



# The 2013 Elections in Kenya and Zimbabwe: Lessons for Africa and Beyond

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## EXECUTIVE SUMMARY

### RECOMMENDATIONS

- In any reform agenda that involves constitutional overhaul, political will aside, the lead-time before holding elections is a critical determinant for conclusive electoral reforms.
- Electoral reforms require moderation as they can thwart the very purpose for which they are sought.
- Rethinking the foreign policy strategy on democratisation in Africa and the developing countries by Western countries is worthwhile. This should be revisited, especially in view of the surging reality in African states that electoral processes are sovereign and legitimating their outcomes does not require Western approval.

The 2013 elections in Kenya and Zimbabwe took place in the context of both optimism and fear. Held under new constitutional dispensations that promised democratic progress, these were ‘first-generation’ elections that followed the gruesome electoral-related violence of 2007 and 2008 in Kenya and Zimbabwe respectively. Those earlier violent polls infused renewed scepticism about elections as a peaceful mechanism for choosing governments. In a diametric departure from the previous electoral process, the 2013 elections were conspicuously peaceful in both countries, albeit with a non-consensual outcome. This policy brief highlights several lessons drawn from the experiences of these elections, with policy insights for the rest of Africa and beyond.

### THE 2013 ELECTIONS IN KENYA AND ZIMBABWE: UNCOMMON INTEREST BEYOND BORDERS

The year 2013 marked one of the most daunting years for African electoral democracy since the dawn of multi-partyism in the early 1990s. In no other year has Africa held so many post-crisis elections – in Madagascar, Mali, Kenya and Zimbabwe. The 4 March 2013 Kenyan and 31 July 2013 Zimbabwean elections, however, were unique in kind. These elections sought to remedy the crises caused by the previous elections in 2007 and 2008 respectively which had been tainted by deadly violence. In Kenya, at least 1 200 people died and 300 000 became internally displaced persons and refugees; the economic effects were palpable not only in East Africa but also in eastern parts of the Democratic Republic of the Congo.<sup>2</sup> In Zimbabwe, besides the loss of lives and refugee influx to South Africa in particular, the country’s economic downturn was also felt in the sub-region.<sup>3</sup> These elections also presented the height of scepticism about the substance of the electoral process and whether its usefulness for democratic renewal of governments is worth the cost.

The regionalisation of the burden accrued from the 2007 and 2008 polls focused intense external attention on the 2013 elections. More particularly, shared social and economic ties with neighbours meant that none of these countries in the respective sub-regions were ready for the consequences of yet another botched electoral process.

Consequently, the transitional processes under the Governments of National Unity that culminated in the 2013 elections in Kenya and Zimbabwe were remotely shepherded, respectively by the African Union (AU) mediation under the leadership of Kofi Annan and the Southern African Development Community (SADC) led by South African President Jacob Zuma. Regional actors were engaged to help restore the democratic political order and prevent the negative externalities of new elections affecting the sub-region. Indeed, these sustained diplomatic efforts during the transitional period impacted considerably on the peaceful conduct of the 2013 elections in both countries.

#### SIMILARITIES AND DIFFERENCES: CONDITIONS, OUTCOMES AND LESSONS

Much of the 2013 electoral context in both Kenya and Zimbabwe came from the outcome of the previous post-electoral violence settlement processes. The elite pacts, commonly known as the National Accord in Kenya, and the Global Political Agreement in Zimbabwe, defined the political spectrum within which the new electoral cycle unfolded. These pacts predetermined the dominant political voices in the bargaining process for political reforms – the signatories of the political agreements. In both countries, arguably, the constitutional referenda served as rubber stamps for the consensus of the political class. Many of the problems of previous elections in both countries had deep constitutional and historic roots. Since independence, both countries had been governed under constitutions inherited as colonial relics; they were subjected to several amendments in a purposive bid to create an imbalance of power between the executive and other institutions. As a consequence, delivering a credible electoral process in Kenya and Zimbabwe depended more on people's actions than an enabling institutional environment.

As part of the envisaged political reforms, following successful referenda, new constitutions were enacted

in Kenya and Zimbabwe in October 2010 and May 2013 respectively; these ushered in the promise for holding democratic elections. Despite the clamour for new electoral governance in both countries, the reforms were more substantive and far-reaching under the new Kenyan Constitution. Kenya pursued judicial and security sector reforms, established a new election management body (the Independent Electoral and Boundaries Commission or IEBC) with substantial guarantees of independence, established a new electoral system and voter registration, among other reforms. As for Zimbabwe, reforms carried out before the harmonised elections of 31 July 2013, as a result of the new constitution, were minimal at best, with partial changes to the electoral system, hurriedly enacted, and no significant institutional transformation.

An important factor that differentially influenced both countries' post-constitutional reform processes was the lead-time available before the holding of the polls. Kenya had two and a half years to enact reforms arising from the new constitution, whereas Zimbabwe had barely two months for the same. In Zimbabwe, the polling date was triggered by the Constitutional Court ruling of 31 May 2013 in a case filed by Jealousy Mawire, a private citizen, which obliged President Robert Mugabe to set a polling date before 31 July 2013. Despite this, the constitutional timeframe of four months for the holding of elections after the automatic dissolution of parliament on 29 June 2013 would still have been inadequate for the proposed reforms, seeing as the new constitution was promulgated in May 2013. Although the 2011 SADC Road Map for Elections in Zimbabwe lacked implementation timelines, SADC did not succeed in securing adequate lead-time for conclusive electoral reforms following the Constitutional Court ruling. Orchestrated by SADC, the Government of Zimbabwe's appeal against the ruling in order to secure a postponement of the polling date was unsuccessful.

It is worth noting how the differentiated scale of reforms in Kenya and Zimbabwe affected the electoral outcomes in both countries. Consulting the various election observer missions' findings, there was noticeable 'ease of convergence' in their assessment of the Kenyan elections.<sup>4</sup> However, the much praised electoral reform agenda did pose a serious danger for the intrinsically intended purpose of restoring electoral integrity and, in effect, securing acceptable electoral

outcomes. In particular, the failure of the technology-intensive voter registration and results management system adopted by the IEBC precipitated a dangerous electoral stand-off; pitting Uhuru Kenyatta of the Jubilee Coalition against Raila Odinga of the Coalition for Reforms and Democracy. This stand-off bore the seeds of a potentially violent electoral outcome. The fears of a repeat of the 2007 post-electoral violence almost became a reality, and the mood was tense across Kenya immediately after voting.

In Zimbabwe, the rushed 31 July 2013 harmonised elections elicited fears of revisiting the 2008 experience. It was rather obvious that the limited reforms undertaken would reproduce some of the past problems such as the flawed voters' roll,<sup>5</sup> despite the efforts of the Zimbabwe Electoral Commission (ZEC) to organise the polls in a very difficult context. Beside the shift from a constituency-based to a ward-based voters' roll system, which partially caused confusion on polling day, the voters' roll was only made available in hard copy to political parties a day before the polls, hence making it difficult to scrutinise. This major oversight, coupled with the outcome where the incumbent President Mugabe's ZANU-PF (Zimbabwe African National Union - Patriotic Front) had a commanding lead, generated an assessment dilemma for election observer missions. SADC declared the polls to be peaceful and free, but momentarily deferred ascertaining their fairness. The AU recognised the elections as peaceful, but criticised in strong terms the high incidence of voters being turned away from polling stations, thus reserving its declaration on fairness of the polls.<sup>6</sup> The Zimbabwe Election Support Network (ZESN) expressly declared the polls as compromised in spite of being outstandingly peaceful.<sup>7</sup> Zimbabwe's 2013 poll pointedly highlights the dilemma of assessing elections under a 'peace mantra' whereby peace at all costs is accorded the highest value. As in Kenya, the high premium for peace is mostly accorded to 'first-generation' elections as countries seek to restore order from past violent political conflict.

An important variable that was peculiar to the 2013 elections in Kenya, (and Zimbabwe to a certain extent), relates to issues of transitional justice that kept the society deeply divided in both countries. Transitional justice entails judicial and non-judicial measures to redress the legacies of massive human rights abuses.<sup>8</sup> The question of transitional justice raised the stakes for the elections and the urgency for a peaceful outcome,

whether legitimate or not. In Kenya, although incumbent President Mwai Kibaki was not contesting the elections, the stakes remained very high. The presidential aspirant Uhuru Kenyatta and his running mate William Ruto were facing an indictment by the International Criminal Court (ICC) for allegedly masterminding the 2007/2008 post-electoral violence perpetrated by Kikuyu and Kalenjin ethnic communities on opposing fronts. They portrayed the elections as a referendum against the Western-backed ICC.<sup>9</sup> The ICC factor played a significant role in the elections, and embroiled Western countries such as the US and Britain, both of which questioned the integrity of the Kenyatta and Ruto candidatures. Former US Assistant Secretary of State, Johnny Carson, stated that 'choices have consequences'<sup>10</sup> for Kenyans if they were to elect the ICC-indicted candidates. This veiled threat provoked strong interpretations of imperialism, and interference with the 'sovereign moments'<sup>11</sup> that reverberated not only in Kenya and but also in the rest of Africa. Kenyatta and Ruto were thus partially elected in defiance of the West.

In Zimbabwe, the question of whether to grant amnesty or bring to justice the alleged perpetrators of previous acts of political violence in the country, including those committed during the 2008 electoral process, was not decisively resolved by the political class. This, therefore, remained an important undercurrent at stake in the harmonised elections that mainly pitted ZANU-PF's incumbent President Robert Mugabe against the MDC-T's (Movement for Democratic Change-Tsvangirai's) Prime Minister Morgan Tsvangirai. Some targeted personalities in Zimbabwe, mostly associated with ZANU-PF, were facing sanctions from the United States and the European Union, attributed to their alleged implication in past political crimes. In response, the Government of Zimbabwe disallowed the participation of observer missions from the European Union and the Carter Center.<sup>12</sup>

These transitional justice issues that percolated through the electoral process in Kenya and Zimbabwe, as well as their attendant diplomatic responses, illuminate the problematic structural relationships between African and Western countries. In Kenya, the reaction was a reminder to the West that the electoral process is a sacrosanct sovereign engagement and the determination of its outcome remains a national preserve. This policy posture resounded equally in Zimbabwe. Barring the participation of Western-oriented institutions from

observing the harmonised elections was a clear signal that the legitimacy of electoral processes and outcomes do not necessarily need approval of the West. These political gestures couched in the electoral politics of both Kenya and Zimbabwe should serve to spur on rethinking of the Western policy orientation towards the democratisation project in Africa and other developing countries.

## CONCLUSION

In an attempt to disengage from the devastating 2007 and 2008 electoral experiences in Kenya and Zimbabwe respectively, the 2013 watershed general elections presented a paradox of reforms which provoked both fears and optimism in variable measures. In Kenya, the optimism brought about by the constitutional and electoral reforms met with surging fears of a violent outcome. These fears were aggravated by the systemic failures in certain aspects of election management, which were arguably a consequence of an over-enthusiastic reform agenda. In Zimbabwe, the optimism brought about by a 'progressive' constitution met with limited electoral reforms for 'first-generation' elections, yet a failed electoral process was the impetus for these very reforms. Political factors aside, the lead-time before the polls, following adoption of new constitutions in Kenya and Zimbabwe, differentially served as a critical lever for fulfilling the proposed electoral reform agenda. More so, with the infusion of transitional justice issues into the electoral politics in both countries, there were high stakes on the outcome, despite the fact that the incumbent president in Kenya was not contesting. The 2013 experience in Kenya and Zimbabwe also demonstrated the urge for guarding 'sovereign [democratic] moments' against Western encroachment.

## ENDNOTES

- 1 Robert Gerenge is the Head of Special Programmes at the Electoral Institute for Sustainable Democracy in Africa (EISA). He acted as advisor and observer to the 2013 elections in both Kenya and Zimbabwe.
- 2 *Socialism Today*, Issue 115, February 2008, <http://www.socialismtoday.org/115/kenya.html>, accessed on 14 May 2014.
- 3 See Badza S, 'Zimbabwe's 2008 Harmonized Elections – Regional and International Reaction', in Masunungure EV (ed.), *Defying the Wind of Change: Zimbabwe's 2008 Elections*. Harare: Konrad Adenauer Stiftung, 2009.
- 4 See observer missions' preliminary statements by: African Union, <http://eisa.org.za/PDF/ken2013au1.pdf>; EAC-COMESA-IGAD, [http://www.eac.int/index.php?option=com\\_content&view=article&id=1226:preliminary-statement-joint-eac-comesa-igad-election-observer-missions-to-kenya-&catid=146:press-releases&Itemid=194](http://www.eac.int/index.php?option=com_content&view=article&id=1226:preliminary-statement-joint-eac-comesa-igad-election-observer-missions-to-kenya-&catid=146:press-releases&Itemid=194); The Carter Center, <http://www.cartercenter.org/news/pr/kenya-prelim-030613.html>, accessed 29 May 2014.
- 5 Interestingly, voter registration remained a shared responsibility between the Registrar General of Voters and ZEC (Zimbabwe Electoral Commission) for the first elections under the new constitution (transitionally), yet this shared responsibility was a cause of the problematic electoral process in 2008. The ZEC is exclusively entrusted with registering voters in subsequent elections.
- 6 SAFPI (Open Society Foundation for Africa) <http://www.safpi.org/news/article/2013/statements-official-african-observer-missions-zimbabwe-election>, accessed 29 May 2014.
- 7 ZESN (Zimbabwe Election Support Network), [http://www.zesn.org.zw/images/ZESN\\_2013\\_Harmonised\\_Election\\_Preliminary\\_Statement\\_01\\_August\\_13-1026hrs.pdf](http://www.zesn.org.zw/images/ZESN_2013_Harmonised_Election_Preliminary_Statement_01_August_13-1026hrs.pdf), accessed 13 May 2014.
- 8 ICTJ (International Centre for Transitional Justice), <http://ictj.org/about/transitional-justice>, accessed 29 May 2014.
- 9 BBC, <http://www.bbc.com/news/world-africa-21739347>, accessed 14 May 2014.
- 10 *The Guardian*, <http://www.theguardian.com/world/2013/mar/08/kenya-kenyatta-election-hague>, accessed 14 May 2014.
- 11 This term was coined by Bruce Ackerman, see Ackerman B, *We the People: Foundations*. Cambridge, Massachusetts: Harvard University Press, 1991.
- 12 These institutions have not succeeded in disentangling themselves from perceptions of Western affinity despite their independent assessment of elections.

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