



Ready or Not? Elections in Kenya and Zimbabwe in 2013

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INTRODUCTION

Governments of National Unity (GNU) have been established in various countries on the African continent in recent decades, from South Africa and Liberia in the nineties to more recently Kenya and Zimbabwe. GNU's are seen as a transitional measure, a vehicle to reduce tension and to create the space to drive durable peace and sustainable change. GNUs also seem to be Africa's conflict resolution approach to intra-state violence caused primarily by ethnic conflict and political polarisation. These power-sharing arrangements are aimed at creating a stable and inclusive political environment through which reforms can be implemented. They have the potential to engender a political framework based on democratic values and procedures. Yet they are fragile arrangements with a high risk of disintegration and they are often short lived.

In both Kenya and Zimbabwe democratic process crumbled when political opposition parties were on the verge of taking control of the state and the incumbent leaders refused to relinquish power, citizens of both countries were then confronted with severe electoral intimidation and violence and inadequate rule of law to protect them. Both GNU's are now reaching the end of their legal term. In Zimbabwe, the Constitution dictates that new elections will be held in 2013. In Kenya elections are planned for 60 days after terms of the GNU formation expire in January 2013, which is consistent with the original power-sharing agreement (Further background to each country's crisis and subsequent power-sharing agreement can be found in Appendix 1).

This paper focuses on a comparison of the GNU's of Kenya and Zimbabwe and their ability to implement reform in preparation for elections. This discussion is based on issues central to the democratic crises for credible and legitimate elections that the GNU's have attempted to address, namely; single party dominance, institutional capacity and electoral processes. Each topic is discussed by considering the crosscutting context-specific issues of the legislative framework, election credibility, the advantage of the incumbent administration and political violence. It is generally considered that Kenya has achieved the necessary reform to conduct legitimate and credible elections and that Zimbabwe has not, therefore the point of departure

for this discussion is the state of reform in Kenya, to which the situation in Zimbabwe is compared (a summary of discussions can be found in Table 1, Appendix 2).

The comparison in no way claims to be comprehensive in its review; the aim is to offer an overview of how the formation, structure and implementation of the GNU's have impaired or enhanced the ability of each nation to prepare for democratic elections.

SINGLE PARTY DOMINANCE

From independence to the early 1990's, when a third wave of democratisation led many African countries to adopt multipartyism, the single party state was the norm. Kenya and Zimbabwe officially adopted multipartyism but continued under a dominant party structure. In both countries decades of single party rule left a lasting impression on governance processes and have led to a major imbalance of power. This power imbalance often opens the door to a conflation of party and state, whereby party officials are appointed to senior civil service positions, irrespective of their qualities, leading to a politicised civil service and increased incompetence. Furthermore, years of political dominance often leads to the development of legislation and systems that advantage the ruling party. This undermines any effective opposition which leaves little room for transparency or accountability processes. In states with ethnic tensions the ruling party often shows an ethnic preference, excluding those of a different ethnicity from access to power and resources, which reinforces social cleavages (Suttner 2006).

To tackle this legacy of single party dominance, thereby creating the possibility of credible elections on an equal playing field, some of the unfair advantages of the former ruling party and the far reaching politicisation of the state must be addressed. Temporary reform of governance structures, specifically the executive and the legislature, is crucial to a power sharing agreement so that all parties are accommodated, preferably according to their share of power as determined by the electorate. By sharing these powers between the parties, decision making and policy development should be a joint venture with no one party defining the agenda (LeVan 2011).

In Kenya, the National Accord and Reconciliation Act of 2008 that established the GNU recognises the main parties, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM), as equal partners. It states that the position of Prime Minister (PM) will be created, and filled by the party with the largest number of seats in parliament; in practice this is the ODM. Provisions are made for two Deputy Prime Ministers, one from each major political party. The principle of portfolio balance is implemented in relation to cabinet ministers and the number of seats assigned in proportion to the parties strength in parliament. Some very specific provisions are made for the national governmental structure, but at the same time no detail is given on the actual authority and powers of the PM, the time-span of the coalition or what happens if the coalition collapses (Horowitz 2008:10). When the Grand Coalition government was created, both sides fought a fierce battle to control key ministries. The President's PNU kept control of Internal Security and Finance, while the Prime Minister's ODM gained other key ministries, including Public Service, Local Government, and Agriculture.

In order to monitor and enforce the implementation of the National Accord the principle of portfolio balance was adopted in Kenya. In practice this was interpreted not only as a balance in the distribution of ministries but also a balance within each ministry was provided for by splitting top positions between different parties. For highly sensitive ministries, such as Defence, two assistant minister positions were created and divided between parties. During negotiations, the ODM also insisted on proportionality at all levels of government thereby addressing exclusive control by either party at lower levels (Horowitz 2009). Even though the power sharing agreement has eliminated official opposition, according to Horowitz (2008) new

opportunities have arisen for oversight within government bodies that seem to have played, together with the balanced allocation of cabinet posts, a large role in the successes claimed by the GNU.

To safeguard against the possibility of reneging, guarantees were also provided to ODM. The Prime Minister would only be removed through a vote of no confidence passed by a majority in parliament. Given that ODM held the largest share of Parliamentary seats, this provision meant that it would not be possible to remove the PM without ODM's consent. Similarly, Cabinet Ministers would be removed from office only with agreement from both parties (Horowitz 2008:10). The Panel of Eminent African Personalities, the committee that brokered the original National Accord agreement, has also continued to be involved in monitoring the transitional process. Where issues have arisen members of the panel have been quick to intervene and resolve disputes (Kioko 2010).

Many members of the parties to the Government of National Unity were previously members of the National Rainbow Coalition government, therefore some balance between the experience of the incumbent party and the newcomers can be assumed. Also, though the civil service is politicised and considered highly inefficient many civil servants previously worked for NARC politicians. This means that there is possibly support among civil servants for both parties in government as there is little sign of active obstruction to ODM leadership. However Raila Odinga, the ODM Prime Minister, has said that a bureaucratic public service has been a major challenge to the implementation of government policies during his term as PM (Opiyo 2013). Though not actively perpetuating single party dominance, the inefficiency of the civil service is clearly not supporting reforms aimed at addressing it either.

There are still many irregularities in the governance processes in Kenya such as un-transparent appointment of persons to government positions by the President, for example the case of the director of public works where there was clear political interference. This suggests that he still feels that unilateral appointments are within his mandate and necessary for his political survival. Also, since the inception of the inclusive government, mainly due to much confusion as to the authority and position of the PM, many citizens feel that the PNU is the dominant party to the coalition and has more power than the ODM (Kanyinga 2012). This reaffirms the superior position of the President's party.

The dominant party structures that characterise Kenyan politics have perpetuated a now infamous 'it's our turn to eat' culture that revolves around ethnic favouritism, patronage and corruption (Murphy 2003). Though a few different parties have governed Kenya since 1991, each party has continued to have a strong ethnic preference and maintained the usual approach to governance, trying to consolidate power through patronage. Ethnic cleavages are exacerbated by the patronage networks that benefit the ethnic group of the ruling elite. Since Kibaki came to power the Central Region of Kenya, the region from which the President originates, has seen an overrepresentation in government and government agencies, and advantageous access to social services and state resources, such as water (Muhula 2009).

The transitional government claims that the 'it's our turn to eat' attitude has been addressed to some extent through a functioning coalition government, made up of parties representing various ethnic groups. Yet the communities and individuals that supported the parties, financially and otherwise, now expect some form of pay-back, even though the nature of the power-sharing arrangement means that each party only has a certain amount of access to state resources, instead of full access, as would normally be the case when a party is in government. Not being able to access sufficient resources and share them with its backers has weakened the support base of each party (Kanyinga 2012). At the same time the cabinet was expanded to 42 posts, in order to accommodate the expanded coalition (Horowitz 2008), in the recent by-election massive state resources were also used for campaigning purposes by government

officials (Jamah 2013). The cabinet was expanded, and extremely high parliamentary wages and sitting allowances were still offered to MP's at a time of economic crisis. This suggests that the political elite are still keen to spend national resources on themselves instead of on more pressing issues. Bratton & Masunungure (2011) point here to an enduring patronage culture.

A continued suggestion of fraud by political leaders is further evidence of a patronage culture. Deputy Prime Minister, Uhuru Kenyatta, is ranked number one richest person in Kenya and 26th on the continent in the 2011 Forbes Richest Africans list. This ignited debate among Kenyans as to how his wealth and that of others, has been accumulated. The inference is that the GNU is facing a serious challenge with corruption. This may require removing senior governmental officials from power. The Kibaki administration also faced serious corruption allegations, but there has always been doubt concerning the government's resolve to deal with the issue (Dagne 2011). Prosecutions, where they have occurred, seem more politically motivated than a genuine attempt to establish culpability.

Some legislation has however been passed concerning the powers of the Executive and other official posts, namely, the Leadership and Integrity Bill 2012 and the Assumption of the Office of President Bill 2012. The Bills change the manner in which political power is distributed and used (Akech 2010). When finally passed by parliament, some consider the Assumption of the Office of President Bill to have been so watered down as to be unconstitutional (Maina 2012).

Institutional reforms are discussed in detail in the next section. However, relating directly to a legacy of single party dominance it is important to mention that judicial reforms have been achieved under the GNU. Several new appointments and the introduction of monitoring mechanisms depoliticised the judiciary, making it more independent, less sensitive to political interference and more likely to pursue the interest of the state over that of a political party. In addition, the political violence that was the catalyst for the GNU was perpetrated by ordinary citizens as well as the state. Considered reasonably professional the Kenyan security forces are not extremely politicised though reform was initiated to ensure professionalism. Security sector reforms have not been completed but legislation has been developed to increase civilian oversight of the police service so that further politicisation is avoided.

The National Accord and Reconciliation Act of 2008 recognises the main parties to the transitional government as equal partners. This is supported by a balanced portfolio of Cabinet Ministers and proportionality at other levels of government. A hands-on approach to problem solving by the Panel of Eminent African Personalities has facilitated a balanced relationship between the parties. This has led to the initiation of legislative and institutional reforms to address a legacy of single party dominance. Yet the government still faces a severe challenge in addressing a political culture of patronage and corruption. This has meant that, despite some reform, the parties in power continue to hold an unfair advantage over their opposition.

In Zimbabwe, the Global Political Agreement established a GNU that introduced a power-sharing arrangement between the three main political parties. Under this agreement, the Executive authority of the GNU is shared by the President the Prime Minister and the Cabinet. President Robert Mugabe (ZANU-PF) retained his position as head of state, commander-in-chief of the armed forces and chair of cabinet, while Morgan Tsvangirai of the Movement for Democratic Change – Tsvangirai (MDC-T) became Prime Minister (PM) and presides over a parallel Council of Ministers, which is meant to implement policy. Arthur Mutambara of the Movement for Democratic Change - Mutambara (MDC-M, that later became known solely as MDC) became Deputy Prime Minister as did Thokozani Khupe (MDC-T). Cabinet decisions are to be taken by consensus. The President is expected to appoint ministers, in consultation with the PM. ZANU-PF was awarded 15 of the 31 cabinet ministries, MDC-T was awarded 13, MDC-M was awarded 3 (Katito 2008; Mutisi 2011). According to the GPA, Ministries, and therefore cabinet posts, were to be divided equally between the President and the Prime Minister for

the purpose of day-to-day supervision. It does not outline any principles to guide that division. The parties then agreed to expand this number eventually swearing in 41 ministers and 20 deputies in breach of the Constitution (Matyszak 2010a). The parties negotiated for control of key ministries yet the incumbent party was able to retain exclusive control over coercive instruments of the state such as the security sector, judicial services and state media thus distorting the balance between the parties to the GNU as the distribution of power is uneven (Bratton & Masunungure 2011).

A joint monitoring and implementation committee (JOMIC) was created in Zimbabwe, tasked with overseeing successful implementation of the GPA, including the reform of institutions and instating of commissions. It has however been too structurally weak to be effective and its independence was compromised by the selection of members from political parties (Connolly 2011). It also lacks jurisdiction and internal capacity (Connolly 2011). According to some it has become a forum for mutual recrimination (Bratton & Masunungure 2011) which has nullified any chance of a political oversight role (Connolly 2011) or accountability structure (Bratton & Masunungure 2011). In addition to the role of internal enforcer provided by JOMIC, it was expected that as the mediator of the GNU SADC would play a strong censorship and enforcement role, but the regional body has failed to fulfil this mandate (Gwisai 2011). Despite numerous appeals from the MDC (Bratton & Masunungure 2011), SADC has refused to condemn acts of unilateralism and on-going abuses have led to a decline in commitment to the GPA from both sides (Connolly 2011). SADC did recognize the need for an empowered JOMIC and recommended strengthening the facilitation team's monitoring and reporting capacity, so it could work more closely with JOMIC (ICG 2011). In early 2012 SADC named two observers to be seconded to JOMIC yet by late 2012 they had not taken up their positions (Madava 2012).

Besides wielding continued influence over the coercive instruments of the state under the GNU (The Independent 2012) ZANU PF has used long established local level state and party structures to its advantage. The mobility of local ZANU PF structures was evident during the recent constitutional outreach programme where they were able to bus groups of supporters to meetings and thereby dominate discussions. ZANU PF has also been able to use patronage to align the interests of traditional leaders with those of the party. These well-established structures and interest groups are not available to other political parties (Matyszak.2010b). In addition allegiance among the civil service to ZANU-PF has led to active obstruction of MDC participation in ministerial activities. Obert Gutu (Deputy Minister of Justice) stated that civil servants in his ministry had on one occasion purposefully neglected to tell him that a meeting with the head of UNHCR, where discussions on human rights abuses in Zimbabwe were to be held, had been moved forward so that he was unprepared and arrived late to the meeting.

Implementation of governmental reforms is severely inhibited by the open disdain the rival elites have for each other. In the eyes of ZANU-PF, only those with liberation war struggle credentials have the right to legitimate power, which MDC leaders do not necessarily have, while the MDC formations and their supporters feel that legitimate power can only be gained through free and fair democratic elections, which in their eyes ZANU-PF could never win. Both parties furthermore do not believe that the other has the best interests of the country at heart.

It is not in ZANU-PF's interest to address reforms that will undermine its own far reaching authority. Instead the party is working to sidestep many GPA requirements (Connolly 2011, Machakanja 2010:4/5). This situation is exacerbated by a lack of enforcement of the GPA reforms by the SADC mediators. It is also considered a shortcoming of the MDC formations that, despite holding a majority in parliament, they have not pursued possibilities for legislative reform vigorously. Some consider this the result of a lack of political experience leading to an inability to implement a strategic vision and to take control of policy making processes. There are also concerns that the MDC-T has not taken sufficient advantage of opportunities within the power-sharing arrangement to consolidate its position (ICG 2011). This has led to a distorted power balance within the GNU formation whereby ZANU-PF executive officials seemingly

outmanoeuvre the Prime Minister's office (Bratton & Masunungure 2011).

ZANU-PF has a history of using violence as a political strategy, and this violence has become an integral part of the body politic, an instrument for settling political scores leading to widespread fear and insecurity (ICG 2011). In recent years, MDC supporters have been the primary victims of violence perpetrated by ZANU-PF sympathisers (Mapuva 2010:259). Even after the establishment of the GNU pockets of politically motivated violence (Mapuva 2010:256) and political persecution persist (Bratton & Masunungure 2011). Arbitrary arrests, detentions, abduction and torture of political opposition and civil society members continue to be perpetrated by state security forces or non-state actors aligning themselves with ZANU-PF, such as war veteran groups and youth militia. Journalists, students and lawyers are consistently arrested when critical of ZANU-PF. Violence escalated particularly during the constitutional review process and at the announcement of possible new elections in 2011 (Machakanja 2010:5, Mutisi 2011). This continued state sponsored and supported violence is partially due to ZANU-PF's continued control of security forces and the judiciary after the formation of the GNU.

The ZANU-PF stronghold on power and access to economic resources has also led incumbents to enrich themselves through access to state resources and lines of patronage. Recent examples include the fast track land reform, leading to some 40% of commercial farm land seized now being owned by a small group of 'well connected' Zimbabweans, in other words, presidential allies (The Guardian 2010). It has also become clear that top government officials and high ranking armed forces officials have become personally involved in the mining industry (Bratton & Masunungure 2011) which has led to the possibility of alternative sources of funding and therefore more autonomy for the security sector (Idasa 2012a), causing further power imbalance in the power-sharing arrangement. Also the current trend of the redirection of diamond revenue away from the state directly to army coffers is increasing senior army officials net worth exponentially (Idasa 2012a). In both cases, nothing has been done to address these issues.

ZANU-PF continues to control coercive instruments of the state, and to capitalise on state structures and institutions which mean it is the dominant partner within the GNU. It is clear that the legacy of single party dominance in Zimbabwe has not been addressed by the GNU.

In conclusion, addressing single party dominance in Kenya means changing a political system within which decisions are made on the basis of ethnic preference, thereby presuming an automatic advantage for the ethnic support base of the leadership. In Zimbabwe, it would involve balancing the playing field so that the incumbent party does not have an unfair advantage; it also entails the maturing of new political movements to rival the old guard. In both cases, these issues have not yet been fully addressed. In Kenya, some kind of power balance has been found between the parties to the GNU, which has led to progress, such as reform of state institutions. In Zimbabwe, the imbalance of power in the GNU has prevented reform. In the long run, in both cases, changes needed to be made to the political cultures that determine access to state resources and structures in order to address this legacy.

INSTITUTIONAL CAPACITY

In both Kenya and Zimbabwe, a major element of the respective political agreements is constitutional reform that offers the legal framework within which institutional reforms can take place. The strengthening of independent state institutions is crucial to transition from crisis to credible democratic processes because strong independent institutions offer checks and balances as they support multiple centres of power allowing for accountability across government branches (LeVan 2011:11). Accountable institutions also promote recurring political behaviour reducing surprises and uncertainty, and they provide a mechanism for estimating a

fair distribution of power among political actors (LeVan 2011:19).

Kenya has been talking about a new constitution since independence. In 2003, the Constitution of Kenya Review Commission (CKRC) embarked on a process of re-view. The draft was turned down in a 2005 referendum which Kenyans treated as a protest vote against President Kibaki ahead of the 2007 general elections (BBC NEWS 2005). The 2008 agreement reopened the door on constitutional review. The review committee, The Committee of Experts (CoE), comprising of nine experts and two ex officio members nominated by the National Assembly and appointed by the President, produced a draft (Katiba 2012). This was followed by public consultations at various levels with a wide range of interest groups. The submissions ranged from oral presentation to memoranda and were considered by the CoE and incorporated into a new draft. Thirty days prior to the referendum the CoE embarked on a civic education programme so that citizens could make an informed decision when voting (COE 2011). The process was not without irregularities, groups, on both sides of the political divide, were against the new constitution all together and numerous attempts were made to control outcomes and/or derail the process. However, in 2010 Parliament passed a draft Constitution which Kenyans approved through a referendum and the new constitution was adopted by the government in that same year (Dagne 2011:1/2). According to Ekuru Aukot, the process was mainly successful due to the rigorous approach of the Committee of Experts, whereby control of the process was kept firmly away from the Executive and contentious issues were purposefully resolved in the public arena. Contentious issues included devolution, dilution of presidential powers and land reform but also topics such as abortion (Dagne 2011). The result of this approach, according to Aukot, is a constitution that considers power to be in the hands of the people, and office bearers to be accountable to the people.

The legislative process in Kenya has long been considered severely inefficient (Horowitz 2008:13), and the current situation makes processes even more cumbersome (LeVan 2011:10). The new constitution has paved the way for institutional reform through legislation such as the Elections Act 2011. However even before the adoption of the constitution new legislation tabled by the GNU was being passed by parliament. Examples include the Societies Act 2009 and the Political Parties Act 2009, focussing on regulating organisations and institutions (Idasa 2012c).

In May 2009 the Task Force on Judicial Reform was established and initiated reform, including the transfer of powers from political appointees such as the Attorney General to an autonomous Directorate of Public Prosecutions. Unfortunately the process has been marred by unilateral appointments made by the president, later declared unconstitutional and reversed (CIA 2012; HRW 2012; Dagne 2011). A judicial services commission was able to replace various key judicial figures, determining appointment through the use of public hearings, thereby creating public support for them (Kaberia 2012). Yet little has been done to reform the lower (magistrates) courts and local judicial services.

As mentioned earlier, the legislature has been able to support security sector reform to an extent. In May 2009, the Task Force on Police Reforms was established (Dagne 2011) to recommend proposals with an emphasis on civilian oversight to enhance accountability (ISS 2011). The Police Reform Implementation Committee was set up to implement the recommendations. It has since prepared five Bills that provide a framework for the implementation of the reforms including the National Police Service Bill and the Independent Policing Oversight Authority Bill. In August and September 2012, parliament passed two police reform bills that bring the Kenya Police and the previously separate (and often politicized) Administration Police under one command structure. The same bills establish a civilian National Police Service Commission, which should play a role in police recruitment, training, and disciplinary proceedings (HRW 2012). It is yet to be seen how successfully this new legislation is implemented.

The Truth, Justice and Reconciliation Commission (TJRC) established specifically to address gross human rights violations in Kenya between 1963 and 2007 (thereby not addressing the electoral violence of 2008) handed over a progress report in 2012 . Significant challenges to its credibility, as well as budgetary constraints severely hampered the TJRC's work. However the report includes a list of recommendations on how to proceed and the government will need to act to address these. The National Cohesion and Integration Commission (NCIC), mandated among other things to prosecute perpetrators of hate speech, is also making some progress. However, many ordinary Kenyans are still traumatised by their experiences during the 2008 election violence, perpetrators remain in the communities, and little has been done to address violations. This lack of redress is discussed further in the next chapter.

Where the state has not been successful is when trying to institutionalise dealing with the violent crime committed during the crisis. As early as August 2008, the Kenya National Commission on Human Rights (KNHRC) released a report on the postelection violence accusing cabinet members, MP's and members of the security force among others of financing and fuelling the violence (Dagne 2011). Despite the identified security sector legislation prepared and passed, in 2011 the KNHRC reported little progress in reform or disarmament of those accused of post-election violence (McCrummen 2009; LeVan 2011). The TJRC and the Witness Protection Agency, among other such bodies trying to address the post-election violence and lack of political tolerance have been underfunded or have not been able to function at all (Idasa2012c; Dagne 2011). A dilemma is created here as many of those considered responsible for the violence are still in power on both sides and therefore it is not in their interest to pursue this institutional development.

The previous Electoral Commission of Kenya was disbanded in December 2008 (Dagne 2011). In May 2009, the Interim Independent Electoral Commission (IIEC), was formed and conducted the constitutional referendum in 2010 successfully. The Independent Electoral and Boundaries Commission was established in 2011. It has so far been functioning reasonably well.

The Kenya Anti-Corruption Commission (KACC) was established in 2003 and was mandated to address issues of corruption (Akech 2010). It was disbanded in 2011 as the new constitution has a provision that requires the establishment of an Independent Ethics and Anti-Corruption Commission (EACC). Its mandate is to ensure compliance with, and implementation of, legislation relating to provisions in the Constitution on leadership and integrity, including conflicts of interest. This commission was established in 2011, and a number of these laws have been enacted (Muthaura 2011). Kenya is still considered highly corrupt .

The media in Kenya, and particularly local language radio, is accused of playing an inflammatory role during the last elections (BBC World Service Trust 2008). There have been some efforts by government to reform the sector. The Kenya Information and Communications Act 1998 was amended with input from the media industry, and the Communications Master Plan 2008, Freedom of Information Policy 2008 and National ICT Policy 2008 were introduced. The Constitution, as adopted in 2010, protects media rights and made way for the Broadcasting Content Advisory Board (Oriare et al 2010). The Communications Commission of Kenya released media guidelines in 2011 aimed at 'decency' rather than independence or objectivity. Civil society has implemented various initiatives to train journalists in election reporting and how to deal with hate speech (UNESCO Media Services 2013). A small group of web monitors also track social media sites to be able to intervene in hate speech online (Ni Chonghaile 2013). Yet as recently as 2012, media reports show that even though there is less of a clear bias towards the administration than prior to the GNU there is still a clear lack of independence of media sources. In addition, the new constitution curbs freedom of expression, which leaves continued harassment and intimidation of journalists by police unpunished (Freedom House 2012).

The power balance in Kenya has stabilised state institutions to some extent which has offered space for reform processes to take place. The successful adoption of a new constitution has led to reform of the ECK and the Judiciary and it offers legal frameworks for reform of other sectors. The impact of institutions such as the TJRC and the NCIC has been undermined as they have not been provided with sufficient mandate or funding to function effectively. Though media reforms are supposedly taking place they are inadequate. The ineffectiveness of these reforms means issues relating to past acts of political violence and inciting of violence remain largely unaddressed.

Unlike Kenya, where something of a power balance has been found, the lack of unity within the Zimbabwean Government is illustrated by the extreme difficulties it faced when trying to draft a new constitution. In April 2009 a Constitutional Parliamentary Select Committee (COPAC) was established to coordinate the consultative processes for constitutional reform in Zimbabwe (Mutisi 2011; Connolly 2011). COPAC held public hearings and consultations to collect input on the content of the new constitution (Mutisi 2011). Unfortunately this process quickly became an object of dispute. Civil society organizations and the MDC-T were outspoken in their criticism (Bratton & Masunungure 2011). The accusation was that COPAC was not ensuring an open and inclusive process (ICG 2011). ZANU-PF dominated the public input procedures, making use of state machinery and structures. The MDC appeared to adopt a strategy of complete non-mobilisation (Gwisai 2011). At certain points political violence escalated and this delayed and disrupted the process (Mutisi 2011; Connolly 2011). There was also infighting regarding budget size and allocations for the review process (Bratton & Masunungure 2011).

Several stops and starts later, the constitutional reform process seemed to have stagnated completely (ICG 2011). Then, in February 2012, a new draft was leaked suggesting that talks were on-going. In July 2012 a final draft was officially handed over from COPAC to the principals. ZANU-PF spoke out against the document calling for it to be rejected on the grounds that firstly, according to them, the negotiators had not been answerable to their parties during the process and secondly, that the document did not reflect the will of the people. The MDC said it considered this constitution a temporary document that will suffice until one side or the other has full control of government and they can start a new constitutional review process (Idasa 2012a). At the Second All-Stakeholders meeting in October 2012 little meaningful input was made by the participant stakeholders. A draft was returned to the Principals, who negotiated the remaining issues. According to the MDC these included the diluting of presidential powers and the devolution of centralised state power, yet neither issue was addressed in the final draft (February 2013). A referendum is set to take place in March of this year.

Constitutional reform may take place now but it is unlikely that it will be broadly supported by all citizens. The lack of direction on constitutional reform has contributed to a lack of clear policy direction within the executive. This has made the GNU, in its role as legislative and institutional reformer, weak. The GPA prioritised a legislative agenda but the GNU suffers from an inability to initiate and table bills and change policies aimed at fundamental reform (Connolly 2011, Machakanja 2010:4/5). In 2010 only six acts were passed in parliament, one of Zimbabwe's poorest years for legislative output (Connolly 2011).

The power imbalance within the GNU that has led to such a lack of legislative, and therefore institutional reform, is exacerbated by the role the security forces play within the political environment. The so called securocrats publicly identify with ZANU-PF. They have played a large role in the party's approach to governance and are generally identified as spoilers of the reform process (Mutisi 2011). It is in their interest to maintain the status quo and they are in a position to use their powers to do so (Mutisi 2011; Bratton & Masunungure 2011). The outright declaration in 2010 by one security chief to never salute a president without liberation struggle credentials was directly aimed at leader of the MDC-T (The Zimbabwean 2010). In May 2012, the army openly rejected the new draft constitution and started making demands of its

own, such as the retention of executive powers by Mugabe including the ability to hire and fire security chiefs (Manzongo 2012). In addition the police show a clear bias towards ZANU-PF in defiance of their own enabling legislation (Matyszak 2011). This leads to the shielding of perpetrators and consistent persecution and harassment of opposition members and human rights activists by members of the police force (Connolly 2011). This confirms the clear bias by the security sector towards the incumbent president and his political party (Mapuva 2010; Bratton & Masunungure 2011; Machakanja 2010; Mutisi 2011).

A National Security Council (NSC) was meant to replace the Joint Operations Command (JOC) for the duration of the transition. The JOC answers to the President alone, whereas the NSC includes multiparty and civilian representation. In reality the council has met infrequently and has not transacted any serious business (Connolly 2011; Bratton & Masunungure 2011). The MDC-T remains under considerable external pressure to exercise some control over the security forces and follow through on reforms, but are widely considered to lack the necessary expertise and authority (Bratton & Masunungure 2011).

The judiciary is also not independent of political involvement. The Attorney-General's Office and Ministry of Justice have shown a clear bias towards the president's party (Connolly 2011). The president, without following GPA protocol, made several judicial appointments in 2010 considered by many a move to ensure favourable rulings (Bratton & Masunungure 2011). Judges continue to make highly political decisions favouring ZANU-PF (Matyszak & Reeler 2012).

Progress has furthermore been extremely slow in setting up any of the independent commissions outlined by the GPA and all the commissions struggle with funding, political interference (Mutisi 2011) and ambiguous mandates (ICG 2011).

The Zimbabwe Human Rights Commission (ZHRC) was established in 2009. Members were selected by parliament through a public process. Formerly members were picked and appointed by the president (Mutisi 2011). By 2011, the Human Rights Commission had not yet started work as it had neither a legislative framework nor any staff to support its functioning (Amnesty 2011, ICG 2011). It is only allowed to consider gross human rights abuses since 2009 onwards thereby excluding the electoral violence of 2008. In December 2012, the head of the ZHRC, Reginald Austin, resigned in protest at the lack of funding and insufficient legal authority of the commission (Scherer 2013).

The GPA also provided for the establishment of an Organ on National Healing (Mutisi 2011). Three ministers of national healing were appointed; each from one of the three parties to the GNU (Mapuva 2010). The ministers' mandate was to develop a policy framework to instil forgiveness among citizens at a grassroots level (Mapuva 2010). The organ has conducted consultations on the nature and direction of healing and reconciliation processes in Zimbabwe, which in turn has generated some public debate on key issues of reconciliation (Mutisi 2011). In 2012, public knowledge of or support for the organ was minimal (ZHRNGO Forum 2011). The far reaching influence of ZANU-PF due to its established structures is furthermore used to block reforms and divert attempts to address socio-political cleavages. There have been few coordinated efforts at reconciliation and national healing in Zimbabwe to date. Investigations into human rights violations are seen to undermine coalition cooperation and antagonize ZANU-PF factions (LeVan 2011). Financial resources to achieve reconciliation objectives have not been sufficient (Mapuva 2010). The biggest challenge remains that the ruling elite does not acknowledge the problem of reconciliation and deals with the issue in an ad hoc manner (Machakanja 2010). Political violence is not addressed by political leaders other than making some public statements; no measures to curb the violence have been put in place by either party (ICG 2011).

The GPA also made provisions for the reform of The Zimbabwe Electoral Commission (ZEC), which was swiftly dissolved under the Government of National Unity, yet when members were reappointed by the president, staff that served its predecessor was retained. The ZEC is perceived as still being heavily biased in favour of ZANU-PF (ICG 2011). This is discussed further in the next chapter.

Zimbabwe has become increasingly corrupt over the last decade, especially within the public sector. The Zimbabwe Anti-Corruption Commission, established in 2004, was inefficient and lacked authority (Global Integrity 2011). In 2011, the commission was re-established under the Inclusive Government, though considered more effective than its predecessor; it has been accused of focussing on trivial issues (The Zimbabwean 2012). The Draft Constitution makes provision for an Anti-Corruption Commission that, although not independent, has a broad and clear legal mandate. This suggests that the current commission will, at least, be able to continue its work.

Since 2008, some media reform has taken place and a number of new independent radio stations and newspapers have emerged. In 2009 the Zimbabwe Media Commission (ZMC) was established to reform the media regulatory environment and regulate licensing, though broadcasting has been severely limited by licensing restrictions and reforms have been blocked by the appointment of ZANU PF supporters to key media positions (Freedom House 2012). State media remains pro-Mugabe while independent media is generally pro-Tsvangirai, though in rural areas state media dominates. This lack of independent and objective media allows for continued infringement of rights to freedom of expression which, in turn, impedes constructive engagement between political parties (Connolly 2011).

Many institutional reforms agreed to in the GPA have not been implemented. The power imbalance has caused institutions to remain biased or weak; they are politicised and are subject to interference from the Executive. Despite this, some institutional reforms were initiated in 2012. It is yet to be seen if these reforms will translate into stronger institutions.

In summary, Kenya has been more successful than Zimbabwe in creating strong independent institutions. Kenya, despite several cases of procedural irregularity, has a more balanced relationship between the parties to the coalition government, and this has led to an ability to develop and adopt legislation and follow through on institutional reform. The gains made in this field include the adoption of a new constitution as well as ECK, security sector and judicial reform. In Zimbabwe, by comparison, the lack of independence of institutions due to the power imbalance has all but blocked reform, most specifically, reform of the Security Sector, the Judiciary and the ZEC. Both countries have failed to address media bias, corruption or electoral violence institutionally, presumably because those responsible for addressing these issues fear implication in the planning or orchestration of such activities.

ELECTORAL PROCESSES

Electoral processes refer to those mechanisms and systems directly related to elections and results management that include the functioning of the electoral commission and voters roll maintenance as well as legislation addressing election disputes. In the context of transition, there is inevitably a deep lack of trust by the citizenry towards election processes. Therefore not only do robust systems need to be in place, the trust of the citizenry also needs to be improved. To create new credible processes independent electoral administration is essential, this includes local ownership and participation. Structures must be protected from outside influence and not influenced by partisan interests (Ellis 2009).

The major difference between electoral processes in Zimbabwe and Kenya is that since the inauguration of the Grand Coalition Government, Kenya has held a referendum and thereby tested its ability to hold a credible and independent national poll. The logistics of staging a referendum cannot be equated to those required for an election, but it has tested the capacity of electoral systems, institutions and frameworks of the state while the GNU in Zimbabwe has no such frame of reference.

In Kenya, the most recent elections were associated with violence and voting irregularities to such an extent that the results were not credible (Mapuva 2010). In the interim however, Kenya has made some progress in addressing anomalies in its electoral processes. Many see the successful constitutional reform as the watershed for the introduction of new elections. The reform process furthermore strengthens the belief of citizens that their input matters. The new constitution has paved the way for new legislation concerning institutional reform as prioritised by the GNU through legislation relating to election management and integrity of office bearers. This has laid a more rigorous legislative framework for credible and independent electoral processes. The new Constitution also made way for, firstly, the interim, and later the actual Independent Boundaries and Electoral Commission (IBEC) which is building confidence and giving electoral processes more credibility.

The IBEC started cleaning up the voters roll in December 2012. Once an initial clean-up had taken place, the roll was opened up for verification, including via SMS, in preparation for the 2013 elections. An amendment to the Elections Act in 2012 also simplified administration as it did away with the voter registration card, now a passport or identity card is considered sufficient proof of identity for voting purposes (Ongiri & Wafula 2012). Yet the voter roll clean-up started only a few months before the planned election, offering little time to deal with flaws. An ICG report from 2013 suggests that because the IEBC made mistakes while procuring voter registration kits that citizens lost confidence in the institution. Because of this, suggestions arose that the IEBC may struggle when under severe pressure (ICG 2013). The accessibility and reliability of voter education is also crucial to election management, especially now the system has changed under the new Elections Act. The IEBC is responsible for disseminating information, but it has not yet embarked on official voter education activities (ICG 2013). Examples can also be found of NGO's involved in relaying information to those otherwise not easily reached by state initiatives. No indications can be found that the state is blocking these efforts.

The trust gained by the reformed IBEC is challenged by the continued repression of political freedoms; examples include a foreign human rights defender who was deported (Onyiego 2011) and a Facebook blogger who was arrested for posting negative comments about an MP on Facebook in 2012 (Idasa 2012c). Citizens' trust in electoral processes is further more challenged by incidents of political violence. Two human rights advocates were assassinated in March 2009 and several people were killed, and dozens wounded, in an attack on a rally in June 2010 promoting the No Vote for the constitutional referendum (Dagne 2011). In 2012 several incidents of ethnic political violence were witnessed in rural communities (HRW 2013). This has led to communities organising and arming themselves (ICG 2011). This shows that tensions are still high. Many Kenyans were already concerned with a return to violence if the coalition collapsed (Horowitz 2008). Many now seem to fear that new elections will lead to the return of widespread violence.

Provisions regarding political violence in the power-sharing agreement focus on investigations into the election disputes of December 2007. Many other important issues such as how to address the root causes of the violence (the so called Agenda Four items of the National Accord and Reconciliation Act 2008) were deferred but there was an informal agreement to investigate the post-election violence and sources of long standing grievances in Kenyan society (Horowitz 2008). Yet, as previously mentioned, there has been little progress in these in-

vestigations. The second investigatory committee, the Commission of Inquiry on Post-Election Violence (CIPEV - also known as the Waki Commission) was mandated to examine the sources and perpetrators of the post-election violence. In October 2008, the commission reported on alleged perpetrators and gave the Government an ultimatum to establish a tribunal or the list would be handed to the International Criminal Court (ICC) (Horowitz 2008). In December 2008 President, Mwai Kibaki, and Prime Minister, Raila Odinga, signed an agreement to establish the tribunal and implement the Waki recommendations in full. But the Kenyan government and parliament have since largely disregarded this commitment (HRW 2011), and the list was handed over. The National Accord and Reconciliation Act 2008 does provide for reconciliation and national healing processes, as does the Constitution of Kenya. But parliament was unable to agree on the establishment of a Special Tribunal so the ICC announced, in 2010, that it would try 6 alleged instigators of the recent political violence (Dagne 2011). Political opinion in Kenya was divided over the ICC actions and the Kenyan parliament has changed its position from supportive to trying to prevent prosecution (HRW 2011). The ICC hearings last year were marked by actions aimed at intimidating persons perceived to support the ICC (HRW 2012). The ICC is now the focus of many victims' hope for justice (HRW 2011) as the Kenyan government is yet to bring many election violence suspects to book (HRW 2012).

A few election violence cases have proceeded through the justice system, but cases do not target the planners of the violence. Government refuses to acknowledge civil suits against it. In cases where compensation has been granted, it denies responsibility for executions, disappearances and torture that took place during this time (HRW 2011). Given the composition of the perpetrators it is unlikely government will lead any substantive efforts to convict those responsible (Horowitz 2008) or even compensate victims (HRW 2011). A report (commissioned by the Panel of Eminent African Personalities) recently found that reconciliation and social harmony in areas most affected by the post-election violence remain fragile, and that the lack of political support for peace and reconciliation efforts by government and non-governmental organizations has created a climate of silence and suspicion. The report concluded that without political support for the work of the Truth, Justice and Reconciliation Commission (TJRC) and the National Cohesion and Integration Commission (NCIC), their impact on ethnic relations and deterrence of future dissonance remained uncertain (Kofi Annan Foundation 2012)

Despite this, some efforts have recently been made to address reconciliation by NCIC, for example NCIC collaborated with the South African Truth and Reconciliation Committee and the Swedish Folke Bernadotte Academy to train key stakeholders in theories and lessons of reconciliation processes (Embassy of Sweden 2012). Running up to the 2013 elections, NCIC has started holding awareness events, especially in areas that saw the worst violence during the last elections. There is a large project targeting Elders from different ethnic backgrounds, who are encouraged to make public appearances and statements together concerning the peace process, in an effort to appease ethnic tensions. In addition, numerous NGO's have been working on civic education. This includes training and projects such as citizen reporters, in an effort to curtail violence during the upcoming elections. Little attention had been paid to internally displaced people. Most of the camps that were set up were swiftly closed. Many consider this to be the result of a broad public approval of the agreement (Horowitz 2008:12). Yet a significant number of people are still internally displaced and the government is yet to address the issue in a significant manner.

Successful constitutional reform in Kenya has made way for the strengthening of electoral processes, including the establishment of an independent electoral commission. These developments have contributed to a greater trust in election processes by the citizenry. Yet even though political tolerance and freedoms are provided for in the new constitution a culture of political intolerance persists, suggesting that electoral processes may still not be free of political interference. The overall lack of urgency to hold those responsible for acts of political violence accountable has led to widespread resentment about impunity (McCrummen 2009; Le-Van 2011:22). But perhaps more concerning is that because addressing long term grievances,

the underlying cause of the violence, has not been prioritised, there is substantial potential for electoral violence again in Kenya.

A crucial part of rebuilding trust in electoral processes is addressing anomalies causing electoral irregularities. Recent elections in Zimbabwe were associated with violence and voting irregularities perpetrated by ZANU PF supporters and sympathisers to such an extent that results were not credible. Furthermore the ZANU-PF incumbent government retained power through negotiations, thereby furthering their own interests over that of the nation (Mapuva 2010). Legislative reform to strengthen electoral administration has taken place in the form of the Electoral Act 2012. This Act addresses the legislative framework for elections. However universal suffrage and secrecy of the ballot are still not secured as there are problems with voter registration procedures, a voters roll that has been badly maintained for years and a politically repressive environment whereby citizens are not convinced that they can vote in secret (Nyangairi 2013).

The Zimbabwe Electoral Commission (ZEC) is perceived as being heavily biased thereby eroding its integrity and independence (ICG 2011). This lack of trust relates specifically to ZEC conduct during previous elections. The ZEC is responsible for elections result management, including vote counting and release of results. In 2008 ZEC delayed the release of results for over a month (Rusere & Kandemiiri 2010), among many claims that results were tampered with during this time. It furthermore supported the subsequent presidential run-off that only had a single candidate and was carried out under severely repressive circumstances (ZESN 2011). In addition, the composition of ZEC is problematic. In 2010 new appointments were made in an attempt to reform the commission. Yet this included the reappointment of Deputy Chairperson Joyce Laetitia Kazembe and Commissioner Theophilus Gambe. Both of whom have sat on the commission for over a decade and presided over numerous elections that were considered neither free nor fair. The administrative organ (Zimbabwe Election Commission Secretariat) has been led by Chief Elections Officer, Lovemore Chipunza Sekeramayi, since 2005 who is a former Central Intelligence Officer (CIO). Furthermore, many of his staff members have a successful military career behind them (Change Zimbabwe 2012). The retention of staff that has previously presided over flawed elections, as well as staff that has strong ties with institutions that openly support ZANU-PF, really undermines any effort by the GNU to create an independent and trustworthy electoral commission.

In January 2013 Prime Minister Tsvangirai ordered the ZEC and Registrar Generals Office to roll out mobile voter registration facilities and to commence voter education in anticipation of the upcoming elections (CORAH 2013), it is unclear if these institutions will obey. Officially election information is only allowed to be conveyed by the Electoral Commission and to this extent in 2008 NGO campaigns encouraging citizens to register and vote were disallowed by the authorities (Nyangairi 2013). The advantages of incumbency and lack of regulations mean that ZANU-PF has access to state structures and resources that other parties are not privy to, including the use of state owned property for campaigning and access to state funding (Mhlanga & Eaglestone 2013).

Political intimidation and persecution continue through state machinery perpetuating any mistrust in the management of electoral processes. ZANU-PF continues to use state media for propaganda purposes and persecute political opponents (Amnesty 2011; Connolly 2011). It is believed that ZANU-PF propaganda and hate speech broadcast by state media as well as continued infringements of rights to freedom of expression, assembly and association, and equality before the law by government institutions impedes constructive engagement, and therefore peace (Connolly 2011).

Political and civil freedoms continue to be severely curbed, as police intimidation and political coercion are still widespread. The widespread fear and insecurity emanating from this has

not been addressed adequately by political leaders. Legislation supporting this repression (such as AIPPA, POSA and PCA) that should have been amended under the GNU, has also not been improved (Connolly 2011; Machakanja 2010; Amnesty 2011). Moreover, political violence through intimidation and fear and restrictions on civil and political liberties by means of legislation means citizens are more likely to censor themselves, this censorship means that there is little open competition of ideas or campaigning free from threat (Mhlanga & Eaglestone 2013).

The MDC has implemented some restorative and rehabilitative programmes through the department of social welfare to assist those who lost resources, who were displaced or who are survivors of the violence. The beneficiaries are however generally their own supporters (Mapuva 2010). Furthermore, at a grass roots level, a range of individuals and organisations are also working on strategies of reconciliation. The work ranges from one-to-one dialogue with victims and perpetrators, to community-based activities on raising awareness as informed by the political environment (Machakanja 2010). But there have been few concerted coordinated efforts at reconciliation and national healing by the Government of National Unity as an institution. Investigations into human rights violations are seen to undermine coalition cooperation and antagonize ZANU-PF factions (LeVan 2011). Financial resources to achieve reconciliation objectives have not been sufficient (Mapuva 2010). The biggest challenge by far remains that the ruling elite of Zimbabwe does not acknowledge the problem of reconciliation and deals with the issue in an ad hoc manner (Machakanja 2010).

In a healthy democracy, civil society plays an active role in electoral processes, however, participation is curtailed due to the mechanisms mentioned above, and furthermore few structural mechanisms are in place for civil society to make a meaningful contribution (Dube 2013). In Zimbabwe, after it became apparent that civil society would not be included in SADC talks on the future of the country, it organised itself, holding a Peoples Conference concerning economic and constitutional reform. According to some researchers, the resulting coalition, known as ZZZICOMP has been more effective than the official Joint Monitoring and Implementation Committee (JOMIC) when holding government to account (Bratton & Masunungure 2011).

The GNU in Zimbabwe has been unable to push through adequate reforms relating to election processes. Legal frameworks have not been put in place and a culture of severe political intolerance persists.

When considering the development of robust electoral systems, Kenya's GNU has made progress through legislative and institutional reform. There is significant local ownership of the Constitution that made way for new electoral legislation and a reformed IBEC. Zimbabwe, in comparison, has not been able to achieve local ownership of a new constitution. New electoral legislation was passed through parliament yet the ZEC has not been adequately reformed. Worryingly, both countries show a persistent political intolerance and a lack of resolve to address past acts of political violence, both of which undermine any trust in electoral processes that was established through above mentioned reforms.

CONCLUSION

This paper compares how the Governments of National Unity in Kenya and Zimbabwe have implemented reforms that would allow for the two countries to hold credible and legitimate elections.

Legislative reform has taken place in both countries. A broadly supported new constitution

is in place in Kenya that lays a firm groundwork for institutional and electoral rigour, though some issues were contentious and enactment still needs to take place. In contrast, the Zimbabwean process is incomplete and highly politicised; in addition, the draft that has been released does not address contentious issues adequately such as dilution of presidential powers and devolution. In both cases, repressive legislation remains in the statutes.

All the governing parties in Kenya and Zimbabwe continue to advance their own interests at the cost of the state. There is little space for opposition politics and therefore inadequate oversight. Though there is less conflation of party and state in Kenya, the advantages of incumbency remain powerful. In Zimbabwe, ZANU PF continues to dominate the political arena. In both cases, the use of state resources for personal and party gain is common. For this reason, no level playing field has been created in either country for fair elections to take place.

Electoral credibility has been enhanced in Kenya through the enactment of new legislation and the reform of related institutions. Yet the infringement of political and civil rights and the impunity regarding acts of political violence in both countries, does not enhance a belief by the citizens that election results will be credible. While in Kenya both parties hope they will win an election, in Zimbabwe, there is an outright denial by ZANU-PF and its supporters that results, other than their own victory, would be acceptable. The above suggests that there is a greater likelihood that election results will be accepted by stakeholders in Kenya and that therefore a transition of power would be able to take place.

In both countries, long standing sources of political violence and ethnic tension have been inadequately addressed. Though in Kenya, efforts at reconciliation and the restoration of social cohesion are being made, in Zimbabwe, these efforts are yet to take significant shape. Those who committed the crimes are often still in power, which leads to them blocking any actions aimed at addressing the violations. For this reason there is a grave potential in both countries for renewed electoral violence.

In conclusion, though Kenya is in a better position than Zimbabwe, neither country has achieved the necessary reforms, as set out by their respective power-sharing agreements, to hold free and fair elections in 2013. While Kenya continues along a slow but determined road towards democratisation, it needs to start focusing on reconciliation and national cohesion efforts, to create a support base for the institutional reforms that are being achieved. Zimbabwe on the other hand, needs to start taking its transition seriously. It should first establish a constitution that is owned and supported by the people, from which other legislative reform can emerge. Zimbabwe must also address social cleavages so that election violence is minimised and political disputes can be resolved peacefully but most importantly so that Zimbabweans can start rebuilding their country.

Background Kenya

Multipartyism

In 1991 the ruling Kenya African National Union (KANU) gave way to international pressure and multi-party democratic elections were held for the first time since 1963 (Horowitz 2008). Incumbent president Daniel Arap Moi won by a small margin and remained in office. In 1997 Kenya held its second multiparty elections and President Moi was re-elected by a small margin over his main rival Mwai Kibaki of the Democratic Party (DP). Though Moi planned to amend the constitution to make way for a third term in office public outcry deterred him and he did not stand in the 2002 presidential and parliamentary elections. The National Rainbow Coalition (NARC) defeated the ruling party (KANU) and Mwai Kibaki became president (Dagne 2011).

Ethnic Favouritism

For decades, under Moi, and under Jomo Kenyatta before him, widespread corruption and visible ethnic favouritism were utilised by political leaders to consolidate their power and wealth (Murphy 2003). Under Kenyatta the Gikuyu had been the most politically well-connected ethnic group, and when Moi, a Kalenjin, took over, though the Kikuyu remained dominant, his ethnic group visibly profited from his position too. With a new NARC government Kenyans were hopeful for change. But despite achievements made by the Kibaki administration in the fields of infrastructure, economic growth, education, and expanded political freedoms in the years that followed, there was a strong sense among Kenyans that Kibaki had not delivered on his 2002 campaign promises, most notably those relating to the ending of ethnic favouritism and corruption (Horowitz 2008).

Election Crisis

On December 27, 2007, against a backdrop of on-going tribalism and a global economic downturn, millions of Kenyans went back to the polls in the country's fourth multi-party elections, with the renewed hope of bringing change (Dagne 2011). There were three main candidates. The incumbent president Mwai Kibaki, a Kikuyu from Central Province, now headed the Party of National Unity (PNU). His main challenge came from Raila Odinga, a Luo from Nyanza Province in south Western Kenya, who led the Orange Democratic Movement (ODM) and Kalonzo Musyoka, a Kamba from Eastern Province, who headed the Orange Democratic Movement-Kenya (ODM-K) (Horowitz 2008).

This election was closely fought by Kibaki and Odinga, for the first time these two ethnic groups were pitted against each other. Even though they had previously worked closely to evict Moi from his presidential position there was a long history of bad blood between the two groups (Horowitz 2008). Election polls indicated that the opposition leader would win a majority vote. Early election results indicated the same (Dagne 2011).

During and after the elections it became apparent that the Electoral Commission of Kenya (ECK) lacked the capacity to oversee an incident free vote counting process. Elections were declared rigged and deeply flawed. Never the less Kibaki was hastily declared the winner and sworn in as president despite indications that in fact Raila Odinga had won the polls (Dagne 2011). This instantly ignited ethnic political violence in different parts of the country (Horowitz 2008). Conservative estimates state that over the course of the next two months over 1000 people were killed, and approximately 350,000 people were displaced (Horowitz 2008; Dagne 2011). What started out as spontaneous rioting by opposition supporters that took the opportunity to loot and destroy businesses seemingly indiscriminately, spiralled out of control into mob violence against pro-government individuals and reprisal killings. Many homes and

properties were also destroyed (Horowitz 2008; Dagne 2011). The police generally targeted opposition supporters and were responsible for numerous killings as well (Dagne 2011).

The political system in Kenya has reinforced ethnic cleavages throughout history and for decades voting behaviour has largely been determined by ethnic identity (Horowitz 2008). Kenya's history of electoral violence also clearly has its roots in politicised ethnicity (Mapuva 2010). But by 2007 the administrative irregularities, a lack of transparency and democratic process, and a negative economic environment were in fact what sparked this electoral violence (Dagne 2011).

Negotiations and Agreement

Under intense international pressure to bring an end to the crisis the two main political parties (PNU and ODM) were forced to the negotiating table (Horowitz 2008 & Mapuva 2010). The African Union (AU) mediation process did not succeed at first under the supervision of Ghanaian president John Kufour, but later the Panel of Eminent Personalities was assembled by the AU, chaired by Kofi Annan, and intervened to end the violence and bring the political parties into agreement (Kioko 2010). During negotiations the PNU demanded that the president remain head of government and retain the authority to determine the composition of the cabinet (Horowitz 2008). On the other hand the opposition party's (ODM) core demands focussed on equal division of cabinet portfolios and other government posts, the creation of a prime minister's post, a revision of the constitution and a new Electoral Commission (Dagne 2011).

On February 28 the parties agreed to a power-sharing arrangement. In March the agreement was approved by government and by April a new cabinet had been agreed upon (Dagne 2011; Horowitz 2008). The final agreement is known as the National Accord and Reconciliation Act of 2008, this led to the creation of the Government of National Unity in Kenya.

Background Zimbabwe

Independence

After years of guerrilla warfare white minority rule was ended by the Lancaster House Agreement, and Robert Mugabe came to power in 1980 as the leader of ZANU (Zimbabwe African National Union). Mugabe and his government inherited a reasonably well developed African country, but with wealth, mostly in the form of land, concentrated in the hands of a few (Zeilig 2002).

The new government also inherited a colonial administration which offered extensive powers to the Executive, including control of the Judiciary. The administration was furthermore characterised by the brutalisation of citizens who showed signs of dissent or opposition. After independence these frameworks along with ZANU's own violent political culture were used to centralise power and suppress dissidents (Onslow 2011). During the first decade of power the government invested in health and education and picked up support. However the threat of an economic crisis led the government to introduce the first full Economic Structural Adjustment Programme in 1991. The effects were devastating (Zeilig 2002). Criticism of and opposition to the government was growing.

Growing Repression

By the second half of the 1990's, as the effects of the Economic Structural Adjustment Programme were starting to be felt, a massive government workers strike crippled the government, which snowballed into a string of strikes and demonstrations by other workers and the unemployed, and the very first farm invasions. By 1998, the demand from activists and workers was that the ZCTU form a political party, which it resisted at first (Zeilig 2002).

The Structural Economic Adjustment Programme, the large scale strikes and the government pay-outs to war-veterans, caused the Zimbabwean dollar to collapse. In March 1999 the Movement for Democratic Change (MDC) was created. The party was launched as a labour party, though middle class representatives of local and international business were also included in leadership positions (Zeilig 2002).

At the same time, the international community was slowly ostracising Mugabe's regime. The government realised that to survive it would have to change course. Its rhetoric began to speak of imperialism and racism from the West. Land reform was key to this new direction. ZANU-PF now supported farm occupation and used the war veterans to do so (Zeilig 2002).

In 2000, due to civil society demands, the ZANU-PF government proposed a revised constitution, but the people rejected it via a referendum. In the same year parliamentary elections were held. ZANU PF won by a small margin and the party unilaterally amended the constitution to allow for land seizures to go ahead. The so called fast track land reform process was rolled out on a large scale. Agricultural production was largely halted thereby ruining Zimbabwe's main source of income (Katito 2008). A further consequence of the waning support for ZANU-PF was the growing levels of political violence, many opposition members and land owners were killed as the party fought to retain power (EISA 2005).

In 2005 a new round of parliamentary elections was held. These elections were not considered free or fair by the international community. However Robert Mugabe was once again inaugurated as president. By 2007 the situation had deteriorated to such an extent that SADC appointed Thabo Mbeki to mediate between ZANU-PF and the MDC to design a strategy to form a new government, but Mugabe pushed through elections in March 2008 anyway (Katito 2008; Makumbe 2011).

Election Crisis

In the run-up to the March 2008 elections conditions improved slightly. The Movement for Democratic Change won a parliamentary majority and control of most municipal governments. It was also announced that Morgan Tsvangirai, leader of the MDC, led in the presidential contest, but he had not been able to secure an outright win. Therefore a presidential run-off was to be held (ICG 2011).

The violence that followed this announcement was of such a nature that it caused Tsvangirai to withdraw in protest, leaving Mugabe the sole candidate and subsequent winner (Katito 2008; Mutisi 2011; ICG 2011). But just a few weeks after the final elections, ZANU-PF associates unleashed a campaign of violence on MDC's structures and supporters. During a period of 10 to 12 weeks over 15000 serious violations were recorded, including more than 300 murders (ICG 2011).

Elections over the last decade in Zimbabwe have been characterised by on-going violence, especially against MDC supports, but the unprecedented violence of the 2008 presidential run-off was a culmination of a spiralling socio-economic crisis, a real fear among ZANU leaders that it may lose power and growing acceptance of violence as a political tool.

Negotiations and Agreement

As in Kenya the parties were pressured into negotiations by external forces. Under a South African led SADC mediation team, the three parties (ZANU-PF, MDC-T and MDC) agreed to a temporary power-sharing arrangement. It would be put in place to end the violence, stabilise the economy, prepare a constitution and conduct legitimate elections so that the country could

move forward with a long term political solution (ICG 2011). ZANU-PF seemed to consider the agreement a way to further its own agenda of holding onto political power and protecting itself (Bratton 2011). On the other hand the MDC formations saw the agreement as a way to restore a developmental agenda, but also as a way to get a foot in the door of the power corridor (Bratton 2011). The main discussions centred on the division of ministries, control of national security organs, the division of provincial governorships, and imprisoned activists (Katito 2008). The agreement, known as the Global Political Agreement (GPA), was signed in February 2008, and by September a Government of National Unity had been established (Mutisi 2011).

In both Kenya and Zimbabwe the power-sharing agreements are aimed at the development of an inclusive government that can implement legislative, institutional, economic and social reforms that will create an environment in which legitimate and credible elections can be held, and initiate a move towards consolidation of their democracy. Both agreements stipulate, with a varying degree of detail, the reforms that the governments should be pursuing.

APPENDIX 2

Table: Summary of Discussions

	Kenya	Zimbabwe
Legislation	• National Accord and Reconciliation Act • Reasonable ability to adopt new legislation • Constitutional reform complete • Not enacting of constitutional legislation • Electoral Act • Introduction of restrictive regulation for civil society	• Global Political Agreement • Inability to initiate or table bills • No clear executive directive due to lack of constitutional reform • MDC not taking advantage of parliamentary majority • Electoral Act • Constitutional reform politicised
Incumbancy	• Coalition has been able to work together to some extent - some power balance • Culture of patronage and corruption persists • Irregularities in democratic procedure • Depoliticising of judiciary in progress • Persisting political intolerance	• ZANU-PF control of coercive instruments of the state • Abuse of state resources • State security/judiciary bias • Diversion of mining revenue • Uneven power distribution • Persisting political intolerance
Election Credibility	• Past transitions of power • Election commission reform • Successful constitutional referendum • Investigations into electoral dispute agreed but not implemented	• Outright denial of acceptance of non-liberation struggle veterans as leaders • Inadequate election commission reform • Lack of open competition • Lack of transparent reform

Violence	• Lack of commitment to reconciliation processes • Continued harassment and intimidation of those critical of government • Growing incidents of political violence • Security sector reform initiated • TJRC / WPA dysfunctional • Those responsible for political violence not held to account • Constitutional referendum violence	• Violence integral part of body politic used leading to widespread insecurity • Impunity in addressing violence and social cleavages • ONHZ / ZHRC dysfunctional • Political violence / persecution persist • Inadequate reconciliation efforts
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Endnotes

1. As stated by Karuti Kanyinga (Director of South Consulting, the consultancy commissioned by the Panel of Eminent African Personalities to monitor the Kenya government) during discussions at a conference hosted by Idasa in Harare in August 2012

2. As stated by Kenyan delegates to a conference hosted by Idasa in Harare in August 2012

3. Blog: <http://kenyastockholm.com/2011/11/21/challenging-uhuru-kenyatta-as-richest-person-in-kenya/>

4. As stated by Ekuru Aukot during a presentation in Harare, 14 August 2012

5. Here see 'the Anatomy of Terror', [<http://www.sokwanele.com/node/2333>]

6. As stated by Obert Gutu during a political briefing hosted by Idasa in Pretoria, July 2012

7. Ekuru Aukot was the director of the Committee of Experts (CoE) on Constitution Review, he chaired the selection panel for members of the Independent Electoral and Boundaries Commission (IEBC)

8. As stated by Ekuru Aukot during an interview with Bryan Sims in Victoria Falls, 20 July 2012

9. As stated by Ekuru Aukot during a presentation in Harare, 14 August 2012

10. This report can be found at www.tjrkenya.org

11. According to the Transparency International Perceptions of Corruption Index 2012

12. Examples can be found at <http://agachiri.blogspot.com/2012/10/can-karua-overcome-media-bias.html>

13. Derived from discussions with Zimbabwean partner organisations and networks

14. According to the Transparency International Perceptions of Corruption Index 2012

15. <http://www.iicd.org/articles/illiterate-northern-kenyans-get-voice-information-about-elections-via-mobile>

16. <http://www.hdcentre.org/projects/kenya-rift-valley?overview>

17. <http://www.cohesion.or.ke/>

18. As stated by Kenyan delegates to a conference hosted by Idasa in Harare in August 2012

19. Access to Information and Protection of Privacy Act 2002 (AIPPA) AIPPA gives the general public access to public information. Citizens requiring information from a public body are expected to put their request in writing and the institution has 30 days to reply. If the application is delayed beyond this period or denied, the applicant can then complain to the minister concerned. AIPPA also regulates the accreditation of journalists by the Media and Information Commission (MIC), Public Order and Security Act 2000 (POSA), Prevention of Corruption Act 1996, Anti-Corruption Commission Act Chapter 9:22 2005 allows for the setting up of an Anti-Corruption Commission which reports to Parliament through a Minister of State in the President's Office

20. A coalition of The Zimbabwe Peace Project (ZPP), Zimbabwe Election Support Network (ZESN) and Zimbabwe Lawyers for Human Rights (ZLHR) Independent Constitution Monitoring Project

21. Kibaki established the DP after leaving KANU in 1992

22. A coalition parties established in preparation for the 2002 elections, of which Kibaki and Odinga were both founding members, the coalition fell apart in 2005 after the failed constitutional referendum

23. The PNU was formed by Kibaki after the collapse of the NARC, firstly as a coalition and later as a party in its own right

24. The KNDR framework identified four main agenda items for the purpose of ending the crisis. The four areas are critical for addressing the causes of the crisis, reconciling communities, and preventing future conflicts in the country

25. These four agenda items are: 1: Immediate action to stop violence and restore fundamental rights and liberties; 2: Immediate measures to address the humanitarian crisis, promote reconciliation; 3: How to overcome the political crisis; 4: Address long term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability (South Consulting 2009)

26. The MDC-T is the original MDC party, led by Morgan Tsvangarai. It adopted the T in its name, when a faction of the party broke away, after disagreement over participation in the 2008 presidential run-off, this faction named itself MDC-M after its first leader Arthur Mutambara. Later the M was dropped from the name and the party is now referred to as MDC while the other party continues to call itself MDC-T