

**DECLARATION**

I, **Gabriel Shumba**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously in its entirety or in part been submitted and is not currently being submitted either in whole or in part at any university for a degree or diploma, and that all references are acknowledged.

**SIGNED** on this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

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**Gabriel Shumba (Candidate)**

I, **Edward Kofi Quashigah**, supervisor hereof, have read this work and approved it for partial fulfillment of the requirements for **Masters of Law Degree (Human Rights and Democratisation in Africa)** of the **University of Pretoria**, South Africa.

Signed this \_\_\_\_ day of \_\_\_\_\_ 2002

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**Edward Kofi Quashigah**  
(Supervisor)

## **DEDICATION**

1. **Daniel Rusere Chikambure Shumba:** Carry on, Inspirational Father.
2. **Retinah Rusere Chikambure Shumba:** Chengetai Vana Hovedzainda.
3. **Mai na Remedzai Neridah (Kitsi) Shumba:** Your support and loyalty are unparalleled.
4. **Mrs S Mantiziba:** Without you, I wouldn't be writing this.
5. **Mary Austin & John Ayton:** Mom and Dad in deed.
6. **Bethel, Mordekai and Bishop Shumba:** Where there is a will, there is a way.
7. **Togwirei (Mushavi) Ruzengwe, Learnmore Jongwe:** (In ideas: Enemies cum friends) - You left me a torch I will try to hold untiringly high: **Human rights for Zimbabwe.**

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**LIST OF ABBREVIATIONS**

ACHPR.....	AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS.
ACHPR.....	AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS.
AU.....	AFRICAN UNION.
CERD.....	CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION.
ECOWAS.....	ECONOMIC COMMUNITY OF WEST AFRICAN STATES.
ICCPR.....	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.
ICESCR.....	INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS.
CPRW.....	CONVENTION ON THE POLITICAL RIGHTS OF WOMEN.
NEPAD.....	NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT.
NGOs.....	NON-GOVERNMENTAL ORGANISATIONS.
OAU.....	ORGANISATION OF AFRICAN UNITY.
OSCE.....	ORGANISATION OF SECURITY AND CO-OPERATION IN EUROPE.
SADC.....	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY.
UDHR.....	UNITED NATIONS DECLARATION ON HUMAN RIGHTS.
UN.....	UNITED NATIONS.
UNHR.....	UNITED NATIONS CENTRE FOR HUMAN RIGHTS.
UNHRC.....	UNITED NATIONS HUMAN RIGHTS COMMITTEE.
ZHRF.....	ZIMBABWE HUMAN RIGHTS NGO FORUM.
ZBC.....	ZIMBABWE BROADCASTING CORPORATION.
ZNA.....	ZIMBABWE NATIONAL ARMY.
ZLWVA.....	ZIMBABWE LIBERATION WAR VETERANS

## ASSOCIATION.

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## CHAPTER ONE: GENERAL OVERVIEW

### 1 GENERAL INTRODUCTION

#### 1.1 Introduction and justification

This study is a comparative analysis of how free and fair recent presidential elections in two African countries were.<sup>1</sup> On a wider frame, the yardsticks used in this work are international norms and principles that govern the conduct of elections. Recourse is also made to regional instruments and norms where appropriate.<sup>2</sup> The case study will focus on Zimbabwe, representing the Southern African Development Community (SADC) and Ghana, representing the Economic Community of West African States (ECOWAS). The reasons for selecting these countries only are given below.<sup>3</sup>

Zimbabwe held a crucial Presidential Election between the 9<sup>th</sup> and 11<sup>th</sup> of March 2002. Ghana held its Presidential and Parliamentary Elections in the year 2000. With regard to Ghana, It is the Presidential runoff that took place on the 28<sup>th</sup> of December 2000 that will be the subject of this investigation. Both elections were momentous in that they were heralded by unprecedented and cataclysmic events in the two countries' post-colonial scenario.

In the case of Zimbabwe, the Presidential Election attracted such singular international interest that the question of sovereignty that had hitherto never been raised regarding the conduct of elections became a topical issue in domestic, regional and international fora. Furthermore, human rights concerns that had characterized the 2000 Parliamentary elections paled into insignificance by comparison.

In Ghana, the Election was 'arguably the most important since independence in 1957'.<sup>4</sup> Indeed, the election was so important that it is characterised locally as 'Ghana's second

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<sup>1</sup> The term 'free and fair' will consistently be used broadly to include allied elements of transparency, genuineness and legitimacy of the process.

<sup>2</sup> International standards have been chosen on the grounds that they are universal and have wider application. Moreover, regional standards sometimes fall short of the standards set by international provisions. (In saying that they are universal though, we are not trying to advocate for the universalist as opposed to the cultural relativist approach to human rights. The debate is too involved for this study and generally serves little purpose except to justify excesses by governments in most instances. For a discussion of these approaches see Benhabib (ed) (1996) part 4. For arguments supportive of the cultural relativist approach see generally Cassese (1990) who says that universality is 'at least for the present' a myth. See also Mutua in Quashigah and Okafor (1999) 109.

<sup>3</sup> See 'Scope and limitation of the study'.

<sup>4</sup> Ayee and others (ed) (2001), as per the preface thereto.

independence'.<sup>5</sup> The reason the election was crucial is that it marked the exit of the country's longest serving head of state.<sup>6</sup> The election also marked a smooth transition in a democratic process that ushered in an opposition party into office.

Because these elections were of profound interest not only in the countries they were held but also in Africa and internationally, examining the regulatory framework of the elections as well as their human rights context is not only of academic importance to scholars of political science and democratisation but also of practical relevance to human rights defenders, political parties and the voting public. Below we raise the questions that motivated this study.

## 1.2 Research questions/hypothesis

It has been asserted that Africa is not yet ripe for democracy. We have picked on two demonstrative elections in the African electoral environment to scrutinise the validity of this statement. Although they are not representative *per se*, it is submitted that in their uniqueness, the elections show whether Africa is capable of substantive, institutional and procedural compliance with the dictates of democracy. In this respect, this research attempts to answer whether elections in Africa are regulated by a different set of standards from the rest of the world and if so, whether this is desirable.

Put differently, did the elections in the respective countries conform to international norms and principles? This begs the question: if they did not, was this because of some peculiar set of circumstances and characteristics in the domestic realm, that is, why were these elections different? If the reasons the election was different in one of the countries are unconscionable, it should be possible to find out whether there is no room for improvement in the future. On the other hand, if the election was different in a progressive way, lessons for improving electoral regimes might be drawn from the experiences of both or either of these countries.

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<sup>5</sup> Gyimah-Boadi 'The December 2000 Elections and prospects' in Ayei above 70.

<sup>6</sup> Jerry Rawlings ruled the country for 19 years.

### 1.3 Aims and objectives

This analysis aims to critique the elections in the light of international human rights standards guiding electoral practices. It also measures them against democratic norms prevailing in the global environment. Consequently, it is envisaged that this will help human rights practitioners, scholars and political scientists studying electoral institutions to contextualise the events and appraise them against the democratic ethic that Africa is aspiring towards. The elections as models can then be either accepted or rejected in contributing to the improvement of domestic or regional systems.<sup>7</sup>

It is also hoped that the analysis will provide lessons for future practices on the continent, not only to organisations and individuals involved in the study and monitoring of electoral practices but also to politicians, their political parties and the citizens of the countries involved. This work is significant to the intended beneficiaries if we consider that it is produced in a special context for the continent.

### 1.4 Context of the study

There is a growing recognition that issues of development cannot be divorced from democracy, the rule of law and good governance.<sup>8</sup> Although there seems to be no clear agreement as to what constitutes democracy<sup>9</sup>, it is still recognised that contestation and participation are some of its key attributes.<sup>10</sup> However, contestation and participation have to be genuine if they are to have meaning. Following from that, it can be noted that the 'stability of democracy not only needs functioning institutional structure, but also congruent political culture, which involves participation of the people'.<sup>11</sup>

With the advent of the New Economic Partnership for Africa's Development (NEPAD) as well as the African Union (AU), Africa seems to be ready to join the global drive for economic development and the provision of better amenities for the less privileged in

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<sup>7</sup> Individual aspects of the elections may be dealt with likewise.

<sup>8</sup> De Waart 'Implementing the right to development: The perfection of democracy' in Chowdhury and others (eds) (1992) 191 192-196. The World bank (WB) and the International Monetary Fund (IMF) seem to have recognised this when they began to attach conditional ties to loans, see for example World Bank (1994) *Technical Paper NO. 254* as quoted in EK Quashigah & OC Okafor (1999) 35. See also International Institute for Democracy and Electoral Assistance (IIDEA) (1996) 2.

<sup>9</sup> Wiseman (1996) 7-8 and IIDEA, as above.

<sup>10</sup> Huntington (1991) 6 and RR Dahl (1956) 125. Generally see also Schumpeter (1950).

society. We opine with confidence that such development will never be possible in the face of indolent commitments to democracy and all its attributes, including free and fair elections. Social stability and economic prosperity will remain a dream if only lip service is paid to democracy. For that reason, this study is undertaken in the context of the challenges made by the desire for economic advancement and democratic aspirations manifesting themselves on the African arena. Below we examine the scope of this thesis.

### **1.5 Scope and limitation of the study**

It must be stated that issues of democracy, good governance and the rule of law are so controversial and nebulous that it would require several tomes to explore them.<sup>12</sup> Even then, it would still be difficult, if not impossible, to exhaust the debate surrounding the issues. Thus, this study does not make any pretension to being a treatise on those concepts. Indeed, when and where they feature, it is only to contextualise the three elections, taking into account the central values generally agreed to constitute democracy and human rights.

Furthermore, a study of this scope exhaust all the aspects related to elections. Elections are not an event but a process. As such they are ordinarily adjudged free and fair or foul after recourse to several considerations. These span a pre-election, election and post-election environment of at least six months. Accordingly, reference will be made to the pertinent human rights concerns arising out of the elections instead of dealing exhaustively with the institutional or procedural arrangements where they do not directly impact on the human rights and legal aspects underlying the process.

By the same token, regional standards will be made reference to when it is compelling. Since most regional instruments have adopted the language of international conventions and norms, we will be referring more to the latter. However, this should not prevent us from making a comparative analysis where it is called for.

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<sup>11</sup> IIDEA (1996) 41.

<sup>12</sup> Academics have posited a set of mutually incompatible conceptions of democracy, but it cannot be ignored that there are core values underlying the concept. We agree with Beetham (1999) 7-12 who sees these as human autonomy or self-determination and public utility.

Lastly it is important to point out that although the writer was present in Zimbabwe during the significant period, it was not feasible to observe the Ghana elections. Thus, heavy reliance had to be placed on written material as well as the Internet. In spite of that, it was an added advantage that at the time of writing, the author was attached to the Ghana Electoral Commission.

## **1.6 Research methodology**

This study involved the employment of the following methods of data collection: international legal instruments, case law, texts, domestic legislation, the Internet, the writer's election observation experience, interviews as well as newspaper reports. Some of the literature found useful is summarised below.

## **1.7 Literature review**

Considering that the subject deals with democracy in the institutional and procedural sense, the literature consulted is limited to that which attempts to explain the notion of democracy and human rights, as well as that dealing directly with the elections.

Beetham examines the current debate on democracy and human rights at the domestic and international levels.<sup>13</sup> He defines and suggests principles for auditing democracy. He also explores the notion of universality of democratic norms and concludes that there are some values that are clearly universalist and standard setting in nature. Some of the questions he answers include whether liberal democracy is the only version possible and whether economic and social rights are important in the human rights paradigm. This work has been important in establishing the parameters within which an assessment of the elections was possible.

Quashigah and Okafor investigate and assess legitimacy in governance within specific African states.<sup>14</sup> They also examine the historical development of the African state since pre-colonial times, particularly the checks and balances that ensure compliance with the will of the people. Some contributors touch on the issue of the universality or otherwise of the Western liberal notion of democracy. Lindholt deals with the same subject in selected

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<sup>13</sup> As above.

<sup>14</sup> As in n 2 above.

chapters of her work.<sup>15</sup> These two books furnish an African dimension to the whole debate on what constitutes democratic practice as well as tackle the question of when legitimacy begins and when it ends.

While Goodwin-Gill has been of enormous importance in providing the standards for free and fair elections and a comprehensive wealth of comparative practices from all over the world,<sup>16</sup> the United Nations Centre for Human Rights (UNHR) also has a wide reference to international human rights norms within the UN system.<sup>17</sup> With the help of these two books, it has been possible to look at the elections in the countries under review with a helicopter view.

Ayee and others make a very comprehensive analysis of the Ghana election in the context of international norms.<sup>18</sup> Whilst the Zimbabwe Lawyers for Human Rights *Bulletins* that are cited offer a general picture of the human rights situation in Zimbabwe, reports by the Commonwealth Secretariat and the Zimbabwe Human Rights NGO Forum offer interesting insights into the view of observers on the Zimbabwe election.

There are other sources that have been acknowledged in the text or are recognised in the bibliography. However for want of space, it shall not be possible to give a summation of all of them. All in all, the literature that already exists articulates the standards and criteria through which the elections in the spotlight should be judged.

## **1.8 Theoretical framework and historical overview**

### **1.8.1 Overview**

Political rights have a long history in the development of civilisation. Even before we knew political rights as they are known today, subjects in many polities had rights and mechanisms through which to remove unpopular rulers. In pre-colonial Africa for example,

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<sup>15</sup> Lindholt (1997).

<sup>16</sup> Goodwin-Gill (1994).

<sup>17</sup> UNHR (1994).

<sup>18</sup> Ayee and others (2001).

a ruler had to earn respect or s/he could be dethroned, banished from the kingdom or killed.<sup>19</sup> Thus, the scenario opened rights and obligations that were enforced through a multifaceted system of checks and balances.<sup>20</sup> Around the same time, European and American political systems underwent a revolutionary transformation regarding the rights of the citizens to decide their own rulers and the political system that they would be governed by.<sup>21</sup>

### 1.8. II Development of the right to vote in the United States

In America, the right to vote in the 1660's was restricted to all males over 21. These had to be of 'peaceable and honest conversation'. Another limitation was that the citizens be 'freemen' and 'freeholders'. This meant that one had to own property as well as be free in the sense that one was not a slave. Freehold requirements were however dispensed with in 1775 when New Hampshire extended the vote to all taxpayers. Nevertheless, the right was not extended to women, blacks, Indians, Quakers, Jews, ex convicts, servants and Catholics.<sup>22</sup> In New England, one had to belong to the 'right' Church to be eligible to vote.

As the gap between the rich and the poor grew, some freemen were disenfranchised. By 1700, one needed some length of residency to vote. In New York this translated to 3 months. In Pennsylvania and Delaware, one needed a period of two years residency.<sup>23</sup>

After the revolution, the pressure to extend franchise mounted. Compromises were made through the creation of a House of Representatives whose members were elected directly. Women continued to be restricted until 1969 when Wyoming granted them the right to vote for governor. In Ghana however, white women had obtained the vote in 1954. They had also obtained suffrage in 1957, in Zimbabwe, and by 1978 they were able to stand for election.<sup>24</sup>

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<sup>19</sup> Quashigah 'Legitimate governance: The Pre-Colonial African Perspectives' in Quashigah & Okafor (eds) (1999) 46. The author gives the example of King Kofi Adzanu Fiayidziehe of Ghana who was deposed and executed.

<sup>20</sup> As above.

<sup>21</sup> It shall not be necessary to consider the emergence of the right to vote in Africa as a brief political background of the counties under discussion will be given in Chapter Four.

<sup>22</sup> Slocum 'A brief look at the history of voting in America' <<http://www.care.co.sanmateo.ca.us.htm>> (accessed on 12 September 2002).

<sup>23</sup> As above.

<sup>24</sup> Lewis 'Winning the vote: International women suffrage timetable' <<http://womenshistory.about.com/library/weekly.htm>> (accessed on 26 July 2002).

As pressure for reforms kept on escalating, several impediments were eventually removed. The Voting Rights Act of 1965 and the Amendments of 1970 and 1975 gave blacks the right to vote. Blacks in Canada had obtained the vote as early as 1837.<sup>25</sup> The right was however not effective, as they had to pay a special poll tax and undergo a literacy tax. They could even be fired from work if they were discovered voting.<sup>26</sup> Up to this day, violence often accompanies the exercise of the right to vote by blacks. In 2000 in Florida, devices such as the setting up of police roadblocks leading to polling centres where blacks vote were employed.

In Federal America, the Nineteenth Amendment introduced the franchise to women. The Twenty-sixth Amendment lowered the voting age to 18 years whilst the National Voting Rights Act of 1995 made it easy to register to vote. Citizens could request registration forms online and vote by mail, as in California.<sup>27</sup> The emergence of the right was almost similar in Europe.

### **1.8. III The franchise and France**

In France, the American Revolution and the writings of English philosophers inspired the struggle for universal franchise and representative democracy. It stimulated thinkers like Voltaire and Rousseau to challenge the dogmas of absolutism. They argued for the notion of brotherhood, which would replace privileges.<sup>28</sup>

In spite of the French Revolution, the 1789 Constitution maintained distinctions based on property and sex. Its achievement however is that it introduced a limited monarchy. Within this arrangement, sovereignty was vested in the Legislative Assembly, which was elected for two years by a system of indirect voting.<sup>29</sup>

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<sup>25</sup> 'Features department: This time in history' <<http://kalamumagazine.com.history.htm>> (accessed on 15 August 2002).

<sup>26</sup> 'Amazing Africana' <<http://www.africana.com/Facts/bl.html>> (accessed on 12 September 2002).

<sup>27</sup> Slocum, as in n 18 above.

<sup>28</sup> Hilton 'The French Revolution' <<http://membersaol.com.summary.html>> (accessed on 15 September 2002).

<sup>29</sup> 'The French Revolution II' <<http://www.mars.acnet.wnec.edu/lectures/rev892.htm>> (accessed on 25 September 2002).



The movement for women's right to vote began at the time of the Revolution. The Declaration on the Rights of Women was drafted to demand the same rights for women as those enshrined in the Declaration on the Rights of Men and of the Citizen. Women fully obtained the franchise in 1956,<sup>30</sup> but officially the vote had been granted in 1944.<sup>31</sup> After much acrimonious debate, the right to vote was eventually extended to Jews. In the colony of St Domingue (now Haiti), Negroes and mulattoes were denied the vote.

#### **1.8. IV Evolution of the vote in the United Kingdom**

Unlike in France and elsewhere in the world, the development of universal franchise was extremely slow in Britain. Effective safeguards against arbitrary power and the modern Parliament nonetheless appeared earlier in the seventeenth century.<sup>32</sup> The Glorious Revolution of 1688 introduced the 'Bill of Rights', which gave Parliament sovereignty, among other things. Protection against absolutism was provided through the Magna Carta and the Habeas Corpus Law of 1679.

The notion of secret ballot was not known before 1872. Inconceivably, Parliamentary debates were not open to the public. Privileges on the grounds of class, property, sex and race hounded the process of selecting Members of Parliament (MP's). However, the Reform Act of 1832 abolished unrepresentative seats in Parliament and made it more accountable.<sup>33</sup> It also extended voting power to those of lower economic and social stature. Consequently, one in every five men had the vote. Progressively, the 1867 Reform Act doubled the electorate when it extended the franchise to workingmen. Likewise, the 1885 Redistribution Act tripled voters when it granted agricultural workers the right.<sup>34</sup>

Full universal suffrage for men above 21 years was gained in 1918. Nevertheless, the franchise was only extended to women in 1918 for those over 30 years, whilst full voting

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<sup>30</sup> 'American civilisation: The glorious revolution'  
<<http://www.moronskyminds.net/civilisation/3.php>> (accessed on 20 September 2002).

<sup>31</sup> Lewis 'Winning the vote: International women suffrage timetable'  
<<http://womenhistory.about.com/library/weekly.htm>> (accessed on 27 September 2002).

<sup>32</sup> As above.

<sup>33</sup> This removed Constituencies like Old Sarum which had only 7 voters who elected two Members of Parliament: Everette 'Reform Acts' <<http://65.107.211.206/history/hist2.html>> (accessed on 19 September 2002).

<sup>34</sup> Generally Hobsbawn (1999).

parity was achieved in 1928. In China, women got the vote in 1949. The right was introduced for women in 1917 Soviet Russia, and in Latvia, Poland and Estonia women suffrage came in 1918.<sup>35</sup>

### **1.9 Observations**

It may be seen therefore that universal suffrage took a very long way to realise. Even today, it is incontrovertible that when discussing universal suffrage, the term is only used in a restricted sense, not in its grammatical meaning. In the African context, the development of the right was also a tenuous project that involved armed struggles in a considerable number of countries.

In Ghana, as in the rest of Africa, blacks obtained suffrage with the advent of independence in 1957.<sup>36</sup> Zimbabwe obtained independence on 18 April 1980 after the first majority vote. It can be observed therefore that generally in Africa, independence attained after bloodshed brought with it universal suffrage. This is in contrast to the development of the right in Europe and America; a process that was more evolutionary than revolutionary.

### **1.10 Conclusion**

This thesis focuses on the democratic validity of the electoral processes in Zimbabwe (2002) and Ghana (2000). The focus will be limited to human rights considerations rather than every aspect of the electoral process because of the limitations already highlighted. In the following chapter, we look at the norms applicable to the elections that took place in the two countries.

## **CHAPTER TWO: THE ELECTORAL STANDARDS**

### **2.1 Introduction**

Elections lie at the 'very heart of democracy'.<sup>37</sup> Indeed, it is now axiomatic that one of the fundamental prerequisites for any democratic transition is free and fair elections.<sup>38</sup> Some

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<sup>35</sup> Lewis, as in n 32 above.

<sup>36</sup> 'Suffrage around the world' <<http://www.askara.com/suffrage.html>> (accessed on 26 September 2002).

<sup>37</sup> 'Contemporary issues in the politics of industrial societies' <<http://members.tripod.com/gtuwi/gt33mlec1.html>> (accessed on 23 September 2002).

scholars go as far as to say that 'the notion of democracy, involving the two aspects of "free and fair elections" and "good governance" has become established as a global norm'.<sup>39</sup> Since the holding of free and fair elections is central to democracy, it is imperative to examine international standards and practices and juxtapose these against the recent Zimbabwe and Ghana experiences to lay down the foundation for testing compliance with global expectations.

Of fundamental interest is the fact that although the two elections had much at stake, the Zimbabwean one can almost be said to be an antithesis of the Ghana one in many respects. In this chapter we seek to examine the international standards governing the holding of elections before looking at some of the principles that regulate the conduct of elections.

## 2.2 Why elections? The principle of self-determination

The first question that needs to be answered is why all democracies need elections. In answering this question, we are alive to the fact that the concept of democracy and all its corollaries like the rule of law and good governance has not yet found universal acceptance, let alone interpretation.<sup>40</sup> Nonetheless, it cannot be gainsaid that

the notion of democracy, involving the two aspects of 'free and fair elections' and good governance has become established in the course of the 1990's.<sup>41</sup>

Since the American and French revolutions as well as the defeat of Hitler in 1945, the notions of absolute monarchism, despotism and totalitarianism seem to have been losing ground to enlightened forms of governance. These recognise that the will of the people should be the *sine qua non* for authority. This trend finds support in the Universal Declaration of Human Rights (the UDHR), which declares as a general principle that the election of representative institutions of governance is the cornerstone for democratic

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<sup>38</sup> Dahl (1990) 'Economic growth and political democracy: Linkages and political implications' as quoted in Diamond (1995) 17. IIDEA (1996) 2 also notes that '...no definition of democracy exists in law, nor is there a global consensus over the political meaning of the term.

<sup>39</sup> International Institute for Democracy and Electoral Assistance (IIDEA) (1996) 2.

<sup>40</sup> Wiseman (1996) 7-8.

<sup>41</sup> IIDEA (in n 39 above).

management of public affairs.<sup>42</sup> Consequently, the citizens as human beings with a right to determine their own existence have the attendant right to choose who should preside over their day-to-day life in their pursuit of fulfilment and happiness; that is, they have a right to self-determination both as individuals and as political beings.

For practical purposes however, self-determination is a nebulous concept.<sup>43</sup> Generally, the principle denotes the ability of individual communities to control their lives and to achieve self-defined goals within the broader framework of society.<sup>44</sup> It has recent manifestations as an articulated right in the liberation movement of colonised polities of the world and the anti-colonialist stance of the UN.<sup>45</sup> More importantly, the right is enshrined in international instruments and is the basis upon which elections are conducted.<sup>46</sup> A problem arises however when the international community applies human rights considerations to the electoral process. More often than not, governments then seek the protection of sovereignty.

### 2.3 Sovereignty and elections

The principle of sovereignty denotes the right and capacity of a state to manage its own affairs free of external influence.<sup>47</sup> When applied to elections, state parties to the international instruments setting out the rules and standards for the conduct of elections have some modicum of discretion and latitude to conduct elections within the parameters of their own laws. The sovereignty of the state party in this regard is also recognised by the U.N. Charter.<sup>48</sup> The U.N. also recognised sovereignty in its Resolution on 'Respect for the principles of national sovereignty and non-interference in the internal affairs of states in their electoral processes'.<sup>49</sup>

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<sup>42</sup> Art 21 (3).

<sup>43</sup> Cassese 'Political self-determination – old concepts and new developments' in Cassese (ed) (1979) 137-165. The author however notes that self-determination has an 'anti-authoritarian and democratic thrust' 152-3. In this way it involves the right to freely choose a government in a human rights-permissive environment.

<sup>44</sup> 'Self-determination' <<http://www.ohsu.edu/selfdetermination/alliance.shtml>> (accessed on 14 August 2002). See also the Final Act of the Helsinki Conference on Security and Co-operation in Europe.

<sup>45</sup> Goodwin-Gill (1994) 7.

<sup>46</sup> For example Art 1 (2) of the UN Charter and Art 1 common to ICCPR and ICESCR.

<sup>47</sup> Osterud, O 'Sovereign statehood and national self-determination' in M Heiberg (1994) 18. London: Pinter Publishers 19.

<sup>48</sup> Art 2, Para. 7 thereof.

<sup>49</sup> UNGA Res. 46/130 of 17 December 1991; see also UNGA Res. 47/130 of 18 December 1992

Albeit they are held within the limitations of domestic law and practice, elections must be held in an environment that caters for the exercise of fundamental freedoms in accordance with international law. It is apparent that on the global scene, the principle of sovereignty is and should indeed keep on giving way to the principles of accountability, the observance of international norms and human rights.<sup>50</sup> These are the parameters within which the two elections should be judged. Sovereignty should never become a sanctuary for dictatorship and human rights violations. Below we look at some of the rules that regulate elections.

#### **2.4 The international rules regulating elections**

The importance of elections to all modern institutions of governance is exemplified by the fact that the notion of free, fair and genuine elections pervades most important international and regional instruments. As already indicated, the UDHR provides for the holding of elections as a right for 'everyone'.<sup>51</sup> The International Covenant on Civil and Political Rights (ICCPR) also makes provision for elections, just as the Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>52</sup> Zimbabwe is a state party to both of them.<sup>53</sup> Ghana too has ratified the two instruments.<sup>54</sup>

#### **2.5 The regional provisions for elections**

In the regional sphere, the African Charter on Human and Peoples' Rights (the African Charter), the American Declaration of the Rights and Duties of Man (the American Declaration), the American Convention on Human Rights (the American Convention) and the European Convention on Human Rights: Protocol 1 (the European Convention) make provision for this right.<sup>55</sup> Both Zimbabwe and Ghana are parties to the African Charter.<sup>56</sup>

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<sup>50</sup> and UNGA res. 48/124 of 20 December 1993.  
It is admitted though that there is a lack of consensus on what issues the international community has the right to intervene, see generally for example Heiberg (ed) (1994).

<sup>51</sup> Art 21 (1).

<sup>52</sup> Arts 25 and 5 respectively. See also Art 1 of the Convention on the Political Rights of Women (CPRW).

<sup>53</sup> This & Feltoe 'Zimbabwe' in Stokke & others (1998) 384. See also Heyns (ed) (1996) 1.

<sup>54</sup> 'State parties to human rights treaties' <[http://www.who.int/reproductive-health/publications\\_appendix3.html](http://www.who.int/reproductive-health/publications_appendix3.html)> (accessed on 14 August 2002).

<sup>55</sup> Arts 13, 20, 23 and 3 respectively.

## 2.6 Observations

For the purposes of this study, it suffices to say that all the instruments cited above basically make provisions for the conduct of regular (or periodic), genuine (or free and fair) elections, mostly by secret ballot. It is however interesting to note that unlike the European and American conventions, the African Charter is silent on the issue of secrecy of the ballot. It is also remarkable that of the regional instruments, it is only the American Convention that makes a direct reference to the issue of 'universal and equal suffrage'.<sup>57</sup> The Charter may also be compared to the American Convention, which adds a right to be elected.<sup>58</sup>

It may further be noted that compared to international and regional instruments, the African Charter 'stands out as meagre and without substantial legal content' in respect to the right to vote. What makes it even regrettable is that the right is to be exercised 'in accordance with the provisions of national laws'. It may be noted however that there is no clear qualification or limitation of the operation of national legislation, leaving wide discretion to the individual state.<sup>59</sup> Since Ghana and Zimbabwe also owe a greater obligation to discharge their international obligations, the inadequacy of the African Charter is of little more than academic significance. The countries are still bound by wider international norms and standards. It is however necessary to examine regional standards below.

## 2.7 The African Union (AU) and electoral standards

The AU has set electoral standards the compliance of which is a *sine qua non* for free and fair elections in the African arena.<sup>60</sup> Apart from the provisions in the African Charter, the AU promulgated principles for democratic elections at the 38<sup>th</sup> Ordinary Session of Heads

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<sup>56</sup> Heyns (1996) 5.

<sup>57</sup> Art 23 (1) (b).

<sup>58</sup> Art 23 (1) (b).

<sup>59</sup> Lindholt (1997) 156.

<sup>60</sup> The Organisation of African Unity was reconstituted to become the AU in Durban, South Africa in July 2002. For further information on the AU visit <<http://www.africa-union.org/>> (accessed on 22 August 2002).

of State and Governments of the OAU.<sup>61</sup> Since Ghana and Zimbabwe are both members of the AU, they are also bound to observe these norms and principles.

The AU realises that regular elections are an essential ingredient for good governance, the rule of law and the maintenance and promotion of peace, security, stability and development.<sup>62</sup> It has also emphasised the fact that democratic elections should be conducted freely and fairly;<sup>63</sup> under democratic constitutions and in compliance with supportive legal instruments;<sup>64</sup> under a system of separation of powers that ensures the independence of the judiciary;<sup>65</sup> and by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.<sup>66</sup>

It cannot be validly challenged that these provisions go a long way to complement and extend the provisions in the African Charter, which as argued before, are inadequate. However, it is regrettable that the Declaration retains the claw back clauses that the African Charter has been criticised for.<sup>67</sup>

## 2.8 SADC/ECOWAS and elections

The SADC Parliamentary Forum declared SADC norms and standards for free and fair elections in 2001.<sup>68</sup> These include the provisions that election dates should be fixed in electoral laws or constitutions. Further, there must be complete independence and impartiality of the electoral commissions.<sup>69</sup> Prospective voters must be provided with a form of national identity card in good time for registration.<sup>70</sup> Opposition parties should also be given equal opportunity and space on the state owned media to advertise their policies.

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<sup>61</sup> Declaration AHG/Declarations 1-2 (XXXVIII) of 8 July 2002.

<sup>62</sup> As above, Part II (2) thereof..

<sup>63</sup> II (4) (a).

<sup>64</sup> II (4) (b).

<sup>65</sup> II (4) (c).

<sup>66</sup> II (4) (e).

<sup>67</sup> See generally Part IV, which provides for the freedoms of assembly, association, movement, expression, access to the media, campaigning, representation at polling stations and equality , but then limit these freedoms to the application of domestic law.

<sup>68</sup> The Declaration of 25 March 2001, Windhoek, Namibia.

<sup>69</sup> 'SADC Parliamentary Forum norms and Standards for elections'

<<http://www.sadcpf.org/documents/SADC/documents>> (accessed on 30 March 2002).

<sup>70</sup> Art 1 (V) of the Declaration.

Verification and reconciliation of ballots should be done before counting begins and in the presence of candidates and all their agents.<sup>71</sup>

More importantly, political violence, kidnapping, murder, threats and sanctions including denial of development opportunities in opposition-controlled areas should be outlawed.<sup>72</sup> State parties should desist from taking decisions and actions that frustrate the operation of the private media.<sup>73</sup>

Unlike SADC, ECOWAS does not have any declaration of norms and principles to regulate the conduct of elections. This is understandable because like SADC, the body had been constituted around an exclusively economic programme. Only recently, did it integrate political objectives and assume a political orientation.

Albeit no principles are expressly stated, it has been possible to discern the standards that apply to West Africa through the activities of ECOMOG.<sup>74</sup> They are not at variance with international standards, nor dissimilar to those of SADC. More importantly, the Commonwealth Principles of 1971 and the ACP-EU Agreement, which affirm the rule of law and respect for 'international human rights' and democratic practices, bind both countries.<sup>75</sup> As such, elections must be held within those parameters.

## 2.9 Concluding remarks

Both Zimbabwe and Ghana are bound by international law, as they are party to the major legal instruments governing elections. Regional and sub regional norms and principles that bind them are manifest in the African Charter, the SADC norms and standards as well as ECOMOG emphasis on free and fair elections. More often than not, domestic laws or practices are either at variance or in direct conflict with international law. In the next Chapter, we shall therefore analyse the general principles that govern election holding.

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<sup>71</sup> As above.

<sup>72</sup> Art 2 (II) of the Declaration.

<sup>73</sup> Art 4 (I) of the Declaration.

<sup>74</sup> For a study of these, see Khobe 'The evolution and conduct of ECOMOG operations in West Africa' <<http://www.iss.co.za/Pubs/Monograph/No44/ECOMOG.html>> and Ero 'Building stability in Africa: Challenges for the new millennium' <<http://www.iss.co.za/Pubs/Monograph/No46/ECOMOG.html>> (accessed on 4 October 2002).

<sup>75</sup> Also see the Harare Declaration of 1998.



## CHAPTER THREE: COMMON PRICIPLES AND TERMS

### 3.1 Introduction

International, regional and some domestic legal instruments provide for the holding of genuine and regular elections in an atmosphere conducive for both the electors and the elected. The hallmark of democratic elections is their transparency as it is the foundation of their freeness and fairness.

### 3.2 The notion of free and fair elections

It is unlikely to be seriously contested that free and fair elections are human rights entitlements.<sup>76</sup> Indeed, the elements of freedom and fairness pervade all international and regional legal instruments on elections.<sup>77</sup> Elections should also be free and fair so that the rights and interests of the governed are protected.<sup>78</sup>

The right of individuals to determine their own fate will remain a sham if they are not granted the necessary environment in which to exercise it freely and without unnecessary impediments. Thus, state parties (in this case Zimbabwe and Ghana) are bound to hold genuine and periodic elections 'guaranteeing the free expression of the will of the electors'.<sup>79</sup> They are also bound to ensure that representatives are 'freely-chosen'.<sup>80</sup> Apart from protecting the individual, these requirements are also designed to give legitimacy to the political system and to enhance democracy. In this respect they are therefore a motivation to contribute to the development process.<sup>81</sup>

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<sup>76</sup> Totemeyer & Kadima (2000) 3 declare that elections are a human right, as does the UNCHR (1994) Part V.

<sup>77</sup> Among which see 'United Nations framework for strengthening the rule of law' <<http://www.arts.mcgill.ca/programmes/polisc/unsco-ruleoflaw.html>> (accessed on 15 July 2002); also Art 21 (3) of the UDHR and Art. 25 (a) of the International Covenant on Civil and Political Rights (ICCPR).

<sup>78</sup> 'Context and objectives of UN electoral assistance' <<http://www.un.org/Depts/dpa/ead/websites.htm>> (accessed on 13 August 2002).

<sup>79</sup> Art 25 (b) of ICCPR. Some of the prerequisites for elections that comply with these requirements are enumerated by Elkit <<http://members.tripod.com/gtuwi/electionsS2.html>> (accessed on 14 May 2002).

<sup>80</sup> Arts 13 of the African Charter, 23 (1) (a) of the American Convention, 21 (1) of UDHR and 25 (a) of the ICCPR.

<sup>81</sup> Part 1 of the African Charter for Popular Participation in Development and Transformation (the African Charter for development).

It should also be observed that the idea of free and fair elections protects the voters not only at the time of voting, but also during the pre-election period.<sup>82</sup> As a consequence, the principle of free elections is closely linked to the fundamental freedoms of thought, conscience and religion; expression; association; assembly; and freedom from discrimination.<sup>83</sup> These essential freedoms are also protected in the African Charter to which both countries are party.<sup>84</sup>

Finally, it is also observed that the idea of freedom in the electoral process contemplates a political environment that is not manipulative. It envisages a situation where there is greater freedom of the media to operate without undue influence or hindrance. Feltoe sets out some of the considerations that could negate the legitimacy of an election as where:

- ◆ Campaigning by a political party is prevented or seriously obstructed;
- ◆ Voters are intimidated or bribed;
- ◆ The electoral laws give an unfair advantage to one of the political parties contesting the election;<sup>85</sup>
- ◆ There is rigging of the elections.<sup>86</sup>

It follows from the above therefore that the notion of freedom in elections is a prerequisite for democracy. In summary, it denotes an environment wherein voters have the freedom

to participate in elections the way they want without fearing adverse effects on their own or families' safety, welfare or general dignity, and without coercion and restrictions.<sup>87</sup>

We may also add that fairness means that the rules of the game are clearly spelled out for all contesting parties to know what is at stake. They must also be held with respect to the principles of universal and equal suffrage, paying attention to the right to equality.<sup>88</sup> In Chapter Four we will examine how these requirements were fulfilled in the two elections.

<sup>82</sup> Generally Goodwin Gill (1994).

<sup>83</sup> Nowak (1993) 449.

<sup>84</sup> Arts 8, 9, 10, 11 and 2 respectively.

<sup>85</sup> Transparency establishing the legal ground rules 'in an inclusive and open manner' is necessary: The Organisation for Security and Co-operation in Europe (OSCE) (1999) 7.

<sup>86</sup> Feltoe (2002). Electoral fraud vitiates or even perverts the will of the people.

<sup>87</sup> Elkit and Svensson (1997) 20. Thus the requirement for the secrecy of the ballot.

<sup>88</sup> Any restriction to the right to vote should be a reasonable one, not discriminatory: See United Nations General Assembly (UNGA) Resolution n 46/137 and introduction to the ICCPR as well as Art 25 (b). Restriction on the grounds of residency was upheld by the European Commission on Human Rights in *Application 7566/76, 9 Decisions and Reports* 121. Citizenship is commonly

### 3.3 The secrecy of the ballot

The rationale regarding the secrecy of the ballot is to insulate the voter from intimidation.<sup>89</sup> Secrecy of the ballot can be assured in practice if the voter is able to cast the ballot alone. Further, this should ideally be done in the privacy of a secure voting booth where it is not possible that the voter's choice may be revealed.

### 3.4 Transparency and elections

Transparency in elections requires that the process takes place within the ambit of the law, that the legal ground rules 'are established in an inclusive and open manner'.<sup>90</sup> It is necessary to prevent electoral fraud this vitiates the will of the people. Since this is contrary to democratic notions, it is mandatory that rules are not changed arbitrarily or willy-nilly, that the funding of political parties and the campaign process be as open as possible and lastly that the counting of votes be visible and verifiable. It should be necessary to make a finding on whether the election in Ghana and Zimbabwe complied with these requirements.

### 3.5 The principle of universal suffrage

The doctrine of universal suffrage is essential to all democratic forms of elections and central to it is the assumption that the right to vote is a basic right of all individuals. The ICCPR accords individuals within a state the right to vote or be elected at elections that must be by 'universal and equal suffrage'.<sup>91</sup>

This doctrine essentially means that the right to vote may not be the preserve of certain individuals, groups or classes of people to the detriment of others. Any restriction of political rights, the ICCPR provides, may only be made if it is not 'unreasonable'.<sup>92</sup> The restrictions must also not have been induced by considerations based on 'race, colour,

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another ground. In the landmark case of *Legal Resources Foundation* Communication n 21/98, the African Commission on Human and Peoples' Rights (the African Commission) held that discrimination in the exercise of these rights has caused 'violence and social and economic instability' and should therefore not be justified.

<sup>89</sup> UNCHR (1994)10. Also Art 21 (3) of UDHR

<sup>90</sup> , Art 25 (b) of ICCPR and Art 3 of Protocol No. 1 to the European Convention.

<sup>91</sup> The Organisation for Security and Co-operation in Europe (OSCE) (1999) 7.

<sup>92</sup> Art 25 (b).

The introduction to Art 25.

sex, language, religion, political or other opinion, national or social origin, property, birth or other statuses.<sup>93</sup>

In spite of the above, it is significant that issues such as age, mental status as well as the criminal history of the citizen have been left to the discretion of the member states. However, the demarcating line would seem to be the requirement of reasonability and objectivity of any infraction.<sup>94</sup> An example that readily comes to mind is the fact that Article 25 of the ICCPR is the only one that does not grant a universal right, limiting the right to vote to the 'citizen'. States in this instance have the discretion to deny non-citizens the right.<sup>95</sup> There can be no serious doubt that it is not unreasonable to deny aliens the right to decide the future of a country where they are not nationals and therefore have no immediate interest. For the citizens, the principle of equality of voting power should be observed.

### 3.6 The principle of equal suffrage

The dictum of equal suffrage means that no single vote should carry more weight than others.<sup>96</sup> In other words, this principle envisages an electoral system that accords similar weight to all the votes cast regardless of the class, social or political position of the electorate. This is designed to ensure equal representation of all the voters.

Although this principle applies to what has been termed 'threshold' requirements for the representation of parties in parliaments, it would seem that the issue of 'threshold' requirements would only apply in systems that employ proportional representation (PR).<sup>97</sup> Under the PR electoral system, the concept of equality means that although the size of the electorate may vary from one electoral district to another, the number of representatives from each district should be proportional to the size of the electorate. In majority voting systems, equal suffrage ordinarily 'requires that the size of the electorate among

<sup>93</sup> Art 2 (1); see also Art 2 of the UDHR , Art 2 of the African Charter, Art 5 of the CERD and Art 3 of the Convention on the CEDAW . This interpretation accords with the observation of the United Nations Human Rights Committee (UNHRC) at its 57<sup>th</sup> Session in *General Comment* number 25 of 12 July 1996.

<sup>94</sup> As above. See also *Landinelli Silva v Uruguay 34/78 and Pietrarola v Uruguay 44/79* as cited in Joseph and others (2000) 502.

<sup>95</sup> Citizenship requirements should however not be too onerous: see UNHRC's ruling in the case of *Estonia* (1995) UN Doc. CCPR/C/79/Add.59, para.12.

<sup>96</sup> Nowak (1993) 447.

constituencies should not vary by more than approximately ten percent (10%).<sup>98</sup> The latter idea of equality applies to the present case as both Zimbabwe and Ghana used the 'First Past the Post' electoral system.

The principle of equality also signifies that voters should not be treated differently in terms of the access granted to them in the exercise of their political rights. In the landmark case of *Legal Resources Foundation*, the African Commission on Human and Peoples' Rights (the African Commission) held that discrimination in the exercise of these rights has caused 'violence and social and economic instability' and should therefore not be justified.<sup>99</sup>

We may add that the right to equality of the electorate must not only be provided for but must also be real in terms of the practical procedures for its exercise. This is to say that the administrative structures, the legal framework and the human rights environment of the countries in question must permit the actual exercise of the right to register, associate and vote, among other things.

### **3.7 Conclusion**

It has been demonstrated in this Chapter that for any election to be credible, certain principles must be applied. Basically, the process must not be discriminatory and must be conducted in as free an atmosphere as possible. We will be gauging the compliance of Ghana and Zimbabwe with these requirements in Chapters Four and Five below.

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<sup>97</sup> Goodwin-Gill (1994) 31.  
<sup>98</sup> OSCE (1999) 7.

## CHAPTER FOUR: THE PRE-ELECTION ARRANGEMENT

### 4.1 POLITICAL BACKGROUND

#### 4.1. I Introduction

Although Ghana and Zimbabwe share a common history of British colonial subjugation, their respective roads to independence are not similar. Likewise, the battle cries for emancipation were premised upon different considerations. Thus, the postcolonial character of the two countries have likewise been different.

#### 4.1. II The political history of Ghana

The country that was known as the Gold Coast has a history that can never be told without reference to the slave trade. Contact with Europeans occurred as early as the 15<sup>th</sup> century when the Portuguese landed in 1470. They built Elmina Castle along the coast as a trading base for gold, ivory and other minerals. In the next three centuries, other European traders established their own ports, which later became slave-trading bases.<sup>100</sup> In 1844, Fanti chiefs signed an agreement giving the British a legal springboard to colonise the coastal areas.<sup>101</sup>

Between 1826 and 1900, the British fought against the Ashantis in the inland areas until they obtained control in 1902. This culminated in the establishment of a protectorate over the Ashanti and the northern territories. In 1957, following the 1956 plebiscite, the United Nations agreed to make British Togoland a part of Ghana when the Gold Coast achieved independence.<sup>102</sup>

The 1951 Constitution greatly enlarged the legislature, members of which were elected directly or indirectly by popular vote. However, the governor could appoint ex-officio members to the governing Executive Council. A 1954 Constitution established a cabinet comprising of African ministers drawn from an all-African legislature chosen by direct election.

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<sup>99</sup> Communication 21/98.

<sup>100</sup> 'Political history' < [http://www.ghanaweb.com/GhanaHomePage/ghana/polit\\_hist.html](http://www.ghanaweb.com/GhanaHomePage/ghana/polit_hist.html) > (accessed on 4 October 2002). For a complete history of Ghana see Buafor-Authur (1980).

<sup>101</sup> 'Ghana: History' <<http://globaledge.msu.edu/ibrid/countryID=5>> (accessed on 1 October 2002).

The Convention People's Party (CPP), led by Kwame Nkrumah, won the majority of seats in the new Legislative Assembly. After proposals from Prime Minister Nkrumah's Gold Coast government, the British agreed to grant independence on the condition that a reasonable majority voted for autonomy in the Legislative Assembly after a general election. In 1956 the CPP returned to power with 71 of the 104 seats in the Legislative Assembly. Ghana obtained independence on 6 March 1957 when Britain relinquished control over the Colony of the Gold Coast, Ashanti, the Northern Territories Protectorate, and British Togoland.

#### **4.1. III Post-Independence politics**

Independence in Ghana did not bring full democracy as Nkrumah sought to prevent dissent. Under the Preventative Detention Act of 1958, political opponents could be detained without trial for up to 10 years. The 1960 Constitution introduced a republican form of government under which the president had unfettered powers and in 1964 a constitutional referendum changed the country to a one-party state.<sup>103</sup> In 1966, the Army overthrew the government.

Civilian rule was only restored in 1969 following a parliamentary election that saw the Progress Party; led by Kofi Busia, win 105 of 140 seats. In 1970 Edward Akufo-Addo was chosen president, while Busia became prime minister.<sup>104</sup> Governments that followed were deposed through coups, culminating with the 1983 one, the second that Jerry Rawlings masterminded.

#### **4.1. IV The Rawlings phase and later developments**

Rawlings did not seem set to establish a serious democratic dispensation until international and domestic agitation compelled him to introduce change. To his credit, he accepted recommendations of the Consultative Assembly, introducing a draft constitution for the establishment of the Fourth Republic. The draft constitution received a 92%

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<sup>102</sup> As above.

<sup>103</sup> 'Ghana: Political history' <[http://www.countrywatch.com.cw\\_topic.asp?TEXT](http://www.countrywatch.com.cw_topic.asp?TEXT)> (accessed on 3 October 2002).

<sup>104</sup> This followed a special referendum held on 31 August 1970.

acceptance in the referendum of 1992.<sup>105</sup> Following this, the ban on political parties was lifted.<sup>106</sup> Parliamentary elections were held the same year but the opposition, which garnered only 17 seats out of a 200-member parliament, boycotted them. The Fourth Republic assumed identity in 1993, with Rawlings as President.<sup>107</sup>

In the presidential election of 1996, President Rawlings emerged the winner, with 57% of the popular vote. His National Democratic Congress (NDC) won 133 of the seats in Parliament. In the 2000 elections, the NDC canvassed 92 seats, while John Kufuor's New Patriotic Party (NPP) got 100 seats. In the Presidential runoff that is the subject of this thesis, John Kufuor beat John Mills of the NDC when he obtained 56.73% of the vote.<sup>108</sup>

#### **4.2.1 Zimbabwe: political background**

Zimbabwe was formally colonised by the British in 1890. In 1893, the Anglo-Ndebele War was waged against the local Ndebele ethnic group in the Matebeleland region. This war was actuated by the dispossession of blacks of their land and cattle. Shortly thereafter the Shona groups from Mashonaland joined the war and by 1896, the conflagration had become so widespread that it was called The First *Chimurenga* or war of liberation. After the arrest and execution of the *Chimurenga* leaders, further dispossession and oppression followed with the result that dissent spread commensurately.<sup>109</sup>

Africans dispossessed of their land, their means of livelihood, were forced to pay taxes. Most young wo/men fled to the urban areas to look for work. The trade union movement that was born out of workers' organisations in due course gave birth to several opposition political parties. The Zimbabwe African National Union (ZAPU) was formed in 1961 under the leadership of Joshua Nkomo and the Zimbabwe African National Union (ZANU), was formed in 1963 under the leadership of Ndabaningi Sithole and later, Robert Mugabe.

As discontent with a political system that was premised on the notion of white supremacy grew, the Prime Minister Ian Smith proclaimed a Unilateral Declaration of Independence

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<sup>105</sup> Held on 28 April 1992.

<sup>106</sup> This was proclaimed on 18 May 1992.

<sup>107</sup> The draft constitution entered into force on 7 January 1993.

<sup>108</sup> For a fuller exposition of the post independence political history of the country see Nugent (1995).

<sup>109</sup> For a history of Zimbabwe visit the Zimbabwe government website at <<http://www.gta.gov.zw>>.



(UDI) on 11 November 1965. This move was designed to perpetuate minority rule and is largely seen as the precipitator of the bitter liberation struggle that was to follow: the Second *Chimurenga*.<sup>110</sup>

Following UDI, opposition groups set up camps in neighbouring Zambia and Mozambique to begin fighting for the disenfranchised majority blacks. The Smith regime established a surrogate black government under Abel Muzorewa, as pressure for independence mounted.<sup>111</sup> The Muzorewa government however failed to garner majority support or end the war. As a result, Smith was forced to the negotiating table at the Lancaster House Conference that led to the first majority vote in April 1980. The elections were won by ZANU (PF), still the ruling party, and ushered in black majority rule.

Although the country has never been a *de jure* one-party state, the ruling party has completely dominated Zimbabwean politics since the Unity Accord with ZAPU in 1987.<sup>112</sup> The ruling party was however shocked out of complacency when the Movement for Democratic Change under the leadership of Morgan Tsvangirai almost won over half the contested seats in the June 2000 Parliamentary Elections. Compounded by the fact that the government had suffered similar humiliation when Zimbabweans rejected a government-sponsored draft Constitution at a referendum earlier in the year, the tone of government speeches in campaigning for the election became ominous if not down right menacing as the Presidential election drew near.

### **4.3 The legal regime for the elections**

#### **4.3.1 Zimbabwe's Constitution**

The Constitution contains fundamental human rights provisions in Chapter Three. These include political rights like freedom of conscience, expression, assembly and association, movement and protection from discrimination.<sup>113</sup> Other freedoms include the right to life, the right to protection from inhumane treatment and the right to protection from arbitrary search or entry.<sup>114</sup>

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<sup>110</sup> Shumba and others (2002) 4.

<sup>111</sup> Commonwealth Secretariat (2002).

<sup>112</sup> As above.

<sup>113</sup> Ss 19-23.

<sup>114</sup> Ss 12, 15 and 17.

The Constitution also provides for the election of the president in accordance with the electoral law.<sup>115</sup> To be elected to presidency, one must be a citizen by birth or descent, having attained forty years of age and being ordinarily resident in Zimbabwe.<sup>116</sup> The tenure of the office of the president is limited to 6 years. It is however worthy to note that the Constitution is silent on the number of terms the incumbent is entitled to stay in office. To be elected as president, one needs to be a citizen (by birth or descent), have attained 40 years of age and be ordinary resident in Zimbabwe. Section 61 of the Constitution provides for the establishment of an Electoral Supervisory Commission (ESC).

It may be observed that although the Constitution makes provision for the registration of voters<sup>117</sup>, it does not have guarantees that those entitled to be registered will actually be registered as voters. It also does not grant the right not to be prevented from casting the ballot.

#### **4.3. II Zimbabwe's Electoral Act (the Act)**

The Act provides for regulations and procedures governing parliamentary and presidential elections.<sup>118</sup> It makes provisions for the appointment of an Electoral Directorate (the ED), the functions of which include 'giving instructions and making recommendations' for 'ensuring that elections are conducted efficiently, properly, freely and fairly'.<sup>119</sup> It also regulates the procedure and conditions of service of the Electoral Supervisory Commission and the Registrar-General of Elections (the R-G) as well as the registration of voters. The Act also provides for the functions of the R-G who is subject to the direction of the ED.<sup>120</sup>

#### **4.3. III The Election Directorate (ED)**

The ED consists of a chairman appointed by the President, the Registrar-General and not fewer than two, nor more than ten other members. The Minister of Justice, Legal and

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<sup>115</sup> Chapter IV.

<sup>116</sup> S 28 (1) (a) – (c).

<sup>117</sup> Schedule 3, S 3.

<sup>118</sup> *Cap* 2:01.

<sup>119</sup> S 4 (1) (c) of the Act.

<sup>120</sup> S 15 (2) and (3) of the Act.

Parliamentary Affairs appoints the ten others. Any other person assigned to administer the Act in terms of Section 3 may also assume the Minister's responsibility.<sup>121</sup> It would seem that the composition of the ED does not augur well for the guaranteeing of free and fair elections. Ultimately, the President appoints members in one-way or another. In practice, it has often been shown that the ED is not impartial when handling contentious elections.<sup>122</sup> The body was chaired by Mariyawanda Nzuwa (appointed by Robert Mugabe) and the Registrar-General (Tobaiwa Mudede) *ex officio*.

#### **4.3. IV The Electoral Supervisory Commission (ESC)**

The ESC is established in terms of Section 61 of the Constitution. The President in consultation with the Judicial Service Commission appoints its Chairperson and two other members.<sup>123</sup> Two further members are 'appointed by the President after consultation with the Speaker'.<sup>124</sup> It should be noted that albeit the President must consult, s/he is not required to adopt recommendations given to him/her.

The President also decides the tenure of office of the Commissioners.<sup>125</sup> Furthermore, members hold office 'on such conditions as the President may fix' and may be removed by the president.<sup>126</sup> Thus, the impartiality of the ESC that s/he appoints remains suspect. Practice has also revealed that the ESC panders to political considerations although the Constitution provides for its independence.<sup>127</sup>

Together with the Registrar-General, the ESC is responsible for conducting presidential and parliamentary elections. It is interesting though, that neither the Electoral Act nor the Constitution specifically grants the ESC a mandate to conduct elections for presidency. During the run up to the election, the ESC appeared to be inadequately geared to discharge its constitutional mandate as only four of the five required ESC members were appointed.<sup>128</sup> As Chair, the President appointed retired army colonel and ex-combatant,

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<sup>121</sup> S 4 (2) (a) – (c).

<sup>122</sup> Generally Cheater (2001).

<sup>123</sup> S 61 (1) (a).

<sup>124</sup> S 61 (1) (b).

<sup>125</sup> S 7 (1) of the Electoral Act.

<sup>126</sup> Ss 7 (3) and 10 of the Electoral Act.

<sup>127</sup> In S 61 (6).

<sup>128</sup> Zimbabwe Human Rights NGO Forum (the Forum) 'Human rights and Zimbabwe's presidential elections' <<http://www.hrforumzim.com>> (accessed on 17 June 2002).

lawyer Sobusa Gula-Ndebele.<sup>129</sup> In turn, the Chair of the ESC appointed as Director of Elections Brigadier Douglas Nyikayaramba.<sup>130</sup> Seventy-two Zimbabwe National Army officers were reportedly seconded to the ESC. 1 080 election supervisors and 22 000 election monitors were recruited from mostly the ministries of defence, home affairs and education.<sup>131</sup>

#### 4.3. V Changes to the electoral law

The President used his wide powers (three times)<sup>132</sup> under the Electoral Act to promulgate laws that were detrimental to opposition.<sup>133</sup> These included legislative provisions that had been voided by the Supreme Court earlier.<sup>134</sup> Some of these changes to the law were introduced through the General Laws Amendment Act, as shown below.<sup>135</sup>

#### 4.3. VI The General Laws Amendment Act (GLAA)

The GLAA made extensive amendments to the Electoral Act. It was described by the opposition as ‘undemocratic and contrary to the SADC Parliamentary Forum Norms and Standards for Elections in the SADC Region’.<sup>136</sup> The Minister of Justice, Legal and Parliamentary affairs described the amendments as designed ‘to kick out from our politics the influence of foreign money and foreign interests’ and to prevent private organisations from conducting voter education.<sup>137</sup>

Also contentious was a provision in the GLAA, which empowered the Registrar-General to change voters’ registration particulars without informing them.<sup>138</sup> It was feared that it facilitated rigging the roll by moving voters between constituencies without their knowledge or even throwing them off the roll altogether. After the Supreme Court nullified the

<sup>129</sup> He took over after Peter Hatendi resigned in protest over funding and other inadequacies.

<sup>130</sup> ‘Soldiers seconded to ESC’ *The Zimbabwe Independent* 14 February 2002 1.

<sup>131</sup> ‘Key poll roll for the military’ *The Financial Gazette* 21 January 2002 1.

<sup>132</sup> Statutory Instruments 41D, 42 B and 42 E of 2002.

<sup>133</sup> S 158 gives the President powers to make statutory instruments that S/he ‘considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation....’

<sup>134</sup> The Human Rights Forum (2002).

<sup>135</sup> Act n 2 of 2002.

<sup>136</sup> *Parliamentary Debates* 28, 35:3135.

<sup>137</sup> The Human Rights Forum (2002).

<sup>138</sup> S 34 (1).

GLAA,<sup>139</sup> an Electoral Amendment bill was introduced, carrying identical provisions.<sup>140</sup> This was in violation of several international standards adverted to in Chapter Two.

### 4.3 VII Evaluation

It may be observed from the above that the electoral institutions in Zimbabwe were not conducive for independence, at least in principle.<sup>141</sup> Furthermore, the wide powers granted to the President to regulate the conditions of service and the tenure of office of the members does not augur well for autonomy. This on its own however should not be considered in isolation. Nonetheless, international standards for transparency, free and fairness of the electoral process can only be enforced when, among others, the selection of electoral officers and the setting up of institutions is seen to be unbiased.

## 4.4 The legal regime for elections in Ghana

### 4.4.1 The presidency and the Constitution

The right to vote for the President of Ghana is enshrined in the Constitution.<sup>142</sup> Every citizen of 18 years or above who is of sound mind has the right to vote and is entitled to be registered as a voter.<sup>143</sup> S/he however should not be under a sentence of death or serving a term of imprisonment for a serious offence.<sup>144</sup>

Requirements for qualification to the presidency are also provided for in the Constitution.<sup>145</sup> As is the case in Zimbabwe, for a person to qualify for presidency, s/he must be a citizen of Ghana by birth.<sup>146</sup> Furthermore, the person should be eligible for candidacy as a Member of Parliament. This means that the person should not have been

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<sup>139</sup> Supreme Court Judgement SC 10/02.

<sup>140</sup> Act n 4 of 2002.

<sup>141</sup> This is contrary to UNHRC General Comment number 25.

<sup>142</sup> Art 42 of the 1992 Constitution of the Fourth Republic of Ghana.

<sup>143</sup> As above. See also Afari-Gyan (1998) 35.

<sup>144</sup> Art 94 of the Constitution; also Electoral Commission of Ghana (ECG) (1996) 1.

<sup>145</sup> See Art 62..

<sup>146</sup> Art 62 (a) and (b).

convicted of a 'high crime' under the Constitution, treason, 'an offence involving the security of the State,' an offence involving dishonesty or moral turpitude.<sup>147</sup>

The Constitution also provides that any nominee should not have been convicted for any offence punishable by death or by a sentence of not less than ten years.<sup>148</sup> If s/he has been convicted of an offence related to elections, the person may also not be eligible to run for presidency. The person must also be competent to hold public office and be qualified to be registered as a voter.<sup>149</sup>

#### 4.4. II Composition of the Electoral Commission (EC)

Several statutory instruments regulate the electoral law of Ghana.<sup>150</sup> The EC is established in terms of the Electoral Commission Act<sup>151</sup> as well as the Constitution. Unlike the ESC of Zimbabwe, which has five members, the EC comprises of seven members. These are the Chair, 2 deputy Chairpersons and four other members.<sup>152</sup> As in the case of Zimbabwe, the President appoints the Commissioners. In this case however, the President acts in consultation with the Council of State.<sup>153</sup>

#### 4.4. III Functions of the Commission

Among other things, the EC is responsible for compiling and revising the voters' register and the education of voters.<sup>154</sup> It is also charged with the conduct and supervision of elections and referenda as well as the demarcation of electoral boundaries.<sup>155</sup> This is in contrast to the position in Zimbabwe where the ED is tasked with the delimitation of electoral boundaries. Lastly, the EC may perform other functions 'as may be prescribed by law'.<sup>156</sup> These include the making of regulations for the issuance of identity cards.<sup>157</sup>

<sup>147</sup> Art 94 (c) (2).

<sup>148</sup> Art 94 (c) (2).

<sup>149</sup> Art 94 (d) and (f).

<sup>150</sup> For example, the Registration of Voters Regulations, 1968; the Political Parties Law, 1992 and the Public Elections Regulations, 1996.

<sup>151</sup> Hereafter the EC Act, 451 of 1993.

<sup>152</sup> Art 43 (1) (a) – (c) of the Constitution; see also Art 1 of the EC Act.

<sup>153</sup> Art 70 (2) of the Constitution.

<sup>154</sup> Art 45 (a) and (d); see also Art 2 (a), (f) and (e) of the EC Act.

<sup>155</sup> Art 45 (c) and (b) respectively; see also Art 2 (c) and (b) of the Act.

<sup>156</sup> Art 45 (f).

<sup>157</sup> Art 2 (d) of the EC Act. For further duties see Afari-Gyan in Ayee (2001).

#### 4.4. IV Independence of the EC

Article 46 of the Constitution provides that in the performance of its functions, the EC 'shall not be subject to the direction or control of any person or authority'.<sup>158</sup> This is remarkable because albeit the same provision appears in the Constitution of Zimbabwe,<sup>159</sup> the terms and conditions of service seem to indicate that the ESC is answerable to the President.<sup>160</sup>

As distinct from the case of Zimbabwe where the President determines the terms and conditions of service, the Chairperson of the EC is entitled to 'the same terms and conditions of service as a Justice of the Court of Appeal'.<sup>161</sup> The Deputy Chairmen qualify for conditions applicable to judges of the High Court.<sup>162</sup> These terms and conditions are significant as they apply to the operation of the EC, as seen below.

A person shall not be qualified for appointment as a judge unless s/he is of 'high moral character and proven integrity'.<sup>163</sup> Secondly, s/he may only be removed 'for stated misbehaviour or incompetence or on grounds of inability' arising out of infirmity.<sup>164</sup> Thirdly, the judge 'shall not be liable to any action or suit for any act or omission' arising out of the exercise of his/her office duties.<sup>165</sup> Lastly, all administrative expenses and salaries are charged to the Consolidated Fund.<sup>166</sup>

These provisions enhance the independence of the judiciary and since they also apply to the EC, it is beyond serious doubt that the EC is autonomous. The position is remarkably dissimilar to that obtaining in Zimbabwe. There, the Minister determines the ESC's

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158 5 above 36.  
 See also Art 3 of the EC Act.  
 159 Sec 61 (6).  
 160 See also Sec 61 (c) that says the ESC may make such reports to the President 'as it thinks fit'.  
 161 Art 44 (2) of the Constitution.  
 162 Art 44 (3).  
 163 Art 139 (4).  
 164 Art 149 (1).  
 165 Art 127 (3).  
 166 Art (4).

remuneration and expenses.<sup>167</sup> In Lesotho, as in Ghana, independence is also guaranteed by paying the Commission out of the Consolidated Fund.<sup>168</sup>

#### 4.5 Evaluation

In a free and fair election, an independent electoral commission is indispensable. This is needed to enhance trust in the system.<sup>169</sup> In view of the danger of electoral commissions being appointed on political grounds, it would be desirable that they be composed of either politically independent individuals or be selected from the different political parties contesting the elections. It may be concluded that the terms and conditions for the Electoral Commission in Ghana allow for greater independence than those of the ESC in Zimbabwe.

#### 4.6 THE PRE-ELECTION SCENARIO

##### 4.6.1.1 Voter education: Zimbabwe

'Voter awareness and education is central to free and fair election'.<sup>170</sup> Unlike the position regarding the 2000 parliamentary election, the government outlawed the provision of voter education by civil society and made it a preserve of the ESC. The ESC however could delegate its responsibility and supply material to whosoever it granted the permission to carry out voter education.<sup>171</sup>

It might be observed that the ESC was not imaginative enough to employ revolutionary methods of voter education, as was the case in Ghana.<sup>172</sup> It relied exclusively on conventional methods like television, radio and posters. These media are of limited outreach however as most people in the rural areas have no access to radio and television. The effect of posters was also limited because, with the influence of urbanisation, most people remaining in rural constituencies are not literate.

<sup>167</sup> The Minister of Justice, Legal and Parliamentary Affairs: Sec 13 of the Electoral Act Cap 2:01.

<sup>168</sup> Art 66D (2) of the Constitution of Lesotho, as amended by The Second Amendment to the Constitution Act, Act NO. 7 of 1997.

<sup>169</sup> Pastor 'The role of electoral administration in democratic transitions: Implications for policy and research' in (1999) 6 n 4 *Democratisation* 18 and generally Council of Freely Elected Heads of Government (1992).

<sup>170</sup> Debrah 'Mechanisms for ensuring free and fair 2000 general elections' in Ayea and others (2002) 81.

<sup>171</sup> General Laws Amendment Act, 2002 S 14 D (4) and (6).

<sup>172</sup> See 'Voter education in Ghana below '.



The GLAA banned foreign contributions or donations for the purposes of voter education to anyone except the Electoral Supervisory Commission.<sup>173</sup> This restricted the participation of civil society in voter education. It is interesting however that these provisions were largely ignored as the Zimbabwe Election Support Network (ZESN) and others continued to distribute pamphlets.<sup>174</sup> Thus, although the GLAA had the potential to, and indeed prejudiced voters, the effect was not fatal in terms of voter education.<sup>175</sup>

#### 4.6. I.2 Zimbabwe and voter registration

A credible electoral register is the key to the administration of free and fair elections.<sup>176</sup> On the 31 January 2002, the nomination day for the presidential election, the ESC announced that 5 479 100 people were registered on the voters roll.<sup>177</sup> The official government newspaper, the *Herald*, announced that of that had registered, 3, 2 million were urban and 2, 2 million rural.<sup>178</sup> (The government contradicted this to reflect 3.2m rural and 2.2m urban. It must be observed here that the ruling party believed its support base was the rural areas).<sup>179</sup>

It is alleged that the office of the Registrar-General declined to make public the number of voters registered in each constituency on the grounds that the information was confidential.<sup>180</sup> Furthermore, the R-G is also alleged to have refused to release the final roll used in the election.<sup>181</sup> This caused disquiet within the opposition as it was argued that the roll could be used to manipulate the outcome of the vote. Some commentators claimed that this anomaly reflected the fact that the roll had not been updated, leaving 'a vast reservoir of fictional voters who can then be mobilised at will when the going gets tough'.<sup>182</sup> The MDC also complained that access to the death register had been denied.<sup>183</sup>

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<sup>173</sup> S 14 D (5).

<sup>174</sup> Commonwealth Secretariat (2002).

<sup>175</sup> It may also be noted that the Civic Alliance for Social and Economic and the Legal Projects Centre continued to educate people on their rights in spite of the GLAA.

<sup>176</sup> Dumor 'Keynote address: Reflections on the 2000 elections' in Ayee (2000) 15.

<sup>177</sup> The Forum reports that the MDC claimed to have uncovered 524 duplications and 107 deceased voters still registered on the roll.

<sup>178</sup> 'Counting Starts' *The Herald* 12 March 2002 4.

<sup>179</sup> 'Mugabe leads in poll' *The Herald* 11 March 2002 1.

<sup>180</sup> 'Election special report' *The Daily News* 10 March 2002 3.

<sup>181</sup> 'Zimbabwe's election system impeccable and watertight' *The Herald* 7 March 2002 1.

<sup>182</sup> 'Mudede accused of electoral fraud' *The Daily News* 2 April 2002 1.

<sup>183</sup> MDC (2002) 14.

The Human Rights Forum observes that the fundamental rights to vote and the right to equality of the votes cast were compromised in the election. It also observes that the effect of the GLAA and other subsequent laws was to disenfranchise Zimbabwean citizens of foreign descent and those previously entitled to postal voting. Furthermore, procedural complexities also resulted in most people being deprived of their right to register and therefore the right to vote.

Disenfranchisement occasioned by failure to secure national identification was particularly rampant among women married under customary law and the youth. Chiefs and headmen (under the pay of the ruling party) became a conduit for securing national identity cards for the purposes of registration. Tendai Shumba, of Magunje (Hurungwe district) failed to secure a national ID reportedly because she did not take a letter of recommendation from ZANU-PF officials.<sup>184</sup> It is reported that numerous roadblocks were set up by ZANU (PF) supporters to dispossess people of their identity cards where they could not prove membership to the ruling party. The Forum also reports that about 1 300 national identity cards had been reportedly stolen in the districts of Mutoko, Tsholotsho, Nkayi, Bulilimamangwe South, Kwekwe and Buhera North by the time of voting.

Other 'stringent' provisions that may be said to have disenfranchised voters were the proof of residence requirements in the GLAA.<sup>185</sup> Many people in the urban areas (touted to be the opposition MDC stronghold) were either homeless or could not obtain proof of residence. Many expatriates intending to come to Zimbabwe to vote were likewise disenfranchised.<sup>186</sup> About 22 000 prisoners in jail could also not vote, although there is no legal impediment for those on remand or serving six months or below. Nonetheless, it is interesting to note that all prisoners were allowed to vote at independence.

Students were also among those to suffer disenfranchisement. Those who had been registered at tertiary institutions found that they could not vote as the Ministry of Higher Education gave instructions that the institutions remain closed during the election. Students attempting to vote at polling stations near their institutions were reportedly turned away.<sup>187</sup> Amendments that were introduced to the Citizenship Act were also used to

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<sup>184</sup> 'Further allegations of ZANU PF rigging' *The Daily News* 7 March 2002 1.

<sup>185</sup> Ss 3 (e) – (f) thereof. It is generally felt that the GLAA placed 'unreasonable' demands on the electorate. .

<sup>186</sup> <<http://www.thestandard.co.zw/archives.hotmail>> (accessed on 27 September 2002).

<sup>187</sup> <<http://www.dailynews.co.zw/2002/January/archives>> (accessed on 22 July 2002).

disenfranchise a majority of the electorate who held dual citizenship. It is reported that the R-G refused to re-instate those who had successfully applied to the courts against these amendments.<sup>188</sup> There were also allegations of procedural irregularities like registration after the roll had been closed or by the under aged.<sup>189</sup> The entire afore-mentioned occurred offensive to Article 25 of ICCPR.<sup>190</sup>

#### 4.6. II.1 Voter education: Ghana

In contrast to the restricted process in Zimbabwe, voter education in Ghana was extensive and was carried out by two national commissions. The big voter turnout that accompanied the election is in part a testimony to the fact that voters had been educated on their rights as well as the procedure for voting.<sup>191</sup> Voter education was conducted in such a way that it stressed not only familiarity with voting mechanisms and the electoral process but also the role of parties, their agents and candidates at the polling stations.<sup>192</sup>

Apart from the conventional methods, the EC employed the use of comic shows and theatre to reach out to the illiterate segments of society. As such, the independence and impartiality of the EC generated faith in the electoral process that would ensure a fairer reflection of the will of the people.<sup>193</sup> In its education drive, the EC was assisted by the National Commission on Civic Education (the NCCE). The latter mounted a 'vigorous' campaign to inform the public of the imperative to exercise their will. This included the use of posters, radio and television programmes as well as booklets.<sup>194</sup>

To augment this education awareness, the various political parties also made strenuous efforts to explain their manifestoes on the radio and television in national languages. Gyimah-Boadi accords the media and civil society their due share of praise when he says

<sup>188</sup> Commonwealth Secretariat (2002).

<sup>189</sup> See generally The Forum <<http://www.hrforumzim.com/special-inhrru/Election.htm>> (accessed on 30 July 2002).

<sup>190</sup> The UNHRC has ruled that no obstacles to registration should be imposed unless they are reasonable. Even then, they should not be imposed so as to exclude the homeless: General Comment number 25 of the 57<sup>th</sup> Session held on 12 July 1996.

<sup>191</sup> 'Big voter turnout in Ghana' <<http://news.bbc.co.uk/1/hi/world/africa.stm>> (accessed on 7 October 2002). However, compared to the 1996 elections, the turnout was 66.4% against 78.2%.

<sup>192</sup> Ayee (2001) 29; see also E Debrah 'Mechanisms for ensuring free and fair 2000 general elections' in the same book 82.

<sup>193</sup> The *Daily Graphic* 6 December 2000 as quoted in Ayee (2001) 47.

<sup>194</sup> Ayee (2002) 37.

that 'They were a major instrument for voter education'.<sup>195</sup> Although attendance at political rallies was apathetic, parties explained what they stood for. As already observed, in Zimbabwe the situation was different because the education drive was the preserve of the ESC. Also as will be seen later, campaigns by opposition were often disrupted and the chance of radio and television coverage was between slim and nonexistent.

#### 4.6. II.2 Registration: Ghana

Registration in Ghana was not beset with the problems that occurred in Zimbabwe, neither was it as controversial. The EC supplied a voter registration manual to electoral officials for ease of reference during the process.<sup>196</sup> Albeit there had been fears that voter registration forms might be inadequate, there were no reports of any shortages prejudicing potential voters.<sup>197</sup>

From the 6<sup>th</sup> to 15 March 2000, 'the EC designed a comprehensive programme to revise the voters' register' in line with its mandate to revise the register annually.<sup>198</sup> The exercise was undertaken to accommodate those who had attained the age of 18 years since the 1996 election as well as to enable those who had moved to apply for permanent transfer of their votes to new addresses. It resulted in the removal of over 120 000 names from the register and the addition of 1 376 638 entrants. Moreover, 'for a period of 3 months, the EC worked assiduously to issue photo ID cards to prospective voters.'<sup>199</sup> The revised register was exhibited at all the 20 113 polling stations for voters to inspect and make the necessary corrections in their personal data.<sup>200</sup> By the time of voting, 6 400 000 men and 4 560 000 women had registered to vote.<sup>201</sup> This was an encouraging figure.<sup>202</sup>

<sup>195</sup> Gyimah-Bouadi 'The December 2000 Elections and Prospects' in Ayee (2001) 65; see also Ahiawordor 'Issues and dilemmas in Ghana's 2000 elections' in Ayee (2001)110. In the same book, Smith and Temin 'The media and Ghana's 2000 election' 160-177, agree that the media played a 'pivotal role' in the election, although there is disagreement as to its impartiality.

<sup>196</sup> See 'Electoral Commission of Ghana: 'Voter registration officials manual' <<http://www.aceproject.org/main/samples/vix-pdf>> (accessed on 8 October 2002).

<sup>197</sup> 'There are enough voter registration forms – EC' <<http://www.mclglobal.com/History/ioe2000.htm>> (accessed on 9 October 2002).

<sup>198</sup> Deborah in Ayee (2001) 81.

<sup>199</sup> As above.

<sup>200</sup> Ayee (2001) 25.

<sup>201</sup> Smith (2001) 20. Cable News Network gave the total of registered voters as 10 678 652 though, which seems a more credible figure because it is not a round figure: < [http://www.CNN.com-World\\_ElectionWartch.htm](http://www.CNN.com-World_ElectionWartch.htm)> (accessed on 14 October 2002).

The population of Ghana stood at 19 533 560 in July 2000, see 'Population in Ghana' <<http://www.yahooligans.com/reference/factbook/gh/popula.html>> (accessed on 7 October 2002).

#### **4.6. III Evaluation**

While the discrepancies in the number of registered voters between Zimbabwe and Ghana may be explicable in terms of the population gap, it is not far fetched to opine that this might also be attributable to the rate of awareness (or lack of it) resulting from education drives by the respective commissions, as well as the peacefulness and smoothness (or otherwise) of the processes. Although the process of registration was ably conducted in Ghana, in Zimbabwe it was marred by lack of transparency, deliberate disenfranchisement, logistical inadequacies and insufficient education.

## CHAPTER FIVE: THE ELECTIONS AND FUNDAMENTAL FREEDOMS: THE CAMPAIGN PROCESS

### 5.1 Introduction

The freedoms of association, assembly and movement 'are essential conditions for the effective exercise of the right to vote and must be fully protected'.<sup>203</sup> Likewise, the 'free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.'<sup>204</sup> The media should also be free of government control if elections are to be really free and fair.<sup>205</sup>

In considering the two elections, it is important to bear in mind the fact that the two processes were almost diametrically opposed in terms of their impact on fundamental human rights. The way the campaign process is carried out is one of the most fundamental determinants of the credibility of an election. Whereas the event was generally peaceful in Ghana, in Zimbabwe, as will be seen below, the situation was tragic in that it brought with it grievous physical and psychological trauma upon the electors and the elected alike.

### 5.2 Rightsto expression, speech and information: Zimbabwe

The right to receive information was recognised by the African Commission in *Media Rights Agenda v Nigeria*.<sup>206</sup> Freedom of expression is also fundamental and is protected in Chapter Three of the Constitution of Zimbabwe.<sup>207</sup> As was the case in Lesotho during its 2002 General Election, the state-controlled media devoted most of their coverage to the ruling party. In Zimbabwe however the situation was more serious.

To begin with, the media was acutely polarised between the independent press and the state-controlled one.<sup>208</sup> The former seemed to favour the opposition, although most of them strived for balance. The government controlled media was however glaringly

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<sup>203</sup> UNHRC as in n 86 above.

<sup>204</sup> As above.

<sup>205</sup> See Concluding Comments on Armenia (1998) UN Doc. CCPR/C/79/Add.100, para.21.

<sup>206</sup> Communication number 224/98.

<sup>207</sup> S 20. See also Art. 19 of UDHR and Art. 19 of the ICCPR.

<sup>208</sup> Generally see Media Monitoring Project (MMP): (2001): MMP; MMP (2000); MMP (2001) *A Question of Balance*: MMP and Saunders (1999).

partisan. For example not a single state-controlled newspaper, radio or television ran any advertisement for the opposition, although the private press advertised the ruling party.<sup>209</sup>

The state -controlled media often invented stories to paint the opposition in a bad light.<sup>210</sup> In fact, the Zimbabwe Broadcasting Corporation (ZBC) was subsequently accused of not adhering to basic standards of journalism in their support for the ruling party.<sup>211</sup> The media Monitoring project issued a report of the news bulletins carried by the television between 1 December and 7 March 2002. It observed that 94% favoured ZANU (PF) while the remainder was negatively slanted against the opposition.<sup>212</sup>

Unlike the case with Ghana or Lesotho in the 2002 General Election, incidents of violence against media houses and personnel were not uncommon during the Zimbabwean election. Offices and printing houses of *The Daily News* (a private newspaper) were bombed several times by suspected ruling party supporters. Independent publications were 'banned' from such areas as Bindura, Karoi and Masvingo, all strongholds of the ruling party.<sup>213</sup> Vendors of these publications were invariably assaulted or tortured.

The law was also used to make it difficult for the media to freely inform the populace. Laws like the Public Order and Security Act<sup>214</sup> and criminal defamation proceedings were often used to arrest journalists for publishing 'false statements which are peddled internationally'.<sup>215</sup> The events articulated above violated the rights of the media as well as that of the voters to receive information.

### 5.3 Information and expression: Ghana

The rights to expression and information are protected in the Constitution of Ghana.<sup>216</sup> The freedoms of thought, conscience and belief are also enshrined.<sup>217</sup> Article 21 of the

<sup>209</sup> The Human Rights Forum (2002) 15.

<sup>210</sup> Feltoe 'An unfair contest: The presidential election in Zimbabwe' in Zimbabwe Lawyers for Human Rights (2002) 6 *Zimbabwe Human Rights Bulletin* p 83-4.

<sup>211</sup> Commonwealth Secretariat (2002) 33.

<sup>212</sup> Quoted in Zimbabwe Human Rights Forum (2002) 18.

<sup>213</sup> 'Nkomo says Daily News to circulate anywhere' *The Daily News* 25 January 2002 2. (2001).

<sup>214</sup> P Chinamasa, as recorded in *Parliamentary Debates* 28, 39:3547.

<sup>215</sup> Article 21. See also Art 16 of the Constitution of South Africa and Art 12 of the Constitution of Botswana, which is more comprehensive.

<sup>216</sup> See Art 21 (b).

Constitution provides that all persons shall have the right to freedom of expression, which shall include freedom of the press and other media. This provision is revolutionary in the African context and may be contrasted with the Constitution of Zimbabwe, which does not have an explicit reference to the media.<sup>218</sup> Political parties and their candidates also have the right to equal access to the state-owned media, a real novelty in Africa's domestic constitutions.<sup>219</sup>

In terms of media coverage, the incumbent (the NDC) inevitably exploited its position to gain greater media coverage from the state-owned media.<sup>220</sup> An investigation by the National Media Commission concluded that state-owned media houses failed to 'provide fair opportunity to all political parties.'<sup>221</sup> In spite of this, 'there was reasonable allocation of time to all the parties in the state-owned media'.<sup>222</sup> Also, the disparity in coverage diminished over time.<sup>223</sup> Indeed as Ayee points out, the two main contesting parties, the NPP and the NDC constantly abused these freedoms by using inflammatory language.<sup>224</sup> It would therefore appear that freedom of expression, information and the media were not abused much in the Ghana election, as was in Zimbabwe.

#### 5.4 Evaluation

It may be observed from the above that media freedom and freedom of expression were observed in Ghana. However inadequate the coverage granted to opposition parties was, it remained within the ambit of what was reasonable. In Zimbabwe it may be observed that ruling party supporters deliberately violated the rights of media personnel as well as the electorate. Opposition parties were denied coverage in the state-owned media. As if that was not enough, laws were introduced to curtail the right of expression as well as its attendant right to receive information. Where the playing field is not level, elections cannot be said to be genuine, free and fair. Likewise, when the electorate is not adequately

<sup>218</sup> Chapter 12 of the Constitution of Ghana buttresses the position further by providing specific additional protection for editors and publishers.

<sup>219</sup> Art 55 (11) and (12). Presidential candidates are specifically mentioned in clause (12).

<sup>220</sup> Ayee (2001) 27.

<sup>221</sup> Smith and Temin 'The media and Ghana's 2000 elections' in Ayee (2001). This position might have been legitimized by the rather disappointing decision by Francois JSC in *NPP v Ghana Broadcasting Corporation* [1992-3] GLR 522, SC in which it was held that the opposition was entitled to equal opportunity, not equal time to air views in the state media.

<sup>222</sup> It is important to point out that although private radio stations operate in Ghana, the Ghana Broadcasting Corporation remains the only one with a national reach as the private ones lack of adequate resources. Furthermore, Ghana laws have always allowed private newspapers but these are also limited in their outreach for the same reason.

<sup>223</sup> Smith, D, Temin, J & K Nuamah (2001).



informed, it is unlikely that it will make an informed choice and *ipso facto*, the will of the people would not have been exercised.

## 5.5 Freedoms of association, assembly and movement

### 5.5.1 Introduction

This sub topic deals with what may be termed the operational or functional rights for the exercise of political choice. We shall look at freedom of association, assembly and movement in the context of the two elections to examine how political parties, candidates and the voters were able or unable to put into reality their entitlement to decide who should govern them.

### 5.5.2 The freedoms in the context of Zimbabwe

The Constitution of Zimbabwe protects the three freedoms mentioned above.<sup>225</sup> The Constitution particularly assures 'the right not to be compelled to belong to an association'.<sup>226</sup> In *John D. Ouko v Kenya* the African Commission held freedom of association sacrosanct.<sup>227</sup> Likewise, the Commission affirmed freedom of assembly as one of the fundamental political rights in *Sir Dawda K. Jawara v The Gambia*.<sup>228</sup> It also reinforced the importance of freedom of movement in *Rights International v Nigeria*.<sup>229</sup> These fundamental freedoms were however trampled upon during the Zimbabwean election.

The introduction of the Public Order and Security Act (POSA) heralded the intensification of a series of violations.<sup>230</sup> Summarized, POSA made it illegal to hold political meetings without advance notice, and the permission of the police. It also prohibited statements likely to cause 'ridicule' to the President. A month after it came into operation, 42 people

<sup>224</sup>

Ayee (2001) 26.

<sup>225</sup>

Ss 21 and 22. See also Art. 20 of UDHR and Arts. 21 and 22 of the ICCPR.

<sup>226</sup>

S 21 (2).

<sup>227</sup>

Communication 232/99

<sup>228</sup>

Communications 149/96

<sup>229</sup>

Communication 215/98.

<sup>230</sup>

Cap 11:17. Violations included freedom of association, see for example South African Parliamentary Observer Mission (SAPOM) (2002) 9. Although the group held (amid disagreements) that the election was 'a credible expression of the will of the people' their observations seem to controvert the conclusion.

were arrested under the Act. The Human Rights Forum notes that none of them were ruling party supporters.<sup>231</sup>

While Mugabe addressed 50 major rallies, Tsvangirai could only address eight as the police mostly refused to grant permission on the grounds that they feared for public security.<sup>232</sup> In White City Stadium in Bulawayo, the police fired teargas to disperse MDC supporters after clashes with ZANU PF sympathisers who invaded the stadium.<sup>233</sup> Subsequently, the MDC had to obtain an injunction against the police. Also, there were reports that police asked for national identity cards before allowing people to attend rallies addressed by MDC. Those with no cards were turned away.<sup>234</sup>

### 5.5.3 Association, assembly and movement in Ghana

In Ghana, freedom of association includes the right to form or join trade unions or other associations, national or international.<sup>235</sup> Article 55 (1) is more specific. It provides: 'The right to form political parties is hereby guaranteed'. The right of the citizens to join a political party of their choice is also assured.<sup>236</sup> Similarly, the Constitution provides for the rights of assembly as well as movement. It is therefore important to analyse how these basic rights were observed during the election period.

We may note that much as this is regrettable, it is almost idealistic to expect a presidential election anywhere to be free of rancour, acrimony or allegations of intimidation and other improper practices. Ghana was no exception to allegations of harassment and violence. In Accra, complaints of violence were made in Alajo and Ablekuma South. Similar reports were made in Kumasi, Wenchi, Berekum, Ahafo Ano South and Asante Akyem North constituencies.<sup>237</sup>

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<sup>231</sup> Human Rights Forum (2002) 23.

<sup>232</sup> As above.

<sup>233</sup> <<http://www.dailynews.co.zw/daily/2002/February/1/>> (accessed on 23 June 2002).

<sup>234</sup> <<http://www.dailynews.co.zw?daily/2002/February/4/>> (accessed on 51 August 2002).

<sup>235</sup> See also Arts 18 and 19 of the Constitution of South Africa and Art 13 of the Constitution of Botswana.

<sup>236</sup> Clause (2) of Article 55, which is comparable to subsection (2) of S 21 of the Constitution of Zimbabwe.

<sup>237</sup> Ayee (2001) 26.

As with Zimbabwe, violent clashes occurred mainly between the major opposition parties, the NPP and the NDC.<sup>238</sup> Also, the police were swift in arresting opposition supporters whilst they were reluctant to bring ruling party supporters to book.<sup>239</sup> The difference however seems to be that in Ghana, intimidation and violence were isolated and occurred mostly on the Election Day.<sup>240</sup> As already seen, the position was *vice versa* in Zimbabwe. Below we focus on the actual incidents of violence and intimidation.

#### 5.5.4 Violence/intimidation during the Zimbabwe election

Political violence impedes the elector's ability to participate freely in the electoral process. The elector can either be deterred from voting or may be unduly influenced in his/her choice.<sup>241</sup> Violence was the most singular occurrence in the Zimbabwean election. It appeared to have been incited by the ruling party in most instances. Although the opposition MDC was the principal target, civil society and churches were not spared either. We must however mention that the opposition was not above perpetrating violence itself.<sup>242</sup> Nonetheless, the ruling party employed the full weight of the 'war veterans' in order to win the election.

Political violence at such a scale had never been experienced before the 2000 Constitutional referendum and Parliamentary election.<sup>243</sup> Inflammatory statements from the leadership of the ruling party aggravated the situation. Mugabe was quoted boasting that his party had several 'degrees in violence'. He also urged his supporters to wage 'a real war' on the MDC, saying that the war was going to be 'physical'.<sup>244</sup>

<sup>238</sup> Ahiawodor 'Issues and dilemmas in Ghana's 2000 elections' in Ayee (2001)113.

<sup>239</sup> Ahiawodor laments the fact that this underscores how governments in Africa politicise institutions that are supposed to be neutral. This is true also in respect to Zimbabwe where the army, police and security chiefs went on national television to warn that they would not support any presidential aspirant who has no liberation struggle credentials, a statement in apparent reference to Morgan Tsvangirai.

<sup>240</sup> 'Kufor wins Ghana presidential election' <<http://allafrica.com/stories/200023000007.html>> (accessed on 12 October 2002).

<sup>241</sup> Commonwealth Secretariat (2002) 7.

<sup>242</sup> As above.

<sup>243</sup> Evidence of the massive violence and intimidation came to light in the cases following the disputed 2000 Parliamentary Elections see for instance *Mutoko South Election Petition* HH 68/2001; *Hurungwe East Election Petition* and *Silas Matamisa v Phillip Chiyangwa and Registrar General of elections* HH48/2001. See also S Moyo (2001) 'The rule of law in Zimbabwe' Paper presented to the Canadian Bar Association Annual General Meeting which is on file with the author.

<sup>244</sup> <<http://www.fingaz.co.zw/2002/january/10/index.hotmail>> (accessed on 27 August 2002).

Following an appeal by SADC, Mugabe made a call for an end to violence, arguing that it was drawing international attention.<sup>245</sup> After the European Union (EU) and the Commonwealth mounted pressure, the President expressed further anti-violence sentiments.<sup>246</sup>

These pleas did nothing to stop the tide as party youths trained under the national youth service, known as the 'green bombers' for their military style uniforms, continued to set up roadblocks and terrorise the people. The 'war veterans' and the 'green bombers' also set up terror 'bases' where victims would be tortured or 're-educated'.<sup>247</sup> Several deaths and disappearances were reported. In the Midlands, an MDC supporter was allegedly beheaded with a spade. Another victim had the letters 'MDC' carved with a knife to his back.<sup>248</sup> Gang rapes were not uncommon against suspected opposition supporters.<sup>249</sup> In stark contrast, Tsvangirai appealed for reason and resort to the law.<sup>250</sup>

Tsvangirai's faith in the rule of law was however misplaced, as the Zimbabwe Republic Police (ZRP) was clearly partisan in enforcing the law.<sup>251</sup> In fact, it has been said that 'Sympathising with the opposition became a sure way of having normal life disrupted by the law enforcement agents'.<sup>252</sup> In Chivi District police fired live bullets and hurled teargas at Tsvangirai's convoy after he had stopped to greet supporters lining the roadside.<sup>253</sup> This was not the first or last time for the police to harass him or his supporters.<sup>254</sup>

### 5.5.5 Ghana: violence and intimidation

There seems to have been no incidents of gross violation of human rights in Ghana. Judging by the multitude of favourable comments from international observers as well as the acceptance of the election result, it seems clear that the election was fundamentally

<sup>245</sup> '30 schools closed' *The Daily News* 19 January 2002 4.

<sup>246</sup> 'Government appeals for peaceful campaign' *The Herald* 30 January 2002 2.

<sup>247</sup> 'Government sets up militia bases' *The Zimbabwe Independent* 1 March 2002 5.

<sup>248</sup> Commonwealth Secretariat (2002) 130.

<sup>249</sup> Such mindless violence is still continuing at the time of writing.

<sup>250</sup> <<http://www.theindependent.co.zw/news.2002/February/index.html>> (accessed on 17 October 2002).

<sup>251</sup> This has been going on since the Constitutional referendum in which the government's sponsored Draft Constitution was rejected, see for example *The Human Rights Observer* 'Deterioration of the rule of law in Zimbabwe'; Norwegian Election Observation Mission (2002) 3 and Feltoe 'The onslaught against the rule of law in Zimbabwe' (2001) Paper presented to the South African Institute of International Affairs, Johannesburg and is on file with the author.

<sup>252</sup> Zimbabwe Human Rights Association (ZIMRIGHTS) (2002) 3.

<sup>253</sup> <<http://www.hrforumzim.com/special.html>> (accessed on 16 August 2002).

free and fair.<sup>255</sup> However, this is not to say that sporadic incidents of violence did not occur. Ayee observes that 'There were cases of intimidation of candidates and voters during the run-up to the 2000 elections, especially the presidential run-off.' 'Dangerous violence', as he dubs it, was manifest in Alajo and other areas mentioned already. It is reported that some areas in the Volta region (the NDC stronghold) were declared 'no-go areas' for opposition supporters, as was the case in Zimbabwe.<sup>256</sup>

## 5.6 Conclusion

It can be observed from the above that in Zimbabwe human rights violations made it impossible for voters to express their will. This also made it extremely difficult for the opposition to sell their programme. As such, the election process was manifestly flawed. In Ghana, although there were incidents of political violence, these were not of such a magnitude as to affect the process.

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<sup>254</sup> See for example *The Daily News* 7 and 8 February 2002.

<sup>255</sup> 'The election was hailed in Africa and abroad as a successful test of Ghana's democracy, despite isolated incidents of violence' <<http://www.freedomhouse.org/research/freework/2001/countryratings/ghana2.htm>> (accessed on 16 October 2002).

<sup>256</sup> Gyimah-Boadi 'The December 2000 elections and prospects' in Ayee (2001) 64.

## CHAPTER SIX: POLLING, POST-ELECTION AND RECOMMENDATIONS

### 6.1 Introduction

Whilst in general there was calm during the actual polling in Zimbabwe, there were several incidents of violence in Ghana. Nevertheless, as has already been noted, these disturbances were not of sufficient gravity to affect the whole process. In both countries, it is encouraging to note that the voting, counting and verification procedures were mostly conducted flawlessly.

### 6.2 Election observers/monitors: Zimbabwe election

It is regrettable that the Zimbabwean government refused to grant accreditation to some international and national observers that it considered unsympathetic to the ruling party. About 200 international observers were denied accreditation.<sup>257</sup> 300 international observers were however allowed. Of the proposed 12 000 observers whose names were submitted by the Zimbabwe Election Support Network, only 420 were accredited.<sup>258</sup> Monitors were only drawn from the Public Service Commission, unlike previously where civil society was involved.<sup>259</sup>

### 6.3 Polling day in Zimbabwe

Most international and domestic observers agreed that the election was not free and fair. With the exception of Senegal and Ghana, the majority official African delegations endorsed the result as 'legitimate', even while conceding evidence to the contrary.<sup>260</sup> All observers are however agreed that there was comparative calm during the actual polling days in Zimbabwe. People who were physically incapacitated were also able to vote when they obtained assistance from polling officers to cast their ballots.<sup>261</sup> This was carried out in accordance with section 59 of the Electoral Act.

<sup>257</sup> 'Zimbabwe bars election monitors' <<http://www.bbc.co.uk/hi/english/world/africa.stm>> (accessed on 17 October 2002).

<sup>258</sup> Commonwealth Secretariat (2002) 6.

<sup>259</sup> As per the General Laws Amendment Act.

<sup>260</sup> This refusal to accept evidence was clear when the South African government delegation was attacked by ZANU PF supporters, having been mistaken for MDC supporters. The delegation went on to declare the election free and fair.

<sup>261</sup> This writer observed two blind people being helped to cast their votes at Thornhill polling station in Gweru on 9 March.

In spite of the overall tranquillity prevailing elsewhere in the country, police fired teargas in Kuwadzana (Harare) to dispel voters who had become impatient with the slow pace of the process. In the same constituency, 'war veterans' allegedly assaulted and dispersed voters while brandishing guns.<sup>262</sup> A large number of people could not vote in the MDC strongholds of Harare and Chitungwiza as a result of the reduction of polling stations in urban areas, which amounted to between 30-40%.<sup>263</sup> Even when the High Court granted an order extending the polling days for all the constituencies, there was token compliance with the order. In Harare and Chitungwiza, voting only started after 11am and polling stations closed at 7pm despite long queues of people waiting to vote.<sup>264</sup>

Although verification and counting was delayed in Zimbabwe, it was conducted smoothly and according to procedure, as was in Ghana and also Lesotho. That notwithstanding, in Zimbabwe there had been prior irregularities, which could warrant a re-run.<sup>265</sup> For example, it is reported that the uniformed forces voted in the presence of senior officers making their choice subject to influence.<sup>266</sup> 'Numerous MDC agents were kidnapped, injured or arrested or had their cars stoned or taken away', making it impossible to supervise the process.<sup>267</sup> No similar reports emanated from the process in Ghana.

#### 6.4 Result acceptance and post-election scenario

The election result in Zimbabwe has been internationally and nationally condemned. The MDC rejected the result as 'the biggest election fraud in history' and promptly filed a petition in the high court.<sup>268</sup> Envoys of the Presidents of Nigeria and South Africa were sent to negotiate the prospects of a government of national unity that would include the MDC and other stakeholders. The talks did not bear fruition however. ZANU PF argued that the process could not go on before the MDC withdraws the application to have the election annulled.

<sup>262</sup> <<http://www.thecommonwealth.org>> (accessed on 14 May 2002).

<sup>263</sup> Commonwealth Secretariat (2001)16.

<sup>264</sup> Norwegian Election Observation Mission (2002) 4.

<sup>265</sup> In the English case of *Morgan v Simpson and Another* 1975 1 QB 151, it was held that although an election had been conducted substantially in accordance with the law, it should be re-run because non-compliance affected the results.

<sup>266</sup> See for example ZIMRIGHTS (2002) 5.

<sup>267</sup> Feltoe (2002) 92.

<sup>268</sup> 'Mugabe wins marred Zimbabwe election' <<http://www.mrcranky.com/movies/iris/21.html>> (accessed on 15 October 2002). At the time of writing, the courts had not decided on the MDC challenge.

On the other hand, the European Parliament MP's called for a fresh presidential election in Zimbabwe. The EU also imposed travel bans and the freezing of assets against ruling party officials.<sup>269</sup> In addition, Zimbabwe was also suspended from the Commonwealth.<sup>270</sup> In spite of these and other measures, violence against opposition supporters and civil society believed to be allied to the opposition continues.

### **6.5 Election observers in Ghana**

Whilst accreditation was in the province of the Minister of Justice in Zimbabwe, the EC was responsible for accreditation in Ghana. Agents of the contesting parties were granted accreditation and had free access to the polling stations to monitor the counting and verification proceedings. International monitors of the election included the European Union and the Commonwealth Secretariat. Local monitors included the Coalition of Domestic Election Observers, which had 5 500 observers, and Ghana Alert.<sup>271</sup> Unlike in Zimbabwe, no one was refused accreditation and this made the process transparent and gave legitimacy to the winner.

### **6.6 The polling day in Ghana**

It would appear that on the actual polling day, incidence of violence and intimidation tarnished an otherwise free and fair process. There were several reported cases of intimidation of candidates and voters in almost all regions.<sup>272</sup> In Ablekuman North, Accra, an NDC supporter stabbed the NPP for the area.<sup>273</sup> Furthermore, heavily armed security personnel were deployed in several regions. This had the result of crating fear and anxiety in the electorate.<sup>274</sup> All in all however, there was relative peace before, during and after the election.

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<sup>269</sup> 'Post election squabbles' <[http: www.eaisa.org.za/WEP/zimbabwe1.html](http://www.eaisa.org.za/WEP/zimbabwe1.html)> (accessed on 14 October 2002).

<sup>270</sup> 'The EU and the Commonwealth: post election perspectives' as above.

<sup>271</sup> Boafor-Arthur 'Election monitoring and observations in Ghana' in Ayee (2002) 97.

<sup>272</sup> Ayee (2002) 27.

<sup>273</sup> Gyimah-Boadi (2001) 9 'The December 2000 election and prospects' in Ayee (2001) 65.

<sup>274</sup> As above.



## 6.7 Result acceptance and post election Ghana

In contrast to Zimbabwe, all the parties accepted the results in Ghana.<sup>275</sup> President Kufour thanked his bitterest opponent during the election, John Mills for 'showing such graciousness'.<sup>276</sup> The elections were hailed as 'the fairest and most transparent' in Ghana since independence.<sup>277</sup>

The Ghana event has shown that African countries can transcend ethnic divisions and dictatorial practices to embrace the democratic ethic. The maturity shown by the people of Ghana, including Rawlings and the NDC, is still evident in the democratic consolidation that is still taking place. It is hoped that other developing countries will borrow a page from Ghana's book. Some writers have however been too liberal in their praises when they say that Ghana has 'lived up to and probably surpassed the high expectations of the international community'.<sup>278</sup>

## 6.8 OVERALL ANALYSIS: POINTS OF DEPARTURE

### 6.8.1 The lack of transparency in Zimbabwe

It has been demonstrated that the election in Zimbabwe was unique, not because of any cultural influences on the process, but because of human rights abuses. Perhaps the most serious cause of violence in Zimbabwe was lack of openness. For instance, the registration process reopened three times amid claims by the opposition that there had been insufficient publicity of the event.<sup>279</sup> The electoral laws that had been the hallmark of past elections were often changed willy-nilly. The courts sometimes struck down some of the laws but nevertheless, the same provisions would be returned in the form of other laws.<sup>280</sup> In instances such as these, it is likely that both the electorate and the contestants

<sup>275</sup> 'Ghana post election report' <[http://www.edc.ca/prodserv/economics/regions/Africa\\_e.shtml](http://www.edc.ca/prodserv/economics/regions/Africa_e.shtml)> (accessed on 15 October 2002) and 'An African source of pride' <[http://csmonitor.com/durable/2001\\_esm.shtml](http://csmonitor.com/durable/2001_esm.shtml)> (accessed on 16 October 2002).

<sup>276</sup> Ayee (2001) 54.

<sup>277</sup> *The West African* 11-17 December 2000 6.

<sup>278</sup> *Public Agenda* 9-14 January 2001.

<sup>279</sup> Commonwealth Secretariat (2002) 22

<sup>280</sup> For example the General Laws Amendment Act was struck down by the courts to be returned barely two weeks later in the form of the Electoral Amendment Bill (number 4 of 2002).

may be tempted to use unlawful means out of sheer frustration or even to compliment an apparently anarchical process.

The refusal to grant accreditation to both domestic and foreign observers that the Zimbabwean government perceived as unfriendly worsened the situation.<sup>281</sup> It also seemed to give credence to the fact that the process was flawed. In Ghana however, no impediment was placed on potential observers.

Also important is the fact that in Ghana, the 'rules of the game' were clearly defined. The opposition had been included in the negotiations surrounding the post 1992 electoral preparations. This was in sharp contrast to the 'ostracisation' of the opposition in Zimbabwe. Thus, more because of the 'inclusivity' of the developments in Lesotho rather than the new electoral system, the election went smoothly.

## **6.8.II The land issue in Zimbabwe**

Although no African state could be said to be liberated from problems regarding the land, in Zimbabwe the clamour took on a frenzied tone in the run up to the elections for various reasons. The liberation struggle (one of the bitterest in the struggle for the decolonisation of Africa) was principally premised on the land question.<sup>282</sup>

The Lancaster House Constitution, which was negotiated in 1979, made it well nigh impossible for the new black government to expedite the process of redistribution.<sup>283</sup> Thus after the government failed to win support to solve the land issue through what many perceived to be an unrepresentative, unjust and discriminatory constitutional overhaul, it mounted a racist campaign against white farmers. They were accused of having sponsored the rejection of the Draft Constitution in cahoots with the MDC, who were also called puppets of Western influence and 'Rhodies'<sup>284</sup>.

This propaganda of hate found its mark and spawned ruling party fanatics in the form of 'war veterans' and most unemployed youths who were willing to shed blood for the 'Third *Chimurenga*'. In contrast, Ghana was remarkable for its non-violent and issue-oriented

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<sup>281</sup> The 23 strong delegation of NGO's from South Africa was refused accreditation and the EU pulled out after its head of delegation had also been denied observer status.

<sup>282</sup> In contrast, Ghana's independence was not obtained after bloodshed, and land was never as emotive an issue as was the case in Zimbabwe.

<sup>283</sup> Herbst 'The dilemmas of land policy in Zimbabwe' in Baynham (1990) 131.

<sup>284</sup> Zimbabwe was formerly Rhodesia under colonial rule.

election campaigns. Thus the demagoguery surrounding the land question in Zimbabwe contributed to violence.<sup>285</sup>

## 6.9 Conclusion

Following from the above, it is our submission that an honest critique will reach the conclusion that the 2002 Presidential Election in Zimbabwe was not genuine, legitimate nor free and fair. While there is little controversy to the genuineness of the elections in Lesotho, the Zimbabwean process violated all the norms and standards, international or regional, expected in an election. It is sad therefore that some observers opted to see no evil, hear no evil and speak no evil.<sup>286</sup>

It is hoped that it is not a misplaced sense of brotherhood or an 'old-boy network of African strongmen,' (as Philip Gourevitch calls it)<sup>287</sup> that makes African leaders stick together in the face of wanton human rights violations. Now is the time to come up with clear, binding and enforceable human rights protection protocols and mechanisms before the Continent is relegated to the dustbin of democratic competitiveness. For the sake of progress and development, the continent should be courageous enough to admit, condemn and rectify its shortfalls. Where praise is due, as in the Ghana and Lesotho elections, it must be generously accorded. By the same token, where (armed) intervention is necessary, as was arguably the case in Zimbabwe, the international community should not hesitate to do so.

## 6.10 Recommendations

There is clearly an urgent need for Zimbabwean government to put in place mechanisms to return the country to the rule of law, observance of human rights and to institute an institutional revamp of the electoral structures. It is proposed that an independent Electoral Commission be set up to supervise the electoral process. Laws that are inimical to the exercise of fundamental freedoms like the Public Order and Security Act and the

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<sup>285</sup> Other factors also include the impunity of the perpetrators as well as selective prosecution of offenders.

<sup>286</sup> These include the Namibian, Kenyan and Tanzanian Government Observer Teams, the COMESA Observer Team, the OAU Observer Mission, the African Heads of (Diplomatic) Mission and the SADC Ministerial Task Force.

<sup>287</sup> Gourevitch (1998)254.

Access to Information, Protection of Privacy Act as well as those making free and fair elections impossible, like the General Laws Amendment Acts should be scraped.

Furthermore, a commission should be set up to investigate perpetrators of human rights violations dating back to independence. Once offenders are prosecuted and the culture of impunity that seems to have taken root in Zimbabwe is removed, there would be a possibility of holding future elections on a clean slate. Clearly any suggestions for a government of national unity would not work when the opposition believes that they were cheated out of a victory. By the same token, such a government would not have legitimacy in the eyes of the electorate and would be liable to face serious problems of governance.

Thus, the international community should facilitate a process of participation similar to the post-1998 one Lesotho to pave way for fresh elections. Meanwhile, those who continue violating the rights of the citizens should face greater censure in the international forum. The targeted sanctions that have been imposed against ruling party officials should be widened and where prosecution is possible in the international forum, it should be carried out.

**Word Count .....17991, including footnotes.**

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## **APPENDIX 1: THE RIGHT TO VOTE: INTERNATIONAL & REGIONAL PROVISIONS**

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

#### Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966**

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

### **CONVENTION on the ELIMINATION of ALL FORMS of RACIAL DISCRIMINATION, 1965**

#### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(c) Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(V iii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

### **CONVENTION ON THE POLITICAL RIGHTS OF WOMEN, 1952**

#### Article 1

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

### **AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, 1981**

#### Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

### **AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN, 1948**

#### Article 20

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, period and free.

**AMERICAN CONVENTION ON HUMAN RIGHTS, 1969***Article 23: Right to Participate in Government*

1. Every citizen shall enjoy the following rights and opportunities:
  - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - (b) to vote and to be elected in genuine periodic elections, which shall be by universal and suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - (c) to have access, under general conditions of equality, to the public service of his country.
  
2. The law may regulate the exercise of the rights and opportunity referred to in the preceding paragraph only on basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.



**APPENDIX 2: LIST OF DEATHS\***

<b>Name + political affiliation</b>	<b>Date of death</b>	<b>Province</b>	<b>Constituency</b>	<b>Locality</b>	<b>Responsible for death</b>
Bhebhe, Newman (MDC)	2002.02.?	MN	Nkayi	?	ZNLWVA and former dissidents
Chacha, Augustus (MDC district youth chair, Gokwe)	2001.12.08	MD	Shurugwi	Gonye dam	ZANU-PF suspected
Chambati, Milton (MDC)	2001.12.20	MW	Hurungwe East	Magunje Growth Point	ZANU-PF
Chatunga, Richard (MDC)	2002.01.20	MV	Bikita East/West	Chigumisirwa Village	ZANU-PF
Chitehwe, ? (ZNLWVA)	2002.01.?	HRE	Hatfield	Epworth, Green Valley Farm	ZNLWVA
Chiwaura, Moffat Soka (MDC)	2001.12.29	MC	Bindura	Atherstone Farm	ZANU-PF
Chiweta/Chimweta Chambara Laban/Lambani (MDC)	2001.12.25	MW	Bindura	Chiwariidzo	State: ZRP
Dhliwayo, Willis (Znlwva)	2001.12.25	MAN	Chipinge North	?	suspected MDC (H), ZANU-PF (DN)
Dube, Nqobizita (MDC)	2002.03.01	BYO	Nkulumane	Khami Road, Nkulumane	ZANU-PF
Ford, Terry (farmowner)	2002.03.18	MW	Mhondoro	Norton, Gowrie farm	ZANU-PF, ZNLWVA

\* Sources: Zimbabwe Human rights NGO Forum (2002) 100 and <[http://www.niza.nl/zimbabwewatch/pub/nizareport\\_zimelections2002ap/pdf](http://www.niza.nl/zimbabwewatch/pub/nizareport_zimelections2002ap/pdf)> (accessed on 28 October 2002).

Katsamudanga, Tichaona (MDC)	2002.02.05	HRE	HRE North	Hatcliffe	ZANU-PF
Khumalo, Kape	2002.02.06	MW	Mhondoro	?	ZANU-PF
Kuvheya, Lawrence (MDC)	2002.03.?	ME	Chikomba	?	ZANU-PF, ZNWVA
Machaka, Shelton Lloyd	2002.03.?	ME	Chikomba	Chivu, Mahusvu BC	MDC
Mahuni, Funny	2002.03.13	MD	Kwekwe	Mbiso/Zimaco	ZANU-PF
Manyara, Owen (MDC)	2002.03.17	MC	Mt Darwin North/South ?	Nyamayaro GP	ZANU-PF, ZILWA militia
Maphosa, Richard (MDC)	2002.01.20	MV	Bikita East	Chigumisirwa	ZANU-PF
Maphosa, Stephen (ZANU-PF)	2002.02.10	HRE	Budiriro	Budiriro	MDC
Mapingure, Atnos (ZANU-PF/MDC?)	2002.01.09	MV	Zaka East/West	Jerera	Suspected MDC
Masarira, Gibson (ZANU-PF)	2002.01.09	MV	Zaka East/West	Jerera	Suspected MDC
Maseva, Amos Mishek (ZNLWNA)	2002.03.08	MV	Gutu North	Northend Farm	ZANU-PF, ZNLWVA
Matope, Kenneth (MDC)	2002.01.13	MC	Guruve	?	Unknown
Midzi, Trymore (MDC V-Chair Bindura)	2001.12.23	MC	Bindura	Chipadze	ZANU-Pf
Mijoni, Simwanja (?MDC)	2002.01.15	MD	Kwekwe	?	?state: ZRP/ZNA
Moyo, Hnery (MDC Vice-Chair, Ward 11)	2002.02.07	MV	Masvingo Central	?	ZANU- PF
Mpofu, Muchenje (MDC Chair, Mketi Ward)	2002.01.19	MD	Mberengwa East	Mketi Ward	ZANU-Pf
Mugodoki, Michael (Farm security guard)	2001.12.06	ME	Chikomba	Chivu, Majumba Farm 483	Unknown
Mukakarei, Tabudamo (MDC)	2002.02.14	MV	Masvingo North	Chief Nemanwa, Muduhunye	State: ZNA

Mupawaenda, Mamvova Takatukwa (MDC)	2002.01.17	MW	Zvimba South	Village Chitomborwizi	ZANU-PF
Munikwa, Isaac (ZANU-PF?)	2002.01.17	MV	ZAKA EAST/WEST	Jerera	Suspected MDC
Ncube, Mtokozi (MDC)	2002.01.26	BYO	Pelandaba	White City Stadium	ZANU-PF
Nemaire, Solomon (MDC)	2002.01.23	MAN	Makoni East/West	Chiome	ZANU-PF, ZNLWVA
Ngundu, Shepherd, MDC	2002.02.05	MC	Mount Darwin North	?	ZANU-PF
Nheya, Titus (MDC)	2001.12.20	MW	Hurungwe East	?	ZANU-PF
Nhitsa, Takesure (MDC)	2002.02.19	MC	Rushinga	?	ZANU-PF
Nkala, Cain	2001.11.05	BYO	Lobengula-Magwegwe	Magwegwe	Suspected MDC
Nyanzira, Tariro (ZANU-PF)	2002.02.08	MAN	Buhera North	Nyanzira village	MDC
Nyika, Rambisai	2001.12.24	MD	Gokwe South	Manoti	ZANU-PF
Rukara, Rufa	2001.11.19	MD	Gokwe North	Mutora GP, Chomuuyu School	ZANU-PF
Sanyamahwe, Kuziva (MDC)	2002.01.18	ME	Murewa South	Kadyamadare School	ZANU-PF
Sibanda, Charles (MDC)	2002.03.02	MD	Zhombe	?	ZANU-PF
Sibanda, James (MDC, Headman)	2002.02.25	MN	Nkayi	Mathendele Ward	ZANU-PF
Sibindi, Halaza (MDC)	2002.01.30	MN	Tsholotsho	Ward 5	ZANU-PF
Sibindi, Joseph (MDC)	2002.01.?	MN/MS	?	?	ZNLWVA
Sicwe, Jameson (MDC)	2002.01.29	MN	Lupane	Sizangobuhle Village	ZNLWVA
Sikele, Johannes Felix (Resettled farmer)	2001.11.11	MV	Chiredzi South/North	Fair Range Estate	Farm guard
Tigere, Shepherd	2001.12.31	MD	Gokwe South	Manoti	ZANU-PF

(MDC?)	2002.02.26	BYO	BYO	?	ZANU-PF
Unnamed	2002.01.23	MV	Mwenezi	Malikanga Ranch	Farm invaders
Unnamed (2 Farm guards)	2001.11.02	MC	Bindura	Kitsiyatota Squatter camp	ZANU-PF
Unnamed (MDC) (2)	2002.03.16	MAN	Chipinge North	Chechete, Chitepo BC	State: ZNA
Unnamed (MDC) (3)	2002.03.13	ME	Mutoko North	?	ZANU-PF
Unnamed Polling agent (MDC) Vikaveka, Darlington (MDC, farm guard)	2002.03.15	ME	Marondera East	Oxford farm	State: ZRP, ZANU-PF, ZNLWVA