# The Registration and Regulation of Political Parties in Zimbabwe: A Key Pillar in Prospects for Free and Fair Elections

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### Abstract

The nature and configuration of the legal framework governing the registration and regulation of political parties in Zimbabwe has become a major point of contestation. This is compounded by the presence of the Political Parties Finances Act which only addresses the financing of political parties and not other aspects of their regulation and registration. The Political Actors Dialogue in Zimbabwe (POLAD) platform has suggested changes to the political parties regulation and registration framework in Zimbabwe. The proposed changes include introducing mandatory registration of political parties which meet a certain threshold and ensuring public financing of all recognised political parties. This paper seeks to analyze the importance of political party registration for inter-and intra-party democracy, free and fair elections, political party financing and political party accountability. Campaign financing is critical for the freeness and fairness of elections. This paper advances arguments in support of mandatory registration and regulation of political parties. It does so by interrogating the shortcomings of the current legal framework and drawing lessons from comparative jurisdictions within the SADC region. It ends by making recommendations for a sustainable, democratic and institutionalized framework and governance structure for political parties in Zimbabwe.

## 1 Introduction

Political party regulation entails guidelines, rules, laws and policies that dictate how political parties must dispose of their mandates. Political party regulation sets the rules of the game; it establishes the minimum requirements in terms of how political parties should organize themselves and conduct their business. It sets parameters and standards in terms of how political parties should conduct themselves. How political parties are registered, deregistered and how they access finances, is all part of political party regulation. Simply put, political party regulation entails the dos and don'ts for political parties and the penalties that accrue to them where they fail to abide by the rules of the game. In Zimbabwe, the only aspect of political parties which is regulated is financing (Political Parties Finance Act).¹ All other aspects including registration, deregistration, ideology, internal democracy, accountability, campaign financing, amongst others, are not regulated. The debate on the need or lack thereof for Zimbabwean political parties to be registered is close to two decades old now. It started in 2005 when the predecessor of the now Zimbabwe Electoral Commission (ZEC), the Electoral Supervisory Commission (ESC) recommended the development of a law to provide for registration and regulation of political parties in order to prevent the emergence of fly by night and nondescript political parties.²

Since then, the debate has been raging between political parties, civil society and recently within the Political Actors Dialogue (POLAD). The debate is pitched between two distinct schools of thought; those in favour of registration and regulation school and those opposed to it. It is however perplexing that despite the pertinence of the debate in respect

<sup>1</sup> See section 3 of the Political parties Finance Act Chapter 2:11

<sup>2</sup> E. Masunungure, Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), https://www.zesn.org.zw/wp-content/\_protected/publications/publication\_113.pdf (Accessed 08 August 2022)

of intra and inter-party democracy, free and fair elections, apolitical party financing and political party accountability, academic literature on political party registration and regulation has remained largely embryonic. This paper seeks to fill this academic hiatus by interrogating how the current Zimbabwean legislative framework in respect of registration and by extension regulation of Zimbabwean political parties is antithetical to inter-and intra-party democracy, free and fair elections, political party financing and political party accountability. In so doing, the paper contributes to the broader electoral reform agenda in Zimbabwe.



## Discursive institutionalism and the debate for and against regulation of political parties in Zimbabwe

The arguments put forward in this paper have to be viewed within Vivien Schmidt's<sup>3</sup> theoretical framework of discursive institutionalism. This theoretical underpinning is helpful in interrogating policy in the context of ideas, discourses and institutions<sup>4</sup> by emphasizing how ideas and discourses affect institutional stability and change. It enables citizens and policy makers to think, debate and transform the institutions they use. This also closely relates to the Gramscian perspective on the role of intellectuals in breaking the hegemonic discourse. Gramsci brings to the fore the importance of public discourse and debates in exposing ideas which serve as vehicles for elite domination, power and manipulation.<sup>5</sup> It serves to challenge the status quo through generating ideas that persuades others to debate, deliberate, argue and contest a certain policy and or legislation.

By making institutions objects of inquiry, Gramsci and Schmidt provide pathways for introspecting formal institutions such as the ZEC and the Electoral Court, to mention a few that are mandated to handle elections and election related matters. Subjecting institutions mandated to handle elections and election related matters to rigorous intellectual interrogation is particularly critical at this juncture where Zimbabwe is headed for the 2023 general elections. This is particularly so given that in Zimbabwe, these institutions are strategic weapons in the battle for hegemonic control.<sup>6</sup> This paper contributes to the electoral reform agenda in Zimbabwe by examining what is and what ought to be in respect of registration and regulation of political parties using the discursive institutionalism lenses.

Discursive institutionalism promotes deliberate democracy in that the ideas generated by communities and entrepreneurs in the policy and legislative sphere trigger policy and law makers to introspect the institutions that they lead in a critical way, to communicate and deliberate about them, to persuade themselves as well as others to change their minds about their institutions, and then to act to change them, individually or collectively.<sup>7</sup> This has the effect of disrupting elite monopoly in decision making ensuring democratic access.<sup>8</sup> Registration and regulation of political parties in Zimbabwe is a very pertinent yet academically under-explored subject in Zimbabwe. This is demonstrated by the fact that our academic literature search returned few results. There is thus a need for ideas and discourse on the matter. According to the discursive institutionalism theory as depicted by Vivien Schmidt, ideas and discourse are tied to action by serving as guides to public actors for what to do and as sources of justification and legitimation for what such actors do.<sup>9</sup>



#### **Proponents of the Status Quo**

While this paper argues for the registration and regulation of political parties, it is important to highlight the arguments that sustain the anti-registration and regulation of political parties in Zimbabwe. This school of thought argues that

<sup>3</sup> V. Schmidt, "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse." Annual Review of Political Science (2008) pp.303–26

<sup>4</sup> V. Schmidt, Discursive institutionalism: Understanding Policy in Context, Handbook of Critical Policy Studies *Boston University Cheltenham: Edward Elgar Publishing* (2015) p.13

<sup>5</sup> A. Gramsci, Selections from the Prison Notebooks, *International Publishers*, New York, 1971

<sup>6</sup> P.Muller, . "Les politiques publiques comme construction d'un rapport au monde." In La Construction du Sens dans les Politiques Publiques, edited by Alain Faure, Gielles Pollet, and Philippe Warin, Paris: L'Harmattan. 1995, p. 153–79

<sup>7</sup> V. Schmidt, Discursive institutionalism: Understanding Policy in Context, Handbook of Critical Policy Studies Boston University Cheltenham: Edward Elgar Publishing (2015) p.13

<sup>8</sup> Ibid

<sup>9</sup> Ibid

instead of promoting multi-party democracy in Zimbabwe, registration and regulation of political parties in Zimbabwe may be weaponized by the state, which in Zimbabwe is conflated with the ruling party, to mutilate opposition parties and by extension, multi-party democracy. Due to the real or imagined possibility of the compromising of the independence of the regulatory authority by the state in the hands of the ruling ZANU-PF party, regulation and registration of any aspect of political party activity in Zimbabwe may end up forming part of the weapons in their armoury. Registration and regulation of political parties may be used to deregister, refuse registration or to impose unjustified penalties upon political parties which pose existential threats to the ruling party. This concern may, however, be addressed by making deregistration of a political party a rigorous process for example by requiring confirmation of deregistration by the High Court and providing several layers of appeal opportunities, among other possibilities. There are legitimate fears of the partiality of the ZEC or any other body that will be tasked to assume the role of registrar of political parties. It has to be emphasized that in as much as the need to have political parties registered is an electoral reform issue, the need to guarantee the independence and impartiality of the Zimbabwean electoral management body is an even bigger electoral reform issue.

In a survey conducted by the ZEC soliciting public opinion on whether or not the registration of political parties is desirable in Zimbabwe, 57.2 percent of the approximately 6 000 respondents responded that registration of political parties is not necessary in Zimbabwe. If the survey is anything to go by, it can thus be argued that the enactment of a law that regulates registration of political parties goes against the wishes of the majority of Zimbabweans, who would prefer to retain the current status quo. However, the apathy, suspicion and mistrust of Zimbabweans to the notion of political party registration may be due to concern that the drive to register political parties is inspired by the impulse to control political parties. There is nothing inherently wrong with registration of political parties *per se* but only if it is done in good faith.<sup>12</sup>

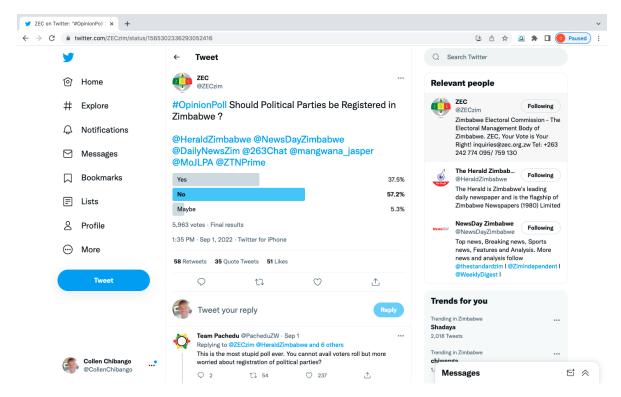


FIGURE 1 Public perceptions on whether or not political parties should be registered, https://twitter.com/ZECzim/status/1565302336293052416 (Accessed 15 September 2022)

<sup>10</sup> B. Raftopoulos, The Persistent Crisis of the Zimbabwean State, http://solidaritypeacetrust.org/1738/the-persistent-crisis-of-the-zimbabwean-state (Accessed 31 August 2022)

<sup>11</sup> E. Masunungure, Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), https://www.zesn.org.zw/wp-content/\_protected/publications/publication\_113.pdf (Accessed 08 August 2022)

<sup>12</sup> Ibid

In countries such as South Africa, Lesotho and Kenya where political parties are registered, political party regulatory authorities were created. The Zimbabwe Democracy Institute, in its 2017 report, argued that all key state institutions such as the media, the legislature, the judiciary and the electoral system have been either directly or indirectly captured by the state. Proponents of the anti-registration and regulation school of thought are inspired by the legitimate fear that if created, the regulatory authority may be captured in a similar fashion by similar interests. This is what happened in apartheid South Africa and colonial Rhodesia when political parties and organizations perceived to be pushing for regime change agendas were criminalized and banned. This fear is further legitimized by the fact that Zimbabwean institutions are generally perceived to be not only weak but unaccountable.

The current status quo is such that forming a political party is guaranteed as a right in Section 67(2)(a) of the Constitution, and is not regulated by any law. There is no law that governs the formation, registration or regulation of political parties. A political party simply needs to notify ZEC of its existence and intention to participate in an election any time before the sitting of the nomination court and it automatically qualifies to participate in that election. In Zimbabwe, it is more difficult to open a bank account than to form a political party. Political parties are free to dispose of their mandates as they deem fit with little, if any external intrusion. This status quo enabled the Citizens Coalition for Change (CCC) to form a political party, contest in the March 26, 2022 by-elections and win them, all in a space of three months. With a law in place on registration and regulation of political parties, this would not have been possible within that short period of time as due diligence on whether or not certain formal requirements were met would need more time than was at CCC's disposal. This is also sometimes perceived as one of the advantages of not having registration requirements in place.



#### **Problems with the Status Quo**

Political parties must be viewed as governments in waiting. By contesting an election, a political party assumes the potential to become the next government. It is therefore prudent that before a political party is allowed to contest an election, it is subjected to scrutiny in terms of its manifesto, its internal democracy, its vertical and its horizontal accountability mechanisms. This will assist in preventing the coming into power of political parties that are not suitable for governing such as dictatorships and gender insensitive political parties. Before the citizens vote in an election, political party registration provides a first line assessment of the political party's suitability to contest an election.

Without a law that regulates political parties, the political playing field will be chaotic, with nondescript, fringe and fly-by-night political parties that do not only confuse the electorate but also make ballot papers unreasonably lengthy. 127 political parties contested in the Zimbabwean general elections in 2018. The absence of a publicly accessible database of registered parties with names, symbols and colors of political parties may also create the room for the ruling party to create fake parties for purposes of preventing legitimate opposition parties from participating in elections. For example, when Citizens Coalition for Change was formed, several groups mushroomed contesting and claiming that Citizens Coalition for Change had stolen their names and symbols.

Political party proliferation creates administrative hurdles for the ZEC as most of them mushroom immediately prior to elections. This creates a situation whereby the ZEC is not aware of the number of political parties it will have to deal with until at the eve of elections, and as such, cannot plan and budget for engaging with them in both statutory and non-statutory engagement platforms. Registration prevents proliferation of fringe political parties since they would now be subjected to eligibility tests using indicators such as membership thresholds, internal democracy and governance requirements, geographic scope of membership, bank statements, and constitutions, amongst other indicators, before

<sup>13</sup> Zimbabwe Democracy Institute, Zimbabwe Transition in a Muddy Terrain: Political Economy Under Military Capture https://kubatana.net/wp-content/uploads/2017/12/Zimbabwe-Transition-in-A-Muddy-Terrain-Political-Economy-Under-Military-Capture-Terrain.pdf (Accessed on August 2022)

<sup>14</sup> Zimbabwe Country Report, BTI Transformation Index, https://bti-project.org/en/reports/country-report/ZWE (Accessed on 31 August 2022)

<sup>15</sup> E. Masunungure, Regulation of Political Parties in Zimbabwe: Registration, Finance and other Support, 2006 p.3, prepared for the Zimbabwe Elections Support Network (ZESN), https://www.zesn.org.zw/wp-content/\_protected/publications/publication\_113.pdf (Accessed 08 August 2022)

they are granted registration status. Only serious political parties will pass these eligibility tests. The registration process of political parties must be made to be so thorough and robust that no political party can mushroom at the eve of an election and be eligible to contest in that election. With no minimum membership thresholds for one to be considered a political party, even one or two people can call themselves a political party.

The current Zimbabwean dispensation does not subject political parties to eligibility tests or scrutiny for the purpose of their legal existence or for the purpose of contesting elections. Although political parties that push divisive, tribal, extremist and violent agendas can be outlawed in terms of the Unlawful Organizations Act, there is still need for a law that provides for the interrogation of political parties' manifestos, agendas and ideologies for purposes of determining whether they are eligible to exist.

In the absence of a law that creates a central registry where all parties can depose of their names, symbols, colours and logos, there are possibilities for more than one political party using a similar or near similar name, symbol, logo or colour. This can create inter party conflicts with the possibility of leading to political tensions which may create a conducive environment for violence. These conflicts are very common in the Zimbabwean political context as evidenced by the different Movement for Democratic Change (MDC) formations such as MDC T, MDC M, MDC Alliance, MDC 99 as well as the ZANU Ndonga, PF ZAPU, ZANU PF and ZIM PF. The use of similar or nearly the same names, logos, symbols and colors also confuse the electorate, prevent them from making informed choices. This creates possibilities for voter manipulation.

The absence of a regulatory framework which requires political parties to be registered creates a dual dichotomy whereby political parties perceive of themselves as private entities who reserve the right to manage their own affairs and who perceive any intervention in their internal affairs by the state as an intrusion but at the same time expect to receive funding from the same state. Logically, institutions that receive funding from the state are public institutions and as such, must be subjected to public scrutiny to ensure accountability on the use of public resources. In fact, one of the biggest shortcomings of the status quo is that it provides for both external and internal accountability deficits. An example of an external accountability deficit is that the law does not prohibit political parties that are regional in scope and agenda from contesting national elections. With regards to internal accountability deficits, a good example would be the absence of a law that prohibits political parties that fail to fulfill set gender thresholds from participating in an election.

## 5

## **Regional and International Practices**

Registration and regulation of political parties is a normative practice in most countries in Africa and beyond. Generally, aspects of political parties which are subject to regulation in most democracies include registration, deregistration, funding, ideology, membership thresholds and internal democracy. In Lesotho, political parties are required to register in terms of the Societies Act 3548 of 1996 first before they register with the Independent Electoral Commission (IEC). In terms of the National Assembly Electoral Act Number 14 of 2011, the IEC is obliged to conduct due diligence on political parties who have applied to register before approving such registration. Part of this due diligence includes, among other things, verifying the authenticity of the 500 registered voters who would have endorsed such a political party's registration and ascertaining that their names, logos, colours and symbols are not similar to those of already registered parties. Section 24 of the Lesotho National Assembly Electoral Act prohibits discrimination based on racial, colour, religious and gender considerations. Political parties are therefore, by law, required to be accountable to their membership. Similarly, in South Africa, Section 16 of the Electoral Commission Act prohibits political parties from registering on pretty much similar grounds as of those in Lesotho such as advocating for violence and promotion of ethnic agendas.

Section 33 of the Lesotho National Assembly Electoral Act requires the Electoral Management Board to reject applications for registration by political parties whose names, symbols, logos and colours that resembles or closely resembles those of other registered political parties. Political parties which apply to register in Lesotho are required

<sup>16</sup> Zimbabwe Electoral Support network, Position Paper, Political Party Regulation in Zimbabwe, https://www.zesn.org.zw/wp-content/uploads/2019/10/ZESN-Postion-Paper-on-Political-Party-Regulation-in-Zimbabwe.pdf (Accessed 18 August 2022)

to submit copies of their constitutions which should, among other things, provide for periodic democratic election of their leadership. If any amendment to such constitutions is made after registration, the IEC must be notified within 30 days of such amendment. Section 17 of the South African Electoral Commission Act and Section 27 of the Lesotho National Assembly Electoral Act legally empower these countries' EMBs' to deregister political parties and lay down the grounds thereof.

Contrary to the current Zimbabwean legislative framework, the manner in which Kenyan political parties dispose of and manage their internal affairs is subject to scrutiny by the Registrar of Political Parties. Section 3 of the Political Parties Act Number 11 of 2011 explicitly states that in the formulation of its internal policies and nomination of candidates, a political party must promote inclusive democracy and participation of the people. No organisation is allowed to operate or function as a political party unless it has been registered in accordance with the provisions of the Political Parties Act. It takes up to 44 days from the date of lodging an application for registration by a political party to the issuance of a certificate of provisional registration.<sup>17</sup> During this 44 day period, due diligence will be carried out, which includes publication of a notice in a gazette and newspapers inviting people nationwide, including existing political parties, to object to the intended registration or to register concerns in respect of name, symbols, and colours. It takes a further 180 days for a political party, after obtaining a provisional registration, to obtain full registration which enables it to participate in elections.

The Kenyan model is interesting in that it imposes mandatory gender requirements for a political party to be registered. Section 6 of the Political Parties Act provides that in its application for provisional registration, a political party's written application must not be signed by more than two thirds of the same gender. Section 7 further provides that not more than two thirds of the governing board of the political party lodging an application for registration must be of the same gender. No member of the governing board must have a prior conviction, nor must have been previously declared bankrupt. Contrary to Lesotho which sets the minimum membership threshold to 500 for purposes of registration, the Kenyan model sets the threshold at 1 000. <sup>18</sup> The law also bars the formation of political parties with a regional or tribal agenda by obliging the 1 000 members to be spread across more than half of the counties. <sup>19</sup> In addition to fulfilling gender, ethnic and regional diversity requirements, the 1 000 minimum threshold of the membership must also include special interest groups. It is also interesting to note that the Registrar of Political parties is empowered to direct a political party to amend its constitution. <sup>20</sup>

Public Officers excluding the President, Deputy President, Member of Parliament, Governor, Deputy Governor and Member of a County Assembly are prohibited from being founding members of political parties. They are also not eligible to hold office in a political party or to engage in a political activity that compromises the political neutrality of their public office. This is in stark contradiction to Zimbabwe where public officers such as members of the Zimbabwe Republic Police and the Zimbabwean National Army have openly participated in political activities of political parties or declared allegiance to political parties. Whilst this conduct is regulated through other laws including the Constitution of Zimbabwe, its implementation has been weak and the situation is worsened by the lack of enforcement.

The Political Parties Act of Kenya strives to foster political party transparency and accountability. Section 17 of the Political Parties Act makes it mandatory for a political party to have certain records at its head office and county offices. These include membership databases, constitution, policies, pledges, contributions and donations in cash or kind made to the parties, their expenditures, and audited accounts amongst other documents. These documents must be availed to the Registrar of Political parties for inspection.

<sup>17</sup> Section of the Kenyan Political Parties Act, Number 11 of 2011

<sup>18</sup> Section 7 (2) (a) of the Kenyan Political Parties Act, Number 11 of 2011

<sup>19</sup> Section 7 (2) (b) of the Kenyan Political Parties Act, Number 11 of 2011

<sup>20</sup> Section 9 (2) of the Kenyan Political parties Act, Number 11 of 2011

## 6

#### **Conclusions and Recommendations**

Reforming political parties regulation in Zimbabwe could lead to more accountable, democratic and institutionalised political parties, which comply with international best practices and the institutional theory. While reforming the regulation of political parties is critical to electoral reforms, it might not be the immediate target for the 2023 elections. Institutionalisation of political parties does not take place over night considering the amount of time it takes for law making. Even if the law allowing for registration and regulation of political parties is enacted before the 2023 elections, it may be too late to implement it for purposes of the 2023 elections. However, it is necessary that deliberations, discussions and debates in this regard start now.

Registration and regulation of political parties has become a standard practice regionally and internationally. Zimbabwe is lagging behind in this regard. Political parties in Zimbabwe lack accountability, partly as a result of the absence of a legal framework for their registration and regulation. The current legal status quo creates room for tribal, violent, extremist and regionalist political parties to exist and operate. The internal governance of political parties suffers in the absence of a legal framework that sets minimum standards fostering democracy and accountability. This is problematic because a political party without this internal democratic order in place then become a governing party. Good examples of legal frameworks which regulate political parties can be drawn from the Kenyan, South African and Lesotho models as examined in this paper. In Zimbabwe, in the absence of a central registry of political party names, colours, logos and symbols, political parties tend to use identical or near identical names, colours, logos and symbols and in the process confuse the electorate. This may also promote inter-party conflicts and violence. The current status quo makes it difficult for ZEC to plan and budget for engagement with political parties as it only becomes aware of the number of political parties contesting in an election just before or on the day of nomination. The absence of a regulatory framework also creates room for proliferation of fringe political parties in the run up to elections and this unnecessarily increases the administrative cost of holding elections.

Zimbabwe needs to enact a law that provides for the registration and regulation of political parties. The same law must provide for minimum requirements for a political party to register and must also provide for deregistration of political parties which do not meet the set standards and requirements. The law must create a central registry of political party names, logos, symbols and colours to prevent inter-party conflict and violence. This central registry must be created and managed by an independent body. In some countries, the EMB is responsible for this function. While this could be a possibility for Zimbabwe, it must be noted that the level of trust for the ZEC is below 50% according to the latest Afrobarometer findings.<sup>21</sup> This creates a challenge for it to be accepted as an impartial regulator. Registration and regulation must also provide for equitable access to finances by all political parties which meet the formal registration criteria. This may include, such as in the case of Lesotho, provision of campaign finances or reimbursement of funds used during a campaign by candidates from political parties which meet formal registration requirements. Section 3 of the Political Parties Finance Act which only provides for funding for political parties which garnered five percent of the vote in the previous general elections must be repealed. Gender equality requirements must be imposed on political parties for purposes of not only registration but selection and nomination of candidates. Political parties which do not meet gender equality requirements as enshrined in Section 81 of the Constitution of Zimbabwe must be de-registered.

<sup>21</sup> Summary of results Afro barometer Round 9 survey in Zimbabwe, 2022 Compiled by the Mass Public Opinion Institute https://www.afrobarometer.org/wp-content/uploads/2022/08/ZIM-R9-AB-Summary-of-Results\_26aug22.pdf (Accessed on 31 October 2022)

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