

Part 4

Constitutionalism and Opposition Parties

Chapter 14 External Regulation and Internal Contradiction in Zimbabwean Opposition Politics: The Case of the MDC/CCC

Edson Ziso

1. Introduction

Save for the brief period from 2009 to 2013, when a government of national unity brokered by the Southern African Development Community (SADC) was in place, Zimbabwe has, since independence in 1980, been ruled by a single party: the Zimbabwe African National Union – Patriotic Front (ZANU-PF). This does not mean that ZANU-PF's dominance has not been seriously challenged; indeed, it has faced opposition since the very first elections in 1980. Though it proved victorious in the subsequent elections of 1985, 1990 and 1995, it has always faced opposition, albeit with the election results increasingly undermined by allegations of violence, vote-rigging, and widespread intimidation of opposition supporters.

For the first two decades of independence, ZANU-PF consistently and emphatically claimed the lion's share of the votes in both parliamentary and presidential elections. In the Parliamentary elections, for example, it claimed 62.99 per cent of the vote in 1980,¹ 80.55 per cent in 1990,² and 77.2 per cent in 1995.³ Robert Mugabe's victories in the accompanying presidential elections were equally resounding. From 2000 on, however, ZANU-PF faced a serious and consistent threat to its political dominance and retention of power.

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- 1 M Gregory, "Zimbabwe 1980: Politicisation through Armed Struggle and Electoral Mobilisation", 19 (1981), *Journal of Commonwealth & Comparative Politics*, pp 63–94.
 - 2 VC Kwashirai, "The New Enemy in the 1990 General Elections Was Zum", in VC Kwashirai, *Election Violence in Zimbabwe: Human Rights, Politics and Power*, Cambridge, Cambridge University Press (2023), pp 65–93.
 - 3 L Laakso, "Relationship between the State and Civil Society in the Zimbabwean Elections 1995", 34 (1996), *Journal of Commonwealth & Comparative Politics*, pp 218–234.

1999 saw the launch of the Movement for Democratic Change (MDC).⁴ The new party was immediately well received by many Zimbabweans, who were disillusioned with the direction the country was taking economically and politically. One of the MDC's objectives was captured in the party's constitution: "The MDC shall pursue social liberation policies aimed at completing the unfinished business of the national liberation movement and in particular shall strive for the democratic structural economic liberation, empowerment and transformation of Zimbabwe."⁵ In 2000, the barely one-year-old party garnered 45.6 per cent of the vote in the parliamentary elections against ZANU-PF's 47.23 per cent.⁶ This performance was matched in the presidential election of March 2002, when the MDC candidate, Morgan Tsvangirai, won 42 per cent of the vote compared to Mugabe's 56 per cent, and this despite the allegations of vote-rigging, intimidation, and violence made against the MDC.⁷

Since then, elections in Zimbabwe have essentially been a fierce two-horse race between the ruling ZANU-PF and opposition MDC and, after 2022, the Citizens Coalition for Change (CCC). Although ZANU-PF had already demonstrated its authoritarian character in the 1980s and 1990s, the new MDC threat after 2000 saw it rise to the occasion with a new level of viciousness. It became an even more lethal organisation, one determined to maintain its power and dominance in Zimbabwe by any means necessary, with the MDC/CCC being the target of its gloves-off approach to politics. ZANU-PF justified its actions by characterising the MDC as a British-sponsored party, one created to fight on behalf of the minority com-

4 A note on terminology: in this chapter, the Movement of Democratic Change (MDC) refers to the party as it was before the split in 2005. Thereafter, it became the MDC-T, led by Morgan Tsvangirai, and later yet the MDC Alliance, before transforming into a new party called the Citizens Coalition for Change (CCC), led by Nelson Chamisa. The breakaways are here not considered as the MDC. Any reference to them – including the MDC-Mutambara, MDC Renewal, MDC-99, MDC-N, or MDC-T (Khupe) – is for the purpose of amplifying some of the arguments in the chapter in regard, for example, to the intra-party upheavals that characterised the MDC until its demise. Where the two parties the MDC and CCC are treated separately, it is only to highlight the fact that the CCC was a reorganisation of the former but without the burden of the old name.

5 Constitution of the Movement for Democratic Change, Article 3(2), January 2000, [https://www.veritaszim.net/sites/veritas_d/files/THE%20FINAL%20CONSTITUTIO N.pdf](https://www.veritaszim.net/sites/veritas_d/files/THE%20FINAL%20CONSTITUTIO%20N.pdf) (accessed 13 October 2024).

6 D Pottie, "Parliamentary elections in Zimbabwe, 2000", 1 (2001) *Journal of African Elections*, pp 61–70.

7 Kwashirai, *supra* n. 2, p 77.

mercial white farmers against the government's land reforms. The party used wartime rhetoric and declared the MDC/CCC an enemy of the state and a security threat.⁸

Nonetheless, despite these external pressures, the MDC continued to perform well electorally, though it was increasingly also undermined by a number of challenges arising from within. While it had survived several internal, as well as externally induced, upheavals since its formation, the MDC suffered a deadly blow with the split of January 2022, which effectively ended it. Nelson Chamisa later revived the MDC, but only by forming a new party, the CCC. This too faced numerous problems and met its demise in January 2024.

What were the determining factors in the demise of the two parties? Tsvangirai, who had led the party since its formation, died at the helm in 2018. Due to the mishandling of his succession, Chamisa (then the party spokesperson and Tsvangirai's preferred successor) and Thokozani Khuphe (Tsvangirai's deputy, elected at a 2014 party congress) both laid claim to the presidency of the party. Shortly before his death, apparently, Tsvangirai had unilaterally appointed Chamisa and Elias Mudzuri as the second and third vice presidents of the party to serve alongside Khuphe.⁹ The confusion culminated in Khuphe and her allies splitting from the party to head what became known as the MDC-T, (the "T" being a reference to the now deceased Tsvangirai). Khuphe argued that her party was the only *bona fide* movement following in the footsteps of the departed founding president. In 2019, the High Court of Zimbabwe ruled that the decision by the late Morgan Tsvangirai to handpick two additional vice presidents was illegal.¹⁰ In spite of the ruling, Chamisa used his charisma, eloquence, and popularity among the party faithful to lay claim to the MDC leadership, and he prevailed.

The 2018 elections were unique in Zimbabwean history as this was the first time that Robert Mugabe was not on the ballot paper. In 2017, just a year earlier at the age of 93, Mugabe had been unceremoniously

8 T Zindoga and F Machivenyika, "MDC-T Sanctions Call Rapped", *The Herald*, 20 August 2015, <https://www.herald.co.zw/mdc-t-sanctions-call-rapped/> (accessed 22 November 2024).

9 Khuphe had been procedurally elected as vice president at the 2014 congress in accordance with the party's constitution.

10 F Munyoro and V Maphosa, "Chamisa, Mudzuri Appointments Illegal – Court", *The Herald*, 9 May 2019, <https://www.herald.co.zw/chamisa-mudzuri-appointments-illegal-court/> (accessed 18 October 2024).

removed from power through a military coup engineered by his long-time right-hand man, Emmerson Mnangagwa, who was immediately instated as the republic's President. Chamisa went on to contest the 2018 elections as the head of a coalition, the MDC-Alliance, which brought together several opposition groups (including the MDC-T). Chamisa narrowly lost the hotly disputed election to Mnangagwa.

The ZANU-PF victory in the 2018 elections was followed by serious disputes over the leadership of the MDC Alliance. In March 2020, Thokozani Khuphe won a Supreme Court judgement which confirmed that Chamisa was not the legitimate MDC leader on the grounds that his appointment as vice president by the late Tsvangirai was illegal.¹¹ Khuphe then became the official leader of the MDC Alliance. But in December 2020, Khuphe herself was displaced at a chaotic extraordinary congress of the party, in a move engineered by Douglas Mwonzora.¹² As the new MDC Alliance leader, Mwonzora immediately went after Chamisa, who still held onto the party name and assets. In September 2021, Mwonzora took control of the MDC and all its assets, including the party headquarters. Chamisa tried to continue his political career under the name of the MDC Alliance, but had to stop using it after Mwonzora threatened him with legal action.

After losing the battle over the control of the MDC, Chamisa established a new political body, the CCC, in January 2022. The CCC sought to distance itself from the MDC-T structures, while claiming to represent the original MDC essence in terms of grassroots membership, vision, and legacy. To visibly distinguish itself from the Mwonzora-led MDC-T, it adopted yellow as its official colour (in place of the traditional red); changed the party symbol from the open palm to a pointing finger; and introduced new songs and party slogans (as discussed below). Moreover, it sought to introduce a new way of doing politics, one which included the abandonment of traditional party structures.

The party instantly proved to be extremely popular across the country and immediately prepared to contest the 2023 elections. Chamisa narrowly lost the 2023 presidential election with 44 per cent of the vote compared

11 Supreme Court of Zimbabwe, *Movement for Democratic Change & Anor v Mashavira & 3 Others* (Civil Appeal SC 289 of 2019; SC 56 of 2020) [2020], ZWSC 56, 31 March 2020.

12 ZimLive, "Mwonzora Wins Chaotic MDC-T Congress, Khuphe Claims Voter Fraud", *ZimLive*, 28 December 2020, <https://www.zimlive.com/mwonzora-wins-chaotic-congress-abandoned-by-khuphe-and-others-over-voter-fraud-violence/> (accessed 11 October 2024).

to Zanu-PF's Mnangagwa (52.6 per cent), according to the official results. By contrast, Mwonozora did poorly, with only 0.65 per cent of the vote. He later claimed that he had pulled out of the election in advance, but that the Zimbabwe Electoral Commission (ZEC) had refused to remove his name from the ballot because he missed the 21-day notice period.¹³ He also conspicuously failed to field candidates in all constituencies.¹⁴ The CCC performed reasonably well in the parliamentary elections, denying ZANU-PF the two-thirds majority necessary to effect any amendments to the Constitution. This promising start for the CCC came to a sticky end, however. Just five months after the election, Chamisa quit the party. We shall discuss below (section 4.2) how a shadowy figure, Sengezo Tshabangu, engineered the takeover of the party that resulted in Chamisa's resignation.

Whilst this introduction has focused on the splits within the opposition, it should be noted that many other factors were involved. These included expulsions and counter-expulsions, suspensions, and intra-party violence; counterclaims to the party and its assets (including offices, symbols, and insignia); recalls from local, parliamentary, and senate seats; and clashes between rival supporters. This chapter argues that the external regulation of political parties played a key role in fostering the contradictions that bedeviled the opposition party. In making its case, it draws on the troubled 25-year lifespan of the opposition party in the context of Zimbabwe's political environment. Put simply, the ineffective constitutional and legal but also heavily politicised framework regulating political parties is hostile to the envisaged development of oppositional politics in Zimbabwe. The chapter thus contributes to recent discussions of the efficacy of political-party regulation in Africa, doing so through an analysis of the challenges opposition parties face in authoritarian contexts and of the wider implications this holds for the state and future of democracy in the region.

To be clear, this chapter is not intended to be an explanation of the opposition's failure to gain political power in Zimbabwe (even though some inferences might be drawn in that regard). Rather, the main aim

13 Business Times, "Douglas Mwonozora Pulls out of August 23 Presidential Race", *Business Times*, 8 August 2023, <https://businesstimes.co.zw/douglas-mwonozora-pulls-out-of-august-23-presidential-race/> (accessed 1 October 2024).

14 N Guma, "Mwonozora Kills MDC as it Awaits its Burial during General Elections", *The NewsHawks*, 26 June 2023, <https://thenewshawks.com/mwonozora-kills-mdc-as-it-awaits-its-burial-during-general-elections/> (accessed on 17 June 2024).

is to place opposition parties (rather than ruling parties) at the centre of debates around democratisation in Africa. Opposition parties in Africa are under-researched, but they are important because their appeal lies in the nature of the democratic promise they maintain against the practice of incumbents. Opposition parties are the lifeblood of a vibrant democracy. It is important here to remember the simple fact that both the MDC and CCC campaigned on a platform to deliver Zimbabwe from authoritarianism and ZANU-PF's "tired rhetoric of nationalism".¹⁵ Their promise was to usher in a democratic dispensation underpinned by the rule of law, constitutionalism, and respect for human and property rights. The necessary implication is that the opposition party itself must practice, internally, the democratic constitutionalism that it preaches if it is to be seen as a genuine political alternative. The chapter will discuss both how Zimbabwe's opposition is caught up in internal problems in ways that undermine its envisaged democratic role, and also how these internal problems are heightened by the external regulatory and legal environment in which it operates.

The chapter draws on a rich tradition of African scholarship on political parties in general and their constitutional regulation in particular. According to Tsholo, the transformation of liberation movements into political parties was meant to see democracy prevail.¹⁶ Sachikonye adds that political parties are an important medium for citizens' participation in the political process both during and between elections.¹⁷ Closer to home, this rhymes with Selolwane and Shale's argument that

the existence and increased number of political parties in Zimbabwe, like elsewhere on the continent, is a manifestation of the colonial legacy and victory over colonialism at the same time. This is because political parties were formed as the vehicles through which power would be transferred to Africans.¹⁸

15 C Sabao, "‘Sanctions Are the Source of Our Suffering’: Of ZANU-PF’s ‘Exhausted’ Rhetoric and Blame-Gaming Tactics as Hegemonic Preservation", in E Mavengano and I Mhute (eds.), *Sub-Saharan Political Cultures of Deceit in Language, Literature, and the Media*, Vol. I, Switzerland, Cham, Springer Nature (2023), pp 343–365.

16 K Tsholo, "Do Transitions from Liberation Movements to Political Parties Guarantee Good Governance? The Case of ZANU-PF and the ANC", 43 (Nov/Dec 2021) *Strategic Review for Southern Africa*, pp 11–39.

17 LM Sachikonye, "Political Parties and the 2005 Elections in Zimbabwe", 4 (2005) *Journal of African Elections*, pp 63–73.

18 O Selolwane and V Shale, "Inter-Party Relations and Democracy in Botswana", *Electoral Institute for Sustainable Democracy in Africa*, 2008, <https://policycommon>

The chapter thus concurs with Lawson “that constitutional opposition is the *sine qua non* of contemporary democracy in mass polities ... its institutionalization in some form or another is required before a regime can be called ‘democratic’ with any real meaning”.¹⁹ Crucially, however, it is Fombad who offers the cautionary note that “political-party constitutionalisation is not a magic wand that can solve all challenges to free and fair political-party competition. Nevertheless, it is an important starting-point.”²⁰ This chapter seeks to build on this inspiring work by contributing to a better understanding of the challenges faced by opposition parties in poorly regulated contexts under very illiberal regimes and what this portends for democracy on the continent. Opposition parties, as noted previously, are the lifeblood of a democracy, and without their proper and democratic regulation there is little hope of establishing real democracy in Africa.

Section 2 provides a brief overview of the Zimbabwean political context. It shows how the incumbent regime’s desire for a one-party state has worked to create Zimbabwe’s treacherous political landscape. Section 3 offers an overview of the constitutional and regulatory framework which governs political parties in Zimbabwe and also presents an analysis of how this framework impacted on both the MDC and the CCC. Section 4 shows the politicisation of the regulatory framework in favor of the ruling party, while section 5 shows the effects of all this on the internal contradictions in the opposition party. Section 6 concludes the chapter.

2. ZANU-PF and the desire for a one-party state

By far the most significant factors to consider when analysing Zimbabwe’s political landscape is ZANU-PF’s declared desire for a one-party state system. The one-party state plan was explicitly promoted by Robert Mugabe

s.net/artifacts/1448811/inter-party-relations-and-democracy-in-botswana/2080589/ (accessed 23 February 2024).

- 19 S Lawson, “Conceptual Issues in the Comparative Study of Regime Change and Democratisation”, 25 (1993), *Comparative Politics*, pp 183–205.
- 20 C Fombad, “Political Party Constitutionalisation in Africa: Trends and Prospects for Deepening Constitutionalism”, in R Dixon, T Ginsburg and A Abebe (eds.), *Comparative Constitutional Law in Africa*, Cheltenham, Edward Elgar Publishing (2022), pp 109–135.

and ZANU both before²¹ and after²² independence. Even the 1987 Unity Accord agreement that merged ZANU and ZAPU specified that the unified “party shall seek to establish a one-party state in Zimbabwe and establish a socialist state along Marxist-Leninist principles”.²³

In the post-Mugabe era, Emmerson Mnangagwa has maintained this same vision. ZANU-PF has managed for 45 years to maintain and develop a de facto one-party state structure, and this despite the fact that Zimbabwe officially exists as a multiparty democracy in what Dawson describes as a “representative one-party state”.²⁴ ZANU-PF sees itself as the permanent and sole guardian of the liberation war legacy, ethos, and its promise, as well as the sovereignty of Zimbabwe and the safeguarding of its interests through its espousal and rhetoric of nationalist politics. For ZANU-PF, opposition parties are not seen as political contestants: they are annoyances that must be silenced. Not surprisingly, ZANU-PF thus has a conflicted but strong interest in the formal regulation of political parties in the country.

It is almost impossible to establish and maintain a one-party state without heightened degrees of coercion and repression, including limiting the political competitiveness of rival political forces as far as possible. According to Sachikonye, ZANU-PF brings a zero-sum game mindset to politics: it must always prevail, and its opponents must be crushed rather than accommodated. While opposition parties exist, they have never been allowed to win an election.²⁵ Sylvester’s observation in 1995 that “Zimbabwe is a textbook case of a country where opposition is provided for constitutionally as a right of political dissent” remains true.²⁶ ZANU-PF’s one-party state system rests on ever-deepening practices of exclusionary politics, includ-

21 RH Shaw, “Towards the One-Party State in Zimbabwe: A Study in African Political Thought”, 24 (1986), *Journal of Modern African Studies*, pp 373–394.

22 TIME, “Zimbabwe: One-Party State”, *TIME*, 20 August 1984, <https://content.time.com/time/subscriber/article/0,33009,954344,00.html> (accessed 13 June 2024).

23 The Herald, “Two Parties Merge as ZANU (PF)”, *The Herald*, 23 December 2021, <https://www.herald.co.zw/two-parties-merge-as-zanu-pf/> (accessed 21 August 2024).

24 RW Dawson, “The Representative One-party State: Mugabe’s Search for Political Control in Zimbabwe”, Unpublished PhD Thesis, University of British Columbia (1989).

25 L Sachikonye, “Between Authoritarianism and Democratisation: The Challenges of a Transition Process in Zimbabwe”, Occasional Paper 2 (July 2009), *Institute for Development Studies*, Paper presented at Centre of Political and Historical Studies on Africa and the Middle East, Bologna.

26 C Sylvester, “Whither Opposition in Zimbabwe?” 33 (1995), *Journal of Modern African Studies*, pp 403–423.

ing patronage; the capture of key state institutions; and the use and/or abuse of the constitution to destroy potential opposition, both internal and external. According to Ndlovu-Gatsheni, a political philosophy based on the annihilation of the enemy underpinned ZANU-PF's attitude to state power not only during the liberation struggle and the 1980 election, but was also in every subsequent election as the ethic for dealing with political opposition.²⁷ The ruling party's politicisation of political-party regulation is a key manifestation of this philosophy.

This brief account of the political environment in which the MDC and CCC operate is crucial for understanding what can be called the “political economy” of the regulatory framework. However, the chapter is not devoted to ZANU-PF. Rather, its focus is on the opposition and its often unacknowledged centrality to the understanding of democracy, governance, and political debates in Zimbabwe. How has working in this political environment affected opposition parties like the MDC and the CCC? The analysis shows that the MDC and CCC not only abandoned some of their defining democratic principles (such as constitutionalism, democratically elected leadership, consensus-based decision-making, and transparency) but also slowly began to become a mirror image of ZANU-PF. This contradiction is firmly linked to the constitutional and legal framework that regulates political parties in Zimbabwe. The following section provides an overview of this framework.

3. The constitutional and legal framework for political parties

The constitutional and legal framework for the regulation of political parties is an essential component of democracy and has significant implications for the integrity of the whole political process. Political-party regulation sets the rules of the game: it establishes the minimum requirements for political-party organisation and how parties conduct their business.²⁸ In democratic societies, party regulation is used as a mechanism to promote

27 SJ Ndlovu-Gatsheni, *Elections in Zimbabwe: A Recipe for Tension or a Remedy for Reconciliation*, Wynberg, Institute for Justice and Reconciliation (2012), <https://paren.org.za/site/wp-content/uploads/2016/07/IJR-Zimbabwe-Elections-OP-WEB.pdf> (accessed 3 September 2024).

28 C Chibango, “The Registration and Regulation of Political Parties in Zimbabwe: A Key Pillar in Prospects for Free and Fair Election”, 1 (2022) *Journal on Governance, Human Rights and Democracy in Zimbabwe*.

and guarantee citizens' rights to political participation. Regulation also seeks to ensure that political parties' activities and behaviour comply with the goals and practices of modern democracies.²⁹

It is useful to consider, for instance, the role of a political party as this is conceived in Article 21 of the German Constitution, the Basic Law.³⁰ Several questions emerge regarding political-party regulation in Zimbabwe. According to Wulf, the Zimbabwean Constitution of 2013 expressly affirms a multiparty system but no further regulations exist regarding the nature, rights, and functions of political parties.³¹ Chibango suggests that in Zimbabwe, only the financing of parties is regulated, while other factors – such as registration, de-registration, ideology, internal democracy, accountability, and campaign financing – escape regulation.³²

In fact, regulation does extend to several other areas. Section 129(1)(k) of the Constitution, for example, gives political parties the power to recall their Members of Parliament (MPs) if they abandon its cause. In addition, all political parties sign a code of conduct which covers their behaviour during election periods. This code is to be found in the Fourth Schedule of the Electoral Act.³³ Moreover, section 160 of the Act compels political parties to participate in multiparty liaison committees chaired by the ZEC. In short, political-party regulation in Zimbabwe does exist. The main problem is that regulation is only visibly at work in some areas (such as the financing of parties and electoral conduct) while in others it is invisible. This chapter focuses on these gaps in regulatory practice.

Masunungure puts matters well: “When done in good faith i.e., without ulterior and sinister motives, party regulation promotes transparency and democratic accountability to the public, curbs corrupt practices and provides for penalties for breach of the regulations.” However, he adds: “[W]hen the impulse to control drives the introduction of party regulation,

29 S Vohito-Anyanwu, “Promoting Constitutional Democracy: Regulating Political Parties in the Central African Republic and Senegal”, 23 (2020) *Potchefstroom Electronic Law Journal*, pp 1–34.

30 A Wulf (ed.), *Legal Framework for Political Parties in Selected Countries of Sub-Saharan Africa*, Nairobi, Konrad-Adenauer-Stiftung Rule of Law Program for Sub-Saharan Africa (2017), p 15, https://www.kas.de/c/document_library/get_file?uuid=735c449b-fd52-c43f-6f58-403a818d3be9&groupId=252038 (accessed 12 September 2024). In the case of Germany, see also J Socher, “International Standards on the Regulation of Political Parties and the Experience of Continental Europe”, in this volume.

31 Wulf, *supra* n. 30, p 15.

32 Chibango, *supra* n. 28, p 13.

33 Electoral Act No. 25 of 2004, Chapter 2:13.

then the move can be a recipe for mutual suspicion and distrust which can further poison the political atmosphere.”³⁴

This chapter argues that there are two key challenges regarding party regulation in Zimbabwe. The first is that political-party regulation is not sufficiently comprehensive (regulation exists in some areas but not in others); the second is related to Masunungure’s main point: constitutional party regulation in Zimbabwe is too politicised. It is therefore infected by what Roux terms “authoritarian legalism”,³⁵ namely a situation in which the law is used for authoritarian ends. As this chapter will show, this created unending problems for the MDC/CCC in terms of intra-party relations; party-society relations (with members and stakeholders); and government-party relations.

4. The regulatory framework and its impact on the MDC/CCC

4.1 Formation and registration of political parties

The consistently high number of political parties that take part in Zimbabwe gives an impression of competitive elections; but there is considerable debate as to whether Zimbabwe enjoys a multiparty democracy or only the façade of one. The Electoral Act does not provide the chief elections body (the ZEC) with the authority to set registration requirements for political parties or essential provisions for party constitutions (such as gender parity).³⁶ Forming a political party is guaranteed as a right in section 67(2)(a) of the Constitution but is not further detailed by any law. A political party simply needs to notify the ZEC of its existence and intention to participate in an election any time before the sitting of the nomination court: it is then automatically qualified to participate.³⁷ The absence of a comprehensive

34 E Masunungure, *Regulation of Political Parties in Zimbabwe: Registration, Finance, and other Support*, Zimbabwe Elections Support Network (ZESN), August 2006, https://www.zesn.org.zw/wp-content/_protected/publications/publication_113.pdf (accessed 18 August 2024).

35 T Roux, “The Postcolonial Adaptation of Authoritarian Legalism in Zimbabwe”, in T Roux (ed.), *The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis*, Cambridge, Cambridge University Press (2018), pp 193–241.

36 USAID, *An Analysis of the Legal Framework Governing Elections in Zimbabwe*, USAID, 1 September 2019, https://pdf.usaid.gov/pdf_docs/PA00W598.pdf (accessed 14 February 2024).

37 Chibango, *supra* n. 28, p 16.

and depoliticised regulation of political-party registration created severe problems for the MDC and CCC. For instance, in the absence of a law that creates a central registry in which all parties can depose their names, symbols, colors and logos, it is possible for more than one party to use a similar name, as well as similar symbols, logos and colours, causing potential confusion among voters.³⁸ Bitter disputes over party names are obvious examples of this failure.

In his study of the significance of party names in the Irish political system, Coakley explains that “in most political systems, party names serve a crude – but by no means unambiguous – indicator of the positions of parties in the ideological spectrum”.³⁹ Names play a similar role in corporate business strategies. Meanwhile, anthropologists and linguists alert us to the criticality of names as core to identity, especially in politics. For Jarvis, names are dynamic entities for political organisations, ones that can be either positioned successfully and adorned with positive characteristics or repositioned by opponents or the media and charged with negative connotations.⁴⁰

From its inception in 1999, the MDC carried all the weight and symbolism of being Zimbabwe’s main opposition party. Its name came to represent both the being and the legacy of the party and embodied all its history, struggle, and aspirations. Not surprisingly, the fact of the vicious and repeated struggles between factions over the ownership of the name, assets, and elected representatives of the party, over the years, weighed heavily on the opposition, distracting it from its core business and leaving both voters and members disillusioned. At times, the struggle degenerated into a circus as rival leaders went all-out to get even. All too often, rival factions ended up contesting elections under the same name. The absence of a regulatory provision for protecting political parties from such unending disputes negatively affected the opposition in both more and less visible ways.

For example, the 2013 split in the MDC resulted in the two factions contesting the 2013 election as MDC-T (Tsvangirai) and MDC-N (Ncube). In 2018, the ballot had MDC-Alliance and MDC-T (now led by Khuphe), causing a lot of unnecessary confusion for voters who struggled to differen-

38 Chibango, *supra* n. 28, p 17.

39 J Coakley, “The Significance of Names: The Evolution of Irish Party Labels”, 5 (1980) *Études irlandaises*, pp 171–182.

40 SE Jarvis, *The Talk of the Party: Political Labels, Symbolic Capital, and American Life*, Maryland, Rowman and Littlefield Publishers (2005).

tiate the parties. Over the years, this situation invariably resulted in spoiled ballot papers as confused voters ended up voting for multiple candidates. This was rife among the elderly as well as the uneducated and any other voter unfamiliar with the fast-moving events, or without updated information on the never-ending splits in the opposition. The overall effect was to split the opposition vote to the advantage of ZANU-PF. Simultaneously, disappointed voters grew tired of the opposition's unending divisions and often chose to stay at home rather than go out to vote, worsening voter apathy and polarisation, and fueling disinterest in politics in general.

The battle over the identity and brand of the opposition parties also became a huge opportunity for the ruling government. Through its control of a thoroughly compromised judiciary, ZANU-PF was able to bring its influence to bear on the adjudication of such intra-party disputes in ways which always worked to destabilise the opposition and promote its one-party-state agenda. ZANU-PF strategically intervened in the sensitive MDC name-dispute in ways that disadvantaged and weakened its real opponents among and within the feuding factions.

When Mwonzora (and not Chamisa) won the dispute over the name, symbol, and assets of MDC, most critics viewed the judgement as a ZANU-PF inside job to cripple Chamisa, their real nemesis. There was also an inordinate and unexplained delay in the delivery of the judgement that held up some important party operations. As the then MDC-Alliance Secretary for Legal Affairs, Innocent Gonese, put it, “[T]he judgment delivered by Justice Patel on the 31st of March 2020 will be rightly or wrongly seen as a political judgment.”⁴¹ In addition, in 2021, the state distributed the funds under the Political Parties (Finance) Act despite a High Court order that no funds were to be distributed until the dispute over the ownership had been fully settled. It was also inexplicable that the funds were allocated to MDC-T despite its failure to reach the necessary 5 per cent of votes stipulated by law as a threshold. As the human rights activist Pedzisayi Ruhanya summed it up on Twitter: “Thokozani’s MDC-T, according to ZEC results, got 0.96% of votes in 2018 elections. On what account does it get the political-party finances money of ZW60 million that is meant for

41 Zimeye, “Gonese Analyses Supreme Court Judgement On MDC Leadership Battle”, 9 April 2020, <https://www.zimeye.net/2020/04/09/gonese-analyses-supreme-court-judgement-on-mdc-leadership-battle> (accessed 7 March 2025).

MDC Alliance Nelson Chamisa?”⁴² The controversy of party financing is discussed in more detail in Section 4.4.

The absence of more detailed regulation regarding the formation, registration, and internal operation of political parties has proved fatal for the operation of internal democracy inside the opposition. Vote-rigging, imposition of candidates, multiple or duplicate nominations, and violence (both physical and structural) became rife in the MDC and CCC, especially in their intra-party primary elections. In the 2018 general elections, the MDC-Alliance was a grand coalition of eight parties. This alliance sought to use its economies of scale to challenge ZANU-PF’s continued rule. Despite agreement among the coalition members on a pre-electoral pact, the absence of a relevant regulatory statute meant that several of these prior agreements could easily be dishonoured. For example, an agreed seat-sharing formula was opposed by some MDC-T officials, who fielded their own candidates in constituencies reserved for smaller coalition partners. The EU Election Observation Mission concluded that “this led to a split of the MDC-Alliance vote and the possible loss of at least two seats”.⁴³

4.2 Use and abuse of the power to recall MPs

By far one of the most controversial constitutional provisions in party regulation in Zimbabwe is section 129(1)(k) of the Constitution. This gives political parties the power to recall MPs if they cease to belong to the party. It states:

The seat of a Member of Parliament becomes vacant –
(k) if the Member has ceased to belong to the political party of which he or she was a member when elected to Parliament and the political party concerned, by written notice to the Speaker or the President of the Senate, as the case may be, has declared that the Member has ceased to belong to it.

42 Voice of America, “MDC Alliance Fuming over Govt’s Disbursement of Almost \$60 Million in State Funds to Mwonozora’s MDC-T”, *Voice of America*, 29 August 2021, <https://www.voazimbabwe.com/a/mdc-alliance-state-disbursement-funds/6078040.html> (accessed 22 November 2024).

43 European Union Election Observation Mission, *Final Report Republic of Zimbabwe: Harmonised Elections 2018*, Veritas (2018), https://www.veritaszim.net/sites/veritas_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf (accessed 2 October 2024).

The objective of the provision is apparently to protect political parties from defections; in practice, though, it has become the most abused provision in the regulatory framework. It has resulted in the winners of elections becoming losers (and losers becoming winners) overnight. Following the 2014 split of the MDC, for example, 21 opposition MPs were expelled from Zimbabwe's parliament after they broke away to form a new party, MDC Renewal. The group had contested the 2013 elections under the banner of Tsvangirai's MDC but then left the party to form MDC Renewal after rejecting his leadership.⁴⁴ Similarly in 2020, Mwonzora, having gained control of the MDC-Alliance, recalled dozens of elected MPs, accusing them of supporting Chamisa. This left the electorate disenfranchised and under-represented when the government failed to hold by-elections within the constitutionally mandated 90-day timeframe (citing the Covid-19 lockdown order as grounds). The by-elections were held only in March 2022 and later that year.⁴⁵

A third instance in which the abuse of the recall provision is evident took place when Tshabangu assumed the role of the Secretary-General of the CCC, instigating the fatal blow that effectively killed the nascent party. Chamisa eventually abandoned the CCC, alleging that it had "been contaminated, bastardized, hijacked by ZANU PF through the abuse of State institutions."⁴⁶ The significance of this recent split cannot be overemphasised.

Tshabangu, who suddenly and unceremoniously announced on 4 October 2023 that he was the Secretary-General of the CCC led by Nelson Chamisa, caused a political thunderstorm that most observers and opposition supporters are still grappling with at the time of this writing. His self-imposed position empowered him to recall elected CCC members from the Senate, Parliament and local government. Despite Chamisa's claim that he did not recognise him, Tshabangu invoked section 129(1)(k) of the Constitution, writing a notification to the Speaker of Parliament, Jacob

44 T Chiripasi, "Tsvangirai MDC-T Recalls Biti, 17 Lawmakers from Parliament", *Voice of America*, 6 November 2014, <https://www.voazimbabwe.com/a/zimbabwe-mdc-t-recalls-biti-17-lawmakers-from-parliament/2510826.html> (accessed 30 December 2024).

45 LB Harris, "Swift Recall of CCC MPs Shows ZANU-PF's Meddling, Analysts Say", *CITE*, 10 October 2023, <https://cite.org.zw/swift-recall-of-ccc-mps-shows-zanu-pfs-meddling-analysts-say/> (accessed 12 October 2024).

46 BBC, "Nelson Chamisa: Zimbabwe Opposition CCC Leader Quits 'Contaminated' Party", *BBC*, 26 January 2024, <https://www.bbc.com/news/world-africa-68095685> (accessed 30 December 2024).

Mudenda, and Minister of Local Government and Public Works, Winston Chitando, to recall several CCC MPs and councillors.⁴⁷ Traditionally, the authority in the MDC to recall a member of the party from the legislation had resided constitutionally in the office of the Secretary-General. Chamisa made representations through his then spokesman, Promise Mkhwananzi, instructing the Speaker not to act on Tshabangu's instruction, arguing that Tshabangu was not even a member of the CCC. However, the Speaker determined that Tshabangu was acting procedurally and legally. Six days later, the Speaker notified the ZEC that there were now 15 vacant seats in the legislative body.⁴⁸ Further recalls were instituted in a calculated, staggered manner until all Chamisa loyalists were expelled. To seal their fate, Tshabangu also secured a legal victory when the courts ruled in his favour that recalled CCC MPs, Senators and Councillors could not contest in subsequent by-elections under the party.⁴⁹ This was controversial because, at this stage, the position of Secretary-General did not exist in the "structureless" CCC. On 11 October 2024, Tshabangu went for the jugular and fired Chamisa himself from the party.⁵⁰

The consequence of all this was that, within days of the swearing in of new MPS after the 2023 election in which Chamisa's CCC had claimed an impressive 100 seats (and denying ZANU-PF a two-thirds majority), Tshabangu spectacularly flipped the script. He used the power of recall to remove those aligned to Chamisa from the party, and also prevented them from contesting the resulting by-elections under the CCC banner. At the end of this bloodletting, ZANU-PF emerged as the overall winner and now commands 190 seats in the 280-member Parliament. This is entirely due to the fact that the recalls necessitated a series of by-elections which were comfortably won by ZANU-PF, allowing it the two-thirds majority it needed to effect constitutional changes. Constitutionally, Mnangagwa

47 G Dube, "CCC 'Interim Secretary General' Recalls Dozens of Party Lawmakers, Councilors", *Voice of America*, 4 October 2023, <https://www.voazimbabwe.com/a/7296398.html/> (accessed 20 November 2024).

48 I Mafundikwa, "Zimbabwe's CCC Crisis: Farce Turning to Tragedy for the Opposition", *BBC*, 8 December 2023, <https://www.bbc.com/news/world-africa-67647449> (accessed 19 November 2024).

49 New Zimbabwe, "Recalled CCC MPs, Councillors barred from contesting in February 3 by-elections" <https://www.newzimbabwe.com/recalled-ccc-mps-councillors-barred-from-contesting-in-february-3-by-elections/> (accessed 17 July 2025).

50 I Zhakata, "Chamisa Kicked out of CCC", *The Herald*, 11 October 2023, <https://www.herald.co.zw/chamisa-kicked-out-from-ccc/> (accessed 17 November 2024).

is currently serving his second and final presidential term. However, he is widely suspected to be harbouring plans to extend his term of office, an extension made possible only by amending the Constitution, and this in turn possible only by a two-thirds parliamentary majority vote. As explained by the prominent human rights lawyer Musa Kika, a “two-thirds majority in parliament is enough to change anything in the Constitution except Chapter 4 (Declaration of Rights), Chapter 16 (Agricultural Land) and Section 328 (Amendment of the Constitution). These three require a referendum.”⁵¹

4.3 Regulating political parties in the electoral space

The situation in Zimbabwe, according to Mude, is one in which, to the detriment of democratic values, election management institutions, procedures, regulations, and personnel all serve as agents representing the interests of the ruling party.⁵² Indeed, the history of elections in Zimbabwe is one best understood not only in terms of the frequent contestation of election results, but also with regard to the ways in which elections are conducted and organised throughout the entire electoral cycle.

From the very first “democratic” elections in 1980, Zimbabwe’s opposition parties have alleged that elections are deliberately manipulated at every stage of the process (including voter registration, delimitation of electoral boundaries, and the counting of votes) to the benefit of ZANU-PF. These allegations have been backed up both by hard evidence and by independent observers and institutions. In its 2017 report on Zimbabwe’s preparedness for free and fair elections, the Zimbabwe Democracy Institute (ZDI) pointed out that key state institutions which should act in a non-partisan manner (including the media, the legislature, the judiciary, and the electoral system) have in fact suffered state capture.⁵³

51 FS Matiashe, “Zimbabwe: With Its Two-Thirds Majority, How Far will ZANU-PF Go?”, *The Africa Report*, 15 February 2024, <https://www.theafricareport.com/336371/zimbabwe-with-its-two-thirds-majority-how-far-will-zanu-pf-go/> (accessed 18 October 2024).

52 T Mude, “Digital Technologies and Election Management in Zimbabwe: Pseudo-democratic Transition and Contorted Delirium?”, 47 Special Issue (2022) *Africa Development*, pp 179–198.

53 Zimbabwe Democracy Institute, “Zimbabwe Transition in a Muddy Terrain: Political Economy under Military Capture”, *Kubatana*, 14 December 2017, <https://kubatana.n>

Involving political parties is critical for the preservation and integrity of the electoral process. Political parties' participation should not be restricted to just the election day. Rather, they ought to be involved in election matters through election management bodies. According to Rusinga, who served as an election observer in the 2018 elections, the ZEC "tried to engage stakeholders, particularly political parties, through Multi-Party Liaison Committees" in an attempt to minimise the perception that the election had been biased.⁵⁴ These committees were established under section 160 of the Electoral Act. They are charged to work in the common pursuit of electoral justice, including conflict management on contentious issues such as political violence among supporters of various parties. They consist of representatives of all the political parties contesting the election, as well as the representatives of independent candidates, the ZEC, and, where necessary, the government, the security forces, and other stakeholders. All representatives are meant to see that elections are conducted in a free and fair manner.⁵⁵ To this end, their main aim is to set up structures that prevent or resolve conflicts and ensure observance of the Code of Conduct for Political Parties and Candidates. However, this has proved ineffective in democratising the electoral space or improving its governance.

Decision-making by consensus has been a weak point in the effectiveness of these committees, particularly when considering the fact that elections in Zimbabwe are a matter of life and death and always take place in an environment of extreme polarisation and violence. They are hotly contested, with state security agents often implicated in electoral malpractice and even violence (security forces backed by ZANU-PF have long engaged with impunity in acts of extra-legal violence). As Chikohora and Chokutamba argue, the problem is deeply rooted:

[T]he current military-political alliance between ZANU-PF and the security sector has its roots in the liberation struggle, when the Zimbabwe African National Liberation Army (ZANLA) and the Zimbabwe People's Revolutionary Army (ZIPRA), the military wings of ZANU and the

et/2017/12/14/zimbabwe-transition-muddy-terrain-political-economy-military-capture/ (accessed February 2024).

54 R Rusinga, "Zimbabwe's 2018 Harmonised Elections: An Assessment of Credibility", 20 (2021), *Journal of African Elections*, pp 90–114.

55 S Vengesai, "A Critical Examination of the Effectiveness of the Zimbabwean Multi-party Liaison Committee", 1 (2022), *Journal on Governance, Human Rights and Democracy in Zimbabwe*.

Zimbabwe African People's Union (ZAPU) respectively, formed close bonds with their respective parties.⁵⁶

Opposition party members, detainees, and protesters often face police brutality, at times resulting in death.⁵⁷ These practices were particularly evident during the 2008 elections when the army played a major role in supporting widespread and systematic abuse, leading to the killing of up to 200 people; the beating and torture of some 5,000 more; and the displacement of around 36,000.⁵⁸ Since the state refuses to prosecute any of its agents, no progress has been made in curbing such abuse.⁵⁹

By the time of the 2018 elections, the multiparty liaison committees were reported to have failed because

[the] ZEC did not present a clear direction for redressing concerns, resulting in redundancies in the plenary at successive [commission] meetings. In addition, it was unclear whether the issues raised at the local level were shared with higher levels of the ZEC.⁶⁰

Commissions met only infrequently at national level and did not serve as a forum where decisions were made, undermining their effectiveness.

4.4 The politics of party-funding regulations

Another controversial feature of Zimbabwe's regulatory framework is to be found in the funding of political parties from private and public

56 E Chikohora and L Chokutamba, "Governing Security Sector Reform in Zimbabwe and the Prospects of Positive Peace in a Polarised Polity", 10 (2022), *Global Scientific Journals*, pp 961–988.

57 Freedom House, "Freedom in the World 2024: Zimbabwe", *Freedom House*, n.d., <https://freedomhouse.org/country/zimbabwe/freedom-world/2024> (accessed 31 October 2024).

58 Human Rights Watch, "The Elephant in the Room: Reforming Zimbabwe's Security Sector Ahead of Elections", *Human Rights Watch*, 4 June 2013, <https://www.hrw.org/report/2013/06/04/elephant-room/reforming-zimbabwes-security-sector-ahead-elections> (accessed 16 November 2024).

59 For example, Freedom House's *Freedom in the World* report states that "pressure on the courts to endorse executive actions and protect ZANU-PF's interests has eroded the judiciary's independence. Judges occasionally rule against the government in sensitive cases, and such rulings are not always respected." *Freedom in the World* 2024, *supra* n. 56.

60 International Republican Institute and National Democratic Institute, *IRI/NDI Zimbabwe International Election Observation Mission Final Report*, Washington DC, International Republican Institute (2018), <https://www.ndi.org/sites/default/files/2018-10-29%20Final%20ZIEOM%20Report%20%288MB%29.pdf> (accessed 16 October 2024).

sources. Indeed, this funding is precisely the most regulated aspect of the Political Parties (Finance) Act 2001.⁶¹ It is a flashpoint in Zimbabwe's politics and a key indicator of the manipulation of a regulatory framework to the incumbent party's benefit. As an instrument of party regulation, it was strategically deployed against the MDC and CCC by the state to devastating effect.

One of the Act's key objectives is the prevention of foreign interference in the internal affairs of Zimbabwe through the funding of political parties. Section 6(1) states that "no political party, member of a political party or candidate shall accept any foreign donation, whether directly from the donor or indirectly through a third person". Section 6(2) states further that

any donation accepted by a member of a political party shall be deemed to have been accepted by the political party, unless the member willfully fails to disclose such donation to the political party, in which case the candidate shall be liable for any [solicitation of donations by foreigners].

With this regulation in place, opposition parties that receive any foreign funding are liable to prosecution – the security establishment pays keen attention to any infringement of this rule by the opposition. At the same time, the Act has been brazenly ignored by ZANU-PF without its suffering legal consequences. Thus, for example, when it emerged that the party received various forms of electoral support from the Chinese Communist Party (CCP) in the 2013 elections, the party spokesperson simply commented:

When we get money from the Chinese, what is wrong with that? That did not in any way affect the election results, so where is all this noise coming from? ... We have every right to get funding for our political programming, no matter where that comes from. Why should they [MDC-T] make noise about us getting funding from the Chinese when they go to the British and Americans to ask for money to sponsor their activities?⁶²

The ruling party has never faced legal consequences for this violation (Moore explores this blatant admission of guilt in some depth).⁶³ Opposition politics, however, is crippled when political-party regulation is en-

61 Political Parties (Finance) Act No. 4 of 2001, Chapter 2:11.

62 "Zanu (PF) Admits Breaking Law", *The Zimbabwean*, 18 September 2013, <https://www.thezimbabwean.co/2013/09/zanu-pf-admits-breaking-law/> (accessed 4 April 2024).

63 D Moore, "ZANU-PF and the Ghosts of Foreign Funding", 32 (2005) *Review of African Political Economy*, pp 156–162.

forced only on one side and the incumbent party can disobey the rules at will. This is particularly so in an environment like Zimbabwe's, where the domestic resources for political financing are extremely limited. The legal position – that political parties should rely on the funding provided for them by the law – should be enforced, precisely according to the provisions of the Political Parties (Finances) Act.

Section 3(1) of the Act states that “every political party shall be entitled in each Parliamentary year to receive from the State the sums of money that are payable to it in terms of this Act”. Nonetheless, a party has to meet certain criteria to be eligible for funding. Section 3(3) of the Act provides that

each political party whose candidates received at least five per centum of the total number of votes cast in the most recent general election shall be entitled to the same proportion of the total money appropriated as the total number of votes cast for its candidates in the election bears to the total number of votes cast for all its candidates in that election.

Despite the spirit of this provision, when it comes to actual practice, the state has potentially weaponised it as an instrument for controlling the opposition.

The constant splits in the MDC and CCC were always followed by claims and counter-claims by rival factions for access to this legislated political funding. Indeed, Chamisa never benefitted from the provisions promised by the Act. This is so in spite of the fact that his former political party, the MDC Alliance, and the CCC after it, each won more than 5 per cent of the total votes in the 2018 and in 2023 elections, respectively (as prescribed as necessary for funding by the Act).⁶⁴ Instead – and despite the obvious conflicts involved – the state apparatus consistently manipulated these intra-party disputes in ways that benefitted its preferred opposition candidate.

Ahead of the 2023 elections, for example, Mwonozora was awarded the funds allocated to the opposition.⁶⁵ By virtue of winning the Supreme

64 V Langa, “Zimbabwe’s Ruling Party is Squeezing the Opposition’s Finances”, *The Africa Report*, 20 September 2024, <https://www.theafricareport.com/362149/zimbabwe-how-political-parties-finance-act-is-weaponised-to-annihilate-the-opposition/> (accessed 28 October 2024).

65 N Ndoro, “Zanu-PF, Mwonozora Share US\$1,5 Million Ahead of 2023 Elections”, *Nehanda Radio*, 21 March 2023, <https://nehandaradio.com/2023/03/21/zanu-pf-mwonozora-share-us15-million-ahead-of-2023-elections/> (accessed 20 November 2024).

Court judgement (as previously discussed) that gave him control of the party, the distribution of the funds became a *fait accompli*. It is widely suspected that Mwonzora is a Trojan horse for ZANU-PF in its endeavor to undermine the *bona fide* opposition. Analysts say that the financial regulation of parties in Zimbabwe is an ongoing scandal: the government has a consistent record of choosing to allocate political leaders to faction leaders that it has itself sponsored in order to divide the main opposition parties.⁶⁶ The CCC did not receive any funding because by the time the funds were allocated, the party (MDC-Alliance) that had qualified to get the funds under the Act was now in the hands of Mwonzora, technically making his party the legal recipient of the funding.

5. The impact of limited and politicised party regulation

The limited and politicised regulatory framework in Zimbabwe has left the opposition exposed and vulnerable. The previous section discussed the treacherous political terrain that the opposition MDC and CCC had to navigate over the years. In the absence of a properly and fairly administered constitutional framework, especially in the context of a country like Zimbabwe where a *de facto* one-party system is firmly in place, opposition parties face unique challenges, including attempts to extirpate them from the political space altogether. In the case of the MDC and CCC, this led to serious levels of destabilisation. The parties faced severe internal contradictions, including high levels of mistrust amongst themselves (as well as towards the political system itself). Paranoia and fear resulted in the adoption of a general siege mentality and defensive posture. In a bid to counteract or minimise its exposure, the opposition parties resorted to a new praxis in its politics, with this having a negative impact on internal democracy. A few examples are discussed below.

5.1 Strategic ambiguity: the CCC goes “structureless”

In response to the onslaught on the party after the 2018 elections and the suspicion that ZANU-PF had already compromised some of the top leadership of the party, Chamisa pursued a new, and controversial, political

⁶⁶ Langa, *supra* n. 64.

strategy. Prior to its announcement, the party had functioned as a unit with collective decision-making as per its constitution.⁶⁷ Acting unilaterally, however, Chamisa surprised many observers (but excited his millions of supporters) by announcing that in the run-up to the 2023 elections, the CCC would operate without its structures (including the party's hitherto crucial women and youth assemblies). It would also operate without a constitution (even though one was in the process of being put together). Referring to the need for "strategic ambiguity", the party would, also for the first time, not be holding an elective congress: he, Chamisa, would be the sole, uncontested candidate for the presidential election. The brave new era of "strategic ambiguity" demanded changes.

Chamisa's rationale for the new strategy was to provide protection for the party in anticipation of further interference from the government. It was widely reported that for the 2023 elections, ZANU-PF, through a state-security-aligned organisation, Forever Associates of Zimbabwe (FAZ), had devised a grand plan to deploy its own agents to contest the CCC's primary parliamentary elections. Such a move would facilitate a smooth capture of the party and lead to the creation of a loyal opposition in parliament and in national politics, thus furthering the one-party-state agenda.

Despite the CCC's efforts to resist this attempt, the FAZ still managed to interfere with the initial candidate-selection process. Such interference resulted in double candidates appearing as contestants for the CCC in parliament as well as local government.⁶⁸ Consequently, this blatant exposure forced the CCC to find ways of circumventing this blind spot, but it only created further problems.

In addition, Chamisa focused all power on himself, in the process barring any official from speaking to the media (with the exceptions of CCC spokesperson Fadzayi Mahere and her deputy, Gift Ostalos Siziba). He also side-lined some of the key leaders who had been founding members of the party in 1999 and wielded substantial influence in the party, such as Welshman Ncube and Tendai Biti. In this way, he entered new and uncharted waters. These moves proved to be immensely popular among grassroots supporters and went either unquestioned or endorsed by them. Among the

67 Article 6(1) of the MDC constitution outlines the party's 15 organs, starting with the congress, national conference, national council, and national executive committee, and extending to ward- and branch-level.

68 P Masau, "CCC Double Candidates 'Sponsor' Exposed", *Newsday*, 20 July 2023, <https://www.newsday.co.zw/local-news/article/200014206/ccc-double-candidates-sponsor-exposed> (accessed 19 November 2024).

former leadership, it generated a great deal of animosity. In particular, Biti and Ncube proved to be so disillusioned by Chamisa's unilateral action that – feeling disrespected – they began to work behind the scenes to undermine Chamisa.

To further ring-fence the party from infiltration, Chamisa outlined what he called “citizenocratic” candidate selection. This was to be a process which would involve wide consultation with stakeholders in particular constituencies or wards, while the traditional party structures of the party that had previously done this work were to be done away with completely.⁶⁹ This proved difficult to implement in practice, with some members of the party claiming that the process lacked transparency and in fact even left the party more vulnerable to infiltration and manipulation by external forces (anyone could claim to be a CCC member for voting purposes or to seek nomination).

5.2 Abandonment of the party constitution

Another drastic measure was Chamisa's decision to operate without a party constitution, something which severely undermined the CCC's internal democracy. Previously, the MDC had always been guided and constrained by its constitution. Article 3(1) of the MDC constitution envisaged “a Social Democratic Party whose core values shall be solidarity, justice, equality, liberty, freedom, transparency, humble and obedient leadership and accountability”.⁷⁰ Chamisa's move was therefore highly unexpected. Even though it could be understood as an exercise in realism in response to the existential threat to the party posed by ZANU-PF's unrelenting efforts to infiltrate it, this represented a huge contradiction and was a major gamble on Chamisa's part.

In fact, Chamisa's initiative would contribute to the subsequent demise of the party as top officials like Ncube and Biti not only dumped him but began working with Tshabangu behind the scenes to undermine him. It led, finally, to Chamisa's voluntarily walking away from the party he had fought

69 A Vinga, “Zimbabwe: Chamisa Outlines ‘Citizenocratic’ Candidate Selection – Says Nomination Process Kicks off This Week”, *AllAfrica*, 3 April 2023, <https://allafrica.com/stories/202304030114.html> (accessed 30 December 2024).

70 Constitution of the Movement for Democratic Change, Article 3(1), January 2000, https://www.veritaszim.net/sites/veritas_d/files/THE%20FINAL%20CONSTITUTION.pdf (accessed 30 October 2024).

so hard to rebuild from the ashes of the MDC. Ncube's recent remarks in that context are worth quoting at length since they bring out the deep resentment that led to Chamisa's ousting:

When you are in the struggle for democracy, when you say you are a democratic alternative that you will govern democratically, that means that you must be organised democratically yourselves. When you say you are the only leader with authority over everything, you become the dear leader. You are the president and chief spokesperson. You are the secretary-general. You are the treasurer-general. You direct the closure of all party accounts. You operate without any known party accounts. There are no financial oversight procedures mechanisms.⁷¹

Chamisa may have felt justified to act in the manner he did as a response to the challenges the party faced in a chaotic political landscape. This chapter suggests that he might not have been compelled to take this unprecedented route had a proper regulatory framework been in place, one that ring-fences political parties from illegalities and state-sanctioned attacks.

6. Conclusion

This chapter has explored the toxic political environment in Zimbabwe and how the formal regulation of political practice in this environment has impacted on opposition parties. It has shown that the MDC and CCC were forced to abandon some of their key principles as democratic alternatives in an attempt to survive in this harsh environment. Where regulation did exist, its intention, efficiency, and effectiveness are matters of dispute. In providing only limited regulation, political parties are faced with numerous, devastating, and often decisive challenges. It is trite to mention that the opposition faces a difficult conundrum: the very principles of openness, constitutionalism and internal democracy that make the opposition so valuable render it, at the same time, extremely vulnerable to state-sponsored destabilisation. But it cannot abandon these same principles without opening itself up to the problems and vulnerabilities discussed above. Despite the reality of the fears that Chamisa had regarding state-orchestrated

71 D Gatsi, "Welshman Ncube Tears into 'Completely Autocratic' Chamisa – Says He Led Opposition through 'Runners'", *New Zimbabwe*, 25 June 2004, <https://www.newzimbabwe.com/welshman-ncube-tears-into-completely-autocratic-chamisa-says-he-led-opposition-through-runners/> (accessed 3 February 2024).

infiltration, his principle of “strategic ambiguity” seems only to have further weakened his party. (For example, when the CCC began to operate without any structures or a constitution, this created much confusion, as anyone could claim to be a member.) This has led some analysts (such as Ibbo Mandaza) to conclude that Chamisa’s “gamble of having a structureless party failed”.⁷²

Political-party regulation is vulnerable to abuse because it does not operate in a political vacuum. Whilst section 129(1)(k) of the Constitution exists to protect political parties against members who use it as a vehicle to get elected and then abandon it, it is clear that this aspect of political-party regulation regarding recalling elected representatives is highly problematic. The relevant law is vulnerable to abuse as the vagueness following the split of a party creates difficulty if, for example, a member is purportedly expelled without a procedural disciplinary hearing. Furthermore, when abused, this law does the electorate a great injustice if it is assumed that voting is based solely on the candidate’s membership of a political party. In fact, a significant number of voters do not belong to a political party, or if they do, may vote for a member of a different political party based on the candidate’s individual traits and qualities. The recalls are done summarily without any consultation with the electorate. To compound everything, in a political context like Zimbabwe’s, where the ruling party is avowedly focused on maintaining a one-party state, the law is weaponised to meet this ultimate objective.

There are dire implications to having a poorly regulated framework for political parties in Africa. It makes good leaders bad and bad leaders worse in their search for survival at all costs. As this chapter has shown, it also stifles opposition parties and political competition. As the political history of Zimbabwe shows, extreme actions are all too easily undertaken once political leaders feel they can justify undemocratic actions as responses to the urgency of political demands. The rule of Mugabe exemplified this. Mugabe made full use of the emergency powers provided by the Constitution to crush dissent in the early 1980s under the cover of restoring law and order. On the apparent justification that a security response to so-called dissidents

72 I Mafundikwa, “‘Structureless Party’: Has Chamisa Led Zimbabwe’s Main Opposition Astray?”, *Al Jazeera*, 12 February 2024, <https://www.aljazeera.com/features/2024/2/12/structureless-party-how-chamisa-led-zimbabwes-main-opposition-astray> (accessed 30 December 2024).

was necessary, more than 20,000 ethnic Ndebeles were killed in just over five years.⁷³

Without suggesting in any way that Chamisa is equivalent to Mugabe, the argument here is that Chamisa, who presents himself as an avowed democrat, appears to have adopted ZANU-PF methods despite having fought against ZANU-PF throughout his life. In his attempt to save his party, he abandoned consensus-based leadership, sacrificing his party's prime commitments to constitutionalism and accountability. This chapter argues, moreover, that the subsequent contradictions in the CCC were the result of its attempt to deal with the challenges posed by the difficult political environment and, in particular, the weaponised regulatory and legislative framework it operated within. Many of these contradictions were so severe that they could not be reconciled with the identity of the party and what it stood for.

The question is not whether Tsvangirai and Chamisa were motivated by genuine concerns to protect the party, or whether they were acting in the personal pursuit of political power; it is impossible to know as only they can answer that. Rather, the analysis is interested in the fact that this mutilation of party processes and procedures becomes the unintentional result of vulnerability arising from the lack of the protection that a proper regulatory framework would otherwise normally provide.

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73 Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation, *Breaking the Silence: A Report into the Disturbances in Matabeleland and the Midlands 1980–1988*, Harare, Legal Resources Foundation, CCJPZ (1997), pp 1–36, <https://davidcoltart.com/wp-content/uploads/2006/10/breakingthesilence.pdf> (accessed 30 December 2024).

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