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New approach urged on Zimbabwe ...legal experts launch report

A new approach to upholding and respecting the rule of law may be needed in Zimbabwe if a lasting solution is to be found to the erstwhile breadbasket of Africa's protracted crises. This is what a new report launched last Wednesday in Johannesburg, South Africa by the International Bar Association's Human Rights Institute (IBAHRI) states.

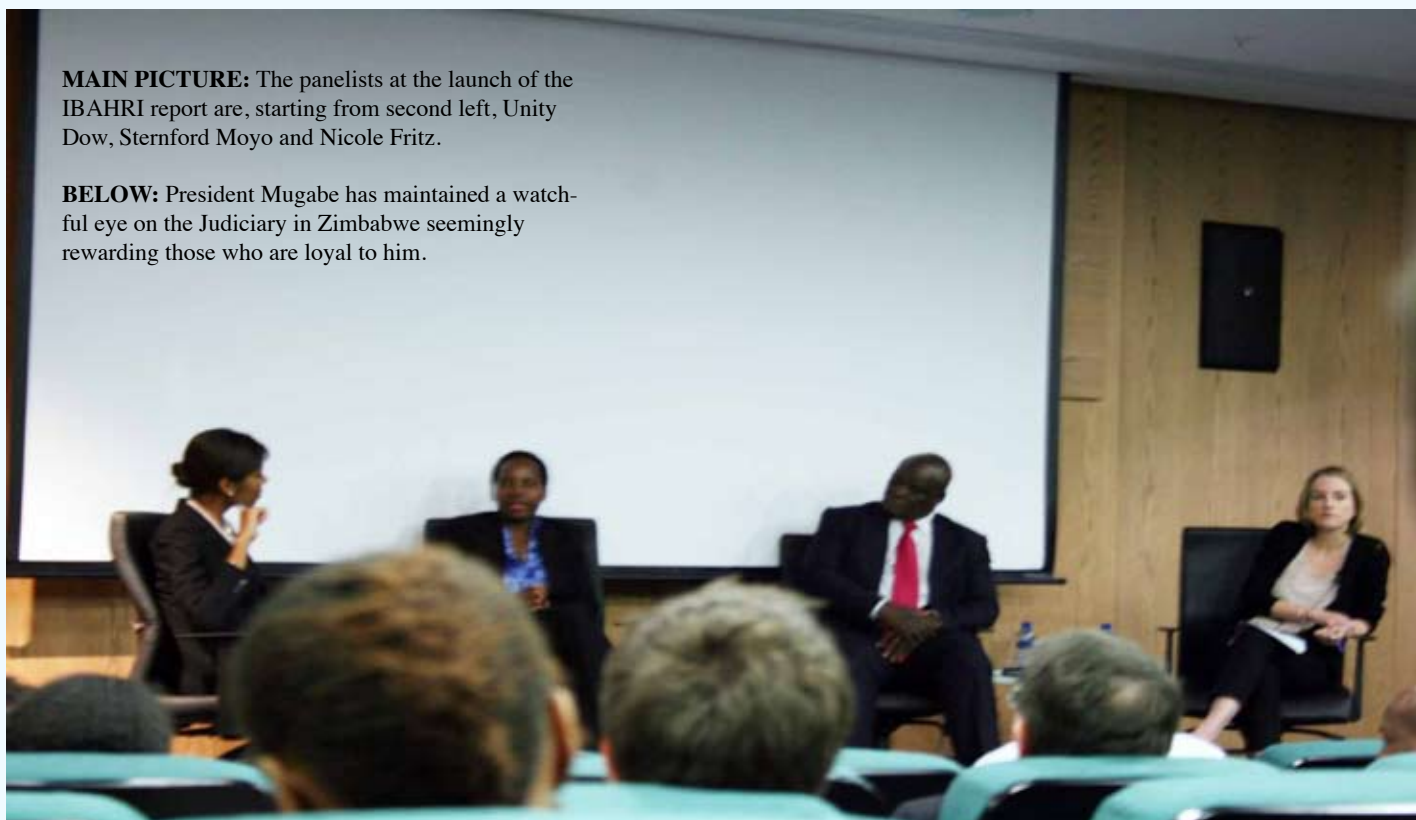
The report puts the Global Political Agreement (GPA) signed three years ago this month at the centre of both the challenges and solutions affecting Zimbabwe. As a result, the delegation representing IBAHRI that travelled to Zimbabwe in June this year and contributed to the report met several key stakeholders whose work revolves around the issues concerned with the agreement. Apart from visiting Harare, the delegation also travelled to Mutare and Bulawayo. Meetings were also conducted in Johannesburg, South Africa.

In the report, IBAHRI notes that: "in assessing the GPA and the problems with its implementation, the delegation considered the role played by the international community, in particular the SADC institutions, the African Union (AU) and foreign states and donors in monitoring the GPA and restoring the rule of law in Zimbabwe and how this could be improved. It also considered the impact that the recent discovery of a large seam of diamonds has had on the rule of law, human rights and political process in Zimbabwe."

Respect of the rule of law in Zimbabwe has remained a hugely contested terrain even in the aftermath of the signing of the GPA and consequent formation of the Government of National Unity (GNU) with several offices, not least among them the office of the Attorney-General being seen to be applying the law selectively.

Addressing the urgent need for an independent and well-resourced judiciary, the report notes that a lack of resources has hampered the effectiveness of the judiciary in Zimbabwe. More importantly, it notes that some of the benefits that have been offered judges under controversial circumstances such as land have impacted negatively on the operations of the judiciary and also how it is perceived by the citizens it represents.

Speaking at the launch of the report, renowned Legal Practitioner and Solicitor Sternford Moyo stated that there existed, in Zimbabwe's courts of law, "an element of incompatibility between farming and presiding over legal matters" in an apparent reference to judges who had taken over farms seized during the chaotic land reform exercise in Zimbabwe. Moyo went on to reveal that there were instances whereby



MAIN PICTURE: The panelists at the launch of the IBAHRI report are, starting from second left, Unity Dow, Sternford Moyo and Nicole Fritz.

BELOW: President Mugabe has maintained a watchful eye on the Judiciary in Zimbabwe seemingly rewarding those who are loyal to him.

judges had failed to pitch on time to hear cases because of engagements on their farms.

One of the most revealing parts in the report regarding the state of rule of law in Zimbabwe is the IBAHRI delegation's encounter with Attorney-General, Johannes Tomana who was appointed by president Robert Mugabe in December 2008, two months before the GNU was sworn in. Critics suggest that Mugabe made this appointment at this time in order to avoid consulting Morgan Tsvangirai who would become Prime Minister early 2009. Regardless, such an appointment is just but one of the many GPA violations recorded since September 2008 by various stakeholders.

"The delegation met Tomana," the report states "who said that he saw no need for a separation of his political and prosecutorial functions as he felt that his office performed both functions professionally and impartially. He completely rejected any suggestions of political bias and said that 'our understanding of the rule of law is that our laws apply equally without discrimination or reference to politics or ethnicity.'"

Interestingly, the report also makes a very telling observation: "On the same day that he met with the delegation, Tomana gave an interview to a newspaper on which he was quoted as having stated that he is a ZANU-PF supporter and that the discretion on who his office should prosecute 'is entirely in my hands.'"

Further observes the report: "In both the newspaper interview and the meeting with the delegation Tomana declared that his office was committed to prosecuting those responsible for breaking the law on an impartial basis.

"In the newspaper interview he



implied that any discrepancy between the prosecutions of ZANU-PF supporters and MDC supporters was simply down to timing. 'Everyone is judge on his own misdeeds,' he commented. 'The MDC people have not said they are not committing offences. They are saying ZANU-PF and them are offenders and complaining that they cannot be arrested alone leaving ZANU-PF out. If you are guilty does it matter whether I have started with you leaving others?' asked Tomana.

Despite the seeming gloom ushered in by the ineffectiveness of the judiciary and the glaring failure to uphold the rule of law in Zimbabwe, respected former High Court Justice Unity Dow who headed the IBAHRI delegation to Zimbabwe said there was new "energy and hopefulness" about the future of Zimbabwe when she spoke at the launch of the report. She was, however, cautious and observed that "it's not just about the legal processes but also about the political will and the attitudes of those who make laws towards their upholding and

respecting."

The full IBAHRI delegation consisted Unity Dow from Botswana; advocate Pansy Tlakula, chief electoral officer of south Africa; Professor Bartram Brown, Professor of human rights and international law at Chicago-Kent College of Law, Illinois Institute of Technology, in Chicago, USA; Daniel Leader, Barrister at Leigh & Day in London; Professor Christina Murray, professor of Constitutional and Human Rights Law at University of Cape Town and former member of the Kenyan Committee of Experts appointed by the Kenyan Parliament to draft a new constitution; Marie Pierre Olivier, Senior Programme Lawyer at the IBAHRI; and Connor Foley, humanitarian aid worker and author, who also acted as rapporteur for the delegation. The Open Society Institute for Southern Africa (OSISA) funded the mission.

By Levi Kabwato, Media & Communications Officer in the Regional Office.

Without pressure, the GPA will not deliver change

Coordinator's Note



dewaMAVHINGA



ABOVE: President Robert Mugabe signs the GPA in September 2008.

LEFT: Morgan Tsvangirai puts his signature on the GPA in September 2008.
pix:www.zimbabwepictures.com

After three years since the signing of the Global Political Agreement (GPA) on 15 September 2008, it has become obvious that the GPA will not deliver political change as anticipated by its signatories who felt that it would help to resolve 'once and for all the current political and economic situations and chart a new political direction for the country.'

It turns out the GPA in just a truce declared by political parties in conflict meant to provide breathing space for the parties to retreat to their garrisons to re-strategise for a fresh onslaught come fresh elections.

The GPA is the legal basis for the formation of the inclusive government between ZANU-PF and the MDC formations – a government that has often been mistakenly referred to as a 'power-sharing government' when in fact president Robert Mugabe and ZANU-PF have the lion's share of that power. The fundamental weakness of the GPA, its Achilles' heel, is that the inclusive government neglected to fully transform it into law and align it with the existing Constitution. Only article 20 of the GPA, the framework for a new government, was made part of Zimbabwe's supreme law

through constitutional amendment 19.

This legal lacuna gives Mugabe leeway to manipulate the GPA often interpreting the constitution to grant himself wider powers that he enjoyed prior to the inclusive government dispensation. The constitutional amendment 19 operates for as long as the inclusive government continues to exist; should the inclusive government for some reason seize to exist, then Zimbabwe reverts to the old constitution without constitutional amendment 19 – a situation where, legally, president Mugabe would continue to exercise his powers outside the GPA framework.

Parties to the inclusive government clearly under-estimated the extent to which, over a period spanning three decades, Zimbabwe's social, economic and political spheres had been ZANUnized, that is, subjected to an elaborate system of patronage and partisanship to ZANU-PF. It will take significantly much more than piece-meal reforms to dismantle ZANU-PF infrastructure and culture.

The extreme polarization that the inclusive government sought to bring to an end has remained, and intensified. Far from taking decisive steps to heal Zimbabwe and permanently end po-

litical conflict, it appears ZANU-PF only made temporary concessions without genuine commitment to democratic reform.

The truce offered ZANU-PF and its allies crucial breathing space to regroup, re-energize and re-strategize. This they have done, and are now financially resourced from the opaque Marange diamond revenue placing them in a position where they are possibly convinced that they can crank-up their violence and intimidation machinery and go into another election and force a win.

Public statements and ZANU-PF's body language around a frenzied call for indigenization shows they are now in elections campaign mode. Violence is flaring up again across the country, particularly in Harare. A partisan and highly politicized police force has renewed and is escalating politically motivated arrests and persecution of MDC supporters and rights activists while ignoring reports of violence by ZANU-PF supporters. ZANU-PF seeks to show it is in control – the incessant jingles speak for themselves.

Democratic space is shrinking fast, whatever gains which appeared to have been secured under the inclusive government are now being exposed that there were

only skin-deep. What many may have thought was the dawn of a new era was just but a false dawn. Those holding the reigns of political power, that is, ZANU-PF and its allies, have no incentive to implement democratic reforms, which may very well mean their demise.

The highly politicized and partisan military continues to pervade political and economic space – it is ubiquitous in political, civilian and economic affairs.

Given that the inclusive government has failed, and apparently collectively lacks both the political will and capacity to deliver credible reforms and to create a conducive environment under which democratic elections can be held in the total absence of state-sponsored violence and intimidation, in the absence of decisive proactive remedial action from SADC and the African Union, Zimbabweans risk being dragged to yet another choiceless election marred with violence. The predictable outcome of the sham election is another disputed ZANU-PF victory leading to further negotiations and another equally ineffective inclusive government.

The obvious conclusion that one reaches is that the GPA will not deliver. Zimbabweans must not be trapped in discussions of legalities

and niceties. The crisis in Zimbabwe is a political question that calls for political solutions in the form of organized domestic pressure to demand change. Not only should citizens reject elections in the absence of proper, credible reforms, we must demand the implementation of those reforms. Only significant political pressure from within will yield desired results, otherwise ZANU-PF will not voluntarily reform.

Through actions within Zimbabwe and direct engagement, the pro-democracy movement must make demands on the political leadership, on SADC and on the AU to ensure that Zimbabwe goes for elections only when conditions on the ground are right, and that those elections are supervised by SADC and closely monitored by the AU and the international community.

Finally, pro-democracy political leaders in the inclusive government should carefully evaluate the performance of the inclusive government and consider alternative routes to democratization.

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UPCOMING ACTIVITIES:

> United Nations Human Rights Council session & Zimbabwe UPR; Geneva, Switzerland (15 September - 20 October)

GPA comes under scrutiny

The Zimbabwe Solidarity Forum (ZSF) in collaboration with Crisis in Zimbabwe Coalition yesterday held a meeting with other civil society organisations (CSOs) to discuss the challenges they are facing and ways of dealing with such challenges against the backdrop of seeking lasting and useful strategies of managing Zimbabwe's transition.

The general consensus at the meeting was that three years on after the signing of the Global Political Agreement (GPA) in Zimbabwe, there still remained several obstacles in the path to reform. And, with talk of elections escalating both within and outside Zimbabwe, there seems to be an urgent need to address issues affecting a successful transition as outlined in the GPA. Elections are seen as the only logical conclusion to both the GPA and the Government of National Unity (GNU) formed as a result of the agreement. The GNU is made up of former ruling party, ZANU-PF and two factions of the Movement for Democratic Change (MDC).

The multifaceted Zimbabwe crisis has attracted the attention of the Southern African Development Community (SADC) and various international institutions and bodies. As a result, the crisis in Zimbabwe will not be for Zimbabweans alone to resolve although they need to take centre-stage in all processes. These sentiments were also echoed by the various organisations represented at the seminar and drawing from various SADC countries such as South Africa, Botswana, Mozambique and Zimbabwe itself.

Summing up the deliberations of the day, Richard Smith from ACTION Support Centre, CSOs need not work alone but must continue to engage each other and in order to successfully influence political, social and economic policies that favour ordinary citizens. Smith also encouraged the need for a "regional expression" that is informed by solid strategy and is a shared reality between all CSOs

RIGHT: Panelists in one of the sessions, from left, Professor David Moore, Nomthandazo Sikiti and Pius Wakatama.

BELOW: DITSHWANELO's Alice Mogwe makes a presentation on the work her organisation is doing on Zimbabwe.



operating especially in the SADC region.

In this regard, the meeting agreed that there was an urgent need to impress action upon CSOs in the region, reaching the bold consensus that although meetings, seminars and conferences were necessary, ultimately it was the common people on the ground who could make things happen and make the necessary demands for reforms.

Presenter at the seminar, Professor David Moore of the University of Johannesburg reminded the CSOs of the words once spoken by South African former president, Nelson Mandela, who remarked that the burden of keeping governments honest and in check lay with CSOs. Moore also questioned the benefits the GPA had been said to bring in Zimbabwe, asking more about what would have happened if no such agreement had been there in the first place. Could the Kenyan scenario have obtained instead, he asked? In Moore's view, negotiated outcomes such as the GNU have only fortified the Western view that Africa is not yet ready for democracy.

Representing the Zimbabwe Christian Alliance, Pius Wakatama observed

that although Zimbabwe was not yet ready for a revolution, it would only seem at present that civil disobedience was the only way to bring about reforms. According to Wakatama, the economic stability, credited to the GNU, had unwittingly forced CSOs to take their eyes off the ball and relax their strategies of demanding respect for the rule of law and human rights.

The Crisis in Zimbabwe Coalition presented its minimum conditions for the holding of democratic, free and fair elections in Zimbabwe, highlighting ten critical points which range from constitutional and institutional reforms to transitional justice and national healing.

By Regina Pazvakavambwa, Media Assistant in the regional office.



No deportations from South Africa...yet

The South African Department of Home Affairs (DHA) has confirmed that there shall be no deportation of Zimbabweans until the documentation of Zimbabweans project (DZP) has been officially completed and the Minister of Home Affairs has lifted the moratorium on deportations currently in effect.

The DHA was responding to questions fielded by various civil society groupings representing Zimbabwean interests in South Africa who had attended an all-stakeholders meeting with the department as part of an on-going documentation project targeting Zimbabweans living on the other side of the Limpopo.

The civil society groupings had raised the concern that it appeared the South African Police Service (SAPS) was deliberately targeting Zimbabweans for arrest and consequent deportation. "We will implement the Immigration Act after the project is finished," said the Department's Chief Director of Operations, Jack Mnedi.

Zimbabweans who took advantage of the DZP will not be deported. He further reiterated that the agreement between the Zimbabwean and South African governments does not support the deportation process. He also observed that there will be administrative problems if deportations were to commence before the documentation project is finalised because SAPS will not be able to tell who was waiting for their permit to come out and who was not.

Many Zimbabweans have expressed exasperation over delays in permits being issued. However, the DHA also revealed that no progress was made throughout July as the department brought in new staff to address capacity shortages in the process of adjudicating applications. With the new staff having undergone training, the process took off again in August and is expected to run smoothly until completion, said to be the end of this month.

In an interview, Gabriel Shumba, Executive Director of the Zimbabwe Exiles Forum, said

his organisation was happy with the way the process has been managed and the involvement of the civil society organisations.

However, he expressed concern over some 'grey areas' which need clarification such as the issue of appeals and the review of more than 11,000 applicants that have so far been rejected by the department. The DHA says it will reject applications of people with criminal records. Shumba further stated that there was confusion on the status of children, in particular children born in South Africa.

There was also a consensus between the DHA and the civil organisations that there seems to be miscommunication between the department's Head Office and its local branches which are issuing conflicting instructions to Zimbabweans who have been notified to tender supporting documents such as passports or letters of employment in order for their applications to be advanced to the next stage. Since the closing of the applica-

tion process in December 2010 the DHA received, 275,762 applications in total under the DZP, and have approved and issued almost 142,732 permits.

In a related matter, the Zimbabwe Consulate says it has processed 69,875 passports that were applied for under the DZP and of that total only 1829 passports are still being expected from Zimbabwe. The numbers of the passports however does not match the number of the permit applicants who applied without a passport. According to DHA figures, not more than 32,500 applicants stated they had no passports.

The documentation process started a year ago and was supposed to have ended in December 2010 but the Minister of Home Affairs, Nkosana Dlamini-Zuma then changed the deadline date.

By Regina Pazvakavambwa, Media Assistant in the Regional Office.