



NON STATE ACTORS FORUM



MASS PUBLIC OPINION INSTITUTE

**NON STATE ACTORS FORUM (NSAF)-MASS PUBLIC OPINION INSTITUTE
(MPOI)**

PUBLIC SEMINAR SERIES

**A REPORT ON THE NSAF-MPOI BULAWAYO PUBLIC SEMINAR ON
'ZIMBABWE CONSTITUTION REFORM: FROM PROCESS TO OUTPUT'**

OCTOBER 2010

2.0 OVERVIEW OF PRESENTATIONS

2.1 Hon. Gladys Dube, MDC-T Senator, COPAC

Honourable Gladys Dube is the **MDC-T** Senate Chief Whip and Deputy Co-Chair of COPAC. She was selected as the main speaker for the seminar in order to award the public an opportunity to interact with a senior member of COPAC, the body that is central to the constitution-making process in Zimbabwe. The Senator did justice in as far as updating the participants of the progress, constraints and perceived outcome of the highly controversial constitutional outreach process.

The Senator began by giving an overview of COPAC, citing its mandate and objectives. A detailed update on the present phase of the national constitution making process; the constitution outreach was satisfactorily articulated. It was highlighted that the COPAC had registered significant success as so far the 'All stakeholders' conference' was held, 17 thematic areas were agreed upon and currently the consultation phase was in progress to gather and collate views of Zimbabweans on the constitution.

2.1.1 Assessment of Constitution making process – COPAC perspective

The constitutional outreach happened in an environment of mistrust spanning from the fragility of the Global political agreement. The presence of a management body to oversee the activities of COPAC, coupled with the militarisation of the process and selective application of the law, created inevitable structural weaknesses within the constitution making framework.

Some internal capacity gaps and environmental constraints were cited as negative influence on the constitution making process which was likely to impact negatively on its outcome as well. Some of the factors highlighted included the following:

- Politically motivated disturbances that marred the Harare outreach process meant that additional resources (funds and time) were required for COPAC to reconvene the meetings.
- COPAC was heavily dependent on external resources and was having difficulties in working within stipulated time frames due to late disbursements or unavailability of funds from donors.
- COPAC still owed the outreach teams some funds; commitment had not been met due to limited funding. In addition to non-payment of personnel, other service providers were also yet to be paid.

- Public media was charging prohibitive rates to COPAC for advertising yet it was being used to churn out ZANU PF propaganda through 'praise' jingles every hour on both ZTV and radio stations.
- The Police was also inactive in maintaining order and security as witnessed during the Harare outreach programme and in other areas where intimidation was reported during the outreach process. The Harare process was characterised by intimidation, 'bussing' of people from outside Harare and violence.
- Bulawayo managed to have two meetings per ward with a few disturbances while all other centres around the country also managed to have one meeting per ward.

The presentation ended by indicating that the challenges experienced during the constitution making process so far could be addressed through political will and commitment by the police to maintaining order and security. COPAC would have managed to carry out all activities on time if the Harare outreach had been better managed by all stakeholders.

2.1.2 Assessment of the Constitution-making process – Civil society perspective

Christian Alliance, a civic organisation based in Bulawayo was closely following the constitution-making process and through its interactions with the public came to the conclusion that the outcome of the constitution-making process was flawed and its outcome was not going to be reflective of the will of the people of Zimbabwe. The feeling was that the process had been heavily politicised given the 'unhealthy relationship' that exists among the principals of the Global Political Agreement (GPA). It was against such a background of 'politicking', mistrust and manipulation of the electorate that the constitution making process was going to result in a flawed outcome.

Evidently the current constitution was highly irrelevant as it had been amended a record 19 times. Rooted in the colonial era, it had some exploitative and oppressive elements which promoted violence, intolerance and authoritarianism.

2.1.2.1 Successes of the constitution-making process

The presenter cited the following success points in the process so far:

- Setting up of COPAC to facilitate the constitution-making process
- Training of rapporteurs
- Civic society set up mechanisms to monitor the outreach process and documented their findings which reflected the presence of incidences of violence and intimidation in some parts of the country.

- Civil Society provided managed to provide civic education although in a difficult political environment.
- The outreach process had so far managed to reach all outreach points except Harare and people had a chance to put forward their views

2.1.2.2 Failures of the Constitution-making process

- COPAC was ill-prepared for the rollout of the outreach process as evidenced by failure to stick to stipulated time frames, inadequacy of funds and other resources, : affecting the outcome process
- Overall compromised technical capacity
- Failure to adequately publicise outreach schedules and dates in good time i.e Public media would advertise on the day of the meetings resulting in scores of people failing to attend.
- Failure to communicate schedules adjustments hence in some instances members of the public were informed of the postponement of meetings when they got to advertised venues.
- Outreach teams were in a number of instances evicted from hotels due to no-payment of hotel bills by COPAC.
- The need for national healing was overlooked hence the environment within which the outreach took place was still characterised by fear, political intolerance and intimidation. National healing should have taken place before the process.
- Massive allegations of political parties pre-orientating people on “party-friendly” contributions to make during outreach meetings and transporting them to other ward meetings were common.

2.1.2.3 Lessons learnt

- COPAC management needed to improve its overall planning process
- There is need for increased civic education in the coming stages of the process
- There is need for increased coverage of the constitution making process in the public media.

2.1.2.4 Overall view on the outcome of the constitution-making process

- May not be reflective of the needs of the people due to pre-orientation of people
- Fear and intimidation will continue if political parties continue to influence the process along party politics.
- There is uncertainty of the process should the GPA come to an end.

2.1.3 Assessment of the Constitution-making process – Academic/political/economic analysis

From an economic and political analysis perspective there was need to examine Zimbabwe's history in constitution making; the pre-colonial, colonial and post colonial eras. Constitution-making in colonial Zimbabwe was highly exclusionary and sought to perpetuate a dual, monopolistic development framework. There was no doubt therefore that the current Zimbabwean constitution was still in many ways reflective of its colonial origin hence after 19 amendments, there was need to embark on a process towards a truly Zimbabwean constitution.

2.1.3.1 Current context of the constitution: GPA Article six

The fact that there was still no draft constitution reflected inefficiency with the COPAC machinery. The flawed process was going to result in the production of a constitution that was far removed from the needs of the people and would be likely rejected at the referendum phase. The political bickering by the principal parties of the GPA perpetuated political polarisation and shifted attention from the constitution-making process. The dysfunctional GPA was most likely to lead to a no vote at the referendum.

The participation of civil society in the entire process was peripheral and of little influence considering the fact that NGOs were barred from freely conducting civic education and other awareness raising activities. Civil Society drafted the People's Charter, but article six of the GPA failed to embrace or acknowledge it as it did the Kariba draft.

2.1.3.2 Observations and recommendations on the process going forward

- The COPAC administrative team needs to be highly autonomous and made up of people of high repute. The present structure was such that COPAC was dominated by politicians from only three political parties who seem to be pushing their own political agendas.
- There is need for a more conducive operational environment for Independent media in order for the people to be awarded wider access to balanced assessment of current affairs in the country. This would allow receptiveness and openness to diverse views.
- There is need to ensure meaningful participation to ensure that people are afforded a safe environment to debate on all sections of the constitution. There were reports that in some parts of Matebeleland, security forces suppressed debates on Presidential term of office, citizenship, executive powers and devolution of power.
- There was evidently lack of information among members of the public who participated in outreach meetings. People need to be empowered to make informed decisions i.e public seminars by the management committee and not civil society alone which has "patches" of influence.

- Even after the alleged simplification, talking points have proven to be too technical for members of the public and even some of the outreach team leaders have failed to clearly articulate them.
- Article Six of the GPA grants unlimited power to MPs who tend to politicise the process.
- Lack of government funding for the process has resulted in over reliance on donors. Government should commit more funds to the process as it is a national priority issue.
- There was still no amendment of POSA and AIPPA which resulted in arbitrary arrest of human rights defenders and activists and limited freedom of speech, assembly and association. Government should look into these prohibitive legislative instruments as a matter of urgency.

There was talk of a campaign for a 'yes vote' already taking place meaning that the outcome of the process has been predetermined by the political elite. The implication is that the outcome of the constitution making process would be far removed from the needs and expectations of the people but rather a 'doctored' document by politicians. The draft was likely to face opposition during the referendum and plunge the nation into a political crisis reminiscent of the past decade.

3.0 PLENARY

The facilitator gave an overview of the three presentations after which participants were given an opportunity to raise comments and questions.

- It was raised that the constitution-making process was parliament driven rather than people driven and this was going to result in an outcome far removed from the aspirations of the people.
- A participant raised a question on existing mechanisms to deter the recurrence of violence during the remainder of the constitution making process. In response, the COPAC Co-Vice Chair indicated that following discussions with the management committee it was agreed that political parties needed to take responsibility and implore their supporters to desist from violence while the security forces had to ensure law and order at all gatherings. This position had been communicated to all political parties. District liaison committees would be put in place to ensure a coordinated approach to dealing with violence. She highlighted that COPAC was doing everything in its power to ensure that the constitution-making process would result in a constitution that, as far as possible, embraces the expectations of the majority of Zimbabweans as reflected through the reports from the outreach consultative meetings and caters for future generations. The senator pointed out that a conducive environment can only be possible if Zimbabweans refused to be 'used' by politicians to perpetrate violence against each other.

Participants reflected lack of confidence in the security forces as they felt that these were manipulated by one political party.

- A question was posed to the presenter representing civil society concerning the efforts undertaken by civil society in advocating for national healing before the commencement of the constitution-making process. In response it was said that civil society recognised that the people of Zimbabwe were hurting from the political intolerance and violence that characterised the past elections in the country and collectively lobbied for National Healing. The collective action clearly failed to attain the intended results as no action was taken particularly by the Organ of National Healing. The organ was yet to prove its function as no major national activities towards national healing had taken place. The principals of the organ were also not carefully selected as the Vice President was mostly busy with other national issues. The passing on of one of the three principals meant that only Sekai Holland was left to deal with such a momentous matter of national importance.
- It was pointed out that Christian Alliance together with other civil society organisations had submitted a paper to the organ of National healing proposing that civil society and the church develop frameworks for intervention and carry out national healing activities while the organ oversees the process. There was a reflection of lack of commitment and limited capacity towards national healing as no action had come to fruition following the proposals by civil society.
- One participant pointed out that the National Healing framework was flawed and ineffective as there was no clear consensus on what exactly should constitute national healing. The initiative was a top down approach and was detached from the people who actually needed “healing”. Without national healing, hatred was going to be perpetuated and in-built violence was likely to erupt in violent conflict in future if not handled with due diligence. The speaker further noted that the whole constitution-making process was a waste of resources and a political ‘gimmick’ as the outcome was already pre-determined. The whole consultation exercise was a mere ‘farce’ as no leader wants to ‘ask the lead how they want to be lead’. There was also rampant abuse of power by the dominant political parties to influence the outcome of the process.
- A participant pointed out that people wanted a new constitution but they did not trust the politicians hence had no confidence that what they had suggested during the outreach was going to be reflected in the draft constitution. The need for devolution of power was highly

popular particularly in Matebeland hence it was going to be a surprise if it did not appear in the draft constitution. In response, the Senator pointed out that evidence existed of what came out in the outreach meetings through the outreach videos and audio recordings. She further pointed out that the referendum awarded people the opportunity to see whether their input was reflected or not and can on that basis either reject or adopt the draft constitution.

- The senator pointed out that there was lack of commitment by the general public as low importance was placed in participating in public forums to discuss issues of national interest. There was a low sense of involvement by the public even during the outreach process. She pointed out that massive publicity had been done for the present seminar through fliers, posters and advertisement in the Chronicle newspaper yet the turnout remained low. There was therefore need for civil society to work hard in mobilising greater public participation.
- Another speaker mentioned that Zimbabwean politicians had no respect for the constitution and the rule of law. He felt that the MDC leadership had since joined in as they were now less critical of the previous government yet it continued to abuse state power. Leadership of the NCA had also become ineffective by adopting a resigned attitude towards the chaotic constitution-making process. The speaker also felt that civil society leadership in general had failed to deliver in so far as holding the state accountable for its actions.
- It emerged through one of the participants that there was 'street talk' that the three political parties wanted to drive the Kariba draft to the referendum and disregard the input gathered during the outreach process. In response the senator maintained that the input from the outreach process was going to be considered during the drafting phase. It was noted that if the political parties pushed forward the Kariba draft which people thought has excessive presidential powers, civil society can mobilise a "NO" vote during the referendum. The political parties were not going to negotiate the constitution but consider the views of the people as the issue was not about them as leaders but about how the people of Zimbabwe want to be governed.
- A participant commented that people had unrealistic expectations in expecting ZANU PF to cooperate on an 'equal pedestal' with MDC in the GPA and the constitution-making process. Hence Zimbabweans should have acknowledged from the beginning that as long as ZANU PF is involved the constitution-making process would be a flawed exercise.
- The composition of COPAC was highly disputed by one participant who felt that MPs were not experts in constitutionalism and law-making. He felt that MPs were not experts and the process

should have been led by independent experts. In response, it was indicated that the MPs drew their mandate from the GPA.

- A question was posed to the COPAC representative on why the outreach team spent 89 days in rural areas and only one day in urban areas. In response, it was indicated that complex logistical arrangements forced COPAC to spend more time in rural areas. It was difficult to have one venue in each ward as some wards were quite vast that people could not assemble at one point. Another factor was that there was no accommodation in most rural areas hence the outreach teams had to travel long distances to the venues.
- Some participants felt that by having to reconvene outreach meetings in Harare; COPAC was giving an unfair advantage to Harare over other areas whose consultations were also disrupted by political activists. The response was that were other areas other than Harare where the meetings were to be reconvened for a number of reasons.
- Concern was raised over the pushing for elections by political parties when no national healing had taken place, the constitution process had not been completed and the structures of political violence were still instituted in society. The participant felt that civic society should mobilise people to refuse to participate in the election if these issues were not adequately addressed.

The Facilitator thanked the panellists for dedicating their time to serving members of the public. He went on to thank participants for their valuable input. Participants indicated that platforms of this nature were important for the people of Bulawayo to be more involved and to be in touch with national issues and they valued the opportunity to debate on the constitution.

4.0 CONCLUSION

The NSAF/MPOI Public Seminar series has the potential of promoting wider public participation in national dialogue across the country. The participants upheld the idea of having platforms that allow them to meet with people who are directly responsible for national policy processes such as COPAC the Co-Vice –Chair. Participants indicated the need to have more platforms of this nature with parliamentarians, political party leaders, and civil society leadership. Increased government and interaction between state and non state actors is essential for the majority of Zimbabweans to be informed of the national processes that have a direct influence upon their day to day lives.

From the deliberations in the public seminar, a number of key issues stood out as critical in the national-constitution making process and the general democratic citizen participation in national issues. The following issues were derived from the interactions as critical areas of concern:

- National healing: greater visibility of the Organ for national Healing, the role of the Church and Civil Society and clear national action plan.
- COPAC was supposed to improve its overall planning and implementation in order to avoid the pandemonium that characterised the pre-consultation and actual consultation phases of the constitution making process.
- Civil Society should be more active in providing civic education in order to have an informed citizenry which will be able to make informed decisions in the coming phases of the constitution making process. Civil Society was to collectively seek more innovative approaches to enhance the opening up of the environment in the face of a complex political environment.
- The need for increased interaction between state and non state actors in Matebelaland; There was a feeling that most national dialogue platforms were created in Harare by both civil society and government;
- Media sector reform was critical for Zimbabweans to have a balanced analysis of national issues and a realistic view of the state of affairs in the country;
- Security sector reform was necessary in order to restore confidence of the citizenry in the sector. There was need for the sector to be non-partisan and more responsive in mitigating politically motivated conflicts in communities.

The NSAF/MPOI look forward to increased collaboration in offering this critical service to the people of Zimbabwe through joint planning, networking and strengthening coalitions for increased democratic participation in policy issues.

NB. Public Seminars are not by individual invitation but voluntary attendance by members of the public. Due to the sensitive nature of some of the discussions, participants are not asked to fill in participants list in order to allay fears of political intimidation.