

An investigation into the nature of election-related disputes in the [SADC] region and effectiveness of existing dispute resolution mechanisms – The role of Parliament(s)

Presentation at:

ZESN Post-election conference, Bulawayo, Zimbabwe, 7-8 March 2019

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Discussion Points

- 1. Nature of Election Related Disputes in SADC**
- 2. Existing dispute resolution mechanisms & their effectiveness**
- 3. Parliament role in election dispute resolution**
- 4. Evidence from literature**
- 5. Infusing African values in resolving disputes**
- 6. Deep-rooted causes of election disputes**
- 7. Representative & Participatory democracy**
- 8. Points for reflection on election-related disputes**
- 9. Conclusion**

1. Nature of Election-Related Disputes (1)

1. Political stalemates arising from disputed elections or election result;
2. Two or more political party candidates claiming victory simultaneously following an election contest; none accepts the outcome or allege fraud, cheating etc. during the polling process; or they may allege that the election was riddled with malpractices;
3. Some contenders claim EMB favours incumbent; or challenge its legality, legitimacy; or its fairness (leader/s or officials);
4. Disputed interpretation of electoral law/s, policy/policies, regulations, or the implementation thereof;

Nature of Election-related Disputes (2)

- 5. Disputed delimitation of election boundaries/demarcation of election districts, wards (gerrymandering), & polling stations;**
- 6. Disputed changes to electoral system or processes — e.g. biometric voter verification methods/machines and electronic voting systems.**
- 7. Disputed name/s or symbols/slogans/colours etc. of parties;**
- 8. Disputed voters' roll (e.g. names omitted or bogus ones added);**
- 9. Disputed voting rights (e.g. diaspora, prisoners, persons with disabilities such as those with mental disabilities);**
- 10. Finally, disputed tenure or office period of a sitting Head of State: ends up affecting elections and relevant preparations.**

Elections are about Contestations & Competitions: But Why Should People Die!



2. Existing dispute resolution mechanisms

- Laws, policies, rules, regulations (national constitutions, laws)
- Peace-building initiatives (AU/UN)
- Diplomatic initiatives by working with affected parties to a dispute to try and resolve them;
- Lobbying relevant governments, donor agencies and other players to intervene where disputes arise.
- Establishment of the SADC Parliamentary Forum
- SADC-PF's increasing role in EOMs and supporting the resolution of election-related disputes

2.1 Effectiveness of such mechanisms

- Many national parliaments in the SADC region are doing fairly well in terms of law-making, policies, rules and regulations intended to address election related and other disputes in elections.
- Recently, such laws and mechanisms have significantly contributed towards resolving many election-related disputes and election management problems, thus reducing headaches for EMBs during elections.
- But how effective are these mechanisms? Rule-bound societies? 'Rule of Law'

Alternative dispute resolution mechanisms?

- “Alternative dispute resolution and conflict management processes such as mediation, arbitration and conciliation are potentially a more accessible, cost-effective and rapid means by which to address such disputes. Only a few countries have instituted these processes.” (SADC, in Outside the Ballot Box, 2004: 163)
- Relevant CSOs: e.g. women’s organisations

3. Parliament Role in resolving Election Disputes

1. Makes & amends laws (separation of powers).
2. Holds the Executive accountable.
3. Collaborates with peers in SADC to address election-related disputes.
4. Represents voters & citizens (legislature), not theirs.
5. Seeks to implement regional & continental instruments (e.g. the African Charter on Democracy, Elections and Governance) in their constituencies.
6. ID & apply local solutions to disputes/ problems.

4. What literature and evidence reveal

“In some SADC countries electoral outcomes have been disputed for a variety of reasons. These include dissatisfaction with the ‘winner-takes-all’ system, which leads to a feeling of exclusion from the process; and with a lack of transparency and accountability.” (SADC, in Outside the Ballot Box, 2004: 181)

What Literature & Evidence Reveal (2)

“...the rationale for resolving electoral conflicts is not to compel the parties to conform to the same political ideologies, persuasions, or worldviews. Neither is the rationale to compel disputing parties to adopt similar perspectives and approaches to political issues, or articulate similar political viewpoints. The rationale for resolving electoral conflicts is to encourage stakeholders in the electoral process and conflicting parties in a particular polity to co-exist peacefully despite their different worldviews, political biases and ideologies”¹ (Mbugua, 2006: 22)

(a) Silver Bullet to Averting Election-Related Disputes?

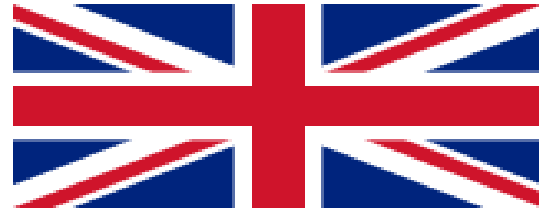
“Leave when your time is up! There’s life after the presidency” (Public office) (Ex-Ghanaian Pres, John Mahama Dramani), Nov. 2017, Pretoria, SA

(b) Outdated or Conservative Measures?

- “African states, including Zambia, inherited electoral models from their colonial masters after independence and, to make matters worse, these African states did little or nothing at all to reform the election laws and processes in use. Elections in Africa are the only window available for entry into the political decision-making forums – the ability to possess power and govern is through participating or taking part in an election in Africa. However, election rules and processes are so restrictive and are an expensive venture in Africa. The starting point of electoral reforms should be to broaden the level playing field...” (Zulu, Zambia Daily News, 2/12/2017).

(c) Flagbearers of 'Flag People'?

Powers behind our thrones?



5. Need to infuse African values into election related dispute resolution

- ✓ Africanisation
- ✓ Curriculum reform (including induction & training of MPs and other public representatives).
- ✓ Paradigm change/ shift about election-related disputes? 'Madness'
- ✓ Do we invest in long-term resolution of such disputes?

6. Deep Rooted Causes of Election Related Disputes in Africa

“.....citizen control of elected representatives is imperfect in all modern democracies. It is particularly elusive in Africa, where many citizens have limited levels of formal education and live in remote rural areas; not surprisingly, they tend to regard central government as remote and inscrutable...But for ordinary people – in Africa as elsewhere in the world – the challenge of democracy concerns how to obtain accountability from officials of the state. .”

Bratton & Van de Walle, 1997: 11-12)

7. Representative, Participatory Democracy & Dispute Resolution

1. Different levels of **public representatives**: national & regional assemblies, Loc. Govt.
2. **Stakeholders**: Voters, candidates, registered political parties, government, CSOs; Security organs, EMBs, CBOs, Faith-Based Organisations;
3. Balancing Rights & Responsibilities: role-player (relevance of Civic & Voter Education)

7.1 Election Disputes: AU Perspective

ACDEG, Chapter 3

- *Respect for human rights & democratic principles; Access to & exercise of state power according to constitution & rule of law;*
- ***Promotion of a system of government that is representative;***
- ***Separation of powers***
- *Promotion of gender equality in public and private institutions;*
- *Effective participation of citizens in democratic & development processes & in governance of public affairs;*
- *Transparency and fairness in the management of public affairs;*
- ***Condemnation & rejection of acts of corruption, related offenses and impunity;***
- ***Condemnation & total rejection of unconstitutional changes of government;***
- *Strengthening political pluralism & recognising the role, rights & responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.*

8.2 Manifestation of Democracy Essentially Causes Election Disputes

Elections are merely a Means towards
Expressing Democratic processes:

- *Freedom of assembly (rallies, meetings)*
- *Freedom to form a political party*
- *Freedom to vote and be voted into office*
- *Freedom of speech (**Criticise**)*

*** MPs who want to fight in Parliament??**

8.3 Dream about solution to disputes?

- **“British member of Parliament falls asleep during House of Commons debate: It's never a good idea to take a nap at work.”**
- **“Parliament orders media not to take photos of sleeping ministers during-budget-speech”**
- **“Parliament Is Becoming The House Of *'Sleepists'* ”**

9. Points for Reflection

1. Is there a 'best model' resolving election related disputes in Africa?
2. Inevitably, the types of election systems we choose also hold answers towards the resolution of election related disputes we may face,
3. Main lessons we learn from recent efforts at resolving election related disputes in Africa:
 - Judiciary can play a critical role (Kenya)
 - The hegemony and collusion of 'liberation parties' is over
 - Numerous factors cause election related disputes; likewise, there should be multifaceted mechanisms towards their resolution!

10. Conclusion

- 1) *Despite signs of democratisation through elections, persistent election related disputes are a ticking time-bomb towards political instability.*
- 2) *National & regional parliaments play crucial roles in the search for sustainable, meaningful, all-inclusive resolution of such disputes; but must rely on multiple partnerships.*
- 3) *No silver bullet towards resolving election-related disputes. The answer lies partly in returning to the people; partly in effective accountability & governance.*
- 4) *Role and investment in research on election related dispute resolution.*

End

- **Siyabonga**
- **Realeboha**
- **Tatenda**
- **Dankie**
- **Merci**
- **Obrigado**

- **Asante Sana**
- **Enkosi**
- *Thank You*

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