

ZIMBABWE BRIEFING

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CONSTITUTION-FLASH : SOME FACTS AND FIGURES IN THE DRAFT CONSTITUTION THAT YOU SHOULD KNOW – APPOINTMENTS TO SECURITY SERVICES

This is the third in a series of papers highlighting key areas of the draft Constitution. It deals mainly with appointments to senior positions in the security services. Comparing the draft Constitution to the current Constitution, the paper identifies the differences and finds some positive developments but also some key areas that are in need of improvement. The principal concern in constitutional appointments is to ensure that there are sufficient checks and balances to prevent politics of patronage, bias and to promote meritocracy in the appointment process and therefore facilitate better quality of governance.



President Robert Mugabe with Security Generals

Appointment of the Commander of the Defence Forces

Post	Commander of the Defence Forces or of a service of the Defence Forces
Current Constitution	- Appointed by the President after consultation with a person or authority prescribed by an Act of Parliament (section 96(4)). - Schedule 8 incorporating the Global Political Agreement requires consultation with the Prime Minister, however, the Prime Minister was by-passed when the terms of office of the commanders and other security service officers were renewed this year and this has been the subject of political controversy.
Draft Constitution	- Appointed by the President <u>after consultation</u> with the Minister of Defence. - Term Limit: Maximum of 2 terms of 5 years each. - A former Commander of the Defence Forces is ineligible for appointment as a Commander of a service of the Defence Forces or to command any other security service.
Change	- The current position has been mired in confusion, particularly given the wording of the GPA and this has caused controversy in the recent re-appointments of military commanders. The draft Constitution merely requires the President to consult the Minister of Defence, whom the President appoints, making it a poor check on the President’s discretion if that is the intended purpose. In any event, given the interpretation of the words “after consultation”, the President is not obliged to follow the Minister’s recommendations. - The introduction of maximum term limits is a new development. It will enable leadership renewal and facilitate promotion of juniors through the ranks. - The rule limiting the eligibility of the Commander of the Defence Forces to the command of a service of the defence forces or any other security service is also new, although in practice it is unlikely that that a senior officer would be appointed to a lower rank, anyway. The purpose it serves is to prevent circumventing the rule on maximum term limits.

Security Services Commissions

Post	Security Services Commissions: Defence Forces Commission; Police Service Commission; Correctional Service Commission
Current Constitution	The Chairman is the chairman of the Public Service Commission who is appointed by the President and at least 2 but not more than 7 other members appointed also appointed by the President (Section 97).
Draft Constitution	- The Chairperson is the chairperson of the Civil Service Commission who as we have seen is appointed directly by the President. At least 2 but not more than 6 other members of the DFC are also appointed by the President. There is no requirement for consultation (Clause 11.12). - Clause 2.9 (1)(b)(ii) (National Objective on Gender Balance) states that the State must take all measures necessary, including legislative measures, needed to ensure that ... (ii) women constitute <u>at least half the membership of all Commissions...</u>” This includes security services commissions. - Clause 18.3(2) makes it very clear that members of Commissions, apart from the independent Commissions and the Judicial Service Commission hold office at the pleasure of the President. This includes security services commissions, thereby compromising their independence.
Change	- The fact that Clause 18.3(2) states clearly that members of these commissions serve at the President’s pleasure make the members beholden to the President. The independence of these commissions is therefore severely compromised. - Apart from that there is no difference between the current position and the proposed position except for numbers.

Police Commissioner General Director of the Intelligence Services

Post	Commander/Director of the Intelligence Services
Current Constitution	There is no equivalent provision for intelligence services
Draft Constitution	- Appointed by the President. - Term Limit: Maximum of 2 terms of 5 years each.
Change	This will be the first time that the intelligence services are recognised in the constitution. Clause 11.20 states that an intelligence service “must be established in terms of a law or a Presidential or Cabinet directive or order” and that it “must be non-partisan, national in character, patriotic, professional and subordinate to the civilian authority as established by this Constitution”. The key element here is that the constitution lays a legal framework for the establishment of an intelligence service as opposed to a situation where the legal framework is vague and uncertain.

Conclusion

I hope the paper has given you a bigger picture of the appointment process. There are some improvements but there are also critical areas, as pointed out that need attention to ensure that there are proper checks and balances in the appointment process.

THE ZIMBABWE ELECTIONS QUESTION: A Way Forward On How To Do The Right Thing, The Right Way

Director's Special Note



McDonald Lewanika

In the last week of September and the 1st week of October 2012, dominating media headlines pointed to the effect that general elections had been set for the 31st of March 2013. On closer reading, it turned out that the “declaration of an election date” had been the statement of “a wish” by the President of the Republic of Zimbabwe, His Excellency Robert Gabriel Mugabe, as part of his court submissions to postpone the holding of by-elections for 3 vacant Parliamentary seats in Matabeleland. The “wish”, in Santa-style, was said to have been granted by the High court which ordered that “the period within which to comply with the order (to hold by-elections) be and is hereby further extended to the 31st of March 2013”. The High Court, in qualifying the judgment, cited the President’s “desire (*wish*)” to hold Harmonised Elections in the last week of March 2013”.

In my humble opinion, the “wish” statement by the President of the Republic in these court papers is setting us on a good path. We need to know as an electorate and as citizens when we will be able to vote for a national leadership of our choice. We need to know when key political processes that are significant markers towards our democratic transformation, as a nation will take place. The voting public must be kept in the loop. An election is not synonymous with a birthday, where ‘**surprise parties**’ are a norm. What the President did in his court papers, moves us a significant way towards doing the right thing, but as we have grown accustomed over the last 32 years, also an indication of how to do the right thing, wrongly.

It is important to do the right thing, but it is best to do the right thing, the right way. The President of the Republic, and those who support him, are constantly in the habit of subverting due process and pretending that they are living in Zimbabwe pre-2008. The reality on the other hand, is that this is 2012, and 3 political parties, who all have to weigh in, especially at the Executive level, on key issues like when the next elections will be held, share incumbency in government. It doesn’t matter whether the President of the Republic likes the Minister of Industry and Commerce (Welshman Ncube), the reality is that the Teacher (Robert Mugabe) has to consult the Professor on these key issues and that both of them have to agree with the Trade Unionist who is the Prime Minister. All of them have to make an effort to ensure that elections, whenever they agree to hold them, are not a façade, but a real opportunity for people to exercise

their freedom in choosing who governs them.

Having said that, you will be hard pressed to find any other country on this planet where the citizens are kept in the dark with regards to when critical democratic processes where people decide their destiny and hold their leaders to account, are treated like a state secret. You would think that a country which spares no blushes in bringing out the private sex lives of consenting adults, would have no qualms with bringing out critical information of public interest and concern. The people have a right to know when critical processes that have a bearing on the country’s political and economic prospects will take place. The argument has been made that the Zimbabwean transition, is pegged, not in terms of time but in terms of steps to be taken before an election can take place. This is good, but the challenge that we have seen in Zimbabwe is that when politicians are given such a blank cheque, they have no imperative to perform and or deliver. They will constantly push to see the depth of the Account that they have to draw the blank cheque from. It is precisely because of this false impression that the Inclusive Government seems to exist in perpetuity that has seen little to no progress taking place in terms of some the key steps that need to be taken before an election takes place.

The inclusive government was established on the strength of a Global Political Agreement (GPA), which was pitched as a high level solution to the political malaise that had become the order of the day in Zimbabwe.

By its own admission as cited in the GPA, The Inclusive Government was intended to "create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation".

Sponsored and guaranteed by the Southern African Development Community (SADC) and the African Union (AU) as an “African Solution to an African Problem”, the Inclusive government was meant to be an experiment in national stability and democratisation, with the GPA providing the theory of change that propelled and dictated how the government would operate and what it should have achieved.

In short the GPA theory was predicated on the hypothesis that, an inclusive approach to governing and problem solving by the 3 major political parties represented in parliament, with the GPA as a guide, would result in the reduction of politi-

cal instability, arrest of the economic free-fall, halt the humanitarian crisis, and institution of democratic reforms - generally providing an inclusive approach to the resolution of the Zimbabwean crisis.

What the GPA provided for was a clear entry into the inclusive arrangement, and a road map on how to navigate in the maze of reform. What it didn’t clearly spell out, outside providing a map, was how long these parties had to navigate the maze of reform. The GPA provided an entry, but was very unclear with regards to an exit. Thus the blank cheque analogy, that part of the challenge that has led to the GPA being at best a failing experiment, and at worst a failed experiment, is this lack of definition with regards to the exit point. A question which the President of the Republic has begun to address through his “wish”, which is the right thing to do, but which he has gone about wrongly.

Our political leaders need to sit down and discuss **two** critical issues. **Firstly**, they should posit what they think is a realistic electoral calendar for the two critical electoral processes, the Referendum on the Constitution and General Elections.

In other countries that have undergone transitions like ours, the calendar was always clear and stakeholders had a clock to race against. Kenya, which mirrors the GPA and Inclusive Government, is a good example here. They had their Political disputes on the eve of 2008 just after Christmas, and eventually agreed on a GNU, but since then, had their Constitutional reform process concluded in 2010. As of now, Kenyans know that they have a General Election on the 4th of March 2013, and that if those elections are not conclusive, there will be a run-off election on April 10 2013. In the meantime, the time between the referendum and the election has been used to operationalize the new constitution, putting in place a new Elections management Body – the new Electoral and Boundaries Commission, and instituting bio-metric voter registration, among other things.

The above is not to say that the Kenyan situation is perfect and on point, far from it. They still have their own issues, but frameworks and timetables are clear. This brings me to **the second thing** that our political parties need to work out and take to SADC, or that SADC needs to facilitate.

To demand clear time frames and dates is not to negate the need for reforms. On the contrary, what it does is to give urgency and agency to the re-

forms that are critical and should be put in place before the election takes place at a known time. To that end, once an agreement has been reached on a clear and dated electoral calendar, there is need to reiterate the things that need to be done by way of concrete electoral reforms to facilitate that the two critical processes are carried out in a free and fair manner. Elections are a critical cog in any democratic process as they lay the basic foundation of governance of the state, on the basic premise that authority to govern derives from the consent of the governed. For that happen, elections must not be choice-less, and cohesion and militarisation must have no part to play in them. Our political leaders need to ensure that this is the case.

The actual issues do be dealt with to avoid a choice-less election, and worse a failed transition in Zimbabwe are not difficult to discern, because they are already largely captured in the GPA. In addition, Civil Society has been screaming from mount Moriah about the need to create a salubrious electoral environment through; keeping the military out of politics, cleaning up the voters role, instituting an impartial arbiter in elections through a professional elections management body, expressing a disdain for the use of violence in elections and the need to have these elections internationally observed and monitored.

These things need to be done within a realistic time frame that is cognisant of our realities as a country if we are to have an environment conducive to free political expression, free political activity and subsequently the holding of free and fair elections.

*By McDonald Lewanika
Director , Crisis in Zimbabwe Coalition*

Maternal Health: One Step Forward, Two Steps Back

To some of us who are in human rights work the move to scrap maternity fees from all provincial and central hospitals countrywide to ease pressure on underprivileged expecting mothers was a plausible effort from central government. However what had seemed like a moment worth celebrating for many Zimbabweans can be a pie in the sky if we fold our hands.

Human rights activists have for long been advocating for the government of Zimbabwe to respect, protect and fulfil the right to health and particularly maternal health through increased access to health care facilities by pregnant mothers. Maternal and child health care is a key element of the right to health. This is in sync with the human rights principles and the Campaign on Accelerated Reduction of Maternal mortality in Africa (CARMMA) under the theme “Zimbabwe Cares: No Woman Should Die While Giving Life!” launched in 2010 and spearheaded by the Hon. Deputy Prime Minister, Thokozani Khuphe. The programme feeds into Zimbabwe’s MDG target for the maternal mortality rate of 174 per 100 000 live births.

Faced with a high rate of maternal mortality and the need to respond effectively to the growing concern, the Ministry of Health and Child Welfare scrapped user fees for pregnant women starting July 2012. According to the Zimbabwe Demographic Health Survey (ZDHS 2010-2011), the country has a Maternal Mortality Rate (MMR) as high as 960 deaths per 100 000 live births. An upward trend can be seen as statistics from the 2010 Millennium Development Goals status report that show that in 1994 the MMR was 283 per 100 000 live births, rising to 695 in 1999 before declining to 555 between 2005 and 2006 and 725 deaths per 100 000 live births in 2007 according to the Zimbabwe Maternal and Perinatal Mortality Study (ZMPMS, 2007).

The Ministry of Health embarked on what can be called a noble initiative in terms of increasing access services but whose undertaking and implementation manifest the failure by the ministry to carry out a feasibility study to determine the extent of the problem and its capacity to respond effectively. In a clear act of poor judgement and desire to score political gains, the Ministry officials in their wisdom failed to act appro-



A man pushing his pregnant wife to the hospital

priately.

The Ministry was and is aware that in the 2012 National Budget

the midwives and inadequate financial resources. With that in mind the government officials should have taken an incremen-

As policy makers and implementers the government is aware that the high mortality rate has been accelerated by failure to afford medical care by the majority of women.

They are also aware of the carrying capacity of state health institutions and the staff levels, particularly the midwives and inadequate financial resources.

With that in mind the government officials should have taken an incremental route instead of the radical policy shift since such policy changes required radical changes on the grant.

the Minister of Finance Hon. Tendai Biti allocated only US\$345, 6 million which amounts to 8.6% of the total national budget and more than 6% below the Abuja Declaration recommendation of 15% of the total budget. The 8.6% would only allow for around \$ USD19.70 per capital income which falls short of the minimum WHO guidelines of USD34 per capita income.

As policy makers and implementers the government is aware that the high mortality rate has been accelerated by failure to afford medical care by the majority of women. They are also aware of the carrying capacity of state health institutions and the staff levels, particularly

tal route instead of the radical policy shift since such policy changes required radical changes on the grant.

From the day of the policy inception, Harare Central Hospital maternity wing is reported to have failed to cope with the surge in numbers of pregnant women as it can only accommodate 180 people at any given time, but had become overstretched after admissions began averaging 70 per day. Such is a clear case of a possible implication that was not well thought of. Further to that, the Ministry officials were quite aware when they made the decision that staffing levels are compromised at most if not all state health institutions. According to the UNFPA in the ZDHS (2012-2011)

only 22 percent of posts for midwives were filled. With such a scenario imagine the quality of services that will be offered when the expected average figures are surpassed. What boggles one’s mind is why someone entrusted with the nation’s health would pursue a policy that is counterproductive without assessing all imperatives and which in all respects lacks a semblance of sustainability. Be that as it may, the temporary policy shift exposed the government and the nation at large to the inadequacies of the health vote and the need to increase the health allocation in subsequent years. The government should make the health sector a priority. If the government work with 15% in line with the Abuja Declaration as a benchmark policy makers should be able to cover ground in the progressive realisation of the right to health. Right now the debate and focus is being limited to the failure of the government to meet the international targets as the primary cause of the government’s failure to provide adequate health care to pregnant women.

The GNU has been extravagant with resources in splashing huge sums of money in purchasing luxury and top of the range vehicles. The inclusive government also gobbled US\$45 million in foreign travel in 2011 alone according to Minister Biti. This is all at the expense of service delivery.

In this light, as health rights activists who were active in pushing for the right to health in the new constitution, we are buoyed by the possibility of the right being enshrined in the New Constitution of Zimbabwe. The Copac draft enshrined the right to health in the Bill of Rights in Chapter 4 Section 28. The move is positive. From this desire is to up our tempo using the constitution to demand the respect, protection and fulfilment of the highest attainable standard of physical and mental health for all Zimbabwean.

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Confront' Partisan Security Officers



light of the 2nd All Stakeholders constitutional conference.

There is no war in Zimbabwe and despite the fact that I am not a security sector guru, I can

and say nothing' approach to critical issues. Until we, as the rightful owners of Zimbabwe, begin to wake up to the painful reality that we are masters of our own destiny, we stand to lose much more than the partisan uniformed personnel. Your call...do what you can to make a difference!

By Grace Chirenje, Vice Chairperson, Crisis in Zimbabwe Coalition

There has been this weird presence of the Zimbabwe Republic Police on the roads for the last couple of months and recently, the army descended on touts and all sorts. With keen interest, I have been listening to the reflections of different people and it came as no surprise that people are excited about what has been happening. Whatever the reason for their excitement, I have had this uncomfortable feeling whenever I see these uniformed forces in all sorts of places that I am not sure whether we actual need to have uniformed personnel littered all over. The bottom line is that Zimbabwe has become a highly militarized state and this poses a threat to the pending 2nd all stakeholders'

constitutional conference.

The First All Stakeholders conference was chaotic and it did not go as well as was intended. However, what is important to note is that some form of force had to be used to keep the participants under check who had turned rowdy. Now with this kind of history in mind and the way this nation is constantly geared to use force to "tame" people, there is a likelihood of heavy police presence at the next meeting. Police presence to observe peace would be welcome but on the other hand, the way the Zimbabwean uniformed personnel seem to take every opportunity to unleash violence on civilians gives us a scare in

safely and confidently say that there is therefore no need for such uniformed sector personnel to maintain a heavy presence during deliberations of civilian issues. Moreover, given that the uniformed forces have declared allegiance to ZANU PF, one wonders why exactly they are there and to serve whose interests? The way that millions of public resources seem to be invested in this partisan sector at the expense of more pressing issues such as service delivery, is a shocker for many Zimbabweans.

However, what is critical to note is that Zimbabweans need to rise to the occasion and resist 'the hear nothing, see nothing

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