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As went the *Institutions*, so went the *Transition*: lessons for Zimbabwe from Zambia’s 2015 Presidential Succession Politics

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As went the **Institutions**, so went the **Transition**: Lessons for Zimbabwe from Zambia’s 2015 Presidential Succession Politics

**Key Questions**

- How did Zambia resolve the Presidential succession question?
- What were the critical enablers of the peaceful transition and what role did they play?
- What is the state of such critical enablers in Zimbabwe and can they enable a democratic transition?
- What needs to be done to strengthen the transitional institutions?
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ABSTRACT

Why is it that some post-colonial African countries experience constant successful democratic transitions from one ruler to another while others face blocked transitions? We argue that the democraticness of state and non-state institutions is the key differential factor. This is based on our comparative case studies of Zambia and Zimbabwe, where the former enjoy successful transitions because in practice it has more inclusive and independent institutions that support democracy than the later which has extractive and partisan ones. We demonstrate this through a macro analysis of the nature and state of critical enablers of a democratic transition in each of the two aforementioned countries. In particular, these are the judiciary, political parties, military, media, civil society, election management bodies and informal institutions. From the premise of our argument, we recommend that democratic actors (civil society) in failed Zimbabwe must encompass programmes that are driven by the will to transform society from below. Any short cuts will be building on quick and soft sand and will fail the hard test of enabling a solid and durable democratic transition even at a critical juncture of what might appear a great opportunity.

1. BACKGROUND

Zimbabwe faces a herculean task of managing the country’s first complex succession politics from more than three decades of President Robert Gabriel Mugabe’s iron rule to a new leader in the not so distant future. Even though Schedule 6 (Section 14) of the Zimbabwe constitution is crystal clear in terms of the transitional provisions in the event of death, resignation, incapacity or removal from office of the incumbent it is the real hard politics of succession that demands a continued search for a practical way of attaining a peaceful and democratic transition especially from the grip of entrenched authoritarian institutions and practices. This was evident in Zimbabwe’s failure to ensure democratic transfer of power from Mugabe to the winner of the 29th of March 2008 presidential election. The Zimbabwean President is 91 years old, his health is said to be deteriorating and even these become non-factors the constitution only allows him to seek one more term of office in 2018. This reality signifies that Zimbabwe is officially in a transitional era from Mugabe’s rule to the unknown. The consequences are evident in the internecine politics within the ruling Zimbabwe African National Union Patriotic Front (ZANU PF) where life has become ‘nasty, brutal and short’. The party is under threat of explosion from the succession centrifugal forces as factions jostle to strategically position for the unavoidable succession of Mugabe. Following a number of blocked transitions on the African continent, what are the critical enablers of a peaceful transition? This brief adds to national debate using evidence from Zambia’s sixth post-colonial transition from one President to another and recommends a possible role for civil society in Zimbabwe in defining the path for Zimbabwe.1

1Note that the paper is based on a 6 day field observation in Zambia by a team of five people under the auspices of the Crisis in Zimbabwe Coalition and Election Resource Centre. Hence the paper is meant to generate debate rather than be conclusive.
Zambia is a particularly interesting case study because it held its Presidential by-elections on 20 January 2015 in a peaceful and relatively democratic manner. This was the sixth time Zambia has had a democratic transition from one President to another in the post-colonial era. By a democratic transition we mean a situation when there is a competitive, free and fair electoral environment that leads to a legitimately elected leader peacefully and constitutionally taking over state power from the incumbent like in the election of Soglo in the March 1991 election in Benin. In Zambia, the office of the President was first held by Kenneth Kaunda on 24 October 1964 following independence from British colonial rule. Kaunda was democratically succeeded by Frederick Chiluba on 2 November 1991 following a general election. Chiluba was replaced by Levy Mwanawasa in an election on 2 January 2002 after serving two terms as prescribed by the constitution. Mwanawasa died in office and Rupiah Banda constitutionally took over as Acting President. Banda subsequently lost an election and was replaced by Michael Sata who took over on 23 September 2011. However, Sata died in office on 28 October 2014 and Guy Scott assumed office as Acting President. Scott could only act for 90 days as prescribed in the constitution, hence the Presidential by-election on 20 January 2015 where 11 candidates contested to fill the vacant seat of President, with Lungu emerging with a 48.3% victory. The most important point here is that Zambia, like South Africa, has managed a consistent democratic transition from one President to another and there are lessons to be learnt for the region in general and Zimbabwe in particular. The following picture shows Zambia’s Presidents since attaining independence in 1964.

**Picture 1: Zambia’s elected presidents 1964-2015**
2. **Introduction**

While Zambia’s post-colonial transition and turnover of leadership in a largely peaceful and democratic manner has been hailed as a model for Africa, and generated envy from Zimbabweans in general and civil society in particular, not enough time and energy has been invested in trying to understand the transitioning critical enablers and their functions. We posit in this paper, that constitutional clarity without constitutionalism does not lead to a successful transition, but that the disposition and practice of the following institutions - judiciary, political parties, military, civil society, media, elections management body and informal institutions- function to either enable or disable transitions, and that the role they play accounts for the successful transitions in Zambia. The Zambian experience in the run up to the January 20 2015 Presidential by-election showed that the democraticness of these institutions in rules and practice define the transitional path and its inherent outcome. As such, while the disposition has to be positive, it does not always follow that all these institutions have to be loud or quiet in their actions and articulations but simply democratic. Additionally, although the bulk of focus in transitions of this nature is often on elections, which Pastor argues as presenting transitions with their moment of greatest promise\(^2\), we acknowledge that the EMBs are a critical enabler, but add that their role is probably the late delivery point of the transition, and can be *a fait accompli* if we do not account for the actions and disposition, prior to the election and after it, of the other critical enablers listed above.\(^3\) Having identified the critical enablers as listed above, what role did they play in the latest of Zambian transition from one national President to another? Before we delve into the findings we give a synopsis of the data gathering techniques.

3. **Methods**

The study was informed by both primary and secondary sources of information. The collection of data between 17 and 25 January 2015 included three key methods. The paper largely relies on desk-top review of literature on transition, democracy and politics in Africa, Zimbabwe’s legal framework, Zambia’s legal framework, media content, political party reports, judiciary judgments, statements of the electoral management bodies, civil society reports, regional and international reports. This was used to triangulate information from primary discussions so as to improve the credibility and reliability of data.

To complement the desk-top approach the article draws on views from engagement with various stakeholders especially in Zambia to gather information on the political process. This engagement was useful in assisting our understanding of the succession context. It also gave an opportunity to triangulate the views and concerns of various stakeholders across the spectrum. Some of the stakeholders engaged included political party members, civil society representatives, and media practitioners, members of the


\(^3\) Given the importance of Election Management Bodies we focus in detail on the technical aspects of the Zambian election and the role of the Electoral Commission of Zambia (ECZ) in our second brief on the Zambian election.
SEOM and ordinary citizens who religiously followed the politics. The discussions were designed to allow asking open questions, listening, further probing and recording in ways that allowed capturing the contestations among the critical enablers.

The final aspect included visiting election centres, polling stations et cetera for close observations of the institutional practices. This provided first hand assessment of institutional practices and provided an opportunity to verify information obtained from desktop research and discussions. As Bentzon et al argue, there might be a difference between what people say are their operative functions and what actually happens in a setting.

Based on findings from the literature review, discussions and site visits, views were manually coded and related to a particular institution. Principles of research ethics and confidentiality were adopted to protect informants, given the sensitivity of political transition politics. The next section presents the findings on Zambian institutions.

4. What were the critical enablers of Zambia’s transition?

4.1 The Judiciary

The judiciary is a critical component of the transition puzzle and succession conundrum. In developed democracies, it often acts as the final arbiter of disputes around interpretation of the rules of engagement and presides over claims to representation and other issues by aspiring candidates. As Abuya observes ‘...an independent judiciary is required for a contested election to be resolved effectively’. In the run-up to the January 20 2015 Presidential by-election, the judiciary had its work cut out from the moment that President Sata died, as questions emerged around whether Vice President Guy Lindsey Scott could actually act as President for the 90-day period between the passing on of the incumbent, and the constitutionally required by-election for the nation to decide who would finish off President Sata’s term of office. The situation arose from a reading of the Zambian Constitution’s Article 34 (3) which states that for one to be President of the Republic both parents must be citizens of Zambia by birth or decent. Vice President Scott, though born in Zambia - his parents were not - having migrated from Scotland. It was this reading of the constitution that led to Scott never acting as Head of State whenever President Sata was absent, leading to second challenge around his right to ascend to the President Sata’s seat post-mortem, as the instruments of power (Acting Presidency) had been left by Sata with Minister Lungu under Article 39 of the constitution. But the matters though occupying important public debate space, were resolved by reference to precedent, where in the matter of Lewanika and Others vs Chiluba, it was ruled that the parentage clause applied to people born after Zambia’s independence and that Zambian citizenship was presumed and conferred on all who were living in Zambia in 1964. The second matter was addressed through referrals to Article 38 of the Zambian constitution, which spells out that in the event of death, the Vice President or a person selected by cabinet takes over as President of the republic for the 90 day period.

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While there has been talk of judicial reform in Zambia for some time now, it would seem that the need for reform though informed by real issues of competence, industry, corruption and other issues, it is, if Zambia is compared to other countries in the SADC region, informed more by the need by Zambia as a country to challenge itself to a better standard. On the evidence, Zambia’s judiciary is considered relatively independent, and is relatively trusted. As Denis points out, despite attempts to capture and or bully, ‘the Zambian judiciary has been fairly successful in preserving its independence from the executive and legislature’. This perhaps accounts for why the Judiciary in Zambia is also relatively trusted as evidenced by a 2014 Gallup Poll which showed that trust levels of the judiciary by Zambia citizens was at a relatively high level of 60%, while Zimbabwe for instance recorded a 51% trust rate with the continent averaging 48%.

It therefore was no surprise when in the run up to the January 20 2015 Presidential by-election, almost all leadership disputes, especially within political parties which internal mechanisms failed to deal with were eventually dealt with by the courts. Cases in point were the Movement for Multi-Party Democracy’s (MMD) leadership wrangle between the party President Nevers Mumba against his party’s executive who had decided to bring back former party and State President Rupiah Banda to run as the party’s candidate in the 2015 Presidential by-election. In the ruling party, leadership wrangles saw the Patriotic Front staging two separate conferences to choose a new president and eventual candidate in the 2015 presidential by-election. In both instances, the courts were approached, and judged on the matters and in both instances despite misgivings by some, all factions eventually accepted the courts decisions as final, bringing some semblance of stability to the parties and some sanity to the national presidential race itself. Of interest is the impression that the judicial system in Zambia seems not only to be relatively trusted but its judgments are also adhered to, similar to Kenya, which ranks one place above Zambia in the cited Gullap Poll, where the citizens seem to relatively trust the judiciary, though the politicians do not but both seem to adhere to judicial pronouncements and or judgments. This is in contrast to Zimbabwe, where the courts are marginally trusted, and their judgments, when not in favour of those in power are not adhered to.

The above is not to suggest that the Zambian judiciary is without fault perceptional or in reality. Some analysts and citizens alike have questioned the independence of the judiciary especially in the run-up to the 2015 presidential by-election on two fronts. The biggest questions have been asked around the acting Chief Justice of Zambia Lombe Chibesakunda, who has been acting for over 3 years. As Hamalengwa notes Zambia is probably ‘the only country in the whole wide-world that has a permanent acting Chief Justice’ and yet the Chief Justice heads a critical arm of the state which is supposed to check the powers of the Executive, and thus his/her position should not be in flux as is Justice Chibesakunda. This is more so, when it is taken into consideration that one of the candidates in the contest for the Presidency is actually a former acting President and Minister of Justice, as was Edgar Lungu. As Himalengwa further argues, the head (of the judiciary) must be permanent and must not feel unhinged in reality or

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6 http://www.gallup.com/poll/174509/less-half-africa-confident-judicial-systems.aspx
7 See Dr. Nevers SikwelaMumba vs MahatLunji: Lusaka High Court case number 2014/HP/1670 – the decision of this court case which favored Lungu, was overturned by the Supreme Court leading to Mumba prevailing and running as the MMD Presidential candidate. See also http://www.lusakatimes.com/2014/12/18/nevers-mumba-official-mmd-presidential-candidate-supreme-court/.
8 http://www.lusakatimes.com/2014/12/03/lusaka-high-court-declares-edgar-lungu-pf-president/
perceptually⁹. MunaNdulo further stresses this point stating that ‘for judges to be personally and substantively independent they need security of tenure, and an appointment system that is transparent, takes merit and competence seriously and minimises political influence in the appointments”¹⁰.

However, for our purposes in this paper, the preponderance of evidence suggests that the judiciary in Zambia as a critical enabler for peace and democratic transition played a progressive or positive role, and was not shy about its pronouncements. In other words, the judiciary played a positive and loud role which aided the process of succession to be smooth and peaceful.

### 4.2 Political Parties

Political parties are generally agreed to be critical cogs where democratic opening and consolidation is concerned. Seymour Martin Lipset asserts that, although political parties seem not be given enough attention, they are an indispensable part of the forces and institutions that allow democracy to flourish¹¹. LeBas adds that for democratisation and liberalisation to progress, the existence of strong parties (especially strong opposition parties) is of crucial importance¹². Political parties in the run-up to the 2015 Zambian Presidential by-election made for a particularly interesting study in that the ruling party had only enjoyed that status for almost three years, having been in opposition for close to 10 years prior to their ascension. While the opposition was characterised by parties that had been in existence for long periods including the former ruling party MMD which had presided over Zambia for 20 years and the United Party for National Development UPND which has been in opposition and gaining in strength since 1998. If longevity is used as a measure, one can argue that this durability of parties, though young by global standards, does point to some strength in political parties in Zambia since the return of multi-party politics in 1991. This perceived strength however, belies fluidity in Zambian politics which has seen numerous instances of floor crossing in the Zambian parliament, and switches of support from one party to another by influential political figures in Zambia. Part of this fluidity in terms of the later can be exemplified by Rupiah Banda’s backing of Edward Lungu in the 2015 Presidential by-election after he had failed to secure the candidature of MMD as alluded above, while the former is evidenced by the high preponderance of parliamentary by-elections as a result of floor crossing by members of the opposition to the ruling party, which saw PF increase its seats in parliament by nine as of the middle of 2013, while a total 31 by-elections had been conducted with possibilities of more¹³.

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⁹ see Dr. Hamalengwa’s opinion “A Machiavellian View of President Sata’s Succession” http://zambiareports.com/2014/10/30/machiavellian-view-president-satas-successor/


However, given the unique set of circumstances that led to the 2015 by-election, which meant that there was to be a transition and succession battle in the Patriotic Front itself before seeking to defend their presence in government, it is of interest to this paper as to how this battle was managed. Our interest is further bolstered by the unique developments in the MMD that saw a sitting President being dumped in favour of a retired one for purposes of seeking to reclaim the national presidency they had lost in 2011. This interest stems from the thesis that how political parties behave in their own spaces affects their chances of retaining or capturing state power, and also can be an indicator of how they will behave in pursuit of the same, and preside over the state. While there were 11 Presidential candidates for the 2015 Presidential by-election\textsuperscript{14}, we focus our attention on the three main ones, based on the 2011 Presidential results.

In the run-up to the 2015 Presidential by-election the ruling Patriotic Front (PF) was fraught with fractions and factions interested in having one of their own succeed the late Sata. Though initially perceived to be more, the factions finally distilled into two, one led by Edgar Lungu (Minister of Defence, Minister of Justice, Acting State President and Secretary General of the party at the time of Sata’s death) and Miles Sampa (nephew to the late President Sata, Deputy Minister of Commerce and acting President Scott’s preferred candidate). The differences between the two fractions proved intractable to the extent that the PF held two separate conferences in Mulungushi, Kabwe that produced two different leaders in Lungu and Sampa. The disputes hovered around different interpretations of the party constitution, allegations of manipulation and political brinksmanship at the expense of process by the contenders. The matter was ultimately resolved through the courts, which ruled in Lungu’s favour\textsuperscript{15}, while peace and unity in the party, was facilitated by, some say, military intervention through blackmailing Guy Scott behind closed doors, while the church also claims that accolade\textsuperscript{16}.

The differences which lasted well into December, and had seen different attempts by the different factions to expel each other from the party even as early as early November\textsuperscript{17}, severely impacted on party unity, with predictions that the impact of

\textsuperscript{14} The 11 parties that fielded candidates were the ruling Patriotic Front, Forum for Democratic Alternatives, Green Party, Forum for Democracy and Development, NAREP, 4th Revolution, UPND, UNIP, United Poor People of Zambia’s Freedom Party, People’s Redemption Party and MMD.


\textsuperscript{16} see http://zambiadailyvation.com/2014/12/22/hands-off-military/

\textsuperscript{17} when Guy Scott was elevated to party president, one of his first acts was to remove Lungu as party Secretary General, an ill fated move which was reversed after protests by some cabinet ministers and protests by Lungu supporters in Lusaka. Lungu on his part is alleged to have led an ill-fated attempt to get Guy Scott to step down from Acting as President.
these fissures would show as they did in the 2015 Presidential by-election through a close contest between Lungu and opposition UPND Candidate HakaindeHichilema. Hichilema’s own party was a study in stability ahead of the 2015 presidential by-election. With no one contesting his leadership, Hichilema was able to get a head start in campaigning while the PF was squabbling. The result was him overtaking the MMD and its candidate Nevers Mumba as the main contender against PF’s Lungu, and an increase in support from just about 18% in the 2011 election to 46.7% in 2015.

The immediate past ruling party, the MMD, was also fraught with leadership contests and factions ahead of the 2015 Presidential by-elections. The factions manifested themselves through fissures between MMD President Nevers Mumba and MMD Secretary General MuhabiLungu, who was bent on sponsoring the return of former President Rupiah Banda as the MMD’s candidate. As in the PF the matters failed to be resolved internally, finally being decided by the Lusaka High Court. However, unlike in the PF, the resolution was not followed by reconciliation between the protagonists, with Dr. Mumba expelling MuhabiLungu from the party. The destruction of MMD as a viable opponent in the 2015 by-election was virtually sealed when Rupiah Banda endorsed PF candidate Lungu ahead of his party President Mumba, as did other MMD heavy weights like Dora Siliya (in whose Petouke Central Edgar Lungu eventually had a runaway lead of 10,346, to HikaindeHichilema’s 1,202 and the MMD holders of the seat with 105 votes, at close of polling) and 21 of 24 members of the MMD national executive. The MMD eventually got less than 1% of the vote in the 2015 Presidential by-election.

What is noteworthy of political parties as critical enablers ahead of the Zambian 2015 Presidential by-election has been the impact that internal party processes have had on the eventual outcome of the election. Stability at leadership levels as in the case of the UPND has clearly yielded positive results. While instability as was the case in the PF and especially the MMD translated to poor performance on the national stage. However, what is commendable was the acceptance of court rulings by all parties concerned, which is hoped to translate even to the national stage. Chances of legal adherence but with possibilities of sabotaging the same decisions remain likely as was displayed by the MMD, though comfort is derived from the ability to be able to reconcile both legal and political processes for purposes of managing succession and providing stability as was done by the PF. Another important observation was that political leaders, though with grievances, managed to concede defeat. For instance, HakaindeHichilema, who lost by a very narrow margin conceded defeat though he felt the election had been stolen from him and urged party members and supporters across the country to remain calm and peaceful.

4.3 The Military

Conventional political transition wisdom, as propounded by Bratton and Van De Walle has it that there where the military goes so too does the transition. However, this usually relates to states that are emerging from an authoritarian setup where the ancient regime is a factor. Zambia passed that stage in 1991, and since then the
military has largely been under effective civilian control. While it remains a critical institution, the professional conduct of the Zambian military and its non-involvement in civilian political processes has been a critical factor in ensuring peaceful transitions from one leadership to the other. In the run-up to the 2015 Presidential by-election, the role of the Zambian military was muted with speculation of covert involvement being mentioned in equally hushed but unsubstantiated tones. Cases in point were allegations that the military played a role in putting an end to former PF Secretary General Wynter Kabimba’s Presidential ambitions after he seemed to have started campaigning to take over from Sata even before he was dead. The military is also alleged to have played an active role in forcing a truce between acting President Guy Scott and then aspiring President Lungu.

These allegations have however been denied, with the strongest protest coming from Father Charles Chilinda of the Catholic church, who claims to have facilitated the reconciliation with the help of Northmead Assemblies of God Bishop Dr. Joshua Banda. In addition there has been speculation that Lungu’s position as Minister of Defence puts the military in his favour, yet the only use of the military that is undisputed is that of deploying members of the force to guard the homes of perceived Scott allies Kabimba and M’membe a local businessman who owns the Zambian Post.

To that end, if the Zambian military played a role at all, it was a quiet one, and on the strength of the allegations, a positive one. Generally, the lack of active involvement of the military in succession matters in Zambia has boded well for successful, peaceful and democratic transition.

4.4 Informal Institutions

Zambia in 2014 celebrated 50 years of independence and with it a celebration of sound democratic culture, which has seen at least four leadership turnovers. This success is a credit not just to the people of Zambia but also its former leaders who paved the way when the electorate called time on them. Most notable among these former leaders actions are those by founding President Kenneth Kaunda who gracefully accepted defeat and retreated into retirement in 1991, and Rupiah Banda who accepted defeat in 2011 and retreated to his farm. These actions have no doubt earned the two some currency amongst the Zambian populace, which has allowed them to retain a relative amount of influence on political developments in the country. In the run-up to the 2015 Presidential election run-off Kaunda’s example from 1991 and the peaceful nature through which he handed power was a looming example and reference points in terms of whether chaos would occur in Zambia in the aftermath of the death of President Sata.

The preponderance of views, both at home and abroad, was that Zambia would undergo another peaceful transition inspired by a culture started by Kaunda, and

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22 http://zambian新华网on.com/2014/12/23/hands-off-military/
24 Former President Kaunda did attempt a comeback, which led to the institution of the parentage clause around citizenship and eligibility to run for Presidency that we discussed earlier in this paper.
followed through by the likes of Rupiah Banda.25 These former heads of states have accrued institution status in Zambia, and founding President Kaunda used his status to call for ‘social harmony in thought, word, and deeds aimed at making fairness and peace a practical way of life.’26 Rupiah Banda, on the other hand evidently used his status to attempt a return to active politics before eventually endorsing a presidential candidate as alluded to, above. Banda’s endorsement was perceived as a game changer, which not only augmented support for Lungu, but dealt a heavy blow on MMD’s chances at the presidency.

Other informal institutions that seem to have played a role in the run-up to the 2015 Presidential By-election include the church, which was reported, and by its own admission, facilitated a ceasing of hostilities within the ruling PF party. Some churches and church leaders went further than facilitating peace, to the extent of leading conversations during church services around candidates and their virtues. Examples of this were Healing Word Ministry’s Pastor Moses Chiluba, who was reported as having extolled the virtues of the PF party and its candidate during services, while also actively campaigning and fundraising for the same.27 Similar incidents were reported as having occurred at the Catholic church’s St. Ignatius Parish in Lusaka. In addition, these churches were also reported as actively encouraging congregates to go out and vote. Another area which requires deeper interrogation is the role of the First Family in the transitional matrix.

Despite the above, the role of informal institutions in enabling transition in Zambia has largely been through messages for peace and tolerance, and an aversion to violence. Outside this, their role has been relatively muted, as the bulk of key players in the political process resorted to formal arrangements of managing challenges as well as facilitating transition.

4.5 Civil Society

Civil Society in general has proved to be a challenging concept to uniformly define. As Comaroff and Comaroff have argued, this has often led to it being a conceptual ‘all-purpose placeholder’28. This has often led to civil society as a concept spawning confusion as to whether it is a noun (a part of society), an adjective (a kind of society), an arena for deliberation or a mix of all three?29 Or as Lewis suggests it can be something that one can use to ‘think with’ or ‘act with’. While these debates around conceptualisation may never be concluded in agreement, one of the things that are clear is that civil society, regardless of how one defines is a critical stakeholder and or space with regards to democratisation process, and by implication for our discussion, transition and succession politics. In Zambia, like everywhere else, civil society has mirrored the general understanding of it either as an associational space (De Tocquavilian), or as a space for contestation, debate and creation of dominant ideas or hegemony (Gramscian). The development of civil society in Zambia and its participation in politics and governance also mirrored the global trend around the emergence of this sector as a vehicle for achieving a democratic society through building social movements strong enough to face off with and win against authoritarian

27This was shared during a personal discussion with a member Pastor Chiluba’s church.
regimes. As Bartlett shows, 'the transfer of power from President Kenneth Kaunda and the United National Independence Party (UNIP) to Frederick Chiluba and the Movement for Multi-Party Democracy (MMD) in 1991 was the first occasion in post-independence sub-Saharan Africa in which power was peacefully transferred through the electoral process.' This event was not just important as an announcement of Huntington’s third wave of democratisation on the continent, but was also significant in terms of its announcement of the power and potency of civil society in democracy and governance matters, as the MMD was born of the labour and civil society movement in Zambia. As such, civil society participation in governance and democracy issues has a long and proud history in Zambia, although the state itself, has even with those progressive changes, retained the presidency as a powerful post and institution in Zambia, giving the incumbent wide discretionary powers and considerable scope for patronage. As a result of the foregoing, one of the major preoccupations of civil society since the 90’s has been a struggle for a people driven democratic constitution and the transformation of the judicial and legal terrain from just a justice system to a just system.

Some of the contradictions in terms of an understanding of civil society and its role were on display ahead of the 2015 Presidential by-election as civil society manifested in different forms playing different roles. These included: political advocacy around the respect of the constitutional order including fair comment on what this was; Voter education and monitoring; efforts aimed at protection of the vote; advocacy around establishing a peaceful environment and perhaps more controversially in some settings, backing and campaigning for political candidates. Below we exemplify some of these initiatives.

Organisations like the Foundation for Democratic Progress (FODEP) and the Christian Churches Monitoring Group (CCMG) offered traditional voter education and monitoring processes in the run-up to the by-election. But allied to this fair comment and analysis on political developments was also proffered through organisations like the Foundation for Democratic Progress (FODEP) who consistently interpreted and commented on political events. Some like Transparency International Zambia moved towards protecting people’s votes through exercises like the Parallel Vote Tabulation, while others like ActionAid Zambia, Civil Society for Poverty Reduction (CSPR), Jesuit Centre for Theological Reflection (JCTR), Non-Governmental Organisations Coordinating Council (NGOCC) and Zambia Council for Social Development (ZCSD) campaigned for peace.

The NGOCC, one of Zambia’s oldest and leading civil society coalitions, actually moved into traditionally mucky waters in terms of the role for civil society, choosing to endorse a Presidential candidate, Edith Nawakwi of the Forum for Democracy and

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30 Edwards, Michael (ibid)
34 This group was made up of Council of Churches of Zambia (CCZ), the Jesuit Centre for Theological Reflection (JCTR), the Evangelical Fellowship of Zambia (EFZ) and the Zambia Episcopal Conference (ZEC).
35 See ‘TIZ to use PVT in election results tabulation’ http://www.qfmzambia.com/2015/01/16/tiz-to-use-pvt-in-election-results-tabulation/
36 Civil Society Calls for Stop to Political Violence http://zambiareports.com/2014/12/04/civil-society-calls-stop-political-violence/
Development. Nawakwi eventually came third out of eleven in the Presidential race. This move was largely understood in terms of the NGOCC’s agenda of women’s emancipation and gender parity, by a lot of people and was acceptable, though perceptions of partisanship by other groups were not so welcome. This was the case for instance in cases of allegations of partisanship on the part of organizations like FODEP who were perceived to be pro-PF and TIZ whose PVT exercise was alleged by some to be government sponsored aimed at propping up the PF government.

The above efforts by civil society relate to the understanding of civil society as associational space. However, in Zambia this role of associations in the run-up to the 2015 Presidential by-election was also augmented by the alternative understanding of civil society as the public sphere and space for the contraction of ideas. This could be seen through the free discussion of issues associated with the succession in the press, in commuter omnibuses (called mini-buses in Zambia), popular radio talk shows like Phoenix Radio’s ‘Let The People Talk’ and other call-in programmes, and even in churches.

In either conception, Civil Society in Zambia assisted in enabling peaceful and democratic transition through the above modes in a loud, above ground fashion. Their roles were clearly positive as they assisted in checking the state, political actors and Presidential aspirants from undemocratic conduct. At the same time the debates they sponsored and the education they provided assisted the citizens with critical takes and initiatives that aided the citizens voting processes and in some instances patterns based on principles. Civil Society, like every other player in the process were clearly affected by time, as the 90-day period with its high political drama, hardly presented enough time for full and proper voter education around the process and candidates. Allied to this challenge was the age-old problem of the constitution which civil society and some opposition political parties thought would have been changed ahead of elections post 2011. As such, these challenges perhaps, together with the wet weather, accounted for what eventually turned out to be low voter turnout at just over 33% during the 2015 Presidential by-election.

4.6 Media

The media is an important institution that can help to shape and influence public thought/action over succession and transitional politics. Media play an essential role of ensuring that information vital to the existence and development of constituents of such societies is disseminated in a timely, equitable, fair and balanced manner. During elections, media afforded constituents with all information necessary for them to make informed choices about whom to elect and whom not to elect into positions of authority.

Zambia was not an exception and the media played a critical role. First, on paper, the institutional structure was clearly spelt out in the journalist code of conduct by the Election Commission of Zambia in line with the Electoral Act. For example, The Electoral Act stated that ‘every public officer and public entity shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct that


39These allegations were largely perception and were not proven.
campaign freely.\(^{40}\) Public media fall within the category of public entities. The code of conduct lucidly stated that, ‘the role of the media in this context is to bring out content of all campaign activities in its reportage or simply to make sure that manifestos of parties and candidates are covered. By so doing, the media is helping the electorate to make informed choice’.\(^{41}\) Even the private media was not given the liberty to report and cover candidates in a biased and unfair way.\(^{42}\) The code of conduct also provided for the protection of journalists among other international democratic best practices.

However, in practice there were violations of these democratic norms. Not all the rules of the game were followed. From most of our discussions with the stakeholders and monitoring of the media, it was apparent that the public media, notably Zambia National Broadcasting Corporation (ZNBC) and government owned newspapers were pro the ruling Patriotic Front.\(^{43}\) Reporters Without Borders also noted that media coverage was very partisan during the campaign, with the main opposition party, the United Party for National Development (UPND) filing a complaint against the Zambia National Broadcasting Corporation (ZNBC) for failing to cover the rallies of its candidate, Hakainde Hichilema. Even the SADC Electoral Observation Mission (SEOM) also noted the biased reporting in its preliminary statement.\(^{44}\) In some isolated incidents journalists were threatened for covering the opposition. For example, PF activists stormed Lukulu FM, a community radio station in Western Province, on 4 January 2015 after it broadcast a UPND campaign spot. According to station manager Munukayumbwa Mundia, the PF activists said “the government will sort out everyone at the station” after PF won the election. Radio Walamo, a station based in the northern town of Mpongwe, said it was told by PF parliamentary representative Freedom Sikazwe in December that it would be closed and its staff dismissed if it did not stop covering the activities of the region’s opposition parties. Youth and Sports Minister Chishimba Kambwili, PF deputy Secretary General Anthony Kasolo and other government officials reportedly stormed into the ZNBC news room on 23 November 2014 and banned staff from broadcasting any information about opposition parties on threat of instant dismissal.\(^{45}\)

Nevertheless, one consistent theme from the Zambian media that enabled a peaceful transition was the cross cutting theme of peace. Almost all media houses tried to avoid inflammatory language that would promote chaos and anarchy leading to a flawed or blocked transition. In their reporting the media houses emphasized that at the end there was need for peaceful resolution of disputes consistent with democratic practice.\(^{46}\)

4.7 Regional and International

Transitions elsewhere have shown that good regional and international states and institutions can help fragile states to succeed in engineering political and economic reforms that lead to a democratic transition. Regional and international states do not only provide critical economic and technical assistance, but can also put forth constructive political and diplomatic pressure to aid a country’s transition.

\(^{43}\) Personal observations, 18-25 January 2015.
\(^{45}\) These are based on observations from the Reporters Without Borders Election reports and personal discussions with stakeholders.
\(^{46}\) Personal content analysis of media coverage of the Zambian elections.
SADC trusted the post-Sata political processes hence it did not overtly interfere in the internal succession processes of Zambia. In line with its objectives SADC sent the SADC Electoral Observation Mission (SEOM) to observe the January 2015 Presidential by-election. The mission was to observe elections in order to enhance and consolidate democracy, and in particular to improve the quality of electoral processes. The SADC Electoral Observation Mission had a duty to establish the extent to which the Constitution and electoral law in Zambia, as well as the SADC Principles and Guidelines Governing Democratic Elections, were followed. The observation raised the stake for institutions and individuals involved to play according to the rules of game. In the end SADC endorsed the process which made it difficult for other forces that harbored the thoughts of subverting the transition. The SEOM concluded that, ‘the 2015 Presidential Election in Zambia was peaceful, transparent, credible, free, and fair, thus reflecting the will of the people of Zambia in accordance with the National Laws and the SADC Principles and Guidelines Governing Democratic Elections’.

The SEOM made an appeal to ‘all Candidates and their political parties, and other stakeholders, to respect the will of the people and to uphold the laws of the Republic of Zambia by accepting the outcome of the election’. In aiding the transition they also stressed the need for ‘all political parties to behave in a manner that promotes peace, security and stability of the country and her citizens’. The African Union (AU) Election Observation Mission (AUEOM) also made similar positive observations in line with the African Charter on Democracy, Elections and Governance, the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 (XXXVIII), the African Union Guidelines for Election Observation and Monitoring Mission and other relevant international instruments like Universal Declarations of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The regional bodies also encouraged Zambia to adopt a new and democratic constitution to enhance the young democracy.

Global powerhouses that sit in the United Nations Security Council (UNSC) like Britain, Germany and United States of America (USA) also played a fundamental role in enabling Zambia’s democratic transition. Zambia has maintained good relations with other countries. As a result there was financial assistance to the Election Commission of Zambia (ECZ) so that the institution could independently exercise its democratic roles and responsibilities. For example Britain donated GBP 1.3 million and German put in K35.5 million. Thin financial resources have choked many institutions in poor countries and hampered their ability to exercise their democratic roles. The most important thing is that the donors placed their money on strengthening institutions and not in interfering with the internal politics to predetermine the electoral outcome.

The endorsement of the elections by superpowers such as Britain, Germany and the USA increased the cost on those who might have thought of subverting the will of the people and the successful democratic transition. For example, the British High Commissioner, James Thornton, in a statement said, ‘my colleagues and I have been enormously impressed by the professionalism of the Electoral Commission of Zambia. From what we saw, the presiding officers and other staff in the polling stations did an
excellent job’. The British High Commissioner also urged ‘all Presidential candidates and their supporters to act responsibly and to refrain from issuing inflammatory statements. Zambia has been a beacon of peace since independence’. The German Ambassador to Zambia Bernd Finke also commended the Electoral Commission of Zambia for its democratic conduct.

The convergence of regional and international players on Zambia’s succession politics aided its democraticness. On the other hand forces bent on derailing the transition became more and more isolated.

5. **WHAT IS THE STATE OF CRITICAL TRANSITIONING INSTITUTIONS IN ZIMBABWE?**

5.1 **THE JUDICIARY**

Can the judiciary in Zimbabwe be a critical enabler of state power transfer? The centrality of the judiciary to constitutional democracy needs no more emphasis. Abuya observes that, ‘...an independent judiciary is required for a contested election to be resolved effectively. An independent judiciary is an essential ingredient in free and fair elections’ . The judiciary in Zimbabwe has played a significant role in the adjudication of electoral disputes in independent Zimbabwe and as Dorman has observed the judiciary was relatively independent until 2000 . Nevertheless the situation was to change in the year 2000 as Zimbabwe underwent a tumultuous political and economic process after the emergence of the Movement for Democratic Change (MDC) that posed a real threat to ZANU PF’s hold on state power and put to test Zimbabwe’s ability to ensure transfer of power from one actor to another. This led to major changes to the High Court and Supreme Court benches which saw the hounding out of senior and independent justices, and thus creating a ‘post 2000 new look judiciary’ perceived pliant to ZANU PF’s electoral and state power retention strategies.

As a result of the partisan changes, since 2000, the Zimbabwe judiciary has failed to deal effectively with electoral disputes that are linked to state power transfer. For example, immediately after the June 2000 parliamentary election the MDC filed

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54Zambia can be proud of the ECZ. British High Commissioner, 21 January 2015.
55British High Commissioner’s statement, January 2015.
56The Daily Mail, German-UK praise Zambia, 21 January 2015.

Picture 3: Chief Justice Godfrey Chidyausiku
petitions to the High court challenging the victories of ZANU PF in 39 constituencies. The following were the outcomes of these petitions: Five were never set down for hearing by the High Court; Two were dismissed by the High Court on procedural grounds; 11 were withdrawn as a result of intimidation against the complainants and because after years of delay MDC candidates claimed prejudice; five were not proceeded with, as some of the ZANU (PF) respondents died before the cases were heard and 16 were heard by the High Court of Zimbabwe. The High Court ruled seven cases in favour of the MDC and nine in favour of ZANU PF. Thirteen of these were appealed to the Supreme Court with the MDC appealing six and ZANU PF appealing all cases against them. Of the 13 appealed cases only three were heard and judgement was never delivered, while the other 10 cases were never heard and resolved. As noted by the Solidarity Peace Trust, ‘all in all, in over five years not even one of the MDC’s electoral challenges was ever resolved by the judiciary.

The 2002 Presidential election petition by Morgan Tsvangirai further strengthened the thesis of a partial judiciary as Justice Hlatshwayo failed to timeously deal with the electoral petition that had a potential impact on reconfiguring the architecture of state power. The petition was submitted on 31 April 2002. The trial began in November 2003 but many months later the judge had still not handed down his promised interim judgment. Later on the presidential petition was dismissed despite overwhelming evidence submitted by the petitioners that the elections failed to suffice the requirements of the law. This despite that the then section 149 of the Electoral Act, as published by the Law Reviser, stated that an election had to be set aside if: (a) the election was not conducted in accordance with the principles laid down in this Act; and (b) such mistake or non-compliance did affect the result of the election. Justice Hlatshwayo went on to dismiss the 1st category of the electoral challenge that dealt with the legal arguments, which paved way for the 2nd category of the electoral challenge which dealt with evidence of abuses, but was also later dismissed despite compelling evidence.

In 2008, there were a number of election petitions filed by both ZANU PF and MDC-T seeking to nullify results of the March 29 parliamentary elections citing electoral irregularities. However, these efforts crumbled at the electoral court as, ‘the parties failed to comply with the provisions of Section 169 of the Electoral Act which stipulates a time frame under which one can file a petition resulted in all petitions being thrown out by the court’, and furthermore, ‘Section 69 of the Electoral Act stipulates that all petitions are required to be served upon the respondent personally or by leaving these at his or her residence or place of business and this should be done within 10 days of the presentation of the petition’. However, it should be noted that in this case the decision of the courts simply maintained the status quo and this did not pose any direct threat to the transfer of power from ZANU PF to any other party. Therefore, the ‘post 2000 new look judiciary’ has never passed any judgments that threaten the hold onto state power of the incumbent.

In 2013, Tsvangirai challenged the outcome of the general elections but later withdrew the court application because of the partisan nature of the judiciary. However, the
Supreme Court went on to deliver a judgment meant to consolidate and legitimise Mugabe’s hold onto power. Chief Chidyausiku ruled that: ‘The Zimbabwe presidential election of 31 July 2013 was held in accordance with laws of Zimbabwe and constitution and electoral laws, the said election was free fair and credible and the result is a true reflection of the people of Zimbabwe who voted and consequently Robert Gabriel Mugabe was duly elected as President.’

There has been a tendency of the judiciary ruling favourably towards the incumbents in Africa which has undermined public confidence. From our analysis, we conclude that the Zimbabwe judiciary has been dominated by the executive and is not likely to make any judgments contrary to ZANU PF’s electoral strategies and state power retention plan. The compromised nature of the judiciary is a common perception within Zimbabwe’s legal fraternity. The challenge in Zimbabwe is more about the partial judiciary despite some clear legal provisions.

### 5.2 Informal Institutions

Historical trends in seeking to unlock democratic deadlocks in Zimbabwe since 2000 have shown that informal institutions have had little influence given Mugabe’s big man stature and his penchant to stay in power at any cost. This has been exacerbated when such informal engagements have involved discussions that might affect Mugabe and ZANU PF’s strategy to retain state power. In other transitional settings, business leaders, churches, peers, influential leaders and neighbouring countries have managed to influence democratic breakthroughs. For example, the owner of Anglo-America has met Mugabe behind doors to influence him on the land reform project but he was rebutted given that the issue was at the centre of Mugabe’s strategy to retain state power. Yet in other transitions during the reign of President Ernesto Zedilloz, business leaders from America condemned Mexico’s democratic deficits and advocated electoral reforms and this contributed towards a democratic breakthrough. The churches have tried to get a breakthrough between Mugabe and Tsvangirai to ease hostilities and advance democratic transition. However,

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68 Paidamoyo Zulu, Con Court Dismisses Election Petition with Cost, The Zimbabwe Independent, 20 August 2013.
70 Personal discussion, Oxford, 2011
71 Coleman, T.L. Remer, 2013. Pathways to Freedom: Political and Economic Lessons from Democratic Transitions
this has not worked as Mugabe promised the church leaders but did not act according to the agreements. Some of the church leaders later became victims of the state propaganda labelled as regime change agents. For example, the Anglican archbishop of Cape Town, a Nobel Peace Prize winner and then a member of a UN advisory panel on genocide prevention, was called an ‘angry, evil and embittered little bishop’ by Mugabe when he talked about the need to democratize Zimbabwe. 72

On the other hand, there are very few significant individuals who are reported to have had some influence on ZANU PF to shift from blatant authoritarian politics to a more democratic polity. According to Gatsheni the diplomatic pressure which was applied behind doors on Mugabe and ZANU PF to accept reforms such as the new constitution was a result of what he termed ‘politics behind politics of mediation’ which was a reflection of former South African President Thabo Mbeki’s ‘silent influence’ on Mugabe.73 However, even Mbeki’s informal influence had its limitations when it came to reconfiguration of the actual architecture of state power upon which ZANU PF relied on such as the military. As argued above, positive neighbourhood influence can also aid a democratic breakthrough but in the situation of Zimbabwe, most of the neighbours seem not prepared to confront ZANU PF and be actively engaged in the succession politics unless there is an escalation of the humanitarian crisis. In Eastern Europe, countries like Poland benefited from positive neighbourhood influence.

Even a delegation of prominent and influential figures and former statesmen, known as the Elders, which comprised of former United Nations Secretary General Kofi Annan, former United States president Jimmy Carter and international advocate for women’s and children’s rights GracaMachel were denied entry on a humanitarian mission to Zimbabwe in November 2008 during the power sharing negotiations. As Annan explained the delegation wanted to use its ‘influence to increase the flow of assistance, immediately and in the longer term, to stop the terrible suffering. We are here to show solidarity with the people of Zimbabwe and to assure them that they are not alone’.74 The visa rejections were after the Zimbabwean state thought that the presence of the Elders would affect political power negotiations. According to Annan they ‘had to cancel [the] visit because the government made it very clear that it will not cooperate’. 75 Yet in Kenya, eminent persons like Kofi Annan, the former Secretary General of the United Nations (UN) played a very critical role in conflict mediation and ensuring that Kenya’s transition to democracy remained on track.

One can argue that informal institutions can keep Zimbabwe’s transition on track once Mugabe, the big man, leaves the scene. These will include churches, business leaders, ZANU PF peers in the region, nationalists, eminent individuals, powerful neighbouring countries and the international community. For example, sitting Presidents like Jacob Zuma or powerful actors within the African National Congress (ANC) can have more influence on the current crop of politicians who seek to succeed Mugabe as they all lack the ‘big man tag’ on the continent. Informal institutions remain an option in helping Zimbabwe attain a democratic breakthrough once the big man, Mugabe exits the scene. For now their main role can be to cultivate relations and build trust with some key institutions and actors.

72http://www.zimbabwesituation.com/old/mar17_2007.html#Z10
74 Mail and Guardian, Elders Forced To Cancel Zimbabwe Visit, 22 November 2008, South Africa.
75 Mail and Guardian, Elders Forced To Cancel Zimbabwe Visit, 22 November 2008, South Africa.
5.3 **The Military**

A survey of political ideas indicates that in fragile transitions, interventions of the military (covert or overt) should be expected to play a major role in enabling or blocking state power transfer. They constitute a wild card. As Bratton argues, whether they remain loyal to the incumbent in the event of electoral defeat has an impact on the course of political events. Pro-democratic military actions or non-partisan military conduct are critical enablers to the installation of a freely elected government. In some cases in Africa, such as in Malawi and South Africa, the army was supportive of democratic initiatives. In other cases like Nigeria, Togo, Democratic Republic of Congo, the army was determined to hold it back. Before we look at how they can either promote or hold it back, we first look at whether Zimbabwe’s security sector is likely to enable a democratic transition?

The military elite are likely to support the incumbent to tenaciously cling on to power in the event of an electoral defeat. Why? The military elite fear prosecution having amassed businesses and prebends through state patronage. Second, some of the military elite have a record of human rights abuses. Hence they fear to face prosecution. Third, stultified by decades of obeisance to the incumbent in Zimbabwe’s neo-patrimonial context (where rule is personalised around President Mugabe), they can hardly imagine a change of context. Fourth, their prebends are best defended by the incumbent with certain state power and prospects of acquiring more are also served best by the incumbent. Fifth, the military elites have been ideologically drilled to believe the opposition is an extension of the neo-colonial and neo-imperial agenda of the British and Americans. Sixth, the institutional legacy of military involvement in politics from the days of the liberation struggle does not augur well for a non-partisan conduct in the transfer of state power. As Chitiyo argues, such history predisposes the military elite to intervene in ways that undermine democracy.

For example, The Commander of the Zimbabwe Defence Forces, General Constantine Chiwenga, expressed his disposition in no uncertain terms towards the July 31 2013 general elections. He said,

> We have no time to meet sell-outs; mapuruvheya...clearly Tsvangirai is a psychiatric patient who needs a competent psychiatrist. There is nothing like that, we never met Tsvangirai, Giles Mutsekwa or anyone from the MDC-T. Why would we do that? We have no time for sell-outs. It's a figment of his imagination that he met us. I think he was dreaming and that dream should remain a dream and never be reality because we have better things to do than to meet with sell-outs. It's just not possible for me to entertain the MDC-T leader, we are different. Just like oil and water, we cannot mix...thousands of people died for this country and you cannot change that nor wish it away. This country was liberated courtesy of a protracted struggle, some of us we carry severe scars from that struggle and its unimaginable of us to spit on that struggle through meeting sell outs. Its either you say yes or no, I do not have time to talk to Tsvangirai who seems to be suffering from hallucinations. I and fellow ZDF generals are not missionaries and will never meet with Tsvangirai.

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76 Michael Chege, The military in the transition to democracy in Africa: some preliminary observations.  
79 The Sunday mail 5 May 2013, I have no time for sellouts: Chiwenga
The military can execute a coup d’état. Extreme examples include Algeria, where the army stopped a second round of national elections after an electoral victory by the Islamic Salvation Front (FIS) in December 1991. In Sierra Leone, a five-man military junta overthrew the government of the All People’s Congress. In 2009 there was a military coup in Madagascar. We want to emphasise that even though the military elites use language that is consistent with hard-liners, it is our view that a coup in Zimbabwe is most unlikely. Coups are likely to occur in countries that have a history of military rule or coups and Zimbabwe has no such history. SADC is against military coups and therefore unlikely to support the military elite if they choose to subvert the will of the people in the election. This is a deterrent factor to the generals. SADC’s refusal to recognise a military backed coup in Madagascar in 2009 that brought AndryRajoelina ascendency to the presidency is an example of how the regional bloc is not ready to recognise such as a legitimate means of state power transfer. The events in Malawi are a case in point where, according to the Singini Commission of Inquiry the military refused to be in complicity with the plans to subvert the constitution and prevent the installation of President Joyce Banda as per the dictates of the Malawian Constitution.

Consequently, in Zimbabwe, the military might support a covert coup, where they will clandestinely urge the incumbent to hold onto state power to maintain a civil face. As Bratton argues, the military elite can act independently of civilian control but never actually seizing state power yet determining the course of political events. According to Masunungure this was the situation that prevailed in 2008, where the military elites were said to have urged Mugabe not to hand over state power after being defeated in the national election. Some argue that the army is not a homogeneous unit but as Chitiyo argues, the top brass is united by fear of collective punishment, shared memory, business interests and other factors we mentioned above. As for the junior officials, who are disgruntled and not recipients of the largesse, and who think corruption by the senior officials is worsening their livelihoods they have little room to manoeuvre. First, the military has a hierarchical command structure. Second, the military intelligence has an effective surveillance system. Third, dissent can be punished by death.

The non-partisan conduct of the military is an important ingredient of state power transfer. As Huntington argues, ‘the military are the ultimate support of regimes...if they withdraw their support, if they carry out a coup against the regime, or if they refuse to use force against those who threaten to overthrow the regime , the regime falls’. At the moment there are little prospects of the military in Zimbabwe being non-partisan in the event of an electoral result that does not favour the incumbent and enable state power transfer.

5.4 Political Parties

Political parties are important critical enablers of state power transfer in Zimbabwe especially given the constitutional transition provisions. Section 14 is clear that ‘the
vacancy of President must be filled by a nominee of the political party which the President represented when he or she stood for election’. It further states that;

’a political party which is entitled to nominate a person ...must notify the Speaker of the nominee’s name within ninety days after the vacancy occurred in the office of President, and thereupon the nominee assumes office as President after taking oath of President in terms of section 94, which oath the nominee must take within forty-eight hours after the Speaker was notified of his or her name’.

Consequently, internal party democracy is an important part of the succession equation. Do political parties adhere to their own internal party rules/institutions in ways that ensure differences are resolved in an amicable and democratic manner for stability and social cohesion? Unfortunately, there is a dearth in actual internal party democracy practice in Zimbabwe’s major political parties that can trigger violence in ways that derail a democratic transition in the event of a vacancy. This can be explained by the party elite’s predilection toward the formation of an oligarchy meant to gain access to state and party power for personal interests at the expense of national democratic goals. This oligarchic behaviour generates disunity, seed violence and authoritarian practices that have adverse effects on the political culture of the nation.

For example, DidymusMutasa, a senior ZANU PF official was clear that his party has no respect for democratic practices in the previous 6th congress.

According to the constitution, a true Zanu PF congress must be elective, providing a free and fair platform for all the party members to elect leaders of their choice without intimidation, victimization, fear or trepidation. This unconstitutional meeting denied members of Zanu PF, their constitutional rights through often violent intimidation and coercion and the last minute illegal amendments made to the constitution. The politburo and central committee meetings immediately preceding the so-called congress were shrouded in threats, fear, and total failure to express individual opinion. This unconstitutional meeting therefore denied innocent members their constitutional right to freely elect leaders of their choice.83

Mutasa was clear that the dearth of internal party democracy in ZANU PF can have an effect on the practice of national democracy. Mutasa said, ‘We believe that if ZANU PF allows this to go unchallenged, we would be indirectly posing a threat to the National Constitution of the Republic of Zimbabwe. This approach to constitutionalism by a Ruling Party can pose a risk to constitutionalism at the national level’.84

There are also possibilities of the use of brutal coercion in the event of disagreements within political parties. As Mutasa articulated, ‘The sad events of the past months reflect a deep-seated historical failure by the Party leadership to correctly handle internal contradictions in the party. Each time the party faces challenges, it resorts to brute force. It fails to sum up its mistakes and experiences and provide durable solutions.’85

In the opposition political parties, there is also a trend of disregarding internal institutions. Elton Mangoma, the former MDC T treasurer bemoaned the lack of internal party democracy after he was assaulted for writing a letter demanding Tsvangirai to

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83 See more at: http://nehandaradio.com/2015/01/14/full-text-didymus-mutasa-statement-zanu-pf-crisis/#sthash.Z1hFgkmn.dpuf
84 See more at: http://nehandaradio.com/2015/01/14/full-text-didymus-mutasa-statement-zanu-pf-crisis/#sthash.Z1hFgkmn.dpuf
85 See more at: http://nehandaradio.com/2015/01/14/full-text-didymus-mutasa-statement-zanu-pf-crisis/#sthash.Z1hFgkmn.dpuf
leave in January 2014. Mangoma expressed that, ‘I remain worried that the meeting you called on February 15 was unconstitutional and tended to usurp the powers of the national council, the body mandated to deal with matters such as the one at hand. My observation is that we are getting more and more unconstitutional in the manner we are handling issues’. Intra-party differences are characterised by intra-party violence, corruption, personalisation of leadership, the role of founding leaders and those around him or her and attempts to create a personality cult around a leader or control of the party by a few which are a threat to democratic transition.

The democratic orientation of the key actors in political parties is also an important aspect and Zimbabwe is not an exception. Following Cross and Katz, we argue that the practice of political parties help to structure public deliberations, national political practices and to foster a healthy democracy. More incisively, the process by which the opinion or practice is formed can also impact on the establishment of a democratic or oligarchic culture in the wider society. Internal party democracy may also ‘further the image of the party as one committed to democratic principles more generally’ which can orient it to respect national democratic institutions. As Scarrow has argued, parties that practice democracy are likely to have less conflict and enjoy greater election success and peaceful transitions from one leader to another. This may not always be the case, especially in relation to Zimbabwe where ZANU PF resorts to authoritarianism and coercion to keep party cohesion in elections. Opposition political parties also face violence, rigging, infiltration and electoral manipulation from the ZANU PF led authoritarian state. Such a scenario rather calls for opposition political parties in Zimbabwe not to abandon democracy but to strengthen through factors that they can control, like democratising internal decision-making processes, to improve coherence, unity, electoral performance and democratic transitions.

### 5.5 Civil society

Most Zimbabwean civics have been in limbo because of the failure to conceptualize the nature of the transition since the 2013 general elections. This follows the Zimbabwe African National Union Patriotic Front (ZANU PF)’s landslide victory in the harmonised elections. This changed Zimbabwe’s political context from a power-sharing arrangement to a one party led government with consequences on transitional politics. Apart from the consensus that Zimbabwe’s unity government gave birth to a flawed transition there is no clear understanding of its trajectory and hence appropriate programming to aid the transition.

In worst case scenarios, some civil society organisations because of their embeddedness in the MDC, have wrongly read the defeat of the MDC in the 2013 general elections as an end to Zimbabwe’s transition paradigm. Yet transitions by their very nature are never static and Zimbabwe faces two possible offshoots that can stem from a flawed transition. The first is a derailed transition. The central feature of a derailed transition is that the ZANU PF government will abandon the democratic gains

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86Elton Mangoma letter, 24 February 2014.
87Sachikonye, ‘Zimbabwe’s Lost Decade’
92Sachikonye, ‘Zimbabwe’s Lost Decade.’
made and return to closed authoritarian practices. Or on a more positive side, a *prolonged transition*, where the ZANU PF government might commit to defend and operationalise the democratic gains made to date. In this context, there is no return to closed authoritarian practices. Nevertheless, the democratic gains made will co-exist with some old authoritarian practices and the push for democratisation will remain relevant but dependent on new strategies by civil society.

Civil society is also divided across political party factions in ways that make it difficult to design and implement coordinated civil society campaigns that seek to democratize political parties. For example, within the MDC some CSOs supported the MDC Renewal whereas others remained with the MDC led by Tsvangirai. On the other hand, others supported the JoiceMujuru faction within ZANU PF whereas some sympathised with Emmerson Mnangagwa. Even individual actors within CSOs are also divided across factional lines in ways that affect transitional politics.

The failure of political parties to institute democratic reforms has also resulted in deflation of energies within civil society. Both the *civil society political efficacy*-the sense that their participation can make a difference- and *party efficacy*-the belief that the current political parties can solve the problems that confront the country might be declining. This might lead to detachment following the slow pace of democratic reforms over the years. However, given ZANU PF’s new political power and the weak status of opposition political parties it is the role of civil society to reposition itself as agents of reform albeit on an evolutional path. 

Political parties dominate during national elections, but between elections especially in countries with weak political parties, civil society organisations can influence national politics and condition the quality of political participation and public life. This is despite the fact that civil society usually faces deflated political energy following the slow pace of democratic change over years.

Civil society has been labelled as a function or extension of political parties which makes it difficult for some to openly associate with political parties to influence the changes in political party institutions. For example, CSOs that have cooperated with ZANU PF have been labelled an extension of the regime and the same applies to many CSOs that have been pushing for democratic reforms. Despite the fact that ZANU PF is in government some civil society organisations continue with their non-engagement policy without solid alternatives to push the democratisation agenda forward. The CSOs continue to refuse to ‘dirty’ their hands by engaging a ZANU PF party and government they consider illegitimate. Yet, in the end, institutional reforms will need some form of approval by political parties. A few civil society organisations have tried to engage the ruling party but the response has been slow for building relationships takes time. At the end, in the aftermath of the poll, most civil society organisations continue to be perceived as an extension of the opposition Movement for Democratic Change (MDC). However, they still have limited engagement as there are fears of being swallowed by political parties.

It is important to note that most repressive political parties do not willingly provide for democratic civil society space unless there is evidence of citizenry engagement, mobilisation and support. That citizenry connectivity is the pressure that forces many repressive parties to open up more space for civil society and democratisation. Space for civil society is going to be contested, against State power and machinery under

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93. See Bratton and van de Walle, Democratic Experiments in Africa, Cambridge University Press, Cambridge, 1997, who argues that political parties dominate during elections, but between elections especially in countries with weak political parties, civil society organisations can influence national politics and condition the quality of political participation and public life.


95. Zamchiya, P. 2013. The role of civil society in promoting democracy and development in Zimbabwe, PACT, Zimbabwe.
ZANU PF governance. However, this can be a call for civil society leadership to develop a heightened focus and urgency, as the return to a single party government invests more responsibility in civil society, to keep the government accountable to the citizens. However, civil society played a key role in aiding the power sharing government through lobbying SADC and the AU.

5.6 Media

The media is an important institution that can help to shape and influence public thought/action over succession politics. Media institutions are important for a democratic transition and that has been translated into Zimbabwe’s new Constitution. Section 61 of the new Constitution upholds the freedom of expression and freedom of the media. It notes that: (1) Every person has the right to freedom of expression, which includes—(a) freedom to seek, receive and communicate ideas and other information; (b) freedom of artistic expression and scientific research and creativity; and (c) academic freedom. 2) Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists’ sources of information.

In practice, the Zimbabwe media has been dominated by the ZANU PF succession politics in the past three months. However, it seems there are three main narratives from the media on the transitional politics. First, is the state media which seeks to advance the ideas of the dominating ruling class within ZANU PF which publicly portrays unquestionable allegiance to Mugabe? The state media which include Zimpapers and the Zimbabwe Broadcasting Corporation (ZBC) intend to influence society and create a hegemony using the ideas of the ruling class in a classic Gramsci way. This has been evident in the past three months where the state media has taken an unprecedented move to denounce, embarrass and demonize former Vice President of Zimbabwe, Joice Mujuru, and a potential successor to Mugabe. Second, is one arm of the private media led by the Daily News which has sought to counter the hegemony of the ruling class by presenting an alternative view especially from those under attack by the powerful ruling elite? In the previous three months, The Daily News has been to the defence of Mujuru and her allies and has given them acres of space to present their side of the succession story. The two views on succession presented so far, have their structural roots in the binary presentation of politics in Zimbabwe which became more defined in 2000. This binary or polarised characterisation of politics, has painted an image of either ZANU PF or MDC or Mugabe or Tsvangirai. In the media this has been replicated across the state media and part of the private press epitomised by the Daily News.

The third narrative is from part of the private press epitomised by Newsday and The Zimbabwe Independent and The Standard. In the Broadcasting arena, Star FM and ZiFM relatively fall into this category, though their newscasts have been adjudged to have a slant towards ZANU PF by the proponents of the first narrative. The third narrative has tried to present credible, factual and non-aligned information to ensure the public is informed in decision making. As a result, they have tried to cover different sides of the succession story. However, any slight criticism of Mugabe and his allies is portrayed by his ideologues as regime change or Western driven. As a result, the third

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narrative has been conflated with the second narrative. It is either you are for or against Mugabe.

Respecting the constitution is a cornerstone of democracy and it has played a significant role in cementing the transitions from authoritarian states to constitutional democracies especially in Eastern Europe. The partisan conduct of the media in Zimbabwe has an effect of validating the thesis that the country might have a constitution without constitutionalism. This is a major hindrance to a democratic transition. For example, section 61 (4) of the constitution unequivocally states that all state-owned media of communication must— (b) be impartial; and (c) afford fair opportunity for the presentation of divergent views and dissenting opinions. According to section 61 (5) Freedom of expression and freedom of the media exclude— (b) advocacy of hatred or hate speech. Continuous violations of the constitution with impunity do not augur well for Zimbabwe’s democratic transition.

This has been exacerbated by the perception that some independent newspapers such as the Zimbabwean and the Daily News – in a bid to counter state media, have become biased toward the MDC T. The News Day, The Standard, The Zimbabwe Independent, while hailed as largely balanced, have also been faulted for having a slant towards the MDC renewal teams. All the above, has served to increase political polarisation.

Democratic transitions entail the free formation of citizen preferences. For this to happen, there is need for citizens to have access to plural and credible sources of information and there is also need for competing successors to have equal access to the public space. Otherwise, ‘unless parties and candidates enjoy free and fair access to the public space, the will of the people...will be little more than the echo of structurally induced ignorance’.

5.7 Regional and International

Political analysts have begun to view SADC and the AU as critical enablers of democratic transition in Zimbabwe. This followed the diplomatic pressure that followed the violent June 27 2008 election which delegitimized President Mugabe’s ‘victory’. More extreme was the Republic of Botswana Government which openly lobbied for the expulsion of Zimbabwe from SADC and AU. The stanza taken by SADC and the AU forced Mugabe into an inclusive government with opposition parties to work towards a democratic transition. Zimbabwe was referred to the AU at its Sharm-el-Sheik summit on June 29 2008 and the AU directed that SADC be put in charge of mediating a solution to the crisis. It is within this context that regional and continental pressure can be viewed as a key lever in the event of another electoral dispute or failure to transfer state power in Zimbabwe. However, following the July 31 2013 harmonised elections there have been massive changes on the body politic.
The regional context has changed as Zimbabwe has managed to re-establish good relations with most of the member states in SADC. Despite occasional critiques from individual state actors in South Africa and the Botswana government, SADC endorsed the 31 July 2013 harmonised elections as free and embraced the new ZANU PF government. SADC even noted that the Global Political Agreement (GPA) with a raft of reform measures was over. It stated that the GPA was no longer going to directly influence political reform or have Zimbabwe discussed as a stand-alone issue at the SADC meetings. The 33rd Summit of the Heads of State held in Lilongwe, Republic of Malawi on 17th and 18th August 2013 was more explicit:

Summit noted with satisfaction the holding of free and peaceful harmonized elections on July 31 2013. Summit commended the Government and people of Zimbabwe for the peaceful manner in which elections were conducted. Summit congratulated the ZANU (PF) party and President Robert G. Mugabe for winning the harmonised elections. Summit reiterated its call for the lifting of all forms of sanctions hitherto imposed on Zimbabwe. Summit commended H.E. President Gedleyihlekisa Zuma and his team for their sterling job in facilitating the successful completion of the Global Political Agreement.  

To show that ZANU PF has reinvented its image in the region President Mugabe was selected as SADC chair from August 2014 and AU chair from February 2015. Within the AU, more broadly, the Zimbabwe government has had different relations with different governments. Other countries have supported it consistently but there have been critical voices from countries such as Nigeria and Ghana. The government has also been criticised by the African Court for Human and People’s Rights. A development possibly in favour of ZANU PF is that the A.U. Commission is now led by Dr. Nkosazana Zuma who seems to prefer Thabo Mbeki’s less critical approach of quiet diplomacy.

SADC and AU after endorsing the 31 July 2013 elections have disengaged from Zimbabwe’s political and economic reform processes. There has been no shift on the position of the SADC and AU reports that endorsed Zimbabwe’s harmonized elections despite the irregularities they highlighted in the election processes.

The disengagement of SADC in Zimbabwe’s political processes in order to shape the post-election prospects of a democratic transition has adversely undermined reforms and conversely endorsed undemocratic practices. The lack of a strong moral voice and diplomatic support for the post-election period has adverse effects as it gives ZANU PF the leeway to do as it pleases even to its members.

Neighbourhood effects do not necessarily need to be a bloc influence; they can come at the behest of a single powerful neighbour. In other countries like Poland and Mexico, positive neighbourhood influences provided important leverage for internal reformers who acted to prevent backsliding. Although transitions are always complex and depend on many other factors, Poland clearly benefited from positive neighbourhood influence. Diplomatic pressure also kept Mexico’s transition on track. During the reign of President Ernesto Zedilloz, business leaders and politicians from America condemned

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100 Communique of the The 33rd Summit of the Heads of State and Government of the Southern African Development Community (SADC) was held in Lilongwe, Republic of Malawi on 17th and 18th August 2013.

101 The irregularities noted in the AU preliminary report are: polarised State media; high number of assisted voters, as 26% at some polling stations; late publication of polling station list; high number of voters turned away; there were 35% more ballot papers printed in comparison to the number of registered voters – international standard ranges between 5 and 10%; Voters roll was made available two days before elections; voters roll was only availed in hard copies and not in electronic copy; and there was no public inspection of voters roll prior to elections as required by Zimbabwe Electoral Act. “Africa Union Election Observation Mission to the Harmonised election of 31 July 2013 in the Republic of Zimbabwe, Preliminary Statement”, Harare, 2 August 2013
Mexico's democratic deficits and advocated electoral reforms. The fact that there is no good neighbour playing a leading and distinct role means that it is going to be difficult for Zimbabwe to be positively influenced toward democratic reforms in the aftermath of the election from a regional perspective. In fact, the effect of disengagement and similar prevalence of undemocratic practices in other African countries negatively influence Zimbabwe’s prospects for a democratic transition and lead to stagnation, or even backsliding.

Unless the political, economic and humanitarian crises escalate, very few African countries will be convinced to engage the Zimbabwean government over the need for democratic transformation.

102 COLEMAN, T.L. REMER, 2013. PATHWAYS TO FREEDOM: POLITICAL AND ECONOMIC LESSONS FROM DEMOCRATIC TRANSITIONS.
Civil society need to play a pro-active role in nation-building and re-making the state through giving life to the new constitution as a way to build inclusive and democratic state and non-state institutions that allow for the culture of democratic practice and consequently allow peaceful transfer of power as in Zambia. A consolidation of best practices from other African states in terms of a regional symposium can add to the bank of knowledge and best practices.

Civic society therefore needs to launch sustained citizen owned public campaigns, policy engagements, adopt watchdog positions and provide technical support to democratise and institutionalise the new independent commissions that support democracy as enshrined in Chapter 12 of the constitution such as the Zimbabwe Election Commission (ZEC). Lessons need to be drawn from the conduct of the Election Commission of Zambia and others in the region.

Civil society need to revisit, devise and escalate community driven and international campaigns that promotes the need for an independent judiciary, non-partisan security sector and media. Zimbabwe’s new constitution provides a strong foundation for the establishment of a non-partisan judiciary, the military and the media as cornerstones of successful democratic transitions in more or less the same way as the Zambian laws.

Civil society has to devise means of including political parties in the campaign for democratisation of key national institutions. This has been an obvious gap despite the importance of political parties in Zimbabwe in structuring a democratic or authoritarian culture. However, CSOs must guard against being sucked in the political party politics driven by the will to power but remain committed to the will to transform institutions as a way to inculcate a societal culture of democratic practice.

Civil society must actively engage, coordinate the demands and actions of the broad masses so that change will come from diverse groups of citizens in communities courageously building and demanding inclusive and democratic political institutions and consistent behaviour from the ruling elite. A key lesson from Zambia is that citizen consciousness was a key factor in succession politics.

There is thus need for civil society to learn mobilisation strategies from Zambia as it is most unlikely that change will come from above but rather from below as political elites seek to maintain state power by any means necessary. The democratic breakthrough from Kaunda’s 27 year rule in 1991 was mainly rooted in the citizens.

For when a campaign for political reform develops national and visible momentum which even threatens the political power holders, the more reform minded might be persuaded to take risks and get the courage to act. Even some hardliners, when there is a powerful movement they may discern that the promising political future in Zimbabwe, post-Mugabe’s government, is in embracing some political and economic reforms rather than stalling or reversing them.

Civil society also need to strengthen its collaboration with intellectuals as the subject of political transition is much more complex than perceived and usually conceptualised in esoteric political fashion. This is even more important in the Zimbabwean situation where succession politics is so fluid that it requires constant revision of strategies and drawing lessons from the region.

However, the fact that some of the critical institutions have low to medium degrees of cooperation and likelihood of immediate success, must not be an inhibiting factor. It must be imperative that building strong democratic institutions has always been a convoluted and long process historically. For example, Zambia started to yield tangible succession results after more than two decades of one man rule and the model Western trajectories to democracy were long and winding too marked by occasional back and forth steps.

"THE END"