

ZIMBABWE BRIEFING

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Centre for Research and Development condemns rise in human rights abuses in Marange diamond fields



IN SEARCH OF DIAMOND: A scene from the Marange diamond fields

On 11 April Centre for Research and Development (CRD) issued a press statement noting an upsurge in violence against citizens around Marange diamond fields by Zimbabwe's security forces in the past five weeks and strongly condemned the state-sponsored violence. CRD called on the government of Zimbabwe to immediately bring to an end the human rights abuses and investigate state security agents that have been

implicated in committing the abuses.

CRD further urged the government of Zimbabwe to fully implement the Swakopmund Joint Work Plan (JWP) which called on the Zimbabwe government to develop 'control systems including removing incentives for smuggling' and the "setting up of adequate security infrastructure" at Marange diamond fields.

Meanwhile, the Kimberley Process Certification Scheme (KPCS) Working Group on Monitoring (WGM)

will meet this week in Dubai on 14 April to discuss the issue of exports from Zimbabwe's Marange diamonds following a unilateral attempt by the KPCS Chair – DRC – to allow the exports in violation of the KPCS consensus rules.

Zimbabwe civil society groups will make submissions coordinated under the KPCS Zimbabwe Local Focal Point which Crisis in Zimbabwe Coalition is part of.

Update on recent political developments

Following the stern 31 March SADC Troika Communiqué, president Mugabe's immediate reaction, in a debrief to the ZANU-PF central committee, was to dismiss the position taken the SADC arguing state sovereignty and that the Facilitator (president Zuma's mandate) did not extend to prescribing what action Zimbabwe's political parties should take.

It now appears, however, that there is a climb-

down with the presidential spokesperson, George Charamba distancing government from initial, emotional outbursts and implicitly endorsing the Communiqué. On 7 April justice minister and chief ZANU-PF negotiator, Patrick Chinamasa announced on state television that ZANU-PF remained positive that national harmonized elections will still be held sometime in 2011.

In the meantime, President Zuma's Facilita-

tion Team was in Harare last week to engage the six political parties negotiators in the process of reviewing GPA implementation progress and drafting an elections roadmap. Zimbabwe civil society groups have requested and hope to have another engagement with the Facilitation Team ahead of the SADC Extraordinary Summit on Zimbabwe presently scheduled to take place around May 20.

On Saturday, 9 April at least 20 armed riot police

used teargas, truncheons and rifle butts to violently break up and stop a church service in Harare where at least 500 congregants had gathered to pray for peace in the country. Police then arrested bishop Paul Mukome, (resident priest at the Nazarene Church which hosted the prayer service), bishop Paul Isaya, pastor Nemukuyu, pastor Caroline Sanyanga and ten other congregants including a juvenile.

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Grounds for direct SADC intervention in Zimbabwe

Coordinator's Note



dewaMAVHINGA

babwe. Perhaps some SADC leaders, in the face of this bullying response by ZANU-PF are bulking at the prospect of transforming their stern words into resolute action. I wish explore the various grounds that justify SADC's direct intervention in the domestic affairs of Zimbabwe.

The debate on whether or not SADC can intervene in the affairs of Zimbabwe without infringing state sovereignty is merely academic because SADC is already intimately involved in Zimbabwe's domestic affairs. SADC and the African Union are the guarantors of the GPA and the resultant governance arrangement. After widespread electoral violence that rendered the June 2008 presidential runoff election illegitimate leaving Zimbabwe without an effective government, it was SADC and the AU that came to the rescue, leading a mediation process that resulted in an uneasy marriage between ZANU-PF and the two MDC formations.

It was on this basis of direct SADC involvement that South Africa was appointed mediator to help SADC, the GPA guarantor, to ensure that the inclusive government that had been set up implements critical agreed reforms in order to pave way for Zimbabwe to hold democratic elections where violence and intimidation play no part. Outside of

this SADC guaranteed arrangement and GPA framework Zimbabwe there is no legitimate government to talk of that can lay claims to state sovereignty.

In the spirit of finding African solutions to African problems the two African institutions – SADC and the AU – are fully within their mandate of guarantorship to continue to directly intervene to assist the people of Zimbabwe to find a lasting solution to the continuing and festering political conflict. Under the international doctrine of the responsibility to protect (R2P), SADC and other regional and international institutions have a right to intervene in the affairs of member states in the interests of human security.

The first and sacred duty of the government of Zimbabwe is to protect its citizens and to advance their interests. However, when a state turns predator on its citizens external intervention becomes legitimate for the purpose of restoration of peace and human security. Sovereignty does not give any State the right to abuse and harm its citizens; rather, genuine sovereignty is premised on the sacrosanctity of the security of person.

To plead state sovereignty as an excuse to butcher citizens while the rest of the international community looks on is akin to an abusive husband telling relatives and members of

the community that they cannot interfere with his right to abuse his wife and children! The correct legal position is that sovereignty is limited and conditional to a state's willingness and capacity to provide protection to its citizens.

SADC and the AU through its Peace and Security Council should closely monitor events in the region in order to anticipate and prevent conflict. Zimbabwe is one such case where all indicators are pointing to a disaster in the making, to a political cataclysm if proactive action is not taken to guide Zimbabwe through the implementation of critical reforms necessary for democratic elections where the military is completely removed and separated from political and civilian affairs.

Now is the right time for SADC and the AU to be firm with Zimbabwe and to demonstrate commitment to human rights, democracy and good governance so as to forestall a catastrophe. SADC should have learnt from the upheavals in north Africa the dangers of waiting for rivers of blood to flow on the streets before taking action.

If Zimbabwe is left to its own devices, it is most likely to go over the precipice, plunging the entire southern Africa region into crisis.

There is need for SADC now to take firm, decisive steps to implement all the Communiqué resolu-

tions to pave way for democratic elections that are without violence or intimidation. The SADC Troika must now urgently appoint, with concrete terms of reference, the promised team of officials to join the Facilitation Team and work with the Joint Monitoring and Implementation Committee (JOMIC) to ensure monitoring, evaluation and implementation of the GPA.

We expect the appointed SADC Team to be composed of eminent Africans who are fully independent, professional and have extensive experience in the area of democratic governance, regional elections and security sector governance reform. The appointed SADC Team must be fully empowered to recommend appropriate, decisive action in the event of failure to implement all GPA provisions.

We expect that the SADC Troika will broaden the process of drawing up with Zimbabwe's elections roadmap making it as inclusive as possible – taking on board a wide range of views from various stakeholders including civil society groups.

The democratization and future of Zimbabwe is too important to be left just in the hands of three political principals and their six negotiators.

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Following an unusually and refreshingly strong statement on Zimbabwe at the recently ended SADC Troika Summit in Livingstone, Zambia, there has been highly emotional responses from certain elements who are falsely claiming that the amorphous concept of State Sovereignty precludes SADC from directly intervening in the internal affairs of Zim-

Update on recent political developments

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The pastors and all congregants except the juvenile, have been charged with public violence and were released on Monday, 11 April.

Only one MDC youth activist, Shakespeare Mukoyi, remains in police custody on additional charges of allegedly assaulting a police officer. Zimbabwe Lawyers for Human Rights (ZLHR) deployed a team of lawyers to attend to those arrested.

The church service aimed to commemorate the events of the 11 March 2007 Save Zimbabwe Prayer Meeting, where police shot dead

one activist - Gift Tandare – and arrested, detained and tortured over 100 political and human rights activists.

Reflecting increasing economic difficulties countrywide, national airliner – Air Zimbabwe pilots and staff continue their job strike action ongoing for over three weeks now.

Magistrates are also on a countrywide strike action to protest poor salaries and conditions of services. Last week teachers' representatives got audience with president Mugabe to demand salary increases. The least paid teacher earns



\$128 per month. President Mugabe promised the teachers that government would consider salary increases for teachers in June 2011.

On Sunday 10 April Crisis in Zimbabwe Coalition Regional Office representa-

tives attended a Swaziland Democracy Campaign rally in Johannesburg in solidarity with the people of Swaziland.

By Dewa Mavhinga, Crisis in Zimbabwe Coalition Regional Coordinator

Articles of Faith: Assessing Zimbabwe's "GPA" as a mechanism for change - A legal perspective

Zimbabwe's current Inclusive Government, more commonly referred to as a Government of National Unity (GNU), was established pursuant to an Interparty Political Agreement, itself more commonly referred to as the Global Political Agreement (GPA). This Agreement was signed by the "Principals" of the three main extant political parties: the Zimbabwe National Union - Patriotic Front (ZANU-PF) and two Movement for Democratic Change (MDC) formations.

The Agreement was at once legally anomalous for several reasons. An agreement can only bind those who are party to it. Accordingly the GPA can only bind the signatory political parties in their relationship with each other as political parties, and no one else. Yet the three political parties purported to oblige the both Government of Zimbabwe and its President, Robert Mugabe, to undertake certain acts.

The Government of Zimbabwe is not party to the Agreement. Mugabe signed the agreement qua leader of ZANU PF and not as President of the country. Even if he had signed in the latter capacity, it is not possible for the President to limit his powers provided for in the Constitution by contract. The Articles which purported to do so only became legally enforceable once



incorporated in the Constitution itself.

When an agreement is committed to paper and solemnly signed, it is assumed to have legal ramifications in regard to its interpretation, obligations and enforcement. However, due to the anomalous legal nature of the agreement, enforcement through juridical channels was always going to be problematic. Furthermore, rather than simply containing clauses which are subject to legal interpretation and enforcement, the larger part of the agreement comprises rhetoric and ideological bombast designed to facilitate political posturing and little else.

In fact only Article XX has, and was intended to have, any real legal traction. The Articles analyzed in what follows may be regarded as falling into one of three categories - Arti-

cles which are mere bombast, Articles which are merely of political relevance and Articles which have legal traction. The Agreement is remarkable in the way that the political positions of each party appear in the document parallel to each other. The patois of ZANU-PF's discourse of "patriotic history" appears throughout and sits uncomfortably alongside (rather than incorporated with) MDC's liberal democratic claims for human rights and governance.

This is nowhere more apparent in the bombast of the Preamble to the Agreement as the following extract illustrates: *CONSIDERING our shared determination to uphold, defend and sustain Zimbabwe's sovereignty, independence, territorial integrity and*

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Articles of Faith: Assessing Zimbabwe's "GPA" as a mechanism for change - A legal perspective

From Page 3

national unity, as a respected member of the international community, a nation where all citizens respect and, therefore, enjoy equal protection of the law and have equal opportunity to compete and prosper in all spheres of life.

ACKNOWLEDGING the sacrifices made by thousands of Zimbabwe's gallant sons and daughters in the fight against colonialism and racial discrimination and determined to accept, cherish and recognize the significance of the Liberation Struggle as the foundation of our sovereign independence, freedoms and human rights.

The Agreement thus reflects the continuation of competing and incompatible claims by the parties rather than a consensus on the modalities of a coop-

erative effort. This lack of consensus, lack of any real agreement between the parties and lack of shared perspective, whether ideological or teleological, has informed the "implementation" of the accord.

The different motivations for entering the accord were apparent at the outset and have remained unchanged. The ostensible and stated objective of the MDC was that the Agreement be a vehicle through which the democratic conditions for a free and fair election could be established. ZANU PF's concerns were primarily the retention of plenary power and to legitimate the Presidency of Robert Mugabe, appointed following a June 2008 run-off election internationally regarded as flawed and vitiated by violence.

These objectives are incommensurate. ZANU PF cannot, as their

loss in the March 2008 election had demonstrated, retain power under the democratic conditions demanded by the MDCs. SADC's primary concern then, as now, was simply that of stability.

SADC did not see such stability arising without accession to the concerns of ZANU PF at the expense of the democratic reforms demanded by the MDCs. Yet without such reforms, SADC's objective of stability could only be achieved in the very short term. In the event, the Agreement met the concerns of SADC and those of ZANU PF.

Extract from a paper By Derek Matyszak and Tony Reeler, Research and Advocacy Unit, Harare.

Swaziland 'Day of Rage' Press Update - 12 April

Leading trade unionists and activists including leaders of the Swaziland Democracy Campaign have been roughly manhandled and now arrested at the offices of the Swaziland Federation of Trade Unions. Comrades Mary Pais Da Silva, and Sikelela Dlamini, the Coordinators of the Swaziland Democracy Campaign and the Swaziland United Democratic Front respectively are amongst those who have just been detained with Union leaders at 12.30.

Contingency plans have been developed for such an eventuality and despite the clampdown by the authorities the SDC and SUDF still has the means to receive messages and updates from inside the country and will continue to issue statements etc.

It has been confirmed by independent observers that this is the largest security mobilisation that has taken place in Swaziland for decades. It has also been reported that soldiers and police are bearing brand new weaponry, and the source of these instruments of oppres-



sion is being investigated.

The regime is determined to arrest all leaders, restrict the movement of all travellers including pedestrians, and do all they can to disrupt the protest actions that are unfolding on the streets of Swaziland.

Students have been confined to campuses, and anyone wearing union or political tee-shirts or caps is being told to change, or risk arrest. Many are detained however, but when arrested are continuing to sing songs, and be defiant. This too indicates the growth in confidence of democracy activists.

In several smaller towns protest gatherings have taken place for the first time in decades. Prominent leaders of faith based organisations

have joined in the protests.

International solidarity messages are pouring in, and world trade unions, rights agencies and political organisations are more determined than ever to use the ILO and many other avenues to isolate the regime and expose further its barbarous character. The abuses of the regime have hardened resolve to action a comprehensive sanctions campaign, and to deprive the Royal Regime and its entourage from squandering the wealth they have accumulated at the expense of the poor.

Measures are also underway to pressurise the IMF and other financial institutions to resist from investing in Swaziland to bail out the royal regime. Most importantly, what the regime is

doing today is adding fuel to the fire of democratic change from below. Nothing will be quite the same ever again in Swaziland, and the days of the regime are numbered.

The Swaziland Democracy Campaign salutes all those who refuse to be intimidated and are celebrating their eventual freedom by refusing to be bowed at this time.

We are with you comrades!

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SADC Must Take Resolute Action to Back Up its Stern Words

We, Zimbabwe civil society organizations under Crisis in Zimbabwe Coalition, strongly urge the Southern African Development Community (SADC) to take resolute action to back up its strongly worded SADC Troika Communiqué of 31 March, 2011 which, among other things, noted with grave concern the polarization of the political environment in Zimbabwe. SADC must now take firm, decisive steps to implement all the Communiqué resolutions to pave way for democratic elections that are without violence or intimidation.

We reiterate that Zimbabwe is not ready for elections in 2011 and that without direct SADC support, the country cannot deliver a democratic election. We totally support the SADC Troika's call for an immediate end to violence, hate speech and harassment and for all stakeholders to the Global Political Agreement (GPA) to implement all the provisions of the GPA and create a conducive environment for peace, security and free political activity.

SADC and the African Union are the guarantors of the GPA and the resultant inclusive government arrangement and therefore the two African institutions are fully within their mandate to continue to directly intervene to assist the people of Zimbabwe to find a lasting solution to the continuing and festering political conflict. Under its responsibility to protect mandate, SADC and other regional and international institutions have a right to intervene in the affairs of member states in the interests of human security.

We therefore totally reject any suggestions that the concept of State Sovereignty would constrain direct SADC intervention in Zimbabwe. Sovereignty does not give any State the right to abuse and harm its citizens; when a state turns on its citizens external intervention becomes legitimate for the restoration of peace and human security.

The SADC Troika must now urgently appoint, with concrete terms of reference, the promised team of officials to join the Facilitation Team and work with the Joint Monitoring and Implementation Committee (JOMIC) to ensure monitoring, evaluation and implementation of the GPA. We expect the appointed SADC Team to be composed of eminent Africans who are fully independent, professional and have extensive experience in the area of democratic governance, regional elections and security sector governance reform. The appointed SADC Team must be fully empowered to recommend appropriate action in the event of failure to implement all GPA provisions.

We strongly urge the SADC Troika to broaden the process of drawing up with Zimbabwe's elections roadmap making it as inclusive as possible – taking on board a wide range of views from various stakeholders including civil society groups. The democratization and future of Zimbabwe is too important to be left just in the hands of three political principals and their six negotiators. Particularly, SADC must summon Zimbabwe's military chiefs to the negotiating table to secure guarantees that the military will immediately, totally separate itself from politics and interference with civilian affairs and focus only on their constitutional mandate subjecting themselves to civilian oversight as is the case in all other SADC countries.

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BOCISCOZ congratulates SADC Troika for clear message about violence and intimidation

The Botswana Civil Society Coalition for Zimbabwe (BOCISCOZ) congratulates the SADC Troika on Politics, Defence and Security Cooperation on its clear message of disapproval of violence and intimidation in Zimbabwe. We also wish to condemn the continued harassment and persecution of human rights defenders in Zimbabwe.

Over the past few weeks, there have been reports about the harassment of Abel Chikomo, The Director of The Zimbabwe Human Rights NGO Forum and MacDonald Lewanika, the Director of Crisis in Zimbabwe Coalition (CZC). Other civil society organisations which have been harassed include Zimbabwe Lawyers for Human Rights (ZLHR), Women of Zimbabwe Arise (WOZA), Men of Zimbabwe Arise (MOZA) and The National Association of Non-Governmental Organisations (NANGO). By justifying the sustained harassment under the rubric of the 'lack of legality' or acting 'contrary to law', government officials are reported to have raided offices in their search for anything 'subversive', such as t-shirts, documents, fliers, or anything incriminating.

The focus of the work of these organizations has been to expose the violations of human rights by the Government of Zimbabwe and to find constructive ways of contributing to the improvement of the crisis in Zimbabwe. However, amidst talk of elections in 2011, by President Mugabe, it is clear that the human right situation is continuing to deteriorate.

In its recent World Report 2011, Human Rights Watch stated that 'The former opposition party, the Movement for Democratic Change (MDC), lacks real power to institute its political agenda and end human rights abuses. The power-sharing government has not investigated widespread abuses, including killings, torture, beatings, and other ill-treatment committed by the army, ZANU-PF supporters, and officials against real and perceived supporters of the MDC.'

In January 2011, The Southern Africa Coalition for the Survivors of Torture reported rise in mob attacks, threats, assaults, questionable arrests by police and at least one shooting in the capital of Harare and its suburbs.

In its most recent communiqué on 31 March 2011, the SADC Troika on Politics, Defence and Security Cooperation noted 'with grave concern the polarisation of the political environment as characterised by, inter alia, resurgence of violence, arrests and intimidation in Zimbabwe'. The Summit also stated that 'there must be an immediate end of violence, intimidation, hate speech, harassment, and any other form of action that contradicts the letter and spirit of the Global Political Agreement (GPA) (and that) all stakeholders to the GPA should implement all the provisions of the GPA and create a conducive environment for peace, security, and free political activity'.

BOCISCOZ welcomes the official recognition by a SADC body of the violence and intimidation currently occurring in Zimbabwe. We also welcome, its commitment that SADC is to 'assist Zimbabwe to formulate guidelines that will assist in holding an election that will be peaceful, free and fair, in accordance with the SADC Principles and Guidelines Governing Democratic Elections'. The elections of 2008 were marked by gross violations of human rights, in spite of them being monitored by SADC member states.

The Troika of The Organ is also 'to appoint a team of officials to join the (Zimbabwe) Facilitation Team and work with the Joint Monitoring and Implementation Committee (JOMIC) to ensure monitoring, evaluation and implementation of the GPA. The Troika shall develop the Terms of Reference, time frames and provide regular progress report, the first, to be presented during the next SADC Extraordinary Summit. Summit will review progress on the implementation of the GPA and take appropriate action'.

This communiqué provides a real opportunity for a new chapter in how SADC engages with Zimbabwe. To date, SADC has opted to use the 'softy-softly' approach without public statements which acknowledge the violence and intimidation being perpetrated on citizens, including civil society activists who are believed to be supporters of The Movement for Democratic Change (MDC).

For our Southern Africa region, the next few months will be critical, as we monitor whether the 31 March 2011 SADC Troika communiqué is taken seriously by the Government of Zimbabwe.

Gaborone
7 April 2011

For more information, please contact DITSHWANELO – The Botswana Centre for Human Rights. Tel: 00267 3906998, Fax: 00267 3907778, Email: admin.ditshwanelo@info.bw, Website: www.ditshwanelo.org.bw.

GIVE PEACE A CHANCE!

Zimbabwe UnFreedom Day Peace & Democracy Rally

DATE: Wednesday, 20 April 2011

VENUE: Walter Sisulu Square – Kliptown, Soweto

TIME: 11:00hrs – 15:00hrs

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UPCOMING ACTIVITIES

- > Zimbabwe Independence Day (April 18)
- > Zimbabwe Unfreedom Day Press Conference, Jo'burg, South Africa (April 18)
- > Give Peace A Chance: Peace & Democracy Rally, Jo'burg, South Africa (April 18)



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