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SOUTH AFRICAN COMMUNISTS AND ELECTIONS

Tom Lodge

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ABSTRACT

In South Africa the Communist Party has a one-hundred-year history of contesting elections, making it the oldest electoral campaigner in Africa. South Africa's elections were increasingly racially restrictive and segregated until 1994. Even so, from the mid-1920's the Party began to focus on the concerns of its black membership though it continued to seek support from white workers. This article explores the Party's reasons for continuing to participate in elections, and the circumstances that helped it achieve occasional victories at the polls. It also considers the effects of electoral participation on an ostensibly revolutionary movement.

Keywords: South African Communist Party, white labour, black workers, elections, campaigning, local elections, advisory boards, membership, alliance

INTRODUCTION

The South African Communist Party is the second oldest political party in Africa (eight years younger than its ally the African National Congress), and it has the longest history of electoral participation, stretching back through a hundred years. Its history offers a useful set of lessons about the effects of electoral campaigning for small organisations with little prospect of winning executive authority. The first of these is that for radical or revolutionary movements – even in politically restricted settings – electoral participation can secure a measure of legal protection. In South Africa lawyers were conspicuous in the Communist Party's leadership from its inception, and the Party would become adept at defending its cause in the courtrooms during and between electoral seasons. Secondly, the search for voter support became a process of learning as the Party sought to identify the geographical location and social character of its most receptive followers, shaping its programme around their concerns and beliefs. Another key feature evident in the Communist Party's electoral history is that, for better or for worse,

electoral participation tends to deradicalise and temper even revolutionary movements as they negotiate their passages through the institutional procedures of representative politics. Finally, well-organised local campaigning, even by small groups, can sometimes achieve modest victories. Throughout their history South African communists would succeed occasionally in winning office and using their positions as electoral representatives to attempt to shift public policy or to build wider support. For followers of democratic causes elsewhere in Africa, these experiences of an organisation so at odds with the dominant political culture may offer encouraging insights.

CONTESTING WHITE ELECTIONS

At the time of its formation in 1921, the Communist Party brought together a cluster of left-wing groups. The most significant was the Johannesburg-based International Socialist League, a breakaway formation of mainly Marxist socialists who left the Labour Party in 1915 after opposing South Africa's participation in the First World War. The Labour Party was committed to electoral politics, drawing its support mainly from white workers in the Transvaal gold mining communities. Its limited appeal was evident in the 1910 Union elections when Labour won only three out of the thirteen seats it contested (from a total of 121 constituencies).

Overall, the Labour Party drew 12.74% of the vote in the Transvaal and a slightly smaller share in Natal. Subsequent by-elections raised its parliamentary representation to six; its most left-wing representative, Bill Andrews, was the victor in one of the by-elections, in Germiston in 1911, becoming, arguably, South Africa's only socialist parliamentarian. Andrews' biographer and friend, Jack Cope, maintained that as early as 1907 Andrews 'was beginning to doubt the white labour policy', and quoted from his maiden speech in Parliament in 1912, in which he observed that 'the black man will not submit to being herded into a compound and treated like a slave' (Cope 1944, pp. 98 & 129). Unusually among his associates in the ILP, Andrews did not oppose the arrival of Chinese labour, and later would maintain friendly contacts with the local Chinese community. Even so, Andrews' socialism could still be shaped by racial considerations: in another parliamentary intervention one year later, Andrews called upon the authorities 'to substitute white youths for Africans on maintenance of telegraph lines in his constituency' (Simons & Simons 1969, p. 129).

A succession of forcefully contested strikes between 1911 and 1914 helped to swell Labour Party's support. It contested the Transvaal Provincial Council's elections in which the Party won 26 seats, one by Sidney Bunting, a British-born lawyer who was beginning to explore Marxism. Labour's organised followers in 1913 were augmented by a significant expansion of Jewish membership;

Jews joined in considerable numbers that year prompted by fears of enforced deportation triggered by new legislation, and their fresh presence in the Labour Party is likely to have strengthened its left wing. Many of these new followers would join the International Socialist League (ISL) when it established itself in 1915.

Most of Labour's voters would stay loyal, though Colin Wade, a busy dentist, took time off from tooth extractions to win a municipal electoral seat in Germiston as an ISL candidate in November 1915. However, his campaign emphasised local issues and made no reference to the disagreements that had provoked the split with Labour, and indeed both accepted and proposed to extend the existing pattern of residential segregation (Hirson & Williams 1995, p. 152). In the national elections one month earlier, Andrews lost his parliamentary seat, obtaining only 82 votes. At this stage, the League was still represented in the Transvaal Provincial Council by Sydney Bunting and five other ISL members. The League published a manifesto for the November municipal elections in Johannesburg; its proposal for 'strict supervision of White and Native housing' as well as the 'development of Klip Spruit as Native Township' suggested acceptance of existing segregationist policies (*The International* 1915, p. 1). One of the ISL's candidates in Johannesburg, J. Clark, the Boilermakers' trade union secretary, won a municipal seat with 721 votes. He was expelled from the League after introducing a draft ordinance on behalf of shopkeepers that would have extended trading hours (*The International* 1917, p. 3).

Electoral campaigning was an early preoccupation for the ISL, though its membership probably understood its purpose in different ways. Syndicalists within the League were opposed to any electoral participation even if only for propaganda purposes. League leadership generally favoured electoral participation; after all it provided opportunities for publicity as well as a measure of legal protection; 'it [was] "the shield" that protects the organisation' (Gibson 1918, p. 4). Initially, with the ISL contesting national, provincial and municipal elections, electioneering required a major mobilisation of supportive activity and material resources. The results were hardly encouraging. Colin Wade stood in the Troyeville by-election against returning soldier and mine manager Colonel Frederick Creswell in January 1917, collecting 32 votes against Creswell's 800, the ISL's lowest poll to date. This time, Wade campaigned on an anti-capitalist and anti-war manifesto which also reminded voters that 'native workers are here to stay' (*The International* 1917, p. 1). More obliquely, in that year's provincial council elections Andrews defended himself against 'the catchvote alarum that I want to give the vote to kaffirs' by conceding that his opponents were correct and that he did indeed stand for political equality, though he held back from explicitly calling for black enfranchisement (*The International* 1917, p. 4). In any case, as he explained later, political power – voting – was 'quite a secondary matter' compared

to collaborative class action (Andrews 1917, p. 4). Neither he nor Sidney Bunting succeeded in winning seats.

In Cape Town in late 1921 ex-soldier Wilfred Harrison put himself up as a municipal candidate for the newly-formed Communist Party, representing the Party against Abdul Abdurahman in Ward Seven. Abdurahman retained his seat comfortably; but that the communists were trying to secure coloured electoral support in Cape Town suggests the Party's rather different social orientation here from Johannesburg. In Cape Town the Party's weekly public meetings in Adderley Street were generally 'faithfully supported' by 'native and coloured elements', attendance that was evidently valued by the local leadership (Dryburgh 1923).

In April 1923, after the suppression of the 1921 Rand mineworkers' rebellion, the Communist Party would decide to support the electoral pact between the Labour Party and General Herzog's National Party. The support was qualified. As an editorial in *The International* explained, a coalition government constituted by Labour and Afrikaner nationalists would not make much material difference to their rank-and-file supporters who would 'sooner or later' reject bourgeois leaders and opt for a real workers' party. Hence an electoral victory for the Pact government 'would be a spur to working class consciousness'. Most of the key party leaders still viewed white workers as a vanguard group; indeed, recent events only solidified such beliefs.

Throughout 1923 most of the Party's energies were invested in efforts to build a united front that could embrace white labour organisations. Communists in Benoni supported Labour in municipal elections, though a communist candidate, Jessie Chapman, stood in one ward in which Labour offered no opposition to the South African Party councillor, possibly a reflection of a reciprocal de facto local alliance (Glass 1924, pp. 3 & 4). Jessie Chapman's electoral address focused mainly on the wage reductions and dismissals that had affected white mineworkers, as well as calling for unemployment relief at a 'recognised white standard' (*The International* 1923, p. 2). In the absence of Labour candidates in Cape Town, communists also contested council elections, in one case performing quite creditably; here their electioneering attempted to reach beyond the concerns of white South Africans.¹

In 1924 communists did not put up their own candidates in the general election, explaining that they would support the so-called Pact alliance between Labour and Afrikaner nationalists. This was not the time to split opposition to

1 In Cape Town's Ward 6, contested by a communist representing the Unemployment Committee, the candidate, William Green, obtained 311 'single votes' compared to the winner's 411. He failed to secure many 'plural votes', that is the multiple votes landlords cast for tenants (*The International* 1923). *The International* reprinted Wilfred Harrison's electoral appeal in Cape Town which included compulsory primary education for 'all children including native and coloured' and the immediate opening of existing high schools and universities to black students (25 October 1923, p. 2).

Smuts, the Party's manifesto explained, though communists should not expect radical reforms from the Pact in power. The Party published a manifesto, a rather quixotic document given that it was sponsoring no candidates of its own. It told its supporters that SALP candidates 'should be strictly held to certain planks'. These included demands that had a particular salience for Africans, such as the 'abolition of pass and passport laws and mineworkers' records of service rights' and the extension of certain rights and entitlements 'to all classes of workers'. This inclusion of rather generalised language that in fact referred to the needs of African workers was a concession to the growing influence of the Young Communists' League which had begun to recruit black workers. Communist support for the Pact was not reciprocated; indeed, both the Pact partners were publicly hostile to the Party, though apparently Labour politicians were actively 'canvassing Communist votes in private'. The Nationalists in particular were careful to disassociate themselves from the Party. Local Nationalists closed down a Party meeting in Vrededorp, threatening to attack the platform if the speakers took up their places, subsequently writing to *The Star* newspaper to defend their action: there was no room for the Communist Party in South Africa, they explained.

Whether the Party's main strategic orientation should remain directed at winning over white workers was the key issue at the Party's conference in November 1924. By this stage, the Pact administration had been in power for five months. Two Labour Party members would accept positions in General Herzog's cabinet, Colonel Creswell taking up the portfolio for defence and labour, a 'logical result of his political career', while his colleague, Tom Boydell, became the Minister for Posts and Telegraphs and Public Works. In accepting these positions in a 'bourgeois cabinet', communists maintained, the Labour Party had entirely abandoned its working class character (Bunting 1924, p. 6). Their position was arguable. Certainly, Creswell would introduce quite significant reforms during his ministry, beginning with the shortening of the working week, restrictions on employing children, and changes to the law on miners' pthisis; increased rates of compensation for white workers afflicted, and specialised medical treatment and more limited provisions for sick black workers, a one-off payment and a free rail pass home. Probably more objectionable from the perspective of the Communist Party were the measures enacted in 1925 and 1926 to protect both skilled and unskilled white workers from the threat of being replaced by cheaper black workers, the Wage Act of 1925 and the Mines and Works Amendment Act of 1926 which supplied legal force for the 'Colour Bar' on the mines. In September 1924, communists unsuccessfully contested local elections, putting up candidates in Johannesburg, Benoni and Cape Town, declaring themselves to be representatives not of 'the working class only' – but of all workers, 'whatever their race or colour' (*The International* 1924a, p. 4; *The International* 1924c, p. 3).

BUILDING BLACK SUPPORT

Through the late 1920s up to the mid-1930s, the Party's strategic aims became increasingly focused on building support among black workers. Between 1924 and 1937 it participated in just three elections. One was in Durban, in 1929, one year after the Party had established a presence in the surrounding black townships. Rather unexpectedly the Communist Party secured a council seat in a municipal by-election in February 1929, with the election of Sophus Pettersen, a Norwegian ship owner and former leader of the sailor's union. Pettersen was one of the CPSA's founders and a key funder of the party as well as someone who could organise travel to Europe meetings for party delegates willing to work as stokers or seamen. In fact, Pettersen's candidature as an independent workers' candidate was unopposed on election day because his opponent in Durban Point's Ward IV was disqualified on a technicality. Within the ward, Pettersen owned several businesses, and in his campaign he had won white trade unionist nominations as well as promises of support from Indian ratepayers, a significant proportion of the voters in the ward. He lost the seat shortly afterwards when the Council decided that he was ineligible as he was one of their key contractors (Kjerland & Bertelsen 2015, p. 131; Mouton 1987 pp. 37-39).² Amongst his other properties, Pettersen owned an office building in which for a while he provided the party with free premises (Bunting 1929). Pettersen had easy access to the docks and was a familiar figure in the compounds where he addressed workers' meetings.

Later that year, in June 1929, communists campaigned in two constituencies, Thembuland and Cape Flats, where significant numbers of Africans qualified for the franchise. Sidney Bunting, who was the Party's candidate in the Transkei, admitted that he was not really seeking support from the relatively privileged group who could vote, teachers, landowners and mining recruiting agents and the like, 'good boys' as he called them dismissively. Photographs of the crowds attending his meetings bear him out: shabbily dressed men on the whole, listening to his speech about a future 'native republic' for peasants and workers, the Party's programme at that point. Even so, he secured nearly 3 000 votes, keeping his deposit. Seventy years later, researchers could still find people who remembered Bunting's speeches, interpreted and embellished in Xhosa by his comrade Gana Makabeni (Drew 2007, pp. 171-180). In 1974 SACP and ANC's organiser Chris

2 Pettersen owned a chandler's business in Durban and was also the proprietor of a whaling station, Lina Linga, that employed a sizeable African workforce of 200, harshly supervised according to eyewitness reports from Norwegian sailors (Kjerland & Bertelsen 2015, p. 131). Pettersen would eventually win a municipal election in Durban on his sixth attempt, in 1935. From 1932 he campaigned on an anti-Indian platform. His biographer suggests that his hostility to Indians was a consequence of the Natal Indian Congress's decision in 1930 to recommend that voters should support the Labour Party. In 1948 Pettersen joined the Senate as a member of the National Party (Mouton pp. 37-39).

Hani would set up party cells in the same vicinity. Hani's uncle had belonged to the Party, probably joining it at the time of Sidney Bunting's visit to Thembuland.

Then in 1932, the Party decided to contest an election symbolically by organising a parallel poll for African voters in a parliamentary by-election in Germiston, the ISL's former heartland. For this purpose it put up as its candidate one of its most charismatic black leaders, JB Marks. Marks was, in the view of the Comintern's local agent, Eugene Dennis, 'an effective mass agitator', and within the party's African following in Johannesburg, both with workers and the 'intellectuals' (Marks himself has been a school teacher) he enjoyed 'considerable influence'. He had an untidy personal life, though, and was always short of money: 'It's agony! The way money comes and goes', he used to say, adding: 'And you're horrified when you wake up to find who's lying next to you'. As one of his friends, Hyman Basner recalled, he possessed the saving 'grace of humour' (Basner 1993, p. 55). The party's decision to contest the election symbolically was equally canny. It was the first poll in which white women had the vote. It also represented a key test for the increasingly unpopular government: the election would receive plenty of public attention. The seat had been held by a member of the Labour Party; but given the Party's loss of support resulting from its participation as a junior coalition partner in the Pact government, and also because of the recent arrival in Germiston of tens of thousands of landless Afrikaner migrants, National Party organisers were determined to establish an urban beachhead by taking the seat. In fact both the main white parties, the ruling National Party and the main opposition, the South African Party, would provide vigorous support from their top-echelon leadership for their local candidates. Here the communists were intervening in a major arena for mainstream white politics.

The by-election campaigning took place over October and November 1932. The party organised public meetings for whites in the market square and at the railway workshops; according to post-graduate university student Eddie Roux, the campaign's main organiser, they had more success in the railway workshops where the workers were chiefly English-speaking, and 'were prepared to give the Communists a hearing' (Roux 1948). Railway workers may have been especially receptive because they had been severely affected by local retrenchments since the advent of the depression (Lewis 1981, p. 106). But for the Party, non-voters were their main target, for in Germiston's African location they were hoping to exploit local dissatisfaction over lodgers' fees. Barred from the location, Communist organisers held meetings outside the location fence: Roux recalls 'huge crowds' in attendance. *Umsebenzi* carried reports of Marks' speeches; he told his audience that the white candidates represented imperialist slavery. As well as the lodgers' permits, Marks referred to other local grievances including the poll tax and beer raids (Simons & Simons 1985, p. 460). Eddie Roux describes one of these meetings,

on October 16th, at which he was present, accompanied by Molly Wolton and by 'stalwarts from the Jewish Workers Club and girls in their bright cotton frocks' (Roux & Roux 1970, p. 117). They began their speeches, which focused on the lodgers' tax, with the help of an interpreter. Then the police arrived with their own 'unofficial supporters' who began heckling. What had been an orderly gathering degenerated into a 'rough and tumble' (Roux & Roux 1970, p. 118), and Roux as well as his comrades on the platform were arrested. Subsequently, the attorney-general dropped the charges of resisting arrest and incitement.

Roux was then assigned the task of attending the official nomination meeting to announce the party's candidate. After a surprised magistrate informed him that Marks was ineligible, Roux was escorted out of the building, only to be delivered to a group of National Party 'toughs' who beat him up. For his pains, he was banished from the Witwatersrand for a year, together with other party leaders. The bans were withdrawn subsequently after the party applied to the Supreme Court to test their validity (Roux 1948, p. 271). The party continued its meetings outside Germiston location and during polling day 'collected votes for its own demonstration candidate', using forms it had distributed earlier (Roux 1948, p. 268). The Party's proxy election in the township attracted commentary as a 'curious feature' in the *Rand Daily Mail's* coverage of polling day. Arthur G Barlow's report refers to a 'march-past' the building used as the main polling station by 'native women', dressed in their Sunday best, 'on their way to protest at the town office at some new regulation in the location'. It was an indication, Barlow thought, of 'the effectiveness of Communist propaganda'. Barlow also referred to the 'straw' election the party conducted, and their announcement that they had collected 3 000 votes for their 'native candidate' (Barlow 1932). After the election Party activists tried to sustain the lodgers' permit protests. A meeting organised by the communists on 18 January was broken up by police and municipal labourers assembled for the purpose by the location superintendent. On 25 January another meeting, inside the location and this time not Party-organised, was broken up by armed policemen who fired their weapons (Roux 1948, pp. 272–273). An elderly woman subsequently died of gunshot wounds (Roux & Roux 1970, p. 117). That brought to an end any protests against the permits. Encouraged by what it perceived to be the success of this initiative in the general election of 1933, the Party announced six more demonstrative candidates, though *Umsebenzi* contains no details of any campaigning on their behalf.

Towards the end of the decade, the Party strengthened its commitment to electoral campaigning. In 1937 it contested the newly-instituted 1937 Native Representative Council (NRC) elections, backing Edwin Mofutsanyana as a candidate for the NRC election and allowing Hyman Basner to contest the Senatorial seat for the Transvaal and the Free State. Basner in fact proposed

himself, though he was one of the few Party members with the necessary freehold property ownership to stand. JB Marks offered to help him campaign and as Edwin Mofutsanyana was contesting an NRC seat that represented the townships of the Transvaal and the Free State, he, Marks and Basner would tour the relevant locations as a team. For Basner, Marks was, 'fond of lively parties, strong drink, and strong polemics' (Basner 1993, p. 93) and provided engaging company, but he was often distracted by other commitments, compelled to work for the rich bus owner, Richard Baloyi, because he was always broke. Because of his warmth and wit, Marks might have been a better choice for the NRC seat candidature, but Mofutsanyana was the Party's secretary-general. Unlike Marks, he was, in the words of Eugene Dennis, 'dependable and politically consistent'; though, writing in 1933, Dennis had noted Mofutsanyana's lack of self-confidence (Davidson, Filatova, Gorodnov & Johns 2003, p. 72).

The elections were indirect: votes would be cast by a mixture of advisory boards acting on the basis of a majority decision, and by rural councils made up of headmen or, in certain districts, chiefs voting on behalf of the men in their reserves. All these agencies needed to be visited and persuaded, though as Basner would discover, approaches to the chiefs were unrewarding. In the Free State, though, support from former ICU leaders was helpful and the team made more headway with advisory board members in the smaller centres. As initial contacts they used lists supplied by Keable Mote, 'one of Kadalie's leading lieutenants', lists of 'teachers, self-employed artisans, clergy, general labourers, hawkers... the names... of men and women who had been office bearers in the ICU [Industrial and Commercial Workers' Union]' (Basner 1993, pp. 82–83). JB Marks helped to win Mote's confidence; he had known him 'very well' since the 1920s (JB Marks interviewed by Sylvia Neame 1969, p. 9). In Kroonstad, 'natives came from all over the surrounding farms to the main meeting', Basner told his fellow members of the Poliburo, information suggesting that here at least, the Communist Party was once again benefitting from earlier networks established by the rural ICU (Politburo Minutes 1937). Apparently the Party did itself have groups in Kroonstad at one stage (JB Marks interviewed by Sylvia Neame 1969, p. 9). Mote advised Basner to 'concentrate on the women... they are the real fighters', an observation that may have reflected the ICU's own experience of the contribution women made to tax protests through the late 1920s and early 1930s (Basner 1993, p. 83). Basner suggests he had one speech, 'which he was to repeat over and over', directed mainly at women, though there were plenty of men in his audiences.

He told them that their children did not go to school because it was ordained that they should be menials when they grew up – in kitchens, on mealie fields, and deep beneath the ground. He scarcely needed to tell them that their infant sons would be humiliated and brutalised, adding that:

their husbands, fathers and grandfathers were called 'boys' because they were paid a boy's wages and not a man's... they lived in municipal locations under permit so that when they and their men became too old to be of use as workers they could be sent away to die – anywhere. ... it was time to stop crying and drive their men into Congress and trade unions and make them strong.

(Basner 1993, p. 87)

There must have been other speeches, because the ever-vigilant Comintern official in Moscow, Robert Nauman, noticed various 'sectarian' references to 'good boys' with reference to 'native reformists'; but in fact Basner had been quite conscientious in his efforts to obtain support from the less conservative ANC leaders (Robert Nauman to Andre Marty, 29 August 1937, Comintern Archive Online Comintern Archive 1937). On election day Basner polled 66 234 votes, against the total of 404 447 for the winning candidate JD Rheinnalt Jones, the director of the Institute of Race Relations. This was a creditable performance and a foundation for his later successful senatorial campaign in 1942 in which he benefitted from the revitalisation of the ANC as a localised political presence. The totals were in fact misleading because Basner's share was largely made up by advisory board polling, whereas Jones obtained all the bloc votes wielded by chiefs, Basner claimed. In fact, the electoral colleges wielding bloc votes were elected committees constituted by tax payers, but these were located mainly in the countryside and their make-up would have been strongly shaped by the influence of chiefs; outside urban locations Basner would indeed have struggled to win them over (Tatz 1962, pp. 92–93). Mofutsanyana fared worse, obtaining one of lowest totals, possibly because his speeches were doctrinaire expressions of Party orthodoxies delivered in manner that 'lacked the common touch', though Mofutsanyana complained later that the Party's support for him was half-hearted. It was true that the Party could not find funding to pay for his travel during the campaign (Basner 1993, p. 89; Roux & Roux 1970, p. 148; CPBG 1937). Mofutsanyana campaigned in the name of the Communist Party, whereas Basner presented himself as the candidate of the African Unity Committee, a group of notables including the Transvaal and Orange Free State provincial ANC officeholders (Basner, H [n.d.], pp. 182–183).

As one member of the British Party's Colonial Committee subsequently pointed out, the Party made no significant recruitment gains during its electoral campaigning (Robert Nauman to Andre Marty, 29 August 1937, Comintern Archive Online). But encouraged by Basner's performance the Party resolved in November 1937 to contest advisory board elections. The same month, Party member Gaur Radebe would be elected as general secretary at a conference of native vigilance associations, a sign of the new attention that African communists

would begin paying to township-based associational life (*South African Worker* 1937c). As Basner had pointed out, advisory boards had an important role as local gatekeepers; preparations for the All-African Convention had alerted communists to the importance of winning allies on the boards if they were to obtain official sanction to call meetings (*South African Worker* 1937a). Basner also discovered during his campaigning that vigilance associations were ‘universally militant and radical in temperament’ (*South African Worker* 1937b). Standing for the vigilance association, Radebe won a seat in the advisory board elections in Orlando in December 1937 (*Umsebenzi* 1938). With respect to white voters, in the municipal elections held in June that year communist leaders tried to secure an agreement with Labour in which both parties would support each other’s candidates in wards they were not contesting. They were rebuffed, politely apparently, but even so the Party urged its enfranchised followers to vote Labour. In Johannesburg a few Party members also maintained a group within the Labour Party (Bernstein 1991, p. 31).

In Cape Town where qualified coloured people could vote in municipal polls, the Party would win a Council seat through the agency of Cissie Gool, the daughter of legendary personality Abdullah Abdurahman, a medical doctor who had won a Council seat in 1904. Cissie Gool had obtained an MA in psychology, the first black South African woman to hold such a qualification. She lived with a leading local communist, Sam Kahn, and she herself would join the Party in the late 1930s: she became a politburo member in 1939. Cissie Gool used to hold open house meetings every Saturday at their home in District Six. One visitor, a recent refugee from Nazi Germany, encountered ‘a veritable League of Nations’ with the company including Sam Kahn, ‘a leading Stalinist Communist’, the artists Gregoire Boonzaire and Frieda Locke, and IB Tabata, ‘prominent member of the Trotskyite Spartacus Club, in earnest conversation with Dr Eddie Roux’ (Hirson 2001, p. 171).

On this occasion, Cissie Gool was ‘sitting next to her father, busy berating him and calling him an Uncle Tom for his lack of radical opposition to the prevailing political and social system’(ibid.). Her electoral campaign in Cape Town’s municipal Ward 7 was organised by James La Guma, a veteran Party activist – to good effect evidently as she was elected. She would defend the seat in successive elections throughout the 1940s.

DEFEND SOUTH AFRICA

In 1941, in the aftermath of the German attack on the Soviet Union, the Party signaled freshly patriotic commitment to ‘Defend South Africa’. One implication of supporting the war effort would be to resume serious efforts to win white electoral support. A pamphlet was published, entitled ‘We South Africans’ which

was aimed at potential white voters in the 1943 general election. It was studiously vague in its treatment of the Party's approach to African political aspirations. Referring to the Labour Party's 'total segregation' policy it suggested, tactfully:

Africans may prefer such a system under socialism: it bears some resemblance to the 'autonomous national republics' that have been recognised in Soviet Russia and may be a progressive step under socialism. But it is a very long-term policy; the practical question today is how to remove the disabilities imposed upon the non-white people.

(Communist Party of South Africa 1943, p. 34)

The pamphlet also argued that to protect their own long-term interests, skilled white workers should set about removing racial job reservation, as well as contending that socialism would benefit 'members of the professions, artists and scientists, shopkeepers and small farmers'. The Party's nine parliamentary candidates – four in the Transvaal, one in Durban and four in the Cape – garnered 7 000 votes between them, an average of 11 per cent of the poll. 'Communists are needed in Parliament' Betty Radford explained in *The Guardian* (20 May 1943), 'both for winning the war against Fascism and for finding a progressive solution to the problems of the post-war world'. Their best performance in the parliamentary poll was that of lawyer Harry Snitcher who took 27.7% of the votes in Woodstock, benefitting from a substantial coloured electorate.

In the Cape Provincial Council elections, East Londoner Archie Muller, supported by qualified African voters, was narrowly defeated, losing by a margin of only 200 votes (Johns 1996, pp. 21–22). That same year the Party's electoral efforts were rewarded with two seats on the Cape Town City Council, one in East London's City Council and in Port Elizabeth, where Mohamed Desai, an Indian party member and trade union organiser, won one seat. In East London Archie Muller campaigned for the Workers' Civic League, effectively a united front between the CPSA and the LP with trade unions around worker demands (*The Guardian* 29 July 1943). It was an encouraging start. The other left-wing contender in the general election was the Independent Labour Party; despite its well-known leader, Garment Workers' Union Secretary Solly Sachs, and a prudent 'bread and butter' manifesto, it collected only 2 per cent of the votes in the three working-class constituencies it contested (Witz 1984, p. 29). Heartened by its modest success the Party continued to fight elections. Between 1943 and 1951 lawyer Sam Kahn held a Council seat for four successive elections which he contested as a communist in a ward that was 70 per cent white and 30 per cent coloured.

In October 1944 Hilda Watts won a Council seat in Hillbrow-Berea, defeating the Labour Party candidate in an all-white electorate in a central Johannesburg

neighbourhood of high-density apartment blocks. Norman Levy grew up in the neighbourhood in which Hilda Watts won her seat, and as a teenager he encountered one of her street corner meetings; most of the people who stayed to listen to her were black, he remembers. She may not have needed to do much to tailor her appeal to white voters in her ward; many of them were relatively recent British immigrants who might have responded to her North London accent as she had had a British childhood until 1934 (Levy 2011, p. 14). She also received contributions to her campaign fund from recently arrived Eastern European immigrants (Bernstein 1993, interviewed by Don Pinnock, p.18). She believed later she may have benefitted from the effect the Soviet army's victory at Stalingrad had on public morale (Bernstein 1984, interviewed by Stephen Clingman). One of her leaflets was clearly targeted at the families of servicemen:

A little home, some soldier dreamed about. There are a lot of people dreaming of homes. Who is preparing for the boys when they come back? In 26 years the Council has built only 360 houses for Europeans. Plenty of promises – BUT NO HOMES.

This particular leaflet made no direct references to Johannesburg's black residents, with even the illustrations portraying only white people (ibid.). A longer manifesto did refer to the 'some of the worst non-European slums', as in Pimville, that were owned by the Council. It also drew attention to the fact that only one doctor served Orlando's 60 000 residents, noting that the Council had failed to provide any facilities 'for the treatment and isolation of infectious diseases amongst non-Europeans'. The risk posed to general public health by the municipality's neglect of hygiene in poorer locations, as in the non-supply of water-borne sewage and clean water, would be a key argument in communist appeals to white voters. As Hilda Watts reminded ratepayers in a leaflet endorsing the Party's candidates for the 1945 elections, 'white tiled bathrooms' and 'constant hot water' were no protection 'from germs brought in by servants' (Watts 1945, p. 3).

Referring to the 1945 municipal elections in Johannesburg, an *Inkululeko* correspondent reported on the 'disappearance of the old prejudices against communists' and the shock he encountered amongst white suburban residents 'at the horror of non-European conditions... [they] nearly always agree that improvements should be made...The voters are waking up', he concluded, 'and we communists, by fighting the elections, are helping them see the truth' (*Inkululeko* 19 October 1945). In this election, Michael Harmel wrote the Party's manifesto: its municipal candidates campaigned on the basis of his master plan for Johannesburg's reconstruction, to make it a city of 'green belts, parks and playgrounds' as well as community centres, clinics and nursery schools. Tellingly,

the inspiration for this vision was not from the socialist world; rather the pictures and plans in the booklet are from American New Deal urban planning, in particular a Harlem housing project by the American modernist pioneer architect, William Lescaze (*Inkululeko* 29 October 1945). Johannesburg would remain in certain respects the same city. 'Native hostels within easy reach of each European area are needed', the plan suggested. The propaganda did not explicitly state that all Johannesburg's citizens would share the new recreational facilities, though there was a reference to the need for 'proper recreational services for the neglected non-European servant' (Communist Party). In Harmel's ward, the voters were unpersuaded and he failed to get elected. A contributor to *Freedom* in 1946 noted that in Hillbrow 'the petit-bourgeois flat-dwelling community has shown in the past to be not unfavourable to the Communist Party' (O'Brien 1946). A new ward delimitation put paid to any prospect of Hilda Watts repeating her 1943 victory in Hillbrow as it included the affluent neighbourhood of Parktown and took out half of Berea, reducing her core supporters, the Hillbrow apartment tenants, to an isolated minority. She would fail in her bid for re-election in 1947 (Bernstein 1983, interviewed by Maureen Tayall; *Guardian* 1946).

Though the CPSA electoral propaganda was phrased in a way that invited recognition of wider social responsibilities, in these appeals the party downplayed the political and social implications of its policies. Support for the 'national democratic revolution' was frequently presented as merely the extension of civil rights to black South Africans. As the Party's thinkers explained to their followers:

Comrades, there are times when to be ultra-revolutionary is to betray the cause for which we are working. Which is the more revolutionary today – to say you want to nationalise the banks, or to say you want the vote and equality of rights for the non-Europeans.

(Simons 1975, p. 122)

The Party's moderation of its public stance did not immunise it from attack. In Johannesburg, the Labour Party had twice refused the communists' offer of an electoral pact, and then published a leaflet in the 1945 election on what the Communist Party stood for. The leaflet detailed the CPSA's advocacy of universal suffrage and its espousal of the right of blacks to stand for election, in addition to its desire for 'natives and coloureds [to be allowed to] ride in the same buses and live in the same residential areas as Europeans'. As *Inkululeko* (12 November 1945) plaintively pointed out, the leaflet 'said nothing at all about the constructive municipal policy advanced by the Communists'. That the Labour Party produced this leaflet suggests that they viewed the Party as a serious competitor; and indeed, when the communists first offered an electoral alliance in 1943, Labour leaders

accepted an invitation to attend a formal meeting at the Trades Hall (Memo of meeting between representatives of the NEC of the SALP and the CC of the CPSA, Trades Hall, Johannesburg, 1 September 1943 (Simons Papers, 05). However, in 1945 communists failed to win new Council seats in the Johannesburg election; for though it achieved a total of 4 000 votes overall, its candidates polled the lowest scores in each of the four wards it contested (*Inkukuleko*, 3 December 1945).

Meanwhile, in black townships communists were at their most effective when they combined electoral politics with direct collective action. This was evident in their assertive presence on the East Rand. Here in early 1945 communists in Benoni joined forces with African tenants protesting against rent rises from Indian landlords, holding well-attended weekly meetings in Wattville location. A key leader was Arthur Damane, an Advisory Board member and a paid CPSA organiser for the African Mineworkers' Union. When evicted tenants occupied freshly constructed municipal houses, the Party paid the rents (Bonner 2005, pp. 178–183). In 1945 communists did well in East Rand Advisory Board elections, winning three seats in Springs, three in Brakpan, one in Benoni and two in Nigel (*Inkululeko* 26 October 1943). However, in Orlando, the nucleus of what would later become Soweto, communist advisory board members held back from joining one of the most successful instances of communal militancy. At the beginning of the war, each of Orlando's 5 000 houses accommodated seven people. This average nearly doubled between 1940 and 1944 as a consequence of a huge influx of migrants from the farms and the reserves seeking jobs and food. Rather than building accommodation for these people the Council lifted restrictions on subletting and tolerated the subsequent overcrowding. After fruitless protests a group of Orlando residents led by James Sofasonke Mpanza, an Advisory Board member, organised an exodus of sub-tenants out of the location to construct hessian shelters on the empty veld in March 1944. Before the sub-tenants moved, Mpanza approached the communists and asked them to join his committee. Edwin Mofutsanyana and his comrades held back, however, arguing that at the beginning of winter Mpanza's plan was irresponsible and would merely lead to greater privations than already existed. Orlando's communists distrusted Mpanza in any case, with his background as a convicted murderer, born-again evangelist and small-time huckster, and they had been energetically contesting his influence within the Advisory Board for nearly a decade. But municipal hostility and cold weather notwithstanding, Mpanza's movement grew and grudgingly the communists had to concede support while questioning Mpanza's personal motives and criticising his administration. Their initial abstention cost them dearly. Thereafter, Mpanza ensured their exclusion from any active contribution to the leadership of his kingdom and they were confined to organising soup

kitchens on its fringes and lobbying the Council in concert with liberal pressure groups for a more generous policy towards the squatters.

The extent of communist estrangement from the Orlando squatters was embarrassingly evident when a leading Party member, advocate Franz Boshoff, appeared for the Native Affairs Department in its efforts to have Mpanza deported from Johannesburg. Boshoff was suspended from his membership. In three successive advisory board elections, in 1944, 1945 and 1946, the communists failed to win any seats (*Inkululeko*, no. 93, 11 March 1946; French, 1983 p. 47). Their characterisation of Mpanza as 'irresponsible' was symptomatic of their unwillingness at that time to contemplate initiating direct action. In Orlando, this may have been partly a consequence of participation in Advisory Board elections. Though at the beginning the communists had professed to be conscious of the limited utility of the Board, by the 1940s it is possible that for them control of the Board had become an end in itself. Certainly, in Orlando in 1944 the communists demonstrated considerable insensitivity to the needs and aspirations of sub-tenants who were not, it should be remembered, entitled to vote in board elections. It is also conceivable that Johannesburg communists may have been influenced in their response to the squatters by their understanding of the local dynamics of white politics. At the time of the Mpanza exodus from Orlando, the Johannesburg Party's leadership was concentrating its energies on canvassing among white municipal voters (O'Brien 1946, p. 13).

In the Western Cape, elections continued to constitute a major focus for local party activity. The Communist Party-led Women's Food Committee had developed in 1945 out of the group elected to maintain fair behaviour in the forty food lines that 30 000 people formed at mobile food vans. By 1947 it was shifting its emphasis from food to franchise issues. In 1948 the Food Committee decided to establish a Non-European Women's League 'to fight for the vote for all black women'. The local committees supplied a network of activists who could canvass support for Sam Kahn's campaign that year in the NRC elections, and which underpinned the efforts of the CPSA's Cape Town branch that constituted Kahn's and later Fred Carneson's campaign committee (Fortescu 1991, p. 489). Local party leadership also invested considerable effort in the Cape Town City Council election in which Cissie Gool and Sam Kahn represented partly coloured wards through the 1940s.

Meanwhile, in the African township of Langa, the Party appeared to be 'trusted by the people', to judge from the Advisory Board elections. Communists had contested Langa's Advisory Board elections annually from 1944, winning several seats and collecting a majority of the votes every time – significantly from the more urbanised married quarters voters than from the migrant worker 'bachelors' inhabiting the barracks where the Party had no presence. At one stage

Langa Party membership peaked at 260. Led locally by Johnson Ngwevela, they constituted a political elite, prominent in the ANC and conspicuous in a range of other associations. Ngwevela was the chairman of the Langa Wesleyan church network, the township's Red Cross organisation, and a moving spirit in the Vigilance Association which for a decade had constituted itself as an unofficial oversight body, monitoring the Advisory Board. The Party's influence in Langa was enhanced by its access to the City Council from 1943. Betty Sacks and Sam Kahn in their capacities as municipal councillors were active in the City's Native Affairs Committee. A degree of success in inducing the authorities to address housing shortages as well as other incremental improvements may help to explain why the Party was able to mobilise unusually wide and assertive responses to the anti-pass campaign in the township (Fortescue p. 490; Musemwa, 1993, pp. 153-1).

Up to the close of the decade national leaders continued to direct effort and resources in elections as they had done since the middle of the war, and indeed continued to prioritise white or racially mixed municipal or parliamentary elections over contests for advisory boards, a source of continuing frustration among African party members. This was despite a trend of increasing success in winning seats on boards in Cape Town, Johannesburg, East London and the East Rand. The Party continued to contest Johannesburg City Council seats though it was never able to repeat Hilda Watts' success there in 1944. It retained seats in the Cape Town municipality, benefitting there from the racially mixed electorate. Ward changes and changing voter requirements put paid to the Party's municipal electoral chances in East London and Port Elizabeth (Johns 1996, p. 25). Less successfully, the Party also campaigned in Native Representative Council elections, nominating Mofutsanyana and Maliba as their candidates. In this it followed the ANC's example, first endorsing and then withdrawing from a decision to boycott the elections in the wake of the adjournment of the NRC during the mineworkers' strike. In 1947, the CPSA decided to nominate a slate of NRC candidates pledged to repeal the 1936 legislation and demand the introduction of universal franchise. The Party's continuing predisposition to contest the NRC elections with its own candidates was significant: at this stage it was still ready to compete with the ANC for African political support and the decision was taken after a sharp debate at the previous party conference (Rusty and Hilda Bernstein interviewed by Maureen Tayall, London 23 August 1983 (ASI 331). In May 1948 the Party sponsored a 'Peoples Assembly for Votes for All' in Johannesburg attended by 800 delegates supposedly representing 750 000 people.

More tellingly, its candidate for the parliamentary native representative for the western Cape, Sam Kahn, was elected in 1948, followed by the election of a Cape Provincial Councillor, Fred Carneson, in 1949. As noted above both benefitted from the organisation communists had set in place with the food

committees, as well as Kahn's own achievements as a city councillor. Kahn's following may also have been enhanced by his prescient record as *The Guardian's* horse-racing tipster. For mobilising the several thousand eligible African voters, Kahn relied on Johnston Ngwevela, the leader of the communist group in Langa which allied with the ANC in advisory board politics. Unlike the arrangements for the Transvaal and the Free State created in the 1936 legislation for African representation, in which the senators were elected indirectly, in the western Cape former common-roll African electors chose their House of Assembly parliamentary representative in a direct election. This helped to explain Kahn's overwhelming victory, 3 780 votes compared to the 948 votes gathered by his opponents (Johns 1996, pp. 27–29). Kahn would hold his seat until his expulsion in 1952 under the terms of the Suppression of Communism Act. In 1949 he particularly enraged National Party MPs with his attack on the Prohibition of Mixed Marriages Bill, 'the immoral offspring of an illicit union between racial superstition and biological ignorance' (Central Committee of the Communist Party of South Africa 1949, p. 38). Especially provocative was his citing of an estimation that around 600 000 white South Africans had black forebears, and several parliamentarians were among this group (Saks 1996).

COMMUNISTS IN GOVERNMENT

Communists would continue to win the contests for African votes in the western Cape until they were prohibited from standing in such elections in 1954. In 1948, the Party's electoral preoccupations still included efforts to influence white voters, if only indirectly. The Springbok Legion survived, though now as an ex-servicemen's organisation. It had lost most of its membership, many scared away by claims made by the prosecution in 1947 during the trial of Party leaders that the Legion was the communists' armed wing. By 1948 the leadership of the Springbok Legion was entirely in communist hands. Before the election the Legion had refused to support the Labour Party exclusively, preferring to urge support for both Labour and the United Party; an electoral victory for Smuts was preferable to Afrikaner Nationalist ascendancy. For the next few years Legionnaires, some of them ex-communists, would actively cooperate with United Party officials (White 1993, pp. 103-104). As late as 1949 Fred Carneson would argue at a Central Committee meeting that there remained 'issues among which a common struggle between Europeans and Non-Europeans was possible, as the Nationalists were beginning to expose themselves even to their followers' (CPSA 1948).

One of the last of the Party's parliamentarians, Brian Bunting (Sidney Bunting's son) was elected in 1952, succeeding Sam Kahn after his expulsion under the terms of the 1950 Suppression of Communism Act. Bunting would serve for just a year before his own ejection from Parliament as a listed communist. But four

decades later, he would return to the House of Assembly, elected on the ANC's party slate, poignantly greeted by the same doorkeepers who had bid him farewell forty years before. After 1953 and for a long time thereafter, communists would contest no elections in their own name, deciding only after 1994 to participate in the elections as ANC members. In exile, communists had held a majority of the seats on the ANC's national executive, and in successive ANC administrations after 1994 communists have held several cabinet positions.

Today, though, the SACP's commitment to its historic alliance with African nationalism is quite delicately poised, in what it now calls the 'radical, second phase of the national democratic revolution' (*Bua Komanisi* 2014). At the last ANC national conference, in December 2017, no senior SACP officials succeeded in winning seats on the ANC's national executive, a significant setback in its influence within the larger movement. This was all the more discouraging because the 300 000 or so signed-up communists constitute about a third of the ANC's membership. The continuing presence of communists in President Cyril Ramaphosa's cabinet notwithstanding, communists perceive the ANC's internal politics as 'reduced to a contestation' between 'capitalist factions' (Davies 2021, p. 225).

Meanwhile the Party itself aims to 're-surface more clearly the imperialist dimension of our persisting structural problems', through 'de-linking from the imperialist north' (SACP 2014). Other kinds of uncoupling are also under consideration in certain quarters. Since at least 2004 there has been an assertive minority proposing that the Party should contest elections separately. The first public suggestion from within the Party of such a course of action came in 1996 from Anthony Holiday, a lecturer at the University of the Western Cape, and a member of the Party since the 1960's (Gumede 1996). Those in favour of such a course were particularly vocal in the Johannesburg Central branch, though newspaper reports suggested that strong sentiment favoured such a move at six of the party's provincial conferences in 2004, especially from Young Communist League members (Tabane 2004). The Johannesburg branch submitted resolutions to the provincial congress calling for separately elected communists who would then 'entrench revolutionary parliamentarianism' (Thomas 2007, p. 262). The resolutions failed to garner support, though research conducted at the time indicated that party leaders were not fiercely opposed to such a prospect. Secretary-General Blade Nzimande, for example, told researcher David Thomas that 'maybe we [should] be looking at a coalition' in which the party could extract concessions for its support in government (Thomas 2007, p. 264). But most of Thomas's interviewees were doubtful that the Party would win much support as an independent electoral competitor, nor were they inclined to take the risk that such a move would certainly entail, that is allowing the ANC to become more susceptible to right-wing influences. In any case, the SACP had no money to fight

elections and even some kind of compromise position, such as a pre-agreed pact or coalition, might be difficult after fighting the same turf in a campaign in a contest 'in which victory means a paid position', the central committee explained (Msomi 2005).

Such arguments prevailed up to 2017. In 2012 the Congress of South African Trade Unions (COSATU) surveyed its membership to assess the extent of support for independent SACP electioneering and discovered only 6 per cent favouring such an option (SACP 2012). On the other hand, the Young Communist League favoured separate electioneering, possibly a reflection of the lethal rivalry that can exist at branch level between the Young Communists and ANC Youth Leaguers. In 2016 in Mpumalanga, a provincial resolution calling for the SACP to field its own electoral candidates followed a succession of murderous attacks directed against Young Communists during contested nominations for the 2014 local government poll (*Umsebenzi*, March 2016, pp. 13–14; Nkonyane 2016). At the Fourteenth Congress in July 2017, in response to membership pressure, the Party did resolve that in future it would 'certainly contest elections', though the 'exact modality' of how it would do this would 'need to be determined'. It might for example be through a 'reconfigured alliance' or through an agreement about 'post-electoral' coalitions with the ANC (SACP 2017). The party's leadership appeared still to be hedging their bets but in November 2017 they allowed local branches to contest a municipal by-election in Metsimaholo (Sasolburg) in the Free State. The decision was opposed by local affiliates of the ANC-allied Congress of South African Trade Unions and so Party campaigners had to do without trade union support. They contested all 21 wards, winning none but securing about 8 per cent of the vote, sufficient to be allocated three of the proportional representation council seats. They took their votes from the ANC, especially eroding its support among young voters. The experience seems to have had chastening effects. Present policy is that the Party should continue to abstain from independent electioneering; but the ANC in constituting its candidate lists should 'reflect the composition of the alliance' (SACP 2019, p. 15).

Counter-balancing any pressure from younger communists to oppose the ANC in elections was the continuing appointment of communists to ministries. Party thinkers continue to believe that their comrades 'deployed' into influential positions since Zuma's ascent could 'drive important advances in the key economic infrastructure and related sectors' (SACP 2012). But such professions are increasingly likely to be articles of faith rather than an expression of assured conviction. There may yet be further chapters in the South African Communist Party's electoral history.

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JUDICIALISING PARTY PRIMARIES

Contemporary Developments in Nigeria

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ABSTRACT

This article explores the judicialisation of party primaries in contemporary Nigeria, which is a defining feature of the country's electoral politics. Since the inception of the Fourth Republic, the lack of internal democracy within the parties has been the source of protracted crises during nomination, and this often gravitates to the serenity of the court(s). Dominant disquisitions in legal theory contend that disputed primaries are internal party affairs; hence, they are non-justiciable. Drawing on primary and secondary data – YouTube interviews, the Constitution, the Electoral Act, judicial ruling, media reports, and personal observation – this article argues that to the extent that political parties are juridical entities, disputed primary elections are justiciable, hence a legal question to be resolved by the judiciary. To validate our argument, the article draws on Raphael's (1970) notion of universal and compulsory jurisdiction. Our enquiry reveals that the failure of the internal mechanisms of the parties to resolve disputed party primaries accounts for aggrieved aspirants' reliance on legal redress. While this approach has been questioned from a legalistic point of view, the constitutionality of seeking legal redress has its provenance in the change of legal regime regulating party primaries, which has shaped, reshaped, and positively impacted electoral democracy in Nigeria.

Keywords: disputed primaries, justiciable, judiciary, Nigeria, constitution

INTRODUCTION

It is axiomatic that political parties are crucial institutions of modern representative democracy. Based on the functions they perform (political mobilisation, political

recruitment, linking the electorate with the government, and implementing policy), it is plausible to argue that they make liberal politics participatory, inclusive, and meaningful. Consequently, some observers have asserted that 'political parties created democracy and modern democracy is unthinkable save in terms of political parties' (Schattschneider 1942, p. 1). Indeed, democracy would be inconceivable without political parties because elections in modern representative government can only be competitive when parties field candidates for elections. Nevertheless, political parties in both established and transitional democracies grapple with conducting inclusive candidate selections during party primaries (Hamalai *et al.* 2017; Hazan & Rahat 2010). In some contexts, parties emerge out of this process united, with high prospects of capturing power in the electoral marketplace and forming a government; while in other contexts they grapple with unresolved internal crises through the general election. The latter is commonly associated with transiting democracies, of which Nigeria is a paradigmatic example. Flowing from this, Gallagher and Marsh posited that the way political parties select candidates for election will serve 'as an acid test of how democratically they conduct their internal affairs' (cited in Bille 2001, p. 364).

In Nigeria, candidate selection is done through party primaries fashioned after the American model, but nowhere close to it in terms of process and outcome. Accordingly, scholars like Ikeanyibe (2014) have argued that it remains difficult to address the inability of political parties in Nigeria to present candidates for election through party primaries that disregard party rules and respect for internal democracy. The nature of primary election in Nigeria is essentially oligarchic in the dominant parties. Party oligarchs constrict the nomination process by anointing preferred candidates, while those with war chests secure the nomination without appealing to the will of party members. Most often, this creates uncertainties that birth schism, or what Ashindorbe and Danjibo (2019) referred to as 'intra-elite factionalism', which ends up weakening the party as an organisation. While the parties have internal mechanisms for resolving disputes of this nature as provided in their constitutions, the reality is that aggrieved members often turn to the judiciary to vent their grievances. Hence the ubiquity of judicial reviews of disputed party primaries in Nigeria. This is what we refer to as the judicialisation of party primaries.

This article critically interrogates the phenomenon of judicialised party primaries in Nigeria. It is the considered position of this article that judicialised party primaries and their outcomes have shaped, reshaped, and impacted electoral politics and governance in Nigeria in profound ways. In Nigeria, a mushrooming literature has emerged in legal theory questioning the involvement of the judiciary in adjudicating disputed party primaries and the outcome of fraudulent/rigged elections (Omoregie 2020; Ugochukwu 2011). The dominant arguments in these

studies de-emphasised the involvement of the court(s) in resolving internal disputes of political parties, noting with emphasis that such disputes are extra-legal and require a political answer, rather than a legal answer, in resolving them. Accordingly, it is non-justiciable. This line of thinking stems from the theoretical postulation of two leading legal theorists, Fuller and Winston (1978) who posited in their concept of 'polycentrism'¹ (many centred) that disputes such as contested party primaries have multiple dimensions that cannot be resolved using a legal approach.

Drawing on primary and secondary data that include YouTube interviews, the Constitution, the Electoral Act, judicial ruling, media reports, and personal observation, this article argues that to the extent that parties are juridical entities, disputed primary elections are justiciable, hence a legal question to be resolved by the judiciary.

To validate our justiciability claim, the article draws on Raphael's (1970) notion of universal and compulsory jurisdiction which allows the state to exercise legal jurisdiction within its territory. In doing this, the focus will be on the two dominant political parties in Nigeria, the People's Democratic Party (PDP) and the All Progressives Congress (APC). Following this introduction, the first section is on the theoretical engagement with the jaundiced perception of political parties. The idea is to elaborate on the view held by pioneering theorists on political parties and their 'baneful effect' on democratic politics, and how that resonates with Nigeria's existential reality. The second section interrogates the nature of party primaries in Nigeria's Fourth Republic, showing how its undemocratic nature validates the jaundiced perception of pioneering thinkers on political parties. The next section explores the internal mechanisms of resolving crises arising from undemocratic party primaries. The aim is to show how the failure of these mechanisms has necessitated the involvement of the judiciary by aggrieved aspirants. The article concludes with the discussion.

THEORY

The plethora of scholarship that discusses the inevitability of political parties in modern representative government appears oblivious of the heated debate by leading theorists concerning their tendency to bring about disunity in a democracy. This was the view in the 18th and 19th centuries in Western history (England and America). As indicated in the pioneering scholarship of Henry Bolingbroke and David Hume who wrote on the English experience, their perception of political

1 In their work, 'The forms and limits of adjudication', Fuller and Winston (1978) used the concept of polycentric to indicate that some matters defy legal approach in resolving them because such an approach will produce an unsavoury outcome.

parties in a free government was mixed. In his *A Dissertation upon Parties*, Lord Bolingbroke engaged the issue of party labelling. In his view, it was an offshoot of the crisis between the Crown and Parliament which eventually birthed the origin of what he referred to as 'faction'. In his words, 'governing by party... must always end in the government of a faction. ... Party is a political evil, and faction is the worst of all parties' (cited in Sartori 1976, p. 5). Herein lies his jaundiced perception of political parties.

In the political party debate, Bolingbroke's polemics introduced the distinction between party and faction. While he considered the latter as the worst evil, he did not mince his words in asserting that neither is desirable in democratic politics as their role obstructs the attainment of the *summum bonum*. From this, it can be inferred that Bolingbroke was unapologetically opposed to government by political party. His distinction became the entry point for other theorists who engaged his thesis. For instance, David Hume, who joined the debate, shared Bolingbroke's view on faction but differed with him on party government. According to Hume, 'factions subvert government, render laws impotent, and beget the fiercest animosities among men of the same nation'. Furthermore, he opined that 'to abolish all distinctions of party may not be practicable, perhaps not desirable' (Sartori 1976, p. 7). From the latter submission, it can be deduced that Hume was diametrically opposed to Bolingbroke's view on parties. These opposing thoughts became the basis of a rich body of literature on party government in the political science of the 20th century, where the winning argument became the inevitability of party government. Before then, the notion about parties in a free government was sustained.

On the other side of the Atlantic, the English experience influenced the founding fathers of America, many of whom were mindful of Bolingbroke's view of the jaundiced role that parties can play in a democracy. George Washington was the first to express this view in his farewell address to Americans. He drew the attention of his countrymen to the adverse effect of parties when he said, 'I have already intimated to you the dangers of parties in the state.... And warn you in the most solemn manner against the baneful effects of party spirit generally' in subverting the political process of the young Republic. Similarly, John Adams ruefully remarked that 'there is nothing I dread so much as a division of the Republic into two great parties, each arranged under its leader and converting measures into opposition to each other', and warned that it should be 'dreaded as the greatest political evil'. Adams' wife, Abigail Adams, also concurred when she declared that 'party spirit is blind, malevolent, uncandid, ungenerous, unjust, and unforgiving. It is equally so under federal and democratic banners.... who disdain to be led blindfold...'. (Adams, 1804).

While amplifying what his comrades had said, Thomas Jefferson dissociated himself from partisan politics when he stated that ‘if I could go to heaven but with a party, I would not go there at all’. James Madison, in his essay *Federalist Papers No. 10*, opined that the art of crafting the American union had many advantages, but ‘none deserves to be more accurately developed than its tendency to break and control the violence of faction’ (in White 2006, pp. 8–9). While he did not state it clearly, it seems that Madison’s aversion is more to faction than to parties. Despite these deprecatory views, Edmund Burke, Voltaire, and other 19th century thinkers have argued to the contrary. For instance, in what appeared to be a reiteration of the Burkean view on political parties, Alexis de Tocqueville posits that political parties ‘are a necessary evil in a free government’. Later in the 20th century, Schattschneider (1942) corroborated this Tocquevillean submission when he argued that representative democracy is unthinkable without political parties.

Throughout the 20th century, the latter views became the winning argument as the global diffusion of liberal democracy continued without restriction. Nevertheless, there has also been renewed scholarship around the issue of ‘parties in decline’ in many of the advanced industrial democracies (Dalton & Wattenburg, 2000). For instance, the expression *parteienverdrossenheit* (dissatisfaction with parties) became a frequently used term in the German political lexicon. It suggests that while party government has become the norm, it retains the apprehension expressed by Bolingbroke. This explains why Scarrow (2002, p. 4) argued that ‘while political experience may have convinced many people of parties’ inevitability and expediency, it was and is less effective in persuading every one of their desirability’. This suggests that the apprehension about the inevitability of parties in free government cannot be easily dismissed. In many ways, the factionalised and divisive nature of political parties in Nigeria and several other transitional democracies, which obstruct the attainment of the *summum bonum*, are good examples. They have been responsible for slowing democratic progress in Nigeria in its previous democratic epochs and have also threatened its survival in the current democratic era.

THE NATURE OF PARTY PRIMARIES IN NIGERIA’S FOURTH REPUBLIC

Nigeria has had a chequered experience with party primaries in colonial and post-colonial times, much of which has been shrouded in manipulations, fraud, and violence. In the current Fourth Republic, which began in 1999, the geography of party primaries has been replete with the same electoral anomalies, beginning with manipulations in the build-up to the transition election in 1999. As Mohammed (2010) and LeVan et al. (2003) remarked, the 1999 primaries were ‘basically a closed affair’. This was the reality in the presidential primaries of

the PDP, ANPP, and Alliance for Democracy (AD). In the build-up to the 2003 consolidation election, more illiberal measures had already been devised by the parties. Once the primaries started, they soon degenerated to using fraud and force, threats, and intimidation by government officials who pressurised delegates to vote for a preferred candidate. The rules of civility were thrown out of the arena allowing force instead to dictate party primaries. Citing the Report of the Justice Development and Peace Commission (JDPC) report on the 2002 party primaries, Egwu (2008) noted that the then ruling PDP gave all its incumbent governors automatic nomination. The governors in turn hijacked the party machinery in order to ensure their re-election as well as that of their loyalists in state and federal elections. This trend was also true for the All Nigeria Peoples Party (APP) and the AD.

Writing on the same issue, Adejumobi and Kehinde (2007) corroborated this submission when they asserted that the number of political parties that held party primaries to nominate candidates for the 2003 general elections were few, and fewer in the 2007 general elections. After three electoral cycles, it became obvious that undemocratic party primaries have been institutionalised by the dominant parties, and they have also become more sophisticated. This growth in sophistication has been captured most poignantly by Jibrin Ibrahim (2011). According to him, party barons compel other aspirants to withdraw from the nomination race and support a particular candidate. Zoning is also used to exclude aspirants, and this is something backed with violence.

As the fragile democracy progressed, it become obvious that what political parties do in Nigeria during primaries is not election, but 'selection', whereby candidates for election are being imposed on the party. In amplifying this assertion, Hamalai et al. (2017, pp. 34-5) averred that 'party primaries and candidate selection are hardly allowed to be truly democratic.... Instead, the moneybags usually hijack the process in favour of "anointed" candidates" often at the expense of a popular candidate'. What we see here is the oligarchisation of the candidate selection procedure by those who own the party.

This illiberal process of candidate selection dictated by men of power and influence within the party has consequences for both the parties and democratic practice in Nigeria. It has generated conflicts, as aspirants whose democratic right has been infringed resort to seeking justice in different ways. One of these is the emergence of factions. This is consistent with the views of pioneering thinkers such as Bolingbroke, Hume, and the founding fathers of America who spoke out against factions and parties. The crisis arising from party primaries has also triggered defections to the main opposition or smaller parties as aspirants move in search of a platform to seek election. The phenomenon of factions arising from disputed primaries has also produced parallel party structures that conduct

parallel primaries, a development that ends up producing two candidates from one party for the same elective office (Ashindorbe & Dajibo 2019; Hamalai et al. 2017; Adejumbi & Kehinde 2007). This created challenges for INEC as it struggles to ascertain who the lawful candidates are. Owing to this illiberal practice by the parties, astute observers have argued that these undemocratic primaries have weakened the party system in Nigeria (Ashindorbe & Danjibo 2019; Ikeanyibe 2014; Omotola 2009) which has affected democratic progress in the country.

Another fallout of disputed primaries is the resort to protracted lawsuits, which has had severe consequences on the conduct of elections. For instance, the International Republican Institute and the National Democratic Institute have noted in their final report on the 2019 general elections that the prolonged lawsuits arising from disputed primaries brought about delays in the production of ballot papers since most of the contested primaries were still in court (IRI/NDI, 2019). This is one dimension of the problem. Another dimension is that in situations where disputed primaries were not resolved and elections were conducted, those unlawful primaries were later reversed by the courts in favour of the lawful winners (Onu 2020). In this context, the judiciary was seen as the bellwether of democracy where the forces of illiberalism sought to truncate it.

Executive absolutism also plays a role in the process of party primaries. In this case, validly nominated candidates are being disqualified from contesting election by the president who, as is the practice in Nigeria, doubles as the leader of his party. This also applies to the governors at the sub-national levels. During his presidency, former President Olusegun Obasanjo demonstrated this absolutist tendency when he eliminated his political enemies and those he considered recalcitrant members of his party from seeking nomination, using the Economic and Financial Crimes Commission (EFCC).² As Adejumbi (2010) noted, some commissioners of the INEC counselled against this, stating that disqualifying candidates from contesting election is an issue that falls constitutionally within the province of the courts, not the presidency or the commission. This shifted the focus onto members of the electoral umpire. According to Adejumbi, the EFCC arrested the INEC commissioners who had faulted the disqualification of candidates by the presidency and summarily leveled trumped-up charges of corruption against them until they acceded, allowing the government to sustain the disqualification before the charges were dropped. This episode reinforces the much-debated issue of a lack of autonomy for the INEC which makes it less confident in carrying out its constitutional mandate.

2 The EFCC is an anti-graft agency in Nigeria that was established by an Act of Parliament in 2003 by the Obasanjo administration to fight financial corruption. Based on its legal mandate, it had no right to screen candidates for election. But given the tense political temperature evidenced by President Obasanjo's desire to neutralise his political enemies, including the then vice president, the EFCC was used for that purpose (Ashindorbe & Danjibo, 2019, p. 756; Egwu 2008, pp. 67-68).

Since the qualification revolved around the electoral legal framework, the president's action and the role of the EFCC generated heated debate in legal circles on where the power to disqualify candidates in an election resides. In his reflection on the issue, Enabulele (2008) pointed out that although the power to disqualify candidate(s) from contesting elections resided with the INEC under the 2002 Electoral Act, that power was transferred to the Courts in the 2006 Act, which is still the case under the 2010 Electoral Act (as amended). In the light of the foregoing, the action of the INEC and the EFCC was a gross violation of the provisions of the law. This issue will be revisited in detail when we discuss the judicialisation of party primaries. However, it suffices to note that executive absolutism and other undemocratic approaches adopted by the parties in conducting their primary elections are signs of severe attack on the 'electoral' component of democracy within the party by men of power and influence, who place themselves above the party rules and guidelines and expect members to do their bidding. It is for this reason that Agbaje (2010) argued that Nigeria does not have political parties worthy of the name. Instead, what it has are 'contraptions' that are nothing but a hurdle to Nigeria's transition to democracy (Agabje, 2010).

While the parties have contributed to the unmaking of democracy in Nigeria, judging from the way they manage their internal affairs, the INEC cannot be absolved. Acting together with the presidency and the EFCC, the INEC has at some point exercised extra-legal powers to eliminate candidates that were validly nominated (Onu 2020, pp. 139-140; Adejumbi 2010, pp. 97; Egwu 2008, pp. 67-68). This also became the subject of litigation. What the Nigerian experience has shown since its democratic rebirth in 1999 is that the judicialisation of pre-election matters occurs largely because the parties have no regard for the rules governing party primaries during candidate selection.

INTERNAL MECHANISMS FOR RESOLVING CRISES ARISING FROM UNDEMOCRATIC PARTY PRIMARIES

After the inauguration of the Fourth Republic in 1999, one thing that has remained constant in Nigeria's party politics is internal crises. These crises have their provenance in congresses and national conventions to select party executives and party primaries during the nomination of candidates for elective office. The framers of the parties' constitutions were far-sighted enough to make provision for measures of resolving internal party disputes. This has been elaborately spelt out in each party's constitution, and it is done in stages. For instance, Section 60 of the PDP Constitution states the appropriate authorities with whom aggrieved members who are dissatisfied with the party's decision on nomination can channel their grievance to within 14 days, and that the national executive committee of

the party shall be the final arbiter of such appeal. Section 61 provides for the right of appeal to a higher organ of the party which shall be determined within 21 days from the date of receipt. Depending on the origin, the appeal shall progress in stages from the local government to the state to zonal, and then the national level. It is only after these channels have been exhaustively engaged without a satisfactory decision that appeals to the candidate, that he or she can seek judicial redress. Section 59 precludes members from seeking judicial remedy on disputed nominations without exhaustively engaging the mechanisms highlighted above. A breach of this provision can attract fine, suspension, or expulsion.

Similarly, the APC has almost the same provision in its constitution, with minimal variations in terms of the number of days to appeal on the party's decision concerning nomination (7 days), and adjudication from the date of receipt of the appeal (14 days) in Article 21. Like the PDP, members who seek legal redress on disputed primaries without exhausting the internal mechanism would be sanctioned with a fine, suspension, or expulsion. In theory, this sounds appealing, but it is problematic. Firstly, given the disposition of the parties in terms of observing rules in the breach, it can hardly be reconciled they would do justice as stated. Secondly, the rules make a pretext of subscribing to democratic norms, but contain draconian tendencies, to the extent that members can be stripped of their constitutional right to seek legal redress with the threat of expulsion. Thirdly, its efficacy in practice has proven to be ineffective.

In the build-up to the 1999 transition elections, the primary elections conducted by the three major parties (PDP, APP, and AD) were fraught with scheming and disregard for the legal framework, including the parties' constitutions (Mohammed 2010; Levan et al. 2003). For instance, Mr Ogbonaya Onu emerged as the APP presidential candidate during its primaries in Kaduna State, North-Central. Chief Olu Falae later emerged as the party's candidate in an alliance with the AD. As both Mohammed and LeVan noted, Falae was secretly selected at a meeting in Ibadan by a small clique. In the PDP, there were more complicated forces at play and the party emerged from pro-democracy agitation against General Sani Abacha's tyranny. The PDP later became the party of retired military oligarchs with war chests, who captured the party structure from the pro-democracy group that had formed the party. Olusegun Obasanjo (himself a retired military general) was their preferred candidate. This left former Vice-President Alex Ekwueme, who was favoured by the founding members of the party, manoeuvred out of the nomination by the military oligarchs (Mohammed 2010, p. 178; Williams 1999, p. 411).

This scheming was not just for presidential nominations. As the study by Levan et al (2003) indicated, it cut across the gubernatorial, senatorial, and other influential elective offices at sub-national levels. Nevertheless, there were no

lawsuits. The reason for this was not necessarily the effectiveness of the internal mechanisms for resolving disputed primary elections. It was mainly because there was a firm commitment to getting the military out of politics, hence the readiness to stomach any electoral injustice in order to complete the transition to civil rule. The primary elections leading to the consolidation elections from 2003 to 2019³ served as a litmus test for how the internal mechanisms of the parties resolved disputed internal primaries. For instance, there is hardly any documented evidence showing that members who appealed undemocratic nomination using the parties' internal mechanisms received justice. However, a careful observation of the outcome of party primaries reveals that members do not believe in the efficacy of the internal mechanisms for justice. This is evidenced in their scathing remarks on the parties' double standards in adjudicating appeals and their predilection for disqualifying and expelling members who resort to legal redress (See Adonu 2021; *Channels TV* 2021). This is the context in which parties become factionalised and weakened as they engage in protracted lawsuits arising from disputed primary elections.

LEGAL BASIS OF JUDICIALISATION OF NIGERIA'S PARTY PRIMARIES

While judicialised elections are common in both established and transiting democracies, the phenomenon of judicialised party primaries is rare. The ubiquity of judicialised party primaries in Nigeria is alarming. According to the chairman of the INEC, the Commission was sued/joined in 600 court cases that were a product of disputed primaries. Additionally, there were 40 court orders compelling the commission to either add or remove candidates, the last of which arrived the day the Commission announced its decision to reschedule the dates of the 2019 general elections due to logistical challenges (Nigerian Television 2019). In legal circles, adjudicating disputed primaries in Nigeria by the courts has sparked legal debates as legal scholars questioned the role of the court. Some of the leading interlocutors in this debate are Omoregie (2020) and Ugochukwu (2011). But it is worth noting that these scholars (especially Omoregie) drew inspiration from the seminal debate in legal theory by two influential legal theorists, Herbert Hart and Ronald Dworkin, to validate their arguments. These intellectuals represent the two contending traditions in jurisprudence: legal positivism and anti-legal

3 Orji and Uzodi (2012) conceptualised two categories of elections since Nigeria's return to civil rule in 1999: 'transition and consolidation elections'. The 1999 election is the transition election while the five general elections between 2003 and 2019 (every four years) fall under the rubric of consolidation election. The reference here is to the party primaries before each of the consolidation elections where the efficacy of the internal mechanism of resolving disputed party primaries was tested.

positivism (Pavone 2014). Hart, the positivist, argues that the role of the judge and the territory of the court is to state the law as it is and abstain from making laws because that is the province of the executive and the legislature. Conversely, Dworkin, the anti-positivist, maintains that where necessary, the judge and the court should exercise discretionary power during adjudication, which becomes a source of law. As (Dahl 1957) argued, when the court does this, it is seen as an institution playing the role of policymaking. This confers on it the status of a political institution, a status that allows it to address questions that are considered political, while it also plays the role of a legal institution. The Hart-Dworkin debate has gained prominence in legal scholarship such it is now referred to as the Hart-Dworkin debate.

In Omoregie's view, the Dworkean view is problematic, especially as it applies to the Nigerian situation. He perceives the role of the judicialisation in adjudicating party primaries as part of the wave of judicial activism that has swept across the Nigerian electoral landscape, and rightly so. Like the positivists, Omoregie argued that the issue of party primaries is extra-legal. By this, he means a matter that is not within the province of the court to adjudicate. To validate his claim, he distinguished adjudicating election and adjudicating party primaries. As he put it:

election is not just a matter of choosing who governs, but a right-based normative issue (electoral justice), it will be difficult to argue against judicial activism..., as all right based claims include the right to seek redress when aggrieved. To this extent, the involvement and intervention of the courts may be inevitable and unavoidable since judicial activism implies upholding the essence of due process and equal protection under the law.

(Omoregie 2020, p. 222)

He submits that a fraudulent election is justiciable to the extent that it infringes on civil rights and political liberties. However, he thinks differently on party primaries because in his opinion the law is not clear. In his words: 'the issue takes a different turn when there are no clear standards for judicial determination or where the electoral dispute is strictly political, with no clear rules to resolve them'. He then counseled that 'where the latter is the case, opposition to judicial activism may not be entirely misplaced', adding that good examples are party primaries which involve the nomination of candidates for election (Omoregie 2020, p. 222). For Omoregie, such dispute is categorised as a political question; hence, it defies a legal solution/resolution.

His position resonates with that of Fuller and Winston (1978), who posited in their concept of 'polycentrism' (many centres) that disputes such as contested

party primaries have multiple dimensions that cannot be resolved using a legal approach. Omoriegie maintains that there are no clear standards for judicial determination of such disputes. On the contrary, there are clear rules without the court necessarily imposing candidates on the party. The court relies on the provisions in the party's constitution for guiding party primaries, and the legal framework, namely, the Constitution and the Electoral Act. For his part, Ugochukwu's (2011) argument is consistent with Omoriegie's, but he seemed to have made minimal concessions on the involvement of the judiciary. According to him, even though there may be enough justification for the judiciary to intervene and settle important political deadlocks in the country, as it has done on several occasions, the preponderance of graft and prebendalism could make such justification a licence for graft. Based on Nigeria's experience in contemporary times, the graft argument is valid (Onapajo & Uzodike 2014); however, it does not invalidate the provisions of the enabling laws which empower the judiciary to adjudicate on such matters.

The argument that precludes the judiciary from adjudicating on party primaries is problematic because it views the parties as non-juridical entities, which is not true. Where the affairs of political parties are not regulated by national laws this would be understandable. For example, comparative literature has shown that party primaries are regulated by national laws in Germany, Finland, Nepal, New Zealand, and the United States (IDEA 2019; Sunberg 1997; Guaja 2006), even though these countries have solid liberal traditions. Section 221 of the 1999 Constitution (as amended) of Nigeria recognises political parties as the only organisations that can canvass voters for their candidates. The aforementioned countries do not have cases of disputed primary elections that have not gravitated to the serenity of the Court despite the regulation by national laws, owing to their strong democratic culture. The situation is different in Nigeria.

Our argument in this article holds that to extent that Nigerian political parties are juridical entities that are regulated by law, this makes their internal affairs that infringe on the civil liberties and political rights of members a legal question that is justiciable. This provision of the law validates our claim. Although there could be a limit to the law, as Fuller and Winston (1978) argued in their notion of polycentric situation; but this applies only when it is explicitly stated in either the Constitution or the Electoral Act. Secondly, we draw on Raphael's (1970) notion of universal and compulsory jurisdiction to validate our claim of disputed primaries as a justiciable matter. According to Raphael, universal jurisdiction refers to the idea that the state has authority over its territorial boundaries extending to air space and territorial waters. This means the authority of the state applies to all humans and organisations within its territorial boundaries. On the other hand,

compulsory jurisdiction holds that once anyone resides within the jurisdiction of the state, they must compulsorily abide by its laws regardless of whether the law appeals to them or not. Accordingly, political parties are juridical organisations that are bound by the laws of the state. The procedure of party primaries and the election of party executives are clearly spelt out in the Constitution, the Electoral Act, and the constitutions of the various political parties, derived from the aforementioned documents. If these procedures are not carefully followed, this could be a justiciable legal question.

The argument about the non-justiciability of disputed primaries in Nigeria has its provenance in the previous democratic epoch that was truncated by the military in 1983 (the Second Republic, 1979-83). Sections 201 and 202 of the 1979 Constitution provided the basis for universal and compulsory jurisdiction as it concerns regulating the affairs of political parties and the extent of the justiciability of disputed nomination. A good example is the *Onuoha vs Okafor* case of the Nigeria Peoples' Party (NPP). The former (Onuoha) won the primary election to vie for the Owerri senatorial election but was replaced with the latter (Okafor) by the party's nomination elections petition panel. The replacement became the subject of a legal tussle when the Supreme Court was approached to nullify the replacement. In its judgment, the Court cited Section 83(2) of the 1982 Electoral Act which states that, 'where there is doubt as to whether a candidate is sponsored by a political party, the Commission [Federal Electoral Commission] shall resolve same by consulting the leader of the political party concerned'. Accordingly, the Court noted that 'the law is therefore certain as to who is to resolve the dispute where two candidates claim sponsorship'. Following from this, the Court ruled that 'real power to make a choice is, in my view, in the political party through its leader', and the judgment was entered in favour of Okafor. Under this legal regime, Fuller and Winston's notion of polycentrism is applicable because the Electoral Act was clear.

What the Court did was to explain the extent of the justiciability regarding disputed primaries as stated in the legal framework. While the parties were regulated by national laws, the 1983 Electoral Act did not allow the Court to meddle in deciding on the candidates the party could sponsor for election. Hence the Court's judgment, declaring the matter a political question to be resolved by the party.

However, this legal regime changed with the 2006 amendment to the Electoral Act. Section 34 of the Act clearly states that a party that intends to replace/substitute a candidate for election must inform the INEC in writing, not less than 60 days before the election, with 'cogent and verifiable reasons'. Furthermore, Sections 33 and 35 of the 2010 Electoral Act (as amended) state that replacement/substitution/changing the name of a candidate whose name has already been

submitted to the INEC can only be done upon the death or withdrawal of a candidate. In the case of withdrawal, it must be in writing and duly signed by the candidate 45 days before the election. There have obviously been significant changes between the 2006 Electoral Act and that of 2010, which is still in use. These changes make disputed primaries justifiable by stating clear standards for adjudication by the Court(s). These provisions of the law provided the grounds on which aggrieved aspirants, whose names were unlawfully removed after a lawful party primary, approached the Court for justice. The contemporary reality in the subsisting Fourth Republic is replete with instances where these provisions of the law have been subjected to a litmus test.

For instance, Ifeanyi Ararume and Rotimi Amaechi, who won the PDP gubernatorial primaries in Imo and Rivers states but were unlawfully substituted by the party, challenged this decision based on these legal provisions, and the Supreme Court served justice accordingly. The lawsuit initiated by former Vice President Atiku Abubakar challenging his disqualification to vie for the office of the president by the INEC at the instigation of then-President Obasanjo also stemmed from this legal provision. In this case Omoregie's line of argument, which claims that there are no clear standards for judicial determination of disputed primaries, or no clear rules to resolve them, is fundamentally problematic. Herein lie the inconsistency of his argument.

Additionally, the law also clearly stated that the Court should adjudicate on the injustices arising from disputed primaries. Section 87(9-10) of the 2010 Electoral Act (as amended) provides that in the event of a political party failing to comply with the provisions of the Electoral Act and the party rules (i.e., the party's constitution and guidelines for party primaries) in the conduct of its primaries, the aspirants whose rights are infringed can seek redress in the Federal High Court, State High Court, or High Court in the Federal Capital Territory. Furthermore, Section 31 of the same Act confers prosecutorial power on the State High Court or the Federal High Court in the event that a candidate submits a false affidavit or any other false document for election. With respect to false documents, the legal tussle that led to the nullification of the governorship in Bayelsa state on account of certificate forgery has its legal basis in the provision of Section 31 of the 2010 Electoral Act (as amended) (Olabimta 2020).

This new legal regime has also shown the universal and compulsory jurisdiction of the state as it relates to adjudicating disputed party primaries. It also ends the era of polycentrism by extending the extent of justiciability, which includes allowing the Court to determine who is the valid and lawful candidate in the dispute. A careful examination of much of the judicialised party primaries in Nigeria shows that the grounds for their justiciability have their origins in

these provisions of the law. A few examples in this regard will suffice. The crisis in the APC in Rivers State created two factions that produced two gubernatorial candidates ahead of the 2019 general elections (Asadu 2018) that were not a product of lawful primaries as provided in Section 87 of the Electoral Act. On seeing this, the PDP (the ruling party in the state) saw an opportunity to force its strong rival out of the gubernatorial election race and asked the Court to declare the primaries null and void. Section 87(2) of the Electoral Act provides that direct and indirect primaries are the procedures for nominating candidates for election in Nigeria. In line with this, the Court ruled in a landmark judgment that the APC had failed to prove that it conducted primaries that were monitored and supervised by its National Working Committee. Hence, it ordered the INEC not to recognise the party's candidates for the 2019 general elections (Yafugborhi 2019).

Similarly, the party was embroiled in crisis in Zamfara State during its primaries in 2018. The party did not conduct lawful primaries for governorship, national and state assembly elections. It literally handpicked candidates by 'consensus',⁴ who eventually won the election. This was challenged by aggrieved aspirants. In a landmark judgment, the Court held that the party failed to conduct lawful primaries. Consequently, it nullified all the elections won by the party in the state and declared runner-up PDP as the winner of those elections (Adesomoju 2019). In these instances, the Court exercised its prosecutorial power to nullify unlawful party primaries. This is consistent with our claim of justiciability in contradistinction to Omoregie's political question/non-justiciability argument.

Lastly, in what appears to be conceding his initial line of argument in the debate, Omoregie states that since much of the problem that gave rise to party primary litigations in Nigeria is a product of intra-party conflict and lack of internal democracy within the party, the courts should focus more on understanding the internal conflicts in the party. This indicates that he is not dismissing unequivocally the role of the judiciary in adjudicating disputed primaries. Instead, he seems to provide an alternative option in dealing with the problem. Nevertheless, it is clear from the judgments that Court entered its judgment with full understanding of the disputes. It critically examined the facts before it as presented by counsels, in line with the provisions of the law, before ruling on the matter. On this basis, it is plausible to argue that the intervention of the judiciary is premised on the provisions of the law to defend rights that have been infringed. Accordingly, this has shaped, reshaped, and positively impacted electoral politics in contemporary Nigeria.

4 While the consensus method is used in a democracy to engender stability, as demonstrated by Arendt Lijphart in his 1969 seminal essay, in Nigeria political parties use it as a way of imposing candidates on the party during primary elections. See also Aziken et al. 2018.

CONCLUSION

The article analysed the judicialisation of party primaries in contemporary Nigeria. The interrogation of this issue became necessary considering the spate of disputed primaries elections that have necessitated aspirants' reliance on an external arbiter (the judiciary) to obtain justice when the internal mechanisms of the party fail. These disputes have created factions within the parties, hence affirming the concerns expressed by pioneering theorists on the baneful effects of party government. In legal theory, scholarly debate questioned the involvement of the judiciary in resolving disputed primaries, referring to it as non-justiciable. Contrary to this, our findings, which drew from the legal framework regulating party primaries, the constitutions of the parties, and Raphael's (1970) notion of universal and compulsory jurisdiction, show that the extent to which disputed primaries election is justiciable varied, due to the legal regime. In the Second Republic, the universal jurisdiction was limited, which meant that there is an extent to which the judiciary can meddle in such disputes. As such, it was a non-justiciable polycentric situation.

However, a change in the legal regime after the 2006 amendment of the Electoral Act extended the universal jurisdiction of the judiciary, which then made disputed primaries justiciable. The law made elaborate provisions for this, allowing aggrieved aspirants to seek redress in the relevant courts, a development which was not well appreciated by the non-justiciability exponents. While adjudicating on disputed primaries before it, the judiciary's role as the bellwether of democracy has seen it act as a legal cum political institution. In the latter sense, it became a policymaking institution that has shaped, reshaped, and positively impacted on electoral politics in Nigeria.

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FREE, FAIR AND CREDIBLE?

An Assessment of Kenya's 2017 Election

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ABSTRACT

Periodic, free, fair, and credible elections are one of the undisputed principles of liberal democracy. Kenya embraced multiparty democracy at independence in 1963 and has since used periodic elections as a means of selecting leaders to office. Focusing on Kenya's national election held on 8 August 2017, this paper evaluates the fundamental requirements for a free, fair, and credible election. To this end, the paper assesses Kenya's electoral legal framework and its application during the 2017 national elections. In addition, the paper uses primary data by Afrobarometer to explore public opinion on the performance of the Independent Electoral and Boundaries Commission (IEBC), political parties, and the media towards free, fair, and credible elections. This study finds that despite some institutional challenges, Kenya's 2017 national elections were conducted under a comprehensive electoral legal framework and met the threshold of free, fair, and credible as affirmed by the citizenry through Afrobarometer's public opinion survey. The positive assessment of universally accepted electoral practice indicators by most of the people affirms that, notable challenges notwithstanding, Kenya's 2017 national elections were free, fair, and credible, thus endorsing the legitimacy and authority of elected leaders. This argument is cognisant of the election outcome as a fundamental factor in shaping public perception of freeness and fairness in the electoral process.

Keywords: Kenya, democracy, election, free and fair; credible

INTRODUCTION

Kenya's democracy dates back to the country's independence in 1963. Periodic elections have subsequently defined political leadership as enshrined in the country's constitution. Indeed, a majority of Kenyans (74%) interviewed during the Afrobarometer Round 8 survey preferred a regular, open, and honest election as an approach to selecting leaders for office (Afrobarometer 2019). The process of

consolidating democracy through periodic, free, fair, and credible elections has however been faced with a myriad of challenges, as the country grapples with weak institutions and ethnically instigated political divisions.

The promulgation of the country's second Constitution in 2010, and the subsequent enactment of electoral laws by Parliament was perceived as a new dawn for Kenya's democracy. The 2010 Constitution broadened representation by creating a devolved structure with two levels of governance, that is, national and county governments. In addition, the Constitution addressed the question of gender representation and equality by providing a gender quota, constitutionally referred to as the two-thirds gender rule. Special seats through nomination, and an affirmative seat for a county woman member of parliament are some of the legal strategies for increasing women's representation in political leadership. Article 97(1b) provides that Parliament shall consist of "...forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency" (Constitution of Kenya 2010).

Kenya conducted two national elections (2013 and 2017)¹ under the 2010 Constitution, both of which had the presidential election results decided by the Supreme Court of Kenya. While the Court upheld the presidential results declared by the Independent Electoral and Boundaries Commission (IEBC) in 2013, the 2017 results were annulled, leading to a fresh presidential election on 26 October 2017. The incumbent, President Kenyatta, condemned the Supreme Court for acting against the will of the people, but opposition leader Raila Odinga defended the Court against this accusation (Kanyinga & Odote 2019). This was the first time in the history of Kenya's democracy, and indeed in Africa, when a presidential election was annulled, more so for an incumbent president seeking re-election.

Determining whether an election was free, fair, and credible requires a broad investigation of institutions and their complex interaction during the entire electoral process. This paper underscores the centrality of public trust in institutions and the rule of law in defining a free, fair, and credible election. Findings from this study point to perceptions of the voter as instrumental in enhancing the credibility and legitimacy of an election outcome. I therefore argue that the determination of whether elections are free, fair, and credible is based not so much on universal standards, but on the perception of the primary participant, the voter. In the case of Kenya, political party affiliation and leadership, and election outcome, were core in shaping voter opinions in the August 2017 national elections. This notwithstanding, I posit that a free, fair, and credible election enacts legitimacy to power and authority in a democracy. To advance this argument,

1 Kenya conducted two elections in 2017; the first was held in August while the repeat of the presidential election was held in October. This paper focuses on the elections in August 2017 which involved all levels of elective leadership positions.

the study focuses on four main institutions: the electoral legal framework, the Independent Electoral and Boundaries Commission (IEBC), political parties, and the media.

CONCEPTUALISING FREE, FAIR AND CREDIBLE ELECTIONS

Free, fair, and credible elections are the principle upon which other indicators of democracy are evaluated. Lindberg (2004) posits that a free and fair electoral process enacts an important component of distributive justice in relation to power and enhances authority and legitimacy of a democratically elected government. Lindberg's argument underscores the importance of elections as a primary means through which the ruled (the people) select and establish a binding social contract with their leaders (rulers), and the government as an institution. In adopting the Declaration on Criteria for Free and Fair Elections, 1994, the Inter-Parliamentary Council (IPC) acknowledged that the authority of any government derives from the will of the people expressed through free, fair, and periodic elections based on universal, equal and secret suffrage (Inter-Parliamentary Council, 1994).

A free and fair process enhances the credibility of election outcomes. Bush and Pruther (2018, p. 662) define an election as credible when 'people trust its results and believe that it produces an outcome that reflects the will of the people'. Thus, credibility is built on people's perceptions of how free and fair the electoral process was, to the extent that the results are perceived as reflecting the will of the people. More often than not, opinions of the people are founded on their vote choice, with the winners perceiving an election as having been credible and the losers holding a contrary opinion. Shah (2015) perceives the legitimacy of elected leaders and government as grounded on the voter's trust of the entire electoral process and related institutions. This is particularly so as the citizenry have broad experience of interacting with the entire electoral process.

The parameters upon which the freeness, fairness and credibility of an electoral process are measured remain contested. Shah (2015) observes that though there is consensus on free and fair elections as a primary measure of emerging and mature democracies, there is a lack of agreed indicators upon which the level can be measured. It is generally agreed that the government should not only create conditions that enable free, fair, and credible elections, but should also develop institutional capacity necessary for the practice of democratic politics (Goodwin-Gill 2006). Attainment of free, fair, and credible elections therefore remains elusive as indicators may be contextual, because there is a lack of overtly agreed measurement tools. In other words, what is free, fair, and credible should take cognisance of unique and different realities such as a democracy emerging from internal conflicts or electoral violence. This was the case of Kenya in 2013, where the presence of peace was the measure for a free and fair election (Shah 2015).

Bishop and Hoeffler (2016) regard free and fair elections as democratic conduct characterised by the right to vote, the registration of voters, freedom to vie for an elective position, freedom to conduct campaigns without intimidation, and access to media. Accuracy in vote counting, timely transmission of results, and impartiality in the management of disputes are imperative in legitimising elections. Goodwin-Gill (2006, p. 73) conceptualises free and fair elections as follows: ‘... as a concept, free is about participation and choice; 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 absence of coercion’. In 1994, the Inter-Parliamentary Council (IPC) acknowledged and endorsed the fundamental principles relating to periodic, free, and fair elections. Such principles were identified as:

[the] right of everyone to take part in the government of his or her country directly or indirectly, through freely chosen representatives, to vote in such elections by secret ballot, to have an equal opportunity to become a candidate for election, and to put forward his or her political views, individually or in association with others.

(Inter-Parliamentary Council 1994)

Elklit (2005) posits that the legal and institutional framework, the political context and ‘levelness’ of the electoral playing ground are important in assessing the equality of elections. This also implies that meaningful assessment of a free and fair process should take consideration of all activities and relevant institutions, as opposed to focusing on voting day(s). Referring to Kenya’s 2013 national election, Shah (2015) notes that most Kenyans’ conception of a free and fair process was based on their experience of electoral violence in the 2007/2008 elections. The presence of peace was therefore used as a measure of a free and fair election. However, free, fair, and credible elections should not be interpreted as an end, but as a basis on which fundamentals of democracy such as popular participation, equality, social justice, and non-discrimination are built.

Goodwin-Gill (2006) summarises free and fair as a concept that is used depending on the context, noting that there is no coherent way of measuring the freeness and fairness of an election, apart from the fact that it is a judgement from either an observer, or a participant. Thus, the credibility of an election is relative, and what may be conceived as free, fair, and credible today, may not be so tomorrow, or in a different context. What is important to take note of, according to Goodwin-Gill (2006), is that any discrepancies in the electoral process should be identifiable as per the law, acceptable by principle, and can be corrected through political dialogue and the rule of law.

This paper conceptualises free, fair, and credible elections as a complex process defined by the experiences of the primary participant, the voter, as guided by established electoral institutions. Acknowledging the complex number of variables used to define what a free, fair and credible election is, this paper limits its analysis to the electoral legal framework, the election management body, the Independent Electoral and Boundaries Commission (IEBC), political parties, and the media to assess Kenya's national elections in 2017. The paper opines that a free, fair, and credible election, whether perceived as universal or contextual, legitimises power and authority for those elected to office and the government as an institution.

KENYA'S 2017 ELECTION IN CONTEXT

On 8 August 2017, Kenya held its sixth elections since the restoration of multiparty democracy in 1991, and the second under the dispensation of the country's second Constitution, promulgated in 2010. The newly promulgated Constitution expanded representation through the establishment of a devolved structure of governance. In this new structure, there are six elective seats, that is, the president, governor, member of parliament, senator, woman member of parliament, and a member of the county assembly.

As in many African countries, ethnicity is a tool for organising politics in Kenya, a situation that occasionally leads to conflictual identities of us versus them. Indeed, the 2017 presidential election was a closely contested race between two ethnically constituted coalitions, the National Super Alliance (NASA) consisting of the Orange Democratic Movement, Wiper Democratic Party, and Amani National Congress; while the Jubilee Alliance Party (JAP) was established through a dissolution of The National Alliance (TNA) and the United Republican Party (URP). Ethnically, NASA drew its support base from the Luo, Luhya, and Kamba communities, while Jubilee was mostly supported by the Kikuyu and the Kalenjin.

In terms of regions, the NASA alliance had the support of Nyanza, Western and lower Eastern, while JAP had the backing of the Mount Kenya, Rift Valley, and the Northeastern regions. Regions with multiethnic populations such as Mombasa and Nairobi had their support divided among the two main alliances. Findings from the Afrobarometer Round 8 survey indicate that JAP was supported by 89% and 75% of the population in Central and Rift Valley regions respectively, while the Orange Democratic Party, an affiliate of NASA, had 72% backing from the Nyanza region (Afrobarometer 2019). The ethnic and regional backing of political parties had ramifications for public perceptions on the credibility of the election, as will be discussed later in this paper.

Just as in 2013, the 2017 presidential election outcome declared by IEBC was disputed. Three days after voting was completed, the IEBC declared Uhuru

Kenyatta as the winner with 54.3% against NASA's Raila Odinga who had garnered 44.7% of the total votes. NASA, under the leadership of Raila Odinga, questioned the validity of results based not on the tallying but on the failure of the IEBC to follow the laid-down procedure (Burbidge 2020). Throughout the electoral process, the IEBC had faced intense scrutiny on the auditing of the voter register, printing of ballot papers, and the commission's use of digital and paper technology in counting of the votes (Cheeseman et al. 2019).

On 1 September 2017, the Supreme Court of Kenya annulled the presidential election results and ordered another presidential election to take place within sixty days, as per the Constitution. The Supreme Court decision was based on three key issues: failure by the IEBC to follow the laid-down procedure, illegalities and irregularities in managing the process, and the IEBC's neglect of responsibilities in discharging its strategic obligations under the law (Supreme Court of Kenya 2017). The nullification of the presidential election results did not legally affect the gubernatorial and parliamentary results. However, the cancellation had indirect ramifications on the legitimacy of the entire election outcome leading to an increase in the number of election petitions. Kanyinga and Odote (2019) describe the 2017 election as the most litigated in Kenya's democratic history.

The 2017 elections were conducted under the scrutiny of regional and global election observer groups, whose reports are instrumental in legitimising elected governments. Bush and Pruther (2018) note that election observer missions enhance credibility of elections, particularly when observers are perceived by the public as unbiased and capable. In other words, election observers create a sense of confidence in an electoral process conducted by the locals through dispelling fraud, and assuring the public of their capacity to detect and deal with fraud when it occurs. Reports by most observer missions described Kenya's August 2017 elections as having been relatively free and fair, albeit with institutional challenges. For example, the African Union Election Observer Mission noted that the elections were conducted in a legal framework that provided the necessary requisites for a regular, free, and fair election, but raised concerns over an election environment that was characterised by lack of dialogue and trust among stakeholders (African Union 2018). This view was alluded to by the Election Observer Group (ELOG), which noted that the election environment was relatively volatile for the stakeholders, especially for the IEBC, as ethnic and regional groupings heightened expectations and anxiety prior to the actual voting day. ELOG however noted that the August 2017 elections were conducted peacefully with no serious, systematic, or planned pattern of irregularities that could have compromised their credibility (ELOG 2018).

According to the Carter Center election observer mission for Kenya, the August elections, especially the voting and tallying process, was well

administered with challenges emerging only in the results transmission. The IEBC did not use the ten-day provision to ensure that all procedures were taken into consideration in declaring the presidential results. There was a delay in transmitting results, a lack of transparency, and the IEBC failed to declare that electronic results were not official as they needed verification (Carter Center 2018). Observation by the Carter Center underscores the centrality of the IEBC, and the importance of following established procedures for a free, fair, and credible election. This view was shared by the European Union Election Observer group, which acknowledged that the August elections were largely peaceful and well managed, but were faced with challenges of tallying, transparency, and transmission. There was also lack of trust in the IEBC by the opposition, and the unfortunate late appointment of the IEBC management put immense pressure on the electoral body (European Union 2018).

Election observer groups generally acknowledged that the August 2017 elections met the basic requirements for being free and fair. The observer groups noted challenges such as delays in vote tallying, and the IEBC's failure to use the necessary procedures for declaring election results. Such omissions compromised the credibility of the election, as will be discussed in the subsequent sections of this study. In the following section, the paper explores Kenya's electoral legal framework as a foundation for free and fair elections.

KENYA'S LEGAL FRAMEWORK FOR ELECTIONS

A comprehensive electoral legal framework is the basis for credible elections. Election laws articulate the rights and privileges for individual citizens as candidates or voters, and the guidelines along which elections are conducted. Electoral laws further spell out what is to be considered irregular, fraudulent or a misconduct in elections, and the management of disputes at all levels. Bishop and Hoeffler (2016) describe election laws as simply the rules of the game. Mueller (2011) posits that laws are a necessary constraint for politicians who are willing to use any means, including violence, to win elections.

Kenya's 2017 elections were conducted under the following laws; the Constitution of Kenya, 2010; Elections Act, 2011; The Independent Electoral and Boundaries Commission Act, 2011; Political Parties Act, 2011; Election Campaign Financing Act, 2013; and the Leadership and Integrity Act of 2012, among others. All laws were enacted after 2010 when the country's second Constitution was promulgated. While these laws focus on specific electoral issues, they are interdependent and have regular overlaps in various phases of an electoral process.

Kenya's 2010 Constitution is the supreme law upon which all other laws are enacted. The Constitution spells out political rights and privileges of the

people and confers obligation upon the government to ensure that such rights are protected. For instance, Article 38 outlines the political rights of every Kenyan citizen, including the right to form or participate in a political party, recruit members, and campaign for a political party. Article 38 (2) specifies that ‘Every citizen has the right to free, fair, and regular elections based on universal suffrage and free expression of will...’ Furthermore, the 2010 Constitution provides for the right to be registered as a voter and to exercise the right of voting through a secret ballot, and to vie for any elective office they qualify for. Article 81(2) addresses the question of gender equity by providing for a two-thirds gender rule to be applied in all elective seats. Such provisions, and many others, broaden the democratic space for public participation, and for the citizenry to exercise their sovereign right of voting their preferred leaders into office. Implementation of the Constitution is, however, challenged by the lack of political will. For example, while the Constitution is explicit on the two-thirds gender rule in elective positions, Parliament is yet to pass legislation on how this is to be achieved. This means that the 11th and 12th parliaments founded under the 2013 and 2017 elections were technically unconstitutional as women were underrepresented (Kaburu 2019).

Parliament enacted several electoral laws based on the 2010 Constitution, including the Elections Act of 2011. This Act focuses on the conduct of elections and referenda, and the registration of voters. It further identifies possible election offences and provides mechanisms for resolving electoral disputes. The Act emphasises universal suffrage, in terms of which every adult Kenyan has a right to vote if they are registered. Article 3(1 and 2) for example provides that ‘An adult citizen shall exercise the right to vote as specified in Article 38 (3) of the Constitution..., and that the citizen is registered in the Principal Register of Voters’. Article 4 underscores the need for a comprehensive voter register comprising:

- a poll register in respect of every polling station;
- a ward register in respect of every ward;
- a constituency register in respect of every constituency;
- a county register in respect of every county; and
- a register of voters residing outside Kenya (Kenya Election Act 2011).

The Independent Electoral and Boundaries Commission Act of 2011 (IEBC Act) is another law that informs the conduct of elections in Kenya. The IEBC Act defines the independence and composition of the commissioners and outlines the duties and responsibilities of the election management body. The primary role of the IEBC, according to the Act, is to facilitate voter registration, maintain the voter register, and conduct elections as per the provisions of the Constitution. Article 25(e) of the IEBC Act clearly articulates the principles under which the

Commission must operate, which include ‘...free and fair elections which are by secret ballot, free from violence, intimidation, improper influence, or corruption, conducted independently, transparent, impartial, neutral, efficient, accurate, and accountable manner’ (IEBC Act 2011). Other election laws include the Election Offences Act, 2016, which defines all forms of electoral offenses and outlines the possible consequences. The Election Campaign Financing Act of 2013 regulates the expenditure and accountability of election campaign funds, and sets limits on party spending. The Leadership and Integrity Act of 2012 emphasises Chapter Six of the Constitution on leadership and integrity of state officers. This Act is used by the IEBC to vet individuals’ suitability as per the law before they are accepted to run for any elective seat. Table 1 provides a summary of electoral laws in Kenya.

Table 1. Summary of domestic electoral laws in Kenya

1.	The Constitution of Kenya, 2010	The supreme law upon which all other laws are founded. The Constitution articulates the political rights of every citizen, including periodic, free, and fair elections as a means of establishing governments.
2	The Election Act, 2011	Spells out the conduct of elections, voter registration, election offences and dispute resolution.
3	The Political Parties Act, 2011	Regulates the formation, registration, and operations of political parties.
4	The Independent Electoral and Boundaries Commission Act, 2011	Establishes, and regulates the operations of the IEBC as the national election management body.
5	Election Campaign Financing Act, 2013	Provides for the regulation, management, expenditure, and accountability of election campaign funds.
6	Leadership and Integrity Act, 2012	Articulates leadership qualities and requirements as per Chapter Six of the Constitution.
7	Election Offences Act, 2016	Outlines election offences and legal consequences.

The electoral legal framework illustrated in Table 1 above indicates that Kenya is not short of laws to deliver a free and fair election. However, weak institutional structure and the lack of political will remain a challenge. For example, while the Political Parties Act of 2011 emphasises that parties should have a national outlook, most political parties bear an ethnic or regional outlook and are personalised, as opposed to having an institutional posture with a clear governance structure (Wanyama & Elklit 2018). The law is also clear on voter registration and the principal voter register, but claims of missing names have been persistent. In

addition, large numbers of deceased voters on the principal register can be interpreted as sheer negligence by the IEBC, or a strategy for election malpractice and fraud resulting in tension among contending parties. For example, the voter register used during the 2007 election that resulted in unprecedented violence had over one million registered deceased voters (Elklit 2011; International Federation for Human Rights 2008). Like previous elections, the voter register in the 2017 election was a point of contention among parties (The Carter Center 2018; Wanyama & Elklit 2018; Cheeseman et al. 2019). Since the voter register is a key determinant of who votes or who doesn't vote, it can be argued that the realisation of a free and fair election is dependent on good management of the Principal Register, which did not seem to have been the case in 2017.

Another notable gap in electoral laws relates to the time frame for handling election-related disputes. For example, the Supreme Court is expected to handle any disputes arising from the presidential election results within fourteen days. This is a very short period for the judges to engage thoroughly with the bulk of files containing evidence from the contending parties before arriving at a judgement. Furthermore, disputes arising from party primaries are managed by individual political parties using internal mechanisms. Unfortunately, the legitimacy of such a process is undermined by the weak institutional structure and personalisation of the political parties. Thus, most disputes are handled in a discriminatory manner, and in most cases they are ruled in favour of those considered close to the party leader (Wanyama & Elklit 2018). Occasionally, financial factors have been used in such cases, leading to the exclusion of financially vulnerable groups from securing nomination by the dominant political parties (Kaburu 2019).

Successful implementation of the election laws is also dependent on other state institutions, including the judiciary and parliament, that work in collaboration with IEBC. Unfortunately, public trust in such institutions is undermined by the perception that they are marred by corruption. For example, findings from the Afrobarometer Round 8 survey indicate that 41% of Kenyans do not trust the courts, with 37% believing that 'most' or 'all' judges and magistrates are involved in corruption. Equally, 47% of Kenyans are of the view that most or all members of parliament are involved in corruption (Afrobarometer 2019). The findings in this study regarding electoral laws point to the fact that Kenya has a comprehensive legal framework, but there is need for a deliberate move to strengthen institutions and ensure implementation of laws towards a free, fair, and legitimate election.

FREE AND FAIR?

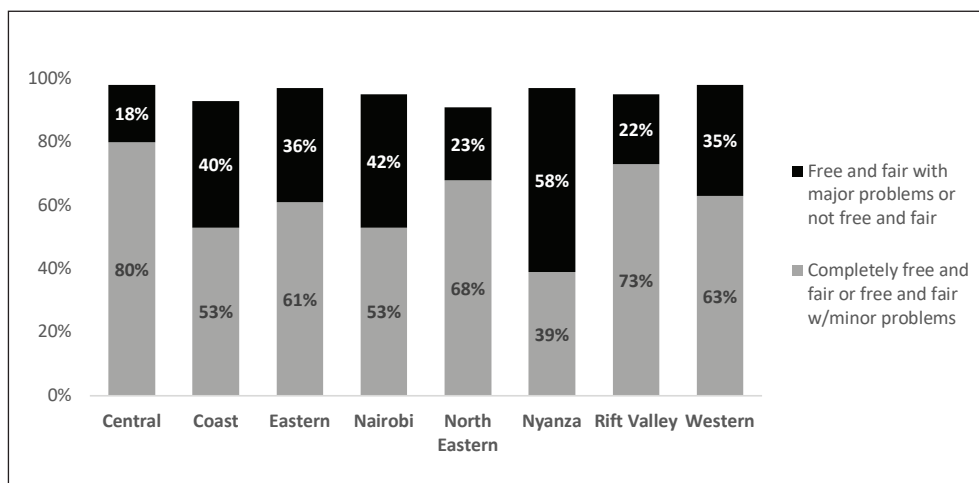
Public Opinion on Kenya's 2017 National Elections

Public opinion plays a fundamental role in legitimising election outcomes. As Barkan argues (2013), elections that are flawed or perceived to be flawed impede

rather than enhance the process of democratisation. The public, in this case the voters, are instrumental in legitimising election results, particularly if elections are closely contested and losers accept the outcome as representing the will of the people.

As a research network, Afrobarometer seeks public opinion on among other things, elections and governance, by conducting national surveys in over 36 countries in Africa. In 2019, Afrobarometer conducted a Round 8 national survey in which 2 400 Kenyans interviewed. The findings of that survey have been used in this section of the paper to explore the opinion of Kenyans regarding the 2017 national elections. One of the many issues included in the survey was the question of whether the elections were free and fair. Survey findings indicate that 62% of Kenyans considered the 2017 elections as having been free and fair (Afrobarometer 2019). However, a further analysis based on regions revealed a significant disparity in opinion between respondents from Nyanza and those from Central Kenya.² For example, 80% of respondents from Central and 73% from the Rift Valley were of the view that the election was free and fair, while 58% of respondents from Nyanza held a contrary opinion, as illustrated in Figure 1 below.

Respondents were asked: *On the whole, how would you rate the freeness and fairness of the last national election, held in 2017?*



Source: <https://afrobarometer.org>

Figure 1. Regional ratings of freeness and fairness in Kenya's 2017 national elections

² Central and Rift Valley regions supported the Jubilee party that had won the election, while Nyanza region supported the Orange Democratic Movement that lost election under the NASA alliance.

The opinions illustrated in Figure 1 are based on people's experiences and perceptions during the 2017 national elections in Kenya. Using Afrobarometer data sets, this section delves deeper to assess the opinion of Kenyans on the performance of the national election management body, the IEBC, political parties, and the media, in realising a free and fair national election or otherwise in 2017.

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) AND THE 2017 NATIONAL ELECTIONS

Kenya's election management body, the IEBC, is a constitutional body that is independent of any other government institution. The IEBC, like any other election management body, is required to be impartial, independent, and accountable to election law, and should set electoral boundaries that do not favour any candidate or political party (Bishop & Houfler 2004). By law, the IEBC is entrusted with the responsibility of ensuring that the elections are free and fair. A free and fair election is to be realised through creating a favourable environment for each registered voter to (IEBC Act 2011).

Since its establishment the IEBC has conducted two national elections, in 2013 and 2017. In both elections, the presidential results were contested in the Supreme Court with claims of election malpractice, fraud and negligence cited by the contending parties, and the IEBC identified as the respondent. While the court upheld the 2013 election results by the IEBC, the 2017 results were annulled based on the failure by the IEBC to follow the specified procedure, illegalities, and irregularities in managing the process, and the IEBC's neglect of responsibilities in discharging its strategic obligations under the law (Supreme Court of Kenya, 2017).

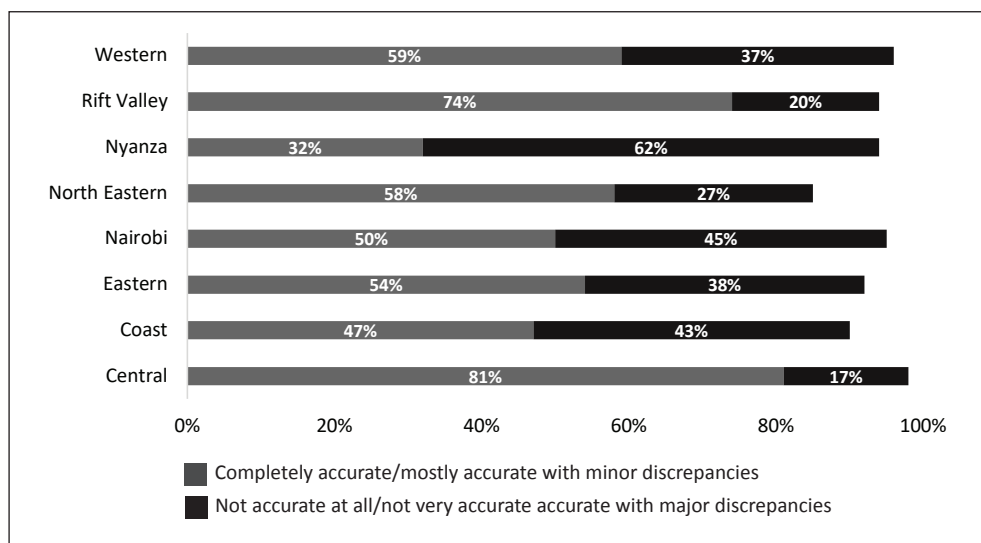
The opportunity for a citizen to vote is one of the fundamental indicators of a free and fair election. Thus, one of the primary roles of the IEBC is to provide the necessary electoral infrastructure for Kenyans to exercise their sovereign right to vote. A sizeable majority (77%) of Kenyans report voting in the 2017 national elections, with the 6% of the 23% that did not vote having been too young to vote (Afrobarometer 2019). Accurate counting and announcement of results are key to defining a free and fair electoral process. While 67% of Kenyans were of the view that votes were generally accurately counted, only 59% were confident that the results announced by the IEBC mirrored the votes counted in August 2017 (Afrobarometer 2019).

A deeper analysis of the data reveals discrepancies based on regional groupings, party affiliations and the election outcome. A majority of respondents from Central (81%) and the Rift Valley (74%) had confidence in the accuracy of results released by the IEBC, compared to only 32% from the Nyanza region, as illustrated in Figure 2. As noted earlier, politics in Kenya are ethnically and

regionally organised. Political party affiliation and election results are therefore likely to shape public opinion on the performance of the IEBC. The regional discrepancies illustrated in Figure 2 reflect how an election outcome impacts the perceptions of the citizenry. This observation resonates with arguments by Goodwin-Gill (2004) who opines that measuring the freeness and fairness of an election is based on the judgement of either an observer or a participant; in this case the evaluations are based on the voter as the primary participant.

Respondents were asked the following question:

With regard to the last national election in 2017, to what extent do you think the results announced by the Independent Electoral and Boundaries Commission or IEBC, accurately reflected the actual results as counted?



Source: <https://afrobarometer.org>

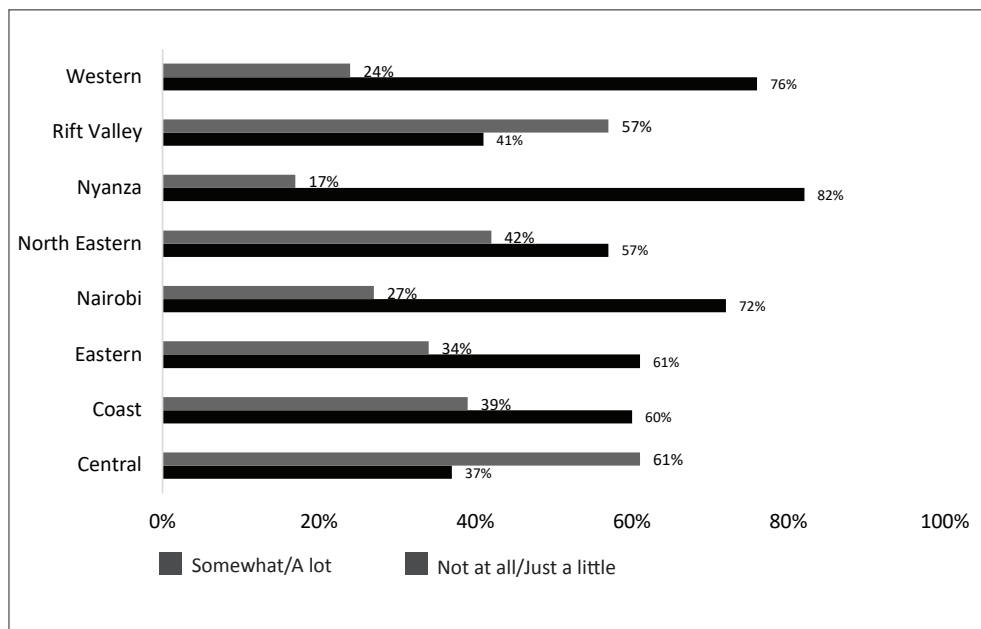
Figure 2. Accuracy of votes counted and announced by the IEBC in Kenya's 2017 elections

Using a secret ballot in voting is another aspect that enhances public confidence in a free and fair election. The Election Act of 2011 stipulates that elections in Kenya are to be conducted thorough a secret ballot with the IEBC bearing the responsibility for making the ballot boxes accessible to the voters. Indeed, the 2017 national elections were conducted by using a secret ballot, with 73% of Kenyans being confident that powerful individuals were not likely to have known who they had voted for. Apart from use of a secret ballot, the IEBC adopted the Kenya Integrated Management System (KIEMS), an electronic voting system that would

limit any possible cases of electoral malpractice, including voting more than once. This move was reassuring to the public, with a large majority of Kenyans (81%) being confident that people had not voted more than once. In addition, 64% were not afraid of any political intimidation or violence during the voting process (Afrobarometer 2019).

Public trust in an election management body is fundamental for the legitimacy of an election outcome. Though the public assessment of most aspects of the 2017 elections was largely positive, a majority of Kenyans (58%) did not trust the IEBC as an institution. Further analysis reveals that the level of public trust also differed across regions, as illustrated in Figure 3 below. Regions like Central and the Rift Valley that voted largely for the ruling party, Jubilee, had more respondents affirming their trust for the electoral body, compared to Nyanza. For example, 82% of the respondents from Nyanza did not trust the IEBC, while 61% of respondents from Central Kenya trusted the IEBC as an institution (Afrobarometer 2019). Western, Coast and Nairobi regions also registered minimal trust for the electoral body, as illustrated in Figure 3 below.

Respondents were asked the following question: *How much do you trust each of the following, or haven't you heard enough about them to say? The IEBC*

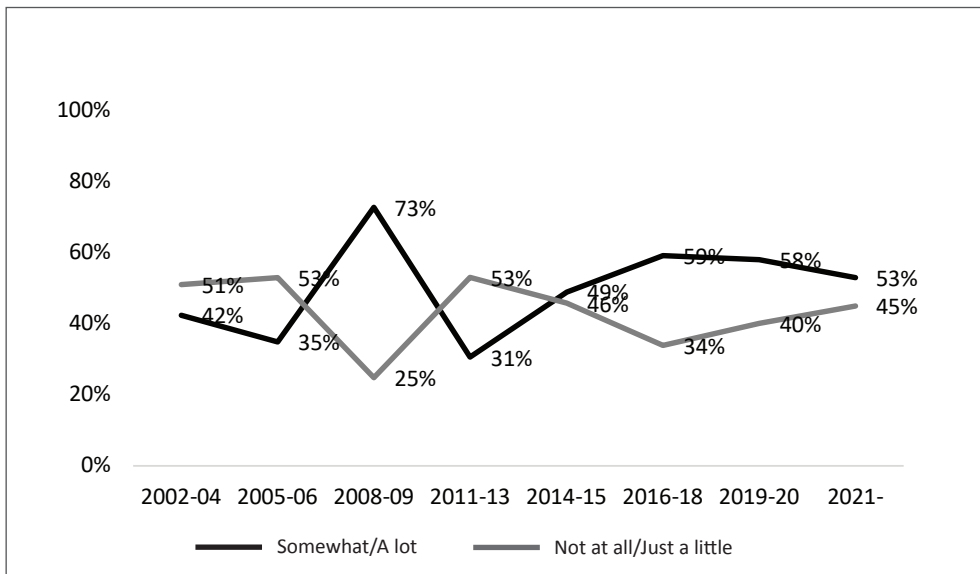


Source: Afrobarometer <https://afrobarometer.org>

Figure 3. Public trust of the Independent Electoral and Boundaries Commission (IEBC) Kenya/2019

Lack of public trust in the electoral management body has existed over many years, as illustrated in Figure 4. Although the IEBC cannot be compared to the defunct Election Commission of Kenya (ECK) in terms of its institutional independence, Kenyans remain sceptical of the electoral management body. In most cases the scepticism may be linked to the process of vetting and appointing the commissioners by the president. For example, the Afrobarometer Round 2 survey carried out between 2002 and 2004 indicates that 51% of the public trusted the defunct Election Commission of Kenya. However, there was a decline in public trust from 51% to 35% and then to 25% in the subsequent rounds of Afrobarometer survey, as illustrated in Figure 4. Key events associated with the decline in public trust were probably the failed constitutional referendum in 2005, and the botched national elections in December 2007 that resulted in post-election violence. Kenya's new constitution in 2010, together with the establishment of a new electoral body, the IEBC, impacted positively on public trust in the electoral body which increased from 25% to 53% between 2008 and 2013. The trend however seems to have reversed since 2014 and the subsequent years as illustrated below, with 2016–2018 registering a low of 34%.

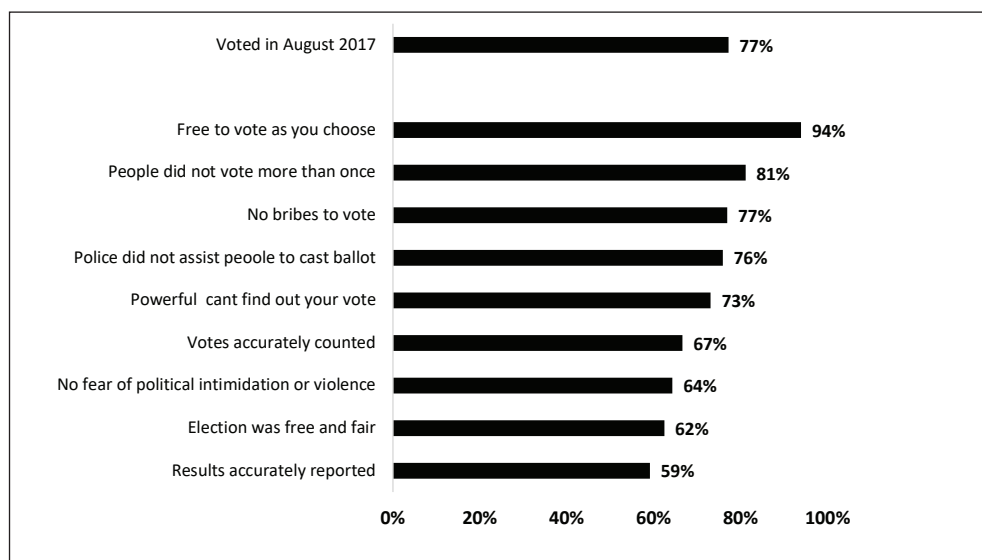
Respondents were asked the following question: *How much do you trust each of the following, or haven't you heard enough about them to say?*



Source: Afrobarometer, <https://afrobarometer.org>,

Figure 4: From ECK to IEBC: Public trust of the national election management body over the years

While the IEBC bears responsibility for credible elections, it is important to acknowledge the complex interaction between the commission and other state institutions in conducting national elections. For example, the police department provides security for the smooth running of elections, and police officers are expected not to interfere with the voting process in any way, including assisting voters to cast their ballot. Findings from the public opinion survey indicate that 76% of Kenyans did not witness the police or soldiers assisting anyone to cast their ballot in 2017 (Afrobarometer, 2019). In general, the 2017 elections attracted positive assessments from the public on key electoral issues, as illustrated in Figure 5 below. Afrobarometer sought public opinion on the extent to which the election was characterised by freedom of choice, freedom from voter intimidation, accuracy in counting and reporting of votes, among other aspects that define a free and fair electoral process. In general, Kenya's 2017 national elections attracted a positive public assessment.



Source: Afrobarometer <https://afrobarometer.org>

Figure 5. Public opinion on various election indicators in 2017

The positive assessment of the identified election management indicators in Figure 5 point to the fact that, despite some challenges, the IEBC met the minimum threshold of free and fair elections in 2017. The Afrobarometer (2019) findings echo those of international electoral observers such as the European Union, the Carter Center, and the African Union, as was discussed earlier in the paper (African Union 2018; Carter Center 2018; European Union Election Observer Mission 2018).

It is also important to take note of the 23% of the respondents who did not vote as per Figure 5. While a small percentage (6%) were underage in August 2017, 17% of Kenyans that did not vote based on other reasons, and fear of political violence, cannot be ignored in this case. For instance, as illustrated in Figure 5, 64% of the respondents expressed no fear of intimidation or violence while the remaining 36% indicated otherwise.

Referring to political violence between the Pokomo and the Oromo of Tana River months before the 2013 national elections in Kenya, Bekoe and Burchard (2017) note that the timing, motivation and target of such conflicts depicts political violence as a tool that powerful individuals are willing to use to influence election outcomes. The choice of not to vote can also be associated with voter apathy resulting from unkept promises by previous governments, or previous electoral malpractices that interfere with voter confidence.

POLITICAL PARTIES AND ELECTIONS

Many political parties expanded choices for Kenyans

At the core of democracy are political parties that are driven by the need to capture and maintain state power (Lipset 1994). As institutions, political parties provide a platform for citizens to exercise their sovereign right of electing their preferred leaders to office. Kenya embraced multiparty democracy at independence, with the Kenya African National Union (KANU), and Kenya African Democratic Union (KADU) as the two dominant political parties. Internal political dynamics and a series of constitutional amendments witnessed a shift in Kenya's political organisational structure. After a few years of independence, Kenya transitioned from being a multiparty to a *de facto* one-party state that lasted until 1982, when Section 2A³ was introduced through a constitutional amendment. This amendment transformed Kenya's political landscape, from a *de facto* to a *de jure* one party democracy (Wanyande 2006; Adar & Kaburu 2020). Multiparty democracy was restored a decade later through the repeal of Section 2A in 1991 (Adar 2008; Chege 2018a; Bratton & Kimenyi 2008; Wanyama & Elklit 2018).

Since then, the number of political parties has grown steadily. For example, the 2017 elections witnessed the participation of over fifty political parties from county to national levels of representation, with parties joining hands to form pre-election pacts through political alliances. Twenty-one political parties secured seats in the National Assembly, with Jubilee and the Orange Democratic Party (ODM) taking the larger share of 140 and 62 members respectively, as illustrated in Table 2 below. Notably, the ODM had worked with three key political parties

3 Section 2A stated: There shall be in Kenya only one political party, the Kenya National African Union.

during the 2017 national elections, the Wiper Democratic Movement, Amani National Congress, and Forum for Restoration of Democracy, within the National Super Alliance (NASA). Each of these parties secured a significant number of seats in the National Assembly (see Table 2), making NASA's influence on parliamentary business unquestionable. It is equally important to note that the number of legislators elected as independent candidates has been on the rise since 2013. For example, the 2017 elections had thirteen members of parliament elected as independent candidates, as illustrated in Table 2; a significant growth compared to the four that were elected in 2013.

Table 2: Elected members of National Assembly per political party and independent candidates in the 2017 national elections

	Political Party	Political Alliance*	Number of seats worn in National Assembly
1	Amani National Congress	National Super Alliance (NASA)	12
2	Chama Cha Mashinani	-	2
3	Chama Cha Uzalende	NASA	1
4	Democratic Party of Kenya	-	1
5	Economic Freedom Party	-	4
6	Forum for Restoration of Democracy – Kenya	NASA	10
7	Frontier Alliance Party		1
8	Jubilee Party	JAP	140
9	Kenya African National Union	-	8
10	Kenya National Congress	-	2
11	Kenya Patriots Party	-	2
12	Maendeleo Chap Mendeley Party	-	3
13	Muungano Party	-	1
14	National Agenda Party of Kenya	-	1
15	New Democrats		1
16	Orange Democratic Party	NASA	62
17	Party for Development and Reform	-	3
18	Party of National Unity	-	1
19	Peoples Democratic Party	-	2

20	Wiper Democratic Movement-Kenya	NASA	19
21	Independent Candidates	-	13
	Total		289
	*(There was no election in Kitutu Chache South Constituency on 8 August 2017 due to death of one of the contestants)		

Source: Independent Electoral and Boundaries Commission

* There were two main political alliances; although parties did not officially join a political alliance, they endorsed a presidential candidate from either of the two main alliances depending on ethnic and regional backing.

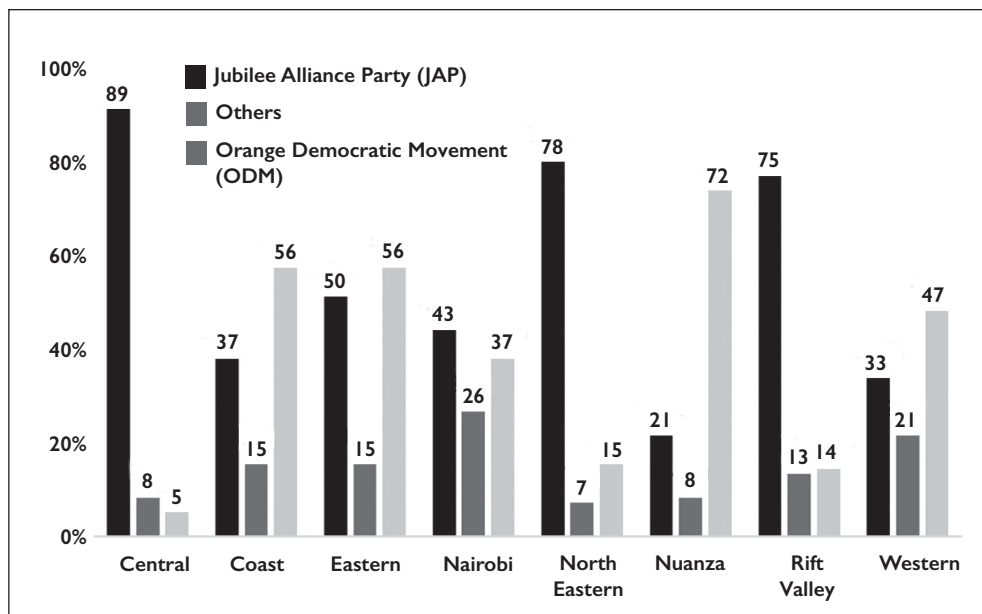
The increased number of political parties may not have translated into free, fair, and credible elections, but it has broadened the choices for the electorate. The Afrobarometer public opinion survey revealed that a majority of Kenyans (71%) prefer to have many political parties during elections as they provide broader choices for leader (Afrobarometer 2019). These opinions may be founded on the country's political history, especially during the 1980s when Kenya was constitutionally a *de jure* one-party state, limiting voters' choice during elections.

One notable characteristic of political parties in Kenya is their ethnic and regional grounding, a reality that informs voting patterns in national elections. For example, during the 2017 election, of the 49% of the respondents who said they were close to a political party, 87% from Central Kenya and 75% from the Rift Valley chose the Jubilee Alliance Party, as illustrated in Figure 6 below (Afrobarometer 2019). The Orange Democratic Movement (ODM) led by Raila Odinga⁴ enjoyed the backing of 72% of the people from his home region in Nyanza. Nairobi region had more balanced political party preferences because of the multiethnic nature of the population in the capital city.

Determined to win the election, political parties merged and formed pre-election alliances through party coalitions. For instance, ODM, Wiper, and Amani National Congress (ANC) were the principal parties in the National Super Alliance (NASA). What is most obvious from the public opinion survey is that divergence in opinion is founded on regional and party affiliations and election outcomes, and not necessarily on objective analysis of the various institutions and their role in the entire electoral process. The Afrobarometer Round 8 survey results locate the public assessment of freeness, fairness, and credibility in the August 2017 elections as more contextual than founded on identifiable indicators and processes that are universally recognised.

4 Raila Odinga was the former Prime Minister during the Government of National Unity (GNU) formed after the 2007/2008 post-election violence.

Respondents were asked: *Which political party are you close to?*



Source: Afrobarometer <https://afrobarometer.org>

Note: The percentages exclude 51% of respondents who said they were not close to any political party.

Figure 6: Preferred political parties in regions

MEDIA AND THE 2017 GENERAL ELECTION

Fair coverage of candidates?

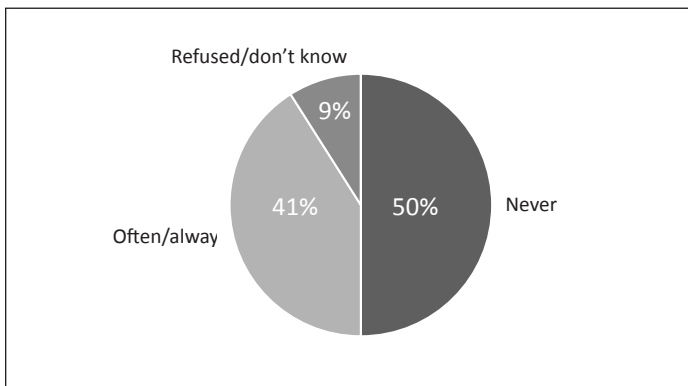
The media plays a fundamental role in consolidating democracy. As a tool for agenda setting, the media provides individual candidates and political parties with the necessary visibility and a platform to solicit support from the electorate. Kenya’s electoral law underpins the importance of media during national elections. Article 41 of the Elections Act of 2011 requires that state-owned media be accessible to all political parties participating in national elections, and airtime should be allocated equitably to all parties, including the independent candidates, during the campaign period. The Election Act emphasises the need for impartiality by both the print and electronic media. Article 41(3) states that ‘Every state-owned print or electronic media which publishes any information relating to the electoral process shall be guided by the principle of total impartiality and shall refrain from any discrimination in relation to any candidate’ (Elections Act 2011).

Kenya has a vibrant media with numerous companies running television, radio, and print media, and that enjoys a significant level of freedom from

interference by the state. Regarding elections, however, there are concerns about the extent to which the Kenyan media has managed to uphold such standards during elections over the years. At the core of this concern is the fact that most media companies are privately owned and are closely linked to political elites (ELOG 2018). Thus, the vitality of the Kenyan media is challenged by a lack of impartiality in political reporting during the electioneering period. For example, ownership of media companies has a significant impact on what and how reporting is to be done. Lack of objectivity and impartiality in reporting has resulted in blame being placed on local media for fanning ethnic tension and political violence, as was the case in the 2007/2008 post-election violence (Ismael & Deane, 2008). Of importance, however, is the ability of the media to convince the public of the credibility of electoral process and outcomes, or otherwise offer fair coverage of candidates and political parties.

Access and fair media coverage of candidates and political parties is critical for a free, fair and credible electoral process. Impartial media provides a level ground for candidates and political parties. However, during the 2017 national elections a majority of Kenyans perceived the media as lacking fairness in the coverage of candidates, as illustrated in Figure 7. A majority of Kenyans (50%) were of the view that the media never, or only sometimes provided fair coverage to all candidates. In these cases the media was usually perceived as having unfair coverage in that some candidates were given more visibility, giving them an advantage over other candidates.

Respondents were asked: *During the last national election campaign in 2017, how often did the media provide fair coverage of all candidates?*



Source: Afrobarometer <https://afrobarometer.org>

Figure 7: Access and fair media coverage for candidates

Findings on media and elections in Kenya by Afrobarometer (2019) relate to the argument by Gathara (2017), whose opinion piece in the *Washington Post* observed that in the August 2017 national elections, Kenya's media went against the principle of freeness and fairness in elections by running advertisements in favour of the ruling Jubilee Alliance Party. Gathara noted:

By law, the government is forbidden from advertising its achievements in any media during the election period. However, this did not stop Kenyan media houses from making money in the weeks before the election, for allegedly broadcasting illegal advertisements from the President's Delivery Unit, some of which even bore the tagline 'Jubilee Delivers' and 'Uhuru, 2017'.

Equally, several election observer missions noted the lack of impartiality and unequal coverage of candidates but applauded the media for their continuous advocacy for a peaceful election in 2017.

CONCLUSION

Attaining a free, fair, and credible election remains an uphill task for most democracies, Kenya included. Although there are universally accepted indicators to assess the credibility of elections, including the extent of freedom and fairness, contextual factors are likely to shape public opinion on the electoral process. This paper focused on Kenya's 2017 national elections with the aim of assessing whether these were free, fair, and credible. To this end, the paper has explored Kenya's electoral legal framework as the foundation for a free and fair election. In addition, the paper used a public opinion survey by Afrobarometer (2019) and previous data sets to assess and underscore the importance of the people's opinion in validating election outcomes and the elected governments. The paper has also assessed the significance of two electoral institutions, that is, the IEBC and political parties, as well the media, in the realisation of a free, fair, and credible electoral process.

The study finds that Kenya has a comprehensive electoral legal framework that covers most, if not all, of the aspects of an election. However, there is a lack of political will in implementing the law which impedes the realisation of a free, fair, and credible electoral process. The public opinion survey by Afrobarometer reveals that the election management body, the IEBC, lacks public trust. Identifiable gaps in the 2017 national elections such as the announcement of a presidential election without following the established procedure compounded the credibility problems of the IEBC as an institution. Ironically, a majority of Kenyans had confidence in most of undertakings by the IEBC, including vote counting and the provision of necessary voting equipment.

Challenges notwithstanding, the study finds that the management of the 2017 national elections by the IEBC met the basic threshold of a free, fair, and credible election. Findings from the 2019 Afrobarometer survey point to the fact that public opinion on the 2017 elections was significantly shaped by regional groupings, party affiliations and leadership, and election outcomes. Therefore, ethnic groupings and regions whose preferred political party lost the election exhibited a more negative assessment of various electoral indicators compared to their counterparts that supported the winning political party.

This study concludes that the achievement of a free, fair, and credible election in Kenya is progressive. The complex interdependence among institutions, and their vital role in a national election, make it difficult for the IEBC to be solely accountable for a credible election. Seemingly, public opinion on the credibility of elections in Kenya is determined by election results with winners approving the process, while the losers express dissatisfaction. The study finds that there is need for institutional strengthening to enhance efficiency of the IEBC and political parties as the primary actors in national elections. In addition, there is a need for impartiality in the implementation of electoral laws, and media coverage and accessibility to candidates as a means of realising fairness in the election.

The paper contributes to the debate on periodic, free, fair, and credible elections as a means of consolidation democracy in Africa.

Acknowledgements

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ZIMBABWE'S POST-2000 ELECTIONS

More Hotly Contested yet less Democratic than in the Past

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ABSTRACT

This article investigates Zimbabwe's post-2000 elections, why they have been more hotly contested than previously, and whether they have been undemocratic. The post-2000 period marked what is arguably the most turbulent phase in the electoral history of the country since independence in 1980, and Zimbabwe's elections were de facto degraded, becoming a means of sustaining incumbents in power. The paper asserts that Zimbabwe's elections are mainly a front for hoodwinking both the electorate and observers. They are not used to provide for the free expression of the will of the people, but to endorse the incumbents rather than effectively challenge them. To this extent, they are manipulated to produce a pre-determined outcome confirming the current leaders, irrespective of their performance. Supported by empirical data from interviews and primary sources together with statistical records from electoral institutions such as the Zimbabwe Electoral Commission (ZEC), the Zimbabwe National Statistics Agency (ZIMSTAT), and Afrobarometer, the article concludes that elections are mainly for show, to entrench the incumbents.

Keywords: Zimbabwe, elections, contested, degraded, democratisation, political power, incumbents, civil society engagement

INTRODUCTION

This article questions whether elections have been a democratic process in Zimbabwe after 2000, given the country's strong ruling parties and presidents, and whether Zimbabwe's elections were more hotly contested after 2000 than previously. It also debates whether elections in Zimbabwe (formerly Rhodesia) have been degraded or dignified. Focusing on the defective quality of these elections, the article concludes that they were either for show or to confirm and entrench the incumbents.

The post-2000 period arguably constitutes the most turbulent phase in the electoral history of the country since independence in 1980, a period in which Zimbabwe's elections were devalued and the electorate and observers deceived. These elections were not intended to promote democracy (the free expression of the people's will) but were manipulated to produce a pre-determined outcome affirming the current crop of leaders, irrespective of their performance.

After the end of the Cold War, electoral discourse in Africa entered a new phase (Tusalem 2007) and the notion of 'free and fair' Western-style democratic elections became ingrained. Elections were expected to offer a regeneration of political regimes, allowing the voting population a democratic say in the affairs of their country. While the ruling political classes in Zimbabwe paid lip-service to this principle, they generally used it as a strategy to stay in power. Promises of development, unfulfilled or piecemeal electoral, constitutional and institutional reforms have been used repeatedly in electioneering.

After Zimbabwe's independence in 1980 President Robert Gabriel Mugabe won the elections, even if his inefficiencies, inadequacies, ineptitude and corruption warranted his removal. However, elections in Zimbabwe were not only about Mugabe as an individual, but also about his political systems and structures. This entailed manipulating the Electoral Management Body (EMB), the Registrar, media, humanitarian aid, campaign spaces (access to voters), as well as state institutions to defend his political party against its opponents.

The article contributes to the ongoing debate and growing literature on elections as either democratic or authoritarian processes. Citing examples of major industrial capitalist countries, Ottaway (2000) concedes that democratic transformations are never simple, linear processes. The established democracies of Europe and the United States (US) have endured a tortuous process of partial transformation, conflict, slowdown, and even outright reversal. Unsurprisingly, most African countries underwent the same travails in the post-Cold War era, with the road to democracy still proving difficult as many countries have remained 'imperfect democracies' or have suffered reversals (*ibid.*). Zimbabwe follows this tendency, though in some exceptions (Botswana, Malawi and Zambia) elections have led to democratic governments and peaceful transitions with few and insignificant disputes. Thus, the case of Zimbabwe is not necessarily representative of elections in general or Africa in particular.

The Purpose of Elections in the Global and Local Contexts

Friedman (2010) claimed that the issue of constitutional representation, which is ingrained in judicial decision-making and constitutional democracy, has been the hallmark of election processes throughout the world, and that the process of

constitutional change is 'a subject that rests at the heart of the will of the people' (Friedman 2010, p. 1232). His *The will of the people* changed the conversation about judicial review from an overly simplistic premise to a more nuanced view of judicial decision-making as symbiotic with aspects of constitutional democracy. In many parts of the world, the will of the people is expressed through elections. Consequently, elections are the mainstay of democracy and constitutional representation.

However, while this theoretical premise is widely recognised, post-2000 elections in Zimbabwe have raised questions on whether elections are part of a democratic process. Are they a means of usurping political power and rights from the people by means of a corrupt, undemocratic and unaccountable process? Are elections and politics in Zimbabwe a route to amass wealth, and not to serve the electorate? The inclination towards personal gain and not broad national interests remains a common challenge. Elections in Zimbabwe are thus widely 'bad for democracy', as illustrated in this article.

The key research questions that this study thus seeks to address are: (a) are Zimbabwean elections hotly contested and degraded? and (b) how far does the scenario of 'democratisation or a sham' apply to Zimbabwe in the post-2000 period? The study finds that a tainted election record commonly indicates a lack of democracy in a country. Zimbabwe's post-2000 elections have coincided with the introduction of the radical Fast Track Land Reform Programme (FTLRP), a move to sustain the ruling party in power when political stakes and support were at their lowest.

Despite holding elections regularly as required in the *Constitution of Zimbabwe/Constitution of Zimbabwe Amendment Act* (2013) (herein referred to as the *Constitution*), the state in Zimbabwe has since independence relied on the culture of 'liberation entitlement' and was not fully accountable to the people. In an interview on 12 July 2019, an anonymous resident at Mbare *Musika* (Market) in Zimbabwe's capital city Harare claimed that elections were not democratic because 'the state told the people what to do, instead of being responsible or accountable to the electorate for its actions'. In principle, and differing from the view of some state officials, citizens as stakeholders should make the law and act as vanguards of change and reform. The people and civic organisations inform the state by acting as effective checks and balances on the regime's three influential branches, namely the executive, the legislature (parliament) and the judiciary (courts). Such checks and balances help these arms of the state to reduce errors (bungling), prevent improper behaviour or decrease the risk of centralising or over-centralising power. Checks should ensure that neither the executive nor any branch of the state is more powerful than the people who gave it the mandate to preside over state affairs following an election.

The article, which focuses on the period from 2000 to 2018, is divided into six sections. The first section outlines the purpose of elections in the global context. The second section provides a brief history of elections in Zimbabwe from independence in 1980 up to 2000, setting the stage for an analysis of elections and their efficacy in the larger democratisation context. Section three has a detailed discussion of the post-2000 period interrogating whether democracy truly exists in the country, followed by sections four (post-2005 up to 2017) and five (the 2018 election). The claim that elections in Zimbabwe are non-democratic but only for show is authenticated or validated. The final section concludes the study, indicating that elections are mainly for confirming officeholders regardless of their performance.

LITERATURE SURVEY

Empirical evidence and the literature on Zimbabwe cast doubts on the theory of 'democratisation through elections' – a theory which Bogaards (2014) has analysed for different parts of the world. The literature shows that elections can have both positive and negative effects on a country's level of democracy (Howard & Roessler 2006; Wahman, Teorell & Hadenius 2013), leading to either democratising outcomes or the increased repression of political rights and suppression of civil liberties. These scholars claim that one mode of accessing and maintaining political power by an authoritarian regime is through popular elections. Ideally, elections should be flawless (unblemished), free and fair for positive results. Authoritarian leaders who agree to hold elections are generally able to remain in power longer than autocrats who refuse to do so (Cheeseman & Klaas, 2018). In this regard Cheeseman and Klaas expose the limitations of national elections as a means of promoting democratisation, and reveal the essential strategies (including rigging) that dictators use to undermine the electoral process in order to guarantee victory for themselves. However, Abuya (2010) has described elections as 'flawed, un-free and unfair', posing the question: Are African [including Zimbabwean] elections free and fair? In *The moral economy of elections in Africa*, Cheeseman et al. (2020) focus on the claims of both politicians and electorates, and how voters respond to electoral manipulations. Both politicians and electorates must discuss what is good and right so that they may be seen as moral actors behaving correctly. In Zimbabwe (as portrayed in the print and electronic media, social media and other platforms) electoral irregularities, election queries and legal claims of vote rigging (*The Standard* 2008a) especially by opposition political formations, confirm that the process of choosing leaders is not free and fair and lacks the virtues discussed by Cheeseman et al. (2020).

For Lindberg (2006), 'democratising nations learn to become democratic through repeated democratic behaviour, even if their elections are often

flawed'. Whilst Lindberg finds no overall negative trend in the frequency of such elections, portraying elections as 'flawed' fits nearly all pre- and post-2000 elections in Zimbabwe. Evidence from Zimbabwe casts doubt on the theory of 'democratisation through elections' as the country's elections have been disputed.

Mvingi (2008) shows that democracy was affected by a hegemonic interplay of consensual and forceful power, based on an ethos of liberation entitlement accepted by the public. Such an ethos, due in part to colonial resentment, enabled the ruling party to maintain a monopoly on political office under the guise of democratic governance after independence. This not only confirms that the ruling elite in Zimbabwe used this situation to influence the politics of the land; they also used their political influence (clout) to retain power. A multidisciplinary approach indicates how political leaders have tempered with democracy.

RESEARCH METHODOLOGY

In assessing whether elections in Zimbabwe were democratic or undemocratic, this article uses qualitative research methods drawing data from both primary and secondary sources. Primary data was derived, *inter alia*, from the documents of election organisations and institutions such as the Zimbabwe Electoral Commission (ZEC), the Zimbabwe National Statistics Agency (ZIMSTAT) and Afrobarometer. Primary document analysis is non-reactive as the information is not subject to distortion. Interviews and raw statistical data were vital for the quality of this study. Oral interviews complemented primary documents as data-gathering tools. The demographic profile of 14 interviewees from both the party-political elite and ordinary citizens consisted of male and female rural-urban dwellers, youths, employed and retired people from Harare, Bulawayo (Zimbabwe's second largest city), Gweru, Kwekwe and some rural constituencies, using purposive and snowball sampling technique. Men were more open than women to discussion, largely due to Zimbabwe's patriarchal society that allowed men to speak more freely. Politics and elections being sensitive topics in Zimbabwe, some of the interviewees preferred anonymity; snowball sampling helped me reach out to interviewees who feared reprisals.

Oral interviews were conducted between 2019 and 2022 during which freedom of movement and face-to-face interviews were restricted by COVID-19 lockdown measures. Hence, some interviews were conducted by telephone and other media platforms such as WhatsApp, Skype, Zoom and Google Meet. Statistical data and my engagement with secondary sources were important in situating the study in the context of broader Zimbabwean election literature. Methodologically, the paper outlines a research design with meaningful signposts towards data collection methods and theoretical application.

DISCUSSION

Background: the Political Environment in Zimbabwe, 1980-2000

At independence, elections were conducted by the Delimitation Commission, the Electoral Supervisory Commission (ESC), the Election Directorate and the Registrar General's (RG) Office. There was not much competition to the Zimbabwe African National Union-Patriotic Front (ZANU-PF) led by Mugabe; but the overall context of political rivalry, especially between 1982 and 1987, was one of conflict between his party and the Patriotic Front-Zimbabwe African People's Union (PF-ZAPU) of Joshua Nkomo (Sachikonye 2003). Since 1980, Zimbabwe has held general and presidential elections at regular five-year intervals. This occurred under a commendably high spirit of national reconciliation, and genuine democracy and power to the people appeared to be on the cards. The 1980 and 1985 elections were free and fair. Although the country never foreclosed multi-party electoral opportunities, the power structure did limit such opportunities by maintaining and perpetuating ZANU-PF as the dominant political party. Such hegemony, however, started to wane after the implementation of the Economic Structural Adjustment Programme (ESAP) from 1990/1991 (Sithole & Makumbe 1997).

After the amalgamation of ZANU-PF and PF-ZAPU following the signing of the Unity Accord in 1987, the new merged political party (known as ZANU-PF) still dominated the ensuing 1990 and 1995 elections (Sachikonye 2003). In the 1990 election, the party won 117 of the 120 directly-elected seats, which it retained in the 1995 election. Political and presidential patronage ensured that 30 non-constituency seats were filled by figures loyal or sympathetic to the ruling party. However, in the 1990s misgivings grew about an electoral system which effectively provided monopoly to one party. One indicator of these misgivings was the growing alienation amongst voters, some of whom demanded that the Registrar General, Tobaiwa Mudede, resign (*Daily News* 2017). The RG had been in charge of all elections held in Zimbabwe since 1981, albeit amid accusations from the ruling ZANU-PF's rivals, mainly the opposition Movement for Democratic Change (MDC), of ballot fraud favouring the governing party. Reports (*ibid.*) indicated that Mugabe used the RG's office to manipulate electoral results. Sometime in 2013 the MDC highlighted voters' roll manipulation. Party sources said Mudede had been 'mandated to make sure that few people [were] able to register in areas where the MDC [enjoyed] support' because he was 'in charge of the voters' roll' (*Mail&Guardian* 2013). Mudede, often blamed for rigging elections, sent officials from his office to conduct a mobile voter registration exercise, but the officials who carried out the process made 'it difficult for people in urban areas to register' (*ibid.*). The officials demanded proof of residence bearing the name of the person attempting to register, despite knowing that most people in high-density

townships do not own houses, but rent accommodation without formal leases (ibid.). After a flurry of complaints, Cabinet ordered that people be allowed to register after signing an affidavit confirming that they lived in the constituency; however, registry officials failed to provide the affidavits. Thus, for the MDC, it was clear that the RG's office was 'staging a go-slow in MDC strongholds so that few people register', adding that 'in areas where they think ZANU-PF is strong, they are more efficient' (ibid.). Mudede raised more eyebrows when he said 'his department did not have enough money to abide by constitutional requirements that voter registration should take place for at least 30 days in all wards' (ibid.).

Although Zimbabwe enjoyed relative political stability for most of its post-independence years, its election campaigns have not been problem-free. Every election since independence, particularly those of 1985, 1990 and 2000 were marked by varying degrees of intimidation and violence (Sachikonye 2003). 'The barometer [of bad behaviour measured through election violence and intimidation] shot up significantly during the 2000 election campaign' (Sachikonye 2003, p. 126). This was because the MDC mounted enormous pressure to have voters' roll regulations and electoral laws transformed following the movement's formation in September 1999. Claims of electoral fraud or cheating escalated during and after the 2000 elections.

THE IMMEDIATE POST-2000 PERIOD

Elections and their Impact in Zimbabwe, 2000-2005

Although Zimbabwe had been a multi-party state since before independence, it became a dominant party state after independence in 1980 when elections were generally free and fair, but the outcomes were hotly contested (Moyo 2014). Zimbabwe faced electoral and post-electoral stand-offs as a consequence of the electoral process 'not [being] free and fair'¹ and the fear that pre-election promises would not be fulfilled. The weaknesses and strengths of Zimbabwe's electoral system were revealed in the 2000 parliamentary election following the referendum held that year. Firstly, a free vote resulted in the government's defeat in the referendum (Dorman 2003, p. 845). In the poll 54% of the voters rejected the draft constitution, thus legitimating organisations and ideas outside the hegemony of the ruling party state. The voting public (albeit a largely urban

1 Due to a broad set of factors that undermined a level playing field. These included (1) A repressive governance system including a plethora of restrictive laws which undermined fundamental freedoms, muzzled the print and electronic media and emasculated the judiciary; (2) Pervasive intimidation, arbitrary arrests of opposition members and dispersal or raid on their meetings; (3) A highly partisan and inefficient election management system with overlapping and conflicting legal authorities (EISA 2005, p. 2).

selection of the potential electorate who voted against, compared to the 46% who voted for the Constitution) affirmed the claims made by the NCA to speak and act outside the remit of the state (ibid.). However, the referendum's rejection of political practice since independence set the stage for the violent and coercive politics of 2000 and beyond (Dorman 2003, p. 845). The weaknesses of the electoral system were highlighted by violence and intimidation signalling a decade-long slide into authoritarianism (Sachikonye 2013, p. 178). Overall, election observers judged the 2000 election a credible process (Sachikonye 2003). Nevertheless, the earlier parts of the election were marked by the RG's failure to conduct proper voter registration and delimitation. The RG's office seemed to favour a particular candidate, as revealed in his personal sentiments during the 2002 election that 'the sitting president would be the ultimate winner' (*Short Wave (SW) Radio Africa* 2012). Such opinions usually flew into the face of the people and civil society organisations (CSOs).

Referring to the 2005 parliamentary election, the National Constitutional Assembly (NCA), a CSO advocating for constitutional reform, described the election as 'flawed, un-free and unfair' (NCA 2005). The NCA said it was 'un-free' because electoral indiscretions/irregularities reflected the prevailing state of affairs dominated by the lack of freedom of association, assembly, movement, and expression; and the incidence of political violence, disputes over electoral procedures, lack of voter education and the use of food as a political weapon (ibid.). The latter was confirmed on 18 April 2021 in a personal interview with a ZANU-PF youth of Nemamwa village, Masvingo rural, who intimated that 'some Non-Governmental Organisations (NGOs) use the register they get from the village headmen to distribute food handouts occasionally'. Only ZANU-PF cell members were on the registers, hence the alienation of opposition supporters from community food-distribution programmes. In a Zoom interview on 28 April 2021, an MDC activist based in the United Kingdom (UK) said, 'people in rural areas are fed false narratives of propaganda and are even told that food handouts that come from NGOs are being provided by ZANU-PF'. In a WhatsApp interview on 29 April 2021 a liberation war veteran from Lower Gweru (Midlands Province) concurred with the respondent from Nemamwa, saying that ZANU-PF is 'the hand that feeds us [family and children] ... one cannot bite the hand that feeds him ... ZANU-PF has empowered me since I came back from the liberation struggle in 1979 ... I have benefited from the land reform where in 2000 I got an A1 [small-scale] plot in Somabhula'. This makes it difficult for the opposition to be accepted in most rural areas, which constitute 68% of the population living in communal and resettlement constituencies (ZIMSTAT 2017, p. 32).

Although pre-2000 election observation was conducted by both local and international elections monitoring agencies and observers, including the

United Nations (UN), this trend changed in the post-2000 era as international monitoring was limited and increasingly proscribed. Limited international election monitoring led to flawed elections. In the opinion of the NCA (2005) electoral indiscretions or anomalies increased. The NCA's consolidated reports on elections and electoral irregularities in all provinces and constituencies entailed a broad assessment of the pre-election climate, covering interference with basic freedoms. Freedom of association, for example, was indicated by whether party supporters were able to wear party regalia or insignia, and by restrictions, or the lack thereof, on erecting party posters.

The political climate included the suppression of the independent media (dating back to the arrest in 2001 of two *Daily News* journalists, editor Geoff Nyarota and Wilf Mbanga, who were not election candidates), organised political violence, and intimidation of opposition supporters especially in rural constituencies (Voanews.com 2001). In the rural areas a common strategy by ZANU-PF was using traditional leaders to pressure local voters into supporting one particular party. There were electoral disagreements on the absence of voter education and manipulation of food as a political weapon (Human Rights Watch 2003). The use of food as a weapon was achieved primarily through the state's maize-marketing monopoly, the Grain Marketing Board (GMB), to threaten rural voters' access to food (NCA 2005). The NCA's evidence on electoral violence, even in previous years, shows that recent election-related violence in Zimbabwe and elsewhere has led to questions on whether regular elections reduce the risk of conflict and lead to stability, democracy, peace and development (Kriger 2005). In Zimbabwe, elections were hotly contested but due to their shortcomings, did not lead to democracy or the attainment of peace.

Elections, which traditionally served as a major yardstick for participation in endorsing or influencing regime change, have thus lost credibility. Limiting democratic theory and practice to electoral pluralism encouraged a culture where democracy was limited to periodic elections in which the results were sometimes rigged, and their organisation seriously flawed (Nyandoro & Ababio 2011). By 2005, such circumstances created widespread discontent, contestation and a lack of trust in the political principles on which the contemporary democratic project rested, as the Zimbabwean government under Mugabe was neither representative nor accountable to the citizenry.

Election Contestation and Fraud in Zimbabwe after 2005

From 2000 to 2018, there were numerous election contestations by the opposition MDC against the ruling party and against an electoral system presided over by ZEC – the government elections flagship under the Ministry of Justice, Legal and

Parliamentary Affairs. ZEC lacks autonomy because it is funded by a ministry and is accountable to Parliament through the Ministry of Justice. One of ZEC's integrated responsibilities includes delimitation before elections; but it has no power to proclaim the election date, which is instructed by the president in the elections. The country's constitution and electoral act give the president this power; but in the interests of electoral fairness this must be in the hands of ZEC. Weaknesses of Zimbabwe's electoral system included the delay of the voters' roll, media polarisation, claims that some ballot papers were counted twice, electoral manipulation and the existence of institutional bias, pointing to electoral mismanagement and fraud (Masunungure 2014); and ZANU-PF control of electoral machinery including ZEC, the RG and his office. Through control of these election institutions, the ruling party had the power to tamper with the voters' roll and ballot (vote) counting.

The ZEC failed to delete the names of dead people (ghost voters) from the voters' roll, especially in rural constituencies which are ZANU-PF strongholds. There is also evidence that during election time ZANU-PF clandestinely bused people to vote in certain constituencies. Some rural voters, for instance, were bused to urban areas (seen as MDC areas/strongholds) to cast their ballots in an endeavour to dilute the urban vote (*ibid.*). The post-electoral environment in Zimbabwe thus witnessed disputed claims around the legitimacy of elections, the fairness of ballot (vote) counting, legitimacy of the leader and disputations over the number of terms of office for an incumbent president. The president of the First Republic had overstayed his welcome, apparently aided by these factors. There had been no presidential term limit before the 2013 Constitution, as Mugabe had used the RG's office to manipulate electoral results. By the time he was ousted from office by the army in what has been described by the ruling party as Operation Restore Legacy, he had been in power for 37 years, from 1980 to 2017 (Tendi 2020).

In the absence of any effective presidential term limits in Zimbabwe's constitution until 2013, presidents could win elections or assume life presidency. Coupled with voter irregularities, this led to the expression of serious concern by political parties and other stakeholders in Zimbabwe, culminating in the dissolution of the Electoral Supervisory Commission (ESC) and the establishment of an independent body, ZEC, in 2004. ZEC was to control, manage and oversee all electoral processes in Zimbabwe in line with the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections which, *inter alia*, included adherence to full participation of citizens in the political process, and freedom of association. ZEC and SADC were both seen as promoting democratic principles. However, claims of electoral fraud or cheating through rigging, vote miscounting, and the ZEC's omission of urban voters in

MDC strongholds from the voters' register, continued to be a major blight on Zimbabwean elections, as the 2005 elections showed.

ZANU-PF was victorious in 2005 (Sturcke 2005), taking 51 seats to the opposition MDC's 33. The ruling party had entered the election needing only 46 seats for a simple majority in the 150-seat Parliament in which 30 members were the president's direct appointees. This 2005 election was the first in the region to be conducted within the framework of the SADC Principles and Guidelines confirmed by the Heads of State and Governments Summit in Mauritius in 2004 (*Zimbabwe Election Support Network (ZESN) 2005*). Although the 2005 elections were relatively peaceful with no major incidents of intimidation or violence reported, there were still electoral challenges. The opposition demanded the abandoning of draconian laws such as the *Public Order and Security Act (POSA)* and the *Access to Information and Protection of Privacy Act (AIPPA)* which severely constrained freedom of association and political tolerance during election campaigns. The need for a truly independent Electoral Commission to monitor state resources was also stressed, as well as for an impartial public media.

In fieldwork interviews conducted on 9 April 2022 via WhatsApp, a Bulawayo resident of Magwegwe North complained that 'the election was a sham and fraudulent'. He asserted that 'massive coercion was employed particularly in the aftermath of Operation *Murambatsvina* ['Move the rubbish', forcible slum clearance in 2005] and made voters scared to vote for any political party other than ZANU-PF'. Another interviewee in Bulawayo also described the 2005 elections as 'a sham and undemocratic'. In follow-up interviews in the city a liberation struggle veteran who sought anonymity confirmed these positions. Similarly, a Gweru resident interviewed telephonically on 12 April 2022, said that the 2005 election and others before and after were marked by 'electoral fraud, ballot-stuffing and [discrete forms of] violence'. In separate interviews in the Midlands on 17 April 2022, a resident from Kwekwe urban constituency and another from Mbizvo high-density suburb, agreed with these sentiments on electoral fraud and theft.

The six interviews conducted in Harare provided empirical material to show that most urban voters wanted fair elections and a change of government, but believed that the rural electorate was letting them down in realising this goal because most rural-dwellers voted for the ruling party (Muzorewa & Nyandoro 2021, p. 150).

A previously unresolved concern from 2005 was the claim by opposition MDC and western powers that the election was fraudulent. Contrary to the perception of a tranquil political environment, Zimbabwe's elections after 2005 were even more hotly contested, as President Mugabe frequently showed signs of dictatorial or authoritarian rule. He and ZANU-PF were empowered by the Constitution to do so; but the appointed commissioners, ZEC and the RG's office,

failed to intervene as they lacked autonomy. This lack of autonomy often produced electoral outcomes that favoured Mugabe ensuring that he perpetuated his reign, demonstrating how patronage and authoritarianism can function under ostensibly democratic institutions. This validates Seeberg's (2018) argument that 'while electoral revolutions in the Philippines and the post-Communist world [for example] have ousted dictators, autocrats from Mexico to Zimbabwe have cemented their rule through regular multi-party elections'. Institutions like ZEC, the Delimitation Commission and the judiciary often lacked integrity and impartiality because of their loyalty to Mugabe (Birch 2016), making them complicit in electoral fraud such as manipulation and tampering with the voters' registration evident after 2005.

After 2005 the country prepared for the first harmonised presidential, parliamentary and local-government elections in 2008, negating the idea of regular elections in Zimbabwe. Elections had become degraded, and in the absence of free and fair elections Zimbabweans did not regard their political system as an electoral democracy. Interviewed in Harare on 30 April 2022, an anonymous resident opined that 'Zimbabwe lacks democracy in elections', a view confirmed in group interviews by Muzorewa and Nyandoro (2021, pp. 150-151). In a survey conducted by the Mass Public Opinion Institute (MPOI) in 2005, more than 90% of the sampled population in Harare expressed concern about the lack of electoral democracy, and also blamed the government for an electoral environment characterised by frequent political violence. In this sense, the country was a pseudo-democracy – a political system which called itself democratic, but though several political parties contested the elections in a secret ballot, offered no real alternative for its citizens. This was in contrast to the spirit of the February 2008 *Electoral Amendment Act* which articulates the general principles undergirding democratic elections in the country. These principles are based on free elections where individuals and political parties participate peacefully. Section 3 of the amended Act states:

Subject to this Act and the Zimbabwe *Constitution* of 2013, every election shall be conducted in a way that is consistent with the following principles:

- (a) the authority to govern derives from the will of the people demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot;
- (b) every citizen has the right:
 - (i) to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the ground of race, ethnicity, gender, language, political or religious belief,

- education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;
- (ii) to join or participate in the activities of and to recruit members of a political party of his or her choice;
 - (iii) to participate in peaceful political activity intended to influence the composition and policies of Government;
 - (iv) to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government; and
- (c) every political party has the right:
- (i) to operate freely within the law;
 - (ii) to put up or sponsor one or more candidates in every election;
 - (iii) to campaign freely within the law; and
 - (iv) to have reasonable access to the media.

When these provisions are read in conjunction with the fundamental civil and political freedoms, rights and liberties guaranteed in the Declaration of Rights (Chapter 3 of the *Constitution*) – freedom of assembly, freedom of expression, freedom of movement, protection from torture, inhuman or degrading treatment, the protection of the law, freedom of conscience et cetera (*ibid.*) – it is clear that the juridical framework supports the general principles of democratic elections. However, at the empirical level serious deficits arise and elections in Zimbabwe vitiate the fundamental concept of representative democracy, that voters and civil society ‘choose the guardians [rulers]’.

The 2008 Elections: ‘Who Will Guard the Guardians?’ and Whose Victory was It?

Was the people’s vote respected or was the process rigged in Zimbabwe’s 2008 elections? This year marked the first synchronisation of both presidential and parliamentary elections. Election rigging (conducted via assisting voters before and after 2008) remained a grey area in Zimbabwe’s electoral process. According to the UN (quoted in a BBC report in 2013), Zimbabwe is the most literate country in Africa with a literacy rate of more than 90%, but African Union (AU) election observers noted a worryingly ‘high number of assisted voters in many polling stations nationwide’ (*ibid.*). Assisted voting was more noticeable in rural areas: in 49% of polling stations more than 25 people were assisted to vote as opposed to 5% of urban polling stations. The AU mission gave the example of Muzarabani district in Mashonaland Central, where it observed that 97 of 370 voters were assisted at one station, 77 of 374 at a second station, and 85 of 374 at a third station (*ibid.*). The MDC argued that in Muzarabani North, more than half of the 17 400 voters were

assisted. Party secretary-general, Tendai Biti, said literate people were told to claim they were illiterate so that they could be 'assisted by ZANU-PF people to vote'. However, ZANU-PF denied the allegations of assisted voting, saying 'the MDC was a bad loser' (ibid.). Nevertheless, several sources provided evidence of electoral fraud in 2008 and 2013. Reliefweb (2008), for example, indicated that in 2008, 8.7 million ballot papers were printed in Zimbabwe, 35% more than the 6.4 million registered voters. The AU said this was 'significantly higher than international best practices' which are between 5% and 10% and 'raises concerns of accountability of unused ballots' (ibid.). In Manicaland, Zimelections (2013) received a verified report from Chipinge South that 'voters [were) arranged in groups by headmen'. Another verified report to the site said 'Headman Chinyamukwakwa ... [issued] threatening [orders to] villagers that they will be evicted from the area if they vote[d] MDC [and not ZANU-PF]' (Zimelections 2013). 'Hundreds of thousands of people were [also] resettled in "strategic [rural and urban] areas" in preparation for the poll' (Reliefweb 2008); hence the people's will and free choice during polls remain contested.

Hurwitz (2008) claims that 'those who choose the guardians' (the people) 'will guard the guardians'. Yet, in the case of the 2008 harmonised elections in Zimbabwe, the choice of 'those who chose the guardians' was only partly fulfilled and respected in the first round of voting in March when the ruling party seemingly accepted defeat. Analysts, opinion leaders, independent observers and opposition political parties, especially the MDC-T², openly claimed victory over ZANU-PF. The election demonstrated that had Zimbabweans been allowed to make a free choice, Mugabe would have lost decisively to Morgan Tsvangirai, the MDC candidate (Tran 2008). However, no official results were announced for more than a month after the first round. After the recount and verification of results, ZEC announced on 2 May 2008 that Tsvangirai won 47.9% of the vote and Mugabe 43.2%, necessitating a run-off to be held on 27 June 2008. Denouncing these elections, Mugabe said, 'We will never allow an event like an election to reverse our independence, our sovereignty' (ibid.).

Despite electoral defeat staring ZANU-PF in the face, a stalemate was declared with an election run-off — but only after a month had elapsed before the results of the March election were released, unprecedented in Zimbabwe's post-1980 elections. ZANU-PF faced the possibility of electoral defeat and resorted to 'absurd retribution' and 'a trail of violence after the [March] ballot' and before June 2008 to intimidate voters (Amnesty International 2008). In an interview on 8 May 2021 a war veteran of Mountview rural resettlement in Marondera

2 MDC-T was the main faction headed by Morgan Tsvangirai and Arthur Mutambara after the MDC split in 2005.

(Mashonaland East Province) justified violence by saying ‘it is our [veterans of the struggle] duty as the elderly to protect the gains of the liberation struggle even if it means employing violence against those who want to corrupt the youth’. Highlighting the prevalence of violence in Zimbabwe during election time, an MDC activist observed that ‘it is difficult for the MDC to penetrate the rural areas because of the violent nature of the rural environment. My home at Juru growth point in Mashonaland East province was torched to the ground in 2008 because they [ZANU-PF] knew we were MDC activists. No one was arrested although we reported the case to the police, no docket was opened yet we lost all our property’. Known by his pseudonym Nyamasvisva, a security guard at Chitandara Secondary School in Chihota communal area (Mashonaland East), interviewed on 21 October 2021 at Makoni shopping centre in Chitungwiza, did not hide his violent side. He stated that ‘I was one of the base commanders during the 2008 election. I was responsible for disciplining people brought to the camp who had defected to the MDC’. He added: ‘I was young and naïve during the election campaign and I admit that I was a little overzealous; however, I felt that it was my chance to exhibit “leadership qualities” and avenge my uncles who had their headmanship stolen by outsiders’. Thus, violence was not only political but an opportunity to settle old scores.

The opposition claimed that ZANU-PF authorities were ‘using the extra time’ after the March election to prepare for a run-off (second round election). But they were preparing to unleash a campaign of ‘massive state-sponsored violence and repression’ as support for Mugabe appeared to waver. It was a reign of terror entailing violence, the intimidation of rural voters (ZANU-PF’s traditional support base), harassment, victimisation, the persecution of civil society, torture and body mutilations, or maiming supporters or purported supporters of the MDC (Human Rights Watch 2008). Civil society’s voice was silenced because civic organisations were viewed (sometimes erroneously) as agents of opposition political parties. This terror left children and women reportedly bearing the burden of political violence, which was largely absent from the first round of elections (ibid.). ZANU-PF refuted the claim of violence and accused the MDC in the public media (*The Chronicle* 2011), leading to a lack of trust in elections and governing principles. The Zimbabwe Human Rights NGO Forum, composed of 21 NGOs, worked to prevent organised violence and torture in Zimbabwe (Peace Direct, 2017). These institutions agree that political violence by state agents and their ancillaries during elections was commonplace (ibid.). Details of violence and distrust for the elections were illustrated in civil society, with ‘public opinions and [lack of] trust in political institutions’ (Alemika 2007). Afrobarometer provided details of this violence and distrust in Zimbabwe’s elections, in comparison to South Africa (ibid.).

Alemika (2007) claimed that by 2007 the percentage of respondents in Zimbabwe that trusted political institutions like the president, Parliament, the Electoral Agency, ruling party, courts and police, was at a low between 29% and 53%. In South Africa, the percentages for the same categories were much higher at between 48% and 69%. Those who considered the 2005 election free and fair was higher in South Africa at 75% than Zimbabwe with 36%. Those very satisfied or (just) satisfied with democracy was 63% for South Africa and much lower for Zimbabwe at 14% (ibid.). This mistrust was confirmed for Zimbabwe in June 2008 when, as the politically-motivated election violence and intimidation escalated, Mugabe implied that he would not cede power to the opposition (which had no liberation credentials) if he lost the run-off election (Britannica.com 2008). MDC leader Morgan Tsvangirai responded on 22 June by announcing his withdrawal from the presidential run-off to be held on 27 June 2008. Tsvangirai's intention to boycott the elections came barely four days before the scheduled election in the midst of a rapidly deteriorating security situation (Reliefweb 2008).

The electoral crisis in the country came amid a burgeoning economic crisis and downward spiral dating back to the late 1990s,³ making the 2008 election a sham. The crisis constituted a major challenge not only to Zimbabwe's democracy, but also to regional stability in southern Africa. Tsvangirai had repeatedly warned of the impossibility of the election being free and fair given the country's tempestuous political and economic climate.

Nevertheless, the election was still held, and Mugabe was declared the winner despite assertions from independent observers that the election was neither free nor fair. The opposition MDC complained of the 'stealing' of elections in March and June 2008, in the same way as the ensuing July 2013 elections were 'stolen' (Africa 2013). The fact that the June 2008 election was never held, but had a manipulated outcome, prompted widespread international condemnation, most notably from African countries such as Botswana and South Africa that had previously supported Mugabe. This condemnation culminated in calls for the MDC and ZANU-PF to form a power-sharing government as a compromise. The country was saved from the prospect of more political turbulence by the establishment of the Government of National Unity (GNU) in 2008. GNUs – an interim and transitional process – emerged through the manipulation of electoral results and the failure to produce a clear-cut winner, compelling former political antagonists ZANU-PF and MDC into a marriage of convenience (ibid.). Although GNUs were presided over by the African Union (AU), they were undemocratic, anti-people and heralded the demise of democracy not only in Zimbabwe but

3 The economic crisis deepened from 1997/1998 onwards, with massive poverty culminating in food shortages, hyperinflation, the demonetisation/devaluation of the Zimbabwean currency (unstable exchange rate) with adverse consequences, particularly for the poor.

on the African continent, because they ignored the will of the people expressed in an election.

In short, the conduct of the March and June 2008 elections not only negated the people's voice but also the influential civil society constituency which plays an important role in any democracy. This unanticipated outcome in the 2008 elections made ZANU-PF panic, and resulted in the unleashing of violence on MDC-T members and supporters, supposedly by President Mugabe and the ruling party. At local and national levels, election and post-election violence caused a humanitarian crisis as the nation faced death from politically-motivated violence, hunger and economic crisis. To protect their followers and the citizenry in general, the MDC refused to participate in the run-off election earmarked for 27 June 2008. Opposition parties, independent observers and the international community considered Zimbabwe's democracy record tainted by the 'stolen' March 2008 election and ensuing violence – a position endorsed by the private media (*The Standard* 2008b) but refuted by the public or state media (*The Herald* 2008). The Zimbabwe Human Rights NGO Forum (2008) and COG (2018) social surveys reported significant human rights abuses during this time, but the election went ahead despite the people's views (as reflected in the first round of the election) being crushed.

An anonymous Harare liberation war veteran, interviewed on 12 July 2019, and a member of the Combined Harare Residents Association (CHRA) in the capital's Central Business District (CBD) (interviewed on 1 August 2019) both claimed that elections were for show and for affirming officeholders as their outcomes were not respected. Democracy in Zimbabwe was, it seems, deployed merely as the means to an end by the ruling elite, i.e. to usurp and retain political power. This argument dovetails with Mkandawire's observation that 'around election time, one of the problems we are faced with in parts of Africa is that many leaders seem to think the issue is not voters choosing leaders, but rather leaders choosing voters' (Mkandawire 2008).

Zimbabwe's GNU was mediated by former South African President Thabo Mbeki, to address political and electoral issues after the March 2008 harmonised elections, and avoid chaos through his controversial 'quiet diplomacy'. There is a telling analogy with Kenya's similar experiment in denigrating citizens' rights to a free election.

Kenya was faced with a humanitarian crisis and growing international condemnation in the wake of the post-election violence after the December 2007 presidential election; consequently, the two protagonists attempted a settlement. President Mwai Kibaki of the ruling Party of National Unity (PNU) and the main opposition leader, Raila Odinga, of the Orange Democratic Movement (ODM), reluctantly entered into a transitional power-sharing arrangement as

a compromise deal with a debatable legal basis. In Zimbabwe (as in Kenya), coalition agreements were reached in an attempt to appease a potentially explosive electorate feeling short-changed after voting. This agreement was merely a conflict prevention strategy (Mapuva 2010). Chigora and Guzura (2011) claim that since a government of national unity elevates the state above the will of the people, it is antithetical to democracy. GNU arrangements certainly indicated voter manipulation, and elections were therefore ‘without democracy’ (Schedler 2002), resulting in the opposition boycotting them in protest. For Seeberg (2013), Zimbabwe was in fact a hegemonic autocracy between 1980 and 2008, that is, a non-democratic regime ruling with the aid of a dominant political party, but holding multi-party elections. The country entered the 2013 election in that state.

The 2013 Harmonised Elections in Zimbabwe

The July 2013 election following the controversial June 2008 elections marked the first harmonised elections held under the new constitutional framework (*Constitution* 2013). Voter education campaigns were conducted on state media; people were encouraged to vote through different forms of media, though the public/state media had a bias towards the ruling party; and biometric voting made voter registration easier than the system used in previous elections. The voting process was thus faster resulting in the swift collation of results. The 2013 election, which ZANU-PF – with years of experience in running and skewing elections (Southall & Slabbert 2013, p. 137) – saw as a ‘moment of truth’ in anticipation of victory (*The Chronicle* 2013), was relatively peaceful compared to June 2008. The ruling party scored a landslide victory, attributed to the revolutionary party’s programmes which appealed more to the rural than urban populace (Muzorewa & Nyandoro 2021, p. 145). The programme’s focus on land redistribution became ZANU-PF’s main rallying cry after the implementation of the FTLRP in 2000 which Muzorewa & Nyandoro (ibid.) view as voter coercion rather than voter preference. Regardless, these programmes (coupled with ZANU-PF’s organisation) helped the party to win the elections.

Raftopoulos (2013, p. 15) contrasts ZANU-PF’s well-planned, organised and developed political party structures with the relatively undeveloped organisational structures of opposition MDC in mobilising the rural vote in particular. Notwithstanding the MDC’s organisational flaws, internal political bickering, and the fact that ZANU-PF could have won without coercion, Masunungure (2014) claims that the ruling party manipulated the 2013 elections in its favour through the partisan application of the law, election bribery and unfair media coverage (ibid.). For example, ZANU-PF gave itself unlimited and ‘reasonable access’ to local radio and television (TV) during election campaigning.

The term 'reasonable access', though not defined in the *Electoral Act*, is covered in the *Zimbabwe Electoral Commission (ZEC) Act*, Part 1VA, especially Section 16C(1): 'Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed in regulations made by the Commission, with the approval of the Minister ...' (*The Electoral Act* 2004). In reality, opposition political formations were not accorded free access to broadcasting services by the Zimbabwe Broadcasting Corporation (ZBC). According to activist Mundawarara 'radio is the most used form of media and most of the radio channels are controlled by the state. Hence there is high probability of people in rural areas feeding on state propaganda'. The MDC-T entered the election at a disadvantage, lacking access to ZBC services; their resounding electoral defeat on 31 July 2013 signified an important watershed. This spelt the end of the GNU, and ZANU-PF's return to full political control and dominance. Although the AU and SADC applauded Zimbabwe for peaceful elections, the irregularities they noted included the bias and polarisation of public media.

ZESN (2005) and other civil society organisations complained about the lack of voter education, a 'characteristically' flawed voter registration process, and failure to make the voters' roll available timeously to political parties and stakeholders. Similarly, the opposition MDC – its political naivety and loss of political providence in 2013 aside – raised genuine concerns around the same issues, in addition to declaring the elections 'not free and fair', 'stolen' from the people, and fraudulent (*The Independent* 2013). Addressing supporters in Mutare in the eastern highlands province of Manicaland, MDC founding president Morgan Tsvangirai reported that his party had compiled a dossier detailing information on how the elections on 31 July 2013 were 'stolen' by the military on behalf of incumbent President Robert Mugabe and his party 'after defeat' (*Africa* 2013; Thompson & Kuntz 2006). In spite of the public media arguing that 'still [there was] no proof Mugabe rigged elections' (Thornycroft 2013), Tsvangirai claimed that resources to fund the 'highly militarised' election and the 'greatest electoral theft of our time' were siphoned from diamond revenues, adding he had evidence (not divulged) of other countries 'helping Harare rig the elections'.

Tsvangirai added that problems contributing to the election 'farce' were the voters' roll, voter registration and displacement, ballot printing, fake voter registration slips, and abuse of traditional leaders in what he termed 'the harvest of fear' (*Africa* 2013). Addressing supporters in Mutare he said 'we must celebrate and [re]claim our victory... Today I want to make it clear to those who have always doubted us and our resolve for real change that we had budgeted for a marathon and not a sprint. So, we remain on course', adding 'We have always known that the change and the transformation that we seek are not instant coffee' (*ibid.*).

Despite calls to reclaim the stolen election and demands for regime change, ZANU-PF rule persisted beyond the watershed election of 31 July 2013. Chan and Gallagher (2017) debunk the claim that ZANU-PF 'stole' a rigged election, and instead demonstrate five years of political mobilisation by the party following its drastic loss in the 2008 elections. In comparison, the MDC had been unable to develop policies and practical solutions with deep national foundations (*ibid.*). The ruling party reassumed its dominance following not only the electoral disputes in 2008 but also an outbreak of cholera, which led to the death of approximately 4 000 people while the main political parties were bickering. Apart from Tsvangirai calling the election a fraud, 2008 is also remembered for his signing of the Global Political Agreement (GPA) on 15 September 2008. This ushered in the GNU that did not survive beyond 2013. But, if the opposition leader's allegations of fraud and the governing party's 'stolen' elections are valid, then the election was merely a contest to usurp power from the people. The elections in 2018 – the first in the Second Republic – were to be a test for this.

Zimbabwe entered the 2018 elections under the banner of the 'new dispensation' following the expulsion, under duress, of the former ruling party leader, replacing him with a new president. Mugabe's life was characterised by triumph and crisis, power and violence (Chan 2011); after his resignation on 21 November 2017 Emmerson Mnangagwa was sworn in as president on 24 November 2017. This paved the way for elections on 30 July 2018 with as many as 23 presidential candidates, the largest number in the history of elections in the country.

For the first time in post-2000 Zimbabwe a significant number of international observers and media were invited and accredited to witness these elections, reflecting the administration's commitment to the re-engagement policy and efforts towards normalising international relations. Peace prevailed on voting day, with the election generally well organised. However, serious and unanticipated disturbances occurred when approximately six unarmed civilians were shot dead, arguably by the army, on 1 August 2018. Amid the confusion, the incumbent president was declared the winner by ZEC with 50.8% (2 456 010) of the vote compared to MDC Chamisa's 44.3% (2 151 927) (COG 2018). This result was contested in the Constitutional Court (Concourt) in open judiciary proceedings aired by the ZBC. Again, as in preceding elections, allegations of violence, voter intimidation, electoral fraud, electoral theft and cheating were levelled against ZANU-PF. Despite the Concourt upholding the verdict that the incumbent president had won, questions remained about the impartiality, neutrality or independence of the judiciary in electoral matters. There were also questions as to whether the election was held in a democratic environment or was yet another case of pilfering from under the noses of the electorate, as the MDC argued. Such

post-election contestations had a negative impact on the democratisation process in Zimbabwe, let alone Africa. It remains to be seen what electoral transformations will be achieved in the forthcoming elections in 2023, and whether they will be democratisers or a sham.

CONCLUSION

This study has demonstrated that in the post-2000 period, elections in Zimbabwe were not fully democratic as they failed to be free and fair. The study emphasises process issues and demonstrates the degraded quality of elections in Zimbabwe, and how disputed elections manipulated and annulled the will of the people, usurping power and political rights. Elections were not a mechanism for the free expression of the people's will but were used to affirm rather than challenge the incumbents and were primarily for show, manipulated to produce a pre-determined outcome affirming the current leaders irrespective of their performance.

The study finds that the elite manipulated the system to retain power by intimidation, electoral deceit, corruption, state capture, and political dominance. Many Zimbabweans became increasingly sceptical about the value of elections given the rampant vote manipulation, the lack of transparency in election monitoring bodies and charges of corruption. An aversion to international election observers reduced the credibility and transparency of elections.

Electoral processes that lack transparency breed public mistrust, protest, and violence. A common indictment of Zimbabwe's elections and resultant post-electoral conflicts are the perennial concerns over election legitimacy, given that the national electoral commission (ZEC) and the judiciary lack independence. Zimbabwe's past elections failed to promote democracy in a peaceful transfer and were a means of usurping power from the people. Different pathways have to be found to inject new levels of trust in the people, the electorate, civil society and opposition political formations before the 2023 elections. Electoral reforms should be upheld in Zimbabwe because elections in general and multiparty elections in particular make a fundamental contribution to democratic governance.

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THE POLITICAL PARTICIPATION OF YOUTH IN MOZAMBIQUE'S 2019 GENERAL ELECTIONS

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ABSTRACT

This article discusses the political participation of youth in Mozambique's electoral processes, specifically the 2019 general elections. The results were obtained through interaction (semi-structured interviews) with young members and institutional representatives from four political parties, who explained their views on youth and political participation during elections. The interviews were conducted between April and September 2021 through virtual platforms. We also carried out a detailed analysis of the manifestos of three political parties. The study finds that Mozambican political parties do not have a clear vision of young people's aspirations, since the definition of the 'youth problem' is dominated by adults. In addition, young people's issues have been generalised without considering the specific concept of what it means to be young. However, in order to maintain the social and economic benefits provided by their political parties, the same young people assume that adults continue to be an example to follow in guiding the destiny of the country.

Keywords: political participation, elections, youth, Mozambique

INTRODUCTION

The debate about youth and politics integrates several studies developed in recent years (Oyedemi, Onodera & Suurpää 2016; Andrew 2020) which assume a degree of fatigue regarding formal politics on the part of voters in general, and young people in particular. However, these young people were once seen as real agents of change in the political reality of several African countries (van Gyampo & Anyidoho 2019). This debate is not new; according to Mbembe (1985, p. 20), in most African states young people are 'the spearhead of the nation ... the surest guarantee for the future,... and the future in the present'. The author argues that for the African states, there is only one definition of youth; discourses,

therefore, proceed by homogenisation and the state refuses to recognise the plurality of conditions that young people experience. Thus, these young people have been perceived as a group sensitive to anything that could lead to the state's destabilisation.

(...) Open to imported ideologies, they would be easily manipulated by external forces that could use them as instruments to challenge national security. In several African countries, young people are identified with threatening perils and the instinct to destroy. Hence, every speech addressed to them functions as a warning.

(Mbembe 1985, p. 19)

Mbembe endorses the tendency in the statement made by the first president of independent Mozambique, Samora Machel, at the creation of the Mozambican Youth Organisation (OJM) on 29 November 1977. He emphasised the historical importance of youth as crucial in the construction of the country, highlighting the need to be vigilant in defending the country. In several of his public speeches, Machel called the Mozambican youth the sap of the nation, contributors to the country's liberation from colonial domination to democracy. President Machel's speech is relevant to understanding the role that youth played in Machel's time, and its meaning for current political actors.

A discussion about youth and politics needs a definition of political participation, even if there is no consensual approach to this subject. According to Ekman & Amnå (2012), scholarly interest in political participation is justified by the concern about declining levels of civic engagement, low electoral turnout, eroding public confidence in the institutions of representative democracy, and other signs of public weariness, scepticism, cynicism, and lack of trust in politicians and political parties. Research on citizens' engagement in politics has conventionally focused on electoral participation. Verba and his colleagues assert that by 'political participation we refer to those legal acts by private citizens that are more or less directly aimed at influencing the selection of governmental personnel and/or the actions that they take' (Verba, Nie & Kim 1978, p. 1). They used four dimensions of participation: voting referring to elections; campaign activity, including membership in or work for political parties and organisations, as well as donating money to such parties or groups; contacting public officials; and cooperative or communal activities, basically understood as all forms of engagement focused on issues in the local community.

Nonetheless, political participation consists of more than elections. For example, Teorell & Torcal (2007) suggested a more extensive typology

encompassing five dimensions, of which electoral participation is the first. Consumer participation taps into the role of citizens as critical consumers and covers donating money to charity, boycotting and political consumption, as well as signing petitions. The third dimension is party activity: to be a member of, active within, do voluntary work for or donate money to a political party. Protest activity is the fourth dimension, which covers such acts as taking part in demonstrations, strikes and other protest activities. Contacting organisations, politicians or civil servants constitute the fifth dimension, that is contact activity.

In examining political participation as more than a reductionist dimension of voting, this article aims to discuss youth political participation in electoral processes, specifically the 2019 general elections. Much of the literature (Oinas et al. 2018) indicates that young people have a decreasing interest in elections, even if this may not be as evident in the case of Mozambique. In general, young people appear to believe that their actions may be less effective in changing governance – what may be considered youth fatigue in participation (Cammaerts et al. 2016). For van Gyampo & Anyidoho (2019), because of their material and social conditions young people are often portrayed as politically indifferent and distrustful of the state’s capacity to meet their needs. Hence, young people are less likely to believe that voting is a civic duty, although they have other less conventional forms of political participation and engagement, such as demonstrations, petitions, or opinion articles (Sloam & Henn 2019). This also refers to the National Democratic Institution (NDI) (n.d), considering that despite constituting more than half of the population in many countries, including Mozambique, young people often find themselves marginalised from mainstream politics and decision making.

They [young people] struggle to gain the respect of public officials and are seen as lacking the skills and experience to engage in political activity and lead positive change in their communities. This exclusion, combined with limited access to educational and economic opportunities, creates a sensation of stagnation and frustration with the status quo (NDI). According to ACE project (n.d), although official voter turnout figures are not consistently available from electoral authorities across regions, data collected from surveys conducted in different continents sketch a discouraging picture. It shows that while in the past political engagement of citizens was mainly channeled through activism in political parties (through membership, voluntary work, door-door campaigning or attending meetings), in recent years political parties have been struggling to attract new party members, and in particular young people.

Analysing the Afrobarometer data from 16 African countries between 2005 and 2015, Lekalake & Gyimah-Boadi (2016) have shown that although young people are less interested in politics than they had been previously, significant proportions of this group still vote. In addition, Round 8 (2018/2019) of Afrobarometer data indicates that two out of three young people between 18 and 35 years voted in the last national election, and more than half reported being interested in politics and having contacted a community or political leader.

Discussing elections seems to have become a topic of less interest, since many studies have shown that, in recent years, democracy is in a crisis (Przeworski 2019) because the 'ritual of voting' (Déloye & Ihl 2008) is no longer relevant, particularly for young people (Augusto 2008; Andrew 2020). In Mozambique, this is due to the emergence of 'new escapisms of political participation' (Tsandzana 2020), making voters interested in alternative means of engaging in politics. However, other studies have shown that elections are one of the most privileged ways to participate in political life (Youth Parliament of Mozambique 2014).

According to a recent study published by EISA (2021) and IMD (2022), Mozambique has had many reasons to increase the political participation of youth. This is linked to the authoritarian political culture, as well as the restrictions and excessive control of freedom of expression, which have become more acute in recent years. Equally, the same studies suggest that despite the emergence and opening of new spaces for political participation, such as social networks, the political participation of young people is still limited.

The structure of this paper consists of the introduction, followed by the methodology, a general discussion of politics and youth in Africa, and the Mozambican context. The conclusion is a preliminary analysis prior to further discussion of the topic.

METHODOLOGY

The research was conducted through interaction (semi-structured interviews) with young members and institutional representatives from four political parties (Frelimo, Renamo, MDM and *Nova Democracia* (New Democracy)) in Mozambique, who explained their views on youth and political participation during elections. The interviews were conducted between April and September 2021 through a virtual platform and the main focus was on the general elections (presidential and legislative) held in 2019. We interviewed 14 young people from five cities: Maputo, Xai-Xai, Beira, Quelimane, and Nampula. Only the initials of the interviewees are presented, except for three youth leaders who agreed to be identified.

Although the city of Maputo has the highest number of representatives, we admit that urban-based informants cannot represent Mozambique. Amongst the interviewees, three were women. We understand that these conclusions

cannot be considered complete, given the inequalities not just the gender and the geographical gap, but also the fact that the thinking of the youth cannot be seen in a generalised way. On one hand, as noted by van Gyampo & Anyidoho (2019, p. 3), 'young people's participation in politics must be situated within the context of political systems, economic conditions, cultural repertoires, and social dynamics of religion and ethnicity'. On the other hand, Coffe & Bolzendahl (2011) state that gender relations have a particularly strong impact on youth politics. In patriarchal societies, young women's participation in formal politics is hindered by the socialisation of young people into gendered roles and by male dominance over resources and public spaces.

The fact that we interviewed youth leaders and ordinary party members is important in understanding that those who simply vote for political parties do not necessarily have the same point of view as party leaders. On one hand, there were restrictions on conducting some interviews because of the pandemic, as we could only be present in person in Maputo throughout the 2019 general elections. On the other hand, difficult access to the Internet did not allow us to access a greater number of young people, even though it is young people who most frequently access digital platforms as a means of political participation in Mozambique (Tsandzana 2018).

Furthermore, we noted excessive bureaucracy on the part of some young people, mainly in Frelimo. In order to speak with us they needed to present formal documents or ask for authorisation from the higher structures of their political parties. Thus, this article is not based on young people in general, but on those who are members of political parties. Specifically, we wanted to explore two complementary questions: how young people participated in the writing of political manifestos during the 2019 general elections; and the views of political parties towards young people. The analysis of these questions was based on the answers of each interviewee, an interpretation made by cross-referencing the interviewees' speech and based on the literature.

In addition, to interviews, we also carried out a detailed analysis of the manifestos of each political parties – *Frente de Libertação de Moçambique* (Frelimo), *Resistência Nacional Moçambicana* (Renamo) and *Movimento Democrático de Moçambique* (MDM) – to understand their promises to young people. These three parties are the only ones able to elect representatives to Parliament, and theoretically are considered to be the main political organisations in the country. However, the participation of youth is not limited to parliamentary representation but starts even before the elections, for example in the drafting of manifestos, the selection/election of candidates, and campaign activities. That means that the youth also participated in other political parties that contested parliamentary elections.

Thus, we have also included *Nova Democracia* (New Democracy) – a political party created in 2019 – which has been seen as a youth party because of its leaders and members. This party emerged as result of the Youth Parliament of Mozambique (a civil society organisation) and has gained much attention from young people since its creation. This choice is important, because political parties in Parliament and those not represented in Parliament are likely to have different levels of youth engagement. However, we had technical and methodological limitations to including more political parties, of which Mozambique officially has more than twenty.

Our analysis is the first academic exercise to be done in Mozambique, as it has an eminently youth-centred approach focusing on youth as the central actors in politics. The youth are the majority group during elections. In addition, an analysis of the manifestos offers an opportunity to compare the political parties in the chapter on young people, although a similar exercise had already been carried out to analyse the same manifestos but as a whole, without a specific focus (Cahen 2020).

YOUTH AND POLITICAL NARRATIVES

Mozambique has more than 30 million inhabitants, of which of over 50% are under 35 years of age (INE 2017) with an average age of 16 years. The discourse around youth has a double dimension. On the one hand, there is a debate about the statistics regarding the population considered young, given that there are contradictory reports and demographic studies on the same subject (Tsandzana 2022). On the other hand, the legal framework, especially the Youth Policy (2013), does not clearly define youth, which is currently considered the interval between 15 and 35.

Moreover, there is a tendency to differentiate the actions of young people according to successive generations, in comparison with adults. Each generation – understood in this article as a polysemic and conflictive notion (Mannheim 2011) – represents a specific era in the history of Mozambique, seen as carrying its own logic and methods of participation. During the presidency of Armando Guebuza (2005–2015), young people were seen as *geração da viragem* (turning point); a political analogy that sought to hold young people accountable as leaders of their own destiny. Studying youth is not a consensual exercise, especially when there is a great deal of conceptual divergence on the subject. It is not even clear that it has meant anything or ‘is only a word’ (Bourdieu 1984, p. 1). Youth may be defined as a historical construct linked to the transformations that have affected socialisation and education. It is also a cultural and institutional construct whose contours vary according to national borders.

Galland (2009) shows that to study youth we need to consider the difficulty of defining youth; in particular the passage from one age, such as adolescence, to another, adulthood. The concept of youth, in the sociological sense of the term, has not always existed. Indeed, it has a certain social consistency when these periods that define an uncertain social position are extended. Youth is thus a social invention, historically situated, whose definition evolves with society itself (Galland 2009, p. 5). However, Honwana (2013) understands youth as an anthropological concept, a social construct proposed by other sociologists. The author considers youth as *waithood*, a prolonged period of suspension between childhood and adulthood because youth transitions to adulthood have become so uncertain that a growing number of young men and women must improvise livelihoods and conduct their relations outside of dominant economic and familial frameworks.

Most governments, however, adopt the age dimension. In many African countries, including Mozambique, youth corresponds to the ages between 15 and 30/35 years. In the African Youth Charter, as in Mozambique, youth is considered to be between 15 and 35 years, but other definitions adopt 18–35 years. For example, 18 years of age confers the right to vote in several countries, including Mozambique; thus its importance in our definition of youth regarding electoral participation. The concept of youth has been associated with concepts of ‘radical’ and ‘rebel’, directly related to the age of the students (Sommers 2015). The international scientific community has long been engaged in a debate to define the age range of youth. For this article, we will consider youth as people of at least 18 years of age, the legal voting age in Mozambique, because our interest is directly related to political processes, particularly the 2019 general elections.

Africa is no exception to the rule that young people are less likely to be engaged in traditional politics than their older peers. While opinion polls show that young Africans discuss politics to the same extent, a lower percentage vote, and a higher percentage participate in protests (Resnick & Casale 2011; McMahan & Kalantaryan 2020). But frustrations around poor public services and a lack of jobs can equally contribute to apathy or a desire to leave the country in search of brighter prospects elsewhere. To change this reality, different initiatives have emerged seeking to reverse the current economic and social situation of young people in many African countries.

African states have established formal spaces for the political participation of youth, ranging from the creation of youth parliaments to national youth councils outside of voting. Many are also institutionalising government entities and youth research institutes and, through these mechanisms, enabling youth participation in international forums, as well as in the public policy process. However, these initiatives and institutions are not driven by the youth. In addition,

it should be noted that the United Nations concept of youth was born in the 1960s after the youth revolutions that shook several countries in Western Europe and North America.

For example, during the popular demonstration in Maputo in 2010 against the high cost of living, the former Minister of Interior (Police), José Pacheco, described the demonstrators, many of whom were young, as ‘vandals... destabilising the country’. This is an example of how young people are regarded in Africa. Although children and young people represent a very large demographic group, they are not yet seriously considered as significant and independent socio-political categories with their own way of life. Rather, they are generally perceived as being on the margins of social, economic, and political processes, often playing a less than promising social role (De Boeck & Honwana 2000).

Maganga (2020) explains that despite the existence of several platforms for participation and for the expression of discontent – such as forming or joining political parties and participating in local elections or forming civil society organisations – youth(s) in Africa have resorted to demonstrations as an effective way of expressing their views on various issues. This is probably because other platforms are not as effective as protests; they do not produce instant results, or youth(s) are manipulated or captured. This may also explain why many young people do not participate in elections, either as candidates or voters. The reasons for this are discussed in relation to the general elections in Mozambique.

GENERAL ELECTIONS IN MOZAMBIQUE

Multiparty politics was introduced in Mozambique in 1990. The first multiparty presidential and parliamentary elections were overseen by the United Nations (UN) and were held from 27 to 29 October 1994. They were based on the framework agreed upon in the Peace Agreement signed on 4 October 1992 between the Mozambican government and the rebel group Renamo, that put an end to a 16-year civil war and to almost two decades of single-party rule. The second multiparty national election took place in December 1999, and the third was in December 2004.

The fourth general elections were held in Mozambique on 28 October 2009. Incumbent President Armando Guebuza ran for re-election as the Frelimo candidate. President Guebuza was again challenged by opposition leader Afonso Dhlakama, who had stood as the Renamo candidate in every general election since 1994. Also contesting for the presidency was Daviz Simango,¹ who was an affiliated Renamo member before founding his party, *Movimento Democrático de Moçambique* (Mozambique’s Democratic Movement, MDM) earlier in 2009.

1 Daviz Simango died on 22 February 2021.

The elections in Mozambique on 15 October 2014 were the fifth national elections since the introduction of multiparty politics in the country in 1990. These elections took place at a time when the country was undergoing several transitions. At the political level, the country was transitioning from one president to another, as it was President Guebuza's last term in office. There was also a transition in the ruling party as a result of the change of presidential candidate, from Armando Guebuza to Filipe Nyusi. The political context in which the 15 October 2019 general elections were organised presented some challenges and opportunities for the consolidation of peace and democracy in Mozambique.

These national elections would be the first held without Renamo's historic leader, Afonso Dhlakama, who had died in May 2018. Importantly, the elections took place in the context of the Maputo Peace and Reconciliation Agreement, signed on 6 August 2019 between the government and the main opposition political party, Renamo. Due to a revision of the electoral law, the 2019 elections offered a new electoral dispensation which made provision for the election of provincial governors to replace the previous system of presidential appointees. The four candidates approved by the Constitutional Council for the General Election were Ossufo Momade of Renamo, Filipe Nyusi of Frelimo, Daviz Simango of MDM, and Mário Albino of the United Movement for Action and Integral Salvation (AMUSI). The results were a resounding victory for Frelimo's Nyusi, with votes cast as follows: Mário Albino: 45 265 votes; Ossufo Momade: 1 351 284 votes; Daviz Simango: 270 615 votes; and Filipe Nyusi: 4 507 549 votes, as indicated in Figure 1 below.

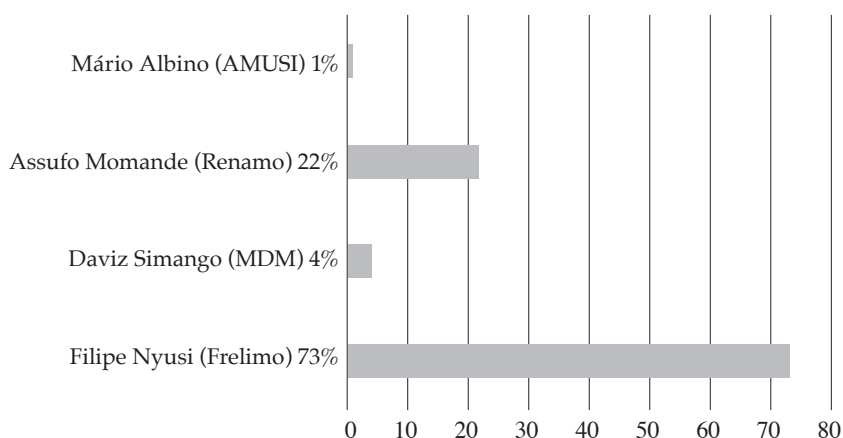


Figure 1: 2019 General Elections in Mozambique (presidential candidates)

In addition to electing the president of the Republic, the 2019 elections also allowed for the election of a new parliament, which resulted in a new configuration, although dominated by the majority Frelimo party. One of the highlights in our analysis was the parliamentary composition based on the ages of the elected Members of Parliament, as illustrated in Table 1 and Figure 2 below.

Table 1: Election to the Assembly of the Republic

Deputies	Over 35 years old	Under or equal to 35 years old
250	233	17
100%	93%	7%

Source: National Electoral Commission – CNE

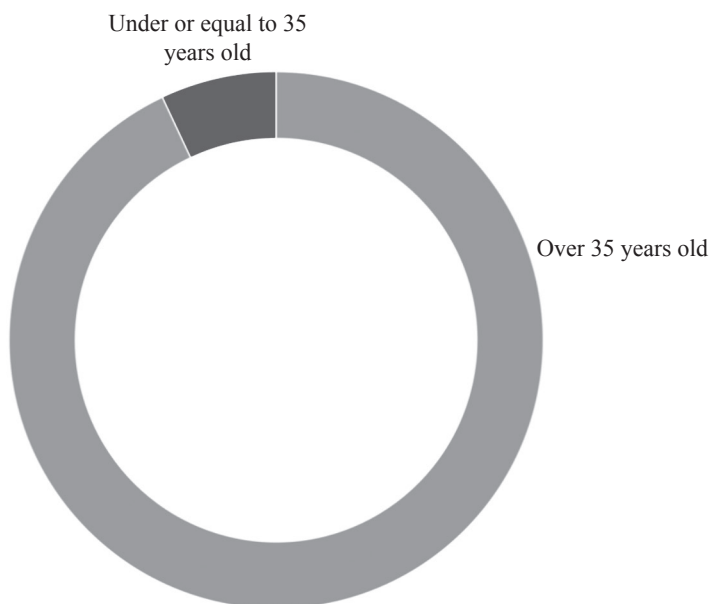


Figure 2: Distribution of parliamentary seats by age

Source: Parliamentary Youth Cabinet

According to the data presented in Table 1, 16 of the 17 Members of Parliament are from Frelimo, 1 from Renamo, and none from MDM. A voter must be 18 years old by the date of the election in order to exercise the right to vote or to be elected, except for the President of the Republic where the minimum age is 35. While our interest is specific to the 2019 general elections, we would have liked to include an assessment of the evolution of youth political participation in each election; but the National Election Commission does not publish age-disaggregated data.

YOUTH AND GENERAL ELECTIONS:

Writing the Manifestos

In 2016 the Friedrich-Ebert-Stiftung organised a debate around the meaning of the crisis and what young people could contribute to overcoming the difficult situation in Mozambique. The organisation noted that talk about the crisis was commonplace as this was affecting various sectors of the economy, such as the price of public transport, the confidence of donors to continue supporting the country, and, above all, future generations. The Friedrich-Ebert-Stiftung initiative allows us to introduce the scope of problems identified by the three political parties as fundamental for young people in the 2019 general elections.

Table 2: Political parties' manifestos in the 2019 general elections

Political party	Commitments
Frelimo	<p>Section 3.1.4 (Title: Youth, p. 47) of Frelimo's manifesto refers to the youth as follows: 'Frelimo recognises the dynamism, perseverance and leadership spirit that has always characterised the youth in all historical processes that culminated with profound political and social transformations in the country'. Among the promises, the party intended to: (1) facilitate youth access to infrastructure land and decent housing with credit; (2) promote youth activism as a mechanism for dialogue with the leadership; (3) stimulate the creation of initiatives that encourage youth participation in the planning and implementation processes of development programmes.</p> <ul style="list-style-type: none"> • The word youth appears five times in Frelimo's manifesto.

MDM	<p>The MDM's manifesto has 54 pages, in which the subject around youth(s) appears on page 46 (Title: Youth, section 4.11), as follows: 'MDM sees in youth the great hope for a new Mozambique and all. Youth will be the inspiring and guiding axis of the MDM governmental action. Youth will be the priority of MDM's government'. To strengthen the Mozambican youth, MDM undertakes, as its main priority for this social group, to create job opportunities, school social action services, and allocate part of the GDP to finance a national housing plan for youth. Among some of the promises, the party intended to: (1) promote actions that stimulate the entrepreneurial spirit in young people; (2) stimulate through solid and continued education, the development of a more qualified generation; (3) introduce plans to disseminate the importance of attending secondary, technical professional and arts and crafts education.</p> <ul style="list-style-type: none"> • The word youth appears 13 times in MDM's manifesto.
Renamo	<p>There are 44 pages in Renamo's manifesto. On page 23, (Title: Youth, section 4.1.5), Renamo states that: 'The intervention of public policies on youth should have as objectives the promotion of youth employment and social inclusion'. Among some of the promises, the party intended to: (1) promote access to employment; (2) institute subsidised housing credit lines for young people in their first job; (3) approve a credit policy favourable to the acquisition or construction of their own home; (4) grant merit-based scholarships to young people.</p> <ul style="list-style-type: none"> • The word youth appears four times in Renamo's manifesto.

Source: Centre for Public Integrity – CIP

Our analysis is based on each manifesto. For the sake of methodological balance, we have chosen political parties that were running in the presidential elections. This was not the case of *Nova Democracia* (New Democracy) which ran only in the legislative elections. This is an important exercise given the fact that the debate around youth is repeatedly placed as central in the national political discourse,

even if these same youths had been called the 'sap of the nation' by Samora Machel (1977); and they were considered potential 'sellers of the motherland' (Hama Thai 2008), indicating that the youth were not prepared to lead the country.

These three manifestos demonstrate their youth-political connotation through the creation of the Mozambican Youth Organization (OJM) in the case of Frelimo, and youth leagues, in the cases of MDM and Renamo. Among the similarities in these manifestos, we found some ambiguity in the definition of being a young person. How all parties consider young people makes us think that there are no social, cultural, political, or even economic categories of what it is to be young in Mozambique, which we consider methodologically erroneous. Not all the parties defined what is understood to be youth in Mozambique.

Only Frelimo and the MDM presented the date of conception or approval of their respective political manifestos as July 2019 for Frelimo and May 2019 for MDM. However, the list of problems identified by these parties as those that afflict the youth can be seen as a strategy that hides the potential in self-taught youth and leaders in their field. In other words, the three manifestos are a set of solutions to problems considered to be those of young people, even if at no point is the difference between problem and non-problem explained.

Different terms are used to refer to the intention of each party, and in this aspect, Frelimo and MDM use a variety of terms that indicate some intention of placing the responsibility of young people to take charge of their future. Renamo makes four areas of intervention for young people, in comparison to Frelimo (eight promises) and MDM (18 promises). There is a large difference between the three political parties in the textual quantity and explanation of the promised actions.

Of the three political parties only Frelimo intersperses its actions with photographs, and in the youth section, did so with a photo that appears to represent two young women. Furthermore, employment and housing are commonly seen as central and necessary problems to be solved when talking about young people. However, it does not seem to us that these two elements should be treated universally for the youth in Mozambique. Even if these are considered to be the main issues faced by young people in Mozambique, we think that there is no clarity in the identification of such problems in terms of gender, age, or even social situation. We recognise that it is still problematic to characterise young people from a biological perspective, or by an age group (18 to 35 years, for example), especially in a regional, continental, or even world context in which there is no consensus on the formula to define who is a young person.

According to MDM member HS in a Zoom interview on 22 September 2021, the reason for the lack of youth participation was because the party was experiencing an internal crisis. For him, many young party members were not present to draft the manifesto, since its elaboration depended solely on the

members of the party's secretariat – the elders – as well as some experts paid to write the document for the party: 'The manifestos are drafted by companies which provide consultancy services, not by the youth. This happens because youth are not so keen to collaborate with the opposition parties'. This reveals that the way in which the party is organised can determine the greater or lesser engagement of young people in political processes. It also indicates that party members do not have full confidence in their ability to produce an effective proposal, which is why they have asked private entities, usually professional (legal) specialists to do so.

In almost all parties, there is an excessive reference to the dominance exercised by elders. In the case of Renamo, CM mentioned (in a Zoom interview on 21 September 2021) that it is a challenge to gain entry into political parties, as young people are a minority representing the majority. He mentioned that in 2019 there was a reasonable opportunity, but the elders still dominated the space for participation, because they had drafted the manifestos and only called the youth to confirm it. 'There was some discussion at the bottom level, but the youth have no power to decide. It's still a struggle. The youth are the majority, and the manifestos should be 60% dominated by youth...'; he said. However, within the same party there were some members with different points of view, as they believe that young people should respect their elders and not necessarily be concerned about making decisions. OU said (in a WhatsApp interview, 21 September 2021), that it is necessary to realise that the Renamo is composed of people with many needs, and some people may understand that everyone wants to make decisions, but it is necessary to respect the leadership and those who have power. For him, 'it is not so true that the debate is only made by adults, as there are forums for young people. What is missing is understanding whether or not the youth league has initiatives to promote the party – the mission of the youth is not necessarily to decide, but to transmit their concerns to the highest level'. The nostalgic idea of defending elders was also supported by a member of Frelimo, who thought of the young as the main problem. AM stated (WhatsApp, 25 September 2021) that although it is said that youth need space, they need to listen to the elders, because 'many young people act emotionally – most of the young people nowadays (1980s) do not respect militancy and are not patriotic. Young people want to live in what is immediate, there is no attention to the future. The elders sacrificed their lives. Although we are the majority, there is still a lack of understanding of the country's problems. There is no sense of homeland, we must put our country first, as some of them are in the party just for immediate gains'. In general, the youth of Frelimo were less critical, indicating that the process of integrating young people in the preparation of the manifesto was peaceful, and suggesting that young people should gain experience from their elders, according to MA (WhatsApp, 24 September 2021). In the same way, it is the elders who must pass

the baton to the young, according to SV, another Frelimo member, in a personal interview (WhatsApp, 21 September 2021). The lack of criticism may be a way to keep benefits and proximity to the party, and through this gain advantages that can be translated into political positions and patronage from the elders.

In the case of New Democracy, they take an opposite line to the other three political parties analysed above. For the members of ND, there was much debate as to which focus was on young people and their problems. The youth contributed in their area of expertise and knowledge, based on small groups and focus meetings. The interviewees also noted that there was no blocking of the elders. After the debate, a compilation was submitted to the headquarters in Maputo. However, in a WhatsApp interview with WD on 21 September 2021, other members consider that additional resources could have allowed for a greater reach of young people, so there were 'decisions taken from the capital'. This makes us realise that no matter how much openness there may be in political parties, they retain an almost absolute centralisation and domination where decisions must be taken at the central organs of the which are in the capital of the country. This may be a limiting factor for the perception of the local problems of young people.

THE PLACE OF YOUNG PEOPLE IN POLITICAL PARTIES

After discussing role of youth in designing each of the manifestos, this section identifies the vision of each party regarding youth and politics in Mozambique. In a Zoom interview on 23 June 2021, Frelimo's José Luís Ernesto Fole (Secretary of the Central Committee of OJM) said that youth is at the centre of political debate, and the education factor gives youth a broader vision of politics. According to the interviewee, Frelimo knows that it can only remain in power and continue to be the leading party if it addresses the youth in its own party: 'Frelimo's governance is turned to the youth'. This is in line with the recent EISA study (2021), that Frelimo uses OJM to dominate the public space for youth in Mozambique.

For José Fole, one of the indicators is the creation of the Secretariat for Youth and Employment (SEJE), because in the previous model, youth issues were marginalised, forcing the government to create a Secretariat for Youth to respond to the concerns of young people. Employment is the main reason for the disintegration of young people, which deters them (young people) from thinking about patriotism, he noted. The youth have limited participation in Frelimo, since all decisions about what is important or not for young people are taken by the adult members in position of leadership. This is why the SEJE was created, an entity led by Oswaldo Petersburgo, who was born in 1984 (38 years old in 2022).

This discourse is in line with the analysis of the electoral manifestos of each party, where the problems of young people are summarised as employment and

housing. This probably conceals a greater challenge regarding the integration of young people in the decision-making processes of political parties. In other words, the emphasis on these problems is a strategy to make young people think that political parties exist to solve their problems, without their inclusion in the leadership structures of such political parties.

In addition, Frelimo intends to recover the nationalist discourse, which Fole describes as the problem of unemployment that makes youth less patriotic because they are searching for survival strategies. This narrative infers that the cause of some conflicts is motivated by young people who lack opportunities such as access to employment and education (Flückiger & Ludwig 2018), although such correlation has already been relativised to indicate that there is not necessarily any cause and effect between unemployment and lack of education (Sommers 2019). The same discourse has been used to justify the apparent reason for the non-involvement of young people, leading senior members to decide what constitutes youth problems. It shows that Mozambican youth engage in political parties as a choice of patronage, not as a way to bring about change. Van Gyampo & Anyidoho (2019, p. 9) note that young people's predisposition to vote is also influenced by their perception that elections are fair and by the length of tenure of the incumbent, which indicates the likelihood that there can be a political change (that is, that their vote will count).

This also indicates that the recurrent emphasis on quotas may reveal that the youth in the four parties analysed are not interested in incorporating their priorities within party strategies and policies, or pushing for greater transparency and accountability in the party's systems and processes. They are more focused on fighting for increased youth quotas at leadership level, as noted by RF when interviewed on WhatsApp (23 September 2021), that even though MDM has quotas for youth (30%), these are difficult to respect. For her, the elders are the majority at decision-making levels, and even though the youth try to impose their ideas, the political commission has no young people.

From the leader's perspective, Renato Muelega (MDM President of the National Youth League) noted in a Zoom interview (14 April 2021) that the party created a slogan indicating that it was considered a 'party of the youth', given that a certain youth movement identified with MDM as a new party. For him, the assumption was that it was a party of the youth, although the day-to-day dynamics indicated differently. Our interviewee affirmed that MDM is a party run by adults. In this way, the 'youth march' is reduced, and MDM is becoming a party just like all the others.

At the last Congress, held in 2017, it imposed itself to have a space in several bodies, as well as in the candidate lists. The challenge of

implementation is great, as it is always necessary to renegotiate. It was a party open and sensitive towards young people, which allowed, after the Congress, to have a 30% youth fringe, a National Youth Council with a minimum proportion of 30%.

(Renato Muelega (Renamo, Maputo, April 2021))

It is clear that the survival of MDM's Youth League has been a great challenge. For example, since it has its own programme and agenda, it should hold two meetings a year, an internal national meeting and another with the national bodies; but often legal statutes are violated due to a lack of resources to organise these activities. This illustrates how the materialisation of the youth agenda within political parties largely depends on the will of the central bodies run by elders, those with the financial power to realise youth activities.

In general, while new parties tend to allow greater youth engagement in consultations and decision-making, traditional parties continue to have greater power. However, this is not the case of the MDM. The usual perception that well-established parties are probably more conservative (with a limited participation of youth) than new ones, is not valid for MDM in comparison to Frelimo and Renamo as they do the same. In addition, it claims to be the party of the youth by holding the majority of youth engagements and pro-youth promises in its manifesto; but it is the party that has the lowest youth representation in Parliament.

This is endorsed by a young man from the MDM. For him, MDM does not differ much from other parties, because the drafting of its manifesto was really a replication of past discourses. It works as an imposition, since the young people don't really say anything, only the older ones do. 'Many people talk about housing and employment, it's the same thing. There are no specific ideas, there was no consultation process with young people. What is done is to impose these wishes through the youth league, but they don't represent youth as a whole. There is no clear process of consultation. The elders continue to dominate the spaces, they feel they are the masters and set the rules. There was only continuity from the other manifestos,' as noted by FN (WhatsApp interview, 22 September 2021).

From comments by Renamo's representative, it is evident that the interest of young people in politics is declining in Mozambique. Augusto Magaure (head of the Department of Organisation and Statistics) commented that 'if we place it on a scale of 1–100, we can see that it is around 50, for there is a lot of frustration in young people, given the lack of opportunities and employment' (Zoom interview, 25 April 2021). He emphasises that, for example, the allocation of scholarships should be based on merit, but what is seen is that this is based on the political colour of the ruling party.

This reality frustrates the longings of young people because they are not aligned with the party in power (Frelimo). Most young people do not have any activities and politics does not emerge as a strategy to overcome difficulties. However, young people are confident (and hopeful) in Renamo and its President, where they believe that opportunities will be provided for all young people.

Augusto Magaure (Renamo, Maputo – April 2021)

Magaure's remarks may indicate that the youth have no hope of leading the change for the better. Renamo tend to blame the ruling party, asserting that the main obstacle to developing the technical capacity of young people is Frelimo's poor governance. Once again unemployment among the youth emerges as a central problem for political parties, as this confirms the Frelimo representative comments. In other words, both parties place the need and opportunity to acquire a job as fundamental for young people.

Each party had a different vision during election campaigns. José Fole stated that Frelimo is composed mainly of young people and had quotas of 18%, which was increased to 22% in 2019 because this group of people needed to have internal benefits within the party. Fole noted that the youth want incentives, and the party felt obliged to provide these. As a result, the 2019 strategy of the youth office was changed; because young people are different, it was necessary to adopt a new style and policy. Instead of using trucks in the campaign, the party used motorbikes. This shows that the fuel or the motorcycles given to the youth were simply incentives for them to participate in the campaigning activities.

Almost 99% were young people who thought about the messages to convince other young people. They thought about the pillars to call other young people. The field of political struggle focuses more on the youth. The adults (from 50 years onwards) are already formatted...even with their eyes closed they vote for Frelimo.

It is no longer possible to convince young people with the discourse of national liberation. They (youth) want to know more about employment policies, about their education and housing. Young people want to know about resource management. This scenario meant that the manifesto was biased towards young people, the candidate's posture, speech, and dress as a young person. This led to him (Filipe Nyusi) having an advantage over the other candidates.

The candidate walked and ran as a young man to attract the attention of the youth. The campaign was fluid – young people liked the posture, and it was really for the young people. Another dynamic

was through the red wave, where the party leadership had a youth-led campaign process. The youth had a chance to say what they wanted to see in case the candidate won.

José Luís Ernesto Fole (Frelimo, Maputo – June 2021)

Fole's remarks can be interpreted in two ways. First, it is a demonstration of Frelimo's capacities, whether technical, political, or financial, and what could be used to attract young people by giving them money to buy fuel or motorcycles. It shows us that because of the political settlement (Buur & Salimo 2018; Khan 2019), Frelimo had a clear advantage over the other parties in the general election since it used some of the state's resources for its campaign. Fole's speech reveals a political party that was well prepared and clear about what it should do to capture the sensibility of young people.

Second, when Fole says that 'the candidate walked and ran as a young man to attract attention of the youth', this indicates that Filipe Nyusi was representing the elders, and there was a need to adapt his profile to win over young voters. Using Mozambique's Afrobarometer's data (2002–2015), Shenga (2017) argued that youth affiliated to political party organisations as well as in civic associations are more likely to participate in political processes, thereby receiving a positive payoff. Whilst the attitudes of these youth are known, the attitudes of ordinary youth (those not affiliated with youth party organisations and civic associations) are not known.

In the case of MDM, Mualega said that in the first phase, their manifesto was defined as a sectoral area, and the youth elaborated their thoughts, after which they were submitted to the party in a general commission. MDM's Youth League was heard, but because of financial difficulties it was not possible to express these ideas in an aggregated and national dimension, since there was no interaction with all the young people within the party.

It was in our interest to go to rural areas, but this was not possible due to the financial dilemma. As a solution, it was necessary to think for others. After this phase of information gathering, a meeting of the staff was held to discuss the manifesto, and the necessary alignment was made, which was then submitted to the young people. The central debate was around academic training, first job, and housing. These were the three main pillars that MDM advocated to solve. Hence, the strategy was to try to solve these issues.

Renato Muelega (Renamo, Maputo – April 2021)

Once again, the lack of resources is the main challenge for the realisation of the MDM youth agenda. Clearly, the promises contained in their manifesto were not necessarily the result of a comprehensive public consultation since there was no internal capacity to reach the youth of that party. This is a lesson that should lead back to the debate on the sustainability of the political parties' youth leagues. Above all, this should question whether they are relevant in the current model, staying only in urban areas like Maputo that do not represent the wider view of young people.

In the electoral chapter, Renamo's central concern was that 'youth was the hope of the country for the future of Mozambique'. Renamo understood that it was necessary to promote access to employment through an education system linked to their first job to create conditions where young people do not think of working only after finishing higher education but start from their first stage of education. Magaure explained that there was a need to invest and think about wealth for young people so they could take the initiative for their lives – an added value for the country.

Renamo held consultation sessions, and from its grassroots, there was discussion about what Renamo's vision should be regarding young people, from various social groups, whether young people, women, or those much older. These concerns were then forwarded to the Provincial Election's Office to be ratified.

Augusto Magaure (Renamo, Maputo – April 2021)

We understand that Renamo differs from MDM, as at least there was an opportunity to expand the discussion on the manifesto to different levels of the party to give 'voice to the youth'. However, the fact that the discussions should always submit to a review by the party's central political bodies, again raises the debate around the legitimacy and independence of these political party youth leagues, since they must still rely on the acceptance of the elders concerning their political aspirations.

As observed throughout our interviews, one of the frequent debates concerns the age of leaders in charge of youth organisations in Mozambique. Adults continue to dominate decision-making spaces without the presence of young people. However, despite this reality, the election of the new Renamo youth president in June 2021 created hope among some young people, who even considered him the 'Malema of Mozambique' (Viage 2021). This statement reveals the hope for change, especially when young people identify themselves with the leadership of youth organisations of their age.² Despite the fact that young people

2 Ivan Mazanga is 32 years old and Bitone Viage is 30 years old (April 2022).

are considered 'fatigued with formal politics' (Tshuma & Zvaita 2019), political parties are still an important space for youth engagement in politics (Honwana 2020).

The Malema of Moz, the Compass of Mozambican Youth

Dear friend Chigamanhane Mazanga, I have always told you how great you are in the Renamo party. If you continue in this path, believe me, that you will be the Malema that our youth is waiting for, you will be the rescue of all the youth confidence that was lost during these years when we were submerged in lies, promises emptied of patriotism.

You know that by continuing in this path, you will never lose sight of my support. It is from postures like yours that we expect. It may even take a while, but at the most, we will go to our graves with our civic duty well done. So, the other organisations will wait for those guidelines since there are many particular interests (political elites) in this cartel.

Well done! For this kind of fight, you can count on my support.

Viage 2021, Facebook (translation from Portuguese)

CONCLUSION

Throughout this article, we discussed the relationship between youth and political participation during elections in a country where most of the population belongs to a group younger than 35 years of age (INE 2017). The 2019 general elections have allowed us to analyse the promises of the political parties on the youth chapter, an exercise that is done for the first time in the case of Mozambique. Equally, we were able to analyse how young people engaged in the design, conception, and approval of these manifestos. However, although more research needs to be done, it was possible to address three key issues.

Firstly, it was possible to observe party-political thinking that the youth represent an important social group in the way politics is practised in Mozambique. This vision derives from Mozambique's history since independence in 1975, when young people were seen as important actors who could not only free the country from the conflict, but equally would be the same young people who would guarantee the country's social, economic, and political stability.

Secondly, from the analysis of the political manifestos it was possible to note the lack of clarity in what the political parties considered to be 'youth problems', and that they define who is young without following clear criteria. There is an

arbitrary generalisation of problems that probably do not belong specifically to young people. In other words, the emphasis given to employability, education, and housing, three topics that we assume to be important for the development of young people, should be seen differently, without assuming that these are young people's central and only problems.

Thirdly, it is obvious that the constitution of party youth organisations is not a guarantee of young people's independence within political parties. In other words, the practice of gerontocracy (Adebayo 2018) is still present in Mozambique's political parties, given that adults still dominate the final decision on what should guide young people, without considering whether these problems were deliberated by young people. Moreover, how the lists for the election of Members of Parliament are defined clearly proves that the over-35s still dominate the decision-making spaces within the political parties.

These three points indicate that the visions of the ordinary members is not the same as their leaders. In fact, youth leaders seem to be better accommodated because of their institutional positions, which creates a distance from the other young people in the party who do not have the same view of their integration in political parties. The lack of capacity-building opportunities for members of political parties can be seen as a sign of fear that youth with high skills may surpass and eventually take over the leadership of the party. This happened in 2018 with Venâncio Mondlane (former MDM) and Samora Machel Júnior (Frelimo), two politicians considered young, who challenged the elders of their parties during local elections.

Finally, as discussed by van Gyampo & Anyidoho (2019), young people are still excluded or marginalised in formal political processes and structures. At the same time, young people's political exclusion is due to their own lack of interest in politics. However, we argue that their activism in alternative spaces of political engagement such as social media networks and unconventional political participation, suggests that young people may be disillusioned with formal political systems that they perceive to be flawed, corrupt, repressive, or exclusionary. This leads them to claim new forms of political participation – new escapisms in the political arena (Tsandzana 2020).

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ELECTION PETITION AND THE FUTURE OF ELECTORAL REFORMS IN GHANA

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ABSTRACT

The results of Ghana's 2012 and 2020 elections were challenged in the nation's Supreme Court. Even though the court processes in both cases did not alter the election results, they nevertheless exposed monumental flaws in the electoral processes. The flaws in the 2012 electoral processes were exposed at the Supreme Court and featured in the final judgment of the court in a manner that allowed the Electoral Commission to initiate moves towards electoral reforms. However, the challenges of the 2020 elections, though exposed at the courts, were never featured in the final judgment of the Supreme Court. This paper discusses the implications of the 2020 election petition for the future of electoral reforms in Ghana. It argues that the rigid application of the letter of the law by the Supreme Court and the relegation to the background of the thorny issues of electoral challenges in the 2020 elections, would render the quest for further electoral reforms difficult. This would then make the future of any attempt to fine-tune the electoral processes quite bleak.

Keywords: election, petition, electoral reform; Supreme Court; judgment; letter of the law; spirit of the law

INTRODUCTION

The 1992 Constitution of Ghana provides for the contestation of election results. Article 64(1) states that 'the validity of the elections of the president may be challenged only by a citizen of Ghana, who may petition the Supreme Court within

twenty-one days after the declarations of the result of the elections in respect of which the petition is presented'. Article 64(2) also states that 'a declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before the declaration'. Also, article 64(3) states that 'the Rules of Court Committee shall, by constitutional instrument, make rules of court for the practice and procedure for petitions to the Supreme Court challenging the election of a President (Republic of Ghana 1992, pp. 49–50).

Armed with the requisite constitutional provisions, the results of Ghana's 2012 and 2020 elections were challenged in the nation's Supreme Court. Even though the court processes in both cases did not alter the election results, they nevertheless exposed flaws in the electoral processes. The flaws in the 2012 electoral processes were exposed and featured in the final judgment of the courts in a manner that allowed the Electoral Commission (EC) to initiate moves towards electoral reforms. However, though the challenges of the 2020 elections were exposed at the courts, they were not featured in the final judgment of the Supreme Court. This has created the impression in the minds of many Ghanaians that nothing serious or untoward had happened in the 2020 electoral processes (Mahama 2021). The pursuit of this idea after the 2021 election petition would mean that the quest for further electoral reforms would be difficult, and any future attempt to fine tune the electoral processes may be quite bleak.

Several studies have been conducted on the electoral processes and electoral reforms in Ghana. These include works by Oquaye (1995), Boahen (1996), Ayee (1998), Ayee (2001), Badu and Larvie (1996), Gyimah-Boadi (2004), Debrah (2011), Oquaye, (2014), Debrah (2015), Gyampo, Graham and Yobo (2017), and Gyampo (2018). Apart from an earlier study undertaken by Gyampo (2018) on 'The State of Electoral Reforms in Ghana', which briefly highlights the 2012 election petition process, none of the studies cited is linked directly or indirectly to election petitions and how they could shape electoral reforms in Ghana. In particular, no scientific study has been conducted about the implications and future of electoral reforms in Ghana following the nation's 2020 election petition to the Supreme Court.

This study aims to fill the lacunae in the literature. It uses a purely qualitative approach by reviewing the petitions or demands of plaintiffs and court verdicts in the 2012 and 2020 election petitions. This is by interrogating earlier works and the state of current thinking on electoral reforms in Ghana and making the needed inferences and deductions based on the materials, facts, and information from the existing literature and other relevant documentation. Structurally, the subsequent sections of this paper explain the concept of electoral reform in dealing with any potential crisis of conceptual confusion; discuss the theoretical taxonomy of the study; deliberate on historical electoral reform initiatives in Ghana; review

the 2012 election petition and its consequent ruling/reform proposals; review the 2020 election petition and its consequent ruling; and draw a conclusion on the implications of the 2020 election petition for the future of electoral reforms in Ghana.

WHAT IS ELECTORAL REFORM?

Lijphart (1994, p. 51) explained the idea of electoral reform in terms of the total replacement of the electoral formulae of national electoral systems. In his view, a minimum of 20% change to a nation's electoral formulae could qualify as major electoral reform. A minor electoral reform has less than 20% change to the electoral formulae. But scholars like Katz (2007) argue that there should be no line of demarcation between major or minor electoral reform. Any change to the electoral processes, regardless of whether major or minor, connotes electoral reform. The International Institute of Democracy and Electoral Assistance (IDEA) (2006) defined electoral reform as the improvement of the responsiveness of an electoral process to the desires and expectations of the electorate. This constitutes reform when the change is intended to foster and enhance impartiality, inclusiveness, transparency, integrity, or the accuracy of the electoral process (*ibid.*).

The current state of thinking about electoral reforms provides for three related dynamics in the process of electoral reform. For instance, the IDEA (2006, pp. 295–296) has presented some of the features around which reforms may take place, starting with the legal framework that governs the conduct of elections. Here, the reform may focus on the amendment of the constitution, the electoral law, and other related regulatory instruments which aim to foster the integrity of the electoral processes. As Jacobs and Leyenaar (2011, p. 41) noted, 'a change in the legislation on the electoral processes is an electoral reform'. The motivation for change could be the alteration of the electoral laws or the introduction of rules on voting choices. The second may address administrative processes, including new mechanisms and technical innovations to build the capacity of the election management body (IDEA 2006). The third could be directed at political changes, including the environment within which the election management performs its duties to create a supposedly safe haven in which to carry out its responsibilities (*ibid.*).

Various stakeholders tend to play roles in fine-tuning the electoral processes. In Ghana, the EC has been instrumental in the reform efforts. Smith (1960, pp. 1–6) reports that the EC of many independent African countries responded to the perceived shortcomings of the inherited colonial electoral systems by changing the *status quo* to accommodate post-colonial political dynamics. For instance, in Ghana, the EC expanded voters' access to registration and created the opportunity

for Ghanaians to exercise their franchise (Crabbe 1975). Politicians and political parties have also featured in the reform agenda. Hence, much of the reform in the electoral process before democratisation occurred largely as a response to intense pressure from politicians and political parties. Voter dissatisfaction and court rulings, as well as recommendations by constitutional or presidential commissions, have also stimulated electoral changes in many developed and emerging democracies. For instance, the electoral reforms in Italy and Japan in the 1990s have been attributed to voter dissatisfaction with the system (IDEA 2006). In Ghana, it took the Siriboe Commission's Report (1968) to re-demarcate constituency boundaries. The various meetings of political elites in Ghana about the electoral processes, and the Supreme Court ruling in Ghana's 2012 election petition, have all been instrumental in persuading the EC to overhaul and reform the electoral processes (Gyampo 2018).

THEORETICAL TAXONOMY

The main theoretical explanations for electoral reform have generally been the rational choice and institutionalist approaches. The earliest model for analysing electoral reform came from rationalists. To the rationalist, any attempt at reforming the electoral process is essentially a political process that grants decision-makers the opportunity to make changes to the electoral processes of a country for the purpose of achieving their political interests and benefits. This theory views politicians as maximising political power to enhance their party's chances of winning general elections (Shugart 2008). In this regard, the only reason why the political elites would seek a reform of the electoral processes would be to maximise their gains at elections and minimise all opportunities for their electoral defeats (Benoit 2004, p. 376). Therefore, electoral reform in the rationalist perspective addresses only areas that are of critical concern to the politician. It is therefore not about interventions to ensure fairness of votes and allocation of seats in the polity or anticipated changes in the population, such as population growth dynamics (Renwick 2010). It is about the selfish interests of politicians who gather as much information as possible about the range of reform options and the consequences for their prospect of winning more seats, in their quest to reform the electoral processes (Benoit 2004; Hindmoor 2006).

The rational choice theory of explaining electoral reform has however been criticised. Generally, if reforms are introduced only to secure the electoral fortunes of politicians, then they would not be initiated in an election in which the politician is assured of victory (Katz 2007). Politically motivated electoral reforms can be counterproductive due to the high degree of uncertainty around their effects on the fortunes of political actors (Colomer 2005, p. 22). Due to the uncertainties

about the outcome of such politically-motivated reform processes, those most likely to suffer damages or disadvantages would resist the change (Reed & Thies 2001). Furthermore, only those political parties that feel most dissatisfied with the rules in use (for instance, parties relegated to opposition for several years) would support a change in the electoral process. Electoral reform process must benefit from support across the board to gain acceptance and legitimacy (Pilet & Bol 2011, p. 67).

The institutionalist model came in response to the weaknesses of the rational choice theory. Its core premise is rooted in the inter-relationship between institutions and their societal roots (Lijphart 1994, p. 2). The model argues that institutional settings are relatively stable and may be altered or reformed only when there are challenges that distort institutional equilibrium (*ibid.*). Thus, within the context of the institutionalist school of thought, electoral reforms can occur only when there are institutional dysfunctions, and when existing institutions produce perverse effects (Shugart 2008, p. 2). Katz (2007), for example, noted that system changes are possible when the existing electoral arrangements are eroded, largely due to concerns such as vote-buying and nepotism. Advocates of this model posit that electoral reform occurs because of a perceived imbalance in the established arrangement for conducting elections. IDEA (2006, p. 296) explained that reforms to an electoral process may be triggered by the failure to deliver acceptable elections, by conflict resulting from disputed elections, and/or by recognised changing dynamics related to population growth and increased economic activities. From these disparate views on the need for electoral reforms, a crucial question is whether an electoral process must undergo reforms for the least system dysfunction? Frequent changes and electoral reforms for the smallest weaknesses in the electoral processes may undermine the resilience of the process and the need for processes to correct themselves in future elections.

Apart from the rational choice and institutionalist models, some scholars have explored other means of explaining reforms. The desire to comply with global best practice may push a country to undertake major or minor electoral reforms (Bowler & Farrell 2009). Indeed, electoral reforms may be linked to donor conditionality for the transition from authoritarian rule to democracy. Several African countries that depended on international donor financial support were forced to implement overall political reforms, including electoral reform, to inaugurate the rebirth of democracy. This was witnessed in Liberia and Sierra Leone when they emerged from civil war to democracy. In this regard Dalton and Gray (2003) identified 'diffusion agents' as a factor instigating progressive electoral reform. It must however be noted that as African democracies evolve, there is no one-size-fits-all global reform agenda to be imposed on them. Each unique country situation may make it impossible for global standards in electoral reform to be implemented in haste.

HISTORY OF ELECTORAL REFORM INITIATIVES IN GHANA

Since 1992, Ghana's electoral processes have undergone several mutations and reforms. In 1994, the opposition parties that lost the November 1992 presidential election and boycotted the subsequent parliamentary polls in December of the same year, threatened to stay away from participating in all future elections unless there was satisfactory electoral reform (Gyampo 2018). The opposition parties argued that the electoral processes used for the conduct of the 1992 presidential election created an uneven playing field and conferred advantages to the National Democratic Congress (NDC). The opposition parties, led by the New Patriotic Party (NPP), published a book titled *The Stolen Verdict* which encapsulated all the cases of electoral fraud perpetrated by agents of the NDC and the Interim National Electoral Commission (INEC) during the 1992 presidential elections (Boahen 1996).

The NPP produced a litany of instances of election violence perpetrated against its candidates and officials. All the opposition forces then laid out stringent conditions to be met before they would consider returning to the electoral front. They insisted that the electoral process should be overhauled by creating a transitional body to supervise the electoral process; by compiling a completely new voters' roll and identity cards for voters; and by replacing the INEC with a new body with representatives from all parties (Ayee 1998). On the other hand, the NDC saw the prevailing electoral processes as efficient and therefore made no demands for electoral reform (Debrah 2015). According to the NDC, the status quo had not posed any threat to the credibility of the 1992 elections because the international community, led by the Commonwealth Secretariat's team of election observers, endorsed the election outcome as free and fair (*ibid.*).

With the future of democracy threatened and the survival of the electoral process hanging in a balance, the international community pressured the EC for electoral reform as the only way of preventing chaos and democratic relapse (Debrah 2015; Gyampo 2018). In countries that maintained the status quo without changing their electoral processes, such as Côte d'Ivoire, Mali, Kenya and the Central Africa Republic, disagreements over the electoral processes and election outcomes sparked heinous civil wars (Lumumba-Kasongo 2005, pp. 1–20). Knowing that electoral reform has great potential for democratic progress, the International Foundation for Electoral System (IFES) established a presence in Ghana to provide a technical guide towards electoral reform (Gyampo 2018). Other international agencies such as the Commonwealth Secretariat and National Democratic Institute (NDI) as well as the governments of individual member states pledged both material and financial support to implement changes in the electoral processes of Ghana (Badu & Larvie 1996; Ayee 1998). Favourable international backing for reform encouraged a settlement by the political elite.

Both the NDC and NPP agreed to proceed by broad consensus to enact a new system that would promote the general good (Tsebelis 2002, p. 33). As a result, in March 1994 an elite consensus body called the Inter-party Advisory Committee (IPAC) was inaugurated. It comprised the EC, which had been established by Act 451 in 1993, together with representatives of political parties, with donors as observers (*ex-officio* members) (Ayee 1998). However, when IPAC commenced work, it functioned as a chamber for the elite to bargain over how to make the electoral process achieve its objective of free and fair elections. The elite used the IPAC platform to reform the electoral processes through an agreement among themselves on the thorny areas of the electoral processes (Gyampo 2018).

A major change in the electoral process instigated via the elite consensus platform was the replacement of the voters' register. The politicians agreed that the voters' register used for the 1992 elections was inaccurate, outdated, unacceptable and therefore incapable of promoting free and fair elections in the future (Ayee 1998; Commonwealth Secretariat 1992). The registration of voters departed from the old method where names of voters also bore titles such as 'Nana', 'Dr/Prof/Mr.' and 'Rev/Alhaji' if they were traditional rulers, academics or religious leaders respectively (Tsebelis 2002). The mechanics of the electoral roll/register were also overhauled to ensure the use of a combination of thumbprint and photo identity (ID) cards in the less controversial areas and controversial border towns respectively (Ayee 1998). To promote the integrity of the register, temporary registration officials and political party agents were recruited and underwent thorough training on procedure (*ibid.*). Party agents formed an integral part of the registration process. As observers of the process for their parties, they could challenge an applicant suspected of being ineligible who came to register at the centres (*ibid.*).

A Registration Review Committee (RRC) with a presence in all constituencies was composed to arbitrate disputed registration cases. Individuals who felt aggrieved by the decision of the RRC could appeal to the courts for redress. A provisional voters' roll was then available for inspection by those who registered their names for purposes of rectifying any anomaly such as omissions, wrong inclusions and deleting the names of the deceased (Ayee 1998; Gyampo 2018). Party agents were also permitted to endorse the daily records of the registration exercise at the centres (Debrah 2015). The EC submitted the final register to each political party to aid their door-to-door campaigns (*ibid.*). Every year, the EC has endeavoured to add new qualified voters on the roll even though it has implemented this mandate more in the election years (Ayee 1998; Gyampo 2018). By 2000, every registered voter had been issued with a photo ID card. In 2004, changes

in the process saw the photographs of voters appearing on the register next to their vital information. This measure aided smooth voter identification, thereby dispelling fears of double voting and impersonation (Debrah 2015; Gyampo 2018).

An important dimension of the reform was the replacement of the opaque ballot boxes used for the 1992 elections with transparent boxes (Ayee 1998). Cardboard screens were also set up in open spaces designated as polling centres where voters entered to make their decisions before depositing their thumb-printed ballot papers in the box, which was located at conspicuous places in front of the designated public buildings marked as polling centres (Debrah 2011). This was a deviation from past practices where voters went into a closed room to mark their choice of candidate. This situation stirred allegations that some voters concealed additional ballot papers on their bodies when they went to the rooms to cast their ballots (Debrah 2015). Accusations of vote-rigging were addressed by setting up polling booths in open places (*ibid.*). To allay the concerns about figures being doctored during and after vote-counting at the polling stations, the EC, in collaboration with the political parties, implemented an arrangement that allowed vote counting and the declaration of results to take place at the polling centres immediately after voting ended (Electoral Commission 1996, pp. 2–16). In the presence of candidates' agents and voters, the presiding officers counted the ballots for each candidate and recorded the figures on the Declaration of Result Form, which each party/candidate's agent countersigned to authenticate the results. Each agent was given a copy of the signed form for the candidate's independent vote-tabulation (Debrah 2015). At the EC regional offices where the constituency's cumulative results for each candidate were faxed to the headquarters, candidates' agents witnessed the process (Electoral Commission 2008, pp. 1–16).

The reform also focused on party organisation and financing. The goal of party reform hinged on the need to provide a levelled playing field for political competition. By 2000, it had become obvious that the Political Parties Law (PNDCL 281) was no longer capable of aiding party development. Indeed, this law obstructed competitive party politics and democratic progress (Ayee 1998, p. 31). As a result, a new Political Parties Act 574 was enacted in 2000 to replace the PNDCL 281 to guarantee greater citizen participation in politics. Only multi-ethnic parties whose internal organisation conformed to a democratic ethos qualified to receive the Certificate of Registration to participate in any electoral competition. To discourage political corruption, political parties were requested to make a declaration of their assets and expenditure within 90 days after receipt of the final Certificate of Registration, and 21 days before general elections respectively. Similarly, within six months from 31 December of each year, and after a general election or by-election in which a party participated, a detailed audited statement of accounts (showing income and expenditure) should be submitted to the EC

for scrutiny (Republic of Ghana 2000, pp. 1–13). Party financing has always been a thorny issue in Ghana's multiparty politics. Incumbents have been accused of depriving their opposition of funds while they used state resources to secure re-election, thereby undermining the competitiveness of the elections. The PNDCL 281 had disqualified foreign companies from donating to political parties, and limited members' contribution to ₵200 (\$60) (Republic of Ghana 1992, p. 3). However, Act 574 scrapped the limited contribution provision and granted party founding members unlimited financial donations towards the development of their parties. In addition, firms owned by Ghanaians could donate to political parties. Only the ban on foreigners' contributions to political parties was retained in the new Law (Republic of Ghana 2000, pp. 8–10).

There was an elite consensus among the political actors for the introduction of biometric registration and voting into Ghana's electoral processes (Gyampo 2018; Republic of Ghana, 2012). This was in order to deal with concerns of electoral irregularities and malpractices such as double-voting, impersonation, and rigging. It was widely held that biometric registration and verification could reduce the incidence of electoral fraud. Hence in the lead-up to the 2012 general elections, the cliché 'NVNV' or 'No Verification, No Vote' was trumpeted by the political elites and their apparatchiks in a manner that pointed to the end of electoral irregularities and fraud (Gyampo 2018).

Following the 2012 general elections, an election petition to the Supreme Court of Ghana was mounted to challenge the outcome of the election results. The Supreme Court ruling took eight months to be delivered; it exposed serious flaws in the electoral processes and also provided an impetus for electoral reform in Ghana. The next section of this paper looks at the 2012 election petition and its consequent proposals for electoral reform.

THE 2012 ELECTION PETITION AND ELECTION REFORM

The 2012 election petition was filed at the Supreme Court of Ghana by Nana Akufo Addo, presidential candidate of the New Patriotic Party (NPP), his running mate, Dr. Mahamadu Bawumia, and the chairman of the party, Mr. Jake Obetsebi Lamptey. They petitioned the apex court of Ghana on issues of electoral anomalies and irregularities, requesting that the court annul the election of John Mahama, NDC presidential candidate, as president (Debrah 2015).

Their main contention was that the EC, headed by Dr. Kwadwo Afari-Gyan, allowed voting to take place in several polling stations across the nation without biometric verification. This, they argued, was contrary to the Constitutional Instrument (CI)75 Regulations 30(2). Therefore, they petitioned the court to annul the election results in those polling stations (Gyampo 2018). Another concern was

that the EC employed the services of Superlock Technologies Limited (STL), an information technology company, without notifying the IPAC.¹ They argued that this contradicted conventional practices in Ghana, where such major decisions were transparently discussed with the IPAC. According to the petitioners, the EC failed to discuss the issue with IPAC because they wanted to rig the elections in favour of the NDC presidential candidate (Asante & Asare 2016, p. 3). Also, several Statement of Poll and Declaration of Results Forms (also called pink sheets) had an identical serial number. The petitioners claimed that this was illegal and an electoral fraud, as all pink sheets were expected to have unique serial numbers. The petitioners further raised issues of widespread incidences where presiding officers failed to sign the results declared on the pink sheets in contravention of CI 75, Regulation 36(2). In addition, the petitioners claimed that the principle of one man, one vote was violated as some people engaged in multiple voting under the watch of the EC. Finally, they noted as dubious the change in the total number of registered voters from 14 031 680 before elections, to 14 158 890 on 9 December 2012 when the results were declared by the EC (Alidu 2014, p. 1453).

SUMMARY OF THE JUDGMENT

In a 588-page judgment with a majority of 5 to 4, the Supreme Court of Ghana dismissed the NPP petition and declared that John Dramani Mahama of the NDC was validly elected as president on 7 December 2012 (Baneseh 2013). Four out of the nine judges, namely Justice William Atuguba, Mrs Justice Sophia Adinyira, Mr Justice N. S. Gbadegbe and Mrs Justice Vida Akoto-Bamfo dismissed the petitioner's claims for the annulment of a total of 3 931 339 votes due to electoral irregularities in the presidential election on 7 and 8 December 2012 (Baneseh, 2013). Three of the judges, namely Mr Justice Julius Ansah, Ms Justice Rose Constance Owusu and Mr Justice Anin Yeboah voted for the annulment of the two million votes due to the petitioner's argument of gross irregularities (Gyampo 2018). They also declined the request of the petitioner to declare their candidate Nana Akufo-Addo as the validly elected president, but supported the view that the votes affected by the allegations of the petitioner be annulled and rerun (Debrah 2015).

In their verdict, the justices of the Supreme Court acknowledged the challenges and monumental flaws of the electoral processes and made extensive recommendations for electoral reform. Justice William Atugubah, who chaired the panel of judges, summarised the proposals for electoral reforms as follows:

1 The IPAC brings all political parties together to discuss issues of the electoral processes with the Electoral Commission with a view to building consensus and finding solutions to problems confronting the electoral process.

This petition, however, has exposed the need for certain electoral reforms. I mention some of them. The voter's register must be compiled and made available to the parties as early as possible; a supplementary register may cater for late exigencies; the calibre of presiding officers must be greatly raised up; the pink sheet is too elaborate, a much simpler one is required to meet the pressures of the public, weariness and lateness of the day at the close of a poll etc.; the carbon copying system has to be improved upon; the Biometric Device System must be streamlined to avoid breakdowns and the stress on the electorate involved in an adjournment of the poll, and invalidating wholesale votes for insignificant excess numbers is not the best application of the administrative principle of the proportionality test.

ELECTORAL REFORM AFTER THE 2012 ELECTION PETITION

As a result, the EC invited proposals for electoral reforms from 38 key stakeholders including political parties, faith-based organisations, professional bodies, and civil society organisations (CSOs). The IEA, under the aegis of the Ghana Political Parties Programme (GPPP) for instance, held a series of workshops to review the electoral processes. This culminated in the submission of 25 proposals for electoral reform to the EC on 20 November 2013.² Subsequently, in January 2015, the EC inaugurated a 10-member Electoral Reforms Committee to examine the proposals for electoral reform and advise the Commission on the implementation of the proposals. The Committee, comprising representatives of political parties, the EC and CSOs, submitted its report encapsulating forty-one proposals for electoral reform to the Commission in April 2015.³

Almost all the reform proposals (close to 99%) were accepted by the EC, albeit with some modifications, while others were slated for further discussion with political parties before their acceptance and possible implementation.

Proposals outside the Ambit of the Commission

Eight proposals fell outside the ambit of the Commission. The Commission therefore forwarded these to the appropriate institutions including Parliament, the judicial service, the Attorney-General's Department, and other institutions, for the necessary action to be taken. These proposals concerned the term of the office of the chairperson and members of the Commission; the appointment of

2 The leading author Prof Gyampo is the Coordinator of the Ghana Political Parties Programme and a member of the Electoral Reform Committee.

3 See report of the Electoral Reforms Committee submitted to the Electoral Commission in April 2015

Commission members following broad consultations and with prior approval of Parliament; financial estimates of the Commission to be sent directly to Parliament; removal of Attorney-General's consent before prosecuting electoral offences; empowering the Commission to prosecute election offences; establishment of election tribunals to determine electoral cases and petitions; spelling out grounds for invalidating the election of a president; and the need to reduce the period of determination of a presidential election petition (Gyampo 2018).

Proposals Accepted with Modifications

The Commission accepted a total of 17 proposals with some modifications. These were:

- The need for well-trained election officials to man the polls
- Continuous voter registration exercise
- Setting up a national collation centre to replace the strong-room
- Institutionalising the inter-party advisory committee meetings
- Using biometric verification devices for voter registration and exhibition exercises
- Raising the minimum educational qualification requirements for various levels of election officials
- Defining the term 'ordinarily resident' in CI 72 and 'hails from' for the qualifications to be registered as a voter in an electoral area
- Taking of oath by election officials before a judicial officer
- Holding elections in November instead of December
- Deferring the adoption of electronic voting
- The EC taking steps to reduce rejected ballots
- Sanctioning election officials who breach electoral laws
- Serial numbering all the statement of poll and declaration of result sheets
- Making clear provisions regarding processes and procedures to be followed upon the adjournment of the poll
- Improving compensation packages for election officials
- Giving vulnerable person priority at all polling stations
- Improving the training of election officials and commission staff (Gyampo 2018).

Proposals Accepted in Principle but Requiring Further Discussions at IPAC

There were 15 such proposals, as follows:

- No creation of additional constituencies in election year
- Voter registration exercise notice period should be extended from 14 to 21 days
- The Commission should receive a mandate to go to court for authority to delete names of unqualified persons from the provisional voters' register
- The Commission must be required by law to provide a copy of the final certified voters' register to political parties 21 days before elections
- Civil society organisations must be full members of IPAC
- The number of voters per polling station should be reduced
- An annual calendar of Commission activities should be published at the beginning of an election year
- All polling stations should be gazetted with their codes and locations not later than 42 days before elections
- Returning officers should give copies of proxy, special and absent voters' lists to candidates or their agents
- The list of accredited special voters should be expanded to include accredited media personnel and election observers
- The Statement of Poll and Declaration of Results form should be redesigned and simplified
- Where there is over-voting, polling station results should be annulled
- Returning officers must issue copies of collation sheets to agents
- Presidential election results should be published on a polling station by polling station basis (Gyampo 2018).

Rejected Proposal

The only proposal that was rejected by the EC was the No Verification, No Vote principle as the EC decided that it would be unfair for machines to determine who is eligible to vote. The Commission indeed recognised that the right of a citizen to vote is fundamental and guaranteed by the 1992 Constitution. In the view of the Commission, it has an inherent mandate to ensure that every eligible voter has the opportunity to vote. The Commission argued that in the absence or malfunctioning of the biometric verification device, there should be other physical or manual means of verifying voters in order not to disenfranchise Ghanaians (Gyampo 2018).⁴

4 See also Minutes of IPAC meeting, 20 July 2015

THE 2020 ELECTION PETITION

The 2020 election petition to the Supreme Court was filed by former President John Dramani Mahama. The petitioner (John Dramani Mahama) pointed out that the elections on 7 December 2020 did not result in any candidate obtaining the 50% plus one vote required for the election of a president. At the Supreme Court, the petitioner argued that the declaration by Mrs. Jean Mensa, chairperson of the EC and also the first respondent in the suit, of New Patriotic Party flag bearer, Nana Akufo Addo as president-elect, violated Article 63(3) of the 1992 Constitution. This article requires the winner to obtain more than 50% of total valid votes cast. The petitioner therefore submitted that the Supreme Court declare the election of Nana Akufo Addo as president-elect null and void. He further argued that, in declaring the election results, Mrs Jean Mensa (first respondent and the returning officer for the presidential elections), violated the constitutional duty imposed on her by articles 23 and 296(a) of the 1992 Constitution to be fair, candid, and reasonable. Mr Mahama also alleged that the EC collation of the presidential election results was 'unfair, untruthful and unreasonable'. The petitioner further noted that the said declaration was made arbitrarily, capriciously and with bias in favour of the second respondent, contrary to Article 296(b) of the 1992 Constitution, and in complete disregard of the allegations of vote-padding. Furthermore, the petitioner argued that the declaration of results was made without regard to due process of law as required under articles 23 and 296(b) of the 1992 Constitution (Mahama 2020, p. 2).

The petitioner, therefore, requested that the Supreme Court grant the following reliefs:

- a. A declaration that Mrs. Jean Mensa, chairperson of the first respondent and the returning officer for the presidential elections held on 7 December 2020, was in breach of Article 63(30) of the 1992 Constitution.
- b. A declaration that, based on the data contained in the declaration made by the chairperson of the first respondent, no candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared president-elect.
- c. A declaration that the purported declaration of Nana Akufo Addo as president-elect on the 9 December 2020 was null and void and of no effect whatsoever.
- d. An order annulling the Declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9 December 2020 issued under the hand of Mrs Jean Mensa, chairperson of first respondent and the returning officer

for the presidential elections held on 7 December 2020 and gazetted on 10 December 2020.

- e. An order of injunction restraining second respondent Nana Akufo Addo from holding himself out as president-elect.
- f. An order of mandatory injunction directing the first respondent to conduct run-off elections for the petitioner and second respondent, as required by articles 62(4) and (5) of the 1992 Constitution (Mahama 2020, pp. 2–3).

RESPONDENTS' ARGUMENTS

The First Respondents' Argument (EC)

The EC argued that it 'complied with all the processes and procedures laid down by law for the conduct of the 7th December 2020 Presidential Election with fairness to every candidate and without malice, ill will or bias against anyone' [para 40 of *1st Respondent's answer to petition*]. The EC offered a thorough explanation of the whole process for the collation of the presidential results. They argued that representatives of Mr Mahama (the petitioner) signed 13 out of the 16 regional election results summary sheets, while representatives of the second respondent (President Akufo Addo) signed 15 out of the 16 regional results summary sheets. The EC however admitted that some errors were made during the declaration of the presidential results on 9 December 2020, noting that 'in reading out the results on 9th December, 2020, its chairperson inadvertently read out the figure presenting the total number of votes cast as the figure representing the total number of valid votes, and the percentage of [the President] as 51.59% instead of 51.295%' [para 21 of *1st Respondent's answer to petition*]. The EC also acknowledged that there were some errors in the declaration of the total valid votes. Nevertheless, the EC argued that those errors were corrected after the declaration, 'the figures converted into percentages showed that the president had obtained more than 50% of the valid votes, which met the constitutional threshold for the Election of President under Article 63(3) of the Constitution' [para 28 of *1st Respondent's answer to petition*] (Ghanalawhub 2021).

The Second Respondent's Argument (Nana Akufo Addo)

In his response to the petition, the second respondent, President Akufo Addo, indicated some initial objections. He argued that the petition should be dismissed by the court because it is 'incompetent, frivolous and vexatious and discloses no

reasonable cause of action in terms of article 64(1) of the Constitution'. The lawyer for the second respondent, Mr Anthony Akoto Ampaw, and the team, argued that the petition failed to meet the constitutional requirement for challenging the validity of a presidential election. They also pointed to the purported factual limitations in the petition, including the claim in paragraph 13 of the petition that 'a total of one hundred points three per cent (100.3%)' is yielded from the percentages announced by 1st Respondent (EC) on 9th December 2020' (Ghanalawhub 2021).

SUMMARY OF THE JUDGMENT

The seven justices of the Supreme Court of Ghana who presided over the election petition on 4 March 2021 unanimously dismissed the petition of the former President John Dramani Mahama as being without merit. On the issues of alleged vote padding, in the view of the court even if proven this would not be significant enough to overturn the results obtained by President Akufo-Addo. They mentioned that 'Indeed, evidence on record clearly showed that the impact of the alleged vote padding, even if proved, would have been very insignificant and would not have materially affected the outcome of the elections. It would therefore not have been a proper ground for the annulment of the 2020 Presidential Elections' (Republic of Ghana 2021, p. 54). In their conclusion, the Supreme Court stated that the petitioner did not demonstrate in any way the alleged errors and unilateral corrections made by the first respondent affected the validity of the declaration made by the chairperson of the first respondent on 9 December 2020 (Republic of Ghana 2021, p. 57).

BRIEF ANALYSIS OF THE 2020 ELECTION PETITION AND JUDGMENT

Unlike the 2012 election petition that interrogated virtually all the concerns raised by petitioners in a manner that exposed the flaws in the nation's electoral processes, the court processes in the 2020 Election Petition were heavily adversarial. Though there is general consensus that there were challenges with the 2020 elections, the court did not delve into the problems for the purposes of properly exposing them, nor making consequential pronouncements that would provide for further electoral reforms. The political elites in Ghana, the petitioner and the defendants all agree that there were challenges with the 2020 elections (Republic of Ghana 2021). The institutionalist argument for electoral reform, and the justification for same, has been forcefully opined by Lijphart (1994), Shugart (2008) and Katz (2007), calling for electoral reform when there are challenges that distort the institutional equilibrium. In contrast, the conduct of the first defendant in refusing to speak to the challenges of the electoral processes at the Supreme

Court, and the final verdict of the Court, ignored the weaknesses of the electoral processes and hence downplayed the imperative for electoral reforms.

Several thorny issues regarding the 2020 elections deepened the already existing trust deficit of the Electoral Commission. These include:

- the inability of the EC to build the needed relational competence in engaging with the opposition to deal with electoral irregularities before declaring results;
- the challenges encountered during the collation of results, a lack of clarity on what constitutes Form 13 and the details it must encapsulate;
- multiple mistakes in the declaration of election results and corrections without allowing key stakeholders to benefit from insights and explanations with regard to the reasons for such changes and the basis for the corrections; and
- allegations of vote padding, among others, which were validated by the Supreme Court's demeanour and blatant refusal to address them and make recommendations on how they must be tackled.

Moreover, some of the preliminary court rulings shielded the EC from being accountable and testifying or being cross-examined on the irregularities and challenges that saddled the 2020 elections. These were, in particular, the application to re-open the petitioner's case, and a review of the ruling on the application to re-open the petitioner's case. The NPP's position was consistent with the EC's declaration so they were not asked by the Supreme Court to present their petition.

Many well-meaning Ghanaians across the political divide, civil society and several governance experts expected that the practical issues of electoral malfeasance and irregularities that marred the 2020 elections would have featured prominently in the final ruling of the courts. Although these were not the issues before the Supreme Court, the institutional weaknesses of the EC that make electoral reform an imperative, were clearly exposed during the court processes. Regrettably, the fact that in their ruling on the 2020 election petition, the Supreme Court left electoral reforms in abeyance creates the impression that all is well with the electoral processes.

THE FUTURE OF ELECTORAL REFORM IN GHANA

As indicated earlier, many hoped that the Supreme Court's final judgment would give the EC the opportunity to deal with some of the issues in the 2020 elections, as

in the 2012 election petition. Unfortunately, the mechanistic application of the law in a positivist manner, without including other socio-political considerations, and the implications of sticking to rigid legalities with no consideration for electoral reforms, denied Ghana's electoral processes a clearer voice and directives for electoral reforms. This approach is a total departure from Lijphart (1994, p. 2) who explained that electoral reform as a replacement of a national electoral system, can consist of minor or major electoral reforms (Katz 2007, p.6). The ruling of the Supreme Court on the 2020 elections petition missed the opportunity to reform Ghana's electoral laws and regimes, the legal framework that governs and guides the conduct of elections in Ghana. This was what the 2012 elections petition had done and which contributed to the improvement of the electoral process in the subsequent elections of 2016 and 2020.

But given that the challenges of the 2020 elections still linger, the EC may independently initiate interventions, after the 2020 election petition, to deal with some of the challenges and concerns raised by the petitioners. The difficulty, however, lies in the fact that such a move requires a multi-stakeholder engagement with the participation of the political party to which the petitioner belongs. The question is, how will the EC get the NDC to approve such a move, particularly in the absence of a credible dialogue platform? Will there be a concession that the challenges of the electoral processes exposed at the court but denied recognition of admission by the first defendant, actually exist? If so, how will the EC be perceived by the NDC and the Ghanaian public? Put differently, the Supreme Court did not make pronouncements in its final judgment that admits the challenges of the 2020 elections, and the EC was shielded and prevented from conceding that there were challenges with the 2020 elections. So, the question remains as to how the Commission will be able to initiate interventions to deal with any challenge.

The Commission invited all political parties to the IPAC meeting on Wednesday 21 April 2021 to review the conduct of the 2020 presidential and parliamentary elections. But, as anticipated, the NDC refused to participate in the meeting. The following statement was signed and issued by the party's general secretary, Johnson Asiedu Nketiah:

The National Democratic Congress (NDC), declined an invitation by the Electoral Commission of Ghana to attend an IPAC meeting to review the 2020 Parliamentary and Presidential Elections which was scheduled for today, Wednesday 21st April, 2020. The party took this decision because of the lack of candour, odious duplicity, and open bias that was displayed by the Jean Mensah-led Electoral Commission in favour of the New Patriotic Party in the conduct of the 2020 general elections. It is the considered view of the NDC, that

the current leadership of the Electoral Commission who supervised the manipulation of the 2020 general elections and the stolen verdict that resulted from same, lack the integrity, credibility and impartiality to lead any such discussions or review of the very elections they rigged. The NDC has thoroughly examined the dubious role the Jean Mensah-led Electoral Commission played in the rigging of the 2020 general elections. Moving forward, the party shall review its working relationship with the electoral management body and take appropriate steps to forestall the rigging of any future elections in the country (NDC, 2021).

This sharp response from the NDC, rejecting the invitation by the EC to review and discuss the 2020 general elections, makes it difficult for the EC to bring together all the stakeholders, and in particular, the largest opposition party, to discuss matters of electoral reform in a manner akin to what happened in the post-2012 election petition. This and other related issues are puzzling questions whose answers are quite difficult to find. But they need to be answered to give a meaningful future to Ghana's quest to reform its electoral processes.

As answers are brainstormed and preferred, it can be admitted with a degree of certainty that the EC would continue to suffer from a trust deficit not only from the opposition but possibly from civil society, the public and even the ruling party. This may negatively affect the independence, image, and credibility of the EC if it makes an attempt at further reforming the electoral processes. Ghana's recent history on the removal of the immediate past chairperson of the Commission and her deputies includes ominous political overtones. A heightened trust deficit in the Commission may thus disturb the security of tenure of its current headship in a manner that may undermine continuity and the quest to build strong and independent institutions.

CONCLUSION

Since 1993, there have been several interventions aimed at fine-tuning Ghana's electoral processes; and indeed, the aftermath of every election has revealed incontrovertible challenges that have been accepted and worked on to improve the electoral processes. However, it appears that even though there were challenges with the electoral processes during Ghana's 2020 elections, the tacit non-admission of these by the EC and its refusal to raise them at the Supreme Court, hiding under the cloak of the law, makes the Commission look like a political ostrich. The petitioners in the 2020 election petition knew the challenges they were

likely to face at the Supreme Court in trying to make a case for a re-run of the presidential elections and for electoral reform. But the enigmatic position of any judicial process is cheapened if litigants go to the courts with a prior knowledge about the final judgment. It should be possible to test contentious issues in the courts; and with solid reasonable arguments, it should be possible for the courts to consider other factors in giving judgments that would not be dependent only on law. Unfortunately, the 2020 election petition was heard and a ruling based on only the legalities in a manner that covered the challenges of the 2020 elections. Until these challenges are admitted and addressed by all stakeholders, the future of electoral reform, post-2020, and the EC itself in the discharge of its mandate, is not too bright.

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BOOK REVIEWS

Coalition Politics in Lesotho: A Multi-Disciplinary Study of Coalitions and their Implications for Governance edited by Hoolo 'Nyane and Motlamelle A. Kapa, African Sun Media, Stellenbosch, 2022.

In his Preface to this book, Richard Weisfelder of Toledo University observes that when he was doing his doctoral research in Lesotho in 1965-66, there were few scholarly texts on the country's political development and institutions, and few of these were by indigenous authors. Although the pattern was to be disrupted by B.M. Khaketla's *Lesotho 1970: An African Coup under the Microscope* (University of California Press 1972), the major studies of Lesotho's politics that came out over the next decade were written by white, foreign authors and appeared in journals and books not easily accessible in Lesotho. By the end of the 1970s, however, 'a significant cadre of social science scholars had emerged at the National University of Lesotho'. I think his dating is a bit optimistic. There was, indeed, a very lively political debate going on among students at the University at that time, yet many of the most engaged were Zimbabweans and South Africans, each of whom had attachments to their own liberation movements. Yes, there were Basotho participants among the core group, yet the numbers were still very small. Nonetheless, Weisfelder is right when he indicates that local students, who were generally highly critical of the incumbent Leabua Jonathan's authoritarian regime, were prone to write under pseudonyms. What he does not say, is that such publications were in the local press. This was perhaps where they should have been, influencing local opinion. Yet the flip-side was that academic publication was still left largely to expatriate and foreign researchers.

Lesotho's accession to independence had prompted early enquiry about how such a small and impoverished country, long left to languish by Britain, the departing imperial power, was going to survive politically and economically when it was land-locked and surrounded by apartheid South Africa. An early stab at outlining its possibilities and limitations was provided by Jack Spence's *Lesotho: The Politics of Dependence*, published by Oxford University Press in 1968. Thereafter, what sparse efforts that followed, notably Gabriel Winai-Stroms' *Development and Dependence in Lesotho, the enclave of South Africa* (Scandinavian Institute of African Studies 1979) and *Lesotho: Dilemmas of Dependence in Southern Africa* (Westview 1985) by John Bardill and James Cobbe, were also written by expatriate and foreign researchers, as were most of the academic articles which appeared at the time. Yet things were changing, and for all the travails that the

country and its university underwent during the 1980s, (and this still needs serious research), local scholarship was developing. As Wiesfelder comments, 'a new generation of Basotho scholars at NUL' was coming into prominence. In 1990, local scholars contributed ten out of the fourteen chapters of a valuable collection assessing the prospects for *Southern Africa after Apartheid* edited by Sehoai Santho and Mafa Sejanamane (SAPES Trust) which engaged with issues vital to Lesotho's future. Even so, local students remained wary, and my own contribution to that book, examining the prospects for Lesotho joining a liberated South Africa, was prompted by local radicals saying to me: 'you can do this, we can't!'

The present collection on *Coalition Politics* demonstrates how things have changed. All but one-and-a-half of the eighteen chapters are written by Basotho scholars, the exception being an excellent contribution by a Kenyan who has been teaching at the National University for the best part of twenty years, and one chapter co-written by an American student doing his PhD at Wits. The overwhelming majority of contributors acquired their undergraduate training at NUL; many have attended South African universities to do postgraduate work; some of those who do not themselves teach at NUL hold academic positions in South Africa; some have acquired extensive experience in African inter-governmental organisations or NGOs; and many have authored contributions to international journals and edited books. Wiesfelder is right to celebrate this transformation.

Lesotho is a small and impoverished country which is largely ignored by the outside world. Especially after 2012, when the country was ruled by unstable coalitions, it has attracted little attention, except when there have been bouts of political instability, sometimes prompted by military mayhem. For foreign observers, including those watching events from within the southern African region, its politics remain obscure. In the 1970s, the country's politics was largely fought out by two main parties, the Basotho National Party (BNP) and the Basutoland Congress Party (BCP). Today, the BNP has been reduced to a bit-player, the Congress tradition has fragmented, and the number of political parties multiplies as ambitious politicians invent their own political vehicles to get themselves elected to office. It is all remarkably confusing to the outsider, and when it is rendered more complicated by the intensity of faction fighting within political parties, its dynamics become even more difficult to comprehend. In a very real sense, uncovering what is going on demands analysis by insiders – who speak Sesotho, who read the local press, who know the personalities, who can read the tea leaves. This speaks to the value of the present book.

Hoolo 'Nyane and Motlamelle Kapa, the editors, make the bold claim that Lesotho deserves attention because it has been 'an experimental laboratory of various models of governance' (p.1) (multi-partyism, one party dominance,

military juntas and now coalitions governments). They set the scene by noting that the 1993 Constitution, which heralded the return of Lesotho to civilian rule at a moment when South Africa was undergoing its own democratic transition, organised state institutions on the Westminster system and the plurality electoral system inherited from Britain in 1966. For complicated demographic and other reasons, these resulted in highly disproportionate electoral outcomes in the 1993 and 1998 elections favouring the incumbent BCP, resulting in political mayhem and the renewed threat of military intervention in 1998. The outcome was the adoption of a mixed-member electoral system (MMP) which retained the existing plurality constituency-based system but combined it with a list PR system to deliver overall proportional representation. 'The system unprecedentedly brought ten political parties into parliament' and 'it was already becoming clear that coalition politics was on the horizon' (p.2).

The present author proclaimed the new system, which was first used in the 2002 general election, 'An Unlikely Success' (*Southall Journal of Modern African Studies*, 2003), and it was in the sense that it delivered a fair outcome. Yet what this missed, and what the architects of the new electoral system also missed, was that the smooth functioning of the system relied not only on the rules which it laid down, but on the spirit which was meant to sustain them. It assumed that, in essence, the old party system, fought out by two political traditions, the one broadly conservative, the other broadly radical, would continue in the proportional representation of the established parties. But in a country where there are few economic opportunities and where entry into politics provides one of the few avenues of personal enrichment, politicians rapidly came to appreciate that the rules could be manipulated. As a result, the larger parties, notably the Lesotho Congress for Democracy (LCD), formed alliances before elections to maximise proportionality. As Jorgen Elklit is cited (*Journal of African Elections* 2008) as pointing out, this distorted the principles underlying the system. This led to no party gaining an overall majority in the 2012 election, and the formation of Lesotho's first governing coalition.

Subsequent governments have all been coalitions:

- Tom Thabane, the leader of the All Basotho Convention (ABC), became Prime Minister to form the first coalition with the LCD and BNP with the support of six smaller parties in the 2012 election, the first in which an opposition had dislodged a ruling party in the country's history.
- After this collapsed, following a dispute between the two major parties in 2014, a new election failed to produce a clear winner, resulting in a seven-party coalition led by Phakalitha Mosisili, the

leader of the Democratic Congress (DC) (who had been displaced as prime minister in 2012), with the LCD (from which the DC had broken away) as its major partner.

- Mosisili proceeded to reverse key appointments in the military made by his predecessor, leading to turmoil in the army. The subsequent assassination of the former commander of the Lesotho Defence Force (who had just been replaced) led to intervention by the Southern African Development Community (SADC). Thereafter, a split within the DC led to a splinter group aligning with the ABC, resulting in Mosisili heading into a new election to avoid defeat in a vote of no confidence in parliament.
- The resulting election in June 2017 saw the ABC under Thabane forming a four-party coalition with three smaller parties, only for it to fall prey to bitter faction fighting. This led to passage of a no-confidence motion in Thabane, whose government now collapsed like ‘a pack of cards’ (Matlosa p. 144). It was replaced by a grand coalition led by a new prime minister comprising the ABC, DC and five smaller parties.

This is a remarkably convoluted history, and when you throw in such random factors as Thabane being arraigned for the murder of his former wife, it takes a remarkable degree of commitment to master even the basics of this complex story. This is where this book does so well. It brings order to a maze of detail. Although the editors’ claim to the collection’s ‘mutlidisciplinarity and interdisciplinarity’ is a bit overdone, as the diverse contributions are made largely by political scientists and constitutional lawyers, the combination is a productive one, occupying the empirical core of the book in Parts Two and Three.

The editors supply a useful summary of each chapter in their introduction. In Part One, Oscar Mwangi provides a valuable discussion of three approaches to coalition-making relating, respectively, to office-seeking, policy-seeking and portfolio-allocation, none of which are mutually exclusive. He speaks to the institutional and political factors that determine their durability, the strains and stresses to which they may be subject, and the uncertainty in which this often results. He also highlights the importance of coalition agreements. These can be tacit or explicit, and they vary in their comprehensiveness, their principal purpose being to limit the uncertainty to which coalitions seem to be inherently prone. He also makes the important point that while coalitions can be progressive and stable, they do not in themselves ensure good governance. This is a most valuable chapter which deserves wide reading.

The second part of the book, on 'Institutions, Powers and the Constitutional Framework', opens with a discussion of the juridical nature of the coalition agreements. Now that coalitions have seemingly come to stay, Kananele Mosito (Chapter 3) suggests the urgent need for Lesotho's constitution to provide for the status and regulation of these agreements. Hoolo 'Nyane (Chapter 4) argues that the Westminster-style constitution has invested the prime minister with powers that are suited to a one-party government, and that this has led to their abuse in a coalition setting. Itumeleng Shale and 'Marealeboha Makau (Chapter 5) demonstrate how coalitions have had a disturbing impact on the independence of the judiciary. Because prime ministers have misused their power to interfere with the leadership of the judiciary, the latter has become enmeshed in politics. Following 'Nyane's plea for the codification of the rules for the formation of coalition governments (which he advises will lead to less power lying in the hands of the king) (Chapter 6), Rapaleng Mosae and Mokitimi Tsosane discuss how coalitions have compromised the independence of the Attorney-General, in much the same way as it has compromised the judiciary (Chapter 7).

Part Three covers 'Political Parties, Political Stability, Security and Electoral Systems', and opens with an excellent overview of how coalition-making has resulted from the change in the electoral system from first-past-the-post to MMP. Authored by veteran commentator Khabele Matlosa, this provides a valuable introduction to Lesotho's chequered political history in recent years and should become a regular 'go-to' source for insiders as well as outsiders. Fako Likoti (Chapter 9) follows with a chapter which indicates that because Lesotho's political parties all have a very similar free-market-cum-welfare orientation, political ideologies have not been a significant factor in either the making or unmaking of Lesotho's coalitions. Sofonea Shale (Chapter 10) argues that when Lesotho's coalitions have collapsed, this has been not only because of lack of agreement about how to regulate conflicts, but a lack of will to do so. This is followed by Mokete Pherudi's highlighting the reasons for the collapse of coalitions (corruption, floor-crossing in parliament by MPs, politicisation of the public sector, squabbles between leading personalities, and so on). And Tlohang Letsie (Chapter 12) follows with a vital contribution on how Lesotho's security forces (the police, the army, and the intelligence and correctional services) have played a major role in the country's political instability, which was aggravated and often precipitated by the power of the prime minister to appoint and dismiss their heads.

Part Four groups together a rather arbitrary collection of chapters under the heading 'Public Participation, Economic Impact, Gender Dynamics and

Comparative Perspectives'. Motlanelle Kapa (Chapter 13) discusses how the comprehensive multi-sectoral reform process, supposedly refereed by SADC, was intended to be underlain by public participation, but has been hi-jacked by political elites, and worries that it has become a window-dressing exercise rather than a transformative process. Watch this space! Moletsane Monyake (Chapter 14) provides a careful examination of how voter participation and enthusiasm in Lesotho is declining. The mushrooming of political parties, the inconclusive results of elections, and the musical-chairs of coalition-forming and governance have increased voter apathy and the distrust of ordinary people in what they see as a political circus, rather a serious exercise in democracy. Mamello Rakolobo (Chapter 15) provides the necessary chapter on gender dynamics, noting that without formal roles on ministerial recruitment, women are usually marginalised within government, and when given ministerial posts, are given ones which deal with 'soft issues' such as social welfare and health. No surprise there! This is followed by a discussion of the economic impact of coalition governments by Selibe Mochoboroane and Keneuoe Mot'soene. Their basic argument is that the constant political instability associated with the coalition government era in Lesotho has had a markedly adverse impact upon budgets (capital allocations down, recurrent expenditure up), loss of enthusiasm by external donors, and capital flight. Finally, Victor Shale and Robert Gerenge (Chapter 17) provide a comparative analysis of coalition governance in Lesotho, Kenya and Mauritius. They arrive at the rather depressing conclusion that too often, coalitions are driven by the quest of elites for power rather than the desire to address developmental concerns. Concern for elite survival hampers any search for restorative justice; and whatever their announced values and aims, coalitions tend to increase ethno-regional differences.

The editors make a useful stab at pulling all this together in Part Five, suggesting that Lesotho's coalition experience offers important lessons to other countries. One, coalitions do not necessarily resolve political instability (although the implication is that they may do so under favourable conditions). Two, if coalitions are to work, participant parties need to genuinely commit to coalition agreements with their in-built procedures for conflict management. Three, coalitions can prove to be extraordinarily expensive, because resulting governments need to keep all participants happy if they are to survive. Four, coalitions may heighten rather than diminish inter-party competition, not least because each party feels it has ownership of the portfolios and ministries it has been allocated.

This book is not an easy read. The subject matter is extraordinarily detailed and complicated, and readers have to wade through a lot of undergrowth to grasp a clear picture of tendencies and personalities (alas, there are few principles to

worry about). This is not the fault of the authors, as they need to wrestle with their subjects (although a stricter edit might have cut down on unnecessary overlap between chapters and a tendency by some contributors to over-write). Nonetheless, this is a book which requires reading, especially in neighbouring South Africa where coalition-making has begun to make its uneven impact at the municipal level and where there is widespread expectation that the ruling African National Congress will lose its majority at the next general election. South African scholars therefore need to take the lessons about coalitions that this book presents very seriously. Very seriously indeed.

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***Marriages of Inconvenience: The Politics of Coalitions in South Africa*, edited by S. Booysen, Mapungubwe Institute for Strategic Reflection (MISTRA), Johannesburg.**

While coalitions are not new to the South African political landscape, the 2021 Local Government Elections yielded five of the eight metros as hung councils and a total of 66 municipalities without a party in the majority, thus thrusting coalition politics into the political limelight. This was nearly double the number of hung councils in the 2016 local elections. Since its first democratic multiparty elections in 1994, South Africa's party politics has been characterised by a dominant party system, with the African National Congress (ANC) winning five consecutive national elections. Provincial elections, but even more so, those in the local spheres have been increasingly competitive. The results have compelled political parties to consider coalitions and post-election co-operation for a joint exercise of political power.

Marriages of Inconvenience: The Politics of Coalitions in South Africa, commissioned and published by independent think-tank, the Mapungubwe Institute for Strategic Reflection (MISTRA) and edited by University of the Witwatersrand Emeritus Professor Susan Booysen, is thus a timely publication. The 528-page volume, published in 2021 (before the Local Government Elections outcomes were known), was intuitively motivated by the expectation that coalition politics would become a more prominent feature of South Africa's political landscape.

A fifteen-strong author team spans academia, research-based think-tanks, and political practitioners, bringing together the theoretical, practical, comparative, and critical. The work comprises five parts: Part One is a contextual positioning of coalitions in South Africa historically as well as in terms of regional foundations and global trends. Part Two focuses on deriving learnings from African case studies. Part Three is a return to South African contextual issues, namely the legal-constitutional and the political-administrative. Part Four considers the practice of coalitions in South Africa's metropolitan municipalities, and Part Five considers future possibilities, while reflecting on the lessons learnt. While the chapters are informative, insightful and accessible, the logic of the chapter divisions between the five parts is at times elusive. However, the book includes useful features such as a glossary of relevant terms as well as a comprehensive index for easy reference.

The point of departure is 'the new politics of instability' (p. 1) that the book seeks to contribute towards understanding. It is rather pessimistically framed, as is the apparent presentation of South African politics as a choice between dominance (bringing stability), and coalitions (embodying instability) (p. 14). The chapters,

covering both local, regional, and global experiences, point to a complex, nuanced record of coalition politics. A key takeaway from the book is the relevance of the motivation for entering into a coalition. Where there is ideological or at least policy agreement, alliances tend towards more stability and better governance outcomes (p. 90). But where the motivations are of 'opportunistic machines' (p. 177) that are essentially rent-seeking, and accessing power and resources for narrow or personal ends, coalitions tend towards disintegration and have poor governance outcomes (pp. 146 & 356).

Scholarship thus notes the basis of coalitions as being driven either by ideology and policy, or position and power, finding that the former tends to create longer-term stability, while the latter tends to faster disintegration. Even so, coalitions with 'programmatically diverse' may also have a 'democratising effect' through including previously excluded groups and engendering a democratic culture of deliberation and compromise (p. 90). In South Africa, five of the twenty best performing municipalities, identified by Good Governance Africa, were governed by coalitions (p. 272). The inevitability of coalition politics for South Africa is not necessarily a move towards dismal politics.

Concerns are highlighted regarding the predominant tendency in many African countries to reduce elections to a zero-sum game of winner-takes-all, which can then translate into coalitions being about patronage and rent-seeking (p. 128). A further concern regarding the case studies in Kenya and Malawi, for example, was a lack of intraparty democracy (pp. 177 & 229). The colonial legacy and post-colonial trajectory are of initial multi-party elections, followed by one-party systems, then one-party dominance, and finally the current trend towards no clear-cut winners. This is well set out; but it would be interesting to understand what influence the pre-colonial political landscape might have, in particular on how opposition is perceived and engaged, the viability and acceptability of cross-cutting ethnic collaboration, and the prospect of governing in the broader national interest as opposed to narrow personal or ethnic interest.

The ANC's nearly three decades of dominance has not been characterised by good governance, accountability, responsiveness or quality service-delivery (especially at the local level). Governing on the basis of partisan interests, it has arguably contributed to citizens opting out of the electoral system, together with the growth of radicalism and violent protests: not the substance of a stable democracy. Furthermore, the predominant narrative in South African scholarship that opposition parties are weak, fails to recognise that they operate within the context of an uneven playing field, where access to resources, policy-making and office has been skewed, creating a weakened opposition. This contextual reality points to the potential coalition politics has of providing a fairer playing field.

A more competitive electoral landscape could give space and opportunity for smaller parties to be kingmakers, to gain governing experience, have deliverables (the opportunity to bring their issues to the fore) to show their voters and thus to grow their voter base. To mature as a democracy, South Africa needs to deepen its political culture in terms of inculcating democratic norms and the values of negotiation, concession, compromises and power sharing – lessons provided by coalition politics. For successful coalitions, parties need policies with ‘national reach and resonance’ (p. 177), and motivations need to move away from the ‘spoils of office’ (p. 208). Political parties need to be sure of where they cannot bend so as not to ‘sell their soul’ for positions and power. Sometimes an opposition voice is also important, especially for accountability. Even so, coalitions provide a maturing opportunity for the political actors in South Africa’s democracy.

Marriages of Inconvenience provides timely insights not just for South Africa and the wider African region, but all countries that have engaged or will engage in coalitions. In the South African context coalitions have become a ‘necessity’ (p. 477) and an inevitability in an increasingly competitive political landscape: hence the need to better understand this political dynamic.

But the resonance of the book goes beyond coalition politics to interest those who seek a better grasp of local South African politics, African politics, party politics and electoral systems. As such this book is set to become a key reference for academics and practitioners alike.

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The Moral Economy of Elections in Africa: Democracy, Voting and Virtue by Nic Cheeseman, Gabrielle Lynch and Justin Willis, Cambridge University Press, Cambridge, 2020, 359 pp.

Are elections truly indicative of a democratic society? This is one of critical questions that scholars Nic Cheeseman, Gabrielle Lynch, and Justin Willis grapple with in their recently-published book, *The Moral Economy of Elections in Africa*.

Drawing on the electoral processes and experiences of former British colonies Ghana, Kenya, and Uganda, the authors analyse how political figures and political parties justify their actions, and how voters validate their own choices. The authors categorise these actions, choices, attitudes, behaviours, postures, and political justifications by politicians and voters as political exercises in making moral claims. As a result, they argue, these clashing views come down to two competing beliefs: civic virtue (proper behaviour, rooted in good and participatory citizenship of which civil society and international organisations are the main sources); and patrimonial register (politicians' long-term personal or political ties).

The authors define civic virtue as the citizens' willingness to abide by the democratic norms, voter education programmes and rules prescribed by electoral officials and commissions. Patrimonial relationships, on the other hand, are those shaped by shared common identities such as political affiliations, individual relationships, ethnicity, community lineages, loyalty, and kinships. While the first is preoccupied with overall national interests and values, the authors claim that the latter is focused on self-interests – which in an electoral competition may lead to democratic malpractice.

In moral 'electoral' economies such as those described in Ghana, Kenya, and Uganda, the authors argue that there is a blurred line and competing visions between 'doing the right thing' and election 'malpractice', even if this means undermining the basic principles of democracy. However, the meaning of 'undermining' here is subject to people's own competing visions of what is right and what is wrong, that is to say their moral interpretation.

The work relies on surveys across Ghana, Kenya, and Uganda using in-depth qualitative research, laboratory games, and historical archives. Perhaps the most intriguing element of this study is the concept of political and moral virtuosity: politicians and voters depict themselves as virtuous people; voter manipulation may be justified as being virtuous; and vote-buying (disguised as personal assistance) may also be seen as virtuous. If each action and reaction can be justified and legitimised, the authors defend the notion that being perceived as a good leader or a good citizen is subject to complex moral interpretations.

Lastly, they argue, the moral authority often claimed in the form of patrimonial relationships by well-established politicians does not always translate into votes. In other words, despite being 'generous' where such an attitude is expected, the authors claim that candidates who spend the most do not always win.

Nonetheless, today as in colonial-era Africa, many political parties and those running for office have, for the sake of political expedience, kept alive a sense of patronage towards their citizens under the label of a patrimonial bond. Such a dynamic and hierarchical relationship between patron (the candidate) and client (the voter) has raised the question of whether it is morally justifiable to run and win elections, which are often perceived as being bought, manipulated, or rigged.

While most readers tend to be naive in hoping for an electoral process where civic virtue will offset all other shortcomings, Africa is not alone regarding the moral economy of the electoral process. In the most advanced democracies voters are also prone to different moral interpretations of the same set of choices, even when their politicians ignore, abuse, manipulate, or even transgress their national laws.

The claims of morality presented in *The Moral Economy of Elections in Africa* seem to resonate across different political systems as voters, election officials, politicians, civil societies, and international observers interact and weigh their interests. Cheeseman, Lynch, and Willis also recognise that elections have many political opportunists. However, contrary to the emphasis on patrimonial register, it is also important to acknowledge the economic and financial vulnerability of voters across the African continent. For instance, politicians in Ghana, Kenya, and Uganda do not necessarily want to patronise their people. Often, they have no other viable choice when seeking elected office. As one Ghanaian politician claimed, these are not just requests, they are demands from the voters (p. 1).

Regarding candidates' political generosity: while such patrimonial dependency may weaken their political accountability in the immediate future, in Africa the display of generosity and empathy is of extraordinary value to voters. These values may not necessarily be those that civil society and other supporters of democracy in the continent would hope for; but they are essential to politicians who want to portray themselves as good and sensible leaders deserving of public office.

In this comprehensive study of popular and institutional engagement with democracy in Ghana, Kenya, and Uganda, the authors suggest that Ghana represents a success story filled with virtue and where politicians are willing to accept electoral results as well as power alternance. Kenya they describe as characterised by a high incidence of patrimonial registers, offering a mix of ethnic politics and electoral violence. Lastly, they argue that Uganda is an example

of electoral authoritarianism, where virtue and patrimonial relations are in constant conflict.

Despite this work's resourcefulness and in-depth findings, the general reader may still be left with lingering questions. For instance, if electoral participation does not mean success, then how can we measure a successful election? And if moral neutrality is desired, but cannot be fully expected, then how can the voters be assured that civic ideas are not being undermined during an election? While trust in an electoral process is highly partisan and alternance in office is key to public confidence, should we assume that a successful election is necessarily won by someone other than the incumbent?

Finally, while offering experiences and general principles that can applied to elections in many regions in Africa, Cheeseman, Lynch and Willis are not claiming any sense of electoral universalism across the continent.

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***Democracy and Electoral Politics In Zambia* by Tinenenji Banda, O'Brien Kaaba, Marja Hinfelaar, and Muno Ndulo, Brill, Leiden & Boston, 2020, pp. vii, 374.**

Zambia's elections in 2015 and 2016 were accorded a generally clean bill of health by international observers and monitors. For example, the European Union team found the electoral process free and transparent. Several teams noted that election day had been mainly peaceful, despite a polarised campaign. EISA's mission statement (2016) concluded that election day procedures and what followed them met normally accepted standards of credibility despite an 'uneven playing field' during campaigning.¹ The opposition's presidential candidate and his party rejected the outcome and petitioned the Constitutional Court but their case was not tested. The Court found that their petition had not been submitted within the required fourteen days after the poll, a requirement which, as the EISA observers' report noted, would have been nearly impossible to fulfill.

This comprehensive volume is likely to become the definitive study of the poll. Its editors generally view the contest as having been a setback to democratisation, though 'not an outright slide into brute authoritarianism' (EISA 2016, p. 2).

One key feature of Zambia's politics is the character of its political parties which mobilise around ethnic cores: Bemba for the then incumbent Patriotic Front presided over by Edgar Lungu, Lozi in the case of the opposition United Party for National Development led by the businessman Hakainde Hichilema. In a setting in which ethnic blocs are not large enough to predominate, winners are inevitably coalitions constituted by 'big men'-led factions. Big-man politics is reinforced by the ways in which opposition groups finance themselves, relying chiefly on the fortunes of very wealthy individuals. While the ruling party benefits from its unregulated access to public resources, the dynamics of party formation still leave room for civil society mobilisation.

Survey data cited in this volume shows that voters mix ethnic loyalty with instrumental calculations and performative evaluation, factors that help to explain the turnover in 2011 that brought Michael Sata's Patriotic Front into office. Since 2008, margins of victory have contracted and elections have become increasingly competitive. Whether ethnic identity supplies a stable cement for party loyalty in Zambia is an issue that remains a puzzle explored by Eric Hern and Jeremy Seekings in the chapters that address the question. Robbie Kapesa, John Bwalya and Owen Sichone suggest that growing 'horizontal' inequalities between regions may reinforce politicised ethnicities, though they also observe that many material resentments arise from misperceptions of economic unfairness.

1 The statement refers to an impending final report but no such assessment was published subsequently.

The opposition claimed that the Electoral Commission of Zambia was paid off by the incumbents and that its management of the election was heavily biased. In this book, Biggie Joe Ndwamba and O'Brien Kaaba offer a more qualified picture in their treatment of the Commission's role, identifying failures to enforce regulations and the opaque procedures for ballot aggregation. The main difficulties with the Commission are institutional, not intentional, they maintain, to do with its financing and the way it was constituted. They find that Commission's autonomy needs better protection.

By continental conventions, the 2016 Zambian poll and the campaigning before it were not singularly violent: fatalities were limited to two deaths on polling day, when two ruling party officials were attacked. But data from focus groups and the Zambian Election Monitor Survey indicate that non-lethal localised violence between rival groups of activists had become quite generalised. In his contribution, Michael Wahman also presents plenty of evidence of other kinds of coercion and the illegal use of money to manipulate voters. In a tight contest these abuses could well have been decisive. Zambian courts, though, operate on the basis of a demanding notion of 'materiality' in deciding whether an abuse is sufficiently serious to affect electoral outcomes. In the past, Tinenenji Banda shows, the Court has applied the materiality test in an inconsistent manner. As noted above, in the vital presidential contest in 2016 it dismissed the opposition petition without considering the issue, though it did invalidate six constituency results; however, Mwale and Mwanza (2017) present a more favourable treatment of the judiciary's role in the 2016 election.

For researchers, the absence of reliable media reports is a major impediment in any attempt to assess the validity of accusations of abuses. Here the government's repressive treatment of independent journalists in 2015 and 2016 accentuated the unevenness of the 'playing field'. Chanda Mfula's analysis in this volume demonstrates that the quality of reportage from opinionated social media platforms is an inadequate substitute for professional journalism.

So, did the 2016 poll represent a decisive setback to Zambia's democratisation? Not if we are to judge from the outcome of the latest poll in 2021 in which Hakainde Hichilema and the UPND unseated Edgar Lungu in a second historic turnover. Lungu was running for a contentious third term with the approval of the Constitutional Court which decided that as his first term lasted only a year – he was elected in 2015 after Michael Sata's death – he had not served the constitutional limit. Whether the law implied two full terms remains questionable, and Lungu's own threats to the Court before its decision may have influenced its judges. Parallel vote counts by local monitoring groups as well as Hichilema's success in wooing disaffected Bemba voters in poorer urban districts both helped to explain the outcome (Resnick 2022, pp. 70–84). But as the careful analyses

assembled in this useful volume suggest, Zambia's electoral procedures and its party system need a major re-organisation if Zambian democracy is to be secured. Even two turnovers may not be enough by themselves.

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