

ZIMBABWE BRIEFING

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SPECIAL ISSUE PARLIAMENT BRIEFING



Unlocking The Zimbabwe Political Stalemate

The current stalemate over the constitutional reform process in Zimbabwe represents yet another example of ZANU PF's [Zimbabwe African National Union- Patriotic Front] consistent attempts to thwart reform in this area since the late 1990s. Moreover, the objective tactics currently being deployed by Mugabe's party reflect its persistent use of the constitution to undermine popular sovereignty and craft a party-state around centralised presidential powers.

The Constitution Select Committee [COPAC] process constructed under the Global Political Agreement [GPA] mediated by the Southern African Development Community [SADC] provides a narrow window of opportunity to put in place the conditions for a generally acceptable election. Thus the on-going attempts by ZANU PF to undermine this process present not only the danger of another contested election outcome in Zimbabwe, but the undermining of SADC's mediation role.

As a way forward it is therefore imperative that the democratic forces in Zimbabwe, SADC and the European Union develop a consensus on the need to respect the constitutional reform process set out under the GPA and in doing so narrow the diplomatic space for ZANU PF to once again frustrate this process. The building of such a consensus must be led by national political forces and SADC.

Four years after the signing of the Global Political Agreement (GPA) facilitated by the Southern African Development Community (SADC) in Zimbabwe, the outcome of the process remains fiercely contested and in the balance. The agreement, which set out to prepare the political process for a generally acceptable election after the debacle of 2008, has been marked by severe ebbs and flows, all too characteristic of the battle for the state that has constituted the politics of the GPA. At almost every stage of the mediation from 2007 and the implementation of the GPA from February 2009, intense conflicts over the interpretation of the accord have left their debris on the political terrain, at the heart of which has been the struggle over the meaning of "sovereignty". Around this notion Zanu PF in particular has woven dense layers of political discourse combined with the coercive force of the state that it continues to control. The major aim of this strategy has been to manipulate and stall the reform provisions in the GPA, and to regroup and reconfigure its political resources after plunging to the nadir of its legitimacy in the 2008 electoral defeat.

The Constitutional Process

Between 2009 and the present an important area of contestation between the Zimbabwean parties has been the struggle for constitutional reform. Article VI of the GPA set out the "fundamental right and duty of the Zimbabwean people to make a constitution for themselves", also stipulating that the process would be carried out by a Select Committee of Parliament composed of the parties to the agreement. Constitutionalism and constitutional reform is often a contradictory and highly contested process with different parties bringing different political agendas and competing imaginaries to the process. Zimbabwe is no exception to this trend, and the major political parties



Professor Brian Raftopolous addressing South African parliament with Irene Petras listening attentively

have since the late 1990s often fought out their competing conceptions of change and democratisation on this terrain.

For the nationalists coming out of the liberation movement, constitutionalism and the law have had a complicated history. On the one hand these discourses were constitutive of their demands against the colonial state and helped to conceptualise their own legality and legitimacy, and have thus played an important role in both locating their demands and imagining the possible forms of a future state (Alexander, 2011). On the other hand, this generation of leaders also viewed the liberation struggle as an alternative to constitutionalism, with the war for liberation leading to the destruction of the colonial state and the establishment of "people's power", however nebulously defined (Mandaza, 1991:72). The constitutional compromises agreed to at Lancaster House in 1979 were the result of a convergence of national, regional and international pressures that inaugurated the politics of the post-colonial state. Once in power, Zanu PF, as in the case of other post-colonial political parties, instrumentalised the use of the constitution to concentrate power in the presidency and used constitutionalism to reconstruct the power relations of the state to deal with political opposition.

With the signing of the GPA in late 2008, constitutional reform became one of the major issues of contention between the parties. After three years of delays, obstructions, logistical and financial squabbles, and a problematic outreach programme, a draft constitution was produced through the Parliamentary Select Committee process, COPAC, in July 2012. While the COPAC draft is clearly a compromise document, it contains some important changes such as controls on executive power, accountability of the security and judicial services, a more independent national prosecuting authority, devolution of power and citizenship rights. Importantly, in terms of process all the parties to the agreement were signatories to the draft, leading to the logical assumption that at all times the principals of the parties and their respective leaderships were fully informed of the discussions of the COPAC team.

However, in a move that replicated previous moves to block constitutional reform and eschew its commitment to the GPA, ZANU PF initiated a strategy intended to foil a process that has the potential to unravel its political hegemony in the country. In August 2012

President Mugabe presented the leaders of the Movement for Democratic Change (MDC) formations with a ZANU PF redraft of the COPAC draft, on the grounds that the latter was drafted in opposition to the "views of the people" gathered during the outreach process. This redraft, described by ZANU PF as "non-negotiable", attempted to undo the COPAC process, undermine the GPA and once again force the Zimbabwean citizenry into a national election without a new constitution. Moreover the redraft effectively dismissed the major reforms included in the draft and proposed a return to the kind of executive powers and party-state rule that ZANU PF has crafted since 1980. Both MDC formations objected strongly to this ZANU PF position. After weeks of political haggling, the parties, under pressure from the SADC facilitation team, agreed to take the COPAC draft to an All Stakeholders Conference to be held from October 21st to 23rd.

SADC And The Constitutional Impasse

The threat of an impasse in the process allowed for the invocation of a SADC resolution made at the Heads of State and Government Summit in Maputo in August 2012, which stated that, in the event of any difficulties regarding Constitution and implementation of agreements, the Facilitator should be called upon to "engage the parties and assist them resolve such issues, bearing in mind the timeframes and the necessity to hold free and fair elections".

Since the inception of the mediation in 2007, SADC and South Africa in particular have invested a good deal of diplomatic capital in the Zimbabwe facilitation. Moreover, since the time of the SADC summit in Livingstone, Zambia, in March 2011, the SADC leadership has consistently restated its commitment to the full implementation of the GPA, fully aware of the points of blockage in the Zimbabwe equation. This remains the position of the regional body even if it has been slow in following up on the implementation of its resolutions. SADC's commitment to ensuring that the regional body remain in control of the Zimbabwe facilitation was set out very clearly from the beginning of the process, with Thabo Mbeki stating that the role of international players would be to "support" and not "direct" the process. This aspiration has not always been translated into smooth relations between the European Union, United States and SADC, with the on-going debate over the efficacy of

sanctions continuing to aggravate the facilitation process. However, notwithstanding such tensions and the difficulties they have created for SADC, the latter's credibility is heavily at stake in this process. With Mugabe and his party clearly drawing a line in the sand over the constitutional draft and in the process openly flouting the modality set out in the GPA, it is clear that SADC is once again faced with a severe test of its standing as a mediation body.

The lead player in the SADC facilitation on Zimbabwe, South Africa, is currently in the midst of its own major challenges, with the ruling African National Congress (ANC) facing many questions over its leadership and authority in the face of the Marikana mine massacre. The moral and political authority of the ANC has been severely bruised and this has not been lost on Mugabe and his party. Against the background of a troubled history of relations between Zanu PF and the ANC, the former has, at critical points in the SADC facilitation in the last three years, already questioned the authority of president Zuma and his facilitation team. Yet South Africa remains the lead player in the facilitation process and SADC retains its primary authority over this process. Moreover, this factor has been the major obstacle to Zanu PF's repeated attempts to destroy the GPA and move to an early election.

In the light of Mugabe's continuing hostility to the West and his growing reliance on a "Look East" policy for strategic economic, military and diplomatic support, the diplomatic influence of the West remains confined to the "sanctions question", humanitarian assistance and the difficult discussions with the international financial institutions. Thus the most fruitful area of diplomatic intervention for the Western powers remains strong support for the SADC mediation, and preparation for a fuller engagement with what could well be another reconfigured government of national unity after the next election.

The Way Forward

There are three strategic positions that need to be pursued at this juncture:

1. Both MDC formations must maintain their current unity against ZANU PF's attempt to subvert the constitutional reform process as set out under the GPA.
2. SADC must stand by the agreement that it has facilitated and guaranteed. In the process the regional body needs to fortify its position against the clear intention of ZANU PF to destroy the GPA. The purpose of such a strategy is once again to subject Zimbabwean citizens to fraudulent election under a constitution that has been repeatedly amended to suit the distortions of executive power that have played so large a role in bringing about the country's current predicament.
3. The role of the Western countries must be to support SADC diplomatically, in its efforts to regroup and confront the dangerous path that ZANU PF has once again embarked on. This situation calls for renewed efforts to build an international consensus on Zimbabwe that must be led by SADC and national political forces inside Zimbabwe.

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MDC'S TEN POINT PLAN FOR SUSTAINABLE DIALOGUE IN ZIMBABWE.

This paper outlines 10 key issues that need urgent attention for Zimbabwe's transition to be successful.

The constitution making process

One of the key deliverable of the GNU was crafting of a new constitution which is supposed to see creation of a level playing field in the election process.

We have now held the second all stakeholders' conference. Beyond the stakeholders conference there is need for the constitution to go to parliament and then put to a referendum after the referendum it has to come as a bill requiring a 2/3 majority. Thereafter the signature of the President.

However it looks like there is an appetite on the side of President Mugabe and some latent willingness on the side of Tsvangirai to have the constitution concluded by what they call "principals" in government which include the two of them and Prof Arthur Mutambara who leads no party after he lost the party presidency to Prof Ncube in January 2011.

Therefore for us the most important thing at the moment is to allow the process to be taken to citizens via a referendum. We expect the referendum in mid-January 2013 because the GPA states that the referendum should be held 3 months after the stakeholders' conference.

Security Sector Reform

There is need to ensure that the security organs of the state are made to exercise their duties without partisanship or behaving like militias of one political party. The members of the securocracy have continuously come out making threats that they will not accept any election results that do not favour the candidate of their interest. And they have declared that they will not salute anyone who is not President Robert Mugabe.

While it is acceptable that the military should be loyal to the commander in chief they also have to abide by the rules of the Defence Act that of impartiality. The danger with their statements is that they breed fear alarm and despondency amongst the voters. This can cause electoral apathy. It is thus important that the facilitators and SADC assist by making the *Securitas* commit themselves to accepting any election result and they should do so by writing a statement of commitment which they should read in public so as to restore confidence of their role.



Parliament Briefing in Session

Demilitarisation of the Zimbabwe Electoral Commission

The electoral management body in the country has been accused of bias and that it is staffed mainly with agents from the Central Intelligence Organisation (CIO) which despite being a national security and intelligence wing has been viewed as aligned to ZANU PF in its operations. While the ZEC Commission has been reconstituted there is still some doubts on the partiality of the secretariat of ZEC. There is some perception that it is not credible whether that perception is wrong or right it discredits the whole electoral system. It is important to remember that one of the key issues that the GNU set to do was to put in place systems that will allow for a fair and free election that does not produce a disputed winner. This is why it is important to reconstruct all structures of ZEC so that it is able to play the role of a credible referee.

Opening of public media space

There is a need to open up the public media space to allow all political players to communicate their manifesto, policies and ideologies. The current situation is that in the Zimbabwe Television (ZTV) and the Zimbabwe Broadcasting Corporation (ZBC) radio stations and in the state controlled newspapers like the Herald, Sunday mail and Chronicle only the voice of the ZANU PF is heard. While it is true that there has been some token opening of media space by giving radio licences to new players (only ZANU PF aligned business people got the licences) there is need to open the space of the public media to all political players.

Depoliticisation of Food Aid

The country is faced with a drought in some areas and as result there are indications and evidence in some parts of the country that there is selective distribution of food aid and that people are forced to exhibit some form of membership of ZANU PF to get food aid. The distribution of food aid should be done in a non-partisan manner to allow for all the needy to benefit. Also food aid should not be used a bait for canvassing of votes. In areas where the people are in need of food aid distribution should be done by non-partisan agencies not party political structures.

Strengthening of the institution playing oversight

The independent commissions like the Human Rights Commission, ZEC, the anti-corruption commission need to be strengthened through legislation and funding so that they start playing the oversight role.

Strengthening the Joint Monitoring and Implementation Committee.

There is need to strengthen JOMIC so that it plays a more defined role in monitoring the elections. To that end there is need to ensure that the SADC Livingstone summit resolution that recommended the strengthening of Jomic by secondment of three people from SADC members of the troika is implemented. There is also a need to give Jomic a more pronounced role in monitoring the elections.

Elections

The critical question is when the elections are. For us it is not so much of the date it is about the conditions and a clear

roadmap with sign posts that will see a free and fair election that does not provide a disputed winner and instability.

In terms of the law the life of parliament comes to an end the day the president was sworn in and that was on 29 June 2008. This means that the elections should be called by 30 June to be held in 90 days which means 29 September 2013. This is significant also because you need to create new institutions created by the constitution.

Election Observers

There is need to allow for local, SADC, African and international observers way before the elections.

Sanctions

In order to assist the efforts for sustainable economic revival of the country there is need for the removal of the economic and target sanctions. Their continued presence and imposition of new ones fly in the face of the efforts to revive the economy of the country and have been used by ZANU PF to be intransigent on many fronts. It is unreasonable for instance to have a situation like the one last December where the companies that were supposed to provide US\$600m to the budget were put under sanctions. The E U has made some conditions for removal of sanctions but you have to know that they have to go now. Also it is limiting the options of trading partners allowing for China to take all existing opportunities creating new economic problems.

Qhubani Moyo...MDC

Zimbabwe's Electoral Reform: Progress And Gaps

Elections are periodic democratic exercises that lead to the change of government in a robust competitive and transparent manner. Genuine elections defined are an expression of sovereignty, which belongs to the people of a country; they are the free expression of whose will provides the basis for the authority and legitimacy of government. Genuine elections serve to resolve peacefully the competition for political power within a country and thus are central to the maintenance of peace and stability (declaration of principles for international Election Observation and Code of Conduct for international Election Observers).

Since 2000, the country has held six elections, which are to include parliamentary elections-2000, presidential 2002, parliamentary 2005, senate 2005, harmonised elections 2008 and the run-off in June 2008. Characteristically these elections have been marred by incident f violence and allegations of electoral fraud. The 2008 elections, because they were inconclusive led a round of negotiations which resulted in the Global Political Agreement, September 2008 and the formation of the inclusive government in February 2009. The Inclusive government ushered in economic stability with the use of the United States Dollar and schools and hospitals reopened. Incidents of violence have been reduced and democratic space slowly, opened up.

However, the much anticipated did not happen as Zimbabweans thought it would, especially the political environment, whilst the principals speak about peace AND POLITICAL TOLERANCE, EVIDENCE AT THE GRASSROOTS proves otherwise. This paper will make an analysis of progress made by the inclusive Government and the remaining gaps and proffer recommendations for the conduct of credible elections.

Constitution

The constitution making process though behind by two years, progress has been as the Second All stakeholders Conference was held successfully from the 22nd to the 23rd of October 2012. The three principals to the GPA called for peace and tolerance and this calling resulted in a peaceful conference except for one or two incidents.

Electoral Amendment Act

It is commendable that the Electoral Amendment Act 2 of 201 ushers in a host of reforms. The electoral legislation brings reforms to prevent errors of the 2008 harmonised and run-off elections. The following are noteworthy provisions which are in the right step for the country to conduct free and fair elections:

Timely dispute resolution mechanisms including the speedy resolution of election related litigation

Timely announcement of results within a period of five days

Police officers will no longer be stationed inside polling stations

Disabled and illiterate voters will be able to chose who they want to assist them in casting their votes

Postal voting will b e restricted to State employees who are outside the country

Committees will be set up to minimise violence and intimidation during lections as well as a creation of the Electoral Court



Zimbabwe Election Support Network Director, Rindai Chipfunde addressing the South African parliament

Electronic voters' roll will be provided free of charge whilst the printed form is only available upon request and payment of the prescribed fee This is important, for purposes of vigilance to compare the two forms of the voters' roll- to check if there are any discrepancies

Electoral Act ensure that electronic copies of voters rolls are available in analyzable format

Conducive Environment

The passing of the Human Rights Commission Bill into law is a positive development. The Act shall promote awareness and respect for human rights and freedoms at levels. The Act aims to promote the development of human rights and freedoms and monitor and assess the observance of human rights in Zimbabwe.

Zimbabwe Electoral Commission (ZEC)

The Electoral Amendment Act 2 of 2012 makes provision for the independence of ZEC. The Act makes emphasis that the ZEC is independent and not under the influence of both public (state) and private actors. The Electoral Act highlights that state or any person, organ, agency or institution of the State shall give ZEC assistance that may be reasonably required to protect its independence, impartiality and dignity. ZEC has trained and invited civic society organisations which would like to conduct voter education to register with ZEC.

GAPS

Constitution Making Process

The Second All Stakeholders conference had no dispute resolution mechanisms. The Constitution Select Committee (COPAC) has not outlined steps to be taken after the Stakeholders Conference and how the areas of contention will be resolved. The Stakeholders' Conference indicated levels of coaching, as ZANU PF tried to push through the 266 amendments and the MD C formations sought to protect the COPAC draft. What is worrisome is the statement by the head of State which indicates that the final decision rests with the Principals and that the COPAC team was working on instructions of the principals. This statement disregards Article VI

of the GPA, Newspaper reports point to the fact that certain ZANU PF hardliners sought to disband the COPAC, which was only saved after the Prime Minister alerted the President who had to intervene.

Conducive Environment Violence and Intimidation

Sporadic violence has been recorded in various provinces in Zimbabwe between July and August 2012. ZESN Ballot Update show that in 60percent of the constituencies, observers have reported that ZESN discrimination based on which political party one supports remains rife in the various constituencies. This was mostly prominent in constituencies in Mashonaland Central, Mashonaland East, Mashonaland West, and Matabeleland South. Observers reported a worrisome feature of some form of youth militia being recruited and trained in their constituencies. This was reported by ZESN in 8 percent of the constituencies particularly in parts of Mashonaland Central and Mashonaland West. As Zimbabwe prepares for the referendum and elections, the spectre of violence that continues to hang on citizens does not instill confidence in their ability to make free choices.

Gaps on Voters Roll

Relaxation of strict registration requirements (proof residence); this has had a deterrent effect to youths who want to vote as most of them do not have proof of residence. Various groups such as women and aliens are finding difficult to access registration areas. There have been no reforms of external voting provisions to enable voting by all eligible Zimbabweans in the Diaspora.

Gaps on Reforms

There has been no reforms on Sweeping Executive powers; further the president recently single-handedly allocated himself; the Commission of Inquiry Act, Emergency Powers Act, Honours and Awards Act, Interception of Communication Act, Presidential Powers (Temporary measures) Act, Procurement Act, Radiation Protection Act, and the Research Act and the Zimbabwe National Security Council Act. This could be viewed as an attempt to consolidate his grip on power

ahead on next year's general elections.

Gaps On The Media

There is no equitable access to the Zimbabwe Broadcasting Corporation by all political parties and candidates as well as free airtime for political parties during prime time viewing. There is also the absence of reasonable charges for airtime for political parties. In line with this there is need for ZEC's directive to state media to observe non partisan reportage during elections and enforce the public broadcaster on its role and that it gives equitable non negative coverage of all political plays, as well as no hate speech. ZEC should be given the mandate to enforce advertising ethics-code of conduct for political parties and the public broadcaster (content and structure of adverts and political messages).

Gaps On Observers

The Commission will, through the Observers Accreditation Committee (OAC) have responsibility for accrediting election observers. However, OAC is dominated by political appointees which could compromise its independence. There are also no clear guidelines for the observers and no expeditious mechanism for appeals should the OAC recommend refusal of accreditation to specific observers.

RECOMMENDATIONS

Full implementation of reforms of the Electoral Roadmap and the GPA before elections

The creation of a violent-free environment where freedom of assembly, association and speech among others are upheld

Election observation forms a critical element in any election, ZESN calls for the opening up of election observation to all interested stakeholders and for the invitation to be given by ZEC. Furthermore, ZESN remains concerned about the state of the voters' roll and calls for the production of a fresh voters' roll.

ZESN advocates that ZEC should be independent of executive influence and report to Parliament, be well resourced and be given its full mandate in the management of the election.

ZESN believes that for elections to be free and fair there is need for transparency in all processes of the elections which include among others results management, transparency in the process of postal.

*Rindai Chipfunde
ZESN*

Progress (not) Made By The Inclusive Government And The Politics Behind Impediments

Introductory Points

As the Crisis in Zimbabwe Coalition we appreciate:

- The political maturity of South Africa's role as part of the SADC and AU's mediation in support of the People of Zimbabwe.
- The key role that South Africa is playing in championing the cause of African people, particularly providing leadership in the African Renaissance, AU and its strong commitment to realize the attainment of African solutions to African problems. That South Africa, albeit its young democracy, has set up strong democratic institutions such as one of the best constitutions in the world, a strong and a clear vertical and horizontal separation of powers evidenced by an effective and Independent parliament, vibrant and recognized civil society and an independent media.

Progress Made

Four years since the Inclusive Government came into being after the signing of the SADC mediated Global Political Agreement, we note the considerable progress that has been made in a number of areas albeit a plethora of challenges, such as the following notable ones.

- o Consistency by the mediation team (Led by SA) in keeping the Zimbabwe crisis on the SADC agenda and the push for full implementation of the GPA.
 - o Economic stabilization: the arrest of one of the highest inflation rates in economic history and attempts to re-engage the International Financial Institutions (IFIs)
- Progress made so far in the constitu-

democracy in Zimbabwe is indeed a hallmark of progress.

Stagnation

However, our position is that more could have been done in a better way to produce better results than what has been achieved this far.

- o The legislative reform agenda (POSA, formerly Rhodesian LOMA) and media reforms (AIPPA, BSA) that would have aided democratic reform remain unfinished. This limits popular participation, support and confidence in the transformative agenda.
- o The legislature has been seriously undermined by executive decisions, negotiations and a whipping system, which makes parliament largely a rubber stamp body to implement executive directives.
- o The political environment has remained volatile, polarized with incidences of intimidation, political violence (structures of political violence), partisanship in state institutions and even deliberate attempts to undermine the implementation of the GPA such as political statements of allegiance to one party state by senior security personnel, unilateralism in decision making (appointments of senior civil service, governors).
- o The Council of Ministers meant to be chaired by the PM has remained a paper tiger.
- o The Inclusive Government and its reform agenda has remained largely a three political parties' negotiated process, in which, for the most part, ZANU PF has been the dominant party in agenda setting.
- o Continuous negotiations on almost everything have hampered full implementation of the GPA. For example, sanctions, media reforms, land



Crisis in Zimbabwe Coalition Spokesperson, Thabani Nyoni, addressing the South African Parliament

with no genuine attempt to accord them the space to participate independently and effectively. For example the constitution-making process and debates on the Zimbabwe Human Rights Commission. The IG reneged substituted a people-driven process with a parliamentary driven one and is now making attempts to make the reform agenda an executive driven process.

- o Hardliners within ZANU PF have constantly stalled progress and questioned the mandate of the mediation team with the aim of delegitimizing the facilitation team. For example, Jonathan Moyo referred to the mediation team as a 'marriage counselor who refuses to leave the bedroom', manipulating the concept of sovereignty as a way to push back the pressure for implementation. Structures and institutions of such as ONRI, JOMIC, ZHRC are not fully

should we hold the elections, not about March or June, our electoral logjam has never been about election dates, or who makes that call. They are about the sufficient conditions to make them legitimate, credible and fair enough to produce an outcome that reflects the will and expression of the citizens.

- o We insist that the SADC mediated election roadmap be used as a benchmark in measuring our progress towards electoral readiness.
- o That the parliamentary select committee draft constitution produced on the 18th of July 2012 be taken to a referendum to allow the people of Zimbabwe to make the judgment, and that should it pass, sufficient time be given for the harmonization of our laws so that the next elections are held under a new charter and a new electoral regime.
- o That SADC and the AU play a critical role in observing and monitoring the electoral process not just during but six months before and after the elections. This includes also monitoring the referendum.

We Thank You!

Thabani Nyoni
Coalition spokesperson!



Zimbabwe Delegates with members of South African Parliament

tion making process, as COPAC has managed to produce a draft, the enactment of the Zimbabwe Electoral Amendment Act and the Zimbabwe Human Rights Commission (ZHRC). Even a review of the Sanctions regime by the European Union in appreciation of the efforts being made by IG to create a better condition for

audit and the indigenization policy.

- o The political relations between the three parties who are partners to the IG has been that of constant contestation every step of the way, entrenching polarization of state institutions, the media and the society.
- o The broad church of stakeholders has been relegated to by-standers

operationalized and even the SADC resolution to second representatives to strengthen the work of JOMIC is still to be implemented.

Way Forward

- o It's not a question of when