

The Dualities of Contemporary Zimbabwean Politics: Constitutionalism Versus The Law of Power and The Land, 1999-2002

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Abstract: This paper explores the dualities in the coexistence within Zimbabwean politics of constitutionalism and legality versus a complex combination of paralegal, suprallegal, oppressive and brutal political action, especially as this pertains to elections and land. The analysis is set in the period 1999-2002. The investigation concerns the issue of how the Zimbabwe African National Unity (Patriotic Front) government had been using a complex combination of constitutionalism-legality and the unconstitutional-paralegal to ensure political survival, despite national resistance and international pressure. An epilogue presents a brief thematic comparison between the core arguments in this article, and developments from 2002-2003. The article has three interconnected parts. The first presents the major contours of constitutionalism in Zimbabwe. It argues that the state contested and manipulated both the practice and discourse of human rights, recasting the 'individual' and the 'liberal' in the context of 'African' and 'socialist', but with the slant to favour the government of the day. The second section highlights how ZANU-PF built the extensive constitutional, legal and electoral-domain front of constitutionality and multi-partyism, precisely to defeat and undermine opposition challenges, whilst maintaining itself in power. It argues that in the electoral domain ZANU-PF uses the legality of constitutionalism to aid and veil unconstitutional, arbitrary, and authoritarian means of maintaining power, and simultaneously garners the moral force of land and colonialism to create 'political immunity'. Thirdly, the article deals with the convergence of liberation politics, land and elections. It assesses the way in which ZANU-PF's anchoring of its electoral conquest in the issue of the land and post colonial liberation superimposed forms of legitimacy and justice that tended to override (in the eyes and minds of many citizens and parts of the international community, including SADC) paralegal and supra-legal action. The abrogation of constitutionalism in the domain of land effected some electoral favour and also conferred a degree of political immunity because of the 'sacredness' in the post-colonial struggle for land justice. The conclusion reviews possible

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explanations and notes the extent to which the period of 1999 to 2002 witnessed the convergence of constitutionalism, legality, and the moral force of land reform, with coercion, oppression and legal-institutional manoeuvring to maintain fragile regime power.

Introduction

By the time of the 2002 presidential election in Zimbabwe, contestation between the worlds of constitutionalism and legality, and supra-legal political practice within the belly of the constitutional epitomised developments in the Zimbabwean African National Union-Patriotic Front's (ZANU-PF) struggle for political survival. The dualities of constitutionalism, legalism, and formal party-electoral actions, versus actions beyond constitutional provisions and law, contribute to an overall characterisation of contemporary Zimbabwean regime politics as precariously vacillating between these two worlds. The co-existence of the legal and the supra-legal means that, for each reality and understanding that emerges, observations from the other side of the constitutional-legal divide reveal another reality.

'An edifice of legality', or 'pretence of constitutionalism', are phrases that opposition and community voices in Zimbabwe used to describe the contradictions between the upholding of the law, constitution and liberal-democratic practice, on the one hand, and the actions or measures of ZANU-PF in maintaining and justifying their hold on political power, on the other. ZANU-PF alternately denied practices of coercive and paralegal state action, or otherwise defended these in terms of security, anti-colonialism and nationalism. ZANU-PF pointed to opposition Movement for Democratic Change (MDC) actions as unpatriotic, driven by foreign funding, and disinterested in resurrecting the pre-colonial bond between people and the land.

This article therefore argues that in Zimbabwe circa 1999-2002 there was a chasm between new constitutionalism, and ZANU-PF's use of the shell of constitutionalism as a *cordon* around its counter-constitutionalist political practice, as well as its portrayal of challenges to its abuse of constitutionalism as the defence of settler privilege. In both the interconnected domains of electoral and land action, the Zimbabwean ruling party upheld a facade of constitutionalism and legality.

Constitutionalism, defined minimally, alludes to the principle that the exercise of political power shall be bounded by rules that determine the validity of legislative and executive action. The procedure according to which this action must be performed is thus prescribed, or the permissible content of the action is delimited. As De Smith notes, constitutionalism "becomes a living reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power."¹ Shivji outlines the 'new constitutionalism' that articulates with African orientations and contexts. He emphasises several pillars of the right to people's and national self-determination; the right to practise democratic self-governance and the participation of citizens therein; the collective right of people and social groups to organise freely for political, ideological and other purposes (including the right to resist oppression); and the right to security and integrity of the person. These pillars present to the people of Africa the "assurance of the legitimacy of their struggle."² In similar vein and in defence of rights as part of a new African orientation, Mamdani points out that discourse about rights can invoke the image of a defence of settler privilege, whilst there is a continued denial of justice for a 'native

majority'.³ Legalism, in turn, is conceptualised as government and political action that is conducted in terms of national laws, as well as the legally adopted rules and procedures of that political system - but with the connotation that there is a facade of legal and procedural action that veils actions that are contrary to the spirit of constitutionalism. Legality refers to action that has the stamp of the law. Paralegal is used to denote violent actions, for instance torture, abductions and intimidation. Supralegal refers to actions that are projected as being above the law or actions that are justified through a higher morality, for instance as is projected to prevail in ZANU-PF's 'struggle against continued colonialism'. Furnace politics is the term that this article uses to denote political practice, which belies claims to constitutionalism.

The facade of supremacy of the law and legality of political and electoral measures, and, on a certain level, adherence to electoral procedure and multi-partyism, started caving in under the pressure of the electoral domain trilogy of the 12-13 February 2000 constitutional referendum, the 24-25 June 2000 parliamentary, and the 9-10 March 2002 presidential elections. A growing chasm emerged between constitutionalism-legality, and furnace politics within the legal-constitutional shell.

The first objective of this article is to outline the contours of legalism and constitutionalism in contemporary Zimbabwe and to analyse how the legalism-constitutionalism dimension was manifested in the period of 1999-2002. The analysis is positioned in the context of the debate on new constitutionalism in Africa. The second objective is to map the contrasts between constitutionalism and the opposing underworld of the constitutionally or legally manipulated life of electoral management and opposition control. A consistent theme is the interplay of constitutionalism and legality with boundary-illegality and paralegal action. In the domain of land and political power, analysed in the third section, it is the legacy of colonialism that is directly challenged through both land seizure and the legitimate discourses of pan-Africanism and anti-colonialism. The article indicates how 'the law of the land' and the need for post-colonial justice were used to largely legitimise otherwise forceful, coercive, and unconstitutional action. The article assesses the reasons why ZANU-PF engaged in the 'game' of constitutionalism and legalism, given the overwhelming of evidence of unconstitutional, paralegal and oppressive political behaviour.

THE MAJOR CONTOURS OF CONSTITUTIONALISM AND LEGALISM IN ZIMBABWEAN POLITICS, 1999-2002

The duality of constitutionalism-legalism versus actions that are partly or fully anchored in unconstitutional, paralegal and supra-legal state operations was particularly characteristic of Zimbabwe circa 1999 to 2002. This range of actions helped entrench ZANU-PF's hold on political power.

Constitutionalism and Decolonisation in Zimbabwe

Constitutionalism was bestowed on many African countries in the form of their independence constitutions. In several cases across Africa, the liberal model of democracy held sway in the design of new constitutions. African regimes, as Shivji points out, have been practical in their choice of the liberal model. Also, African regimes have been tinkering with

their constitutions in the direction of liberalisation, sometimes under pressure, “and maybe to re-establish their credibility with the West.”⁴ These liberal perspectives departed from preceding statist orientations that found their inspiration in sources as varied as African authenticity, American realism, and the Soviet non-capitalist thesis. Two factors contributed to degrees of non-acceptance and illegitimacy of independence constitutions: the fact that the preceding colonial-African regimes did not rule in terms of the principles of constitutionalism and that the particular Western form of constitutionalism was seen to be foreign to Africa. Examples of such incompatibility are the concepts of individual rights or the separation of powers between the head of state and head of government.⁵

Post-liberation Zimbabwe has been characterised by its contestational relationship with the inherited Lancaster House Constitution. Constitutional amendments in Zimbabwe were exercised at least 18 times in 21 years. Many of the changes were uncontroversial attempts at the indigenisation of the Zimbabwe Constitution, once the limitations that were imposed by the Lancaster House Agreement had fallen away. Other controversial changes included those that were designed to entrench ZANU-PF in power. These ‘entrenchment changes’ often occurred in the leeway that was provided by the constitution’s provision for wide presidential powers. The Electoral Act of 1990 specifically related the conduct of elections to presidential omnipotence. The combination of constitutional and legal concentration of power in the president therefore provided the setting for Zimbabwe’s special case of a ‘liberation party rule through elections’. When the tide started turning (circa 1999 to 2002) and popular resistance began translating into formalised opposition politics, the constitutional and legal provisions were used to effectively constrain challenges to ZANU-PF.

The Zimbabwe constitutional debate engaged with the dual pressures of moving away from Lancaster House constraints towards indigenisation and socio-economic transformation, and, on the other hand, engendering change that would create space for the voices of civil society and opposition. These pressures articulated with the broader debate on the nature of constitutionalism in Africa. Several authors point to the need to develop constitutions that would not mechanically lift from the Western historical experience, but would build a constitutionalism that recognised African realities.⁶ As Mamdani notes,

the point is not to oppose one-sidedly the demand for human rights and the rule of the law; it is, on the other hand, to struggle towards a definition of the agenda of human rights and the rule of law that will not displace the discourse on power and popular sovereignty but will in fact lead to it. To do so, of course, is not possible without arriving at a conception of rights that flows from a concrete conceptualising of the wrongs on the continent.⁷

From Constitutional Indigenisation to Presidential Fiat

Over the years, the Zimbabwe constitution has remained a contested document. First, there was the component of ‘foreignness’ (and this is something that has continued), the idea that the constitution remained a non-Zimbabwean, colonial relic.⁸ Secondly, struggles developed around the appropriation and, as many argue, the abuse of reactionary components of the Lancaster House Constitution, by the ZANU-PF government in order to sustain its hegemony.

This constitution should be interpreted in the context of the preceding phase of both white settler colonialism-republicanism (which was unconstitutional and illegal), and the liberation struggle's action against the edifice of the Smith regime's form of constitutionalism. In the Lancaster House Constitution of 1979, however, the liberation forces compromised and achieved less than they might have expected as the result of a liberation war. The British government was seen to have "deliberately designed a constitution aimed at preserving and protecting the interests of the white minority group. To this end, the original Lancaster House Constitution (LHC) had several entrenched clauses which prevented the first Zimbabwe government from amending the constitution easily."⁹ Other authors and politicians concur, for example, E. D. Mnangagwa states:

In the case of Zimbabwe, the new constitution was encumbered in the sense that it contained certain entrenched provisions which ensure that certain policies could not be changed until a specified time had elapsed or until the matter was determined by a specified majority vote in the House of Assembly.¹⁰

Indigenisation was an important consideration in early constitutional changes in Zimbabwe. For instance, one of the earlier changes was the removal (by the expiry date of the provision) of the twenty seats that were reserved for whites in parliament.¹¹ Related changes were the substitution of a ceremonial presidency and premier for an executive president, as well as the abolition of the senate to create a 150-member unicameral legislature.¹²

The 1979 constitution made provision for both the retention of land-use patterns for a certain period and several socio-economic constraints on the post-liberation state. For instance, private property was guaranteed for ten years. On the question of land, it has been pointed out that even if "a new government of Zimbabwe were committed to implementing a comprehensive land reform programme, the inhibiting cost would put it out of reach of the government."¹³ One early constitutional amendment to address some of the land concerns was the authorisation in 1990 (Act 11) of the acquisition of land for resettlement.¹⁴ The decade of the 1990s saw the development of land programmes which, with limited success in implementation, fed into the turn-of-the-century land action that superseded legal and constitutional frameworks.

The Zimbabwe constitution had been changed not only to indigenise and offer restitution, but also, as in 1987 (Amendment No. 7), to remove the president from questioning by and accountability to parliament. Some provisions of this amendment placed the president above parliament while other provisions placed him above the judiciary in that the judiciary was denied the right to question the substance of or the process through which presidential decisions and policies were derived.¹⁵ The constitution furthermore makes provision for presidential powers ('Temporary Measures') that essentially give the president powers of rule-making equal to those of the rest of the legislature. Amendment No. 7 grants the president immunity from "being personally liable to any civil or criminal proceedings..."¹⁶ Makumbe states that this amendment concentrated so much power in the president that "he does not need either parliament or his ministers and deputy ministers in order to run the country."¹⁷ He alludes to the constitution having become an instrument of authoritarian government in the hands of the ruling ZANU-PF. He observes that many of the thirteen amendments of the

constitution of Zimbabwe that had been passed by Parliament by 1998 had tended to perpetuate the tenure of office of the ruling ZANU-PF.

The convergence of the need for an indigenous constitution and concern about presidential usurpation of power led to constitutional initiatives on the part of civil society, including those embodied in the National Constitutional Assembly (NCA) in the late 1990s. The government-sponsored reaction was the appointment of the Constitutional Commission. The draft constitution offered to the Zimbabwean electorate in the February 2000 referendum was rejected. The government, however, continued its pursuit of enhanced power on the basis of the often-amended Lancaster House Constitution.¹⁸ After the June 2000 parliamentary election, ZANU-PF no longer had a two-thirds majority, and constitutional amendments were obstructed. Increasingly, therefore, extensive presidential powers became the substitute for constitutional and law-based measures of governance.

The president of Zimbabwe throughout the period of analysis continued to enjoy a range of powers that allowed him to exercise control over the electoral process. The major law that regulates presidential powers on elections is the Electoral Act of 1990. Section 151 of this Act provides for the president to “make any such statutory instruments as he considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation connected with, arising out of or resulting from the election”.¹⁹ From the 1984 constitutional amendments (Act 4), the president had gained the right to appoint (amongst others) the members of the Electoral Supervisory Committee (ESC), judges, ombudsmen, police, defence forces and the auditor-general. In effect, the president became the sole ruler of the electoral process. The president practically appoints all of the personnel of the three core electoral institutions of Zimbabwe: the Election Directorate, the Delimitation Commission, and the ESC. In the appointment processes, the president is required to consult with specified bodies, but he is not obliged to follow their advice. These appointments seem to articulate with ZANU-PF party political patronage networks.²⁰ Sections 15 (1) and (2) afford the president the power to regulate the electoral process to the extent that he is able to suspend or amend any provisions of either the Electoral Act or any other law in so far as it applies to elections. In 1995, the president used this provision to reduce the number of categories of persons that could exercise postal ballots.²¹ These changes continued into 2002.

It is widely accepted in Zimbabwe that neither the Registrar-General nor the ESC are independent.²² The civil servants that are appointed to supervise the elections are ZANU-PF loyalists. In 2000, then-chairperson of the ESC, Elaine Raftopoulos, attempted to enforce neutrality (or, non-ZANU-PF dominance) in ESC operations. A court struggle ensued, and the results emasculated the ESC. In preparation for the 2002 election, the ESC was reconstituted with its voter education function diluted and subsequently steered away from NGO participation. The new ESC also asserted full control over election monitors.

Several authors note ZANU-PF’s methods of marginalising and eliminating opposition.²³ They provide details about ZANU-PF’s methods of dealing with opposition. Dirty tricks, electoral manipulation, and violence against opponents have been an integral part of ZANU-PF governance ever since it came to power in 1980.²⁴ What distinguishes the period of 1999 to 2002 is the extension of a multi-faceted strategy for simultaneous annihilation of the opposition and construction of a 2002 presidential electoral victory that would allow ZANU-PF to reinvent the

party and construct a new hegemony based on anti-colonial liberation discourse. ZANU-PF actions at this time comprised not only the extension of constitutional and legal provisions in order to build the space for elaborate legal-constitutional action against opposition, but also the extra-legal use of violence and coercion to enforce the envisaged hegemony a *Third Chimurenga* required. The measures also aimed at promoting ZANU-PF's longer-term project for the reconstitution of ZANU-PF as a hegemonic liberation movement government.²⁵

Constitutionalism and Zimbabwean Adaptations of Multi-party Democracy

In its 22 years of regular engagement in elections, ZANU-PF has on several occasions changed positions with regard to one-partyism, socialism, neo-liberalism, Marxism, and pan-Africanism.²⁶ In 1980, ZANU-PF campaigned as a "would-be single party of a Marxist-toned Zimbabwe"²⁷ In 1985 it followed a Marxist script that was designed to root out dissidence. By 1995, it was showcasing its adoption of ESAP. Sylvester points out that ZANU-PF has always 'iconised' itself as the torchbearer of the struggles that others might have been too weak to embrace.²⁸ In the late-1990s, this zeal converged with the mission to counter a 'multi-party onslaught' on its power (which ZANU-PF construed as the MDC, 'puppet' NGOs on media organisations, and a range of colonial and Western powers). This onslaught comprised a set of legal-constitutional and paralegal actions that would deliver electoral practices regulating election outcomes.

Some tolerance of opposition still prevailed in the 1999-2000 campaign for the constitutional referendum, despite growing ruling party intimidation of the anti-constitution activists.²⁹ In preparation for the June 2000 parliamentary elections, however, ZANU-PF launched a wide-ranging campaign of intimidating opposition, controlling the media, and mobilising voters around the issue of land. By 2002, ZANU-PF's political tolerance had further decreased, but the party paraded the formal processes and rules of multi-party elections as evidence of democracy. It also continued using the existence of a fair number of political parties (irrespective of level of political action and organisation) as evidence that Zimbabwe was a vibrant multi-party democracy.³⁰ It furthermore used the outer face of multi-party democracy to help drive its thrust for African recognition of the March 2002 elections. ZANU-PF presented a multi-pronged oppressive onslaught against electoral and civil society opposition, rendering Zimbabwe a multi-party democracy in only a nominal way. Subsequently, in the post-election period ZANU-PF threatened to continue its campaign for reduced opposition action and impact.³¹

One of the persistent anomalies of the Zimbabwean case of constitutionalism has been the ability and periodic willingness of the courts to bring government to order. Up to 2001, this was a relatively strong feature. However, pressure came to bear on certain judges to step down (including former Chief Justice Anthony Gubbay) especially from government and war veterans following judgements in cases of land redistribution.³² A phase followed in which ZANU-PF had much more assurance of a compliant judiciary. High Court judges such as Rita Makaura and Ben Hlatswayo occasionally delivered judgements that went against the ZANU-PF government. On appeal to the Supreme Court, however, ZANU-PF from 2001 to 2002 could be virtually assured of favourable judgements.

This preliminary delineation of the dualities of contemporary Zimbabwean politics highlights the extent to which Zimbabwe diverges from the principles of constitutionalism, as defined in an African context. Despite the constitutional and legal edifices, methodical constitutional disorder prevailed. Not only was the principle of constitutionalism selectively upheld, but the ZANU-PF government also felt compelled to create an elaborate edifice and pretend to operate by legal and constitutional criteria. In some instances, the edifice was proactively instituted, but more frequently the ZANU-PF government acted retrospectively to effect legalisation.

CONSTITUTIONALISM AND LEGALITY AS AN INSTRUMENT TO INFLUENCE ELECTIONS

This section analyses the range of actions that constituted the systematic multi-front ZANU-PF assault on popular and electoral action during the mobilisation of civil society, NCA, and MDC against ZANU-PF's exercise of state power. Under the burden of this opposition surge and two electoral near-defeats (see Table 1: *Zimbabwe Parliamentary and Presidential Election Results, 1980-2002*), ZANU-PF by 2002 had become increasingly vehement and elaborate in its measures to control opposition and secure its own hold on power. Beyond the broader constitutional and legal changes that led to the powerful Zimbabwe presidency, it was the far-reaching and intensifying application of legal-constitutional and oppressive-authoritarian powers, concurrent with an insistence that liberal-democratic standards were being upheld, that characterised the 1999-2002 period. This section focuses on the threefold interplay of constitutionalism-legality, unconstitutional and paralegal acts presented in the language of constitutional-legal interventions, and outright disregard of constitutionalism in the form of actions that were 'beyond the law' or paralegal.

Table 1

ZIMBABWE PARLIAMENTARY AND PRESIDENTIAL ELECTION RESULTS, 1980-2002

Number of elected seats and percentages

POLITICAL PARTY (Note 1)	1980 (Note 2)	1985	1990	1995 (Note 3)	2000	2002 Presidential election	2000 Referendum
ZANU-PF (Mugabe)	57 (63,0%)	63 (77,2%)	117 (75,4%)	118 (81,4%)	62 (48,8%)	Proportion of vote to ZANU-PF candidate: 1990: 80%	697,754 to 578,210 votes (54,7% versus 45,3% of the votes). 5 m voters
ZAPU (PF-ZAPU)	20 (24,1%)	15 (19,3%)	-	-	(0,4%)		
ZANU-Ndonga	0	1 (1,3%)	1	2	1		

(ZANU)	(2%)		(0,9%)	(6,5%)	(0,7%)	1996: 93% 2002: 57% Mugabe 1,7m Tsvangirai: 1,3m 5,6+ m voters in 2002	
MDC (Note 4)	-	-	-	-	57		
(Tsvangirai)					(47,1%)		
RF/CAZ	20	15	-	-	-		
UANC	3	- (2,2%)	-	-	-		
(from '94:UP)	(8,3%)		(0,5%)				
ZUM	-	-	2 (16,6%)	0	0		
Independent	0	5	0	1	0		
			(,34%)	(5,86%)	(2,1%)		
Forum Party	-	-	-	-	-		
(from '94: UP)							
UP	-	-	-	6,3%	0		
					(1,2%)		
ZUD	-	-	-	-	0		
					(0,2%)		
TOTAL VOTES / CONTEXT	Electorate of 2,9m	+/- 3 m votes cast for 80 'black seats'	Preceded by merger ZANU & ZAPU	Boycotts; 55 ZANU- PF seats not contested (Note 5)	Emergence of MDC, un- free context		
PERCENTAGE TURNOUT	94-98+% (Note 6)	97,3%	42,8-60% (Note 7)	53,9% (Note 8)	50% (Note 9)	55%	26%

Note 1: ZANU-PF=Zimbabwe African National Union (Patriotic Front); ZAPU: Zimbabwe African Peoples' Union; MDC= Movement for Democratic Change; RF/CAZ=Rhodesian (Republican Front/Conservative Alliance of Zimbabwe; ZUM=Zimbabwe Unity Movement (Tekere); UP=United Parties.

Note 2: Figures for the 'White Voters' Roll' elections of 1980 and 1985 are not included in this table (Saunders, 2000).

Note 3: Only 65 of the 120 constituencies were contested.

Note 4: The MDC challenged 37 of these seats; the 37 Zanu-PF constituency wins were being contested

for reversal.

Note 5: 85 of total of 150 seats therefore uncontested.

Note 6: Estimated percentage; no registration figures available (Saunders, 2000:46). Other estimates are that the percentage was closer to 94% (Booyesen, 2001).

Note 7: Estimated percentage, based on questionable ESC registration figures (Saunders, 2000:46). Other estimates are that the range of participation was between 54 and 65% (Booyesen, 2001). Sylvester (1990:376) refers to a poll of 'less than 60%'. Represents a sharp decline in comparison with turnout of 95% and above in previous elections.

Note 8: Other sources estimate participation at 57% (see Booyesen, 2001).

Note 9: Estimated that 50% of the total of 5 049 815 voters voted (Booyesen, 2001).

Sources: Saunders, 2000:38; 46; Booyesen, 2001; Sithole, 2000; selection of additional print media sources

On the eve of the 2002 presidential election, a body of repressive legislation was in place, in the name of preserving law and order as well as national security.³³ Such laws, while in many cases couched in patriotic terms, were designed to suppress opposition and pave the way for ZANU-PF's retention of power. Generally, ZANU-PF managed to keep electoral measures and processes veneered in the language and practices of legality and liberal democratic procedure.³⁴ As the civil society and party political opposition threat grew from late 1999 to 2002, ZANU-PF's counter-offensive assumed shades of demonising political opposition, anti-colonialism, and real or construed linkages between political opposition and imperialist influences. The offensive also projected ZANU-PF as a force of pro-national sovereignty and pan-Africanism. Despite what amounted to a total onslaught on opposition, the ZANU-PF government continued to publicly promote its commitment to 'free and fair' elections. Zimbabwean political and electoral authorities concentrated attention on the core aspects of the conduct of the poll. The 'ability' and 'freedom' to vote on the polling days were pegged as icons of the liberal-democratic project. Yet, beyond this narrow core of electoral action, there were extensive measures in place to subvert the opposition.

To analyse how the degrees of constitutionalism versus 'beyond the law' actions manifested themselves in the electoral domain, this section explores electoral management, the application of violence and coercion, and the ideological framing and logistical decapitation of opposition. These measures constitute the *Third Chimurenga*, or the so-called final phase of the liberation struggle that would return the land to the people.³⁵

Electoral Contests in the Context of Campaigns of Violence and Terror

In the propagation of the *Third Chimurenga*, ZANU-PF attached little value to elections as the means for the realisation of popular aspirations. Rather, the two elections became part of the means to dispose of an enemy that included, inter alia, the contesting opposition parties. At the December 2001 ZANU-PF congress, Mugabe urged supporters to view his 2002 re-election

campaign as 'total war'.³⁶ The ZANU-PF campaigns around all three of the 2000-2002 voter contests used force and coercion that ranged from direct, violent attacks on the MDC to wide-ranging projects of community terror. The urban and rural electorates in this period were subjected to widespread violence. In one of the most prominent techniques for control and coercion, the new militia (national youth trainees working for ZANU-PF) supplemented the role of the war veterans and riot police, setting up base camps close to town and villages centres to intimidate, abduct, and torture residents who were suspected of being opposition party supporters.³⁷ Community opposition was driven back into subservience and electoral abstention. Through this process, ZANU-PF regained an edge over the MDC opposition.

The project of community terror commenced in the run-up to the 2000 elections.³⁸ Base camps mushroomed from the late 2000 by-elections to the 2002 presidential elections. They were erected both in high-density urban areas and across most of the rural communal lands to house, feed and train ZANU-PF militias. The camps also became centres for re-education, intimidation, and torture. Militia activities included the setting up of roadblocks, at which soldiers, war veterans, and youths either confiscated the identity documents of citizens who could not prove ZANU-PF membership or forced the acquisition of ZANU-PF membership cards.³⁹ Some torture centres in Harare also became polling stations.⁴⁰ In other places, base camps were across the road from voting stations.⁴¹ News services reported many similar instances.⁴² In 2002, militia actions extended to the confiscation of identity cards and intimidation of voters queuing on the March polling days.⁴³

The Central Intelligence Organisation (CIO) worked closely with ZANU-PF war veterans in campaigns of terror. The CIO is funded through the "special services" category in the budget votes, and the use of these funds may not be questioned in parliament, nor may items and expenditures be scrutinised by government auditors. The estimates (2000 Zimbabwe Budget Estimates) indicated that compared with the previous year's Z\$1,2billion, this budget item would receive Z\$3 billion (a 143% increase). The war veterans are funded through the Ministry of Defence, set to receive Z\$429 million.⁴⁴

Violence was most prevalent in the provinces where the ZANU-PF grip on the electorate was seen to be loosening, especially in Manicaland and Midlands.⁴⁵ Furthermore, there was intense contestation of violence statistics as indicators of the nature of electoral procedures. The weight of evidence gave credence to allegations of systematic and extensive state violence. For instance, *The Herald* of 6 March 2002) observed that more than half of reported cases of political violence in the first 25 days of February 2002 (241) had been traced to the MDC, and 223 to ZANU-PF. University of Zimbabwe academics put the loss of lives at 107, substantially higher than police estimates.⁴⁶ Earlier in 2002, the MDC had published a list of 89 of its supporters who had died as a result of ZANU-PF attacks. Statistics from the Mass Public Opinion Institute (7 March 2002) were: 70,000 displaced, 107 killed, 397 abducted, 83 MDC rallies banned, and 5,308 opposition supporters tortured.

The processes of coercion and violence started manifesting themselves in the run-up to the February 2000 referendum. War veterans and so-called 'thug forces' then continued their electoral clean-up functions for the June 2000 elections. There were regular reports of illegal roadblocks, confiscation of identity cards, and the presence of war veterans in the vicinity of voting stations. Several rural areas were completely sealed off from the outside world. No-go

areas became frequent occurrences across Zimbabwe. *Crisis Alert* noted that ‘no-go areas’, ‘curfews’, and ‘militia road blocks’ had become part of the vocabulary of the 2002 election.⁴⁷ No-go areas were most prevalent in provinces under ZANU-PF control, especially Mashonaland West, East and Central. In Makoni-North constituency, the only form of access for the MDC was to scatter campaign literature on nearby roads at night.⁴⁸ Widespread assaults on the organisers, officials, and agents of the MDC occurred in the run-up to both the 2000 and 2002 elections, and in the intermediary by-elections.⁴⁹ Assaults, abductions and murder of activists and polling agents became commonplace.⁵⁰ Analyses of the 2000 election indicate that ZANU-PF had either encouraged or condoned electoral violence. After the 2000 election, there was an official pardon for those (overwhelmingly ZANU-PF) who had committed these acts.⁵¹

Electoral Management and Pushing the Boundaries of the Legal

The president of Zimbabwe fully utilised his constitutional and legal powers for the management of elections. The government’s measures for near-totalitarian control of multi-party elections were increasingly sharpened from the June 2000 elections onwards. This was facilitated by the exercise of executive powers, in combination with presidential control over the legislature and the judiciary. In June 2000 and March 2002, court cases and new legislation, often in the form of Statutory Instruments, emerged right up to the polling days. The rules for the conduct of elections changed and so did rules for the electoral activities of media, parties, and civil society. The changes pertained to the voters’ roll, eligibility to vote, constituency versus national bases for voting, postal voting, selection of staff for the administration and implementation of elections, the impartiality of monitors and voting staff, and responsibility for voter education.⁵²

The president of Zimbabwe appoints all core electoral personnel under the Electoral Act of 1990. These include the Registrar-General and the Electoral Supervisory Commission (ESC). The Registrar-General, Tobaiwa Mudede, is mainly responsible for implementing presidential measures and directives. Events in 2000 proved that staff “adhere or get out.”⁵³ In 2000, the ESC suffered a reduction of powers in the accreditation of monitors and observers as well as its voter education functions. Subsequent to these changes, ZANU-PF was effectively in control of voter education. In 2000, NGOs still autonomously conducted voter education. In 2002, the ESC assumed full control of all aspects of voter education, including the curriculum and the channelling of voter education funding. Furthermore, in 2002 election monitors were appointed from the ranks of civil servants or the security forces, no longer from civil society. There was also evidence that CIO staff had strategic placements within voting stations, sometimes actually marking names off the voters’ roll.⁵⁴ The 2002 Electoral Amendment Act, amending section 34 of the Electoral Act, gave the Registrar-General the power to alter the voters’ roll at any time without directly informing the voters concerned and without giving them the right to appeal.

The ‘voters roll process’ severely impacted on the ability to exercise ‘the right to vote.’ The management of this process, including decisions on eligibility, the dates for registration, displacement of voters, etc. contributed to confusion and disenfranchisement. In both the 2000 and 2002 elections, the Registrar-General’s office did not treat the voters’ roll as a public access document as is required in terms of section 18 of Zimbabwe’s 1990 Electoral Act.⁵⁵ Up to 36

hours before commencement of the 2002 poll, the final voters' roll had not been made public. Evidence of removals from the voters' roll only came to light when it was too late to challenge.

In 2002, the widespread powers of the Registrar-General facilitated the engineering of the voters' roll process to effect both disenfranchisement and selective or limited voter turnout. These actions included the Registrar-General opening the voters' roll for inspection and registration changes between 19 November and 23 December 2001. He closed it with effect from 10 January 2002. On 29 January 2002, using his powers under s94(2) of the Electoral Act, he retrospectively gazetted a later date of closure, namely Sunday 27 January 2002. After the roll was closed and in contravention of s25 (1) and s34 (1)(c) of the Electoral Act (amended by the General Laws Amendment Act), 5,000 permanent residents who had ceased to be citizens but retained their right to vote under the Constitution of Zimbabwe Schedule 3 s3 (3)(b) were excluded. The closing date of the voters roll was then further extended to 3 March 2002.⁵⁶ Even beyond this period, evidence surfaced of continuous registration (for instance in Chinhoyi). The Registrar-General claimed that voter registration at this time was part of the continuous functioning of his office and that these people were not being registered with a view to participation in the March election. Selective removals from the voters' roll also became easy after several MDC branch chairpersons in 2001 were forced to hand over MDC membership lists.

Because of terror campaigns by militias, war veterans and the hired 'thug forces', many Zimbabweans were displaced from their usual places of residence or registration, and consequently, the place to exercise their vote. The process of fast-track land reform also resulted in additional tens of thousands of farm labourers (regarded as 'totemless' because of possible Malawian or Mozambican origins) being displaced.⁵⁷ Displacement was reinforced through the March 2002 Supreme Court ruling specifying that the election would be held on the basis of constituency voters' rolls. This followed the 25 January 2002 High Court ruling by Justice Makarau that the election was to be held on the basis of a non-constituency common roll.⁵⁸ Temporary displacement was also effected through the closure of tertiary state educational institutions for the polling period (and indeed beyond). This disenfranchised large percentages of students who were registered to vote in their campus constituencies.⁵⁹

The number of 2002 voters in Zimbabwe was estimated to be 5,6 million.⁶⁰ It had been approximately 5.1 million in 2000.⁶¹ The office of the Registrar-General released the final voters' roll on the Thursday before the Saturday-Sunday March 2002 election. It was then reported that another 400,000 names were to appear on the supplementary voters' roll, and that most of these additions would be from the ZANU-PF heartland of the Mashonaland provinces.⁶²

On election days in Harare and Chitungwiza, confusion prevailed about the location of voting stations (dual or tripartite elections were to be held: for president and council, or president, mayor and council). This confusion contributed to low voter turnout. This situation contrasted with the relatively orderly dissemination of polling station information in 2000. Then the location of voting stations had been published in newspapers, albeit only a number of days prior to polling.⁶³

Disenfranchisement also happened through an overload of urban polling stations. In 2000, urban residents had approximately 50% more voting stations than in 2002 (official figures were never released). The MDC and the Combined Harare Residents Association stressed that the

reallocation of urban voting stations to rural areas effectively wrought the disenfranchisement of urban voters, in that it would have required a voting throughput of one ballot per 10 seconds in some urban areas, based on a 70% turnout.⁶⁴ The Registrar-General, in a ZBC “Face the Nation” interview on 1 March 2002, emphasised that the reduction in the number of urban voting stations was intended to assist rural people who had previously been subject to long distances of travel to the polling stations. He never gave reasons as to why there had to be a trade-off between urban and rural. This form of disenfranchisement was highly visible, especially in Harare in 2002.⁶⁵

In the final days of the 2000 election process, it was widely believed that the Registrar-General ‘manufactured’ large numbers of marked ballot papers. Counting processes in the Harare South constituency confirmed that postal ballots from the DRC, channelled into this strategic constituency, were uniformly marked in favour of the ruling party.⁶⁶ With regard to 2002, the Registrar-General on 6 February 2002 ruled that applications for a postal ballot (then still within terms of the General Laws Amendment Act) would commence on or around 7 February, and these could be returned up to the first day of polling.⁶⁷ Three days before the election, reports surfaced that army members had been required to vote in the presence of their superiors.

Amendments to the Electoral Act (ss20 and 21) also effected a form of ‘class disenfranchisement’. In 2002, one requirement to vote was proof of residence. The ZHR estimated that many lodgers and tenants in high-density areas had no lease agreements or proof of tenancy. This disqualification extended into rural areas, where traditional leaders would often have been the only persons able to vouch for residential details. Other forms of mainly urban disenfranchisement happened through ‘deregistration’ (omitting previously confirmed names off new rolls), splitting voting between presidential and municipal/mayoral votes, delaying voting processes (through go-slows, lunches, and station closures) discouraging turnout (through militia presence and nearby militia training camps), and attrition induced by long voting lines (personal observation, 10-11 March 2002). The Crisis in Zimbabwe Coalition pointed to the inflation of the voters’ roll with ‘phantom names’ that facilitated the subsequent stuffing of ballot boxes.⁶⁸ Statutory Instruments 41A-F, adopted in March 2002, had reinstated aspects of the General Laws Amendment Act which could not be implemented because of the Supreme Court nullification of the Act (28 February 2002). This law, amongst others, had limited postal votes and civil society engagement in voter education. The Statutory Instruments reinstated the restrictions.

Vote specialists also pointed to several flaws in the 2002 management of ballot papers and ballot boxes. First, the Registrar-General refused to release the details of the specific number of ballot papers that had been printed. This refusal occurred amidst opposition fears that:

- ⊙ voters in ZANU-PF heartland areas were being forced to mark ballots
- ⊙ these might be channelled into pre-loaded ballot boxes
- ⊙ ballot boxes would only be sealed at the apertures and not at the seams
- ⊙ not all ballot boxes would be screened by party agents
- ⊙ mobile voting stations would deliver ample opportunities for ballot fraud (in the form of substitution of ballot boxes *en route* between voting venues).⁶⁹

Judges of the High Court and Supreme Court of Zimbabwe played crucial roles in the implementation of ZANU-PF's election strategy. On the eve of both the 2000 and 2002 elections, the judiciary at crucial junctures offered rulings that were favourable to ZANU-PF. In 2000, the High Court ruled against appeals by the ESC. In 2002 the Supreme Court overruled the High Court's judgement in favour of voting on a national rather than constituency base. However, there were exceptions. In 2002, the High Court (Sunday 10 March) ruled in favour of extending voting by one more day. A week earlier the Supreme Court had overturned the General Laws Amendment Act, because of its unprocedural adoption. This relative balance between pro- and anti-ZANU-PF judgements, however, only illustrates the extent to which ZANU-PF did not depend on a compliant judiciary to effect many of its electoral plans. In the case of the General Laws Amendment Act, the government used Statutory Instruments to amend the Electoral Act of 1990 and instituted all of the provisions in the General Laws Amendment Act required to manage the poll in their own way, including the accreditation of monitors/observers and the conduct of voter education.

The Engineering and Ideological Framing of Opposition Election Campaigns

Beyond the legal-constitutional measures (including their adaptations, reformulations and post-defeat reintroductions), ZANU-PF made effective use of control over mass media to limit the impact of opposition and optimise the effect of the governing party. Governing party control over information combined with the constraints that it imposed on the campaign activities of the MDC, helped to ensure that voters would primarily hear ZANU-PF's interpretations of the electoral battle. Various laws, such as the Citizen Amendment Act (2001), the Broadcasting Services Act (2001), and the Access to Information and Protection of Privacy Act (2002) served this purpose.

ZANU-PF's 2000 and 2002 rural dominance was secured with a combination of measures: delivery of land to many of the previously landless and threats of war or personal retribution should ZANU-PF's rural dominance be threatened. The urban anti-ZANU-PF vote, in contrast, was largely countered through a suppression of the pro-MDC vote through the forms of disenfranchisement already outlined above and the widespread fear of either violence or war in the event of an MDC victory.⁷⁰

ZANU-PF constitutional, legal, and paralegal action hampered the MDC's ability to campaign. Restrictions ranged from its ideological demonisation by ZANU-PF to logistical issues, such as selective provision of transport to rallies. The range of legislation, including the 2002 Public Order and Security Act (POSA) and Statutory Instruments, meant that the MDC had to obtain government permission to have rallies, and that it was not allowed to provide bus transport to their rallies. ZANU-PF itself openly flouted this regulation. ZANU-PF had a virtual monopoly over public advertising space. Militias ensured that shop and taxi owners would fear for their lives and property should they either remove ZANU-PF posters or allow the MDC to display posters.⁷¹

Other constraints included accusations against the MDC leader of an assassination plot, the burning of MDC offices in Bulawayo, and several attacks on offices in Harare, continuous legal charges against MDC leaders, and the bombing of the printing presses of the MDC-sympathetic *Daily News*. Although the assassination plot allegations were soon questioned and/or dismissed,

the Mugabe 2002 presidential campaign thrived on suggestions of opposition weakness and gullibility.⁷² Whereas the independent Zimbabwe press continued to provide coverage of opposition voices, ZANU-PF enjoyed virtual monopoly access to the electronic media, such as ZBC television. Short-wave radio stations that broadcast from the United Kingdom and the Netherlands did spring up in the months preceding the election. There was little, however, that could counter the extended and established chain of government information.

'Ideological warfare' and the delegitimisation of opposition had a significant role in the electoral performance of ZANU-PF. ZANU-PF contested and manipulated both the practice and the discourse of human rights, recasting the 'individual and the 'liberal' in the context of 'African' and 'socialist'. It projected opposition challenges as reactionary, racist, colonial, and devoid of patriotism. Raftopoulos points out that whereas ordinary voters were unlikely to have been affected by the revival of ZANU-PF liberation rhetoric, the ZANU-PF-sympathetic middle and intellectual classes were substantial enough to have warranted this new ZANU-PF hegemonic project. ZANU-PF effectively used the reality of continuous colonial fault-lines of dispossession, as well as land scarcity, to construct a campaign message that "anti-ZANU-PF equals anti-land fast-tracking and reform, and equals support for reactionary forces, sell-outs and puppets of the British/Western-imperial project that wish to destroy the sovereignty of the Zimbabwean state and people."⁷³ Patriotism, nationalism, sovereignty and movement to a land-centred 'new future' were combined with a one-dimensional assignation of blame for problems on the MDC, white farmers, businesses, and their international associates.

Raftopoulos characterises this disjuncture in Zimbabwean politics as "a severe break" that had developed between the discourse and politics of the liberation struggle (as channelled through party ideologues), on the one hand, and that of the civic struggles for democratisation in the post-colonial period.⁷⁴ He observes that this friction developed in the context of a declining liberation movement that had drawn a lethal distinction between a violence driven, 'anti-imperialist' project centred on the land question, and the politics of human rights which ZANU-PF characterised as an imposition of global imperatives. The civic opposition, in contrast, had espoused its agenda largely through the language of citizenship rights, articulated most clearly in the campaign for constitutional reform. However, Raftopoulos states, "this politics of democratisation has not sufficiently negotiated its connections, as well as its differences, with the legacies of the liberation struggle."⁷⁵

Electoral observation, far from being the supposedly neutral project of assessment, became an integral part of the Zimbabwean electoral process from 2000 onwards.⁷⁶ Increasingly from 2000 to 2002, the state was engineering who the observers would be and what they would be permitted to see.⁷⁷ Observers were manipulated through delaying the processes of accreditation so that there would be an overwhelming focus on the two polling days, and, at most, the week preceding polling. The determined effort to stamp out critical electoral exposure had its first serious trial run in June 2000. There were delays and refusals in accreditation. To the extent that accreditation in 2000 did happen, it became effective only two days before the poll. Control over election observation was further fine-tuned for 2002. Large organisations such as the EU were excluded.⁷⁸ Furthermore, observers in both elections were 'self-censored'. For fear of their personal safety, they did not venture far beyond the main centres and bigger cities. Observer

missions have simply been too small, even in combined numbers, to effect countrywide coverage. Yet, most missions tended to report that their observers 'covered all province.'⁷⁹

These were elections that could not be lost by the governing party. Beyond talk of rigging in the form of stuffing ballot boxes (which remained a possibility in both 2000 and 2002), an array of measures contributed to a stacking of the odds in favour of ZANU-PF. Many of these actions occurred beyond the electoral domain. Yet, the end-result put on display was one of multi-party parliamentary elections and competitive presidential elections. These electoral actions all played out on the stage of multi-party politics, but were positioned in a world where liberal democracy was 'not enough' to address the fault lines of the state that was inherited from colonial powers. ZANU-PF mobilised several lines of action, supplementing the accepted repertoires of multi-party contestation with extra-constitutional or paralegal measures, as well as action by executive fiat and state-administrative monopoly. It might even be argued that liberal, multi-party democracy is inappropriate as a model of government, given that Zimbabwean society demands far-reaching socio-economic change, including corrections of continuing colonial fault-lines.

THE LAW OF POWER AND THE LAND IN SUPERSEDING CONSTITUTIONALISM

The 1999-2002 electoral crisis in Zimbabwe revolved around land ownership in conjunction with the unfinished business of the colonial past and the determined attempts by the former liberation movement government to maintain itself in power.⁸⁰ The brutalities attendant upon retaining power became obscured through ZANU-PF's recourse to constitutional and legal packaging for pervasive coercion and violence. On the other hand, ZANU-PF's actions to maintain itself in power took recourse to a superior morality, namely that of resisting continued and renewed colonialist intervention in Africa. Objections against the methods of ZANU-PF's actions would themselves be construed as unpatriotic and in defence of colonial powers' disregard for the continent. The land programme's violations of rights and constitutionalism were therefore offset by the illegitimacy of colonial and white settler occupation (as well as subsequent purchases and accumulation) of prime land.

ZANU-PF contextualized the turn-of-the-21st century Zimbabwean land struggles in terms of the *Third Chimurenga*, or the completion of the struggle for decolonisation and return of the land to the people. It may be argued that, out of the ashes of feared electoral loss and the problem of how to deal with war veterans, there arose a land strategy that turned elections into only a small part of the broader struggle for post-colonial justice. The unresolved issue of post-colonial land justice in Zimbabwe was undoubtedly a part of the alienation between a large proportion of Zimbabwean voters and their liberation movement government. Land action, however, also became the crux of a ZANU-PF strategy for political survival, invoking aspects of the liberation struggle ethos. Moreover, the renewed emphasis on land found resonance amongst other African leaders. The strategy of fast-tracked land redistribution from 2000 onwards would be slow to turn the economy around, but provided an inner-sanctum of post-colonial legitimacy and ZANU-PF could then use the powerful arguments of pan-Africanism to buy time. Evidence of ZANU-PF insincerity in the land project manifested itself in widespread elite manipulation of land redistribution, the fact that ZANU-PF supporters were the main

beneficiaries, and the reality that there was little facilitation or support for post-invasion agricultural and settlement initiatives.⁸¹ By early 2002, evidence started emerging that both government officials and politicians, not to mention ZANU-PF non-government functionaries, benefited on a much larger scale by gaining access to prime land.

Rupture Between Land Redistribution and Rights Issues

Many of the land actions contrast with new constitutionalism in Africa, as articulated by Shivji (1991). Mhanda observes that the “liberation struggle was driven by political, economic, social and cultural demands” and that “land distribution was just one of the key economic demands”.⁸² Raftopoulos, on the basis of major writings on the liberation struggle, notes:

A programme of violent land occupations, sanctioned by the ruling party, that abrogates other issues around political and civil rights, is at odds with an important part of the nationalist legacy. Even during the difficulties of the liberation war itself, when violence and coercion formed a central part of nationalist mobilisation, rural communities attempted to impose a moral economy of controls over the activities of the liberation forces, through traditional leaders, and long existing party structures.⁸³

The 2000 election slogan of ZANU-PF, “The Land is the Economy, the Economy is the Land” came to epitomise the convergence between contemporary economic crisis, electoral threats to ZANU-PF, and the political will to allow the liberation movement government the chance to resurrect itself. It was in December 1999, at the ZANU-PF conference, that the party realised that it would not survive politically without actions such as the land campaign.⁸⁴ Both its sliding popular fortunes and the inescapable problems of its relationship with war veterans contributed to this realisation. The reality of ZANU-PF’s position was reinforced by the constitutional referendum results of February 2000.⁸⁵

It is therefore through this extensive project of land and liberation-cum-pan-Africanism that ZANU-PF strategised for its longer-term electoral survival. Beyond the scrutiny of election observers, ZANU-PF used violence and coercion to enforce its land project because “belly dissent” was likely to escalate before there would be economic revival. ZANU-PF needed the suppression of dissent and disregard of individual rights in order to remain in power long enough to witness a reversal of electoral fortunes. Ordinary Zimbabweans talked about the need for change. Only some of this, however, was connected to the land. Inside Zimbabwe, it was predominantly the politics of the belly (hunger, unemployment, and frustration with inability to get ahead in life) that caused a large proportion of voters to desire a new government.⁸⁶ The 2002 election result, however, also demonstrated that in parts of Zimbabwe there indeed would be pro-ZANU-PF voting as an expression of gratitude for land redistribution.⁸⁷

Legal Measures on Land and Overrule by the President

Liberal democracy’s shortcoming - that it is not a panacea for economic ills - is an insufficient explanation for years of relatively little action on the issue of land justice in Zimbabwe. Up to 1997, the acquisition of land in Zimbabwe was based on a slow and cautious,

market-based approach to land reform. The 1980s did witness low-intensity land occupations, but the government discouraged these. The ZANU-PF government, in the decade between the end of Lancaster House and the 2000 referendum, had several opportunities to expedite the land reform process. Parallel to the adoption of ESAP and its effects on the Zimbabwean economy, war veterans challenged the authority of ZANU-PF and the president in 1997 by demanding gratuities for their role in the liberation struggle. This was a turning point, and the president would become increasingly reliant on violent means of mobilisation.⁸⁸

Constitutionalism became a relative value. In the language of new constitutionalism for Africa, certain individual rights (such as property rights) created the space for social and group rights.

The 2000-2002 period constituted a historical juncture that uniquely facilitated a relative breach of constitutionalism in favour of long-awaited, far-reaching land reform. The historical moment was conducive to the pardoning of 'lawlessness' by other former colonially occupied states that suffered from similar backlogs of post-colonial restitution, and by former colonial powers that suffered a mild form of colonial guilt.

To some extent, the ZANU-PF government complied with the insistence (Zimbabwean, Southern African and other international) that their land reform project should be conducted in a lawful manner. As was the case with regard to various electoral measures, however, these legal measures often only emanated after initial ZANU-PF action was followed by opposition efforts to fault the action on legal grounds. In the run-up to the 2002 elections, the Commercial Farmers Union (CFU) and individual farmers challenged the invasions, the listing of farms, and the 'fast-track' programme in the Administrative Court. The Supreme Court, however, ruled in favour of the government. It found that there was no legal basis for the Administrative Court to demand the existence of a land reform programme before it could confirm or reject government acquisition orders.⁸⁹ The government then tabled the *Rural Land Occupiers (Protection from Eviction) Bill* in April 2001 to undermine the legal efforts by the commercial farmers.⁹⁰

Opposition members of parliament dismissed the Bill as a plot to 'legalise the illegal.'⁹¹ The donor community also expressed its displeasure. According to the *Zimbabwe Independent* of 4 May 2001, diplomatic sources reckoned that the Bill undermined the goodwill created after the United Nations Development Programme visited Zimbabwe in December 2000 and the government made commitments to non-partisan, organised and transparent land reform. This prompted the United States to hasten the approval of the *Zimbabwe Democracy and Economic Recovery Act (2001)* which sought to pressure Mugabe to improve human rights, respect the constitution, restore good governance and ensure conditions for economic prosperity -- in exchange for development funding.⁹²

It is in this context that Mugabe overruled his Cabinet's support for two April 2000 High Court rulings that ordered new land settlers to withdraw from occupied farms. Freeman points out that Mugabe also brushed aside attempts by then Home Affairs Minister Dumiso Dabengwa and Deputy-President Joseph Msika to secure withdrawals from the farms.⁹³ A purge of intra-government and ZANU-PF opponents of the land programme followed. This was at a crucial point shortly before the June 2000 elections and ZANU-PF needed a project that would distinguish it from the opposition. A range of examples of paralegal action and presidential overrule can be cited. In one of the most far-reaching instances from October 2001, President Mugabe's newly constituted Supreme Court (with a new chief justice and three new

justices) reversed all previous rulings that fast-track seizures had been illegal. They stated that land reform was proceeding according to the law. This was one of the criteria of the September 2001 *Abuja Agreement*. The ruling meant that the government could now claim to be fulfilling the conditions of the Agreement.⁹⁴

'The Economy of the Land' Clashing with Constitutionalism

The new land revolution was built around the assertion that the return of rural land would be the genesis of a new Zimbabwean economy. Jobs and housing would be created in rural Zimbabwe and the stream of migration to the cities would be reversed.⁹⁵ The *Third Chimurenga* was then conceived as the struggle to give the land back to the black majority.⁹⁶ In the words of a ZANU-PF election advertisement, "Like life itself, jobs come from the land, not factories which will not be there if the land is not in the hands of the people."⁹⁷ The official denial of the importance of industrialisation belied the fact that the Zimbabwean economy depended on international trade relations and its own internal industrialisation. The land project was utopian in its assertion that it could be the basis of the future Zimbabwean economy. Moore points out that without plans for industrialisation and high wages for the urban proletariat, the 'return of the land' to a mythical peasantry is not progressive.⁹⁸

The Zimbabwe economy is now generally considered, and objectively judged by all standard macro- and micro-economic indicators, to be bankrupt. By 2002, the country was already hugely in debt, only partially and temporarily rescued by the spoils of the DRC war and temporary Libyan oil rescue missions.⁹⁹ Without a rapid economic plan to alleviate hunger, poverty, unemployment, and ensure realistic economic reversal programmes for the large urban centres, land redistribution would not win the time required for adequate numbers of Zimbabweans to feel its benefits.

The low prospects for economic revival could indicate a prolongation of the coercion prevalent in the 2000 to 2002 period. Essential neo-constitutionalist rights would remain suspended. In 2000-2002, ZANU-PF also commenced its project for the reorganisation of civil society. Working through a range of newly constituted civil society organisations such as trade unions, ZANU-PF hoped to supplement its projects of control and destabilisation of existing civil society structures with new alternative organisations.¹⁰⁰ This alternative civil society network would help the ZANU-PF state to move to lower levels of coercion and build the new hegemonic project.¹⁰¹

The longer-term suspension of core aspects of constitutionalism in Zimbabwe was also indicated by the fact that the Zimbabwean economy remained suspended between its integration into neo-liberal globalism and the pronounced 'return to socialism'.¹⁰² Extensive privatisation combined with equally extensive political elite patronage derived from interest-holding in privatised transport, telecommunications, and other industries. Nhema points out that privatisation was not initiated in a context of private sector competitiveness and this negatively affected consumers.¹⁰³ As he further observes that there were few indicators ZANU-PF might be moving away from policies of state capitalism and corporatism.¹⁰⁴ On the one hand, this could mean that despite a lack of public focus, ZANU-PF might be committed to drive both the land and the industrialisation legs of the economy. Alternatively, the fact that Zimbabwe in

recent years has 'de-industrialised' could mean that whilst industrialisation goes into a decline and the land reform project collapses, the extensive economic crisis in Zimbabwe might provide the backdrop for further deconstitutionalisation to aid political survival.

The heads of state of Southern Africa have largely supported the ZANU-PF government in its efforts to keep water and electricity flowing, to find relative approval of electoral outcomes, and to provide a cordon of support against the Western world that insisted on orderly, lawful, and gradual land reform.¹⁰⁵ One of the donor preconditions for support of land reform was that funds for 'orderly' land reform would not be released unless there was a return to the *Land Reform and Resettlement Programme* which Zimbabwe had agreed to in 1998. This agreement had specified conditions for land reform and transfer that included adherence to the rule of law, stakeholder involvement, and full compensation. Land talks with the British government collapsed on the eve of the 2000 election, when Zimbabwe refused to return to the 1998 agreement. At a September 2000 summit in Windhoek, SADC leaders endorsed Zimbabwe's land reform programme.¹⁰⁶

Conclusion

This article has analysed how the ZANU-PF government of Zimbabwe in the period of 1999-2002 used a complex combination of constitutional-legal and paralegal-supralegal measures in conducting elections and reclaiming liberation movement zeal.

On the first tier of analysis, this article emphasised the ZANU-PF government's determination to create the semblance of constitutionalism and legality, of procedural democracy, of adherence and loyalty to 'multi-party democracy'. On the second tier, however, there was an extensive reliance on the paralegal and the abrogation of fundamental rights to organise and oppose, and the denial of the constitutional right to personal security. The ZANU-PF government defended the paralegal, supralegal, and constitutional executive power excesses on the basis of its actions being lodged in the constitutional and the legal. The question arose as to the motivation for such an elaborate and concealing edifice of constitutionalism and legality.

The analysis assessed the labyrinth of interconnections between elections, land, and electoral retention of political power. An elaborate network of constitutional and legal measures was used to effect what usually would be regarded as unconstitutional, oppressive, and dictatorial. As the details of this network unfolded in the analysis, and as the effects of the measures emerged, it became clear that ZANU-PF had effected its own political survival. Through its appeals to being a constitutional multiparty democracy and having used the land campaign to effect post-colonial land justice, ZANU-PF had constructed a defence of its power which will take a substantial period - possibly an electoral term or longer - to disentangle. Through this constitutional-paralegal combination, ZANU-PF had survived a trilogy of electoral and opposition movement assaults. It had ensured that dislodging the party in the post 2002 period would be a complex and daunting endeavour.

The ZANU-PF government weighed in with an approximately equal balance between the constitutional-legal and paralegal-coercive in the two domains of elections and land. Its action in the domain of land, however, gained added immunity from African and other international sanctions through its twin appeals to continued resistance against colonialist intervention and

post-colonial land justice. The fact that some land justice had been effected, even if it had been through extra-legal and coercive measures, created a forceful legitimation of a regime that had been re-elected in a constitutionally and legally dubious manner. The great dilemma for Zimbabwe, and for many other post-colonial or neo-colonially occupied states, is to decide whether there are circumstances in which contemporary manifestations of collective and social group rights of restitution to the dispossessed should prevail over adherence to constitutional and legal procedure and justice - *if* the former cannot be achieved by means of the latter. The jury is out on whether the two had been mutually exclusive in the case of Zimbabwe 1999-2002, or whether it had been a contrived incompatibility in the name of retention of political power.

Epilogue

By March 2003, the evidence was abundant that multiple pressures were mounting on the Mugabe regime. There was, for instance, a stream of reports of negotiated efforts to get Mugabe to hand power to a ZANU-PF successor, evidence of behind-the-scenes negotiations between ZANU-PF and the MDC, the refusal by the MDC to disband its legal challenge to the 2002 election, signs of South African and Nigerian vacillation in upholding an undiluted defence of the Mugabe regime, a rapidly escalating collapse of the Zimbabwean economy, and continuous exposure of human rights violations by intelligence, security and paramilitary forces. These pressures started penetrating the cordon of invincible legality and constitutionalism, which had carried the Mugabe government through the trilogy of electoral challenges. Yet, the effect of the pressures remained uncertain and the stalemate continued. Given the political and economic exhaustion of both the MDC and the general population, combined with hunger, unemployment, and reports of fragmentation of the MDC, a range of outcomes remained possible. Possible outcomes included an internal ZANU-PF succession, Mugabe clinging to power for the rest of his presidential term, or an African-mediated cooperative interim government. By early 2003, however, a new resolution remained a distant prospect, given the intractability of the complex constitutional, legal and security entrenchment of ZANU-PF.

Notes:

1. Quoted in Shivji, I.G. (ed.) "State and Constitutionalism: A New Democratic Perspective". *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991, p. 28
2. Shivji, 1991: 46.
3. Mamdani, M. "Social movements and constitutionalism in the African context". In Shivji, I. G. (ed.) *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991.
4. Shivji, 1991: 27.
5. Shivji, 1991.
6. See Mamdani, 1991, & Shivji, 1991.
7. Mamdani, 1991: 241.

8. Makumbe, J. M. "Electoral Procedures and Processes in Zimbabwe". In Sichone, O. (ed.) *The State and Constitutionalism in Southern Africa*. Harare: SAPES Books, 1998.
9. Ibid: 64. In the 1990 election, ZUM attacked ZANU-PF for its record on land distribution, contending that the constraints that were imposed were not the sole explanation for failure to meet targets. See Sachikonye, L. "The 1990 Zimbabwe Elections: A Post-Mortem." *Review of African Political Economy*. Vol. 48: 93-99, 1990.
10. Quoted in Mandaza, I. "Perspectives on Armed Struggle and Constitutionalism: The Zimbabwe Model. In Shivji I. G. (ed.) *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991: p. 71.
11. Act 15 of 1987, which abolished the "white roll seats" from parliament.
12. Act 23 of 1987 created the executive presidency (which meant that the president could appoint top officials in government and, in effect, placed the president above the law) and Act 31 of 1989, respectively. Sithole, 2001: 161 comments on the fact that the combination of an executive presidency and strong governing party control over the legislature led to an "excessively powerful" presidency.
13. Mandaza, 1986: 39
14. Ironically, Zimbabwe emerged out of the period of constitutional constraints when it was already submerged in the constraints wrought by agreements with the International Financial Institutions (IFIs).
15. Makumbe, 1998
16. See Amendment No. 7, Section 30(1) Subsection (2).
17. Makumbe, 1998: 68
18. Ihonvbere, J. "Constitution-making and Constitutionalism in Post-Colonial Africa. *SAPEM*. August/September: 46-48, 2000.
19. For a discussion of Section 151, see Ncube, 1994:13. One of the implications is that the president could even declare election results null and void and still be constitutionally correct. The regulatory powers of the president are described in EISA, 2000: 30.
20. See Makumbe, 1998
21. Ibid
22. For the regulations regarding their appointment, see *EISA Handbook*, 2000.
23. Mandaza 1995.
24. Freeman points out that ZANU-PF's approach to the 2000 election had been unsurpassed in this genre of electoral intervention. See Freeman, L. "Gulliver in Southern Africa: South Africa and Zimbabwe in the Post-apartheid Era". Paper delivered at the University of Natal (Durban), 2001.
25. See NCA Supplement, *Zimbabwe Independent*, 10 March 2002 for a detailed exploration of the build-up of repressive legislation on the eve of the March 2002 election. See the Electoral Amendment Bill and Statutory Instruments 41A-F for full details of the formulation of these extensions, and compare these amendments and instruments with the retracted General Laws Amendment Act for the details on how the amendments and instruments virtually replace the General Laws Amendment Act, through a route which could still uphold the provisions in time for election day 2000.

26. Africa over the years has had relatively positive experiences with one-partyism. Such examples are cited as Kenya, Cote d'Ivoire, Gabon, Cameroon and Tanzania. Most African states ruled by either one party or the military, however, have not fared as well. Analysts also point out that the transitions to multi-partyism themselves are characterised by boycotts, demonstrations, strikes, violence, etc. See Songmin & Jiang, 1992: 13-16. Also see Mandaza & Sachikonye, 1991. See also Lewis Machipisa, "Mugabe plans to return to his socialist roots", *Business Day*, 16 October 2001.
27. Sylvester, C. "Whither Opposition in Zimbabwe?" *Journal of Modern African Studies*, Vol. 33: 407-423, p. 406
28. Ibid
29. Holland, S. Panel discussion. Conference of the African Studies Association of Australasia and the Pacific. University of Western Australia, Perth. 26-29 November 1999.
30. Mugabe, R. G. Address at rally, Rufare Stadium, Harare, 23 June 2000.
31. Raftopoulos, B. Interview. Harare. 11 March 2002.
32. See *EIU Country Report*, March 2001: 14-15
33. See Mottiar, S. "Effects of the New Zimbabwean Legislation on the Prospects for a Free and Fair Election." <http://www.org.za/WEP/zimbabwe-mot-1.htm>. 25 February 2002.
34. Sithole, S. and Makumbe, J. "Elections in Zimbabwe: The ZANU (PF) Hegemony and the Incipient Decline". *African Journal of Political Science*, 2(1), 1998.
35. The details below should be seen as summaries and illustrations of the state and election actions to which the paper refers. Because of the important, but contested, nature of much of the electoral practices of ZANU-PF, the rest of this section provides as much detail as possible within constraints of space.
36. *Southern African Reports*, 5 January 2002, p. 7
37. Alternately, they have been called the "Green Shirts", or the "Green Bombers". Amnesty International, 2000 provides an overview of terror tactics in the run-up to the 2000 elections. The report also focuses on the range of rights that were infringed.
38. Freeman, L. 2001
39. See M. Sayagues in *Mail and Guardian*, 1 July 2000.
40. South African observer, Interview, *Die Burger*, 15 March 2002.
41. For example, in Glenview 3 Shopping Centre, Budiriro constituency, Personal observation by the author, 10 March 2002.
42. See *Jo-Ann McGregor e-newsletter*, 8 February 2002, regarding similar occurrences in Chivhu.
43. Personal voter interviews Avondale and Glenview; *The Daily News*, 12 February 2002
44. These figures are all dwarfed by the Z\$19,8 billion in requested food aid, as requested by Minister of Finance and Economic Development, Simba Makoni, from the UNDP in *The Mirror*, 12 November 2001. A further Z\$14,4 billion would come from the Zimbabwean government.
45. Sachikonye, L. Address to a meeting of the Mass Public Opinion Institute, Monomotapa Hotel, Harare. 7 March 2002.
46. Mass Public Opinion Institute meeting, 7 March 2002.

47. Crisis Alert, 22 February 2002, p. 6 also published a list of 77 recorded youth paramilitary training bases. Also see *Crisis in Zimbabwe Coalition, Briefing paper* No. 5: 2-3.
48. *Special Assignment*, SABC, 6 March 2002.
49. Booyesen. S. "Multi-stage Monitoring and Declaring Elections Free and Fair: The June 2000 Zimbabwe Election." *Journal of African Elections*. Vol. 1 (2), 2002a.
50. See *Special Assignment*, SABC, 5 March 2002; and *Zimbabwe Independent*, 8 March 2002.
51. Clemency Order No. 1 of 2000. The Human Rights Forum estimated that 90% of human rights violations that occurred during the election were pardoned. By November 2000 a total of 111 individuals who had been implicated had been released. The MMPZ, 2001: 42 reported that 90% of the more than 1000 violent incidents were attributable to ZANU-PF supporters.
52. Ruhanya, P. "MDC wins poll case." In *J. McGregor Newsletter*, 28 February 2002.
53. Interview Elaine Raftopoulos, former ESC chairperson (sidelined days before the 2000 election, after questioning government actions regarding ESC operations), June 2000.
54. Mhanda, W. Interview, Harare. 12 March 2002. (Mhanda is the leader of the Zimbabwe Liberators' Platform and former commander of the ZIPA group).
55. *ZHR NGO Forum*, 2002
56. *Zimbabwe Independent*, 8 March 2002.
57. *BBC World*, 17 September 2001, reported on this dimension of inclusion and exclusion in Zimbabwean politics.
58. *ZHR*, 2002.
59. Ibid
60. Mudede, T. 1 March 2002. *Face the Nation*. Interview on ZBC.
61. *EISA Briefing Document*, May 2000
62. *Zimbabwe Independent*, 8 March 2002. Renewed contestation of figures on the size of the March 2002 electorate emerged in early 2003. Census data then revealed the size of the Zimbabwean population as 11,6 million. An electorate of 5,6 million means that 48,28% of Zimbabwe's population is over 18 years of age and eligible to vote. See *Daily News*, 10 March 2003.
63. *The Daily News*, 21 June 2000
64. Combined Harare Residents' Association. Introductory speech. Harare, 5 March 2002.
65. Personal observation by author, 10-11 March 2002.
66. Personal observation, 26 June 2000; Also see Booyesen, 2001.
67. See *ZHR*, 2002.
68. *Election Bulletin 2*, 2002.
69. See *ZHR*, 2002: 6
70. For a comparison of Mugabe's urban versus rural election campaign of March 2002, see *Moto*, March 2002. The analysis points out that Mugabe was not intending to give up power - despite leading Zimbabwe through a futile one-party state, and the disastrous ESAP with its massive inflation and the DRC project, which finished off the ailing economy.

71. Interviews with shop-owners in Mufakose, March 2002; Crisis in Zimbabwe Coalition, 10 March 2002.
72. For details on the alleged plot, see Jo-Ann McGregor e-newsletter, 15 February 2002; ZBC 1 special broadcast, Sunday 3 March 2002. For other examples of charges against the opposition leadership, see *EIU Country Report*, March 2001: 13.
73. Raftopoulos, 2002.
74. Raftopoulos, B. "The State in Crisis: Authoritarian Nationalism, Selective Citizenship and Distortions of Democracy in Zimbabwe." Paper. Institute of Development Studies, University of Zimbabwe. Harare, 2001, p. 16.
75. Ibid
76. Booyesen. S. "Multi-stage Monitoring and Declaring Elections Free and Fair: The June 2000 Zimbabwe Election." *Journal of African Elections*. Vol. 1 (2), 2002a; Booyesen. S. "In the Crossfire of Zimbabwe's War for Political Survival". *Africa Insight*. Vol. 32(3), 2002b; (also see Pottie, D. "Parliamentary Elections in Zimbabwe, 2000." *Journal of African Elections*. Vol. 1(1): 61-70, 2001)
77. See *Africa Research Bulletin*, 1 November 2001: 14628-9.
78. See *Irin News*, 8 February 2002
79. For instance the South African Observer Mission; see *Sunday Times*, 17 March 2002.
80. The land reform process was controlled out of the office of President Mugabe, bringing together the Central Intelligence Organisation (CIO), senior officials of ZANU-PF, provincial governors, senior army officers (led by General Perence Shiri and retired Brigadier Ben Matanga), top police officers and the Liberation War Veterans" Association (first under the late Chenjerai Hunzvi, and later led by Joseph Chinotimba). The implementation forces comprised large numbers of war veterans and associated forces that in 2000 included the so-called "thug-forces" of unemployed Zimbabweans that were recruited from the ranks of the unemployed, party officials, and provincial governors. In many instances, security forces supplied active and passive (guarantees of no intervention) back-up. Also see S. Moyo, 2003: 59-75.
81. Ankomah provides an exposition of the ZANU-PF justifications of and figures on officials and government ministers that have benefited ("less than 10%"). See Ankomah, B. "Righting Colonial Wrongs". *The Sunday Mail*, 10 March 2002. Also see *Crisis in Zimbabwe Coalition*, 2003.
82. Quoted in Raftopoulos, 2001: 1
83. Raftopoulos, 2001: 1
84. Noko, E. Interview. June 2000. Noko is Permanent Secretary of Foreign Affairs, ZANU-PF.
85. For more details, see Moore, 2000; 2001. In the referendum, ZANU-PF's draft constitution was defeated by 697,754 to 578,210 votes (54,7% versus 45,3% of the votes).
86. For the official forecasts of increased food production on the basis of land resettlement, see *Africa Confidential*, 10 August 2001:5). In contrast, in the late 2001 budget speech, it was noted that the agricultural sector would undergo a major decline -- of 12,2%, as opposed to the earlier estimate of 9,5%. See *Africa Research Bulletin*, 16 October 2001: 14968.

87. Mandaza, 2002 noted in analysing the March 2002 election trends that constituency swings from MDC (2000) to ZANU-PF (2002) have occurred in a number of regions that had benefited from land reform.
88. Raftopoulos, 2001: 11
89. *The Herald*, 03 July 2001
90. The purpose of the Bill was to restrict or suspend, for a certain period, legal proceedings for the eviction of occupiers of rural land who by 1 March 2001 occupied land in anticipation of being resettled and would still be occupying that land at the time of the enactment of the Bill. See *Extraordinary Government Gazette*, April 2000.

91. Parliamentary Debates, 2001: 7311.
92. *Zimbabwe Standard*, 15 July 2001.
93. Freeman, 2001
94. *EIU Country Report*, December 2001: 13; *Africa Confidential*, 23 November 2001.
95. Noko, 2000
96. *The People's Voice*, 23 February 2002.
97. *The Herald*, 4 March 2002.
98. Moore, D. "The Zimbabwe Crisis: An Original Twist on the Problem of Primitive Accumulation, State Formation and the Universalisation of Property Rights in the Era of Neo-liberal Globalisation". Paper, African Association of Political Science. Fort Hare, 2000. See also Moore, D. "Is the Land the Economy and the Economy the Land? Primitive Accumulation in Zimbabwe" *Journal of Contemporary African Studies*, 19 (2): 253-266, 2001; Moyo, S. "The Political Economy of Land Acquisition and Redistribution in Zimbabwe: 1990-1999," *Journal of Southern African Studies*. 26(1): 1-28, 2000; and Kinsey, B. "Land reform, Growth and Equity: Emerging evidence from Zimbabwe's Resettlement Programme", *Journal of Southern African Studies*, 25,2: 173-96, 2000.
99. This contrasts with evidence of individual enrichment of Zimbabwean officials and politicians. See *Southern Africa Report*, 18 January 2002; *Africa Confidential*, 20 April 2001; Venter, 2000: 2-3.
100. Nhema, A. G. *Democracy in Zimbabwe: From Liberation to Liberalization*. Harare: University of Zimbabwe Publications, 2002. See also Saunders, R. "Never the Same Again: Zimbabwe's Growth Towards Democracy, 1980-2000. Harare: Edwina Spicer Productions, 2000.
101. Raftopoulos, 2002
102. See Machipise, L. "Mugabe plans to return to his socialist roots", *Business Day*, 16 October 2001.
103. Similarly, price controls were instituted by the ZANU-PF government in the face of scarcities of principal, mass consumer foodstuffs. But control could not ensure supply.
104. Nhema, 2002
105. President Thabo Mbeki of South Africa has, on several occasions refrained from criticising the Zimbabwe land strategy, emphasising that the problem is, first and foremost, the issue of the land. See, for example, *Southern Africa Report*, 26 April 2000:1. Also see Booyesen, 2002b.

106. Freeman, 2001 points out that the representatives of Southern Africa ruling parties met in October 2000 to “plot strategies to reinvigorate the glory of past struggles against colonial and white minority rule.”

References

Amnesty International. *Zimbabwe: Terror Tactics in the Run-up the Parliamentary Elections, June 2000*. London, 2000.

Ankomah, B. “Righting Colonial Wrongs”. *The Sunday Mail*, 10 March 2002.

BBC World: Africa. “Living on the Front-line -- Storm clouds gather for farm workers”. 17 September 2001.

Booyesen. S. “Multi-stage Monitoring and Declaring Elections Free and Fair: The June 2000 Zimbabwe Election.” *Journal of African Elections*. Vol. 1 (2), 2002a.

Booyesen. S. “In the Crossfire of Zimbabwe’s War for Political Survival”. *Africa Insight*. Vol. 32(3), 2002b.

Chege, M. “Between Africa’s Extremes.” *Journal of Democracy*. Vol. 6(1): 44-51, 1995.

Combined Harare Residents' Association. Introductory speech. Harare, 5 March 2002.

Electoral Institute of Southern Africa. Briefing Document for SADC-ECF Election Observers, 2000a.

Electoral Institute of Southern Africa (EISA). *A Handbook of Zimbabwe Electoral Laws and Regulations*. Johannesburg: EISA, 2000b.

Freeman, L. “Gulliver in Southern Africa: South Africa and Zimbabwe in the Post-apartheid Era”. Paper delivered at the University of Natal (Durban), 2001.

Holland, S. Panel discussion. Conference of the African Studies Association of Australasia and the Pacific. University of Western Australia. Perth. 26-29 November, 1999.

Ihonvbere, J. “Constitution-making and Constitutionalism in Post-Colonial Africa. *SAPEM*. August/September: 46-48, 2000.

Kinsey, B. “Land reform, Growth and Equity: Emerging evidence from Zimbabwe’s Resettlement Programme”, *Journal of Southern African Studies*, 25,2: 173-96, 2000.

Machipise, L. “Mugabe plans to return to his socialist roots”, *Business Day*, 16 October 2001.

Makumbe, J. M. "Electoral Procedures and Processes in Zimbabwe". In Sichone, O. (ed.) *The State and Constitutionalism in Southern Africa*. Harare: SAPES Books, 1998.

Mamdani, M. "Social movements and constitutionalism in the African context". In Shivji, I. G. (ed.) *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991.

Mamdani, M. "When does a Settler Become a Native? Reflections of the Colonial Roots of Citizenship in Equatorial and Southern Africa". Inaugural Lecture. University of Cape Town. 13 May 1998.

Mandaza, I. Introduction, In Mandaza, I. (ed.) *Zimbabwe: The Political Economy of Transition: 1980-1986*. Dakar: Codesria Book Series.

Mandaza, I. & Sachikonye, L. (ed.) *The One-Party State and Democracy: The Zimbabwe Debate*. Harare: SAPES Books, 1991.

Mandaza, I. "Perspectives on Armed Struggle and Constitutionalism: The Zimbabwe Model. In Shivji I. G. (ed.) *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991.

Media Monitoring Project Zimbabwe (MMPZ), "A Question of Balance: The Zimbabwean Media and the Constitutional Referendum", 2000.

Media Monitoring Project Zimbabwe (MMPZ); "Election 2000: The Media War", Harare, 2001.

Mhanda, W. Interview, Harare. 12 March 2002 (leader of the Zimbabwe Liberators' Platform; former commander of the ZIPA group).

Moore, D. "The Zimbabwe Crisis: An Original Twist on the Problem of Primitive Accumulation, State Formation and the Universalisation of Property Rights in the Era of Neo-liberal Globalisation". Paper, African Association of Political Science. Fort Hare, 2000.

Moore, D. "Is the Land the Economy and the Economy the Land? Primitive Accumulation in Zimbabwe" *Journal of Contemporary African Studies*, 19 (2): 253-266, 2001.

Mottiar, S. "Effects of the New Zimbabwean Legislation on the Prospects for a Free and Fair Election." <http://www.org.za/WEP/zimbabwe-mot-1.htm>. 25 February 2002.

Moyo, S. "The Political Economy of Land Acquisition and Redistribution in Zimbabwe: 1990-1999", *Journal of Southern African Studies*. 26(1): 1-28, 2000.

Moyo, S. "Land reform in Zimbabwe." *New Agenda*, 9: 59-75.

Mudede, T. 1 March 2002. *Face the Nation*. Interview on ZBC.

Mudedede, T. 6 March 2002. Press Conference for Election Observers. Harare.

Mugabe, R. G. Address at rally, Rufare Stadium, Harare, 23 June 2000.

National Constitutional Assembly (NCA), Press statement, 7 March 2002: "NCA deplores the desperate attempts by government to rig the presidential elections."

Ncube, W. "A review of electoral law and institutions in Zimbabwe". In *ZimRights Bulletin*, December 1994.

Nhema, A. G. *Democracy in Zimbabwe: From Liberation to Liberalization*. Harare: University of Zimbabwe Publications, 2002.

Noko, E. Interview. Permanent Secretary of Foreign Affairs, ZANU-PF. June 2000.

Pottie, D. "Parliamentary Elections in Zimbabwe, 2000." *Journal of African Elections*. Vol. 1(1): 61-70, 2001.

Raftopoulos, B. "The State in Crisis: Authoritarian Nationalism, Selective Citizenship and Distortions of Democracy in Zimbabwe." Paper. Institute of Development Studies, University of Zimbabwe. Harare, 2001.

Raftopoulos, B. Interview. Harare. 11 March 2002.

Raftopoulos, E. Interview. Harare, 15 June 2000.

Ruhanya, P. In J. McGregor Newsletter. 28 February 2002. "MDC wins poll case."

Sachikonye, L. "The 1990 Zimbabwe Elections: A Post-Mortem." *Review of African Political Economy*. Vol. 48: 93-99, 1990.

Sachikonye, L. Address to a meeting of the Mass Public Opinion Institute, Monomotapa Hotel, Harare. 7 March 2002.

Saunders, R. "Never the Same Again: Zimbabwe's Growth Towards Democracy, 1980-2000." Harare: Edwina Spicer Productions, 2000.

Shivji, I.G. (ed.) "State and Constitutionalism: A New Democratic Perspective". *State and Constitutionalism: An African Debate on Democracy*. Harare: SAPES Books, 1991.

Sithole, M. "Zimbabwe's eroding authoritarianism". *Journal of Democracy*, 8(1): 127-141, 1997.

Sithole, S. and Makumbe, J. "Elections in Zimbabwe: The ZANU (PF) Hegemony and the Incipient Decline". *African Journal of Political Science*, 2(1), 1998.

Sithole, M. "Fighting Authoritarianism in Zimbabwe". *Journal of Democracy*. Vol. 12(1): 1601-169, 2001.

Songmin, Z. & Jiang, L. "Africa challenged by Political Pluralism." *Beijing Review*. Vol. 35 (July): 13-16, 1992.

SouthScan. "Zimbabwe: More pressure on the economy as Pretoria cuts credit insurance". Vol. 13. 28 January 2000.

Special Assignment, 6 March 2002, Analysis of the March 2002 Zimbabwe Presidential Election.

Sylvester, C. "Whither Opposition in Zimbabwe?" *Journal of Modern African Studies*. Vol. 33: 407-423, 1995.

Venter, D. *Zimbabwe Before and After the June 2000 Elections: An Assessment*. Pretoria: Africa Consultancy Research, 2000.

Zimbabwe Human Rights (ZHR) NGO Forum, Research Unit, Briefing Paper No. 1: "Pre-election danger signals of large-scale disenfranchisement". Harare.

Zimbabwe Constitution, Legislation and Special Measures:

Budget Statement 2001, Minister S. Makoni, 16 November 2000.

Electoral Amendment Bill. Harare: Government Printer, 2002

Statutory Instruments 41A - F2002. Harare: Government Printer, 2002.

Newspapers and Current Affair journals:

Africa Confidential; Africa Research Bulletin; Crisis in Zimbabwe Coalition / Election Bulletins; Die Burger; Economist Intelligence Unit: Country Reports; IRIN News; Jo-An McGregor e-newsletter; Mail & Guardian; Moto, March 2002. Issue No. 230; New African; Southern Africa Report; The Daily News; The Economist; The Herald; Zimbabwe Independent; The People's Voice; Zimbabwe Standard; The Sunday Mail; Zimbabwe Independent; Zimbabwe News, Vol. 32(10). ZANU-PF Department of Information and Publicity.

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