

*Review*

## Can the centre hold for Arnstein's ladder of participation in Zimbabwe?

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**One of the most contentious issues in Zimbabwe's post-colonial history has been the law and practice of democracy. Electoral processes as a tenets of democracy has continued to produce contested and disputed electoral results. Politically-motivated violence has also reared its ugly head on Zimbabwe's political landscape. The dictates of Arnstein's Ladder of Participation which presents a normative framework for effective citizen participation has been violated both in letter and in spirit. Consequently, good governance and democracy have been elusive elements of the country's political practice. At the same time, citizen participation and freedoms such as those of assembly, association and the right to participate in the governance of the country has equally been compromised. Through existing legislation and effecting amendments to existing legislation there has been brazenly violation of civil liberties, erode political space and limiting political activity.**

**Key words:** Participation, democracy, socialism, civil liberties.

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### INTRODUCTION

Recent years have seen democratic practice has incited much scholarly debate. Political developments during the last three decades of Zimbabwe's post-colonial history have left a lasting impression on democracy human rights, civil liberties and citizen participation on the backdrop of a devastating economic environment. These processes have been put to the test as the country failed to live up to its liberation struggle promises of creating a democratic and egalitarian society, based on socialism. A plethora of legislative pieces of civil liberties have not lived up to the expectation of the general populace still smarting from the protracted liberation struggle that had

promised a horde of liberties. This paper deliberates on the different pieces legislation and how these compare with the dictates of Arnstein's Ladder of Participation. It has been argued that Zimbabwe's historiography contains all the ingredients for a democratic states. However the law and practice that have obtained in the country have left people guessing when the fruits of the liberation struggle would be enjoyed by all and sundry.

Despite the fact that the post-colonial dispensation undertook several reforms, the generality of the population does not have anything to show for it. The most outstanding reforms that have prevailed over the

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last few years include gender equity, constitutional reforms of 2013, the (in)famous fast track land reform programme as well as a litany of electoral reforms after a lot of disputed electoral results. It is worth noting that these reforms have not really responded to citizens' demands for an egalitarian society in the country. However, rampant corruption practices, arbitrary decisions by the bureaucracy as well as pockets of gross human rights violations resulted in gradual disconnect between the ruling elites and the general citizenry. From the early 1990s, increased demands for further reforms saw the emergence of a pro-democracy civil society groups that sought to engage the state towards the realization of and respect for civil liberties.

Most of Zimbabwe's political woes emanated from skewed policy implementation on the backdrop of numerous restrictive legislation some seeking to disenfranchise eligible members of society; curtail civil liberties and perpetuate gross human rights violations. However, despite operating in an unfriendly environment, civil society have sought to engage the state as well as mobilise the general citizenry towards the demand for an egalitarian society with enhanced service delivery. The Southern African Development Committee (SADC) ended up enacting legislation that compelled member states to conduct free, fair and transparent elections that would present the voice of citizens.

### Citizen Participation and Democratic Practice

Available literature has shown that about 2500 years ago, before the internet age, Athenians had developed a system of self-government that they called democracy which basically relied on active citizen participation for both direction and decision-making. A few millennia later, the founding fathers of the United States built a country around the proposition that government must be responsive to the needs of its citizens. They envisaged that for democracy to flourish and thrive, citizens must take an active part in public life, sharing their ideas and opening their minds to the opinions of others, and taking ownership in the well-being of the country (Meskell, 2009:24). This is how citizen participation took root within the democratic discourse, with multilateral institutions such as the World Bank and the IMF adopting it among its array of conditionalities for aid to countries. Consequently, it has come to be accepted that citizen participation provides private individuals with an opportunity to influence public decisions and has long been a component of the democratic decision-making process (Cogan and Hertberg, 1986:283). Active participation has also been found to meaningfully tie programmes to people (Speigel, 1998:7). Consequently, despite the angle from which one looks at citizen participation, it all boils down to community involvement

in the decision-making processes.

The preparedness of citizens to participate in public projects can be used as a barometer to measure public opinion and responsiveness in policy formation for informing regulators of exactly where "...volatile public backlash is likely to occur and for winning the sympathies of a few influential citizens..." (Irvin and Stansbury, 2004:58). However, citizens do not participate just for the sake of participating in whatever programme or process.

### Arnstein's Ladder of Participation

Arnstein's Ladder of Participation presents one of the most vivid practical examples of the different stages that governance can take place. It is common knowledge that while some states are die-hard dictatorships, others attempt to hoodwink their citizens as well as the international community that they are complying with democratic best practices and benchmarks by holding regular elections. The difference between genuine democracies and such states is that the prevailing political environment in such states is not conducive for holding free and fair elections. Such states present a token form of democracy. Then there are those states which genuine democracies which engage their citizens to contribute to policy formulation and implementation. Such states enable citizens to be actively participate the political processes. At institutional level, Arnstein presents a hierarchical structure portraying participation in three phases- *nonparticipation*, *tokenism* and *citizen power*. Arnstein argues that institutions can either make decisions without involving citizens, can consult citizens as a formality or can empower citizens to take control of all decision-making processes. Through the '*ladder of citizen participation*' Arnstein's (1969:34) presents citizen participation in hierarchical order and as existing in degrees of development as follows (Figure 1)::

Arnstein (1969:32) portrays participation as existing in three tiers. At the bottom of the ladder is *non-participation* where decisions are made from the top and handed down to citizens. On the second tier, herein viewed as representing a *degree of tokenism*, the quality of participation is through informing and consulting citizens without giving assurances that their contributions will be considered for decision-making purposes. This tier consists of merely *informing* citizens of decisions already made by the ruling elites; *consultation* as a formality without guaranteeing that the contribution of citizens will be taken into consideration; as well as *placating* involving mollifying, pacifying and appeasing citizens without due respect for their contribution in policy formulation in public affairs. As a result, merely informing (as a formality), consulting as well as placating citizens are gimmicks at the epi-centre of the degree of tokenism. The third tier consists of a degree of citizen power in which citizens

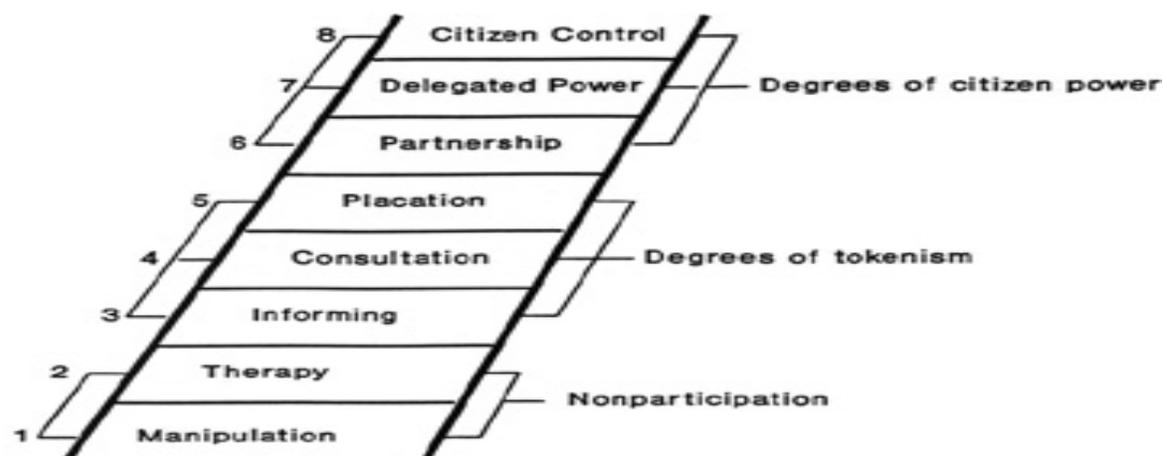


Figure 1. The ladder of citizen participation. Adopted from Arnstein's Ladder of Citizen Participation (1969).

play a role in decision-making processes. It should be noted that while citizens play a pivotal role in this level of participation, but the ruling elites have the final say, which makes this tier an enhanced form of tokenism, though citizens are portrayed as partners in making decisions though they cannot entirely influence policy formulation and implementation. Although citizens are portrayed as partners in decision-making processes, it is decisions palatable to the ruling elites which will be adopted as policy and eventually as law. Additionally, although there is an element of delegation of tasks to citizens, the ruling elites retain the mandate to deal with high profile issues.

The bottom-line presented by the Arnstein's Ladder of Participation is that in a democracy, citizen participation is the prime political practice which every democratically-elected government should strive to achieve both in principle and in practice. The ladder put citizens at the epi-centre of decision making processes. On the contrary the failure by the state to give citizens the right to free political choices and decision making powers presents an unacceptable form of a governmental dispensation. Arnstein's Ladder of Citizen Participation encompasses these arguments by consolidating the various arguments into three core values that inform citizen participation or lack of it thereof. According to the Arnstein (1969) in a political dispensation, there is no participation at all; participation comes in the form of tokenism or there is citizen power. Under non-participation, the political practice is characterised by manipulation of citizens by the ruling elites. Under the tokenism stage, citizens are merely informed by the government of what programmes the government intends to undertake without seeking public opinion. Under citizen power, communities are given the opportunity by legislation to contribute or influence decision-making processes.

All these governance processes exist within a legislative

context which provides for a regulatory frame work that govern citizens' behaviour. The legislative regime can either be restrictive and prohibitive or contribute to the creation of an enabling political environment.

This paper uses Arnstein's Ladder of Participation that presents a democratic best practice to establish the extent to which legislation in Zimbabwe has sought to promote or hinder civil liberties and enhance democratic practise. In addition, a plethora of existing legislation in Zimbabwe is presented to ascertain the extent to which these conform to the democratic best practices of governance, thereby putting the country's legislative regime to the test. The emphasis of this paper is on the extent to which the legislative regime allows for the dispensing of civil liberties, rights and freedoms to citizens to influence public decisions.

### Preview of Constitutional and Legislative Framework Guiding Participation in Zimbabwe

Ordinarily, the constitution and the attendant pieces of legislation existing in a country should provide a framework for citizen entitlements, rights and freedoms. Clapham (1992:44) notes that "...the formal constitution of the state should in principle provide the ultimate legal framework through which rational-legal behaviour is defined". Proponents of constitutionalism concur with this notion by pointing out that "...constitutions lay down the overall nature and the characteristics of political institutions in elaborate detail, and hold promises of institutionally guaranteed civil liberties and political democracy" (Kamrava, 2000). Constitutional provisions include civil, natural and political rights, which all citizens are entitled to, irrespective of religion, colour or political affiliation. Through registering and allowing civil society

continued existence, the State is creating an avenue for civil society participation in national programmes that help in realizing societal objectives such as poverty alleviation, the observance of human rights, upholding of democratic principles and even environmental and HIV/AIDS awareness campaigns. On the contrary, constitutions "...are tailor-made to fulfil specific political purposes and to present a mere cloak of legitimacy to norms and practices otherwise considered as unpopular and illegitimate" (Kamrava, 2000). In the Zimbabwean situation, one vivid example of this is the, Constitutional Amendment 17 of 2006 which authenticated the confiscation of formerly white-owned commercial farms, contrary to property rights that the former owners had over their properties. From then onwards, a plethora of the same nature and sophistication were enacted to fulfil specific political ambitions. From the content of the Constitution, there is very little evidence to suggest that it dispenses the privilege of citizens to participate in the administration of the country or to influence public policy. Most of the greater details for providing citizen entitlements are left to subsidiary legislation, such as the Electoral Act.

Consequently, the constitution and legislation should be there to regularize citizen participation among other things. In the case of Zimbabwe, the euphoria of attaining political independence and the commandist spirit that came with this euphoria resulted in the country not aligning itself to the Lancaster House Constitution which failed to provide for civil liberties as a constitutional provisions, but the ruling elites went a step further to promulgate a plethora of restrictive legislation that further eroded the little rights and freedoms that existed. Among the most outstanding of these restrictive pieces of legislation were the POSA and AIPPA, both of which sought to curtail citizens' right to information as well as the rights to assembly, association and expression (Mapuva and Muyengwa-Mapuva, 2012).

Repeated amendments of the Lancaster House Constitution, did not only signal that things were to align, but that self-interests prevailed over the concerns of the ordinary citizenry.. Eventually the constitution became a *patchwork of conflicting purposes, and not a* regulatory and legislative frameworks that should inform the socio-political interests of the majority of people and a conduit through which democracy is dispensed. In addition, the constitutional developments showed the extent to which the political dispensation strived for political survival on the backdrop of an increasingly restive population which responded to democratic decay that characterized political developments from the mid-1990s. The emergence of pro-democracy civil society movement in the country was a manifestation of a gap in the citizen participation continuum. The cross section of civil societies began to form but were strictly monitored by the state which "...signalled the eagerness to control the growing NGO

sector and, in particular, the funding being channelled into these organizations at a time when its political legitimacy was being undermined by a growing economic crisis" (Raftopoulos, 2000:36).

### **Factors Leading to the Changed State/Civil Society Interface**

To understand why government have reneged on its wartime promises of creating a free society for its people, one needs to reflect on the recent developments, starting with the growing in prominence of the Zimbabwe Congress of Trade Unions (ZCTU) and the subsequent formation of a broad-based opposition political party-the Movement for Democratic Change (MDC). The popularity of the MDC has been reflected by the fact that it commands a lot of support from almost the whole spectrum of civil society, ranging from labour and student movements, religious groups, and independent media houses (Sachikonye, 1995). Additionally, it has been able to amass the most electoral results since 2000 which has culminated in electoral disputes with other political parties. This explains the MDC's impressive performance in municipal and parliamentary elections at its inceptions and during its heydays. The success of civil society to convince citizen to refuse the endorsement of the government-sponsored Draft Constitutional in a referendum in 1999 dealt a heavy blow on the state because exposed the despotic nature that government had dealt with the issue of constitutional reforms. The results of the Referendum also indicated that civil society can at times have stronger voice than the state. The "farm invasions" that came hard on the heels of the formation of the MDC and the results of the Referendum were intended to punish the white commercial farmers who had bank-rolled the formation of the MDC and had also influenced farm workers in voting against government's intended endorsement of the Draft Constitution. The government began to perceive the white commercial farmers, civil society and the MDC as "enemies of the people". To the government, it has been alleged that Britain, the former colonial master, was behind the funding of various groups to effect regime change.

The unfolding of the above events led government to adopt a pessimistic view of civil society groups, Britain and its western allies as well as opposition political parties, especially the MDC. The pretext for the attempt to bringing civil societies into the sphere of the state is often given as their financial mismanagement, the lack of control with their funds (Raftopoulos and Phimister 1987). But the reality behind the attempts are linked to a fear by government of the potential NGOs have for organizing people outside the state structures, and secondly that NGOs with the change in donor policies with emphasis on building civil society institutions now receive funds

which earlier would go to government projects (World Bank Country Report, 2004). Thus, civil societies can be seen to be in direct competition with government over donor funds (*ibid*). New legislation and amendment to existing laws reflected vindictiveness on the part of government, for the laws were now geared at restricting citizen participation in governance and policy processes as well as downplaying their popularity. While laws are meant to protect the populace, the amendments to existing laws and the enactment of new laws provided government with a tool through which it could deal with the perceived “enemies of the state” and proponents of “regime change”. This paper will mainly deal with legal enactments and amendments that took effect soon after the formation of the MDC, a result of concerted effort by the generality of the Zimbabwean citizenry. This is so because the formation of the MDC reflected the extent of citizen participation and broad support enjoyed by this new political formation. The following are key legislative framework that this paper attempts to critique and how the content of these pieces of legislation influenced civil society involvement in public affairs.

At local level, local government, which had over the year had been centres for local participation, began to give in to the over-arching powers of central government. Contrary to the World Bank (2007:195)’s perception that “...local government has the power to manage its own fiscal revenues and expenditures, subject to national framework conditions”, events in Zimbabwe proved otherwise. Although ordinarily, local government institutions are supposed to represent “...a desired and natural outgrowth of trends towards fiscal decentralization, intended to reduce central [government] control in favour of local preferences that foster allocative efficiency” (Leach et al., 2007), the uncalled for interventions of the Executive in the affairs of local authorities tended to have a debilitating impact on the operations of such institutions.

Consequently, the State failed to establish a legal and policy framework consistent with decentralization and local autonomy (Leach, et al, (2007). However, there has been justification for the top-down approach being practiced by some governments, on the understanding that “...government officials are the ones who have the information on what resources the central government will make available for the implementation of development programmes and projects, so they are justified to make critical decisions regarding these programmes and projects if they are to be funded” (Hyden and Braton, 1993). Subsequently in Zimbabwe, the democratization of urban councils has been frustrated by “...the relatively stronger hand from central government which gives the Minister of Local Government and Urban Development] the right [and powers] to remove an elected [Urban] Council where it is felt that the elected officials are not in line with people’s wishes (MLGRUD, 1985).

Through an enabling Act of Parliament, ratepayers in

urban areas were empowered to form resident associations that would represent their interests. These residents’ associations have; in recent years, encouraged citizen participation and have even assumed political powers, which include fielding mayoral candidates, as well as showing direct interest in the running of city councils and rural district councils. In addition, such associations have been known to summon political leadership to discuss ratepayers concerns such as those pertaining to rates, and service delivery. However, through the Act, government has always retained much of the decision-making powers, with the Minister of Local Government having the power to decide on the suitability of an elected Mayor and to dismiss him/her as well as to appoint a Commission to run the affairs of a given Town or City. This has tended to discourage citizen participation because ratepayers’ choice of a Mayor should not necessarily be the one preferable to the Minister of Local Government. It can therefore be noted that the Urban Councils Act provided token participation as it did not require community participation to pass legislation, but only consults communities after the by-laws have been enacted. There is no guarantee that citizens’ input is ever considered or incorporated into the ensuing legislation.

### **Closing Existing Political Space**

The enactment of the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act AIPPA in 2002 was a turning point in the democratic history of post-colonial Zimbabwe. The two pieces of legislation sought to curtail civil liberties

It has been argued that POSA was a reincarnation of colonial legislation, Law and order Maintenance Act (LOMA) of the 1960s which has sought to curtail the movement of the black population. Therefore it came as a surprise that a similar piece of legislation was enacted in a post-colonial dispensation. POSA comprises a number of sections, which prescribes certain expectations and compliances. Of note is Part 2 of POSA which enumerates what action can be viewed as ‘offences against constitutional government and public security’, which include sabotage, acts of terrorism, possession of dangerous weaponry as well as undermining the authority of or insulting the President. Under Part 2 of POSA publishing or communicating false statements prejudicial to the state constitutes an offence. Under Part 3, POSA calls for police clearance for any one or group that intends to hold a public gathering. Public gatherings under this Act include political, religious and social gatherings. In order to preserve public order, police are given the authority to change the venue or other logistical aspects of the meeting, prohibit the meeting entirely, or prohibit all public meetings in a particular police district for up to three months. These sections of POSA have

been used to decline or shut down several public meetings, including those held by civil society groups and elected political officials as they attempted to report to their constituencies. The police are not required to give reasons why meetings are considered threats to public order nor do they suggest conditions under which the meetings could be held. The Act gives the police arbitrary powers such as the authority to change the venue or other logistical aspects of a meeting, prohibit the meeting entirely, or prohibit all public meetings in a particular police district for up to three months.

In practice, police does not sanction any meeting presumed to threaten public order and this is referred to in Section 19, which discourages "gatherings conducive to riot, disorder or intolerance". Part 5 requires that people carry identity documents with them and empowers the police to cordon and search individuals and residences. Part 6 authorizes the Attorney-General to prosecute those suspected of having breached any section of POSA and calls upon the defence forces to assist the police when the need arises. It also gives the police powers of search, seizure and forfeiture. In the face of this legislation, many civic organizations and opposition political parties have found it very difficult to reach out to their constituencies without committing a breach of one of the sections of POSA. Freedoms of speech, movement and association have also been curtailed by sections of this legislation and this has made the work of much of civil society difficult. Some sections of civil society have regarded POSA as a draw back to their attempts to contribute to a democratic dispensation and to engage government on vital issues such as the cultivation of a democratic culture among the citizens and enlightening people of their rights as citizens, through outreach programmes. Consequently, POSA has shown the failure by the state, not only to stay away from colonial legislative practices, but to desist from rejuvenating colonial practice to deal with an increasingly restive population demanding the restoration of democracy. It has also shown that the post-colonial state has accepted that the most effective way of dealing with a restive population is through heavy-handedness.

Access to Information and Protection of Privacy Act (AIPPA) sought to curtail information dissemination and access to information to the general public. It is generally accepted that access to information empowers citizens and enables them to make informed political decisions. Martin and Feldman (1998:1) note that countries "...which are committed to democratic good governance should adopt a legal regime that promotes access to information". They further maintain that access to information is "...the ability of the citizen to obtain information in the possession of the state" (1998:1). AIPPA is a legal instrument that enables the government to monitor and control the flow of information in the country. In enacting the legislation, the government argued that it wanted to

prevent the publication of information that is "...manufactured and can be manipulated into a lethal weapon for our downfall". Under Part V, sections 38, 39 and 42, the Act prohibited the publication of unverified stories. The Act was also empowered to register and deregister journalists or deny them a practicing licence without giving reasons. This implies that journalists can be co-opted or taken advantage of in order to retain their practicing licences, in contravention of ethics. These ethics were further compromised in that the government can determine what should be reported and what should not. Prohibitive punishment for breach of these laws saw many journalists getting arrested and independent newspapers closed down, like in the case of *The Daily News*, which was closed in 2004, after it was accused of reporting in favour of anti-government forces. The government has also taken advantage of AIPPA to deny prospective independent newspapers and radio stations practicing licenses, arguing "...the local media should not be owned by foreigners". This is in breach of citizens' right to information. AIPPA has also adversely affected relationships with other countries because it prohibits foreign diplomats from making speeches at their National Day events. Amendment to AIPPA makes the practice of journalism without accreditation a criminal offence punishable by up to two years in prison. Civic organizations were not allowed to be involved in politics of the country or to make political statements or to leak any information outside the country. Civic organizations were also not allowed to be involved in politics of the country, to make political statements, or to leak any information outside the country.

Under AIPPA, practising journalism was by registration under the Media and Information Council (MIC), which would give or deny practicing licences to both journalists and media stations alike. It also licensed or denied to license radio stations. Under MIC, many prospective radio stations were denied the chance to practice. Journalists operating without licenses were subjected to hefty fines and/or imprisonment. These restrictions on journalism also applied to non-journalists collecting information for other private purposes. From the content and practice of AIPPA, it can be inferred that it has been aimed to stifle debate and open discussion on political developments in the country as well as curtailing citizens from making informed political decisions.

## ELECTIONS AND ELECTORAL PROCESSES

Elections in Zimbabwe have set a very controversial precedence over the last two decades. L Successive disputed electoral results and the subsequent establishment of a Government of National Unity (GNU) in 2009, bears testimony to the nature and character of elections in the country in recent times. Elections are one of the

most vital tenets of democratic rule as they provide the much-needed opportunity for citizens to determine who should govern over public affairs. As a result, Zimbabwe has put in place legislation that governs the conduct of elections in the country. During the time, all elections were guided and informed by a set of legislation, notably the Electoral Act and the Zimbabwe Electoral Commission Act (ZECA). The Electoral Act was the overall law that governed the conduct of elections in Zimbabwe. The Zimbabwe Electoral Commission Act created the Zimbabwe Electoral Commission (ZEC), in charge of preparing for and conducting House of Assembly (formerly parliamentary), senatorial, presidential, council and referendums as provided for in the Electoral Act. The Zimbabwean Electoral Act has been at the centre of all the disputed elections over the years due to its partisan nature as it was crafted in such a way that it would not only allow the incumbent political party to militarise and politicise the electoral process, with such terms as 'electoral rigging', 'vote buying' and 'manipulation of the electorate through politicizing food aid to rural communities' being floated around. This has rendered the whole electoral process not only prone to manipulation but flawed, thereby eventually short-changing the electorate. The Zimbabwe Electoral Act (2004) is a constitutional provision that provides guidelines on the conduct of elections both at national, provincial and municipal levels. The Act provides for the creation of the Zimbabwe Electoral Commission whose mandate is to conduct elections. This Act establishes an independent authority, the Zimbabwe Electoral Commission, to administer all elections and referenda in Zimbabwe. The Act empowers the State President to appoint members of the Commission. It administers Presidential, Parliamentary, Senatorial and municipal elections (Chapter 2:13, Act 25/2004).

The provisions gave the Commission far-reaching powers over voter education. The Act also barred all foreign support for voter education activities except through the Electoral Commission. Under the Act, the Commission would be empowered to require anyone, other than a political party, providing voter education to furnish it with detailed information, including funding sources. Failure to comply with any one of these laws would constitute a criminal offence, liable to a fine or to up to two years of imprisonment. Much of civil society and NGOs depend on foreign funding. Civil society has therefore tended to view this Bill as government attempts to flash them out of existence and to cause cash flow problems for civic groups. A free election is one in which voters can freely vote for the candidates of their choice. The electoral laws themselves must create a set of rules that allow all contesting parties to compete fairly in the elections and all eligible voters who wish to do so to exercise their right to vote. A fair election is one in which all the processes of the election are fairly and impartially

administered. These processes included the registration of voters and election candidates, the voting process and the counting of votes and the announcement of the results. Election candidates and parties contesting the election were required to be given a fair and substantially equal opportunity before the election to campaign and inform the electorate of their principles, policies and promises. This included equal opportunity for airtime on the electronic and print media the most worrisome aspect in the electoral legislation and practice is the role of the executive which plays a prominent role in the general administration of elections, despite the fact that during elections, the Executive will also be contesting the same elections which compromises its neutrality.

Recent political developments have put Zimbabwe on the world map once again as political parties accused each other of electoral irregularities, just as had happened in 2008. As the centre of the controversy was the way in which the Zimbabwe Election Commission (ZEC), the electoral regulatory body conducted the elections. Subsequently, the Zimbabwe Electoral Act was put to the test both prior to the Harmonised Elections. Despite the fact that the election results had been authenticated by observers, notably the *SADC Observer Mission, which not only certified the results as authentic but went on to congratulate President Mugabe for securing a resounding victory*. Politically-motivated violent acts were not common and peace seems to have prevailed prior, during and on the aftermath of the electoral process. However, some political parties alleged that they were denied access to use media (both print and electronic, as prescribed by electoral laws.

### **Recent Developments in Zimbabwe**

Recent Development in Zimbabwe, especially from 2010, has seen the adoption of a new constitutional dispensation (2013) which seeks to liberalise the Zimbabwean citizenry by overturning the restrictive different pieces of legislation that violated various civil liberties over the years (Mapuva and Muyengwa-Mapuva, 2012). The new Constitutional dispensation of 2013 has been a landmark development in the constitutionalism discourse of the country because for the first time in the history of the country, civil liberties boast of constitutional protection. Over the years, since colonial days, political and civil as well as socio-economic rights (encompassing civil liberties) of citizens have been creatures of statutes and as such had no constitutional protection. With recent political developments, notably the constitutional reform processes culminating in the enactment of a 'people-driven' constitution after exhaustive public consultations, the country can now boast of a fairly comprehensive constitutional order. However, the challenge to the activation of the new constitution to full throttle has been

lack of political will to align, reconcile and harmonise the new constitution to existing legislation, most of which run *ultra vires* the dictates of the new constitutional dispensation. As such it is incumbent upon the establishment to ensure that the new supreme law of the land and the plethora of pieces of legislation are aligned so as to avoid dissonance and/or discord as well as double standards in the implementation of laws in the country.

### Application of the Dictates of Arnstein's Ladder of Participation to the Zimbabwe State

Judging from the above discussion, access to information, enjoyment of rights and freedoms as well as the absence of a level political landscape have all failed to meet the requirements of Arnstein's Ladder of Participation. The main thrust of Arnstein's Ladder of Participation is that state parties can deal with participation differently. The Ladder presents participation as existing in categories ranging from non-participation, tokenism and citizen control (see Ladder of Participation above), with each category representing a specific political dispensation. Dictatorships are represented under the non-participation classification, tokenism represents those political leaders that masquerade as democracies, which citizen control represents those political dispensations where citizens contribute to the decision-making processes in the country.

Some states, mostly dictatorships view citizens as insignificant and with no capacity to contribute to policy formulation and the general administration of the country. Consequently such dictatorships consider citizens as mere recipients of regulations, which means that citizens are non-participants in the politics of the country or in decision-making processes. This befits Arnstein's **non-participation** stage. The different pieces of legislation in Zimbabwe have attempted to dodge this scenario by putting in place some semblance of seeking to empower citizens either through indirect participation or through consultation. This is a token form of participation with no guarantee that citizens' input would be incorporated into the resultant legislation or decisions. This practice befits Arnstein's **Tokenism** stage which is aimed at hoodwinking the public into thinking that they are participants and/or stakeholders in the administration of the country. In the Zimbabwean context, the character is Parliament was such that only ZANU PF had a majority and would pass laws that satisfied their political aspirations without due regard of the populace. While elections would have provided the opportunity for active participation, events on the ground such as politically-motivated violence and coercion as well as limiting political freedoms resulting in the inability of the general populace enjoying active participation. In other words, Arnstein's **Active Participation** stage has been reduced to tokenism as

people have not been free to engage in active political activity. Consequently, it can be argued that the **Active Participation** stage in Zimbabwe has failed to be fully utilised due to a menacingly political environment. It can therefore be concluded that democracy in Zimbabwe has been increasingly controversial as opposition political parties and civil society organisations have continued to question the way elections have been held over the years.

### Conclusion

The increased political dynamics from the mid-1990s coupled with increased intolerance among different political players culminated in violence in some cases as well as indecisive elections and the government of national unity in 2009. Some would allege that elections have become a façade to hoodwink the international community into believing that there was active participation yet it was mostly tokenism. Even amendments to existing laws had been vindictive and tended to disempower citizens from partaking in matters of public interest. The employment of laws to vindicate against the citizenry has seen the government breaching and renegeing on its obligations of serving the populace. However, people of Zimbabwe have their hopes pinned on the new constitution whose provisions resonate with the democratic dictates of Arnstein's **Active Participation** level. It remains to be seen whether the implementation of the new constitution will be done in letter and spirit of democracy. It is also this author's conviction that political leaders will set aside their political differences to serve the interests of the generality of Zimbabwe. If current political mud-slinging and tug-of-war on the backdrop of endemic corruption are anything to go by, then the people of Zimbabwe have still a long way to go before democracy and democratic principles are complied with in the dispensing of good governance.

### ABBREVIATIONS

**POSA**-Public Order and Security Act; **AIPPA**-Access to Information and Protection of Privacy Act; **MDC**-Movement for Democratic Change; **ZANU PF**-Zimbabwe African National Union (Patriotic Front); **SADC**-Southern African Development Committee; **ZEC**-Zimbabwe Electoral Commission; **ZECA**- Zimbabwe Electoral Commission Act; **MLGRUD**-Ministry of Local Government, Rural and Urban Development; **PVO**-Private and Voluntary Organizations Act; **NANGO**-National Association of Non-Governmental Organisations; **MACRA**-Malawi Communications Regulatory Authority.

## Conflict of Interests

The author has not declared any conflict of interests.

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- Capital radio open to the public, but was later closed down by Government, citing it as a security threat to state security, on the basis that it would temper with frequencies.
- Legal Resources Foundation, *Paralegal Bulletin*, No.20, February, 2008. This was an argument put forward by The Belize Court of Appeal which argued that "Today television is the most powerful medium for communicating ideas and disseminating information. The enjoyment of freedom of expression therefore includes freedom to use such a medium"
- This was the argument put forward by the then Minister of Information Professor Jonathan Moyo in defence of the Zimbabwe Broadcasting Corporation's monopoly of the airwaves and the need to deny other prospective broadcasters a broadcasting licences.
- Voters were required to bring serial numbers of ballot papers that they will have used during the election to the ZANU (PF) party structures in their locality for a possible follow-up to determine who they will have voted for.