

HEINRICH BÖLL STIFTUNG

perspectives

Issue 1
May 2018

POLITICAL ANALYSIS AND COMMENTARY

AFRICA

The Quest for Political Accountability:

Change Agents, Openings and Dead Ends



This edition of **Perspectives Africa** is published jointly by the offices of the Heinrich-Böll-Stiftung in sub-Saharan Africa.



Heinrich-Böll-Stiftung

The Heinrich Böll Foundation is a publicly funded institution that is affiliated with but intellectually independent from the German Green party. From our headquarters in Berlin and over 30 overseas offices, we promote civic participation in Germany, as well as in more than 60 countries worldwide. Our work in Africa concentrates on promoting civil society, democratic structures, gender democracy and global justice. Together with our partners, we work toward conflict prevention and search for solutions to the challenges of environmental degradation and the depletion of resources. To achieve these goals, we rely on disseminating information, creating a deeper understanding between actors in Africa and Europe, and supporting global dialogue.

Contents

- 4** **Editorial**
- 6** **Zimbabwe After the Coup: Prospects for Real Political Change**
McDonald Lewanika
- 11** **Interview**
Kenya's Judiciary: Agent of Justice under Difficult Circumstances
Yash Ghai
- 17** **Uganda: Political Organising in a De-facto One-Party State**
Lydia Namubiru
- 22** **Moving On Up!? Opposition Parties and Political Change in South Africa**
Sithembile Mbete
- 27** **Advocate Thuli Madonsela: Whispering Truth to Power**
Shameela Seedat
- 31** **Interview**
Breathe, for the Battle Will Be Long: Changing Nigeria's Body Politic
Patrick O. Okigbo III
- 36** **Interview**
The Gambia: One Year After Jammeh, What Has Changed?
Sheriff Bojang Jr

Editorial

Since the third wave of democratisation swept through the continent in the 1990s, the majority of African states have replaced military dictatorships and one-party-dominant systems with more democratic forms of governance. Today, 61 percent of sub-Saharan countries are “free” or “partly free” according to Freedom House’s 2018 survey – although this is down from a high of 71 percent in 2008.

By adopting representative democracies founded on multiparty elections, the African electorate was promised, finally, responsive and accountable governments, for the people and by the people.

In a comparative study of electoral governance, Shaheen Mozaffar and Andreas Schedler (2002) posit that “competitive elections are the hallmark of modern representative democracy. As the institutionalised means by which large numbers of people participate peacefully in selecting and removing governments, they are the primary, albeit not the only, source of democratic legitimacy”.

This, they argue, is predicated on two conditions. First, there must be “institutional certainty” to ensure unbiased rules and procedures. Such institutional impartiality results in the second condition: “substantive uncertainty” about the outcome. The prospect of defeat keeps politicians on their toes and places the balance of power with the electorate.

The idea that an institutional architecture of multiparty democracy would lead to more responsive and accountable governments in Africa remains in question. In numerous countries, institutional certainty has yet to establish itself, rendering elections a hollow ritual. The corrupting influence of money has taken its toll, as it has elsewhere in the world. And even where electoral governance has become relatively entrenched, it may have little sway when

political parties serve as proxies for deep ethnic cleavages or for the ambitions of powerful individuals. In countries like South Africa, a perceived absence of alternatives to the governing party makes abstention and disengagement seem more meaningful options than engaging in elections.

In such contexts, what do elections contribute to accountability? What additional paths to accountability can be discerned? This edition of *Perspectives* seeks to deliberate on such questions, unpacking limitations and exploring how actors in the state, political parties, and civil society have been able to make those in government less certain about the future balance of power. Although these change agents have not always reached their stated objectives, they have protected important democratic gains, opened up political possibilities, and initiated reforms that seemed inconceivable until they happened.

In Zimbabwe, a new leader took power in November 2017. While Robert Mugabe’s departure after 37 years was widely welcomed, he was replaced by his former vice-president in what was no less than a military coup. That Emmerson Mnangagwa has long been a member of the political establishment clearly raises doubts about his desire for meaningful political reform. Sharing these reservations, McDonald Lewanika nonetheless concludes that “the coup has opened a crack in the authoritarian wall, allowing people to reimagine what they can accomplish to widen that crack”.

Leaders in other countries managed to cling to power in 2017. Kenya’s Supreme Court declared the August 8 presidential elections invalid due to irregularities and ordered a new vote. The period that followed was marred by political contempt for the constitution, violence, and a boycott by the main opposition leader, Raila Odinga, all of which undermined the credibility of

President Uhuru Kenyatta's 98 percent victory in October. Constitutional expert Yash Ghai unpacks how this episode highlights both the strengths and weaknesses of the judiciary in consolidating constitutionalism and political accountability.

In neighbouring Uganda, Yoweri Museveni, who has ruled since 1986, was re-elected in 2016 after polls characterised by violence and intimidation. In her article, Lydia Namubiru outlines how individual activists like academic Stella Nyanzi and musician Bobi Wine have, despite the general repression of dissent, been able to challenge power both from within and without the ballot box. The challenge that lies ahead, she concludes, is to translate the power individual activists hold into effective political movements.

In South Africa, Jacob Zuma's presidency posed the most difficult test yet to the country's young democracy. However, as unending corruption scandals inflicted significant damage on democratic institutions, and the public's trust in them, the foundations held and may even have been strengthened. This is not least thanks to brave individuals inside the state machinery. Filmmaker Shameela Seedat offers a powerful portrait of the country's public protector, Thuli Madonsela, who fearlessly "whispered truth to power" throughout the Zuma era. Electoral competition also increased significantly in the 2016 local government polls, with the opposition, led by the Democratic Alliance and the Economic Freedom Fighters, wresting power from the ruling African National Congress (ANC) and taking over the large metros. It would be hard to argue that the 2016 results did not also have a bearing on the internal power struggles in the ANC. Sithembile Mbete considers whether the opposition's momentum can be maintained against a revived ANC under President Cyril Ramaphosa and whether indications of more responsive

and accountable administration can be detected as power changes hands.

Our interview with Patrick O. Okigbo III, a political campaigner from Nigeria, shows that opposition politics can also be a dead end. Osita Chidoka ran a spirited, people-driven campaign for Anambra State governor in 2017, but his results were less than encouraging. Even after the 2015 elections supposedly marked a democratic consolidation in Nigeria, a toxic mix of voter apathy, identity politics and money eliminates "substantive uncertainty" for voters and undermines the "institutional certainty" of the elections, thus raising questions about the necessary reforms that would instil their credibility.

The political events in the Gambia provide a ray of hope that change is possible even in the most difficult circumstances. After more than two decades of authoritarian rule under President Yahya Jammeh, the people and opposition parties, with the help of the diaspora and the regional body ECOWAS, leapt into a new era in January 2017 when opposition candidate Adama Barrow was inaugurated as their new president. Sheriff Bojang Jr unpacks how it all became possible and reflects on the democratic gains achieved one year later as well as the challenges ahead.

In a time when democracy worldwide is facing the strongest headwinds since the end of the Cold War, we hope that the collection of articles gathered here gives inspiration to those committed to continuing the fight for democratic ideals, such as free and fair elections, free speech, the rule of law, and political accountability.

Jochen Luckscheiter

Programme Manager

Keren Ben-Zeev

Deputy Regional Director

Zimbabwe After the Coup: Prospects for Real Political Change

McDonald Lewanika

In November 2017, the winds of change were blowing in Zimbabwe. The political terrain underwent seismic shifts following “Operation Restore Order”, the veto- and palace-coup¹ that led to the resignation of Robert Mugabe, Zimbabwe’s political patriarch of thirty-seven years. Mugabe’s former vice-president, Emmerson Mnangagwa, who had been fired from the government on 6 November, was the military’s preferred candidate to replace Mugabe. Mnangagwa became Zimbabwe’s new president on November 24.²

But did these winds blow with enough force to clear the decks, or only enough to rearrange the furniture? Beyond a changing of the guard, could the coup open space for more meaningful political changes in governance? If so, how could this change be supported? Was there a role for the international community, for Zimbabweans and Zimbabwean institutions? And if this “new dispensation” was not the fundamental change Zimbabweans sought, where else could they turn?

In February 2018, the death of Morgan Tsvangirai brought about more shifts. As president of the Movement for Democratic Change (MDC), Zimbabwe’s largest opposition party, and Mugabe’s nemesis for twenty years, Tsvangirai was the country’s leading protagonist for political change.³ With his death, the leadership baton was passed to the next generation in the form of the 40-year-old firebrand lawyer and career politician Nelson Chamisa.

However, even before these two significant developments, serious factional fights had been brewing within the governing

party over Mugabe’s succession. These fights were part of the reason for Mnangagwa’s sacking and had left in their wake hundreds of expulsions from Zanu-PF, which in turn swelled the ranks of the opposition as some of those expelled either joined or formed opposition parties.⁴ The main opposition parties, fractured and fractious for years due to splits, were increasingly turning towards coalition politics as the panacea to defeat Mugabe and Zanu-PF.⁵ Outside of political parties, civil protests had also been on the rise in 2016, led by informal traders, civil servants, and campaigns like #Thisflag and #Tajamuka.

As with most transitions, the November 27 coup created a new crisis, in which – as Gramsci would put it – “the old is dying and the new could not be born”, creating “a great variety of morbid symptoms”.⁶ In this respect, Zimbabwe’s future is a dance with uncertainty. While this article tries to explain some of the “morbid symptoms”, it promises no full illumination of all the questions posed above. It offers a perspective on Zimbabwe’s prospects for real political change in the aftermath of the November 2017 coup, differentiating between a change in leadership and a change in governance.

A Tale of Two Commissars and a Return to Factory Settings

In December 2017, Victor Matemadanda, the first political commissar of the post-Mugabe Zanu-PF, outlined a “culture change”. Matemadanda was convinced that those who disliked Zanu-PF had reason to



McDonald Lewanika is a development professional and researcher with over 15 years experience working in Zimbabwe, the southern Africa region and parts of Europe. During his career, McDonald has led and managed civil-society coalitions and organisations, designed and conducted high-level research-based advocacy, and planned and coordinated national and global campaigns. He is currently pursuing doctoral studies at the London School of Economics and Political Science (LSE) in the department of government.



and stated the party's intention to "sit down with them to understand their concerns".⁷ This was a notable shift from the past when Zanu-PF had labelled opponents as "sell-outs", "puppets of the West" and "imperialist lapdogs". President Mnangagwa also exhorted Zanu-PF members to be "servants of the people, moved by matters that affect the people". Zanu-PF seemed to be transforming after the coup – although some suspected that this was too good to be true.

The inclusive approach, while retained in rhetoric, did not last long in action. At the Zanu-PF Special Congress on 15 December 2017, five days after articulating this "culture change", Matemadanda was replaced as political commissar by Major-General Engelbert Rugeje of the Zimbabwe National Army. Rugeje's entry signalled a shift towards the entrenchment of militarism in Zanu-PF, and a return of attention to the Zanu-PF faithful rather than reaching out to external and hitherto adversarial publics. Zanu-PF's capacity to foster fundamental political change was dealt a heavy blow when Rugeje was given province over the party's political engine room and election strategy for 2018. This was the telltale sign that Zanu-PF was

returning to factory settings, focused on the capture and retention of power rather than transformation of the architecture of governance and people's lives.

Zimbabwe has a long history of military involvement in civilian political contests. It was the military that aided Zanu-PF's efforts to centralise power during the 1980s Gukurahundi massacres and helped to manage the 2008 run-off election campaign. After 2008, Zanu-PF's commissariat department was led and run by retired Air Vice-Marshal Henry Muchena, former Central Intelligence Organisation Deputy-Director Sydney Nyanhongo, and other former security officers. Although some of these soldiers and spies were expelled in 2015, following allegations that they were aligned with former Vice-President Joice Mujuru, Rugeje brought them back, making the Zanu-PF Commissariat a war room, figuratively and literally, ahead of the 2018 elections.

This account of the Zanu-PF Commissariat is only illustrative of the perverse military presence that cuts across all spheres of the Zimbabwean state, its subsidiaries, institutions and businesses, forming a complex web that is hard to untangle. Profes-

Voice of the people? A man holds up a poster of Zimbabwe Defence Forces chief Constantino Chiwenga at a protest calling for Zimbabwean President Robert Mugabe to resign outside the parliament in Harare.

© REUTERS/Philimon Bulawayo

sors Bratton and Masunungure have shown how this complex was designed to outlast Mugabe's political career through penetrating the organs of the state, corrupting the economy, and securing a prominent role for the military in policy-making.⁸

Surfacing Zimbabwe's Deep State

"The deep state" is a political term that refers to networks of people, typically influential members of government agencies or the military, that are involved in the secret manipulation or control of elected governments. In pre-coup Zimbabwe, powerful military and business elites, who were unelected and unaccountable, ran the show from the shadows and were the real power behind the state's throne. What the coup facilitated was the surfacing of this deep state.

In pre-coup Zimbabwe, powerful military and business elites, who were unelected and unaccountable, ran the show from the shadows and were the real power behind the state's throne. What the coup facilitated was the surfacing of this deep state.

Despite accusations that the Generation 40 (G40) faction within Zanu-PF had captured the state, the reality was that, while the G40 held sway in the presidency, the country was hostage to this deep state. Political developments before the coup indicated that the deep state's proxies and pawns were losing the game of politics, forcing it to step out of the shadows into the light.

This is exemplified by Constantino Chiwenga, the former commander of the Defence Forces. Even in a country with two vice-presidents (and sometimes a prime minister), General Chiwenga had fancied himself the second-most influential man in Zimbabwe, after Robert Mugabe, and is reported to have moved around in a car registered as "Zim 2".⁹ Chiwenga's post-coup elevation to first deputy-president, the presence of other generals in the cabinet and the Zanu-PF Politburo, and the takeover of the Politburo by soldiers and spies all signal the emergence of the deep state.

Making Change Happen

This is not to argue that Zanu-PF cannot change. In fact, change is the most significant conundrum that Zanu-PF faces today. Because the current political conjuncture demands change, the party has to deconstruct itself, and a necessary change of guard at the top is insufficient to constitute meaningful political reform. The new leadership knows this.

This is why President Mnangagwa, having stolen some opposition policies, is speaking with a decidedly capitalist accent, embracing the West, and unashamedly pursuing capital with the decidedly neoliberal mantra that "Zimbabwe is open for business". The regime has not hidden the motivation behind their brand of change (economic or political). The new policies aim to attract investment, not necessarily to democratise the polity and emancipate the people. The consolation is that the deep-state players now have to operate in the light. To meet the prerequisites of international finance, the Mnangagwa regime has committed to economic and political reforms, including free, fair and credible elections.

This presents a clear and present opportunity ahead of the 2018 elections. Rather than just doubting the regime's commitment, Zimbabwean civil society, the international community and various economic, electoral and political stakeholders must hold them to their promises. Where the administration makes commitments, it must be supported to fulfil them; where its commitments fall short of international standards, it must be persuaded to increase them; and where it remains intransigent, it must be pushed to accept change. This is the role of civil society, the international community, and other stakeholders in the quest for real political change.

Leveraging International Goodwill for Institutional Reform

The international community has demonstrated a tremendous amount of goodwill towards Mnangagwa. This can be a basis for promoting and supporting real political change, but goodwill alone is not sufficient

to turn the Mnangagwa regime – whose members provided aid to Mugabe’s dictatorship and took power through a coup – into overnight democrats. There must also be pressure applied through a clear political incentive structure that is built on performance-based trade-offs for political and economic reforms, both on paper and in practice.

The Zimbabwean Constitution, promulgated in March 2013, is sufficiently democratic and progressive to provide an excellent place to start. Along with the requirements for free, fair and credible elections that follow SADC guidelines and are internationally observed and monitored, the implementation of the letter and the spirit of the Constitution can provide reasonable benchmarks for support and pressure from the international community.

Opposition Parties

Since the 2000s, the opposition has signalled a clear agenda of democratisation in response to Zanu-PF’s authoritarian nationalism. Part of this change agenda was encapsulated in the simple slogan “Mugabe Must Go”. But now that Mugabe is gone and the Mnangagwa regime has started to speak of change and pursue international reengagement, the opposition finds itself in need of rebirth to retain their pride of place as change agents.

Despite speculation that the MDC would die with Morgan Tsvangirai, Nelson Chamisa has slipped neatly into his elder’s shoes. He shares Tsvangirai’s charisma, and his relative youth and sound intellectual credentials have captured the MDC base, excited the youth (who constitute over 50 percent of registered voters), and forced the fence-sitting middle-class intelligentsia (who leaned towards Mnangagwa because they could not fathom being led by an “uneducated” Tsvangirai) to take a second look. A Chamisa presidency holds some potential for transformative political change in Zimbabwe. Unlike Mnangagwa, who has had to retain people known to have been Mugabe’s henchman, Chamisa can effect change in state personnel and in the mode of governance, drawing on the MDC’s long-held social-democratic principles.

To be clear, Nelson Chamisa is no Nelson Mandela, but he has so far been able to hold together the MDC Alliance that Tsvangirai built – although his ascent was

based on realpolitik rather than democratic politics. Chamisa’s magnetism and ability to unite will be tested in a field that has three significant opposition alliances – the MDC Alliance, the People’s Rainbow Coalition and the Coalition of Democrats – alongside a multitude of candidates from smaller parties all making a play for parliamentary seats and the presidency.

All these parties and candidates share the belief that Zanu-PF cannot radically transform political and economic governance in the country. What separates them is their estimations of their own abilities to take the lead and the inadequacies of others.

The Zimbabwean Constitution, promulgated in March 2013, is sufficiently democratic and progressive to provide an excellent place to start.

The opposition’s potential for creating real political change is stymied by this inability to form a grand coalition with a consensus candidate. But even if the opposition were to unite, one would be wary of leaving the task of political transformation to politicians, especially charismatic ones, who can prevail by appealing to the masses and manufacturing consent outside of established institutions.

Trusting in “We the People”

Paulo Freire warned that some of those who challenge oppression as freedom fighters become the next oppressors. Politicians and political parties are in the business of seeking power. They are known to use promises of change in order to persuade voters, and then, when they attain power, use it to serve parochial interests. These reasonable grounds for suspicion suggest that meaningful political change in Zimbabwe is the task of the current generation of citizens. They have the political power to change the old guard through their votes and the potential to protect their choices. But the kind of governance changes that are needed goes beyond the polls. Beyond changing the maestro and orchestra, it means changing the music.

Therefore, even if there is a change of political guard in Zimbabwe, the best potential for transformative political change lies

with a vigilant citizenry, uncaptured by political interests, clear on the changes they require, brave enough to demand them, and organised enough to campaign effectively for them. This kind of citizenry and civil society is burgeoning in Zimbabwe. Throughout the events of 2016 and November 2017, Zimbabweans showed that they can be mobilised, and only lack organisation. Organisation, and avoiding capture by political parties, is the next great task for civil society and citizen movements in Zimbabwe if they are to act as a counterweight to the state, as well as to capitalist and anti-democratic interests.

The coup has opened a crack in the authoritarian wall, allowing people to reimagine what they can accomplish to widen that crack.

Conclusion

It would be unwise to bet on Zanu-PF reforming itself out of power. To achieve significant political reform, Zanu-PF would have to shed a comfortable and familiar skin

for an unaccustomed and more tight-fitting one. The task is made harder by the fact that Zanu-PF is not just a party, but also a culture that has developed over decades in power.

The best chance for real political change in Zimbabwe lies in the simple task of everyone playing their part and the complex task of coordinating these parts into a formidable force. The people have the most significant role to play in fighting for political change beyond leadership change, as this is their interest. But to succeed they need allies, so-called “reformers”, within the state. This means not painting the incumbent regime with one brush, but rather strategically analysing where power lies and attempting to influence its disposition. It means allying with the opposition to control political power, and pushing for reforms beyond the institutions that moderate power (like elections) to those that moderate the political and economic elements of people’s lives.

The coup has opened a crack in the authoritarian wall, allowing people to reimagine what they can accomplish to widen that crack. If the people’s movements can be built and organised, civil society will be stronger and independent. This can provide the base and the arsenal to push for real political change in Zimbabwe. ■■■

-
- 1 A “veto coup” is an unconstitutional seizure of power usually staged by high-ranking military officers to prevent a civilian government from taking action against their (political, economic or strategic) interests. A “palace coup” comes from within the structures of a ruling party, with political rivals plotting to unseat, as well as replace, the incumbent through constitutional means. The coup that removed Robert Mugabe from power in Zimbabwe in November 2017 was an amalgam of these two types.
 - 2 For an extensive account and analysis of the coup, see “Zimbabwe and Zanu-PF’s Continuing Hegemony: Meet The New Boss Same As The Old Boss?” on the LSE Africa Blog at blogs.lse.ac.uk/africaatlse/.
 - 3 Tsvangirai beat Robert Mugabe in a presidential election in March 2008 but failed to capture state power. Military interference and alleged results-tempering denied him outright victory, leading to a violent run-off election in June of that year which returned Mugabe to office.
 - 4 See “Zimbabwe’s Political State of Play Ahead of 2018 Elections” for an account of extant actors, including Zanu-PF’s factional fights as at August 2017. Available at www.academia.edu/34686956/the_zimbabwean_political_state_of_play_ahead_of_2018_elections.
 - 5 For an account of opposition coalition politics in Zimbabwe, see “How to Create a Winning Coalition for #Zimbabwe2018” on the LSE Africa Blog at blogs.lse.ac.uk/africaatlse/.
 - 6 Gramsci, A. 1971. Selections from the Prison Notebooks of Antonio Gramsci (Quintin Hoare and Geoffrey Nowell Smith, eds and trans.) International Publishers.
 - 7 Victor Matemadanda, “Culture Change in Zanu-PF”, Sunday Mail, 10 December 2017 at www.sundaymail.co.zw/a-culture-change-in-zanu-pf.
 - 8 Bratton, M and Masunungure, E. (2008). “Zimbabwe’s Long Agony”. *Journal of Democracy*, 19(4). 41955.
 - 9 See James Thompson (2017) “‘Zim 2’, A General with Political Aspirations”. Sunday Times, 22 November 2017. Available at <https://www.timeslive.co.za/news/africa/2017-11-22-zim-2-a-general-with-political-aspirations/>.

Kenya's Judiciary:

Agent of Justice under Difficult Circumstances

Interview

On 1 September 2017, Kenya's Supreme Court declared the August 8 presidential elections invalid and ordered a new vote within 60 days. The judges found that the Independent Electoral and Boundaries Commission (IEBC) did not conduct the electoral process in a way that was consistent with the law, and that several irregularities and illegalities had occurred. The court received much praise for its courage and impartiality, not only in Kenya but throughout Africa and the world. The court's decision raises interesting questions about the role of the judiciary in democratic consolidation and political change.

To unpack these and related questions, *Perspectives* spoke to Yash Ghai, one of Kenya's leading constitutional law experts.

Perspectives: The fact that the Kenyan Supreme Court annulled the re-election of President Uhuru Kenyatta sent shockwaves around the world. Has the Kenyan judiciary always been so bold in its approach?

Ghai: No, not at all. The status of the judiciary diminished greatly during the regimes of Jomo Kenyatta and Daniel arap Moi.¹ Its independence was effectively removed, with the government giving instructions to judges, particularly in political matters. In cases between private parties, decisions were often made on the basis of the highest bribe paid to judges. The judiciary ceased to be agents of justice.

What turned the situation around?

The drafting and adoption of a new constitution in 2010 played a big role. Its drafters aimed for a legal framework which would vest sovereignty in the people, promote their role in the making of policies and laws, protect their political and social rights, and ensure justice in the community. For these purposes, it sought to remove bribery and other forms of corruption in state and society. The drafters realised that unless the judiciary was fundamentally reformed the Constitution, however perfect to meet Kenya's conditions, would be subverted.

They invited a number of distinguished judges from Commonwealth countries to advise them on the appointment and structure of the judiciary. Horrified by the conduct of Kenyan judges, the panel advised the vetting of existing judges for competence and integrity and that future appointments be made by an independent constitutional commission. Both these recommendations were implemented, which in turn attracted competent and honest judges to the judiciary and got rid of several corrupt judges.



Yash Ghai is a constitutional law expert and the former chair of the Constitution of Kenya Review Commission. He has advised various governments and political parties on constitutional matters and was a consultant on the independence constitutions of the Pacific island nations of Papua New Guinea, Solomon Islands and Vanuatu. He also was the UN Secretary-General's Special Representative for Human Rights in Cambodia from 2005 to 2008. More recently, he founded the Katiba Institute, which is involved in litigation protecting rights under the 2010 Constitution of Kenya.

What is the new constitutional role of the judiciary?

The 2010 Constitution represents a radical departure from the earlier constitutions. It is written to serve the people; it puts serious restrictions on the powers of the government and the legislature and strictly prescribes the powers of the state and how they should be exercised. But it is to the judiciary that the drafters looked for the safeguarding of the Constitution in the last resort, and on whom it placed the highest responsibility. The Constitution strengthens the independence of the judiciary through a more representative and independent judicial service commission, which alone can appoint and dismiss judges. The judiciary now also enjoys secure financial resources.

According to Article 21 (3), the judiciary, as other state organs, has the duty to “address the needs of the vulnerable groups within society,

including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities”. Courts have to develop the law where the law does not reflect the protection of a right.

The Constitution sets other guidelines for courts in the exercise of their authority. These include that “justice shall be done to all, irrespective of status”. The administration of justice

must be directed to the promotion of the purposes and principles of the Constitution. Article 47 gives the judiciary a specific role in reviewing the administrative law and practice of state authorities. The rules of interpretation – which bind all state and private parties, not merely the courts – require that the Constitution should be interpreted to promote its purposes, values and principles; advance the rule of law and human rights and fundamental freedoms; permit the development of the law; and contribute to good government.

The Supreme Court and the constitution division of the high court have done much to clarify the constitutional position on controversial issues and thus provided very useful guidance on the interpretation of the Constitution, emphasising its radical and transformative character.

The 2010 Constitution represents a radical departure from the earlier constitutions. It is written to serve the people; it puts serious restrictions on the powers of the government and the legislature and strictly prescribes the powers of the state and how they should be exercised.

How easy was it to restore public confidence in the judiciary post-2010?

The bad reputation of the judiciary before 2010 has not been entirely overcome, but some corrupt judges have been removed and some excellent ones appointed.

The judiciary has easily become the most favoured and trusted institution since the new Constitution was enacted, especially with the appointment of Dr Willy Mutunga as the chief justice and his policy of reform. In one sense, it is the strongest, most powerful agent of the state: it is the ultimate interpreter and safeguard of the Constitution. On the other hand, it is unable on its own to enforce its judgments and instructions, or determine its resources. This dilemma defines the judiciary and puts a high premium on the wisdom and integrity of judges.

In many ways, the judiciary is well qualified for the protection of the Constitution. Its members normally have extensive knowledge of the law. They are usually appointed through an open process from a strong group of applicants by an independent commission. Once appointed, they have secure tenure of office and can be dismissed only



after a public hearing and for serious misdemeanour. The process, and the reasons, by which they decide cases are transparent and their decisions can be questioned in a higher court.

At the same time, the long delays in court hearings and even longer delays in delivering its judgments have cost the judiciary considerable public sympathy. Perhaps in recognition of this, the Constitution encourages people to settle their disputes in other ways, like other forms of dispute resolution such as mediation and arbitration.

Nevertheless, several members of the legal profession and the public have come out in defence of the judiciary against recent attacks from members of government and parliamentarians, including the president, after it has held various government laws and practices unconstitutional.

Kenya's Supreme Court judges arrive at the court room before delivering the ruling that nullified the election.

© REUTERS/Baz Ratner

How does the judiciary relate to the other two arms of government?

Despite the good efforts of the judiciary, the legislature and the executive have intensified their disregard of the spirit and letter of the Constitution. The president has gone well beyond his authority when he has tried to veto the appointment of judges, disregarding the Constitution, which gives him only a formal role in the appointment and dismissal of judges. The government has often ignored court decisions – sometimes even encouraged by the attorney general, the chief government lawyer – making the task of the judiciary even more difficult. President Uhuru Kenyatta has, from the beginning of his first term, shown no regard for the constitutional status and role of the judiciary.

Despite this, the judiciary has made considerable progress, reaching out to the people in areas where it was impossible to reach a court,

steadfastly protecting the constitutional rights of the people, and insisting that the legislatures and the executive must follow the law. Both the judiciary's respect of the Constitution and the disregard of it by the president have been highlighted by the presidential elections in August and October 2017.

The Supreme Court's 2017 ruling was not the first time the judiciary got involved with electoral issues.

That's correct. Elections in Kenya are not about policies. Instead, they are about the capture and control of the state in order to illegally amass as much money and property as possible. Not surprisingly, electoral laws have been violated ever since independence. For this reason, the losers of elections almost always challenge the credentials or conduct of the winners, giving the judiciary hundreds of cases. This practice has intensified under the new Constitution, both because there are more seats in the national legislature but also because there is now a second chamber, the senate, as well as elections for various purposes in the 47 counties.

The first electoral issue for the Supreme Court – where challenges in respect of presidential elections begin and end – was in 2013 when Raila Odinga challenged his defeat against Uhuru Kenyatta at the hands of the electoral commission. The decision by the Supreme Court to uphold the Kenyatta's election victory was very controversial on legal grounds, and objected to by Odinga, but he did eventually accept it.

Kenyatta and Odinga were again leading candidates in August 2017, where Kenyatta was again declared the winner with 54 percent of votes. Odinga, who had received 45 percent, challenged the decision again.

This time the Supreme Court declared the elections void on technical grounds – basically that the conduct of the election departed to such an extent from the principles of the Constitution and the law that it could not be allowed to stand – and ordered another election in October. While the 2013 decision did the court considerable harm, in 2017 it was able to redeem itself to some extent.

At first, in a prepared speech, Kenyatta took the court decision well, but he soon began to denounce, even threaten, the court. Odinga's position was that certain improvements in the electoral system must be made before the elections, and when these were not forthcoming – or he thought they were not – he withdrew his candidacy. A challenge to the holding of the October election could not be heard because the Supreme Court could not muster a quorum – for reasons that are still obscure, and troubling. A challenge after the event was unsuccessful.

Odinga maintained that he had already won the previous round of elections, and his party produced figures of which the provenance and authenticity remain unclear.

How was the judiciary affected by the elections?

Kenyatta eventually won 98 percent of the vote in October, after Odinga opted out of the process. As before, the response among the people was largely ethnic. The reaction to Odinga's defeat was strong and picked up momentum as Odinga declared that he had already won the August elections, rendering the October elections unnecessary. He declared his intention to be sworn in as "president of the peo-

Both the judiciary's respect of the Constitution and the disregard of it by the president have been highlighted by the presidential elections in August and October 2017.

ple”, not the state, a position which gathered huge public support and created a major national crisis. This rather put the judiciary a little bit in the background while “pure” politics – principally consisting of insults and not infrequent threats – occupied the central place at least until Odinga did take the “oath” on 30 January 2018.

What was government's reaction to the swearing-in of the “people's president”?

The swearing itself was peaceful, despite government attempts to prevent Odinga and his supporters – many thousands it seemed – from accessing the swearing-in venue, Uhuru Park. The high turnout shocked the president and his government as they realised how little influence they would have in areas which support Odinga. Their reaction therefore was very strong, using the police to arrest several politicians.

The government blocked off the TV programmes of about five companies for five days. Interior Cabinet Minister Fred Mitiang'i “explained” that the media were complicit in an alleged plot by the opposition to commit a massacre during the swearing-in of the leader of the opposition, Raila Odinga. The minister also alleged that the opposition rally on 30 January was intended to “subvert or overthrow the legally constituted government” without an iota of evidence. The programmes were restored only after huge protests from the public and the international community. The high court also ordered the lifting of the ban. Kenyatta's family's TV station was unaffected, but naturally did not really report the event.

There has been a massive defiance of the judiciary by the government and the police. The inspector general of police – who takes his orders from the president, illegally – has refused to appear before the court, despite court orders to do so. The TV coverage was not broadcast promptly as the court order required.

Did individual opposition politicians remain untouched?

A leading figure in the opposition, Miguna Miguna, was arrested and hidden in a prison despite the law requiring that those detained should be able to see family and lawyers. The court, after orders that he be released were ignored, ordered the inspector general and the interior minister to bring him before the court. Neither of them appeared. Instead, Miguna, who suffers from various ailments including asthma, was produced in a court well away from Nairobi and then deported to Canada, where he had lived for some years until his return to Kenya and where he has citizenship. The courts have declared the illegality of the deportation, but with hardly any effect.

The government has also confiscated the passports of other leaders of the opposition. This is in violation of the Constitution, which recognises the right of every citizen to necessary documents. To the best of my information, no one I know is planning to run out of the country. In fact, they have become quite popular as the general resentment against the government increases.

You mentioned the role of the police earlier.

The Kenyan police have always been brutal, from colonial times onwards. But in the last few years under Kenyatta, their conduct has become outrageous. Numerous teenagers and young male adults have been killed for no reason whatsoever – certainly none that justifies killing without trial. These murders are well documented but nothing is

done about it. The Constitution aims to protect the police from undue government influence and provides for an independent commission to review the conduct of the police. However, when Kenyatta became president, he ensured the passage of a law to assume control over the police. He has effectively exercised that control. In all these acts, the president and his colleagues have deliberately ignored the courts. This seems also an essential element of their strategy: to demean the status and authority of the judiciary.

What conclusions about the judiciary's ability to effect lasting change do you draw from these episodes?

The electoral episodes have highlighted two aspects of the judiciary. The first is its importance for the protection of the Constitution and laws. The judiciary is the final authority for the interpretation of the Constitution. The jurisdiction and rulings of the courts are closely connected to the rule of law, which is respected in both Kenya and the West. The stands taken and orders given by the judiciary have no doubt increased the people's understanding of the constitutional order and respect for the judiciary.

On the other hand, the ease with which the president and his officers have been able to disregard the orders of the courts shows the judiciary's limitations to enforce its orders. It depends for implementation on the very officers/ institutions that it has sanctioned.

On the other hand, the ease with which the president and his officers have been able to disregard the orders of the courts shows the judiciary's limitations to enforce its orders. It depends for implementation on the very officers/ institutions that it has sanctioned. There is no judiciary police in Kenya which can carry out the orders of the courts. The relatively passive attitude of the people to the government regarding its disregard of judicial orders shows that they

have not fully imbibed the centrality of the judiciary to good governance and the Constitution, which, in the abstract, they seem to cherish. The elections episode also shows that ethnicity is more important to them than the rule of law.

Some key elements of the justice system, like the attorney general, have given the judiciary very little support in the episodes discussed here and in other instances preferred to side with the government, despite its contempt for justice. ■■■

1 Jomo Kenyatta was Kenya's first president after independence, serving from 12 December 1964 until his death on 22 August 1978. Daniel arap Moi succeeded Kenyatta and held the office until 30 December 2002.

Uganda: Political Organising in a De-facto One-Party State

Lydia Namubiru

To start the tale like Yoweri Museveni would: when the National Resistance Movement (NRM) took power in 1986, Uganda was transformed.

However, unlike the peace, security and modernisation that Museveni – Uganda’s president since then – likes to tout, the political shifts have been markedly less progressive. Over three decades, they have led to a slow death, or perhaps a descent into political coma. This is especially true for political parties, which raises formidable challenges to anyone wanting to affect change in the country. “We didn’t appreciate it early enough, but right from his bush days, one of Museveni’s chief enemies was political parties,” argues Richard Sewakiryanga, who, as a political analyst and the executive director of the Uganda National NGO Forum, has fought to defend the country’s political space.¹

Museveni went to war in 1980, following a multiparty election that was widely considered rigged and unfair. Museveni’s Uganda People’s Movement (UPM) won just one seat in parliament, while 16 UPM members had been denied the chance to stand for election, often on frivolous or even made-up grounds.² This effectively limited the competition to the two traditional parties, Milton Obote’s Uganda People’s Congress (UPC) and the Buganda-based Democratic Party (DP), both of which dated back to the country’s independence struggle.

After the UPC handed itself the vast majority of seats, an angry Museveni started a guerrilla war. As Sewakiryanga explains it, part of Museveni’s strategy to mobilise pop-

ular support for his rebel movement was to accuse the parties of playing havoc with Uganda’s democracy. For Museveni, it also was a deeply personal affair. He had been part of Uganda’s political establishment and regional politics for a long time.

When he came to power, Museveni set about turning Ugandan politics into a “no-party” system. In the Uganda he attempted to build in the 1980s and ‘90s, all Ugandans were to be happy members of an umbrella movement, the NRM, in which political power came from individual merit rather than traditional ethnic-based party affiliations. That didn’t work. By 2005, Museveni himself was campaigning for a return to party-based politics. In a referendum, more than 90 percent of voters ticked “yes” to the question: “Do you agree to open up the political space to allow those who wish to join different organisations/parties to do so to compete for political power?”

Yet, thirteen years into the multiparty political system, Uganda still isn’t a democracy with open political space and contestation. Nearly 70 percent of members of parliament (MPs) are from a single party – that romantic NRM that all Ugandans once belonged to. The second biggest group of MPs (15 percent) are independents: politicians who chose to run on that “individual merit” idea first introduced by, once again, the NRM. The third group (8 percent) come from the Forum for Democratic Change (FDC). Although it is seen as the most significant opposition party, the FDC is an offshoot of the NRM, as Sewakiryanga reminds us: “It’s like the Protestant Church to the Catholic Church. It was founded as the Reform Agenda, an effort to return the NRM to what some of its members felt it



Lydia Namubiru is a Kampala-based writer, data journalist and researcher who contributes to *Quartz Africa*, *The New York Times* and *BBC World Service*. She teaches data journalism at the African Centre for Media Excellence in Kampala and curates open data on Uganda via an online portal in her stewardship: www.data.ug. Between these, you’ll find her practicing feminist politics via her @namlyd Twitter handle.



Stella Nyanzi stands in the dock at Buganda Road court charged with cybercrimes after she posted profanity-filled denunciations of president Yoweri Museveni on Facebook in Kampala, Uganda.
© Reuters/James Akena

had moved away from.” The two traditional political parties, which “short-changed” Museveni during that fateful 1980 election, are barely visible today. The UPC and DP share 19 seats in a parliament of over 430 members.

Hence, Uganda is a multiparty system without differentiable and strong political parties. How then does one build a mass movement around any particular political rallying point? Where does one start to mobilise people?

How then does one build a mass movement around any particular political rallying point? Where does one start to mobilise people? There is at least one woman in Uganda who would know something about that.

There is at least one woman in Uganda who would know something about that. Until February 2017, Dr Stella Nyanzi was many things: a research fellow at Makerere University; an activist for LGBTI rights in a country which in 2013 passed (but later annulled) a law setting life in prison as the penalty for some gay acts; a social anthropologist who loved to document resistance against the state; a news and social-media

sensation with a Facebook page teeming with trolls and fans alike; and someone who, in an employment dispute, stripped to her knickers at the office of her boss, Mahmood Mamdani, the celebrated African scholar. However, if Ugandans had seen her merely as an entertaining or confusing intellectual woman, on 14 February 2017, she became a political force.

On that day, Janet Museveni, the country’s minister of education and also the president’s wife, announced that the government had no money to buy menstrual hygiene products for school-going girls. It might not have been a big deal. After all, the government had never provided such items anyway. However, while campaigning for his fifth re-election, President Museveni had specifically promised to deliver them to schools as a way to curb the drop-out rate of girls. This is what made Stella Nyanzi snap. With language perhaps too colourful to reproduce here, she turned to her popular Facebook page to start a campaign in which she would fundraise for the pads and deliver on the president’s campaign promise herself. In the ensuing weeks, she launched what NGOs might call a multipronged approach. She used mobile money and online crowdfunding to collect funds. She worked with queer and feminist networks to collect in-kind donations. She

used her online fame to taunt and call out the minister of education at every occasion. Of course, she did this in that uncensored language her audience loved.

That last prong was predictably controversial. Ugandans, for all their violent and turbulent political history, see themselves as polite and hospitable people. Secondly, although Janet Museveni has been the political head of a government ministry since 2009, she is still branded with her first-lady persona: Mama Janet, mother of the nation. To these sensibilities, Nyanzi's non-decorous political speech was an affront. Media businessman Andrew Mwenda, himself best known for his "take no prisoners" approach to political critique, had this to say:

It is permissible to call the president a dictator or corrupt. I find it morally reprehensible for Nyanzi to refer to their sexual organs in a vulgar way to express her frustration with their power though I disagree that such language should be criminalised. Mrs Museveni responded to Nyanzi's insults with grace and dignity. Instead of seeing this as an opportunity for a policy debate, Nyanzi used (and abused) it to hurl even worse sexually lurid insults at her.³

To such calls for decorum, Nyanzi responded on her Facebook page, "Why should I cushion Uganda's leaders, yet they neglect Ugandans? Why should I pad Janet Kataaha Museveni, yet she justified to parliament the lies about our government lacking money to provide sanitary pads to poor Ugandan girls – although her husband manipulated voters during his presidential campaigns with empty promises of the same pads?"

Whatever today's sensibilities might say, employing rudeness for political effect has precedent in Ugandan political culture. In the 1940s, Baganda youths grew increasingly bitter with the colonial government that had educated them but seemed to actively block their individual progress by locking power and opportunity within a small circle of Baganda gentry, religious leaders and white colonialists. Organising against that state of affairs, they formed the Bataka Union, with Semakula Mulumba as its chief propagandist. However, their lack of connections to the circles of power also meant they had little access to resources with which to organise. And so, they turned to what historian

Carol Summers calls "radical rudeness": Mulumba and other Baganda rebels of the late 1940s were disorderly, intemperate and obnoxious. What made their rudeness more than just adolescent immaturity, though, was that it was rooted in an understanding of the significance of social rituals, constituted a strategy to disrupt them, and was tied to an effort to build new sorts of public sociability to replace the older elite private networks.⁴

To this, Nyanzi responded: "Aw Lawd my Gawd! This woman is totally out of touch with the reality of the masses her family has misgoverned for thirty-one years and still counting."

A chief enemy of the Bataka Union was Cyril Stuart, the Anglican bishop of Uganda, who had entered an agreement with the colonial government in 1948, allowing it mineral rights on church land. Having been at loggerheads with the Bataka over this and other matters, Stuart invited Mulumba to dinner, saying there was no reason they could not be friendly even if they officially disagreed. Mulumba jumped at the opportunity. Not to go, but to refuse – and to do so obnoxiously. He wrote the bishop an 18-page rebuff, with choice words like, "My Lord, you are crooked". Mulumba made his response public, even though the bishop had sent his invitation privately.

Nearly seventy years later, Stella Nyanzi, who understands the significance of social rituals just as well as Mulumba did, gave the same treatment to a member of the small elite of her own time. Having been at the receiving end of Nyanzi's e-missives for weeks, Janet Museveni took to her own Facebook page to release a rare statement: "I have received reports about Dr Stella Nyanzi insulting me. I don't know what wrong I committed to deserve that kind of language and abuse. However, I want to tell Ugandans that I forgive her."

To this, Nyanzi responded: "Aw Lawd my Gawd! This woman is totally out of touch with the reality of the masses her family has misgoverned for thirty-one years and still counting. Let's temporarily ignore her foolhardy poopooish heretics of postur-

ing as one with the moral onus to forgive me. But how dare she not understand why I am irked and outraged by the long list of evil rained upon Ugandans by the Musevenis and Musevenists?”. This insistence on flouting social rituals and respectability, plus the traction her #Pads4Girls campaign was gaining, would eventually get Nyanzi in trouble.

While she had successfully captured the public imagination, she also ignited ire in the circles of power. While mobile money for menstrual pads trickled into her phone, the police were preparing charges against her. While she toured schools distributing pads and dancing with the students to promote menstrual positivity, plainclothes security agents were trailing her and her family members. Makerere University suspended her, saying she had insulted the head of the ministry which oversees the institution. The immigration department put her on a no-fly list.

On April 8, less than two months into her campaign, the matter escalated sharply. She was arrested and would spend 33 days in pre-trial detention at a maximum security prison. For her online taunts, the Ugandan police charged her with cyber-bullying and harassment. The state prosecutor asked the court to order a mental examination, with

On 30 May 2017, following an annulled election in his area of residence, Bobi Wine, along with family members, fans and fellow musicians, presented himself at the local electoral commission office for nomination. The erstwhile dreadlocked singer of politically conscious urban music now sported a gentrified haircut. “Many of my songs send a message out there, but I think it’s high time I joined parliament to ensure all the things I sing about can be implemented and put into practice,” he said on the day of his nomination.

What followed was an electrifying campaign fuelled by social media. The campaign hired a communications consultant, a first in Ugandan campaign culture. Social media was flooded with beautiful pictures of rallies that looked like pop concerts. The candidate himself was clearly fashioning himself on the model of Barack Obama: a writer of shareable quotes, and a modern family man with a beautiful, fashionable and compelling wife. The masses gobbled it up and handed him a landslide victory. In the June 28 election, he polled 25,659 votes; the closest opponent got 4,556. Timothy Kalyegira, a columnist in the Daily Monitor, called it a “victory of the oppressed”.⁵ This young man, born and raised in Kamwokya, one of the poorest neighbourhoods in Kampala, had turned his ghetto roots into a music career that made him a multimillionaire. Now he performed his second miracle by turning pop celebrity into political power.

Like Nyanzi, Bobi Wine took to social media to address the highest power in the land. He wrote open letters to the president. Still smarting from the public relations nightmare that Nyanzi had stormed up against his wife, the president responded with some civility. In a country where the leadership either ignores or brutally crashes into its weak opposition, it seemed like a mountain had moved. The emperor was beginning to talk to the dissenters.

So, is combining the power of social media with firebrand personalities the way to organise in a de-facto one-party state? It is perhaps a start. Yet pundits and activists alike say it should not replace party-based organising. “This [individual activism] has its resonance and appeal because I am so ordinary. I belong to a community which shares the injustices I speak about. People can relate,” Nyanzi explains in an interview. “On the other hand,” she cautions, “it is very

So, is combining the power of social media with firebrand personalities the way to organise in a de-facto one-party state? It is perhaps a start. Yet pundits and activists alike say it should not replace party-based organising.

the hope of declaring her insane, a prospect that would seriously threaten her career as an academic. In prison, warders attempted to block visits from her lawyers and children, and took away all her reading material, leaving her with just a Bible. When she eventually emerged out of the bowels of the system, it seemed, at least for a while, that a political activist had been broken.

Somewhere else, however, another tech-savvy figure was working on his roar: Robert Kyagulanyi Ssentamu, better known as Bobi Wine, the Ghetto President. During the week, he is a member of parliament. The rest of the time, he is a celebrity musi-

weak, uncoordinated, sporadic, unsponsored and easy to squash. You are just a mad woman, and there are not enough mad women.”

Sewakiryanga thinks Ugandans have “a hangover from the individual merit system”. That is problematic. “Individual merit is patronage politics. Until we outgrow this cult of individuals, it is hard to defeat that,” he warns. Besides piling political causes onto individual backs, individual activism is high maintenance and risky. “The biggest challenge is being asked to perform the work of institutions. Bring a road. Bring water. Contribute to all the funerals in your area. You cannot bury all the dead yourself.” Instead, Sewakiryanga advises, even people like Bobi Wine should be thinking about how to institutionalise their power bases. As he sees it, one can’t hope to build a long political career on individual merit. “It’s good when the spotlight is on you – but once you lose just one election, you fizzle out. In a

party, you remain an asset.”

However, to institutionalise these so-called power bases isn’t an easy task as they operate more like fan clubs than civic interest groups. Bobi Wine isn’t a politician without his musical fame. At least, not yet. Similarly, the average follower on Stella Nyanzi’s page likes the posts and condoles with her in the comments, but is unlikely to pro-actively drive a political cause. For example, her #Pads4Girls campaign fizzled out during her month-long imprisonment, despite the fact that it was wildly popular with her followers. Ultimately, they are spectators and supporters rather than political animals themselves. Without a cultural shift that brings Ugandans to see themselves as political agents with both leverage and responsibility to change the political landscape, it is impossible to see how Nyanzi or Bobi Wine could institutionalise the crowds gathered around them into effective political movements. ■■■

1 Interview with the author.

2 Faustin Mugabe, “Why Museveni’s UPM party lost the 1980 election”, *Daily Monitor*, 24 January 2016.

3 Andrew Mwenda, “The last word: On Museveni and Stella Nyanzi”, *The Independent*, 8 May 2017. www.independent.co.ug/last-word-museveni-stella-nyanzi.

4 Carol Summers, “Radical rudeness: Ugandan social critiques in the 1940s”, *Journal of Social History* 39, 3 (2006): 741-770.

5 Timothy Kalyegira, “MP Bobi Wine: Victory of the oppressed”, *Daily Monitor*, 3 July 2017. www.monitor.co.ug/Magazines/PeoplePower/MP-Bobi-Wine--Victory-of-the-oppressed---/689844-3997178-cgeh5jz/index.html.

Moving On Up!?

Opposition Parties and Political Change in South Africa

Sithembile Mbete

South Africa started 2018 on a wave of “Ramaphoria” following Cyril Ramaphosa’s victory at the national elective conference of the African National Congress (ANC) in December 2017 and his election as president of the Republic in February 2018. With “Bogeyman Zuma” out of power, political commentators have been quick to pronounce the death of opposition politics. The two main opposition parties, the Democratic Alliance (DA) and the Economic Freedom Fighters (EFF), built their political brands on the numerous scandals that plagued Jacob Zuma’s presidency. With a year to go before the 2019 general election, the question is whether the growth in opposition politics in South Africa can be sustained post-Zuma.

The past decade has seen a revival of opposition politics in South Africa, driven primarily by the ANC’s declining electoral support. In the 2016 local government elections, the ANC lost control of three metropolitan municipalities. The City of Johannesburg, the country’s economic hub, the City of Tshwane, the capital city, and Nelson Mandela Bay Municipality, in the ANC’s traditional heartland of the Eastern Cape, are now governed by opposition party coalitions led by the DA. While the EFF rejected taking part in the DA-led coalitions, it provided critical voting support to enable the DA to form governments in each metro. The result is that South Africa appears to be developing from a one-party dominant system into a competitive democracy. What is driving this change in the South African

political landscape? Have ordinary citizens benefited from the increased electoral competition? What are the prospects for opposition politics and governance in the next decade of South African democracy?

In the first fifteen years after 1994, South Africa was characterised as a “dominant party regime”. In party systems theory, dominant party regimes are democracies in which one party dominates in elections for a prolonged period and has sustained control over the government. Such parties face no prospect of defeat at the ballot box, despite the existence of a nominally competitive multiparty system. Dominant parties are also hegemonic, in that they come to define the popular will and set the agenda for politics in a country. They are often characterised as “a broad church”, representing a range of societal interests. This internalises political contestation within the party, making multiparty electoral competition redundant. Conservative political observers saw the ANC’s dominance as a danger to South Africa’s democracy. They predicted the degeneration of South African politics into an authoritarian one-party state like many others in post-liberation Africa. Progressive political scholars rightly criticised the Afro-pessimism underlying these apocalyptic visions. They argued that, in a country as fractious and unequal as South Africa, the ANC’s electoral domain provided the stability and room for consensus necessary for development. The idealism of proponents of this line of thought ignored the faultlines within the ANC’s body politic and the risks these posed for political stability in South Africa. In any event, both pessimistic and idealist perspectives have been challenged by real-life events.



Sithembile Mbete is a lecturer in the Department of Political Sciences at the University of Pretoria where she teaches international relations and South African politics. She is also an Associate Fellow of the Centre for Governance Innovation (GovInn) at the same university. She recently completed her doctoral dissertation on South Africa’s foreign policy during its two elected terms in the United Nations Security Council. She comments frequently in the media on a range of issues in South African politics.



Opposition Formations

The first notable challenge to the ANC's dominance was the formation of the Congress of the People (COPE) in 2008 after the recall and resignation of Thabo Mbeki, following an acrimonious battle for the ANC leadership between him and his successor, Jacob Zuma. This split divided the party and society by demonstrating that black South Africans could have a democratic choice outside of the ANC. It raised the idea that the ANC could be challenged electorally and precipitated the decline of the party's hegemony. COPE went on to implode through its own internal leadership battles. In the 2014 elections, it garnered only 0.67 percent of the votes, from a peak of 7.42 percent in 2009 when the ANC suffered its first electoral decline.

The DA, formed from the merger of the liberal Democratic Party (DP) and the conservative National Party (NP), attracted Afrikaner and coloured supporters of the NP into its ranks, enabling it to win control of the Western Cape province in 2009. The DA thrived under the first Zuma administration, which was scandal-prone from the beginning. The DA turned Zuma's weak leadership, unresolved corruption charges and dodgy sexual conduct into political capital to consolidate its support base of

white, coloured and Indian minorities. Through the recruitment of talented young black politicians like Lindiwe Mazibuko, the DA began to chip away at its "white" image and increase its appeal to a younger generation of black voters. Mazibuko's election as DA parliamentary leader made her the most senior non-ANC politician in parliament,

EFF leaders during the party's media conference regarding coalitions following the 2016 local government elections.

© Gallo Images / Beeld / Felix Dlangamandla

The DA thrived under the first Zuma administration, which was scandal-prone from the beginning. The DA turned Zuma's weak leadership, unresolved corruption charges and dodgy sexual conduct into political capital to consolidate its support base of white, coloured and Indian minorities.

which again demonstrated that black people could have a political home outside of the ANC. However, she was pushed out of the party after falling out with then leader and Western Cape Premier Helen Zille. Despite progress in the 2009 national and 2011 municipal elections, the DA struggled to attract support from the black South African electorate, which tended to stay away from the polls in protest against the ANC's failures instead of switching allegiance to another party.

The Rise of the Red Berets

The next major turning point in opposition politics was the formation of the Economic Freedom Fighters (EFF) by expelled ANC Youth League leader Julius Malema in 2013. The EFF became the big story of South Africa's 2014 election. It captured the public imagination and visually transformed the political landscape. The party's red beret became ubiquitous at political meetings, township funerals and on urban streets across South Africa. Because of the political personality of its leader, the EFF dominated the media and public discourse far more than would normally be expected for

The EFF reinvigorated parliament and turned it into the main site of political theatre for the first time since 1994. It was the party's activism that kept the issue of security upgrades to Zuma's Nkandla homestead in the public consciousness long after the ANC had hoped to squash it.

a party that had only been in existence for such a short time. The EFF's populist politics appealed to the historically disadvantaged black majority that continues to be marginalised in the democratic dispensation. In the terms of EFF rhetoric, the black majority is exploited both by the white capitalist class that hasn't relinquished power since 1994 and by the corrupt black elite that sold out during the negotiated democratic settlement. One of the ways in which the EFF identifies itself with the people is through clothing: its signature red beret, miners' overalls for men and domestic workers' uniforms for women are a direct identification with the working class.

In the 2014 elections, the EFF won 6.35 percent of the vote, giving it 25 seats in parliament, and it is the official opposition in Limpopo and North West provinces. Although the ANC received an overwhelming mandate to govern the country, with 62.15 percent of the vote, the party continued its electoral decline. In 2009, it had won with 65.9 percent, which was down from 69.7 percent in 2004. The DA consolidated its position as the official opposition with 22 percent of the vote, a 5 percent increase from 2009. The DA made inroads in Gauteng's metropolitan municipalities, which

laid the ground for it to govern Johannesburg and Tshwane in 2016.

The EFF reinvigorated parliament and turned it into the main site of political theatre for the first time since 1994. It was the party's activism that kept the issue of security upgrades to Zuma's Nkandla homestead in the public consciousness long after the ANC had hoped to squash it. The EFF made the greatest noise in highlighting the role of the Gupta family in government decisions, making the term "state capture" a part of the public lexicon. Some of the tactics the party used were disruption and non-cooperation in parliament, leading to frequent clashes with the speaker of parliament, Baleka Mbete, and their forced removal from the National Assembly chamber on several occasions. The slogans "Pay back the money!" and "Zupta must fall!" set the political narrative in 2016 and 2017.

Through its disruptive political engagement in parliament and clever use of the courts, the EFF has succeeded in setting the national political agenda and stimulating unprecedented public interest in the country's political institutions. It was the EFF that directly approached the constitutional court to institute legal action against the president's ad hoc Nkandla committee, arguing that it violated the public protector's constitutional powers. In April 2016, a full bench of the court confirmed the powers of the public protector and found that Zuma "had failed to uphold, defend and respect the Constitution as the supreme law of the land". This finding was the most significant indictment of Zuma's leadership since he became president and set the tone for a bruising campaign for the 2016 local government election. More damning constitutional court judgements against Zuma followed in 2017. Smaller parties like the United Democratic Movement (UDM), the Inkatha Freedom Party (IFP) and COPE have been able to take advantage of the new political landscape through strategic litigation and timely interventions in parliament to punch above their weight. The EFF's successes have cast doubt on the old adage that "it is cold outside the ANC".

The EFF's success presented a direct challenge to the DA's growth strategy. The acrimonious exit of Mazibuko and the erratic behaviour of erstwhile party leader Zille have alienated potential black supporters of the party. The current DA party leader, Mmusi Maimane, is now the poster boy of

the party's transformation. However, Zille's Twitter rants defending colonialism and condemning critics have exposed the limitations of the DA's transformation narrative. Like US President Donald Trump, Zille has been accused of using Twitter to fight political opponents and using racially charged "dog whistles" to undermine calls for transformation and equality in South Africa. The water crisis in Cape Town has also seen ongoing battles between the party and its mayor, Patricia de Lille, leading to perceptions among black South Africans that the DA is willing to put black faces in leading roles so long as old white men continue to run the engine behind the scenes.

Touching the Glass Ceiling

For the longest time, opposition parties in South Africa appeared destined to remain at the level of opposition, unable to attract enough voters from the ANC to break the glass ceiling. This began to change with the local government elections of 2016. The DA won new voters in black townships in the metropolitan areas, enabling it to lead coalition governments in three metros. The EFF has been able to draw some support from ANC voters, but it seems to be attracting mostly young voters between the ages of 18 and 25, and its support base is concentrated in Gauteng, North West and Limpopo provinces. In the North West and Limpopo, it was the second-best performing party after the ANC, which challenges the idea that the ANC lost support only in urban areas. The EFF established its support in the platinum belt of the North West by capitalising on the symbolic importance of Marikana, using the massacre of 34 miners there in 2012 as a rallying point against the ANC.

Nevertheless, disgruntled ANC voters still tend to abstain from voting rather than vote for another party. The trick for opposition parties is to find a way to convince those ANC voters to switch and not just stay home. Urban voters seem most willing to vote for other parties for no other reason than to have an alternative to the ANC. This could significantly reduce the ANC's share of the vote in 2019.

While many observers are predicting that voters will return to the ANC en masse with Cyril Ramaphosa at the helm, these views assume that Jacob Zuma is the only reason voters have turned away from the ANC and that Ramaphosa has firm control

over the party. Neither of these assumptions is correct. Firstly, Zuma was in many ways only a manifestation of the fragmentation and poor governance that has been a problem in the ANC since 1994. Secondly, Ramaphosa won the ANC presidency by a small margin and half of the top leadership is made up of former Zuma loyalists. So it is likely that well-informed urban voters will vote strategically in 2019 to prevent the ANC from winning a large majority. Voters could choose to split their votes, for example, by voting for the ANC at the provincial level but not nationally. This is the kind of voting logic one sees in established democracies and bodes well for the consolidation of South African democracy.

While many observers are predicting that voters will return to the ANC en masse with Cyril Ramaphosa at the helm, these views assume that Jacob Zuma is the only reason voters have turned away from the ANC and that Ramaphosa has firm control over the party.

Real Lives Matter

At this stage, the increase in political contestation is felt more at the rhetorical level than it is in the real lives of citizens. The successful court cases on Nkandla, the votes of no confidence against Zuma, and the civil society victory against the Secrecy Bill, which aimed to regulate the classification, protection and dissemination of state information, did have concrete effects in terms of limiting the excesses of the ANC government. At the same time, the jurisdictions that are controlled by the DA or DA-led coalitions have shown mixed results. The Western Cape and City of Cape Town continue to be characterised by stark spatial segregation and an exclusionary economy. Poor and working-class people are facing eviction from their homes to make way for private residential developments in the rapidly gentrifying area of Woodstock. The most violent places in the country are the townships of Cape Town and the majority poor population there feels excluded from the parts of the city that make the pages of international travel magazines. While policing is a national competence, the provincial and city governments have been accused of doing too little to improve secu-

rity in townships. In Johannesburg, despite heavy criticism by social justice and human rights NGOs, citizens have responded positively to Mayor Herman Mashaba's campaign to clean up the inner city by targeting "hijacked buildings" and adopting an often-xenophobic stance against migrants in the city. However, it is unclear whether this high profile intervention will have any material impact on people's wellbeing.

Beyond Party Politics

The lesson of the past 24 years is that real change cannot come about only through formal electoral politics. Ordinary citizens need to mobilise and use their civil power to influence governance. During Mbeki's presidency, it was the activism of the Treatment Action Campaign and others that changed government's policy on HIV/AIDS, and we now have the largest ARV rollout programme in the world. Zuma's attempts to turn South Africa into a security state were challenged by Right to Know (R2K), a broad civil-society coalition. His decline was brought about by courageous whistleblowers, NGOs, social movements and an activist media.

The ANC's decline is a reminder that freedom was won by the people through activism and mobilisation. It is activism and mobilisation that will enable citizens to hold political leaders accountable and create a responsive state. The challenge for South African politics is to weaken the power of political parties and transfer it to citizens. One of the ways to do this is to make the internal workings of political parties more transparent to the general public. Incoming legislation on political party funding creates regulations that make parties more transparent and publicly accountable. This will go some way in empowering citizens. Another initiative is to reopen the debate on electoral system reform as set out in the 2003 report of the Van Zyl Slabbert Commission on Electoral Reform. Young leaders of the Fees Must Fall student movement and the so-called "service delivery" protests across the country have demonstrated their readiness to engage outside of electoral politics to transform society. The consolidation of South Africa's democracy depends on harnessing their energy to strengthen democratic institutions and create a genuinely representative government. ■■■

Advocate Thuli Madonsela: Whispering Truth to Power

Shameela Seedat

Advocate Thuli Madonsela was appointed to a seven-year term as the public protector of South Africa in 2009 by then President Jacob Zuma. Zuma's resignation from office in 2018, amid allegations of fraud, corruption and involvement in state capture, is inextricably linked to her determination and tireless investigative work. Madonsela has become a treasured citizen, recognised and rewarded for her courage and resilience, and was named among the world's 100 most influential people by Time Magazine in 2014.

One of Madonsela's most distinguishing features is the softness of her voice. She speaks gently and chooses her words precisely, demanding full and careful attention. Her quiet demeanour was raised during interviews for the position, when the chair of the appointments committee commented, "You have a calm and gentle manner, but do you think that you will be able to maintain the confidence of those who come to you ... that they will get help?" Madonsela's reply was characteristically resolute: "I have a gentle manner. But I am able to make decisions – firm decisions."

These words would prove true in ways that no one expected.

The Office of the Public Protector

The office of the public protector (OPP) was established by the Constitution of 1996 as one of seven state institutions supporting constitutional democracy. Often referred to as "Chapter 9 institutions", these include

the Human Rights Commission, the Auditor General and the Commission for Gender Equality, among others. The role of the public protector, outlined in Sections 182 and 183 of the Constitution, is to investigate and report on cases of alleged or suspected misconduct in the affairs of the state and public administration. Importantly, the public protector is also empowered to take remedial action on the basis of these findings. However, like many Chapter 9 institutions, the efficacy and influence of the OPP have varied since its establishment.

Prior to Madonsela's tenure, few South Africans were aware of the work of the OPP, or its power to hold the state to account.¹ Her predecessor, Advocate Lawrence Mushwana, was criticised by the supreme court of appeal (SCA) for narrowing the interpretation of the OPP's mandate. During the 2005 "Oilgate" investigation, Mushwana stopped short of probing allegations that state-owned PetroSA had channelled R11 million in public funds to the ANC's election campaign via Imvume, a private trader.² Mushwana maintained that the OPP could not investigate the conduct of private entities, even if they were alleged to be working as proxies for public enterprises. The SCA cautioned that "if [the office of the public protector] falters, or finds itself undermined, the nation loses an indispensable constitutional guarantee", adding that "the Constitution demands that [the public protector's] powers must be exercised 'without fear or favour or prejudice' ... Fulfilling [these] demands will call for courage at times, but it will always call for vigilance and conviction of purpose."³

Thuli Madonsela was the person to answer this call.



Shameela Seedat is a human-rights law specialist and filmmaker from South Africa. She worked at the constitutional court of South Africa, the UNDP/UNIFEM in New York, the democracy research institute Idasa, and at a law firm. She has published widely on human rights and democratic accountability. *Whispering Truth to Power*, which tracks South Africa's first female public protector, Thuli Madonsela, is her first feature-length documentary. The film won a special jury prize at the 2018 Hot Docs Canadian International Documentary Festival.



Public Protector Thuli Madonsela announces her findings on scandalous lease dealings at the National Press Club on July 14, 2011 in Pretoria.

© Gallo Images / Foto24 / Liza van Deventer

Redefining the Role

Madonsela created ripples within the OPP right from the start. Rather than reviewing the SCA's decision against Mushwana, she publicly committed to take the matter forward. She was prepared to think seriously about the OPP's powers, and a colleague recalled how from the first day she was very clear that this office does not only make recommendations but it also has the power to take remedial action ... [She] insisted that we do a fresh examination of the text of the

But it was two later investigations, "Secure in Comfort" and "State of Capture", that not only set the tone of the relationship between Madonsela and Zuma but would also change the shape of South African politics.

Constitution and the purpose behind it. I remember that she [used] this example: you have been programmed as if in an elephant circus, and you are worried that if you step on the coals you will get burnt!

With a growing reputation for being fearless, hardworking and proactive, Madonsela's office investigated 110,000 cases. Many

of these involved ordinary people facing injustice at the hands of public officials, such as problems with identity documents, social grants and housing, or adequate service delivery. Her high-profile investigations targeted powerful politicians and officials, including cabinet ministers, CEOs of state companies, a police commissioner and even members of other Chapter 9 institutions.

Madonsela's most powerful adversary was President Zuma himself. They both came into office in 2009, and Madonsela's first investigation of the president began just one year later. That case was concerned with the disclosure of his financial interests and assets.⁴ But it was two later investigations, "Secure in Comfort" and "State of Capture", that not only set the tone of the relationship between Madonsela and Zuma but would also change the shape of South African politics.

Investigating the President

During an interview in 2016, Madonsela described her initial impressions of Zuma as a "humble person" who supported the role of the public protector in a constitutional democracy. However, this was only "until investigating Nkandla" – a case that revealed massive illegal spending of state funds on

supposed “security” upgrades to Zuma’s private residence in rural KwaZulu-Natal.

The 300-page “Secure in Comfort” report, released in March 2014, found that Zuma had breached the Executive Ethics Code by failing to act on queries and complaints about misspending at Nkandla. Further, the president had enriched himself and his family at the taxpayer’s expense. He was ordered to personally repay a portion of the public funds.

What followed was an acrimonious two-year battle for which Madonsela paid a massive professional and personal price. In addition to public insults and humiliation in parliament, Madonsela began to receive death threats. Zuma refused to comply with the public protector’s findings and recommendations for remedial action – ultimately taking the matter all the way to the constitutional court.⁵ Other government departments suddenly began to follow suit, and Madonsela worried that the office of the public protector would become irrelevant if it was seen to lack teeth. She was concerned that, if public officials could ignore the public protector, ordinary people would stop seeking justice.

Nonetheless, even as her term in office was coming to an end, Madonsela plunged into a new investigation into the alleged systemic takeover of the state by the Gupta brothers – close business associates of the Zuma family. In October 2016, she spent her last week as public protector fighting a dramatic battle to ensure that the “State of Capture”⁶ report would see the light of day. On the morning of her last day, Zuma applied for a court interdict to halt the release of the report. As she vacated the office, the country faced uncertainty about whether evidence of wrongdoing by the Zuma and Gupta families would ever be made public. Following a high court judgement, the report was ultimately released in November.⁷

Zuma Resigns

An astute politician with a growing base of party support and patronage, Jacob Zuma had entered presidential office under a cloud of allegations – including fraud and corruption charges related to the 1999 arms procurement deal.⁸ Despite these and other shortcomings, he maintained a strong grip on power for most of his two terms in office. He survived multiple motions of no confidence in the national assembly and was

protected by his party, the African National Congress, both inside and outside parliament.

But by late 2017 it was apparent that the ANC had begun to view him as a serious liability. Secretary-General Gwede Mantashe acknowledged that the findings of the Nkandla and state capture investigations had cost the party dearly in the 2016 local government elections and that its credibility remained at risk.⁹ The establishment of a judicial State Capture Commission – as ordered by Madonsela and scheduled for 2018 – will likely thrust Zuma’s alleged misdeeds even further into the public spotlight. With the growing momentum of opposition to his presidency – largely due to the public protector’s investigations – Zuma was forced to resign early in 2018.

A year and a half after she left office, it is clear that Thuli Madonsela’s gentle firmness has borne fruit, and that she was instrumental in raising the standards of accountability demanded of the country’s leaders.

Leaving a Legacy

A year and a half after she left office, it is clear that Thuli Madonsela’s gentle firmness has borne fruit, and that she was instrumental in raising the standards of accountability demanded of the country’s leaders.

However, it would be shortsighted to suggest that Madonsela’s single goal in office was to secure the public protector’s power to order the government to remedy wrongdoing. For her part, Madonsela insists that the OPP “is not a political office” and that “it does not take sides or go out to get people”. She has described her intense sadness at having to release the Nkandla report, knowing its repercussions for the president. At office meetings, she regularly reminded her team of their unwavering *modus operandi*: “We have to look at the standard required of a particular public official, whether they breached that standard, and if so, what can be done to remedy the situation and prevent future breach.”

She recognised that an elected government would resist being told what to do by a one-person commission. Despite her elevated position in the eyes of the media and

the public, Madonsela insisted that most of her engagements with government were actually about “whispering truth to power”, invoking the role of a *makhadzi* – the Venda aunt who quietly informs the chief about complaints from the people.

Madonsela was also at pains to emphasise that the job of the public protector is “not to order people around but to convince the majority – both in government and members of the public – to walk with you, and to have a common understanding on what constitutes an ethical violation”. Through regular public outreach, media briefings, dialogue events and conferences with top officials, Madonsela managed to raise awareness of both ethical governance standards and the role of the OPP. Ultimately, she invigorated a larger swathe of South Africans to call out public officials who fail to meet legal and moral standards.

Courage and Conviction

Madonsela’s many admirers remain curious about what drives her courage and conviction. Her son Wantu believes her strength arises from an unwavering quest for the truth, backed by a firm belief in the Constitution. “My mother can handle everything because she does her job correctly, sticks to the letter of the law, obeys the rules – and so she is beyond reproach. The Constitu-

tion is her bible, and knowing that she is acting in terms of the bible, without malice and for the benefit of the whole, gives her strength.” A colleague also commented on her enduring calmness: “Even when there is a storm brewing in her spirit she can hold on to her emotions. She faced a lot of pressure over the years, but she remained calm and centred. Maturity is something that you need for this position. And she is also very spiritual.”

And how does Madonsela’s reserve relate to her success? A colleague who worked on the Nkandla investigation explained, “Yes, she is soft-spoken, but strong and stern. She is also an excellent lawyer. During our investigations, we have fierce debates about the law and we persuade each other ... Being a woman in this environment is tricky, as sometimes people expect you to be meek. She stands her ground.”

Madonsela herself is aware that outward perceptions about her have not always been accurate – and that this may have worked to her advantage when she got the job. “The people who did not know me closely did not know my personality,” she explains. “But those who had worked with me closely knew that while I had a quiet demeanour, I was also firm. When I was appointed to be public protector, a former colleague remarked [that] people did not know what they are getting!” ■■■

-
- 1 To be fair, the legal question of whether the public protector’s orders are binding was not a straightforward one. Before the constitutional court finally resolved the matter in February 2016, the legal fraternity had been divided. For example, in a 2015 case involving the Board of the South African Broadcasting Commission, a judge of the Western Cape high court had ruled that her remedial actions were not legally binding.
 - 2 Faull, L. (2011) “Mushwana unmoved by Oilgate ruling”, Mail & Guardian, 10 June 2011. mg.co.za/article/2011-06-10-mushwana-unmoved-by-oilgate-ruling.
 - 3 The Public Protector v Mail & Guardian Ltd (422/10) [2011] ZASCA 108 (1 June 2011) www.justice.gov.za/sca/judgments/sca_2011/sca2011-108.pdf.
 - 4 Public Protector of South Africa (2011). Report on an investigation into an alleged breach of Section 5 of the Executive Ethics Code by President JG Zuma. Report No 1 of 2010/11. www.pprotect.org/sites/default/files/Legislation_report/PPREPORTMEEA%20PZ21042010%20_2_.pdf.
 - 5 In March 2016, the constitutional court ordered Zuma to pay back a portion of the funds spent on the Nkandla upgrade. See News24 (2016). “Zuma ordered to pay back the money”. businessstech.co.za/news/government/118520/zuma-ordered-to-pay-back-the-money/.
 - 6 Public Protector of South Africa (2016). State of Capture. Report No 6 of 2016/17.
 - 7 Eyewitness News (2016). “Public protector releases state capture report”, 2 November 2016. ewn.co.za/2016/11/02/state-capture-report-findings.
 - 8 For more information about the arms deal, see mg.co.za/report/the-arms-deal.
 - 9 Msomi, S. (2017). “Gwede fights his corner”, Sunday Times, 3 December 2017. www.pressreader.com/south-africa/sunday-times/20171203/282888026013755.

Breathe, for the Battle Will Be Long:

Changing Nigeria's Body Politic

Interview

On 18 November 2017, voters in Anambra, one of the 36 states in Nigeria, went to the polls to elect their governor. The election yielded a strong line-up of candidates, including Osita Chidoka, who gave credence to the idea that a young, dynamic leader, widely regarded as a successful public servant, with no blemish on his record, could excite the electorate and secure victory at the polls. As Chidoka said in an election-day press release, "Our campaign attracted the finest and brightest of Anambra. The bold and the courageous were with us as we exerted our best in running the most robust issue-based and technology-driven campaign in the history of our dear state." He crowdfunded his campaign, rather than take funding from "political investors" whose support could essentially mortgage the future of the state. One week before the election, he won a nationally televised political debate. And yet, the final results at the polls were dismal. What happened?

Patrick O. Okigbo III, one of the leaders of the Chidoka campaign, provides insights that should be useful for budding politicians in Nigeria and indeed Africa.

Perspectives: After developing an issues-based and youth-focused party manifesto to which the public had a chance to provide input, Osita Chidoka, a candidate in the Anambra gubernatorial elections, received less than 8,000 out of about 448,000 votes cast. Why do you think your campaign achieved such poor results?

Okigbo: Our performance at the polls arises from the fact that the electorate has become very cynical of the political process, and is quite agnostic to politicians of all hues. They have developed a near-doctrinal distrust of politicians. This conclusion probably needs to be qualified with some context.

From independence in 1960 to date, Nigerians have steadily and consistently lost trust in their politicians. Years of sweet promises from politicians that were jettisoned as soon as they assumed office have resulted in the electorate painting all candidates with the same brush. Such disappointments have, in the past, led to jubilation in the streets when the military shot their way to power. However, with the passage of time, Nigerians have realised that the military and the politicians were two sides of the same rusting coin when it came to addressing the developmental needs of the masses. Today, the general feeling is that the Nigerian elite (civilian and military) take care of themselves without much regard for the public's welfare.

This apathy is deepened by the loss of faith in the electoral process. For instance, about 50 percent of the Anambra's youthful population



Patrick O. Okigbo III is the founder and principal partner at Nextier, a public sector advisory firm and thinktank with its main office in Abuja, Nigeria. Prior to this role, Patrick was a special assistant in the Office of the President of Nigeria with a focus on the power sector. Earlier in his career, Patrick was the chief financial officer at Transcorp (Nigeria), vice president at Citigroup Corporate and Investment Banking in Washington DC, and a consultant with Accenture in Nigeria.



Osita Chidoka on the campaign trail.

© Nextier

are registered voters, yet only 9 percent of the population participated in the 2017 elections. With many years of unabated electoral fraud, Nigerians have come to accept election results as simply fiction. Like the Israelites under Pharaoh's bondage, they have accepted their powerlessness and resorted to praying for the emergence of a Moses who would magically part the Red Sea and march them to a new dawn. Sadly, such magic only happens in fantastical biblical stories or on the big screen.

How does voter apathy alone explain your poor showing at the 2017 polls?

There are many factors that contributed: identity politics, money politics, the incumbency factor, and the impact of the sit-at-home order from the leadership of the Independent Peoples of Biafra, an influential separatist organisation in southeast Nigeria. These factors are both rooted in, and further feed, voter apathy.

Prior to 2012, identity considerations were not the basis for participation in Anambra politics. However, by the 2017 election, it was widely held that the governorship was zoned to the northern senatorial zone of the state and that, at the end of that tenure in 2022, the position would rotate to the southern senatorial zone. This meant that most of the voters from the north voted for their own. Similarly, voters from the southern senatorial zone voted for a candidate from the northern senatorial zone in a bid to clear the path for their turn at the feeding trough. As a result, except for Osita Chidoka, all the governorship candidates of the major political parties in the race were from the northern senatorial zone.

While Chidoka understands the place of affirmative action, he did not believe that Anambra needed such considerations at the governorship elections. Anambra people have always prided themselves as people who can survive where meritocracy is upheld. Every part of the state has well-qualified candidates who do not need affirmative action

to succeed in elections. The unintended consequence of this zoning formula was the cancer of identity politics. A people who have always seen themselves as simply Ndi Anambra (Anambra people) are now beginning to see themselves as being from the north, south or central senatorial zones. Non-existent boundary lines have now been firmly established and will be difficult to erase. Chidoka's run was an attempt to nip this cancer in the bud. However, being a non-northern candidate meant that, from day one, Chidoka had to swim against the tide.

What role did money play in the elections?

Research evidence shows that money has been fuelling electoral fraud from as far back as the second election in Nigeria in 1951. Nigerians understand that electoral officers can be financially induced to change election results and that miscreants can be paid to stuff ballot boxes. However, the 2017 Anambra elections took election fraud to a new low with a retail approach to vote-buying. The going rate was 5,000 naira (about US\$16 in 2017) per vote. All a voter had to do was negotiate this rate with the relevant party official before stepping into the voting booth. Once the ballot paper had been thumbprinted, the voter would raise it up to confirm with the party official that the vote has been cast for his party.

The offer was difficult for most voters – including Chidoka's campaign staff – to resist. In a state where a senior civil servant earns about 150,000 naira per month and the minimum wage is 18,000 naira, it is not easy for a voter to walk away from such sums. From the start

of the campaign, Chidoka made it categorically clear that he would not engage in such shenanigans. His campaign staff and volunteers were trained in this and other values. The hope was that the campaign could convince enough voters to resist the money inducement – or accept the money and still vote with their conscience. This was not to be the case. Against the retail vote-buying, Chidoka's message stood no chance.

Research evidence shows that money has been fuelling electoral fraud from as far back as the second election in Nigeria in 1951. Nigerians understand that electoral officers can be financially induced to change election results and that miscreants can be paid to stuff ballot boxes.

You also mentioned the incumbency factor. How did it influence the results?

The 2015 victory of Muhammadu Buhari over Goodluck Jonathan was a momentous occasion in Nigerian politics. Guided by that experience, we now know that the stars can align to lead to the defeat of an incumbent.

However, reality tells us that 2015 was more of an exception than the beginning of a trend. It would be difficult to repeat that feat without campaign finance reforms that put significant restrictions on the sources and uses of campaign funds. In the current situation, where political officeholders have unfettered access to the public purse to fund their campaigns, it would be near impossible for a challenger to outspend an incumbent. It is near impossible to find a challenger who is independently wealthier than the state. While an alternative is to rely on contributions from wealthy individuals and corporations, this is a tricky option because most of the large private enterprises rely on public-sector patronage to succeed through contracts, licenses,

etc. Even where the challenger could find such donors who are not entangled with the state, there is the risk that they would expect financial returns which could result in mortgaging the future of the state. Anambra has had recent experience of a governor who accepted financial support from a donor and was expected to return 25 percent of the state revenues every month.

The power of incumbency manifests in other, more interesting, ways. Ndigbo (Igbo people) have an adage that says "goats follow the bearer of palm fronds" and not he who promises to bring food. We heard this adage quite frequently as one reason why political operatives would rather support the incumbent instead of Chidoka, whom they acknowledged had what was required to transform Anambra State. These operatives wanted a sure bet and not one where the odds were too high.

Voter apathy plays into this scenario as well because the electorate, especially the political elite, did not believe it is possible to unseat an incumbent. They would rather follow the incumbent who already has the "palm fronds" rather than a candidate who promises development. Place this within the context of a people who have already painted all politicians with the same brush and do not quite believe that Chidoka would be any different once he assumed power.

Are people, especially the youth, maybe *not* hungry for change in the end?

Far from it. The people desperately yearn for change but they are also convinced that politicians can't deliver the desired results. The 2015 general election validates this point. One of the reasons why Muhammadu Buhari won that election was that he was not seen as a politician. He was seen as an outsider who would fight the corrupt politicians when he got to Aso Rock, the presidential villa. In fact, Nigerians were willing to forgive Buhari for his abuses of office as head of state from 1983 to 1985. They were also willing to overlook the questions about his academic qualification and fitness for office because there was a great yearning for change.

The people desperately yearn for change but they are also convinced that politicians can't deliver the desired results. The 2015 general election validates this point. One of the reasons why Muhammadu Buhari won that election was that he was not seen as a politician.

The Chidoka campaign had a lot of young people involved. A number of them worked long hours in the 200-seat campaign call centre from where they spoke to all registered voters in the state. Others were supposedly canvassing support at the grassroots. Many of these young people showed a lot of passion and commitment during the campaign. However, this passion did not translate to votes when they had to make a decision between 5,000 naira today and a gamble on the electability of their candidate and the promise of development tomorrow. In retrospect, we should have started the campaigns earlier so we have enough time to inculcate the new doctrine in the people.

All of this paints a dire picture of the state of Nigerian politics. Are attempts to change the situation a "mission impossible"?

Impossible is a big word. From 2003, when Muhammadu Buhari started running for office, no one gave him a real chance of success. His political ambition was the real mission impossible. Yet, by 2015, he had become the "beautiful bride" that led a hastily convened coalition to defeat an incumbent African president. Anything is possible.

However, we must concede that it would be a very difficult feat for

a “clean” candidate to win an election in Nigeria absent campaign finance reform and a less cynical electorate. For this to happen, the candidate must show deep commitment to the issues important to the electorate and demonstrate willingness to stay the course, no matter how long. The candidate must also be seen to be electable. With all these in place, the candidate must then hope that the stars align in his or her favour, either through an electorate overwhelmingly dissatisfied with the status quo, as was the case in 2015 general elections, or one that has built up trust in the candidate. In my view, real people-focused leadership can emerge, but it would require commitment to a marathon, not a sprint.

What could be done in the short term to make changes?

I am more interested in the longer-term approach because of its promise of more fundamental change. However, in the interim, Nigerians should be encouraged to join existing political structures and fight for fundamental change from within those structures.

By fundamental change, I mean things like reform of campaign finance, without which there can be no meaningful political change. A system where politicians can use government funds to finance campaigns limits the prospects for significant progress through the electoral process. Nigerians should be able to know the source of the money spent on campaigns. This would ensure that our democracy is not for the highest bidder.

Internal party democracy is also critical to advancing democracy in Nigeria. When politicians know that they have to rely on the electorate for their power, it would incentivise them to learn what is important to the people and negotiate with them, knowing that if you do not treat the electorate well, they will vote you out in the primaries or the main election. It is such systemic transformations that would yield good candidates that can drive development as well as restore voters' interest and commitment to the electoral process. Once the electorate becomes fully disconnected from the electoral process, it will be difficult if not impossible to engage people in fixing Nigeria's politics.

By fundamental change, I mean things like reform of campaign finance, without which there can be no meaningful political change. A system where politicians can use government funds to finance campaigns limits the prospects for significant progress through the electoral process.

What's next for you in Nigerian politics?

If your question is whether I intend to run for elected office, the answer is, categorically, not any time soon. For now, I am focused on other ways of improving governance through policy work and advocacy. I will always engage in an active search for ways to transform the system. I will always support good candidates who are committed to improving the lives of Nigerians.

Going forward, however, I would ensure that any candidate I work with understands the investment of time and resources required to address the apathy. The journey to fix our politics and, in turn, our society will be a long one. Interested? Take a deep breath and gird your loins. This battle will be long. ■■■

The Gambia:

One Year After Jammeh, What Has Changed?

Interview

The West African Republic of the Gambia, one of the smallest countries in Africa, was ruled by Yahya Jammeh for 22 years. Jammeh came to power in a coup in 1994 and, although elected as president in 1996, 2001, 2006 and 2011, his regime was continuously accused of human rights abuses. On 1 December 2016, after months of protests and calls for him to step down, Jammeh lost the presidential election to Adama Barrow. At first, surprisingly, Jammeh accepted his defeat. This was followed, however, by almost two months of “ping-pong” negotiations between Jammeh, who refused to leave power, the newly elected Barrow and the international community, led by the Economic Community of West African States (ECOWAS). Barrow was sworn in as the new president at the Gambian Embassy in Dakar on 19 January 2017. On the same day, Senegalese troops under an ECOWAS mandate entered the Gambia to compel Jammeh to leave. On 26 January, Barrow finally returned to the Gambia, while about 2,500 ECOWAS troops remained there to stabilise the country. Jammeh went into exile in Equatorial Guinea.

Dakar-based Gambian journalist Sheriff Bojang Jr, who has lived in exile for many years, shares his insights into this democratic revolution in the Gambia and sheds light on the challenges one year later.

Perspectives: What made political change in the Gambia possible?

Bojang: Although this has been a long time coming, the main trigger for change occurred in April 2016, a few months before the election, when opposition activist Solo Sandeng and a handful of other opposition members were arrested following their peaceful protest for electoral reform. Shortly after that, news emerged that Solo Sandeng had been tortured to death in custody. When the opposition leader at the time, Ousainou Darboe, and his followers went to ask for the release of Sandeng’s body, they were arrested and some of them beaten by armed police. It was for everyone to see, and that was the turning point. People who, for two decades, were never ever interested in anything political, who didn’t register to vote and who didn’t care but for their little business, felt they could not be quiet anymore.

On top of it all, Jammeh publicly insulted the Mandinkas, the biggest ethnic group in the country, at public rallies in the lead-up to the December elections. If it weren’t for these events, Jammeh would still be in power.



Sheriff Bojang Jr is an award-winning Senegal-based Gambian print, radio, TV, social media and online journalist, blogger and communications consultant. Until recently, he served as the head of English service and programme production at West Africa Democracy Radio in Dakar.



What enabled people to see and be more aware this time?

Before 2016, there were hardly any open street-protests. The student protests in 2000 were swiftly shut down by the authorities. 2016 was different in that everything that happened in the Gambia was fuelled from the diaspora. When local media would not dare to report on Sandeng's death and the flow of information inside the Gambia was blocked, Gambians were able to consume information from the outside via social media. Information about Sandeng's arrest was posted on Facebook, as were the beatings of opposition members who protested with Ousainou Darboe. You didn't need to read it, you could watch it. It was a social media revolution.

A woman cheers as ECOWAS troops from Senegal gather outside the Gambian statehouse on January 23, 2017 in Banjul.

© Andrew Renneisen/ Getty Images

In what other ways did social media play a role?

Young people formed WhatsApp groups inside the country, through which they were spreading the messages the government had long suppressed. They recorded their messages in local languages because many people in those groups didn't go to school. They sent live videos. A kind of social movement formed, raising awareness, sparking anger and frustration, via Facebook, WhatsApp and Twitter. People just recorded voices and sent videos to everybody out there.

Which other constituencies, besides the diaspora and youth, played a critical role in the protests?

When the opposition leader Darboe and his people were arrested and detained illegally, women started what got to be known as the

“Calama Revolution”. A *calama* is a traditional wooden spoon that they would hold as a symbol of protest. The woman to single-handedly start this movement was a retired headmistress who stood in front of the National Intelligence Agency, right opposite the supreme court, to protest. By the end of the week, hundreds of women were there. When the police started to stop vehicles at the bridge to Banjul, forcing women to disembark, they would simply walk. They walked three hours early in the morning to get to Banjul, to be at the court, to wait for the prisoners to be transferred. Every day they were there. The government eventually just let the protests happen. This was the end of fear. They were all market women, housewives and so on – most of them older than 50. This inspired everybody else across the country.

What role did Adama Barrow play in the protests?

Adama Barrow was kind of an outsider. He was the unlikeliest candidate. He helped the main opposition United Democratic Party (UDP) campaign financially, but he was never prepared or groomed to be president. But anybody else among the big names would have been a problem because some of the differences between opposition leaders date as far back as their schooldays. They needed an outsider like Barrow, this guy who is always smiling and full of wisdom.

In addition, the youth movements put pressure on the opposition leaders to come together. Young leaders told them, “If you don’t come together, we won’t vote”. There was also a lot of pressure from outside and on the social media, like, “If Gambia goes into chaos, it’s your fault – because if you don’t come together, Jammeh will win again. We won’t take part in elections, no campaign and no vote.”

Barrow was the only candidate that everybody could agree with and, at that time, the only objective was to defeat Jammeh. In the lead-up to the elections in December 2016, Barrow was disciplined, sending a very good image of himself, while Jammeh was getting angrier and angrier, even insulting people. Barrow had a very unifying message which resonated very well.

In Africa and internationally, ECOWAS received a lot of media attention for their intervention after the elections. How much credit do they deserve for this change of political power?

I think it’s quite evident that if it were not for ECOWAS, Jammeh would still be there. People voted against him but he refused to respect their collective will. This is when ECOWAS, led by Senegal, stepped in. They sought permission to intervene from the UN Security Council – first through negotiations and, if necessary, with armed troops. The Senegalese government, as well as public opinion, was determined since Jammeh had publicly insulted the Senegalese president, Macky Sall, and his predecessor, Abdoulaye Wade. It became somehow a personal issue. All Senegalese were united against Jammeh. That’s when the Senegalese foreign minister said, basically, “As far as we are concerned: he lost, he goes”.

Are ECOWAS troops still present in the country?

The mandate of the ECOWAS military intervention in the Gambia was extended until May 2018 after the incidents of Kanilai, Jammeh’s place of birth, east of Banjul. On 2 June 2017, one person got shot and several injured during a protest against the heavy military presence by ECO-

WAS troops in their community. Despite this unfortunate incident, ECOWAS confirmed its determination to support the new Gambian government to stabilise the country.

What does life in the Gambia look like, one year after Jammeh? What does the political change feel like?

If you go to the Gambia today, you will see people who left the country ten or twenty years ago. It's a very emotional time right now. You go to a restaurant and people are talking about everything related to politics. People are criticising the government in the open.

There are also not many soldiers in the streets. Nobody is scared of police officers. In the past, there was a lot of abuse. For example, the military used to beat people who were caught using their phone while approaching a checkpoint. They thought that those people are sending information to the diaspora.

But the newly won freedom also comes with costs. For example, Jammeh completely bankrupted the national electricity company, and the new government is trying to put this in order, but people are very impatient due to frequent power cuts. People are publicly insulting officials for anything; it's like they are trying to find

People are publicly insulting officials for anything; it's like they are trying to find their voices. They've been silent for two decades. Before you could not even say on a public vehicle "oh, the road is bad", because it was all linked to the president.

their voices. They've been silent for two decades. Before you could not even say on a public vehicle "oh, the road is bad", because it was all linked to the president. Now you're on public transport and people are so free. The most important thing for us as Gambians is freedom.

However, this also led to a concerning reaction. There's a lot of bullying among Gambians on the social media. The country has also never been this divided based on tribe and political affiliation.

The former National Intelligence Agency (NIA) played a crucial role in keeping Jammeh in power for so long. How much influence do they still have?

The name has changed and I think everything else changed with it because, publicly, they are not present anymore and this is what was supposed to happen. Of course, we cannot do without secret agents, but they are not supposed to target the local population for dissent. Their existence is not supposed to be felt by people. Now the new director invited the journalists to visit the NIA. Never had this happened before. If you ended up there before, you could be sure you will be tortured. Otherwise, you would not be there.

Now nine former NIA agents, including the former director, are on trial for Solo Sandeng's death. The reforms are going on. What they are doing now is training, and the trainers are all from a human-rights background or working on freedom of the media, etc. Some of the former agents are still there, of course. You cannot kick everybody out. But there is no space for intimidation or torture in this new Gambia. Even if you want to do it, you cannot. Everybody is conscious. What is necessary now is to change the building, because it's a stark reminder of dictatorship and torture. It's so scary. But now the institution NIA is no longer the same. I have confidence in it.

What do you think will be the challenges going ahead?

Regarding security, we are not out of the woods yet. Maintaining the deployed ECOWAS troops in the Gambia is costly. Right now, they are not needed elsewhere in West Africa, but there will be that moment when they will be needed elsewhere. In the long term, I don't know how effective the reforms in the Gambian army will be. A minimum of 80 percent of the Gambian soldiers came into the army under Jammeh. They were trained the Jammeh way: "Crush anything that is even perceived to be against me and my government. You are loyal to me, I'm the country, you belong to me." This is the way they've acted and this is his army: this is him. So I'm very sceptical. But I also believe that a coup d'état is not possible in West Africa anymore. ECOWAS would not allow it.

There is also a policy vacuum. President Barrow hardly says anything. He flip-flops a lot and I don't think that he has the right people surrounding him. But the biggest danger is political. The political party leaders are already preparing for the next election. And when that happens,

your effort to do the right thing as the cabinet minister is divided between that function and your presidential ambition.

Currently, there is a lot of goodwill towards this government, especially towards the president. But there is a lot of nepotism as well. Almost all the ambassadors are from the UDP and people are not happy about this. I am afraid of the moment when people will lose hope and confidence in the parties

in the ruling coalition. The opposition party led by Mama Kandeh is very similar to Jammeh's party. If they get into power, there are concerns that Jammeh might be allowed back into the country. So I'm worried about Mama Kandeh gaining power, capitalising on grievances. We would have Jammeh back in one way or the other.

The political party leaders are already preparing for the next election. And when that happens, your effort to do the right thing as the cabinet minister is divided between that function and your presidential ambition.

What role will the people who protested on the streets play going forward?

My hope is that if it becomes clear that if things go wrong, ordinary Gambian people – the women who protested and young people who used social media – will revolt again and say "no".

Under Jammeh, people were not thinking about politics: the focus was the unforgivable killings by Jammeh's government. But now people are beginning to think and talk about politics. It's still very limited, but it happens. People are debating the budget for next year, something which would have never happened under Jammeh.

There are also so many Gambians from the diaspora who are coming home to settle. People are now taking their jobs more seriously because they no longer fear the closure of their business because of allegations such as, "Your father is against Jammeh". So there is hope. But I'm also still paranoid from all those years of living in exile. It will take time. But it's the most amazing thing in my life that I'm free now to come home to the Gambia and see my family whenever I want. ■■■





This publication can be ordered from our Africa offices:

Southern Africa Office

Vunani Chambers
33 Church Street
Cape Town, South Africa

T: +27 – 21 – 4616266
E: info@za.boell.org
I: www.za.boell.org

East & Horn of Africa Office

Prof. Wangari Maathai Road
P.O. Box 10799-00100 GPO
Nairobi, Kenya

T: +254 – 20 – 3750329
E: info@ke.boell.org
I: www.ke.boell.org

Nigeria Office

93 Obafemi Awolowo Way
Jabi District
Abuja, Nigeria

T: +234– 80– 99905176
E: info@ng.boell.org
I: www.ng.boell.org

Senegal Office

109, Rue Carnot
x Mass Diokhane
Dakar, Senegal

T: +221 33 889 96 05
E: info@sn.boell.org

Publication information

Publisher	Heinrich-Böll-Stiftung e.V.
Publication Date	May 2018
Editors	Jochen Luckscheiter, Keren Ben-Zeev and Layla Al-Zubaidi.
Copy Editor	Helen Douglas
Cover Image	Found Not Taken, London (2014). Courtesy of Stevenson, Cape Town and Johannesburg. © Edson Chagas.
Layout/Typesetting	Catherine Coetzer
Printed by	Hansa Print, Cape Town



Opinions expressed in the articles are those of their authors and not Heinrich-Böll-Stiftung.
All articles in this publication are subject to Creative Commons License CC BY-NC-ND 3.0

About the Cover Artist

Edson Chagas was born in 1977 in Luanda, Angola, where he lives. His work considers the socio-cultural context within contemporary cities looking specifically at consumerist culture and identity politics, pointing towards a broader dialogue between time and space.

In 1999, he attended Portugal's Centro Comunitário de Arcena where he did a three-month course in photography and audio. In 2002 Chagas completed his studies in photography, art and photojournalism at the Escola Técnica de Imagem e Comunicação. He later went on to do a degree in Photojournalism at the University of Arts in London (2005–2007). In the following year, Chagas studied documentary photography at the University of Wales in Newport.

In 2013 his Found Not Taken series was exhibited in Luanda, Encyclopedic City, the Angolan Pavilion at the 55th Venice Biennale, winning the Golden Lion for best national pavilion. He was one of three artists shortlisted for the 11th Novo Banco Photo Award, with an exhibition at Museu Coleção Berardo, Lisbon (2015).

Chagas' Found Not Taken works featured in the inaugural exhibitions at Zeitz Museum of Contemporary Art Africa in Cape Town (2017). Solo exhibitions have taken place at the Kunst Haus Wien, Museum Hundertwasser in Vienna (2016) and Instituto Camões - Centro Cultural Português in Luanda (2014), among others.

