

Liberal Democracy is A Myth: A Legislative Response to Election Irregularities in Zimbabwe

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ABSTRACT

Elections in Zimbabwe have been marred by electoral irregularities and have been contested and remain a controversial issue which in turn has resulted in some researchers to believe that democracy is unattainable. Faced with a lot of anomalies various legislative measures were effected by the Legislature to deal with electoral irregularities. This article finds out that there is a strong correlation between weak institutions and election irregularities. Another major finding of this article is that although elections are not the be all and end all in achieving democracy but they lay a concrete foundation for democratic consolidation. However, despite various amendments, election irregularities are still a common feature in Zimbabwe. This article concludes that in order to address the anomalies relating to elections, the legislative arm of government in Zimbabwe has come out with numerous initiatives. This study recommends that there is need for political will to deal with issues of amending the Electoral Act and align it with the Constitution of Zimbabwe. This article also recommends that the Government of Zimbabwe should create strong electoral institutions so as to curb election irregularities.

Key words: Elections, Movement of Democratic Change, Zimbabwe African National Union -Patriotic Front and Democracy.

INTRODUCTION

Since the formation of Movement of Democratic Change (MDC) electoral irregularities has been the order of days. MDC refers to opposition political which was dominant to challenge Zimbabwe African National Union -Patriotic Front (ZANU PF). The main legal instruments governing elections in Zimbabwe are the Constitution of Zimbabwe and the Electoral Act (Chapter 2:13) which have been amended several times to best suit the current political environment and in-line with various international treaties. The Electoral Act provides for the electoral systems, and processes including principles of the electoral system and how elections and referendums should be conducted. It is important to understand what constitutes election irregularities by analysing the entire electoral environment using a holistic approach. Herbst (2008: 23) states that "in the last ten years of the 19th century, a wave of democratic revolution transformed the political landscape of the African continent". Since then, it is self-evident that, if there is anything that has become a major topic of interest in African politics, definitely it has to be the significant principle of democratic elections (Lynch and Crawford 2011). This research focuses on the legislative responses to election irregularities in Zimbabwe, by so doing the study utilizes various amendments of the Electoral Act. The Electoral Act (Chapter 2:13) was published as Act No. 25 of 2004 and came into operation on the 1st of February, 2005 (Statutory Instrument. 17 of 2005). As at the 28th of May, 2018, it has been amended by the following Acts, Electoral Laws Amendment Act, 2007; Local Government Laws Amendment Act, 2008; Electoral Amendment Act, 2012; National Prosecuting Authority Act (Chapter 7:20), Electoral Amendment Act 2014 and the General Laws Amendment Act No. 3 of 2016 (ZESN Report 2018). Therefore, legislative



measures to address election irregularities have been put in place but still the issue, remains a bone of contention among political parties.

BACKGROUND INFORMATION

During the elections held in 2008, Mugabe's Zimbabwe African National Union -Patriotic Front (ZANU PF) did not win outright at the presidential ballot box and marked its failure to win in the first round of elections since 1980 (Tensi 2013). Following the first-round victory of Morgan Tsvangirai of the Movement of Democratic Change (MDC) an electoral crisis broke out, leading to rampant violence, intimidation of MDC opponents and the withdrawal of 2 Tsvangirai's candidacy (Tensi 2013). Against such a back drop of the controversial election of 2008, three main dominant political parties that is ZANU PF, Movement of Democratic ChangeTsvangirai (MDC-T) and Movement of Democratic Change- Ncube (MDC-N) entered into the Government of National Unity (GNU) after a negotiated compromise (Masunungure 2009). The three political parties was to drive for greater obligations for a legislative agenda that promoted human rights coupled with democratic elections as provided for by the GPA. The three political parties agreed to "discuss and agree on supplementary legislative measures which may become compulsory to implement the Government's agreed policies and in particular, with a view to entrenching democratic values and practices." (Makumbe 2011: 3). However Tensi (2013) states that the GNU which took office in February 2009, has been marked by ongoing ZANU-PF dominance and important reforms being strategically sidelined. It was significant for the legislative agenda around elections associated issues to be revisited and reinforced in order to guarantee that chaotic elections, as seen in 2008, would not be repeated (Sachikonye 2011).

The first elections in Zimbabwe were held in 1980, followed by 1985, 1990, 1995, 2000, 2002, 2005, 2008, 2013, 2018 and the nation is expecting to hold elections in July or August 2023. Of much importance is the beginning of multi-party elections since the early 1990's the decade of democratization. Moyo (1992: 23) argues that "there are a number of reasons why 1990 elections in Zimbabwe were central, however this is not to deny the significance of the 1980 and 1985 elections". Vollan (2008:23) argues that "elections have been controversial in Zimbabwe since a significant opposition to the ruling party ZANU PF emerged in 2000". This is because, "the Movement for Democratic Change (MDC) gained strength after having run a successful campaign together with the National Constitutional Assembly against a draft constitution in a referendum in 2000" (Makumbe 2002: 78). The following elections in 2000 and 2002 were marred by violence and manipulation, and the violence continued till 2005.

In 2008, the country conducted polls twice as these were very controversial and the other one was a run off, despite laws enacted in the Electoral Act to guide elections, "illegality still undermined the democratic process in Zimbabwe's 2008 harmonized elections" (Linington 2013: 98). Since, "there were many instances of illegality in 3 these elections" (Linington 2013: 98). The 2013 elections followed and these were not very different from the previous elections held as they share the same characteristics. It is also argued by scholars such Tensi (2013), Masunungure (2009) and Sachikonye (2011) that the 2013 elections have been riddled with immense electoral loopholes which exhibited from the day of the announcement of the polls. The 2018 elections was peaceful but contested since the post-election encountered violence which resulted in August 1 shooting which this researcher dubbed the blood Wednesday which resulted to death of 6 protesters in the Central Business District (CBD) of Harare.All these elections have not been without shortfalls and the effectiveness of elections in promoting democracy has become questionable. However despite electoral laws put in place the issue of election irregularities has remained a bone of contention.

Defining elections and unpacking its critical elements

Elections can be defined as "the symbolic competitive, periodic, inclusive, definitive processes organized in



an independent, free fair and transparent frameworks in which the chief decision makers in government are selected by citizens." (Kirkpatrick 2006: 3). This article maintains that, although three common types of electoral systems can be identified, namely: proportional representation, majority system and the mixed electoral system, none appears to be more democratic than the other. The definition of elections given above describes democratic elections, whether in a proportional, majority or mixed system. It should be noted that "when people use the term election, they more often mean democratic elections" (Kewir and Banlilon 2010: 122). For Madzonga and Mashingaidze, (2007:32) "an electoral system acts as a conduct through which the electorate is able to hold representatives accountable".

According to Diamond (2009: 23) "elections can influence democracy in a number of ways like monitoring, checking and restraining the exercise of power by the state and this function reduces political corruption which is pervasive in emerging democracies". Elections can force the government to be more transparent and responsive to the public which strengthens legitimacy. Owens (2009: 2) states that "the idea of elections is not entirely new in the contemporary political world but rather it is a democratic exercise that can be traced from way back". According Bratton and de Walle (1997) elections are indispensable in consolidating democracy. Scholars like Nohlen, Krennerich and Thibaut (1999), Ellis (2000) also argue that elections are vital by stating that, elections are an integral part of Africa since independence. Therefore, elections have become a major tool of the stabilization and democratization in emerging democracies as it enables peaceful transfer of power from one leader to the other.

Ntalaja (1977:15) concludes that "democracy is unachievable without elections hence their importance for democratic consolidation". It is important to note that democracy without credible, free and fair elections is implausible. To date, "no acceptable substitute to elections has been found to express popular choice" (Ellis and Harold 2016:8). In other words, popular legitimacy to rule flows from the ballot box rather than the barrel of a gun. Therefore, "elections are the building blocks of democracy but to serve that salutary purpose, they have to be both substantively free and procedurally fair" (Bratton 2014:183).

Conceptualizing Democracy

Democracy is an elusive concept, as it is difficult to present a singular comprehensive definition of the term. Cain (2001: 73) notes that "one of the difficulties in studying democracy lies in defining it, while it may appear to be a semantic issue, the way in which democracy is defined actually ends up determining how different political outfits label themselves as democracies." Thus, "the diversity of approaches to democracy underpins the diverse definitions and just like love democracy is in the eyes of the beholder" (Martins 2009: 5). Efforts to define democracy over the years have been difficult. Many schools of thought have provided with different definitions of democracy, thus in simple terms, democracy is government by the people that forms a government in which the sovereign power resides in the people as a whole, and is exercised either directly by them or by officers elected by them (Haynes 2003). This article will operationalize democracy as the government which is selected by people and make political decisions basing on considering people not by thwarting their vision and hopes.

A Brief History of Zimbabwe's Elections

Zimbabwe has experienced at least nine general elections since the end of colonial rule in 1980. Most of these elections, if not all of them, have gained notoriety for allegations of electoral fraud, corruption and other related irregularities. The quality of elections in most countries has not lacked controversies of either vote rigging or accusations of manipulating the electoral rules particularly those of Zimbabwe in 1980, 1985,1990, 1995, 2000, 2002,2005,2008 and 2013 (Raftopolous 2014:6). Since early 2000 to 2013 elections in Zimbabwe were characterized by extreme violence of citizen (Dyson 2017). The 2018 elections was also characterized by postelection violence which this study dubbed the blood Wednesday which resulted in the death of six MDC Alliance protestors. It has been argued that elections themselves comes with a lot of

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uncertainties. Zimbabwean elections have always been violent in nature, a lot of intimidation, destruction of people's properties. The 2008 elections were hotly contested. Acts of violence were conducted under the operation makavhotera papi? (Where did you put your vote?) (Newsday 2 October 2013). The increase in post-election violence has made many citizens lose their faith in electoral processes and until now many people are still reluctant or rather scared to vote (Sithole and Motsi 2014). The electoral violence has been a characteristic of Zimbabwe's electoral system since it has been witnessed in many of its elections (Masunungure 2009).

Elections Irregularities

Vote rigging in Zimbabwe has characterized the election environment. Chigora and Chilunjika (2016: 29) states that "reports of vote rigging have been part of the history of elections in Zimbabwe". Attempts have been made to ensure that the electoral menace be dealt with. One such sure way has been the improvement of the laws that govern elections. The fundamental law in relation to Zimbabwe has been the Electoral Act. Chigora and Chilunjika (2016: 29) argues that "following the massive allegations of vote rigging in the hotly contested 29 March 2008 harmonized elections, efforts were made to address the law governing the conduct of elections to address issues of election irregularities". Major changes were done in 2012 in an effort to improve the conduct of elections in Zimbabwe especially in the view of the 2013 harmonized elections. Issue of vote rigging has been cited as the most callous order of the day when it comes to elections in Zimbabwe (ZESN Report 2013, Makumbe 2000, and Sokwanele 2013). The act of stealing elections is not a phenomena which can be confined to Zimbabwe an elections alone, as elections the world over are either rigged or have anomalies (Chigora and Chilunjika 2016).

Various methods of vote rigging have been exposed throughout the elections held in post independent Zimbabwe. According to Chigora and Chilunjika (2016: 29) "a mishmash of deliberate actions on the part of biased election officials and gross administrative error or general ineptitude of the institutions running the elections which have been blamed for election malfeasance in Zimbabwe". This study maintains that weak institutions are to be blamed for weak electoral systems. To this effect, the following manifestations of electoral fraud have been identified and exposed as they show the multi facetedness of electoral fraud as practised in different localities across Zimbabwe. Among them include: vote buying, control of institutions by the incumbent, violence as a tool of control and win over votes, gerrymandering, legislative framework such as Public Order and Security Act (POSA), Broadcasting Act giving sole authority of public information to ZBC, Access to Information and Protection of Privacy Act (AIPPA), individuals conducting the elections 12 that is elections agents assisting disabled and the elderly, bribery of the elections agents, intimidation and coercion of supporters and international agents (Chigora and Chilunjika 2016). In the same vein, deliberate disfranchisement of voters may also occur because of other kinds of official misconduct which encompass malpractices such as turning away voters already in line when polls close, intimidating or misinforming voters when they arrive at the polls, producing misleading or poorly designed ballots, failing to provide bilingual voting materials as required by law, failing to upgrade or repair voting systems in specific election districts and by other means (Minnite 2003). In addition, "there is overall disfranchisement of voters through antiquated voting systems, errors mismanagement of registration, intimidation and harassment is a far bigger problem today than traditional forms of election fraud" (Chigora and Chilunjika 2016: 30). These electoral initiatives relentlessly seek to satisfy the need for a particular party or candidate to outpace, outwit and outshine their electoral opponents (Chigora and Chilunjika 2016: 30). Therefore, without being able to sort out the above mentioned issues, elections in Zimbabwe will always be dogged by ceaseless contestations and serious flaws.

According to Makumbe (2011: 52) "state institutions in Zimbabwe are typically headed by individuals who are well recognized as supporters of the ruling party". Makumbe's observation is valid on the basis that interms of election irregularities and consolidation of democracy, responsible institutions have become



participants in withering democracy and showing a reverse to democratic progress. Fig 2 (a) identifies some institutions used by ZANU PF to manipulate votes and summarizes some of the ways in which they have been commandeered to ensure ZANUPF's success at the polls. Although some of the institutions in Fig 2, have been abolished via electoral law amendments it is important to provide a picture of past irregularities.

Table 1 (a) Tabular Presentation of Institutions used to ensure ZANU-PF's victory 1980-2000

Institution	Comment
Delimitation Commission	Gerrymanders especially of urban areas, determination of sizes of specific constituencies to disadvantage some interests.
Electoral Supervisory Commission	Pays blind eye to irregularities; frequently unwilling to examine electoral fraud; lacks power to penalize electoral offenders; fails to highlight legal defects affecting electoral process; issues vague reports which lack quantitative details of polling; grossly understaffed so lacks aptitude to supervise elections.
Election Directorate	Composed completely of civil servants who tend to be partisan in favour of the incumbent political party; highly secretive in its hold of elections; violates some of the laid down procedures of handling elections
Registrar General	incompetent of accurately registering voters; headed by a partisan official unproven to be a member of the Provincial Committee of ZANU PF; violates laid down procedures; lacks transparency in handling elections; extremely defensive against queries from media, opposition and independent electoral candidates

Source: Data from Makumbe 2011: 34

It is important to note that most of the institutions mentioned in Table 1 (a) are no longer there such as the Delimitation Commission, Electoral Supervisory Commission. More so the office of the Registrar General is no longer handling election related issues. ZEC now holds sole authority in election related issues. According to Makumbe (2011: 34) "ZEC was formed in 2004 to control and manage as well as overseeing all electoral process in the country". The establishment of ZEC was necessitated by the opposition political parties and civil society organisations which were disgruntled by the activities of the Registrar General's office as well as the Electoral Supervisory Commission which supervised elections in the country from 1980. In 2018, ZEC was mainly challenged by the then MDC Alliance which was arguing that its leader Advocate Nelson Chamisa won the election, however according to the results announced by ZEC he lost to ZANU PF leader Dr Emmerson Mnangagwa this resulted in a period of political contestation which resulted to bloodshed and 5years of political contestation.

Legislative Response to Election Irregularities in Zimbabwe

In order to address the anomalies relating to elections, the legislative arm of government in Zimbabwe revised the Electoral Act as a way to resolve concerns that had been raised by academics, commentators and concerned institutions (Chigora and Chilunjika 2016). Electoral law reforms has been prominent in African politics since the 'third wave' of democracy washed over the shores of the African continent in the early 1990s (Huntington 1991). Since then, "some countries have made changes to voter registration rules and electoral system designs, brought about and amended legal frameworks" (Martins 2009: 8). In rectifying electoral anomalies, Kuhne (2016: 6) asserts that "choosing the appropriate Electoral System as well as establishing a functioning Election Commission and Complaints Mechanism is indispensable for ensuring sufficiently free and fair elections". Section 4 (a) of Chapter 2:13 of the Electoral Act provides for the establishment of the Electoral Commission, an independent body to oversee the electoral process rather than



it being manned by a senior civil servant often controlled by a political appointee in form of a minister (Chigora and Chilunjika 2016). According to Masunungure (2009:4), "ZEC is charged with the constitutional mandate of promoting fairness and transparency in the electoral processes in Zimbabwe". This study maintains that since electoral irregularities have been witnessed when the conduct of elections were done by the Registrar General , which has been blamed for manipulating the electoral system in favour of former President of Zimbabwe Robert Mugabe, in a bid to address this anomaly the legislature amended the Electoral Act.

Chigora and Chilunjika (2016) argue that in a bid to enhance its operational efficiency, ZEC is headed by some Commissioners. Prior to the amendment of the Electoral Act, the appointment of Commissioners to ZEC was done by the President of the Republic of Zimbabwe who was also a candidate in the elections (Chigora and Chilunjika 2016). Therefore such a clause does not guarantee total independence of the Commission as it still reports to the President. Indeed, this will result to a situation in which the independent commission is being driven by a big man, and is just ardent on paper not in practise hence open for manipulation by the ruling party (Chigora and Chilunjika 2016). According to ZESN Report (2018: 2), "the amendment of the Electoral Act provided that, the Commissioners should be appointed by the Parliament as this will enhance their independence since ZEC will be subjected to parliamentary oversight rather than unilateral 15 presidential oversight". Therefore, "as an efficient entity ZEC should relentlessly work to eliminate any forms of institutional bias in the management of elections" (Chigora and Chilunjika 2016: 32). Section 37 of Chapter 2:13 of the Electoral Act 2012 states that "Constituency delimitation is to be done by the ZEC, this initiative will go a long way in the avoidance of gerrymandering".

According to Makumbe (2011:12) "Delimitation has in the past been used to dilute areas where the ruling party was losing, especially in Harare". However, Dyson (2010: 4) disagrees with Makumbe (2011) basing on the fact that "the Delimitation Commission carried its mandate without favoritism or partisan drive". However, this study agrees with Makumbe (2011) and this researcher is of the view that the parliamentary effort to amend the Electoral Act and the transfer of responsibility of constituency delimitation to be done by ZEC reflects that there were a lot of irregularities conducted by the, Delimitation Commission. In a bid to fulfil transparent and accountable electoral practices, Section 13 of the Electoral Act 2012 states that, "ZEC announces the results of any election or referendum as well as submits a report on the conduct of elections to the key electoral stakeholders, that is political parties, the President, the President of Senate and the Speaker of the House of Assembly" (Masunungure 2012:6). According to ZESN Report (2013: 1), "this initiative is useful given the protracted delays in publishing the 29 March 2008 election results". In addition, to avoid the 2008 announcing of unofficial results curse, the Legislature amended the Electoral Act to solve such an anomaly, the Electoral Act 2:13 of 2012 part XIII allows ZEC to be the sole authority that announces the results through the Chief Election Officer. According to Chigora and Chilunjika (2016), this provision places some limits to the extent to which unofficial results can be announced by an individual other than the election management body. Of course, Section 66 (A) of the Electoral Act Chapter 2:13 as amended as up to 28th May 2018 prohibits announcement of unofficial results or false declaration of results. This section was inserted by section 23 of Electoral Act No. 3 of 2012 and substituted by section 32 of Electoral Act No. 6 of 2014.

This study maintains that the logic behind amendments of Section 66 (a) of the Electoral Act stems from the 2008 scenario. Sokwanele (2013: 2) states that "the 2008 elections saw Tendai Biti, opening a command centre and announcing election results based on tallies posted outside the polling stations". ZESN (2013:2) asserts that "in the past, pre-emption of the official declaration has occurred as a direct response of failures to declare results promptly". This justifies the need for 16 promptness in the announcement of election results. By and large, "to elude the pre-emption of results the Commission should ensure that results are declared forthwith after counting and without any delays to prevent any anxieties or concerns" (ZESN Report 2013: 2). In the same vein, the efforts of enhancement of transparency and accountability of the



Commission was one of the core thrust of the law making body in Zimbabwe. Section 6 (3) of the Electoral Act 2:13 of 2012 notes that "there must be unfeigned access of the voters roll by any person upon request and payment of the prescribed fee". According to Chigora and Chilunjika (2016: 33), "to compound chances of manipulation of the electronic voters roll they are presented in a format that prevents them from being tampered with or altered". Indeed the issue of the voters roll has been a contested area of electoral irregularities in Zimbabwean elections since there were claims that the voters roll included either deceased or none existent people with at time none existent physical addresses. Accordingly, there have been simmering complaints about the voters roll being perpetually inaccurate and outdated. Section 5 of the Electoral Act of 2012 states that "the voters roll is under the control of ZEC in both print and electronic than the previous which reside in the Registrar's office often accused of manipulating the voters roll to facilitate rigging". This study dubbed the Registrar's Office as an evil institution which was used to rig elections using all avenues to manipulate election results. The Legislature ushered in what this study calls the new dispensation of electoral politics since, Section 6 of the Electoral Act enables anyone to inspect the voters roll and making it available to the contesting parties (ZESN Report 2018). This clause has proved to be a panacea to challenge the irregularities by the Registrar General's Office which in past elections at times failed to produce the voters roll to the public, this was seen as a tactic used to keep the incumbent in power (Chigora and Chilunjika 2016). However, in the run up to the 2018 elections the issue of the voters roll remain a problematic issue to electoral politics in Zimbabwe. Currently as the nation prepares to hold 2023 elections, to date the issue of voters roll is still challenging as the now the former MDC Alliance party now called CCC led by Nelson Chamisa is demanding to inspect the voters roll.

There is a growing body of literature sustaining that voter registration in Zimbabwe has been twisted in favour of the ruling party (Makumbe 2011), and an uneven playing field in electoral politics (Sachikonye 2011). Accordingly, voter registration in MDC strongholds has been faced with what this study dubbed the cold delays aimed at frustrating the voters. Chigora and Chilunjika (2016: 32) state that, "in the previous elections registration exercises were alleged to have been marred by ineffable interruptions as those areas that were perceived to be strongholds for opposition parties delayed starting the process, as well as reports of members of the opposition parties were impeded from registering especially in the rural areas were noted". Academics such as Makumbe (2011) and Masunungure (2009) advocated for continuous uninterrupted registration of voters. This study supports Makumbe (2011), Masunungure (2009) argument on the issue of uninterrupted registration of voters. Against such a backdrop, Section 36 (1) (ii) of the Electoral Act of 2012 provides for the non-interruption of continuous registration and the extension of the period of new registration. This is in line with, section 17 (A) (1) of the Electoral Act Chapter 2:13 as amended as up to 28th May 2018 which states that registration shall be conducted on a continuous basis so as to keep the voters roll up to date. This section was inserted by Section 19 of Act No 17 of 2017. This will help to grant voters sufficient time and space to register as well as accommodating them in their diverse localities hence dealing with electoral irregularities pertaining voter registration. To this effect, the Electoral Act now provides for the incessant and unremitting registration of voters. Section 5 of the Electoral Act proposes to repeal the provision to section 56 (I) (a) of the Electoral Act that entitles a person whose name does not appear on the voters roll to vote upon production of a voter's registration certificate. ZESN Report (2018: 3) states that "this amendment deals with one of the most contentious issues raised in previous elections relating to the use of the voters". The extremely high number of voters slips seen in the 2013 election raised controversy and suspicions that persons disentitled to vote took advantage and abused the facility to repeatedly vote thereby affecting the credibility of the election (ZESN Report 2018). It is important to note that, the proposed amendment is therefore welcome and is consistent with constitutional provisions enshrined in section 155 of the Constitution of Zimbabwe.

However, a ZESN Report (2018) notes that, the proposed amendment may still retain to haunt future processes, in the absence of a clean and comprehensive voters roll that accurately captures names of all eligible voters. Indeed, every previous election in Zimbabwe since 1980 to 2013 has been characterized by



an inaccurate, erroneous and incomplete voters rolls that has affected the credibility of previous electoral processes and outcomes (Bratton 2017: 23).

According to Makumbe (2011: 5), "electoral irregularities in Zimbabwe has been a product of black box approach in dealing with elections". Masunungure (2009) further states that lack of openness in conducting of election forms the crux of electoral procedures in Zimbabwe. However, the Herald 18 of 17 October 2013 states that elections in Zimbabwe have been conducted on open footing and embraced democratic principles. This study is of the view that, indeed there has been a lot of secrecy in the conduct of elections hence in further buttressing the need for openness in the Zimbabwean electoral processes, section 62 of the Electoral Act now provides for the procedure after sealing of ballot boxes, and this procedure outlines who can be inside the polling station after voting. These people include the political party's agents including those roving agents who were in the vicinity of the polling station during the voting process. This initiative ensures that the electoral process is open and transparent to all concerned parties and is consistent with the "free and fair" provisions in the New Constitution of Zimbabwe. Zimbabwean elections have been described as stolen elections by Sachikonye (2009) or as stolen by numbers by Makumbe (2011) hence withering democracy. Thus in addressing such irregularities, which stems from a popular statement that, "make sure they count nicely" (Makumbe 2011: 1). This article, after tracing all elections since the year 2000 argues that election results will never be counted nicely, they reflect the intended results of those who count them.

The legislature, amended the Electoral Act and set provisions on section 62 to create openness and section 64 of the Electoral Act states that "vote counting based on polling stations is provided to avoid manipulation of statistics during transmission" (Chigora and Chilunjika 2016: 32). In addition to that, representatives or polling agents of each contesting political party will be available during the voting and counting of the votes Section 95 (5). Part XVIIIB of the Electoral Act 2012 states that it is the responsibility of political parties to desist from violence as people should be persuaded to vote for a certain party and not coerced. To this effect, "measures are placed against politically motivated violence and intimidation of whatsoever form" (Chigora and Chilunjika 2016: 32). In addition Section 133 (K) outlines the special penalty for politically motivated violence and intimidation after the investigations, prosecutions and trials of these and related cases have been conducted. Culprits and perpetrators of political violence in addition to the penalty are also prohibited from campaigning or taking any further part in the election (Chigora and Chilunjika 2016). Furthermore, Part XVIIIB of the Electoral Act 2012 also states that "special liaison officer and special investigation committee to investigate and deal with violence should be established". Of course, "violence during elections in Zimbabwe has been a common feature especially in the 21st century" (Chigora and Chilunjika 2016: 32). Section 161 states that an Electoral court to handle disputes if they ever arise will be established. Chigora and Chilunjika (2016: 32) states that "previously, election disputes have been handled by 19 Zimbabwe's judiciary which is yet to come up with a verdict of elections held in 2000 and 2002 after they were contested by the opposition Movement for Democratic Change". In addition, in a bid to regulate the behaviour of parties to the electoral process section 160 A establishes the code of conduct for political parties. This study finds out that, the Electoral Act now provides for the operations of other bodies such as the Human Rights Commission in upholding a favourable environment upon which elections are conducted. The Human Rights Commission which is meant to uphold and oversee human rights related issues before, during and after elections. This initiative has been adopted as result of reports of widespread violation human rights and gross abuse of members of the opposition in the previous elections in Zimbabwe. Chigora and Chilunjika (2016: 33) argue that "the period towards the June 2008 run-off period saw many supporters of the opposition MDC party reportedly being butchered, tortured, maimed, murdered as well as being abducted by some rowdy ZANU-PF youths and members of the central intelligence". Such atrocities have prompted the Electoral Act to empower these human rights related bodies. "Cases of violation of human rights during election time were also reported in most African countries in general and Zimbabwe in particular" (Zimbabwe Human Rights Report 2008: 4-5). Section 111 focuses on election petitions in respect of election to office of President. Section 111 (1) of the Electoral Act states that "an election petition



complaining of an undue return or an undue election of a person to the office of President by reason of irregularity or any other cause whatsoever, may be presented to the Constitutional Court within seven days of the declaration of the result of the election in respect of which the petition is presented, by any person (a) claiming to have had a right to be elected at that election or (b) alleging himself or herself to have been a candidate at such election". This subsection has been amended by section 40 of Act No. 6 of 2014. This provision is in line with section 93 of the constitution of Zimbabwe. 2. 6 Multiple causes of election irregularities in Zimbabwe Patrimonial politics, conflict cleavages, violence as a legitimate political tool, cultures of impunity, dictatorship, rule by man, weak institutions are enabling conditions of electoral irregularities. (Sachikonye 2009 and Makumbe 2011). However, this study maintains that for these conditions to effectively lead to electoral irregularities they must necessarily be accompanied or exploited by the 20 triggering factors indicated by Hoglund (2017: 3) such as "violent actors, a biased security force and partisan electoral body". This study is of the view that neo-patrimonialism is one of the main cause of election irregularities in Zimbabwe. In many developing countries, the social system is characterized by neo patrimonialism in which the 'big men' look after their constituents through providing them with the resources to which their position within the state allows them access (Barkan 2004, Chabal and Daloz 1999, Lindberg 2003). This social system is very comprising and posits a big challenge to Electoral Management Bodies (EMB's) such as ZEC, this study likens Electoral Management Bodies in a neo patrimonial system as instruments of consolidating power for the 'big men'. Hence, EMB's are reduced to become an extension of the president's private business and can be treated like a private tuck shop, and elections are therefore reduced to become symbolic.

Sachikonye (2003: 101) observes that "in a patrimonial political system, a leader rules by impression of personal stature and personal power while ordinary people are treated as an extension of the big man's household". This study maintains that if there is so much truth in Sachikonye's observation then one can conclude that in Zimbabwe, during the Mugabe era from 1980 to November 2017, various institutions including those which were mandated to conduct elections were nothing but a creation of Machiavellian type of politics of consolidating power by the former President Robert Mugabe. This created a major hurdle to democratic consolidation. Thus Bratton (2013) describes elections in Zimbabwe as an election without an election. Deduced, from Bratton's description is the fact that elections in Zimbabwe are meaningless, since the ruling party use all channels and avenues to remain in power even if there is greatest degree of vote rigging. Electoral irregularities becomes impossible in a neo-patrimonial set up since, the right to rule is ascribed to a person rather than an office and sovereignty is considered as belonging to the ruler and not to the people (Sachikonye 2011; Makumbe 2011; Masunungure 2009). It is important to note that repressive response grows bigger as the opposition challenge increases hence created a complicated equation which resulted in electoral fraud, violation of human rights, among others by a frustrated ruling party. From 2000 to November 2017, the liberation movement was unable to transform into broad democratic movement thus resort to the use of political terror for electoral advantage was a sad illustration of its weakness. Politics of incumbency is one of the cause of electoral irregularities in Zimbabwe.

Shortfalls of electoral law

The gaps and piecemeal approach in addressing election irregularities and also efforts to consolidate democracy in Zimbabwe hence reflects the ineffectiveness of the legislature as a law making arm of government. The Electoral Act (Chapter 2:13) was published as Act No. 25 of 2004 and came into operation on the 1st February, 2005 (Statutory. Instrument. 17 of 2005). As at the 28th May, 2018, it has been amended by the following Acts, Electoral Laws Amendment Act, 2007; Local Government Laws Amendment Act, 2008; Electoral Amendment Act, 2012; National Prosecuting Authority Act (Chapter 7:20), Electoral Amendment Act 2014 and the General Laws Amendment Act No. 3 of 2016 (ZESN Report 2018). Indeed, despite such efforts and amendments to the Electoral Act, it is clear that there is a gap in terms of reality and theory. There are some gaps regarding the translation of the electoral theory into



practical aspects underpinning real electoral conduct and practice that is the law as it says and how it is practiced should be upheld (Chigora and Chilunjika 2016). Politicians and leaders tend to be trapped in reverberating rhetoric on the need for democracy and free and fair elections thereby failing to be serious about implementing them (Menocal 2013; Schedler 2011). To date, "despite numerous efforts of amending the Electoral Act it has not yet fully translated into reality and this should be seen by the full judicious operationalization and implementation of the theoretical provisions contained in electoral legislation" (Chigora and Chilunjika 2016: 33). The Electoral Act is limited as it solely applies to the internal environment, where international actors are involved in Electoral Fraud it cannot limit or control such behaviour (Chigora and Chilunjika 2016).

It is imperative that the Electoral Act should not be silent on the regulation of the behaviour of the international players when then the local electoral processes are not immune from this external influence. To this effect, "there is need to broaden the scope of this Act to be useful in regulating the behaviour and activities of the international environment" (Chigora and Chilunjika 2016: 33). The Electoral Act is not the only legislation that contributes to free and fair elections or removes all aspects of election irregularities. Reformations of various pieces of legislation that under gird the practice of elections is also a prudent initiative towards the curtailment of electoral irregularities in Zimbabwe (Chigora and Chilunjika 2016). Statutory provisions and clauses that are prohibitive 22 and restrictive in the realization of free and fair elections should be struck off or amended (Sachikonye 2015). Over and above, reforms are needed in the following legislations in Zimbabwe, Broadcasting Services Act (BSA), Access to Information and protection of Privacy (AIPPA) which controls the flow of information, Public Order and Security Act (POSA) which controls the grouping of people for political reasons, Political Finances Act which gives privileges to certain political partners thereby giving the incumbent much resources for political maneuvering (Chigora and Chilunjika 2016). There is need for the purging of the voters roll. The voters roll has been criticized for being unendingly inaccurate and outdated. According to Parliament of Zimbabwe Hansard (Wednesday 20 June 2012), there is only one country, where a president of a country is elected more by graves than by human beings that is the President of Zimbabwe, indeed the President is voted more by ghost voters because the voters roll is well staffed with ghost voters. This study is of the view that elections since 1980- 2013 were conducted following a ghost voters roll approach. However, the legislative response to the voters roll anomalies provide opportunities for an accurate, up-to-date and clean voters roll. An accurate and a clean voter's roll is the quintessence of an encyclopedic, a translucent voting process and an ingredient to democratic consolidation. This study maintains that although parliamentary deliberations have pointed on removal of ghost voters, a lot of questions have been raised rather than answers and the ZANU PF parliamentarians who were enjoying the 2/3 majority in parliament from 2013 to June 2018 were so reluctant to address such election irregularities. Hence, Madhuku argues that most parliamentarians have no idea of their oversight role resulting in partisan stance taken when dealing with important issues (The Standard 13 April 2014). This study maintains that, despite all amendments to the Electoral Act there are still significant shortcomings and a lot still needs to be done.

Perceptions of Election Irregularities

There have been legislative changes to electoral law in Zimbabwe to solve election irregularities. A plethora of legislative measures have been effected to address election irregularities since 1980, however at the heart of these measures are the most important amendments in post the 2000 era. The Electoral Act (Chapter 2:13) was published as Act No. 25 of 2004 and came into operation on the 1st of February, 2005 and has been amended by various Acts. Legislative measures to address election irregularities are effected basing on incremental approach hence the Electoral Act No.25 of 2004 has been amended by Acts such as Electoral Laws Amendment Act, 2007; Local Government Laws Amendment Act, 2008; Electoral Amendment Act, 2012; National Prosecuting Authority Act (Chapter 7:20), Electoral Amendment Act 2014 and the General Laws Amendment Act No. 3 of 2016". Chigora and Chilunjika (2016) argue that in order to address the



anomalies relating to elections, the legislative arm of government in Zimbabwe revised the Electoral Act as a way of trying to resolve concerns that had been raised by academics, commentators and concerned institutions. Table 2 (a) shows some changes in electoral law and certain amendments which deals with election irregularities.

Table 2 (a) Changes in Electoral Law since 2004 to present

Election Irregularities	Changes and comments
Various irregularities	The Electoral Act (Chapter 2:13) was published as Act No. 25 of 2004 and came into operation on the 1st February, 2005 (Statutory. Instrument. 17 of 2005). As at the 28th May, 2018, it has been amended by the following Acts, Electoral Laws Amendment Act, 2007; Local Government Laws Amendment Act, 2008; Electoral Amendment Act, 2012; National Prosecuting Authority Act (Chapter 7:20), Electoral Amendment Act 2014 and the General Laws Amendment Act No. 3 of 2016 (ZESN Report 2018). All the above changes and amendments sought to solve various election related irregularities.
Delimitation issues and gerrymandering	Section 37 of Chapter 2:13 of the Electoral Act 2012 has been amended and now states that "Constituency delimitation is to be done by the ZEC, this initiative will go a long way in the avoidance of gerrymandering".
Unauthorized announcement of election results	Electoral Act 2:13 of 2012 part XIII allows ZEC to be the sole authority that announces the results through the Chief Election Officer.
	Section 66 (A) of the Electoral Act Chapter 2:13 as amended as up to 28th May 2018 prohibits announcement of unofficial results or false declaration of results. This section was inserted by section 23 of Electoral Act No. 3 of 2012 and substituted by section 32 of Electoral Act No. 6 of 2014. This change avoid speculation of un authorized results to the public.
Ineffectiveness of the Registrar General's office and the Election Supervisor	In 2004 there was the establishment of ZEC an independent electoral commission to deal with election related issues. Section 4 (a) of Chapter 2:13 of the Electoral Act provides for the establishment of the Electoral Commission, an independent body to oversee the electoral process.
Commission	ZEC is charged with the constitutional mandate of promoting fairness and transparency in the electoral processes in Zimbabwe

Source: Researcher's Analysis

A lot still needs to be done in terms of aligning the Electoral Act to the new constitution ushered in 2013. Section 4 (a) of Chapter 2:13 of the Electoral Act provides for the establishment of the Electoral Commission, an independent body to oversee the electoral process a situation which best addresses some problems of transparency and electoral bias". Masunungure (2014:4) states that "ZEC is charged with the constitutional mandate of promoting fairness and transparency in the electoral processes in Zimbabwe". Despite all these responses and legislative measures affected by the legislature to address election irregularities there is need to keep on revisiting electoral laws and Electoral Act to address some the gray



areas which are still haunting elections in Zimbabwe. This study also finds out that although some changes have been put in place in terms of the establishment of ZEC there is need to amend the Electoral Act and provide adequate independency of ZEC, also to allocate enough resources and adequate technical capacities.

Participatory Democracy Theory

The study used the participatory democracy theory. Major proponents of this theory include, Rousseau and John Stuart Mill. Martins (2009: 4) "The participation democracy theory entails that citizens must fully participate in choosing whom must lead them". The proponents of this theory argue that, participation democracy theory is very essential as it enables every citizen to gain much representation as possible (Dyson 2009). Taking a closer look into the Zimbabwe's elections one would question if the participatory democracy theory was a reality or just a myth. One can argue that in the 27 June 2008 run-off election there was no real participation of citizens since the election was characterized by violence, intimidation of citizens as well as vote rigging. However, the 2013 harmonized elections was characterized by participation of citizens as they were given the opportunity to participate in choosing who must govern them (Herald 23 October 2013). However research conducted by the Human Rights Organization after 2013 elections finds out that, there was no real participation in the 2013 elections because a large number of voters especially youths in urban areas and youths in the diaspora were not on the voters roll (Human Rights Organization Report 2013). Judging on that, the effectiveness of the 2008 and 2013 elections in promoting democracy is questionable. In 2018 elections proved to promote democracy, however the end result was problematic.

CONCLUSION

- This study concludes that various aspects contribute to election irregularities, among some of the causes of election irregularities include vote buying, control of institutions by the incumbent, violence as a tool of control and win over votes, gerrymandering, legislative framework such as Public Order and Security Act (POSA), Broadcasting Act giving sole authority of public information to ZBC, Access to Information and Protection of Privacy Act (AIPPA), individuals conducting the elections that is elections agents assisting disabled and the elderly, bribery of the elections agents, intimidation and coercion of supporters and international agents. After analysis of various factors this study comes to a conclusion that certain manifestations of electoral fraud have been identified and need to be exposed as they affect the realization of democracy. In order to address the anomalies relating to elections, the legislative arm of government in Zimbabwe revised the Electoral Act as a way of trying to resolve concerns that had been raised by academics, commentators and concerned citizens. In most African countries certain changes have been made to address election irregularities such as issues of voter registration rules and electoral system design, introduction of gender quotas and other affirmative action measures to enhance the participation of typically marginalized groups such as the disabled, young people or ethnic minorities, brought about and amended legal frameworks governing party and campaignfinance and out of country voting; and adjusted legislation to pave the way for the use of newtechnologies.
- This study concludes that patrimonial politics, conflict cleavages, violence as a legitimate political tool, cultures of impunity, dictatorship, rule by man, weak institutions are enabling conditions of electoral irregularities and these conditions to effectively lead to electoral irregularities they must necessarily be accompanied or exploited by the triggering factors such as violent actors, a biased security force and partisan electoral body.
- This study concludes that the gaps and piecemeal approach in addressing election irregularities and efforts to consolidate democracy in Zimbabwe resembles the ineffectiveness of the legislature as a law making arm of government. Although, the Electoral Act (Chapter 2:13) was published as Act No. 25 of 2004 and came into operation on the 1st February, 2005 (Statutory. Instrument of 2005). As at the 28th May, 2018, and has been amended by the following Acts, Electoral Laws Amendment Act,



2007; Local Government Laws Amendment Act, 2008; Electoral Amendment Act, 2012; National Prosecuting Authority Act (Chapter 7:20), Electoral Amendment Act 2014 and the General Laws Amendment Act No. 3 of 2016 (ZESN Report 2018). This study after interrogating the above mentioned amendment reached a conclusion that despite such efforts and amendments to the Electoral Act, it is clear that in practice electoral irregularities still haunt Zimbabwean electoral practice.

RECOMMENDATIONS

- This study recommends that there is need for political will to deal with issues of amending the Electoral Act and align it with the new constitution of Zimbabwe. Critical thinking in various election related issues can be best materialized if there is there is rule of law and aspects such as separation of powers this will materialize in the improvement of the integrity of elections and democratic consolidation.
- This study recommends that the Government of Zimbabwe should create strong electoral institutions so as to curb election irregularities. The system is more broken with weak institutions and more porous thus there is need to strengthen electoral institutions and all related institutions to the issue of elections. The Zimbabwe Electoral Commission (ZEC) should take action against actsof electoral corruption instead of endorsing these acts through silence or inaction. This studyrecommends that ZEC should perform its duties efficiently and independently this will improve integrity of elections in Zimbabwe. This study also recommends that Civil Society Organisations (CSOs) should effectively play a watch-dog role by monitoring, reporting and taking action against acts of electoral irregularities.
- More so, Zimbabwean courts of law should be empowered to preside over electoral corruption related cases in an environment that is free from victimization and interference and the parliament should play its oversight and legislative role to ensure that Zimbabwean elections are free, fair and credible.

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