

# Managing Election-related Conflicts in Zimbabwe

## Introduction

The issue of disputed election outcomes is not a new phenomenon to countries that have carried out periodic elections to elect new governments after particular periods as stipulated by those countries' constitutions or any guiding governance documents. Managing such conflicts has always been a challenge. Often some of these conflicts have degenerated into outright physical confrontations in the form of military surges, genocides and other forms of physical conflict capable of killing or maiming those caught up in the conflict. Zimbabwe is a good example of a country torn apart by a conflict that is election-related. Allow me ladies and gentlemen, to give background to the Zimbabwe Crisis.

## Background

The Zimbabwe Crisis, which has often been identified by an economic downturn, can be traced to as far back as 1997.

## **What does this mean?**

It means the only legal route through which post-election conflicts are resolved is through the High Court which has been the case before the Electoral Court was set up. This has its own shortcomings and precedent cases have taken forever to be heard in the court. As we speak, there are 16 election petitions before the High Court, submitted by MDC in 2005 after the General Election, which have not been resolved. There is also a petition lodged through the same court by Roy Bennett challenging his disqualification from running for office in the Chimanimani constituency during the 2005 parliamentary elections, which is still unresolved two years after the election.

## **What then should be done?**

Apart from creating a conducive atmosphere for conducting free and fair elections, which I will deal with in the final section of this paper, there is need for the creation of an independent Electoral Court that is composed of competent, impartial judges capable of expeditiously dealing with election petitions in the shortest possible period to avoid raging electoral conflicts. Subsequent to the nullification of the Electoral Court by the Supreme Court on the grounds that its composition was unconstitutional, there needs to be provision for the establishment of a truly independent Electoral Court with adequate provision for the speedy resolution of disputes. (Election Petitions should be resolved within 6 months.) There is also need to complement the judges of the Electoral Court with staff, equipment and adequate resources.

In considering all these, one needs to be mindful of the fact that there is need for political will in order to embrace electoral reforms and abide by constitutions. All players should cultivate a democratic electoral culture. Political tolerance should be fully embraced and practiced. It is necessary to encourage intra party democracy. There is need for enforceable codes of conduct for political parties, crafted in an all-inclusive transparent process. Penalties need to be punitive enough to ensure compliance.

There is also need to make attempts at conflict management processes, rather than conflict resolution so that election-related conflicts are dealt with amicably without going to court. The electoral legislative framework also needs to be mindful of the prevailing political culture of the country. The Electoral Management Body (EMB) needs to be particularly vigilant and ensure that the enabling electoral legislative and regulatory environment provides for effective conflict resolution mechanisms, both formal – through the Courts and informal – through alternative dispute resolution processes. Even though there may not be a history of consensus building and negotiation in the country, it is incumbent upon the EMB, by way of its various fora such as the Conflict Management Committees (CMCs) and Party Liaison Committees (PLCs) to encourage a culture of compromise where problem solving rather than conflict and civil strife is promoted.

The Courts too need to take into account the context in which they are operating during election periods. Long delays in hearing petitions and complaints and providing judgments can only exacerbate political tensions, which will have an impact on the credibility and legitimacy of the elections. These delays could also result in the electoral process being held to ransom by postponements and rescheduling of polling. It is therefore critically important that the Court, be it

the High Court or the Electoral Court has sufficient capacity to deal with the various cases brought before it, and that timeframes for each matter be limited to few days so that judgments can be delivered as soon as possible after the hearing.

## **Challenges to managing post-election conflict**

As part of the body politic in Zimbabwe, it is incumbent upon me that I focus on examples from my country to articulate the challenges that any managers or would-be manager of a post-election conflict would encounter.

### **(i) The Question of legitimacy**

The Zimbabwe crisis is a typical example of a post-election conflict that has been allowed to spurn over a long period of time. It is a cyclic post-election conflict that has overlapped from one post-election period into the other, thereby becoming intrinsically galvanised by the subsequent compound anger aroused by different electoral complaints. Central, however, to the challenges to resolving this conflict is the issue of legitimacy. As I have alluded to in my discussion of democracy, any conflict management process has to recognise the existence of the other party in the conflict as legitimate.

The problem in Zimbabwe is that both parties to the conflict, the Movement for Democratic Change (MDC) and Zanu-PF, which in the context of Zimbabwe, represents the government, do not accept each other as legitimate political players. MDC, because of the allegations of electoral fraud it levels against the ruling party, has taken a stance that the President is illegitimate. They predicate their complaints on what they perceive as “a stolen presidential election” in March 2002. Zanu-PF, on the other hand, perceive the MDC as “a puppet” political party formed to achieve what they call “a neo-colonial regime change” agenda by the country’s former colonial master, Britain. The issue of legitimacy is so central to the crisis in Zimbabwe that without processes aimed at its restoration, there is little hope the conflict can be managed. Professor Welshman Ncube, the MDC Secretary General, on 25 May 2004, in an interview with the Business Daily of South Africa, summed up the sticking points in the conflict between his party and Zanu-PF. In just three sentences in response to the

content of the talks between his party and Zanu-PF, Ncube alluded to the issue of legitimacy three times. He said,

*“ The talks are principally about how we restore legitimacy to our election processes so that whenever we hold the next elections we will have an outcome acceptable to all players. Assuming we agree on all those things then the next question would be when would it be best to hold a legitimate election so that whatever is born out of that as the new government has complete, unquestioned legitimacy.”*

So in a situation where no one between the feuding parties accepts the legitimate existence of the other, managing the conflict becomes a very big challenge.

## **(ii) Basic Principles**

The other hindrance to managing the conflict in Zimbabwe is lack of agreement on “basic principles” that should guide the holding of free and legitimate elections. The opposition call for the demilitarisation of state institutions, a new people-driven constitution, reform of the electoral laws, repeal of sections of the Access to Information and Protection of Privacy Act (AIPPA), a repeal of the Public Order and Security Act (POSA), among other basic principles to govern the conduct of elections while Zanu-PF sees nothing wrong in the constitution, electoral laws and the cited Acts. The two parties divergent views on the issues noted above pose challenges to attempts at managing the conflict. However, with the on-going negotiations mediated by South African President Thabo Mbeki there is a glimmer of hope the two parties might reach a compromise.

## **(iii) Lack of consensus on the cause of the crisis**

One of the most important processes in conflict management is getting the belligerents to share a common understanding of the cause of their conflict. Whether the conflict management is achieved through negotiation, mediation, conciliation or arbitration, the first step is always to make the conflicting parties realise the common cause(s) of the crisis. In Zimbabwe, the high levels of political polarisation have lead to different understandings of the causes of the crisis. While the Catholic Commission for Justice and Peace in Zimbabwe (CCJP), in their report of the June 2000

parliamentary elections, described the root cause of the conflict in Zimbabwe as “a crisis of governance”, other observers have seen it differently. The Zimbabwe government reckon it as a result of imperialist machinations by Britain and America who want to effect illegal regime change to make sure the redistributed land is handed back to minority white farmers. The MDC shares the CCJP view of illegitimacy of the President and government as the major cause of the crisis. They relate the crisis to the “fraudulent 2002 presidential election” and the subsequent repressive laws and actions that have been put in place by the government to legitimise itself as the major cause of the crisis.

**(iv) Failure by neighbours to completely condemn the crisis.**

The major problem faced by efforts to resolve conflicts in Southern Africa, especially where a former liberation (revolutionary) party is involved is the issue of camaraderie which makes it difficult for neighbouring states to condemn undemocratic practices by neighbouring states. It is unfortunate that instruments like the South African Observer Mission failed to come out public in condemnation of the presidential election in 2002 choosing to be vague about their final assessment of the plebiscite.

In his final assessment, the head of the observer team, Sam Mutsuenyane, concluded that, “...the outcome of the 2002 Zimbabwe presidential elections should be considered legitimate...[But] we cannot openly describe it as free and fair.” This failure to come up with a direct description of the election, choosing to use euphemism, emanates from the spirit of camaraderie between the South African government and its Zimbabwean counterpart. Unfortunately, such brotherly overtones, create situations where managing election-related conflicts difficult.

**(v) International, Regional Protocols Vs Domestic Laws**

A major issue that makes it difficult to resolve conflicts, or manage them is the issue of sovereignty of nation states which, unfortunately, in some circumstances, have meant that various protocols and other regional instruments acceded to by member states cease to be binding in view of local laws. In Zimbabwe, all the protocols, conventions and any other instrument, regional or international that the country signed are not binding in view of the provision of section 111B of the country’s constitution which stipulates that, “no international treaty, covenant or agreement signed and ratified by the

Zimbabwean government shall form a part of the local laws unless parliament passes a law making the agreement part of the laws of Zimbabwe.” What this means is that, where countries have agreed to, for example, coming up with principles and guidelines to govern democratic elections, as is the case with SADC, the SADC member states cannot take the government of Zimbabwe to task over flouting the same principles as they are not binding with regards to the country’s constitution. This presents difficulties in light of efforts by neighbouring countries to try and assist in managing the country’s crisis.

### **Prospects for constructive management of conflict**

Recent developments in Zimbabwe, where the MDC and Zanu-PF have gotten down to the negotiation table indicate the abundant prospects that the Southern African Development Community (SADC) have put in place for effective conflict management. That Zimbabwe is part to the regional body has provided leverage within the community to push for talks aimed at resolving the conflict in Zimbabwe. Speaking during the second reading of the Constitutional Amendment Bill No. 18, Zimbabwe Minister for Justice, Legal and Parliamentary Affairs, Patrick Chinamasa expressed his government’s commitment to “upholding” the statutes contained in the various SADC protocols that Zimbabwe is signatory to. He specifically mentioned the SADC Principles and Guidelines Governing Democratic Elections, Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and People’s Rights. Such frameworks provide the necessary platform for SADC member countries to intervene and mediate on post election conflicts or any other conflicts thereof. It should be noted here that the fact that Zimbabwe is a member of SADC provides an opportunity for other countries to intervene in its domestic affairs through the SADC Organ on Politics, Defence and Security on the understanding that the crisis can be a threat to regional peace. Festus Mogae, the Botswana President, in justifying the need to intervene in the Zimbabwe crisis argued that it is not lack of rains that posed threat to peace and stability in Southern Africa, but “it is a drought of good governance that is much more difficult because you have neighbours like Zimbabwe.”

So the existence of neighbours who fully understand the extent and nature of the Zimbabwe crisis provides prospects for effective management of the crisis. Recent events in the country have been

positive where, as a result of the talks between Zanu-PF and MDC, which are mediated by the South African President, the two parties have agreed to come up with new electoral laws, a repeal of draconian legislation like AIIPA and POSA and the amendment of the constitution demonstrate the prospects that neighbours might bring towards effectively managing conflicts in the region.

Another effective way of managing post-election conflict is by learning from the conflicts, ways to, avoid such disputes arising again in the future. At the beginning, I alluded to the creation of a democratic playing field during and after election time as a way of managing conflict. I make recommendations here that the following instruments, if put in place effectively, would not only promote the growth of democracy in the region, but would help in managing conflict arising during and after elections.

### **Independent Electoral Management Body (EMB)**

In addition to the formal dispute resolution structures put in place the EMB in itself can play a critical conflict management and conflict resolution role. To be able to effectively act as supervisor, manager and monitor of an election it presupposes that the EMB is an independent, impartial and non-partisan institution that has the trust of the electorate and the political parties to act fairly and in an even-handed manner when supervising the elections, as well as when it is called upon to assist in managing and resolving election related disputes that have the potential to hinder the smooth functioning of the EMB and ultimately the electoral process. In this light, the EMB can form structures that can be put in place to resolve disputes, during and after elections like the political Party Liaison Committees (PPLCs).

### **Political Party Liaison Committees**

In most southern African countries e.g. Tanzania, Lesotho, Namibia, South Africa, Malawi, Zambia and Zimbabwe, party liaison committees have been established by the Electoral Management Bodies as a form of communication between themselves and the political parties contesting the elections. Issues that form part of the agenda for the Party Liaison Committees include matters related to the Code of Conduct, including infringements of its provisions, legislative infringements,

amendments to electoral regulations, as well as administrative omissions and problems experienced during the pre, during and post election periods, amongst others.

In most instances the Electoral Act favours the involvement of political parties contesting the elections in all aspects of the election process in order to encourage consensus about the 'rules of game' and where this is unable to be reached to facilitate a dialogue about how best the electoral legislation and regulations can be applied. These structures provide avenues of communication between the political parties, the EMB and where necessary and appropriate representatives from government, the security forces and other stakeholders involved in ensuring that the elections will be conducted as freely and fairly as possible without threat.

### **The Electoral Code of Conduct**

The ability to campaign without fear of violence is a basic political right that requires vigilance and commitment on the part of the parties, their supporters, the security forces and the EMB. The development of a Code of Conduct, ideally, one that is part of the electoral act, is one means of contributing to the development of free and fair electoral practices. This code of conduct may prohibit and prescribe certain forms of behaviour on the part of government, the EMB, political parties, their supporters and the media. For example, the 1998 Electoral Act in South Africa recognises the desirability of involving political parties in the electoral process and the activities of political parties in this regard are regulated by the Act. Registered parties are subject to an Electoral Code of Conduct designed to regulate their behaviour throughout the election period.

In another example, the National Electoral Commission in Tanzania also has a code of conduct for political parties, which was first institutionalised in advance of the 1995 general elections, but the political parties rejected it. The Tanzanian Code of Conduct has many provisions similar to those in South Africa's 1998 Electoral Act but it also included a Code of Conduct for both government and the EMB. For example, the EMB was bound to ensure that the election results were declared as promptly as possible.

### **Conflict Management Committees (CMCs)**



A fourth example of alternative dispute resolution processes used during elections is the establishment of Conflict Management Committees (CMCs) or community-based structures that assist the EMB in managing disputes between electoral stakeholders. Comprised of respected and impartial individuals, with proper training these structures have the capabilities to address concerns about the electoral process, instead of using the courts, which are often, expensive, inaccessible or too slow to be able to respond to the immediate concerns of political parties during election campaigns. In Zimbabwe, these committees are called Peace Committees which have effectively, in the Makokoba and Harare North Constituencies, helped feuding MDC and Zanu-PF youths to come to a resolution that no youths from these two constituencies would throw stones at political rivals during and after election time<sup>1</sup>

## Conclusion

In order for post-election conflicts to be managed effectively, there is need to put effective and democratic governance structures in place. There is need for structures that allow for open expression of grievances and a realisation that disputes are supposed to be debated on and reacted to rather than being resolved definitively and permanently, for in dealing with disputes definitively and permanently, there are high chances of creating bitter losers who might see another conflict as the only way to seek recourse. In other words, conflicts should be managed in such a way that help bring the feuding parties to negotiate their differences and come up with structures and resolutions that, not only make the conflict management a process, but would also build structures upon which the parties can work together on disputes that might arise from the decisions that they would have made today. In short, implementing democratic governance structures, which allow for inclusive participation, equal chances for contestation and an assurance to ensuring the integrity of political competition and participation form the bedrock of effective conflict management structures.

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<sup>1</sup> Testimonies by Sihle Thebe (Zanu-PF Makokoba Constituency and Gift Ncube MDC Makokoba Constituency during a conflict resolution workshop in Nyanga on 12 September 2007.,