

An analysis of electoral
dispute mechanisms available
in Zimbabwe and prospects
for change



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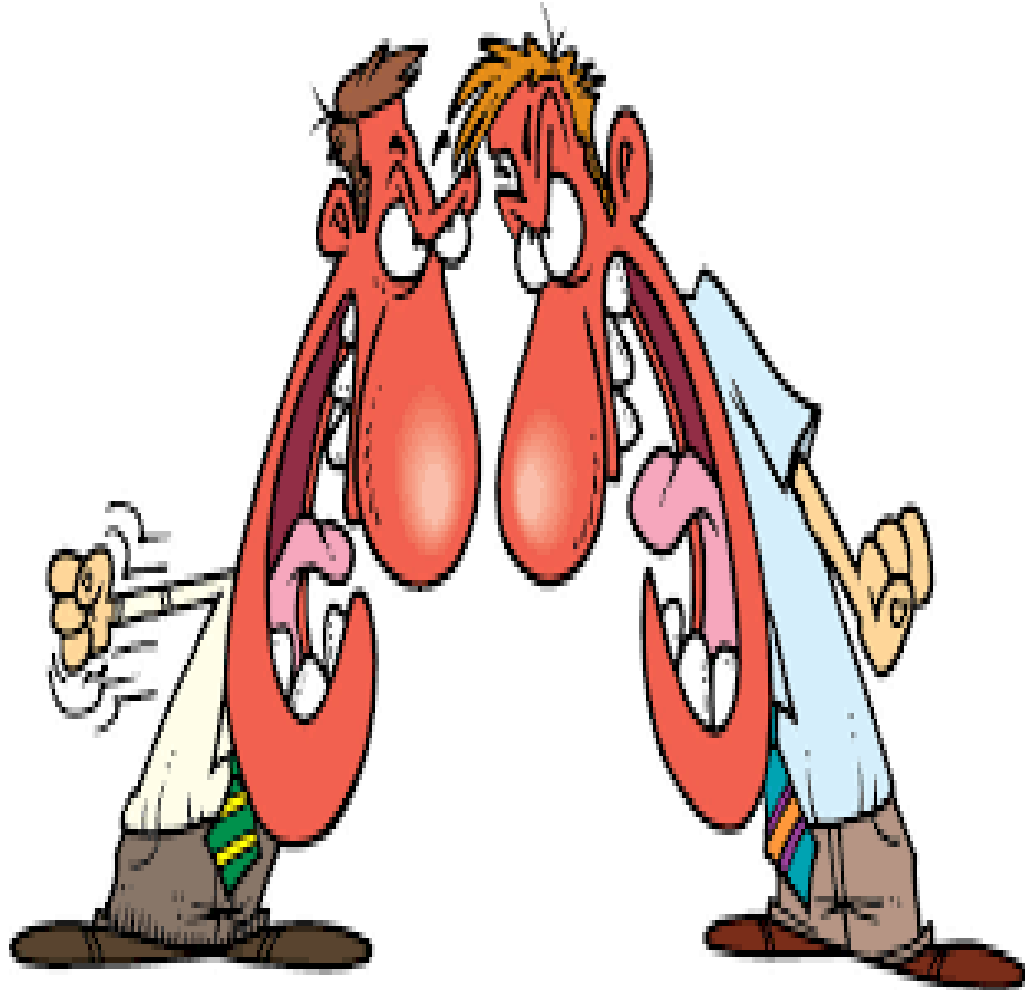
Elections and conflict

- Elections are important yet they are one of the most contentious processes Zimbabwe's political life
- although elections are an essential feature of democracy they do not, in themselves, amount to democracy. It is one thing to talk about procedural and institutional democracy, of which electoral politics is a constituent, but quite another to talk about democratic politics.
- democratic politics is about the conduct of politics within a framework of democratic values and practices and power relations in society
- Elections per se do not cause conflict but the process of competing for political power often exacerbates existing tensions and underlying social grievances and escalates them into conflict.
- There is a complicated nexus between election management and conflict prevention

Elections and disputes

- Elections can either help reduce tensions by reconstituting legitimate government, or they can exacerbate them by further polarizing highly conflictual societies and Zimbabwe is a highly polarised country
- The institutions that support democracy affect the quality of elections and the dispute resolutions mechanisms and their outcomes.

Causes of Electoral Conflict in Zimbabwe



Causes of electoral conflict in Zimbabwe

- Causes of electoral conflict in Zimbabwe are complex and structural and this presentation will not be able to exhaust however the presentation will provide points to ponder.
- Weak political system characterised by undeveloped policy agendas, lack of intraparty democratic values, narrow personalistic interests, unstable political allegiances, the dominance of class interests and norms, and weak regulatory oversight.
- Lack of trust of the EMB
- Weak institutions that support democracy
- Poverty and the economic crisis

When is conflict most likely in the electoral cycle

- i) the pre-election period (roughly described as from 18 months prior to an election until the commencement of the official election campaign period)
- ii) the election period (the official campaign period up to and including election day)
- iii) the post election period (the processing and communication of election results and the aftermath, including electoral dispute resolution).

Why conflict prevention is critical

- From a conflict prevention perspective, low intensity or localised violence can serve as a 'training ground' for more largescale violence campaigns, including civil war.
- Electoral processes may catalyse conflict by setting the stage for apparently spontaneous social clashes among rival supporters, which frequently have structural social, economic, and political dimensions.
- Managing election-related conflict , is important in the long-term effort to build a strong, democratic and peaceful society, based on the rule of law, accountability and transparency

Mechanisms available in Zimbabwe

- The electoral courts and constitutional court :
- The Electoral Court is established in terms of Section 161 of the Electoral Act.
- provides mechanisms for dispute resolution
- Multiparty Liaison Committees
- Electoral code of conduct

The electoral court

- The Electoral Court has exclusive jurisdiction to hear appeals, applications and petitions and to review decisions made by ZEC or any other person or any decisions made in terms of the Act.
- The EC hears all cases from nomination of candidates, voter and candidate conduct, media coverage, electoral fraud, voter and candidate intimidation; political violence and all things elections-related.
- Petitions are lodged by candidates who took part in an election if they feel aggrieved by anything to do with the conduct of that election.
- Petitions are based on complaints over undue returns or undue election of a Member of Parliament for lack of qualifying for the seat, malpractice or any other irregularity committed. Irregularities are varied and include any of a variety of malpractices like intimidation, inciting violence, electoral fraud, poll misconduct, vote buying etc.

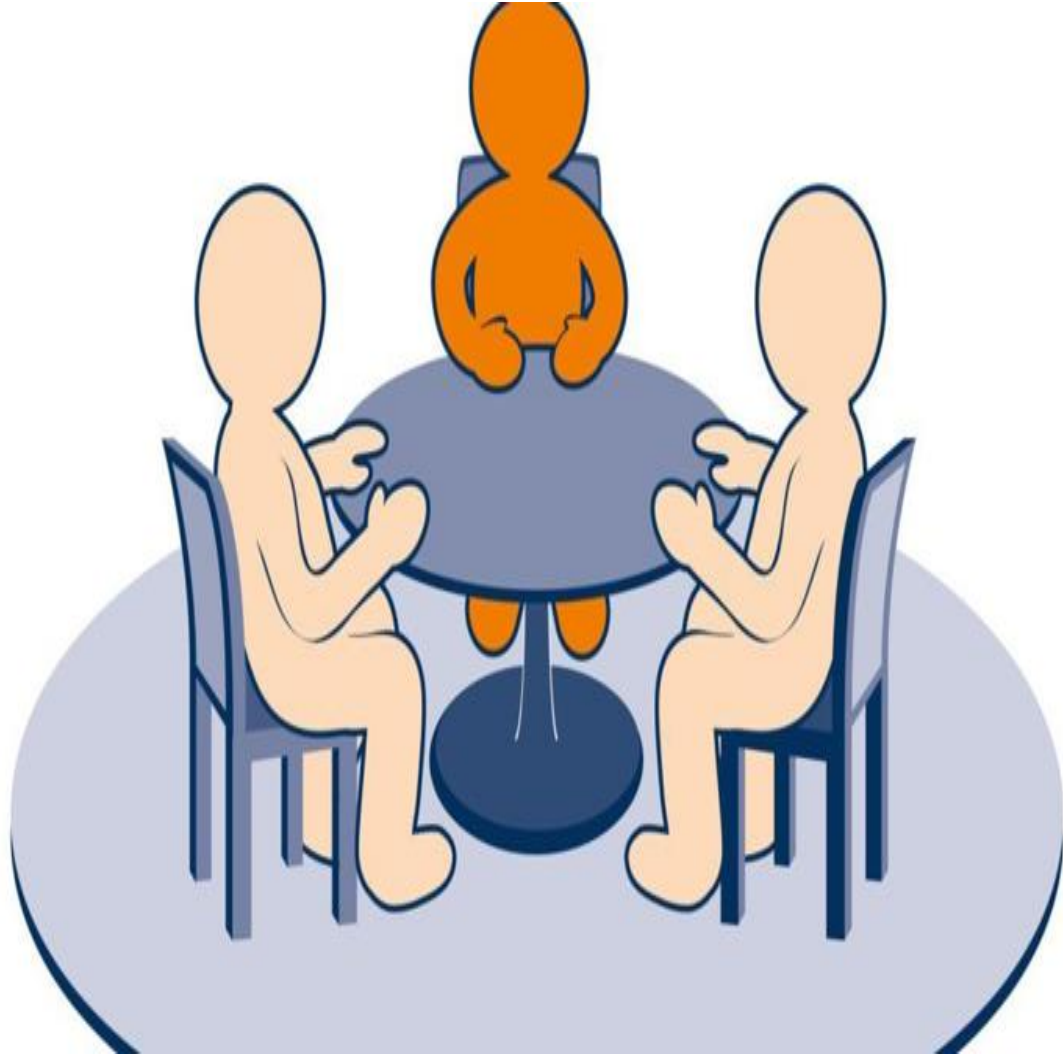
Limitations of the electoral courts and constitutional court

- The time set for petitions is limited that is 14 days after the election and that period is not clearly defined
- the challenge in Zimbabwe is the independence of the courts, lack of trust in the judiciary and implications for conflict resolution
- The length of time it takes to resolve electoral disputes
- Political parties seem to have little knowledge of how to file papers correctly
- Overreliance on the court systems does not heal wounds created by the disputes hence the animosity festers and conflict is just a spark away
- The burden of evidence and the inability by most political parties to gather evidence
- it recommended to benchmark the date of lodging the petition with the date the results were first announced at constituency level for the Members of parliament elections and the date of announcement of Presidential results for the Presidential election

Political party liaison committees

- These committees are established at national, provincial, and local levels as vehicles for consultation and cooperation between the commission and registered parties on all electoral matters however their operations are limited to election period and national level
- They are meant to promote transparency through consultation, to promote trust between parties and between parties and the ZEC however they have not served that function due to lack of trust and confidence in the impartiality of ZEC

the challenge is that these are not well developed all levels including provincial, constituency and ward levels hence local issues are not resolved at the local levels such as the allegations of traditional leaders appointed as party agents



Conflict Resolution Methods: examples from Africa

Foundation for sustainable conflict resolution

- Mediation
- Arbitration
- The application of conflict management systems
- The institutionalisation of conflict management

Party Liaison Committees in South Africa

- They are permanent structures that convene with the commission at regular intervals and more frequently during election cycles.
- They are established at all levels of society, have grass-roots knowledge and can warn of potential conflict.
- They are avenues through which parties can raise matters of concern and be assured that action will be taken as they make recommendations to the commission and the commission has a feedback mechanism to inform PLCs.

Conflict resolution mechanisms available

Reforming Electoral systems

- Electoral systems can exacerbate or alleviate conflict.
- The first past the post or winner takes all is likely to cause more conflict than the proportional representation as the stakes are higher in FPTP

Understanding the historical pattern of electoral conflict

- To prevent conflict in Zimbabwe it is essential to understand the root causes of conflict and not deal with the symptoms of conflict

Early warning systems

- These are the responsibility of all stakeholders in the electoral process
- 'early warning' resides with all the stakeholders involved in the electoral process, including the media, legislative bodies, political parties and civil society;
- conflict early warning signals should be integrated into activities during an electoral cycle and that conflict management processes should become an important part of the development process.

Conflict analysis

- Conflict analysis combines a focus on structural causes and on proximate causes. It can be conducted at regional, national or local level.
- Conflict analysis can be done at the stage of programming (Country Strategy Papers) or project design, or for monitoring and evaluation in order to build conflict sensitive indicators.
- Conflict analysis can also be used as a tool for action in itself, for instance for building national confidence



Potential conflict areas 2019-2023

Potential conflict areas in the 2019-2023 electoral cycle

- Boundary delimitation
- Electoral reforms
- Lack of trust in the election management body (ZEC) and need for building trust (refer to Afrobarometer results on trust and confidence in the ZEC)
- Social media and fake news
- Politicised security sector
- Poverty and socio-economic conditions: political implications of the economic and social stagnation were far-reaching. In many countries economic malaise and social dislocations, generated social tensions and political discontent against government, thereby aggravating political conflicts.

Alternative conflict resolution mechanisms

- Strengthen Multiparty Liaison Committees at all levels
- Ensure political parties abide by the Code of conduct
- 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.

Alternative methods for conflict resolution

- Political parties, ensuring their members and candidates abide by the code of conduct
- Observer missions: domestic and international have a role to play in deterring electoral conflict
- Civil society critical for conflict resolution through providing impartial information to citizen
- Having an plurality of media which is not polarised and providing accurate information

Possible conflict resolution mechanisms

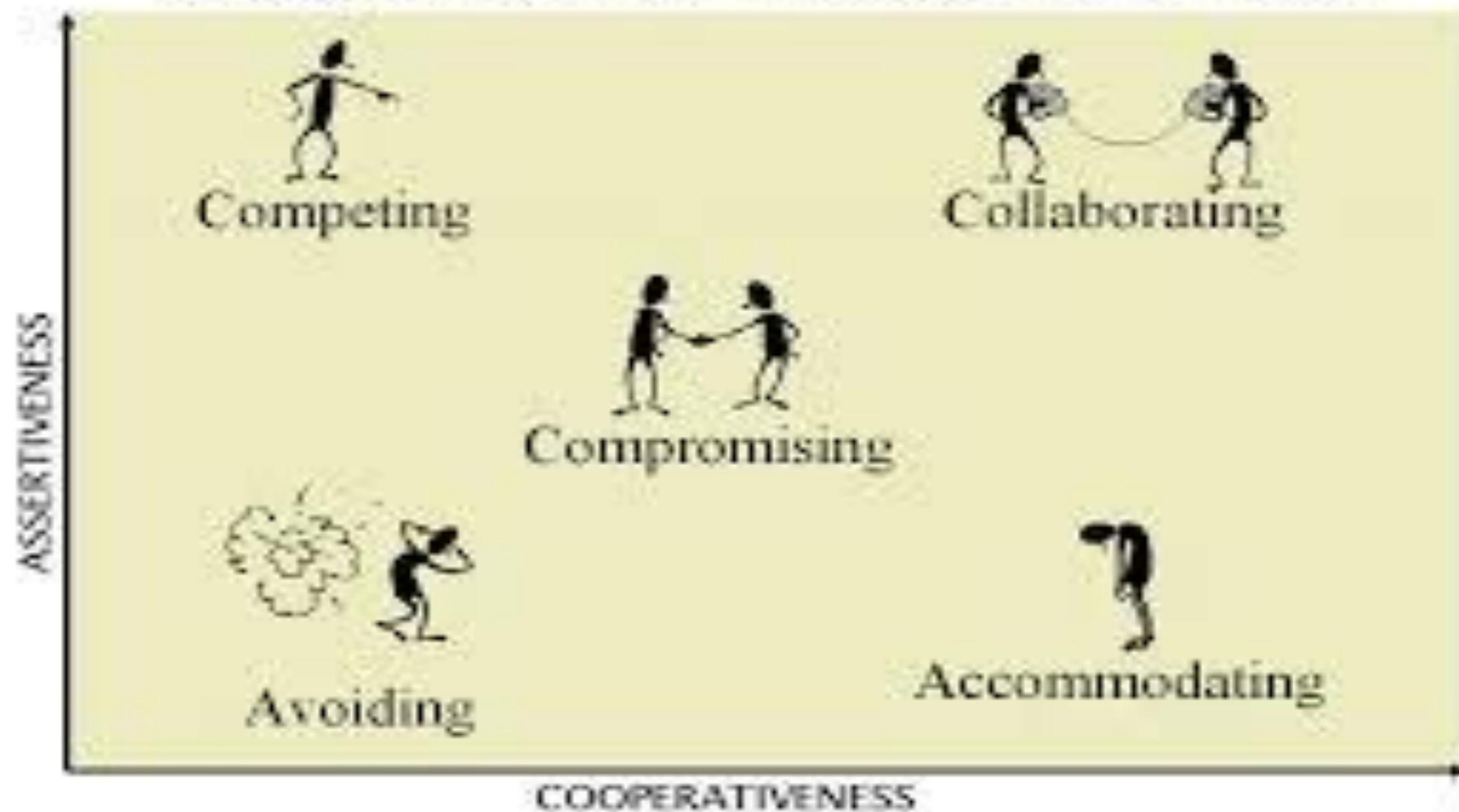
Conflict resolution panels (SA and DRC)

- the establishment of election-related conflict management panels at various layers of society during the election cycle.
- Among the countries which use this model are South Africa and the DRC.
- The composition of the panels should reflect the diversity of the communities in which they operate.
- The approach is premised on early intervention mechanisms and entrenches the notion of mediation, arbitration and facilitation of conflict resolution

Institutional strengthening

- Building institutions rather than merely relying on legal instruments or prevention and management when electoral conflict/violence breaks out.

Dealing With Conflict – Thomas/Kilmann model



Recommendations for addressing electoral disputes in Zimbabwe

- Some of the advantages of the establishment of a permanent Electoral Court is that the same judges are allocated to the Court on a permanent basis, which allows for institutional memory to be developed over time. Monitoring and civic education activities should be done throughout the electoral cycle
- Conflict-mitigation measures should be included in the electoral process design;
- To ensure security, a balance between deterrence and confidence building has to be found;
- To improve peacebuilding around election times, the multiple actors involved need to coordinate activities to avoid overlap and to identify policy gaps.
- Introducing local and grass roots conflict resolution panels that use indigenous methods and knowledge of conflict resolution