisting of heterogeneous lineages and clans, with each clan having its own political, social and economic organisations. Even the state formation initiatives in the 19th century that culminated into the emergence of chieftains in places like Ugenya, Yimbo and Kano did not establish truly centralised power (Ochieng 1974, p 47).

A characteristic feature of the emerging chieftainships was egalitarianism, a system that advocated social justice and equal rights. Accordingly, in a later phase, when Oginga Odinga stood up against colonialism, created the Luo Thrift and Trading Corporation and opposed European authoritarian control over the aspirations of Africans, Luo-speakers would acknowledge his leadership and embrace him as their leader.

During his period as the country's first vice-president, Oginga's agitation for reforms to enhance social protection and justice for all served to enhance support among Luo-speakers for his leadership. When he was forced to resign from government due to his ideological stand, and formed the Kenya People's Union (KPU) in 1966, the Luo shifted their party affiliation from Kanu to KPU. The assassination of Tom Mboya in 1969 solidified Luo political allegiance to Oginga Odinga as a way of protecting themselves from a predatory state – seen as based on a negative mobilisation of ethnic power – that was excluding Luos, not just from political power but also from the distribution of state resources for development. Luo voters would move with Oginga into opposition politics in 1992 and this loyalty would be transferred to his son, Raila Odinga, following the demise of Oginga in 1994.

Consequently – in their own understanding – the apparently homogeneous political affiliation of Luo-speaking voters has been an effort to resist a repressive state that has not just restricted their freedom and rights but has also denied them development resources and social protection. Here again, Luo-speakers have

not been too different from the Luyia, where – according to MacArthur (2008, p 231) – in 'the 2007 election, as in 2002, what united a majority of Luyia voters was not necessarily calls to ethnic solidarity, but rather a deep desire to challenge the current political system'. Thus, as Lesa Morrison (2007, p 120) argues, while the discourse of being victimised, of being a 'fallen elite group' disadvantaged and discriminated against in terms of development, may not be an accurate representation of the development history of the Luo, it has served as a strong ideology and has contributed to uniting the political allegiance of the community.

THE 2013 ELECTIONS IN WESTERN KENYA

Political parties and coalitions

The requirement for a competitive election is the existence of more than one political party competing to form and control the government. Such parties are expected to aggregate people's views into coherent policies and then facilitate their choice of alternative policies and representatives in the government. To assess awareness of the political parties that competed in the elections in Western Kenya we asked our respondents to name the political parties and political coalitions in the region, which many of them could. The main political parties and coalitions in the two communities during the 2013 elections are shown in Table 2.

What is interesting is that there were more political parties and coalitions in the Luyia constituencies than among the Luo. All three dominant political coalitions in the 2013 general elections, CORD, Amani and Jubilee, competed for the votes of Luyia-speakers, but only CORD and, to a small extent, Jubilee, were represented in the Luo counties. Among the Luyia there was also a more marked presence of political parties not allied to any coalition than among the Luo. This might indicate that Luyia voters continue to be more liberal and pluralism-inclined than their Luo neighbours.

However, the presence of several political parties among the Luo in the 2013 general elections was a significant departure from past elections, as the ODM, for the first time since its formation in 2007, was competing with other parties in its own territory. Indeed, Luo Nyanza had all along been a preserve of changing dominant parties since the re-introduction of multiparty politics in 1992. Nevertheless, the competition ODM faced was a function of the political realignments in the run-up to the election that forced Odinga to craft CORD.

Most of the political parties, however, were not founded on the basis of any discernible ideology or philosophy but on the individual ambitions of leaders aspiring to power. For instance, Mudavadi joined the UDF only in December 2012 after his disagreement with Odinga over the procedure for nominating the presidential candidate. Ideological differences did not inform this move.

Similarly, the creation of coalitions was based solely on the political survival of the leaders. The CORD brought together Odinga and Kalonzo Musyoka, of the Wiper Democratic Movement (WDM), who have never shared a political vision. Similarly, the Mudavadi-led Amani coalition was only formed after its leader failed to find accommodation in the Jubilee alliance that evolved around Uhuru Kenyatta and William Ruto. Subsequently, the parties and coalitions ended up coalescing around the personality and perceived ethnic and/or regional support of their leaders.

Table 2
Main Political Parties and Coalitions in Western Kenya

Community	Political Coalitions	Political Parties
Luo	Coalition for Reforms and Democracy (CORD)	Orange Democratic Movement (ODM)
		FORD - Kenya
		Wiper Democratic Movement (WDM)
		Federal Party of Kenya (FPK)
		National Agenda Party of Kenya (NAPK)
		People's Democratic Party (PDP)
	Jubilee Coalition	The National Alliance (TNA)
	N/A (Independent parties)	Kenya National Congress
		Labor Party of Kenya (LPK)
Community	**Political Coalitions**	**Political Parties**
Abaluyia	Amani Coalition	United Democratic Front (UDF)
		New FORD Kenya
	Coalition for Reforms and Democracy (CORD)	Orange Democratic Movement (ODM)
		FORD - Kenya
		Federal Party of Kenya (FPK)
	Jubilee Coalition	The National Alliance (TNA)
		United Republican Party (URP)
	N/A (Independent parties)	Labour Party of Kenya (LPK)
		Progressive Party of Kenya (PPK)
		Safina
		Restore and Build Kenya Party (RBKP)
		National Vision Party of Kenya (NVPK)

Source: Field data

The political parties also did not have formally registered members. This was not unique to parties in Western Kenya, as virtually no party in the country has registered members (Oloo 2007, pp 100-103). The tendency has been to assume that people from the ethnic group and region from which the party leader comes support the party in question. Indeed, some political parties command a large following from the regions from which their leaders come due to either the ethnic identity of the leader or political patronage, where 'members' are paid to vote for the patron. With such support bases, party leaders have ignored the need for party membership and personalised party activities to serve their own interests (Wanyama 2010, p 91).

Without registered members political parties had difficulties in performing their functions. For instance, most of them had not conducted internal elections and had not established elaborate structures of officials and delegates to link the national level to the grassroots. Secondly, their structural weaknesses denied them the ability to aggregate people's interests into policy issues to inform their campaigns. This became apparent in the haphazardly drafted manifestos that tended to enhance the posture of the party leader rather than the issues the party actually stood for. For instance, the UDF only publicised its manifesto one week into the campaign period, emphasising that Mudavadi was a moderate compared to Odinga and Kenyatta, who might plunge the country into violence. Even at the end of the campaign period it was not clear what socio-economic policies the UDF and the Amani coalition were advancing.

Political party primaries

Since the re-introduction of multiparty politics in 1992, party nomination processes have been marked by intimidation of candidates, massive bribery, violence and outright rigging in favour of particular candidates. In the 1997 elections, for example, all party nominations were reported to have been marred by administrative and structural malpractices: vote buying, violence and the imposition of losing candidates on the electorate by the party bosses (Oloo 2007, pp 108-110). The scenario recurred in 2002, particularly in the National Rainbow Coalition (NARC) nominations, which attracted thousands of candidates, resulting in widespread violence. Unfortunately, these malpractices were largely repeated in the 2007 elections (Wanyama 2010, p 75).

The Elections Act of 2012 and the Political Parties Act of 2011 significantly changed the way political parties and coalitions would nominate their candidates for the 2013 elections. The provision for pre-election coalitions saw the leading parties form alliances with the intention of carving out ethno-regional voting blocs for themselves. Consequently, virtually all leaders of parties faced no challenge in

the nominations for the presidential election. So, Odinga was the unchallenged candidate for the ODM and Mudavadi for the UDF. Thereafter, the presidential candidates embarked on weaving coalitions that could win the elections.

It was in these circumstances that CORD emerged to support Odinga's presidential campaign. Among the key political parties in the alliance were Kalonzo Musyoka's WDM, Moses Wetangula's FORD-Kenya, Omingo Magara's People's Democratic Party (PDP), Cyrus Jirongo's Federal Party of Kenya (FPK) and other smaller political parties. Having been ejected from the Jubilee alliance in the closing week of the period for forming pre-election coalitions, Mudavadi entered the fray to assemble the Amani coalition that brought together his own UDF, Eugene Wamalwa's New FORD-Kenya and Gideon Moi's Kanu. With these two coalitions presenting the region's presidential candidates, the spotlight within the parties turned on the nomination of candidates for the other seats. The fledgling structures of the leading political parties in Western Kenya, particularly ODM, UDF, and FORD-Kenya, created election boards at party headquarters in Nairobi to manage the primaries.

The election boards established the requirements of candidates for respective seats. These were basically the party's nomination fees and compliance with the provisions of the Elections Act 2012. Thereafter, the boards had to deal with the requirements for voters in the primaries. Since the parties did not have registered members, virtually all of them qualified any person registered as a voter in a constituency to be eligible to participate in the primaries. Consequently, to vote in any party's nomination process one was required merely to present a national identity card and evidence of registration as a voter by the IEBC.

This laid the ground for 'free-for-all' primaries, made them too huge to manage and opened up the possibility of people participating in the primaries of more than one party. The problem was particularly marked in the respective strongholds of the presidential candidates' parties where it was assumed that the parliamentary (both houses), gubernatorial and county assembly representative aspirants nominated by the party within his stronghold would almost be guaranteed to win their respective elections.

In order to reduce the chances of losers defecting from one party to another, all parties held their primaries on 15 January 2013, two days prior to the deadline IEBC had set for completion of the primaries. With every person being an eligible voter in the primaries and the nominations taking place on the same day in all 290 constituencies for five elective seats (senator, governor, woman member of Parliament, member of Parliament and County Assembly ward representative), logistical and management problems marred the secret ballot method that virtually all parties were using. The result was frequent anarchic and chaotic

scenes, sometimes including the outbreak of violence, as observed at first hand in the Homa Bay and Siaya constituencies.

One problem was the supply of voting materials. Few parties had the capacity to produce and distribute voting materials to all constituencies in time. In places where prepared voting materials did not arrive, people improvised. For ballot boxes they used adhesive-taped plastic waste buckets, food containers and cartons. For ballot papers the 32-page exercise books used in primary schools were on hand. Where such improvisation was delayed, voters waited for hours, with the result that some were not able to vote or voting was postponed for several days. Some candidates, occasionally in collusion with polling officials, capitalised on logistical problems to hijack ballot papers for use in rigging the elections. For instance, in Homa Bay County there were reports of ballot papers found on the streets marked in favour of one of the candidates for the Senate seat.

Logistical problems also arose with the appointment and allocation of polling officials to the voting centres. In some constituencies ODM nominations had to be delayed due to parallel lists of presiding officers being circulated. Some polling officers reached their polling centres very late, while others failed to show up, forcing postponement of the nominations to the next day. There were also a number of management problems. In some cases ballot papers were not adequate, while in others some candidates' names were missing from the ballot papers. Then there were cases where voting started late in the day and had to continue into the night. In some cases voting had to be postponed to the next day, yet there were no arrangements for safeguarding the ballots that had already been cast. In some cases where voting was postponed to the next day, the presiding officers did not reappear to continue with the process.

Another management problem related to the counting and tallying of the votes. In some cases, the ballot boxes and the returning officers were kidnapped and taken to undesignated places to tally the votes and announce particular candidates as the winners. This was the case with the FORD-Kenya primaries for the Funyula constituency seat. As our research assistant was able to observe directly, the returning officer was commandeered to a remote pub, from which he announced one of the candidates as the winner without including vote tallies from some polling stations where the candidate was said to have received the fewest votes.

Furthermore, the results of the ODM primaries in most constituencies were never declared. The reason was that either voting had been prematurely terminated due to logistical problems or the presiding officers did not have the opportunity to count and tally the results. Thus, whereas some people were still waiting to vote, others were waiting for the declaration of the results from the ODM Elections Board. In the meantime, ever-changing lists of preferred nominees

that went contrary to the expectations of many voters were being generated at the party's headquarters. The anxiety that resulted from these incidents led to the outbreak of violence in Homa Bay and Siaya counties.

The shambolic primaries occasioned a fall-out within the ODM, not only between the leadership of the party and the losing candidates, but also between the party and the electorate. The latter were particularly interested in making their choice in the primaries of the dominant party in the region because they had learnt from the past that it was the primaries that determined the actual winners in the general elections. When they were denied a chance to vote or even have their votes determine the nominees for the seats, many resigned from the electoral process and some vowed not to participate in the general elections. This would force Odinga to campaign in the region to mend fences, which he had never done in previous elections. With such chaos, manipulations, violence and rigging in the primaries, those who failed to secure the tickets of their preferred party defected to minor political parties to pursue their ambitions. Those in the ODM decamped to join smaller parties in the CORD coalition.

The results of the 2013 general elections in Western Kenya

If the view that electoral outcomes tend to be an 'ethnic census' holds for Western Kenya, then the expectation would be that the Luo would vote to the last man for Odinga in the presidential election, while the Luyia would vote overwhelmingly for Mudavadi. However, the results of the 2013 presidential elections reveal a more mixed pattern of voting behaviour. Table 3 presents the results for Odinga and Mudavadi in all eight counties dominated by Luo- and Luyia-speaking voters.

Table 3
Presidential Election Results for Candidates from Western Kenya

Ethnic group	County	Odinga %	Mudavadi %	Others %
Luyia	Kakamega	64	30	6
	Vihiga	46	49	5
	Bungoma	53	31	16
	Busia	86	8	6
Luo	Siaya	98	0	2
	Kisumu	97	1	2
	Homa Bay	99	0	1
	Migori	86	2	12

Source: Compiled from IEBC data

Table 3 shows that Odinga performed better than Mudavadi in three of four Luyia counties. Even in Vihiga County, where he comes from, Mudavadi beat Odinga by only 3%. This seems to disprove the thesis that voting in rural Kenya is merely an ethnic census. The possibility that voting is also influenced by issues would perhaps explain why more Abaluyia voted for Odinga than for Mudavadi who is 'their own'. Voting might also have been influenced by common-sense considerations of Mudavadi's limited chances of success, which strengthens the argument that the Luyia were weighing the issues on which they were likely to lose by voting for Mudavadi. By contrast, an examination of the results from the Luo counties seems to support the ethnic census argument as it is evident that the Luo voted overwhelmingly for Odinga.

The relatively lower level of ethnic voting among the Luyia than among the Luo is apparent in the gubernatorial results in the counties under scrutiny here, as seen when Tables 4 and 5 are compared.

Table 4
Gubernatorial Election Results for Vihiga and Busia Counties

County	Candidate	Political Party	Votes	%
Vihiga	Moses Akaranga	PPK	58 543	35.6
	Kennedy E. Butiko	ODM	57 096	34.7
	Jairus B. Amayi	UDF	37 873	23.0
	Reuben Kigame	RBKP	4 880	3.0
	Francis Mwanga	NAPK	3 160	1.9
	Justus I. Mwanje	FORD-Kenya	2 887	1.8
	Total		**164 439**	**100.0**
Busia	Sospeters Ojaamongson	ODM	117 078	53.5
	Vincent Sidai	UDF	74 670	34.1
	Philemon L. Imo	FORD-Kenya	12 766	5.8
	Alice B. Were	LPK	11 212	5.1
	Benjamin Okwara	Safina	3 236	1.5
	Total		**218 962**	**100.0**

Source: IEBC

Conventionally, 'ethnic census' voting presupposes that voters are tied to their presidential candidate by virtue of ethnic identity. The implication is, then, that voters will vote more or less as a bloc for the candidates running on behalf of the presidential candidate's party. However, data in Table 4 show a different picture:

Mudavadi's UDF did not perform well in either of the two counties. Indeed, the ODM performed markedly better, winning the seat in Busia and coming close to winning in Vihiga. Thus, it seems that the Luyia were not solely motivated by ethnic identity.

The voting pattern among the Luo, however, seems to have been significantly influenced by ethnic identity, as seen in Table 5, which shows the results of the gubernatorial contests in Siaya and Homa Bay.

Table 5
Gubernatorial Election Results for Homa Bay and Siaya Counties

County	Candidate	Political Party	Votes	%
Homa Bay	Cyprian Otieno Awiti	ODM	295 657	97.3
	Benson Owiti Odhiambo	TNA	5 257	1.7
	Philip O. Auko	Independent	2 925	1.0
	Total		**303 839**	**100.0**
Siaya	Cornel Rasanga Amoth	ODM	138 908	49.3
	William O. Oduol	NAPK	135 413	48.2
	Abong'o Malik Obama	Independent	2 814	1.0
	Nellie Okwiri	FPK	2 297	0.8
	Noah M. Winja	Independent	1 262	0.4
	Thomas P. M. Okore	KNC	969	0.3
	Total		**281 663**	**100.0**

Source: IEBC

Whereas the ODM won 97% of the vote in Homa Bay, in Siaya it had to share another 97% with the NAPK. Given that the ODM and the NAPK were both affiliates of CORD, we argue that there was bloc voting in Siaya to support Odinga (see also Tables 3 and 6). This is particularly the case because William Oduol stood for this seat in the ODM primaries and only defected to NAPK when he was voted out in an allegedly rigged process during the chaotic primaries. Nevertheless, Oduol almost caused an even split among CORD supporters in the gubernatorial race, which suggests that the votes in Siaya – and probably also Luo voters elsewhere – reflected underlying issues.

Parliamentary results also revealed quite differentiated voting patterns in the region. Table 6 shows the results of the two parliamentary seats contested at county level, that is, the senator and the women representative in the National Assembly.

Table 6
Votes for Key Parties in Presidential, Senatorial and Women MP
Elections in Selected Counties in Western Kenya

County	Party	President	Senator	Woman MP
Vihiga	ODM	77 825	33 022	51 907
	UDF(P)	82 426	112 816	37 733
	PPK	-	10 755	23 810
	FPK	-	-	22 721
	TNA	2 542	6 474	2 542
	Others		-	25 190
	Valid Votes	165 494	163 067	163 903
	Rejected votes	2 079	3 814	3 448
	Total votes	167 573	166 881	167 351
	Turnout (%)	83	82	83

County	Party	President	Senator	Woman MP
Busia	ODM	189 161	146 828	84 502
	UDF(P)	18 608	-	43 328
	Ford-Kenya	-	59 413	28 470
	LPK	-	-	53 253
	TNA	8 186	-	-
	Others	2 701	10 298	6 594
	Valid Votes	218 656	216 539	216 147
	Rejected votes	2.272	-	4 570
	Total votes	220 928	216 539	220 717
	Turnout (%)	88	88	88

County	Party	President	Senator	Woman MP
Siaya	ODM	284 031	269 253	239 242
	UDF(P)	713	-	-
	NAPK	-	-	33 769
	TNA	884	-	2 474
	Others	1 084	16 894	8 138
	Valid Votes	286 712	286 147	283 623
	Rejected votes	1 735	2 441	2 514
	Total votes	288 447	288 588	286 137
	Turnout (%)	92	92	92

County	Party	President	Senator	Woman MP
Siaya	ODM	303 447	232 601	298 623
	UDF(P)	557	-	-
	TNA	725	-	4 894
	PDP	-	59 508	-
	Others	937	6 869	-
	Valid Votes	305 666	298 978	303 517
	Rejected votes	1 054	2 470	2 100
	Total votes	306 720	301 448	305 617
	Turnout (%)	94	93	94

Source: IEBC

Table 6 shows that the turnout for the different elections was almost identical across the various offices, which demonstrates that the voters wanted to participate in the elections at all levels, including the election of the woman representative. Whereas the ODM won all the seats in the two counties occupied by the Luo, Mudavadi's UDF only won the senate seat in his own Vihiga County. The rest of the seats in the Luyia counties went to the ODM. This demonstrates that the Luyia voters were not simply trying to support their own presidential candidate.

Indeed, the very different numbers of votes cast for candidates of different parties in the three races demonstrate that voters – for whatever reason – were able to differentiate between the casting of a vote for a presidential candidate and the casting of a vote for a senator or a woman MP. Voting in Vihiga County is a particular case in point as the different support levels for the parties point to complicated voting decisions for all contests, not least for senator and woman MP.

At the constituency and county ward levels divergent voting patterns continued to manifest themselves among the Luyia, with some differentiation occurring among the Luo, especially at the county ward level. Table 7 shows the political parties that won the parliamentary and county assembly ward elections in the four constituencies we are studying here.

As was the case in the other sets of elections, the Luyia in Busia opted in the parliamentary election to vote for candidates from the ODM rather than from Mudavadi's UDF. Mudavadi once again drew support from his own constituency of Sabatia. The Luo remained true to the ethnic census voting pattern by electing ODM candidates in these two constituencies. Nevertheless, there was a differentiation in voting patterns at the County Assembly ward level.

Luo voters did not necessarily vote a straight ticket or 'the six-piece voting suit', as it was called. Just as candidates from other smaller parties won seats in ODM strongholds, the UDF lost one ward in its stronghold to another a CORD-affiliated party.

Table 7
Parties that Won National Assembly and County Assembly Ward
Seats in Selected Counties

County	Constituency	Party	County ward	Party
Vihiga	Sabatia	UDF	West Sabatia	UDF
			Wodanga	UDF
			North Maragoli	UDF
			Lyaduywa/Izava	UDF
			Mungoma	UDF
			Lugaga-Wamuluma	FORD-K
			South Maragoli	UDF
			Central Maragoli	UDF
			Chavakali	UDF
Busia	Funyula	ODM	Namboboto/Nambuku	LPK
			Bwiri	ODM
			Ageng'a/Nanguba	LPK
			Nangina	ODM
Siaya	Ugenya	ODM	Ukwala	ODM
			West Ugenya	ODM
			East Ugenya	ODM
			North Ugenya	ODM
Homa Bay	Ndhiwa	ODM	Kanyikela	LPK
			Kanyamwa Kosewe	ODM
			Kanyamwa Kologi	LPK
			Kanyadoto	LPK
			Kwabwai	ODM
			Kabuoch South/Pala	ODM
			Kabuoch North	ODM

Source: IEBC

Thus, voting patterns in the county ward representative elections – where more candidates are known personally by many voters – might have been informed by diverse factors. Ethnicity, issues, and perceived or real candidate competencies might have interacted with social pressure in many different ways.

On the whole, the results of the six elections in Western Kenya show that there was a certain tendency among voters to vote in a way that might seem to have been determined by ethnicity. This was particularly so for Luo voters, but we should certainly also take note of the dissenting voices among the Luo who voted for candidates sponsored by other parties. For instance, the ODM failed to win parliamentary seats in Alego-Usonga, Kisumu West, Muhoroni, and Awendo, all of which are Luo-dominated constituencies. Luyia-speakers also certainly

did not vote as a bloc, despite the fact that they had their own candidate in the presidential race, albeit with a slim chance of winning, but aspiring to a position from where inclusion in the next government might be negotiated.

This may suggest that issues – and perceptions of candidate competency – competed with considerations of ethnic affiliation as important factors in decisions about how to vote. In the following section we discuss what the balance was between identity politics and issues in the motivations for voting in 2013 in Western Kenya.

EXPLAINING THE RESULTS OF THE 2013 GENERAL ELECTIONS IN WESTERN KENYA

We asked respondents to give the most important reason why they voted for a candidate in each of the five elective seats we were looking at. Such questions are asked in most voter surveys, even though the direction of causality remains a contentious issue: Did the voter actually vote as she or he did for the reasons given as response to the question or did she or he give the answer we received because she or he felt it was socially acceptable? Voters who vote for a person because of ethnic considerations might feel that that is not a good enough reason and answer that they did so because of the policies advocated by the candidate.

Attempts to negotiate these intricacies require many more questions, more respondents, and more sophisticated analytical techniques than have been available to us. We are aware of the methodological challenges but feel nevertheless that the study can function as a kind of pilot study, where nothing else is available. The responses to the question of why respondents voted for the candidates at the various levels are summarised in Table 8.

Table 8
Reasons for Voting for the Various Candidates
%

Main Reason	President	Governor	Senator	Member of National Assembly	County Assembly Representative
Issues	83	46	2	62	60
Candidate qualities	3	44	82	19	14
Party popularity	-	6	11	10	10
Ethnic/regional identity	14	-	2	3	-
Just complete the ballots	-	2	3	3	6
Bribe/reward	-	-	-	2	1
Other (e.g. don't know)	-	2	-	1	9
Total (N=200)	100	100	100	100	100

Source: Field data

Table 8 shows that a majority of the respondents to our small survey claimed to have voted for their preferred presidential candidate because of his or her stand on issues, with just 14% saying they voted on the basis of ethnicity. Issues that informed the vote for president included the need to shift the presidency from central Kenya to other regions as a means of redistributing development resources, to ensure the implementation of the Constitution, to guarantee the peace and economic stability of the country and because of good development policies set out in the manifesto.

Votes for the other positions, apart from that of senator, were also claimed to have been informed by issues. In voting for the governor the voters were looking for someone who could solve development challenges in the county, while, with regard to the member of the National Assembly, the key issues in addition to solutions to the development challenges were continuity in order to complete development projects that had already been initiated and the drive to end nepotism, favouritism and corruption. With respect to the County Assembly representative the issues that informed voters' choices were facilitation of development in the ward and the creation of employment opportunities for the youth and women. It is significant that ethnic and regional identity were mentioned by just 3% of the voters in the election of the ordinary NA member. For reasons of brevity we did not ask this question in relation to the election of the woman representative.

The fact that voters are preoccupied with concerns about development when electing the governor, the member of the National Assembly and the County Assembly representative makes sense in the socio-economic circumstances described briefly above. This speaks to the desire for improved access to all kinds of services and it is, therefore, not surprising that the voters expected their local leaders at the ward, constituency and county levels to address these concerns. So even if ethnicity was also a concern it is not surprising that voters provide the answers they do in this kind of survey.

Though the senator seems not to have been elected because of concerns about development issues, the voters were looking for proper representation of the county at the national level. Consequently, they emphasised the personal qualities and characteristics of the candidate, such as oratorical skills, professional and political experience, personality and formal education. The ethnic identity of the candidate accounted for a paltry 2%, while the popularity of the political party led 11% to choose their senator. Thus, ethnicity was not claimed to be a major consideration here. It is also instructive to note that in identifying the ability to represent as a main reason, voters were actually trying to match the qualities of the candidate with the job description of a senator.

To ascertain whether the reasons for voting for various candidates also determined the outcome of the election we asked the respondents to tell us, based

on the results that had just been declared, what they saw as the key factor that influenced the victory of the winning candidates. Responses are summarised in Table 9.

Table 9
Factors Influencing the Victory of Candidates
%

Factors	Governor	Senator	Member of National Assembly	County Assembly Representative
Issues	3	-	-	30
Candidate qualities	22	53	36	38
Political party popularity	24	33	18	22
Ethnic or regional identity	-	3	1	1
Campaign strategy	5	5	10	-
Financial capacity/bribes	1	2	-	2
Pre-electoral deals in parties	44	-	-	-
Many candidates split votes	-	-	24	-
Electoral irregularities	-	3	4	-
Other (incl. Don't Know)	1	1	7	7
Total (N=200)	100	100	100	100

Source: Field data

Table 9 shows a significant variation in the factors shown in Table 8 as influencing the respondents in their vote for governor. It emerges that pre-election deals by political parties were perceived as more significant in determining the victory of the governor than the issues voters wished to be addressed.

The pre-election deals determined by what was referred to locally as 'consensus democracy' arose out of attempts by parties to present acceptable candidates to all regions and ethnic communities across the county. This led county level elective seats (governor, senator and woman NA representative) to be shared among different regions and communities in the county. For instance, in Busia County, the ODM aimed to reserve the senate seat for the Luyia candidate, while the governor's seat was reserved for a Teso candidate. The governor was then required to nominate his deputy not from the Teso but from the Luyia constituency. As for the woman representative, the party left it open to any candidate who won the primaries (which led to a remarkable spread of votes, (see Table 6)).

When respondents in a survey are asked, as they were here, about what people 'in general' do, they may *not* feel that they have to provide a socially acceptable answer and there is then reason to believe that answers to such questions come closer to the truth than they do to questions about the person's own motivation for doing this or that. There is therefore reason to believe that Table 9 speaks more validly about the actual situation in these counties than Table 8 – which then implies that issues should have played a much more reduced role than was argued above. And answers like 'ODM won the seat because the party was liked by the voters' are, of course, not very helpful because of their circular character.

Whereas one may argue that inter-community deals were ethnic in orientation, they were also meant to enhance the inclusion of all communities and regions in the governance of the county, and they may be comparable to Lijphart's consensus democracy, which, it has been argued, can contribute to resolving conflicts in ethnically divided societies through power sharing (Lijphart 1999). Indeed, the fact that respondents never considered that pre-election deals accounted for the victory of the senator, despite the fact that the parties had used them in their nomination, may be interpreted to mean that voters had opted to do away with the power-sharing deals negotiated by the parties and, therefore, proceeded to vet the senatorial candidates on the basis of personal qualities that would enable them to represent the county ably. Perhaps this explains why a significant proportion of the voters concluded that the popularity of the political party had influenced the victory of the governor, senator and woman National Assembly representative.

We did not ask our respondents about the key factor that influenced the outcome of the presidential election, but the general mood in the region was that there had been electoral fraud in the tallying of presidential results following the failure of the electronic voter identification and tallying kits. Given that Western Kenya had overwhelmingly voted for presidential candidates from the region, we interpret this to mean that the majority of the people in Western Kenya attributed the victory of the president to electoral irregularities.

On the whole, the responses to the questionnaire, with all their limitations, seem to indicate that ethnic and regional identity might have influenced some voters to vote in the 2013 general elections, but we cannot tell precisely what proportion of the electorate we are talking about. Consequently, we would argue that what appears to have been ethnic bloc voting by Luo voters was probably also influenced by considerations of socio-economic grievances that candidates promised to address and perceptions of candidates' general competencies. Similarly, the more disparate voting by the Luyia may not just be the result of a lack of ethnic unity among the many sub-groups of this region, as argued by

some analysts (MacArthur 2008), but also of different perceptions of how the socio-economic challenges could be solved.

CONCLUSIONS

The purpose of this article has been to examine the factors that determined electoral outcomes in the 2013 general elections in Western Kenya and to try to assess to what extent they represented an 'ethnic census'. Besides showing that Luyia voters did not just vote for their kinsman in the presidential race and for candidates of the 'Luyia party' in the other elections, it was illustrated that voters from both communities in Western Kenya had specific and aggregated reasons for voting for the various candidates. These reasons included the socio-economic challenges that confront voters in this part of Kenya, as their livelihoods figured particularly importantly in the responses. This suggests that – once again in the 2013 elections – seemingly ethnic patterns of voting concealed more complex combinations of issue-centred motivations, ethnic considerations and candidates' competencies and general profile.

In their 2007 study, Bratton & Kimenyi (2008, p 288) argued that social structural change is a necessary condition for the transformation of ethnic-voting into policy-voting patterns in Kenya. Our results suggest that such change is indeed taking place and that concerns about social and economic issues challenging livelihoods are a highly significant factor in determining voters' choices, especially at local level.

In his study of the 2007 elections, Cheeseman (2008, pp 168, 172) found that ethnicity tended to steal the headlines from 'social cleavages' that were increasingly influencing voting. He also pointed out that the power of party coalitions significantly influenced election results, and that the most successful coalition brought together groups that believed they had been historically unfairly disenfranchised. By contrast, the 2013 elections in Western Kenya were characterised by less effective coalition building, which saw the disintegration at the local level of CORD's 'six-piece voting strategy' and the more unwieldy Amani coalition. This may have helped to make issues more and ethnic identity less significant in determining the outcomes of the elections.

Further analysis of such trends would require access to the full set of election results Disaggregation and dissemination of all results down to – preferably – polling station level is a precondition for any in-depth statistical study of some of the points raised here. Unfortunately, what is available is the total number of votes for each candidate in all races and we can only hope that the IEBC will release the disaggregated polling station-level data for the benefit of academic and political analysts. There is certainly a clear need for further research more generally into

electoral politics in rural Kenya and, more specifically, for research that highlights the issues that make ethnic constituencies choose to vote more or less collectively.

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MONETARY CLOUT AND ELECTORAL POLITICS IN KENYA

The 1992 to 2013 Presidential Elections in Focus

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ABSTRACT

*This article sets out to analyse the role and impact of monetary power in
Kenya's presidential elections. It examines the economic advantages or lack
thereof which each of the candidates marshalled to fight the elections and
the extent to which the economic edge determined the final outcome. The
article focuses on the five presidential elections Kenya has held since its first
multiparty dispensation. The analysis traces the consistency of trends and
the presence, or absence, of patterns in an attempt to draw generalisations
and parallels, and demonstrates how economic wealth has been used by
Kenyan presidential candidates since 1992 to influence and win elections.
The article contributes to a comprehensive understanding of the conceptual,
legal and practical development of the role of money in supporting and/or
discrediting presidential electoral processes and outcomes in Kenya.*

INTRODUCTION

In most African 'emerging democracies' (Cameroon, Zimbabwe, Democratic
Republic of Congo, Kenya, Côte d'Ivoire and Sudan, to name just a few) where

there have been reports of less than ideal electoral processes, money is believed to have played a central role in skewing election results in favour of those who control greater wealth – public or private.

In all the elections held between 1992 and 2013 in Kenya money was an important factor in defining politics and the nature of democracy. It has therefore become a 'necessary evil', owing to its worth and growing use as a determining factor in the fate of the candidates. Bakari (2002, p 271) argues that Kenyan politics has been all about money for a long time and that those who had money controlled politics. Former leaders, for example, Daniel arap Moi, the second president, who held office from 1978 to 2002, not only used money to manipulate government contracts and consolidate patronage by appointing cronies to high governmental positions, but also to enable him to give out public lands in attempts to win votes.

According to a report by the National Democratic Institute for International Affairs (NDI) (Bryan & Baer 2005), the availability or otherwise of money has enormous influence on the conduct and nature of general elections. Likewise, the high costs of elections have a direct bearing on two ingredients of electoral democracy, namely, popular participation and fair contestation. Money arguably determines the very basics of democracy (Mwangi 2008, p 268). As we illustrate in this article money is a versatile resource which helps muster support for political parties and strengthens and safeguards their influence in society.

While it is not the sole defining factor in electoral outcomes, if a political party does not have money its leaders and supporters may fail to achieve political participation through representation, which, in turn, often fosters the democratic protection of their interests. Therefore, the question of money in maintaining political parties and winning power through elections, we argue, is very pertinent to the conduct of elections and the building of democracy – which is not to say that the practice of democracy revolves solely around elections.

The importance of money to elections brings many questions to the fore: What role does it play? How and to what extent does a candidate's or a party's wealth influence election outcomes? With specific focus on the Kenyan presidential elections from 1992 to 2013, this article attempts to examine the consequences for electoral processes of the economic/monetary opulence of candidates running for the office of president and the impact of money on electoral outcomes.

It is common knowledge that candidates standing for public office have one shared goal – they all want to win. However, in other ways they differ. As candidates and, more importantly, as individuals, they have personal merits and qualities (such as education, talent, drive, popularity, value system and so on) and advantages or disadvantages (such as ethnic or regional affiliation, and so on) that can enable them to win or make them lose elections. But we argue that it

is the spending power of the candidates that far outweighs the impact of all the other factors combined.

CONCEPTUAL FRAMEWORK

Elections, which are held to transfer governing rights, constitute one of the many defining and practical instruments of democracy that allow citizens the right to wield their human, civilian and constitutional rights. According to Kanyinga, Okello & Akech (2010, p 3), participating in elections is an ideal democratic moment that provides citizens with the opportunity to 'evaluate regimes, sanction or reward leadership based on performance and policy'. This notwithstanding, one major challenge in organising general democratic elections, especially presidential elections, relates to sponsoring and managing the election campaigns and activities.

Generally, campaigns organised for presidential elections are bigger and more ostentatious than those carried out for election to other public offices. Jacobson (2006, p 199) asserts that campaigns are an integral part of other electoral undertakings that influence the outcomes of elections. Jacobson traces this influence to the knowledge that campaigns enable voters to evaluate the contesting candidates and that voters' decisions are based on information about the candidates acquired during the run-up to the elections.

While this phenomenon is recurrent, another element is that the success or otherwise of election campaigns depends heavily on the financial resources of the competing candidates or their political parties. In support of this line of argument Campbell (2005, p 1) highlights the possible impact of money on voter turnout and on governance and how monetary incentives can influence voters' decisions. The disproportionate effects of money on election outcomes suggests the potentially enormous impact of this single factor on countries where elections are part of the political process.

To highlight the undesirable role money has played in some situations, as was the case in the Kenyan presidential elections, is not to discount its useful and positive role in the organisation and running of election campaigns and activities. There are challenges in coordinating and managing election campaigns and the monetary investments involved therein. These reside in the fact that often the use of resources devoted to conducting and steering campaigns are not limited to promoting the political platforms of the contending candidates but are also employed to undermine and corrupt the electoral process, mislead voters and eventually marginalise other candidates, who control less wealth and resources.

The relationship between money and elections has remained a tacit area of focus in political and academic research. Electoral outcomes most often, especially

in the context of 'African democracies', have been, to some extent, influenced by the wealth of the candidate(s) or their parties. This is not a new phenomenon, given that contenders for public office and rulers have, throughout history, leveraged the power of the economic upper hand of the wealth they own or control, or the strong economic muscle their political base provides to gain an edge over rivals, competitors, and detractors.

The modern political landscape is replete with political systems in which rulers and governing bodies – monarchs, military dictators, elected heads of state, legislatures – across continents rely on their economic and financial clout, whether ill-gotten or legitimately accumulated, to gain access to and/or maintain political power. The distinct and determinant role economic power plays in politics is universal in that individuals, political parties and interest groups with the greatest access to and control of financial and economic resources shape, in varying degrees, the outcomes of political processes in developed as well as developing countries. Presidential elections represent the epitome of political life in any society and, for this reason, encapsulate the intensity with which the interplay of the economic clout/political advantage dichotomy is manifested.

As Mwangi (2008, p 268) rightly states, money is a vital aspect of elective politics and of the shaping of democracy. Evidence from Kenya, South Africa and Ghana, to mention just a few countries, has shown that strong political parties are essential to open, competitive democratic politics, particularly in emerging democracies. The creation of a national network for a political party requires a huge amount of resources to fund, among other things, advertisements, outreach programmes, campaigns and membership recruitment. Without finances parties have little chance of surviving and those who have the power and the money are able to dictate, while the masses are merely tolerated (Fawole 2005, p 160).

LEGAL FRAMEWORK

Kenya lacks a credible legal framework regulating the funding of elections and election campaigns. The Political Parties Act of 2011 does, however, regulate how money is sourced by political parties. Article 29 of the Act stipulates that political parties should be transparent in and accountable for the way they spend their monetary resources.

They must reveal the amount of money received from various sources of the spending Fund, such as funds not being less than zero point three per cent of the revenue collected by the national government as may be provided by Parliament; contributions and donations to the Fund from any other lawful sources, including from its members; and their own income and expenditure; as well as their assets and disbursements. The Act directs that monies allocated by

the Fund to a registered political party must be used for purposes compatible with democracy, including:

- Covering the party's election expenses and communicating its policies;
- Organising civic education in democracy and other electoral processes;
- Bringing the party's influence to bear on the shaping of public opinion; and
- Administrative and staff expenses of the party, which must not be more than 30% of the funds allocated

<div align="right">The Political Parties Act 2011, Article 24</div>

In spite of this, another debate that focuses particularly on campaign financing is underway. Kenya's 10th Parliament (from 2008-2013) was presented with the Campaign Finance Bill 2012 for enactment into legislation that would regulate the use of money during elections. The Bill proposes that a candidate who or a political party or a referendum committee which receives contributions under this Act shall:

- Use the contributions to pay for party nomination expenses, election campaign expenses, or referendum campaign expenses as the case may be;
- Issue a receipt for every contribution received; and
- Keep a receipt and documentary evidence of all expenditures.

The law was drafted to enable the Independent and Electoral Boundaries Commission (IEBC) to fulfil the constitutional provision found in section 88(2) (i), which makes the commission responsible for 'the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election'. However, as noted in the African Union Elections Observation Mission (AUEOM) Report (2013, p 9), the Bill was not passed and the electoral process took place without any campaign finance regulation in place. In its recommendation, the AUEOM (2013, p 18) proposes that a comprehensive legal framework for party and campaign finance regulation should be passed into law by the next Parliament to ensure probity, transparency and fairness in electoral financing.

MONEY AND POWER IN THE 1992 ELECTIONS

Since the emergence of multiparty elections in Kenya in 1992 it has become evident that it is only those parties that have huge resource bases that have continued to win elections. Prior to 1992 the one-party system had built a monopoly under the presidency, leaving no space for relevant competition in presidential elections.

The genesis of multipartyism and eventual elections therefore meant the ruling party had to brace itself against stiff competition from an opposition that was determined to take over government.

According to Barkan (1993, p 94) and Foeken & Dietz (2000, p 135), the apparent reality of what lay ahead for the Kenya African National Union (Kanu), given the new system, prompted it to dispose of large amount of (state) money to set up national secretariats for its support groups, with full-time staff, in preparation for the elections. Throup & Hornsby (1998, p 351) allude to the fact that vast sums were allocated by the central government to fund the campaigns of candidates representing the ruling party.

Throup & Hornsby (1998, p 358) also point out that huge amounts of tax-payers' money – about KSh 2-billion (US$208-million) were funnelled into Moi's election campaign. The funds were used for a variety of purposes ranging from hiring transport for voters and bodyguards for candidates to employing thugs and distributing party T-shirts and even cash to passersby.

These actions were intended to garner support among the majority of poor Kenyans, most of whom were persuaded by one meal to cast their vote. Barkan (1998, p 94) asserted that prior to the 1992 elections the government had organised an array of pro-KANU campaign organisations, using a flood of misappropriated public funds. Surprisingly, Moi not only used money to buy people's support but also to woo opposition supporters to return to Kanu. Barkan further notes that several North Eastern opposition candidates were given cash handouts in an effort to persuade them to defect to Kanu.

Against this backdrop, Barkan (1998, p 94) underscores that 'so great was the flow of money from the Central Bank of Kenya to the president and KANU nominees that the money supply increased by an estimated 40 percent during the last quarter of 1992'. As a result of money laundering, the whole process of buying voters and their support with money destabilised the economy and the Moi regime found itself in difficulties. While the possibility of losing power as a result of economic challenges plunged Moi into a state of anxiety, it did not deter him from his plan and his attempt to win the presidential election.

Githinji & Holmquist (2012, p 61) aver that one of the easiest way for Moi to achieve this was to urge the government to print more money, thus leading to inflationary surges around elections in a country that had relatively low levels of inflation. In 1991,

> inflation reached 20 percent, the highest it had been since 1982. For the next three years subsequent to 1991, it reached an all-time high of 45 percent in 1993 before falling to 28 percent in 1995, and then below 10 percent in 1996.
>
> Githinji & Holmquist 2012, p 61

While this signalled the beginning of the test of true democracy, what was left was political manipulation and greed for money and power.

Relatedly, reports in the *Daily Nation* detailed that Moi's administration had, in the run-up to the 1992 election, manipulated the economically vulnerable youth, who had very few, if any, resources, to eke out a living through recruitment into unscrupulous groups. Youths like the Youth of KANU '92 (YK '92), and Operation Moi Wins and Toroitich [Moi's middle name] Till 2000, under the leadership of people like Cirus Jirongo, Julius Sunkuli and William Ruto, were used to gather money, buy votes on a large scale and intimidate voters and candidates (*Daily Nation*, 21 and 26 November 1992), thus partly ensuring Kanu's victory that year.

While Kanu used state's resources to mobilise support and influence voters (Foeken & Dietz 2000, p 137), the economy weakened and inflation rose, placing many Kenyan communities and individuals in a precarious financial position. Intrinsically, it made the communities easy to manipulate so that food, cash, and the distribution of loans to voters became the most successful tactic in creating dependency.

Kenyans were left with almost no choice, for incurring the enmity of the government was extremely unwise in a society in which the government dominates the economy. Government propaganda led people to believe that there was no chance of an opposition victory and only if they voted for Kanu would patronage continue to flow. The regions that voted against the ruling party were marginalised and government money was used to reward areas that remained loyal (Throup & Hornsby 1998, p 350).

Not surprisingly, the sums spent were never acknowledged or disclosed, but certainly exceeded anything Kanu, or even Moi and his business partners, could afford (Throup & Hornsby 1998, p 351). The funds are believed to have come from the vast personal wealth of clients of Moi and his ministers, from the state itself and from a series of clever schemes which released so much cash into the money supply that they threatened Kenya's economic stability, creating serious inflation in the aftermath of the election (Throup & Hornsby 1998, p 352).

Throup & Hornsby (1998, p 351) highlight several incidents in which President Moi and Kanu openly used control of public resources to mobilise support. For instance, in August 1992 the president issued a cheque for KSh14-million to compensate sugar farmers, who had not been paid since the collapse of the Kwale Ramisi sugar factory. On 18 October he ordered minister Ngala to provide sugar cane farmers, who had not been paid for over a year, with KSh20-million for deliveries to the Nzoia Sugar Company. Two weeks later he was in Bungoma District with another KSh20-million cheque as a personal gift to the sugar farmers there. He also paid out KSh10-million in Kanduyi in Bungoma for a teacher training college.

These are just some of the manoeuvres invented by the incumbent to tilt the electoral outcome in his favour. There were other schemes too. Research reveals that on 10 October the president promised that tea and coffee auctions would henceforth be held for foreign exchange, to ensure that farmers were protected against the devaluation of the KSh. In addition, the government ordered the coffee board's third annual payment to farmers of KSh533-million on 4 December, just three and a half weeks before the election, in an attempt to bolster Kanu's support in Kikuyu coffee growing areas.

On Jamuhuri Day, 12 December 1992, President Moi also rewarded four major groups – workers, women, civil servants and Muslims. He raised the minimum wage by 12%, announced that women civil servants would receive house allowances, directed that Muslims be allowed time off work between eleven and one o'clock on Fridays to attend prayers and raised the amount of foreign currency they could take abroad for the Haj. In the main, President Moi did not hesitate to assure civil servants that under Kanu their jobs were secure, in contrast to the cutbacks planned by opposition parties such as the Democratic Party (DP) and FORD-Kenya (Throup & Hornsby 1998, p 351).

In the context of the Kenyan electoral processes, Mwangi (2008, p 267) contends that the question of money for financing political parties has become more prevalent since the reintroduction of multiparty politics because the multiparty arena has opened up democratic space that has intensified inter-political party competition. This has not only increased the opportunities for corrupt political financing, it has also led to the misuse and forfeiture of huge sums of money during political campaigns in attempts to command more support across the country. Närman (2003, p 344) also suggests that the money that was used for electioneering in 1992 had serious repercussions for the national economy.

The 1992 elections were also characterised by scandals such as the Goldenberg schemes, which have, to date, remained an unresolved puzzle (AfriCOG 2011; Warutere 2005). As Throup & Hornsby (1998, p 352) record, this scam involved the exportation by Goldenberg International Limited (GILtd) between 1991 and 1992 of gold and diamond jewellery to fictitious companies in Switzerland and Dubai, and the reclamation of the money from the government as export compensation. While the company had, by 1992, received a payment of KSh580-million (US$11--million) in 'compensation', the Central Bank commissioners overseeing the compensation maintained that the items for which the company was reimbursed either did not exist in Kenya or had been grossly overvalued.

AfriCOG (2011, p 1) and Warutere (2005, pp 1-3) assert that this scandal was one of the cleverest scams associated with the excess money pilfering by GILtd and Exchange Bank Limited for counterfeited export compensation and foreign exchange claims respectively. Likewise, it was connected with the purported

embezzlement by politicians of huge amounts of KSh and their use for the purposes of supporting the financing of the 1992 presidential election.

Warutere (2005 p 12) draws attention to the fact that an issue commonly alluded to but unverifiable during and following the Goldenberg scandal was the fact that the Exchange Bank and Postbank Credit served as 'money laundering outfits for political expediency, including financing the 1992 election'. In line with this, Throup & Hornsby (1998, p 548) cited the scam as an ostensible means by which Kanu funded its election campaign. Thus, the Goldenberg Scandal provides a significant link between money, political power and the outcome of Kenya's first multiparty presidential poll.

THE ROLE OF MONEY IN THE 1997 PRESIDENTIAL ELECTION

In addition to the ethnic patronage that has continued to characterise Kenya's multiparty elections since 1992, the country's electoral practices and outcomes have also been greatly influenced by the financial clout of candidates for presidential office. The role of money provides important cues to the manner in which campaigns and outcomes have been managed over the years. The 1997 election, like that of 1992, offers a basis on which to examine the issue of monetary power.

The period leading to the 1997 election saw the registration of 16 political parties in addition to the 11 parties that were already registered (Commonwealth Secretariat 2008, p 1). When President Moi won another term in office the losing parties lodged complaints, alleging that the election had been flawed, corrupt and not transparent and there ensued demonstrations and widespread violence, which were largely attributed to ethnic animosity (Commonwealth Secretariat 2008, p 1; Sundet, Moen & Barasa 2009, p 8).

It had been hoped that the 1997 electoral process would be more transparent and peaceful enough to turn the page on the violent demonstrations that ensued after the 1992 election. However, it would seem that the violence that followed the 1997 election was even more extreme.

Added to the factors and events that clouded the run-up to the 1997 election are the practices of undemocratic consolidation, domination, corruption and manipulation of political processes and institutions, which seem to be inherent in 'African emerging democracies'. In this regard Bay (2010, p 45) highlights the fact that the 1997 general elections, like those in 1992, saw the misappropriation of state resources to instigate ethnic clashes, with the intention of terrorising opposition supporters.

The role, effects and consequences of this misuse of resources cannot be disentangled from the non-compliance with the normal democratic standards of free and fair elections. The Constitution and Reform Education Consortium

(CRECO 2012, p 1) reports that a lack of regard for electoral rules led to the irregularities and disorder that have characterised Kenyan elections since the return to multiparty politics.

CRECO lists these irregularities as:

- Highly controversial and often violent political party nominations, which sideline women, youth, marginalised groups and so on, due to their highly competitive nature and undemocratic rules;
- An electoral register that does not contain all names, especially of a burgeoning young population, and often contains the names of 'ghost voters';
- The first-past-the-post (FPTP) electoral system, which creates all manner of disparities such as anomalous results, which therefore do not lead to universality and equality of the vote;
- An electoral process that is insensitive to the needs of vulnerable groups such as persons living with disability;
- An electoral system that seems to be largely controlled by whoever occupies power, who often manipulates the electoral management body; and
- Electoral areas resulting from past and continuous gerrymandering by the political party in power, which leads to discriminatory results within the FPTP system.

CRECO 2012, p 1

With regard to the issues that clouded the 1997 elections, the media reported on the disorganised electoral processes and irregularities. These generally included oversights and omissions from the ballot papers of candidates' names, non-concealment of the secret ballots at 13% of polling stations and bribery, corruption and the buying of votes even on election day (Foeken & Dietz 2000, p 145).

In addition, the 1997 election was characterised by violent incidents, incomplete registration and intimidation of opponents. The European Union described the election as falling short of 'normal democratic standards', and the Electoral Commission of Kenya (ECK) itself stated that in view of the flawed electoral environment the elections could not be called fair (Foeken & Dietz 2000, p 146).

THE 2002 ELECTION

In 2002, after 24 years of President Moi's oppressive rule, Kanu, for the first time, lost the election to the National Alliance Rainbow Coalition (NARC), thus

officially relinquishing power to Mwai Kibaki. Compared to the presidential elections of 1992 and 1997, the 2002 election marked a significant shift in Kenya's voting history; it was the first to be commended as free and fair. However, using individual-level survey data from a study by Afrobarometer of a nationally representative sample of more than 1200 Kenyans, Kramon (2009, p 2) notes that even though the 2002 presidential and general elections were relatively free and fair, the campaigns were characterised by corruption relating to monetary resources spent to buy votes.[1]

According to a constitutional amendment of 1992, by 2002 Moi's two terms of office were officially over. This did not stop him from attempting to influence the outcome in favour of his nominee, Uhuru Kenyatta (Bachelard 2010, p 187). Närman (2003, p 344) states that Uhuru Kenyatta was accused of using a considerable quantity of state funds for his personal election expenses. The Commonwealth Observer Group (COG 2006, p 8) chronicled allegations of vote-buying, including the distribution of food and other materials during the campaign. This was coupled with large sums of money reportedly distributed at campaign rallies.

COG (2006, p 19) reported large-scale buying of voters' cards and votes, and photographs were taken of party leaders handing out money at one of the campaign rallies. Throup (2003, p 1) asserts that 'KANU did bribe, it did rig, it did intimidate'. Furthermore, Bachelard (2010, p 187–188) states that prior to the 2002 elections Moi purportedly attempted to manoeuvre military officers to stage an intervention if NARC won. Despite these reported contraventions, the 2002 election resulted in Kenya becoming an electoral democracy. Even though this success was not consolidated, it was attributed to the fact that the ruling party was facing a significantly united opposition, which made it realise it could only lose more money if it engaged in bribery (Throup, 2003).

THE 2007 ELECTION

The conduct of elections is, without doubt, integral to the practice of democracy. However, in reviewing Kenya's election history one might be tempted to state that elections there are synonymous with the overspending of money to garner voter support and with post-election violence. Focusing on the 2007 elections, more specifically on the presidential election, the Coalition for Accountable Political Financing (CAPF) 2008 reports, as well as the Kriegler and Waki reports of 2009,

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1   Vote-buying in the conduct of elections in Kenya (as it is in almost all democracies) remains a tactic used by various political factions and individuals in order to attract voters to their camp.

document issues of corruption and the overspending of state resources to secure and acquire votes.

The 2007 elections were described as the most vigorous and highly contested in the history of the country since independence. The main challenger of the incumbent, President Mwai Kibaki, was Raila Odinga, (a Kibaki supporter in 2002), who posed a real threat, coming close to ousting Kibaki.

Among the developments prior to the 2007 election were the number of political parties that were formed shortly before the elections, a remarkable upturn in the number of voter registrations – especially by the youth – and an increase in the number of voting stations created to accommodate the growing number of registered voters.

 Like the previous elections, the 2007 elections sparked concerns about the misuse of state funds and resources to sideline opposition presidential candidates and stakeholders, promote state patronage, undermine societal welfare and organise expensive campaigns and the purchase of votes (CAPF 2008a, p 11; Bay 2010, p 32).

The Anglo-leasing scandal is one example, linking corruption and money laundering as tools to manipulate the electoral outcome. It involved a series of security contracts with official payoffs that were meant to fund and support the government's forthcoming 2005 Constitutional Referendum and NARC's 2007 election campaign (Githongo 2006, cited in Chege 2008, p 129).

According to the report of the Kriegler Commission, the 2007 presidential election was void of transparency and stifled with extensive bribery, coercion, vote-buying and voting fraud, which made the whole electoral process flawed (combined Kriegler and Waki Reports 2009).

The CAPF estimated that President Mwai Kibaki and Prime Minister Raila Odinga spent a traceable amount of $75-million on their presidential bids in 2007 and parliamentary candidates spent an average of $100 000 (International Crisis Group 2013, p 31; *The East African News* 2012). In addition, the CAPF (2008b) report also stated that the election was fraught with spending irregularities and expenditure that was unaccounted for, in that, while the political parties and candidates spent KSh5.6-billion on their campaigns, the original amount raised was an estimated KSh4.8-billion.

The table below, adapted from the CAPF (2008a, pp 25- 27; 2008b, pp 23-24) highlights the estimated expenditure of the three dominant parties – the Party of National Unity (PNU), the Orange Democratic Movement (ODM) and the Orange Democratic Movement-Kenya (ODM-K). Expenditure on the presidential campaign is highlighted.

Table 1
Estimated PNU Coalition Campaign Expenditure

Expenditure category	Amount
Fundraising costs	KSh36-million
Mass media and publicity	KSh189-million
Campaign materials	KSh160-million
Constituency support	KSh190-million
Travel and logistics (vehicles)	KSh9-million
Kibaki Tena rallies	KSh190-million
Media facilitations (journalists)	KSh9-million
*Presidential campaign teams	*KSh150-million
Vijana Na Kibaki	KSh300-million
Party nominations	KSh120-million
Campaign coordinators	KSh230-million
Party agents (polling stations)	KSh390-million
General ICT	KSh39-million
Opinion polls	KSh19-million
Propaganda	KSh10-million
Total	**KSh2. 1-billion**

Table 2
Estimated ODM Campaign Expenditure

Expenditure category	Amount
Fundraising costs	KSh30-million
Mass media and media facilitations (advertising)	KSh152-million
Campaign Materials	KSh39-million
Constituency support	KSh27-million
Travel and logistics (choppers & vehicles)	KSh200-million
National campaign vents (Manifesto launch and Nairobi rallies)	KSh57-million
Pentagon team	KSh147-million

*Presidential nominations	*KSh54-million
Party nominations (personnel, logistics, communications)	KSh156-million
Campaign coordinators	KSh50-million
Party agents (polling stations)	KSh120-million
Rallies and meetings, trainings and seminars	KSh89-million
Security and rally personnel	KSh70-million
Opinion polls	KSh6-million
Propaganda	KSh3-million
Total	**KSh1.2 billion**

Table 3
Estimated ODM-K Campaign Expenditure

Expenditure category	Amount
Mass media and publicity	KSh6-million
Campaign materials	KSh9-million
Constituency support	KSh8-million
Travel and logistics	KSh28-million
National campaign events (manifesto launch, Nairobi rallies)	KSh22-million
***Presidential nominations**	***KSh17-million**
Parliamentary nominations	KSh21-million
Campaign coordinators	KSh9-million
Party agents (polling day)	KSh9-million
Rallies and meetings	KSh16-million
Security	KSh12-million
Total	**KSh157-million**

The importance of the overspending by the political parties and candidates in 2007 cannot be overstated, especially given the CAPF and Kriegler reports, which highlighted the problem of vote-buying and voter bribery. The funds were used for both monetary handouts and cash payments to voters and supporters and for the delivery of gifts and convenient public services (Kenya Human Rights Commission 2008, p 38). According to the CAPF (2008b, p 45) report, the youth,

women and religious groups were the groups most targeted in an attempt to take advantage of poverty and unemployment to secure political support. CAPF's monitoring report and data indicated a total of 75 137 instances of vote-buying voter bribery in the 71 districts monitored.

Figure 1, from the Election Monitoring and Response Centre (EMRC), illustrates instances of voter bribery by province (Kenya Human Rights Commission 2008, p 38).

Figure 1
Bribery Instances by Province
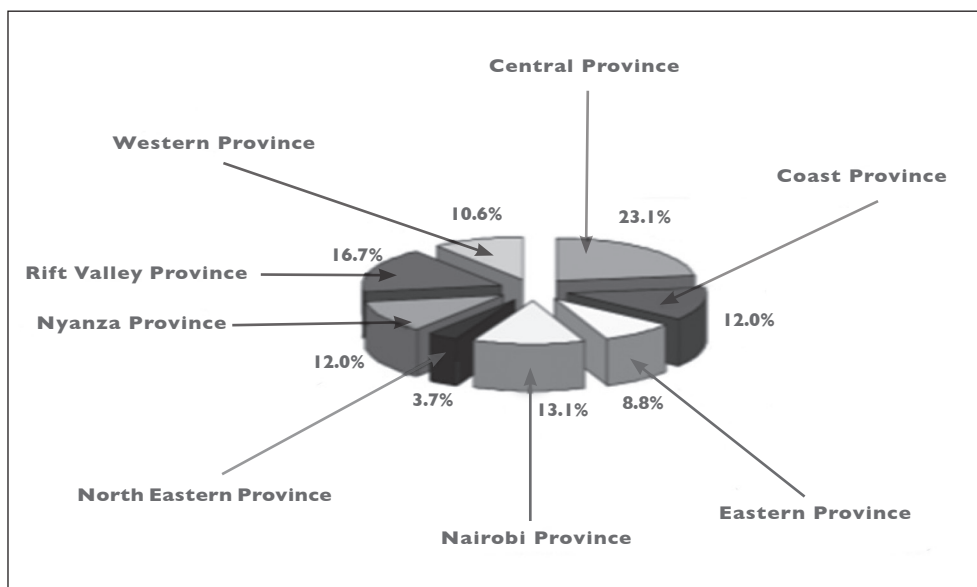
Source: Kenya Human Rights Commission 2008, p 38

Another notable factor in the 2007 election was the deep-seated corruption and prejudice that created tensions and conflict between the opposing parties and presidential candidates, especially the PNU (with Mwai Kibaki as the candidate) and the ODM (Raila Odinga) (Bay 2010, p 36). The rift between the parties was instigated by and attributable to the outcome of the elections, from which the incumbent president, Kibaki, emerged victorious. According to Orji & Uzodi (2012, p 50), reports indicated that the ODM was leading but that owing to the ruling party's access to state resources, the outcome of the election was manipulated in favour of the PNU.

The PNU's ability to sway the election outcome could also be linked to the

fact that the incumbent president had significant influence over the appointment of members of the ECK and over its decisions (International Crisis Group 2013, p 25). As further highlighted by Orji & Uzodi (2012, p 50; Human Rights Watch 2008, p 22), it was obvious that the results had been rigged, considering that the opposition had secured 99 seats at the parliamentary election as against 43 seats by the PNU.

In line with the above, the Kriegler Commission (2008) highlighted that fraud at polling stations was widespread among the electoral commissioners given the inconsistencies in tallying and documenting the votes. This made it extremely difficult to establish who among the presidential candidates had indeed won the election. AfriCOG (2009) attributed this to manipulation of political power by major political parties. The misuse of power, as further recorded in the 2009 AfriCOG report, created an arena wherein electoral malpractice was inevitable.

The violence that followed the announcement of the results portrayed and created deep distrust of state institutions and brought the country to the brink of war.

THE 2013 GENERAL ELECTION

Reports from the *Sahan Journal* (2013) and *Business Daily* (2013) suggest that the 2013 general election was the most expensive, biggest and flashiest in the country's history, with coalitions and individuals using their financial muscle to beat their financially weaker opponents. According to the *Business Daily* account, by the end of 2012 the Jubilee coalition had spent about Ksh40.66-million on media, compared to the Cord coalition's Ksh23.29-million. Musalia Mudavadi for the Amani Coalition spent KSh4.58-million, Peter Kenneth's Eagle KSh1.47-million, while other parties spent about Ksh10-million among them. The Jubilee coalition used six helicopters and four fixed wing planes on its campaign trail at a cost of about $1 700 (KSh147 900) per hour for the helicopters, for a minimum of two hours, and the planes about KSh443 700 an hour, excluding fuel.

On the individual trail, in Mombasa County, Governor Ali Hassan Joho is reported to have spent well over KSh700-million to win the highly competitive seat. Former Changamwe MP Ramadhan Kajembe spent between KSh50-million and KSh100-million on his campaign for a senatorial seat.

According to the AUEOM Report (2013, p 9), the campaigns in 2013 became a platform on which major political parties and coalitions exhibited their financial muscle, lashing out on political advertising and messaging, logistical arrangements and campaign material. It is not surprising that the smaller parties were unable to match the scale of expenditure, making for a very uneven playing field.

CONCLUSION AND RECOMMENDATION

It would not be an overstatement to suggest that since independence in 1963 Kenya's political culture has been blemished by corruption and political exclusion, especially during elections. What is particularly confounding is the fact that the introduction of a multiparty / democratic system did not mitigate voter intimidation, corruption in decision-making and the systematic marginalisation of some constituents of society in the electoral processes. In these circumstances the use of money during election campaigns, as outlined in this article, constitutes 'licit' corruption by the candidates seeking election.

Having studied the patterns of Kenyan presidential elections from 1992 to 2013, this study agrees with Bakari's assertion (2002) that Kenyan politics has, for a long time, been all about money. While the multiparty system is an enviable sign of democracy, that in Kenya is infested with abundance for a few members of the political elite and with poverty for the majority.

This study has attempted to link the access of political parties to financial resources with the accumulation of power and the nature of democracy in Kenya, where financial resources have considerable influence over who wins elections.

As the study has indicated, the conduct of presidential elections has repeatedly shown that the pursuit and use of money during political campaigns disfigure the democratic morality of Kenyans. This, in turn, has negatively shaped the system of democratic governance, defiling the principle of free and fair elections and enlarging the space for the abuse of power, pillaging of public resources, inequality, poverty and a high unemployment rate among the youth and exposing the country to power struggles instigated along inter-communal and ethnic lines.

Not only has the manipulative misuse and overspending of public money to finance and influence presidential elections undermined the integrity of true democracy in Kenya, it has largely contributed to weakening the country's economy.

For these reasons and in order to redefine democracy in Kenya to reflect the government 'of the people, by the people, for the people', it is necessary to address the question of the financing of political parties. Accounts of some of the parties' campaign expenditure suggest that money is the political will of the people, which is not consonant with the interpretation of democracy. Therefore, it is imperative that all contesting parties put effective financial regulatory mechanisms in place to monitor the accessing of funds that aid them not only in calling for support, but in making their policies acceptable by the voters. Only then can the true will of the masses be reflect in the country's elections. Regulatory mechanisms will not only ensure a realistic democracy, they will also help to guarantee that voters

are persuaded by policies rather than by the money parties distributed to them during political campaigns.

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TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 1   NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 1 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 2 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 2   NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 3 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 3   NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 4 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 4   NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 5 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 5 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 6 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 6 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 7 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 7 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 8 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 8 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 9 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 9 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 10 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 10 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 11 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 11 NO 2

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 12 NO 1

TABLE OF CONTENTS

JOURNAL OF AFRICAN ELECTIONS   VOL 12 NO 2

TABLE OF CONTENTS

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TABLE OF CONTENTS

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