POWER DYNAMICS IN ZIMBABWE'S INCLUSIVE GOVERNMENT

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Introduction.

The elections of March 2008 yielded an astounding victory for Zimbabwe's Movement for Democratic Change opposition parties. For the first time the ruling ZANU PF party lost its majority in parliament - by a single seat to the MDC formation led by Morgan Tsvangirai (MDC-T) and 11 seats if combined with those held by the formation of the MDC led by Arthur Mutambara (MDC-M)[1][2]. Tsvangirai garnered over 4% more of the votes than Mugabe in the presidential poll, but (officially[3]) short of the 50% plus one to prevent a run-off. In the build up to this run-off poll, security forces and militia loyal to Mugabe launched an intimidatory campaign of such violence that Tsvangirai was forced to withdraw from the poll, unable to ensure that his supporters would be able to vote or that the polls would be monitored[4]. The MDC-T's records indicate that over 500 people were murdered during this campaign[5]. Brutal beatings, rapes, the burning of homesteads and massive displacement of voters from their constituencies[6] rendered the process an electoral farce.[7] The Zimbabwe Electoral Commission ignored this violence[8] and declared Mugabe the winner of the poll with an 85% majority, announcing polling statistics and return numbers which were clearly phantasmagorical[9]. Not even Mugabe's allies in the regional SADC block were prepared to recognise his election as legitimate. With Mugabe firmly in control of the army, but the clear loser of the 2008 elections and thus with no democratic legitimacy, a political impasse developed.

Under the auspices of South Africa's president Thabo Mbeki, talks began between the main protagonists to attempt to resolve the deadlock. Tsvangirai was in a strong negotiating position. ZANU PF had clearly lost popular support. And Thabo Mbeki, the most influential SADC player in the process, was desperate to resolve the long running Zimbabwean crisis. Millions of Zimbabwean refugees who had poured across the border into South Africa to escape the consequences of Zimbabwe's economic meltdown, were placing service delivery in poorer areas – an accepted

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[1] There are 214 seats in the House of Assembly. The 100 seat Senate only has the power to suggest legislation, propose changes to legislation from the House of Assembly or delay the passage of legislation through the House of Assembly while such changes are considered.

[2] In the text MDC refers to both formations of the MDC. Where it is necessary to distinguish between the policies of the two "T" or "M" has been inserted.

[3] Many believe that the long delay in releasing the results of the presidential election was to facilitate a manipulation of the results to reduce Morgan Tsvangirai's tally to below 50%. See *Worst Case Scenario* The Zimbabwean http://www.thezimbabwean.co.uk/2008040111921/weekday-top-stories/worst-case-scenario.html 01/04/08.

[4] *Report on the Zimbabwe 29 March 2008 Harmonized Elections and 27th June Presidential Run-off* (the ZESN 2008 Report) p 57 ZESN, Zimbabwe 2008. In the event, the polling went largely unmonitored. The returns officially announced are without credibility – on which see below.

[5] *MDC Says 500 died in Political Violence Zimbabwe Metro* 10/09/09 http://www.zimbabwemetro.com/headline/mdc-says-500-died-in-2008-political-violence/

[6] The ZESN 2008 Report p 64.

[7] See generally D. Matyszak *Hear No Evil, See No Evil, Speak No Evil: A Critique of the Zimbabwe Electoral Commission Report on the 2008 General Elections* Research and Advocacy Unit 2009, Zimbabwe available at www.kubatana.net (ZEC Critique).

[8] See generally D. Matyszak ZEC critique.

[9] See D. Matyszak ZEC critique p 6 where some of these statistics are analysed.

Achilles heel of the Mbeki administration – under increased pressure[10]and a global economic slowdown had resulted in increased competition for jobs and consequent antagonism towards immigrants.[11] Mbeki's own position as president was under threat on account of internal politics within his ANC party.[12] He desperately wanted to resolve the Zimbabwe crisis and present a major foreign policy success to deflect criticism from his governance and growing pressure for his resignation. Furthermore, Mbeki and SADC could not allow the possibility of a formal take over by the Zimbabwean military or for Zimbabwe to become a failed state – particularly in light of the fact that Southern Africa was trying to market itself as a tourist destination ahead of the 2010 FIFA World cup.

Mugabe too was under considerable pressure. The refusal of SADC to recognise the presidential run-off meant that Mugabe faced a crisis of legitimacy vis-à-vis his own allies. It was also clear that Mugabe's ability to finance his ZANU PF party and his government, and more importantly the ability to pay the army and police force through the printing of cash could not last much longer. No matter how large the denomination of notes or quantity printed, given the rate of inflation, it was a matter of months before none would be willing to exchange Zimbabwe dollars for hard currency[13]. Most significant commercial transactions were already being conducted in foreign currency – despite the fact that these transactions were technically illegal. With the effective dollarisation of the economy the Zimbabwe dollar was soon to become completely worthless.

For MDC-T supporters therefore, the sole question was how the transition of power was to take place. Tsvangirai, interviewed by South Africa's eTV[14], firmly declared that the on-going post June 2008 electoral talks were not about power-sharing or the formation of a Kenyan style government of national unity (GNU) but about a transitional government and return to democracy, with the MDC in charge and leading to fresh elections. Despite this pronouncement, the discourse in fact quickly morphed into discussions about a GNU and "power sharing". This was to be the first of numerous positions which Tsvangirai declared non-negotiable and from which he would subsequently retreat.

Despite the powerful negotiating position that had been occupied by Tsvangirai, the "global political agreement" (GPA), which emerged left Mugabe's extensive powers almost untouched. Although it was referred to as a power sharing agreement (and not an agreement to establish a transitional government) there was very little "sharing" of power with the MDC formations.

The "Power-Sharing" Agreement

The core of the GPA was absorbed into Zimbabwe's law by way of constitutional amendment 19. The agreement and subsequent constitutional amendment have been analysed in detail elsewhere.[15] These analyses show that Mugabe had conceded power in only three areas. Firstly, the number of ministers he could appoint was limited to 31. Secondly, of these 31, 16 were to be nominees from the combined MDC formations[16]. Thirdly, constitutional amendment 19 provides that all appointments made by Mugabe "in terms of the constitution or under any legislation" must be made "in consultation with"[17] Morgan Tsvangirai – and "in consultation with" was defined to mean "after

[10] ANC speaks on Zimbabwean GNU http://www.thezimbabwetimes.com/?p=22182 03/09/09

[11] This antagonism eventually exploded into xenophobic violence and murders in May. See Der Spiegel 27/05/08 http://www.spiegel.de/international/world/0,1518,555821,00.html.

[12] Mbeki's position became precarious after losing the presidency of the party to arch rival Jacob Zuma. He was eventually deposed from office in late September 2008, within a week of the signing of the Global Political Agreement. (GPA).

[13] The official rate of inflation had last been calculated in July 231 million percent. The actual rate, according to the Hanke Hyperinflation Index was to move nearly 90 sextillion http://en.wikipedia.org/wiki/Hyperinflation.

[14] Interview with Debra Pata on Third Degree August 2008.

[15] See D. Matyszak (2008) *Losing Focus: Zimbabwe's "Power-Sharing" Agreement* and *Zimbabwe's Proposed Constitutional Amendment 19* both available from www.kubatana.net.

[16] Even this concession was in fact to Mugabe's advantage as shared Ministries were necessary to advance the idea of joint governance on which recognition of Mugabe's legitimacy depended.

[17] Article 20.1.3(p) of the GPA and schedule 8 to the Constitution.

securing the agreement or consent of"[18] effectively giving Tsvangirai a veto power over such appointments. In exchange for these concessions, the agreement provided that Mugabe would "continue" in office as president. Mugabe's problem of legitimacy was thus immediately resolved. The benefits for the MDC formations were to be implemented later, and would be dependent on Mugabe's whims. Some have suggested that the agreement to draft and adopt a new constitution for Zimbabwe constituted a forth concession. This, for reasons stated below, is not a view held here.

During the talks, Tsvangirai had indicated that there must be a true sharing of executive authority between himself as Prime Minister and President Mugabe stating that the refusal to share this authority was the main stumbling block in the talks:

> *Let them demonstrate what powers they have ceded to the prime minister or to the other party. Identify those areas and you will easily see who the stumbling block is.*
>
> *Why are they afraid to do that?* [spell out the job descriptions for himself and Mugabe] *That demarcation of responsibility is very important for accountability purposes, for authority purposes. You expect the MDC to be tasked with turning around the mess in Zimbabwe without being given authority.*[19]

Yet Tsvangirai signed the agreement without resolution of these points. Despite the fact that he was to become Prime Minister, and the agreement states that he is to share executive authority with Mugabe, the nature of this executive authority is no where indicated in the agreement or constitution. The police, security forces, and intelligence agencies all remain under Mugabe's control. Legislative amendments required to remove a raft of repressive laws and open up democratic space, and particularly space in relation to the media, need Mugabe's approval or that of a two-thirds majority in parliament, none of which is likely to be forthcoming.

Initially, unaware of the details of the GPA, and, reassured by Tsvangirai's previous comments that "no agreement is better than a bad agreement"[20], MDC supporters enthusiastically welcomed the signing of the GPA, while ZANU PF supporters significantly lowered their profile and reduced intimidatory activities against MDC members, uncertain as to what had been conceded.

Power Dynamics

A crucial component of understanding the polity in a developing country such as Zimbabwe lies in considering political decision making within impoverished rural constituencies. For voters within these constituencies voter preference may be determined not so much by whom the voter wishes to win the election, but by who is deemed most likely to actually win the poll[21]. It is important to back the winner. To a considerable extent, elections for impoverished communities are less an exercise of choice, but an opportunity to display fealty to power. ZANU PF has been unabashed in its pronouncements that power giveth and power taketh away. ZANU PF Ministers and candidates, during political rallies in opposition constituencies have openly declared that the seat will see little government food aid, assistance with agricultural inputs or development for so long as an area continues to support an opposition party. More recently, ZANU PF village headmen and chiefs have indicated to villagers that their very ability to remain living in the area depends upon a show of support for ZANU PF. [22]

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[18] Section 115(1) of the Constitution.
[19] *Tsvangirai Says Zanu-PF is the Stumbling Block to the Talks SW Radio 20/08/08.*
[20] *Zimbabwe Accord a House of Cards* Digital Journal 21/09/09 http://www.digitaljournal.com/article/260104.
[21] C. Logan (2008), R*ejecting the Disloyal Opposition? The Trust Gap in Mass Attitudes Toward Ruling and Opposition Parties in Africa*. Working Paper 94, AFROBAROMETER.
[22] See as one of many available examples *Gwanda Chief Threatens Village Heads* 08-07-2007 Zimbabwe Standard *08/07/*

It is in this context that the statements of Mugabe and his supporters that Tsvangirai will "never be allowed to rule" and that a vote for Tsvangirai "is a wasted vote" should be understood. The top military commanders provided backing for this, obliquely suggesting that they would take over power if Tsvangirai won the poll.[23] The implication is that it is a waste to display fealty to a party that will never govern and thus never be in a position to deliver food aid or other assistance which may, in a very literal sense, be a matter of basic survival for a villager. However, this relationship between the dependent and powerful, is eroded when the ability of those holding power to deliver state assistance becomes uncertain – as was the case in rural areas by March 2008 as the effects of the economic meltdown in Zimbabwe became acute. The ability of ZANU PF to provide or withhold government assistance was replaced by a campaign of violence against perceived opposition supporters. Power would thus provide or withhold the key to voters' very physical integrity, making it even more important to back the winner.

The strategy of Mugabe and ZANU PF needs to be understood in this context.

ZANU PF's Strategy

The country wide relief, and, in the MDC, camp misplaced euphoria over the signing of the GPA caused some alarm within ZANU PF, uncertain as to any concessions that may have been made. To contain this alarm, Mugabe, at the very signing of the agreement, set about demonstrating that little had changed. His address at the signing ceremony was a familiar tirade against "western imperialists",[24] the very countries whose financial aid was required to resuscitate Zimbabwe's devastated economy.

In order to ram home the message that nothing had changed in power relations, a wave of abductions of MDC activists and civil society activists followed. At least 32 people disappeared in the course of these abductions and were tortured over the course of several weeks at the hands of Zimbabwe's intelligence operatives[25]. When they were finally released, they were handed into the custody of the police and detained on dubious charges. The state vigorously opposed any applications for bail, and immediately appealed any bail applications that were granted.

Furthermore, Mugabe had no intention of complying with the three limitations the GPA and constitutional amendment had placed upon his power.

As stated, the number of Ministers Mugabe may appoint is limited in terms of the constitution and GPA to 31, with 15 ZANU PF nominees. In order to accommodate loyalists and the various factions within his party, Mugabe ignored these provisions and appointed 41 Ministers with 21 ZANU PF nominees. Secondly, although Mugabe was obliged in terms of the constitution and GPA to allow the MDC formations to nominate 16 of the original 31 Ministers, the significance of this concession was greatly reduced by the fact that he used his powers to allocate the 16 ministerial seats to "empty" portfolios, junior portfolios or portfolios related to infrastructure or service delivery[26] – all of which were in a parlous state.[27] Mugabe did allow the MDC-T one Ministry with some real power – the Ministry of Finance, presumably on the understanding that little international aid would

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http://www.thezimbabwestandard.com/

[23] *Mugabe Seeks Election Price Cuts* BBC News 25/03/08 http://news.bbc.co.uk/2/hi/africa/7312649.stm

[24] *Mugabe's Speech at the Signing Ceremony* http://www.zimonline.co.za/ 16/09/08

[25] See Veritas Zimbabwe *Peace Watch* 17/02/09

[26] Mugabe's power to do so is unaffected by the GPA and constitution [section 31D(1)(a)]. The allocation of portfolios must be done "after consultation with" the Prime Minister. In terms of the peculiar and convoluted provisions of the constitution "after consultation with", unlike "in consultation with", is given its ordinary meaning and Mugabe is not obliged to follow any recommendations or advice given in such consultations.

[27] Which was graphically illustrated by a cholera epidemic which was to infect over 100 000 people and claim the lives of over 4 200 see *Zimbabwe: Beyond Cholera—Beyond the Crisis?* Report by Doctors Without Borders 18/08/09.

be forthcoming without this concession.[28]

Each Minister's power is derived from the executive authority provided for in legislative Acts given to the Ministers to administer. The allocation of the administration of Acts by the President is usually done shortly after ministerial portfolios are renamed or new portfolios introduced. For the first time this has not been done, leaving the administration of Acts as it was before the formation of the inclusive government. This effectively means that many of the new MDC Ministers have no Acts to administer. They thus have no real executive authority and the nature of their duties and ambit of their portfolios is obscure.

Ministries and departments relating to defence and state security remain firmly in ZANU PF hands. And while the Ministry of Home Affairs was shared by an MDC-T and ZANU PF Minister, this apparent compromise was of little significance given that the Commissioner-General of Police and commissioned police officers are answerable to and take instructions from the President and Attorney-General and not Minister of Home Affairs.[29] Furthermore, when Mugabe realised that control of the Information and Communications Technology portfolio would give an MDC-T Minister power over the state's surveillance infrastructure, he moved quickly to reassign this part of the Minister's duties to the ZANU PF Minister of Transport.[30]

The third concession, and arguably the most significant limitation on Mugabe's powers, was the restriction of his ability to make key appointments in terms of the constitution or any legislation unilaterally. The constitution and GPA provide:

> *The President **in consultation** with the Prime Minister makes key appointments the President is required to make under and in terms of the Constitution or any Act of Parliament.*[31]

And section 115 of the Constitution provides:

> *"in consultation" means that the person required to consult before arriving at a decision arrives at the decision **after securing the agreement or consent** of the person so consulted*

A second (and slightly contradictory) clause of the constitution[32] and GPA also provides:

> *Senior Government appointments: The Parties agree that with respect to occupants of senior Government positions, such as **Permanent Secretaries** and Ambassadors, the leadership in Government, comprising the President, the Vice-Presidents, the Prime Minister and Deputy Prime Ministers, **will consult and agree on such prior** to their appointment.*

Notwithstanding these clauses, Mugabe proceeded to unilaterally appoint all permanent secretaries to the Ministries and all ambassadors. The permanent secretaries in all Ministries are thus all ZANU PF loyalists, causing no little difficulty for the MDC Ministers. The position within Ministry of Education is instructive. In an attempt to get teachers back to work, the Minister directed that teachers who had unlawfully left their posts (usually on account of the inability of the government to pay any meaningful wage, but also because of political intimidation and violence) would be allowed back without reprisal. In fact, those teachers who have returned to rural schools have faced

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[28] Since the police force is under the control of the President and not the Ministry of Home Affairs (as is usual in many democracies) the sharing of this Ministry between Ministers from both ZANU PF and MDC-T, was hardly necessary or a concession.
[29] Sections 5 and 11 of the Police Act Chapter 11:10.
[30] See below.
[31] Schedule 8 to the constitution, article 20.1.3 (p).
[32] Schedule 8 to the constitution article 20.1.7.

harassment from ZANU PF militia[33] and have not been re-entered on the government pay roll by the permanent secretary for education.[34]

The MDC should not have been surprised by Mugabe's disregard of these restrictions on his powers. The Memorandum of Understanding (MOU) signed in July 2008 to underpin and chart the way forward for the negotiations had provided:

> *The Parties shall not, during the subsistence of the Dialogue, take any decisions or measures that have a bearing on the agenda of the Dialogue, save by consensus. Such decisions or measures include, but are not limited to the convening of Parliament or the formation of a new government.*[35]

Disregarding this clause, Mugabe unilaterally appointed all ten provincial governors without the necessary consensus.

Mugabe also unilaterally renewed the appointment of the Governor of the Reserve Bank,[36]Gideon Gono, and unilaterally appointed a new Attorney–General. These two appointments to crucial positions, were in violation of the clause of the MOU above and article 20.1.3 of GPA (cited above) which was signed in September, 2008.[37]

In response to objections about the appointment of Gono, Mugabe stated:

> *I do not see any reason why those people should go and they will not go.*[38]

Later, on state television, he declared:

> "*Those in Britain and elsewhere are not happy that he is where he is, still (at) the top of the Reserve Bank. Within the country, in the inclusive (power-sharing) government, there are those who don't want him, but I say he will not go."*[39]

inferring that having indicated his wish, that was the end of the matter. He later stated that those insisting on the removal of Gono and Attorney-General Johannes Tomana were "wasting their time".[40]

ZANU PF hatchet man Joseph Chinotimba weighed in with:

> *"… having realised that the source of these calls for Gono's ouster are whites, we would respond by ejecting all the white farmers who still remain in the farms. As war veterans, we are saying those whites whom we had allowed to stay in the farms would leave with immediate effect - immediately! We can only allow them to remain on condition that they drop the issue of Gono and (Attorney General*

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[33] *New Terror for Returning Rural Teachers* http://www.thezimbabwestandard.com/ 07/03/09.

[34] While the Minister concerned has defended his permanent secretary claiming that bureaucratic hurdles emanating from the Public Service Commissioners are to blame (SWRadio interview with David Coltart 21/08/09) the situation accords with anecdotal evidence of obstructionism by the permanent secretaries and the Minister's defence of the permanent secretary needs to be interpreted in light of general MDC strategy – see below.

[35] Section 9 of the MOU.

[36] In November and December 2008 respectively. The Governor of the Reserve bank holds office at the president's pleasure for a term of a maximum of five years, though this term may be renewed.

[37] Although at the time of these appointments the constitutional provision defining "in consultation" to mean "after securing the agreement or consent of" was not in force, the provision at least required consultation in the normal sense of the word. Since this requirement was not met, Tsvangirai is entitled to enforce the agreement and Mugabe would be required to use his powers to reverse these appointments. The subsequent appointment to these posts would then have to be in terms of the new constitutional amendment, requiring Tsvangirai's consent.

[38] Report by APA on 26/02/09.

[39] *Zimbabwe Central Bank Governor Gono to Stay: Mugabe* http://af.reuters.com 25/05/09.

[40] *Comment: Army Should Confine Itself to Barracks* The Zimbabwe Independent 28/05/09.

Johannes) Tomana leaving their jobs."[41]

Similarly, Air Vice-Marshal Henry Muchena, representing service chiefs of the army, police, Prison Service and the Central Intelligence Organisation at a funeral, proclaimed in Mugabe's presence that those insisting on the removal of Gono and Tomana were "provoking a reaction from the army".[42]

The intention of ZANU PF and Mugabe to ignore the GPA and appropriate plenary power in this regard could scarcely be clearer. The message to the electorate is that the true locus of power lies unequivocally with Mugabe.

In the same vein, attempts by Tsvangirai to exercise power have been met with derision by ZANU PF Ministers. An issue relating to the accreditation of journalists to cover a COMESA[43] summit is telling. Zimbabwe's repressive media law required that journalists wishing to cover public events be accredited with a Media Information Commission (MIC) which comprised ZANU PF loyalists.

Negotiations between the parties in 2007 repealed the sections of the legislation establishing the MIC, the intention being to further negotiate this issue as part of the undertaking to reform Zimbabwe's media laws. This reform has yet to take place. As a result, there is no statutory body with which journalists need register[44]. Nonetheless, the former head of the MIC and Zimbabwe's Information Ministry continued to act as if the body were still in existence.[45] The Information Ministry thus insisted that journalists intending to cover the COMESA summit be accredited by the (legally defunct) MIC. In response, Tsvangirai issued a directive to the Ministry to the contrary. The Minister of Information, Webster Shamu, ignored this directive, subsequently stating that he does not take instructions from the Prime Minister, and claiming that only the President has the power to issue such directions. He went on to elaborate that the Prime Minister was ignorant of the security concerns that arise from the presence of journalists at international summits. The issue of accreditation, he said, had been cleared with the President and that despite the legislation repealing the MIC, "functional vacuums" could not be allowed to exist. In contravention of a court order[46], the unaccredited journalists were barred from covering the summit. The lack of executive authority and powerlessness of Tsvangirai was thus starkly exposed.

In case the point had not been made clearly enough, shortly after this debacle the permanent secretary in the Ministry in the Ministry of Information and presidential spokesperson, George Charamba, issued a directive to the state media that whenever President Mugabe was mentioned the phrase, "who is also Commander of the Armed Forces and Head of the State and the Government", must be inserted parenthetically immediately thereafter: a directive which has been followed without remiss.[47]

Mugabe's declaration that he remained "in charge" and "in the driver's seat"[48] thus was not without justification. He underscored the point at birthday celebrations held in March, 2009.

I am still in control and hold executive authority, so nothing much has changed.[49]

The rural electorate could thus be certain as to whom to display their fealty.

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[41] *Chinotimba Throws weight Behind Gono* The Zimbabwe Times 30/05/09.
[42] Ibid.
[43] A Regional Customs Union – the Common Market for Eastern and Southern Africa.
[44] That this is so was upheld by Justice Patel following a court application (see footnote immediately below) by the journalists affected and the law is patently clear in this regard.
[45] *Zanu-PF Defies Tsvangirai* http://news.iafrica.com 24.05.09.
[46] *Journalists Win Landmark Case Against Government* http://www.swradioafrica.com 04.06.09
[47] See for example *Tsvangirai Media-Onslaught Intensifies* http://www.radiovop.com 06/09/09.
[48] *Time for MDC to Make Big Decision* The Zimbabwe Times 13/01/09 http://www.thezimbabwetimes.com/?
[49] *Mugabe Calls On White Farmers to Leave, During Lavish Birthday Celebrations* http://www.3news.co.nz 01/03/09.

MDC-T "Strategy".[50]

Tsvangirai's reaction to Mugabe's arrogation of plenary power has been entirely consistent with his actions since the 27th June, 2008 presidential run-off. It was apparent after that election that the country was in a political deadlock, and Thabo Mbeki urged Tsvangirai and Mugabe to engage in negotiations. Tentative steps in this direction began almost immediately.[51]Although the run-off election had been almost universally condemned as not reflecting the wishes of the people, Tsvangirai made no attempt to bring an election petition to challenge the official result. After protracted negotiations in 2007, the Electoral Act had been amended obliging the courts to deliver judgement on such petitions within six months, thus seeking to avoid the position in the past where a compromised judiciary did not deliver judgements on electoral petitions before the next electoral cycle, rending the outcomes academic. Given the circumstances of the presidential run-off, even judges seen as sympathetic to Mugabe would have had difficulty in avoiding the conclusion that the election was vitiated by violence. There was considerable political mileage to be gained by bringing such a petition. It also would have strengthened the hand of the Zimbabwe Exiles Forum, which had lodged an application with the SADC Tribunal challenging the *de facto* recognition being accorded by SADC to Mugabe as Head of State.

Together these legal actions would have been a powerful bargaining chip in Tsvangirai's negotiating arsenal. In addition, there was also the question of the prosecution of those involved in the electoral violence which had been sufficiently wide spread and systematic to qualify as a crime against humanity[52]. Tsvangirai did not follow up on any of these issues. Once the talks were formally underway, the parties agreed to a media blackout. The dearth of information led to considerable speculation as to the progress of the negotiations. Such speculation suggested that Tsvangirai had been prevailed upon by Mbeki to neither pursue an election petition nor the issue of prosecutions for crimes against humanity on the basis that to do so would "jeopardise the talks". Tsvangirai thus seems to have taken these issues off the negotiating table, and did so without any apparent *qui pro quo*.

Furthermore, Tsvangirai allowed the negotiations to move away from his initial insistence that they concern arrangements for a transitional government, to talks about a unity government and "power-sharing." In these early stages Tsvangirai thus indicated that his non-negotiable positions were in fact flexible. This determined the power dynamics in the continued negotiations (and in the subsequent unity government) and when faced with the rigid intransigence of Mugabe, made it clear to SADC as to where pressure could effectively be applied when compromise was required to move the process forward.

As indicated above, the agreement that resulted from the closed door discussions gave very little power to Tsvangirai and the MDC formations. But more importantly, and remarkably, the crucial issue as to how ministerial portfolios would be divided was not part of the agreement. It is astounding that the agreement was concluded without this central issue having been addressed. It appeared that Tsvangirai had yielded to Mbeki's need for a rapid and "successful" conclusion to the talks before a satisfactory resolution of this issue. The MDC-T claimed that a verbal understanding had been reached in relation to the division of Ministerial portfolios. Yet, even if this were the case,

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[50] MDC-M strategy has not been dealt with separately. While that of MDC-T has been one of protest and capitulation, the MDC-M strategy has simply been one of capitulation, with its leadership more readily accepting the cession of power to Mugabe and ZANU PF. The leader of MDC-M, Arthur Mutambara has however incurred the ire of ZANU PF by forthrightly pointing out that no non-humanitarian aid and balance of payments support will be forthcoming until western benchmarks on governance are met.

[51] In fact, the deadlock was clear after the March, 2008 elections and Thabo Mbeki immediately urged Mugabe to enter into negotiations with Tsvangirai, rather than proceed with the presidential run-off – see http://www.dailymail.co.uk /news/worldnews/article-1027648/Zimbabwe-oppositions-TV-adverts-banned-Mugabe-schemes-steal-election.html#ixzz0RAy9pK3v 19/06/09.

[52] *Subliminal Terror? Human rights violations and torture in Zimbabwe during 2008.* Report produced for the Centre for Violence and Reconciliation by Tony Reeler, June 2009; Pigou. P (2008), *Defining violation: Political violence or crimes against humanity?* Paper commissioned by the Research and Advocacy Unit, SITO: IDASA.

one would have thought that the MDC-T would then have included a clause in the GPA which removed Mugabe's constitutional power[53] to unilaterally allocate the Ministries. It did not.

With Mugabe intent upon retaining all Ministries relating to the armed forces, intelligence and security, the MDC-T inexplicably began to insist on the allocation of the Ministry of Home Affairs to an MDC-T nominee. This stance was inexplicable in that the police force is directly controlled by the President. There would be little the MDC could do to prevent malicious arrests and prosecution of its members (as subsequent events were to demonstrate), or to ensure the prosecution of perpetrators of electoral violence, even with control of this Ministry. The MDC-T could and should have parted with this Ministry in exchange for the Ministry of Information or Local Government. The Minister of Local Government has an enormous amount of power over local authorities. Almost all urban councils were won by the MDC, making this portfolio one of considerable importance.

The MDC-T continued to insist that an equitable distribution of Ministries was a precondition to its entry into a unity government[54]. The question of the Ministry of Home affairs became central to this dispute and assumed a symbolic importance far above the actual significance of the portfolio. Mugabe's proposal that this Ministry be shared was categorically rejected by the MDC-T.

Tensions between the parties rose in the last months of 2008 when, in what could only be a conceived as deliberate snub of the supposed "spirit" and letter of the GPA, a wave of abductions of MDC-T and civil society activists by state agents ensued, with the police for several weeks falsely denying any knowledge of the abductees' whereabouts.

In a position paper written in January, 2009[55]the MDC-T set out what it considered to be breaches of the GPA and other understandings reached with Mugabe, demanding that these be remedied before it entered into a unity government. In addition to an equitable division of ministerial portfolios it demanded that legislation establishing a National Security Council which would have control over the military and security agencies be enacted. It also demanded: the reversal of the unilateral appointments by Mugabe of the Governor of the Reserve Bank, Attorney-General and Provincial Governors; it demanded the release of the 32 MDC and civil society activists abducted by state agents, the whereabouts of some still being unknown; and it demanded the opening of space for democratic activities and an end to the continued vitriol and hate speech[56] in the public media directed against Tsvangirai and the MDC. The following is typical of the kind of ultimatum issued by Tsvangirai or the MDC-T National Council over November 2008 to January 2009 period:

> *The MDC can no longer sit at the same negotiating table with a party that is abducting our members, and other innocent civilians, and refusing to produce any of them before a court of law. Therefore, if these abductions do not cease immediately, and if all the abductees are not released or charged in a court of law by January 1 2009, I will be asking the MDC's national council to pass a resolution to suspend all negotiations and contact with Zanu-PF.*
> (December, 2009)[57]

A SADC summit was set for the end of January 2009 to attempt to resolve the stalemate caused by these unresolved issues. In the build up to the summit, the MDC-T categorically and repeatedly stated that SADC had to resolve the outstanding issues before a new government could be formed.[58]

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[53] Constitution 31D(1)(a).
[54] *Mugabe on Leave, May Delay New Govt* http://africa.reuters.com/ 04.01.09.
[55] *MDC Position Paper on Agreement* The Zimbabwe Times http://www.thezimbabwetimes.com/? 19.01.09.
[56] See generally *The Language of Hate* Media Monitoring Project Zimbabwe, Zimbabwe 2008.
[57] *Mugabe Defiant as Pressure Builds* Mail and Guardian Online *http://www.mg.co.za/Dec 20 2008.*
[58] *MDC Says Will Not Participate in GNU* The Zimbabwe Times http://www.thezimbabwetimes.com/ 11/01/09.

On the 27th January, 2009 the Extraordinary Summit of the SADC issued a communiqué which stated that:

- *the parties shall endeavour to cause parliament to pass the constitutional amendment 19 by 5 February 2009.*

- *the Prime Minister and the Deputy Prime Ministers shall be sworn in by 11 February 2009:*

- *the Ministers and Deputy Ministers shall be sworn in on 13 February 2009, which will conclude the process of the formation on the inclusive government.*

- *the Joint-Monitoring Implementation Committee (JOMIC), provided for in the Global Political Agreement shall be activated immediately. The first meeting of JOMIC shall be convened by the facilitator on 30 January 2009 and shall, among other things, elect the chairpersons;*

- *the allocation of ministerial portfolios endorsed by the SADC Extraordinary Summit held on 9 November 2008 shall be reviewed six (6) months after the inauguration of the inclusive government.*

- *the appointments of the Reserve Bank Governor and the Attorney-General will be dealt with by the inclusive government after its formation*

- *the negotiators of the parties shall meet immediately to consider the national security bill submitted by the MDCT-T as well as the formula for the distribution of governors.*

The MDC-T immediately issued a response to this communiqué, pointing out that the outstanding issues and their preconditions for entry into a unity government had not been met, stating:

> *Quite clearly the conclusions reached as reflected in the communiqué fall far short of our expectations. Most importantly they do not accord with our National Council resolutions of the 14th of November 2008 and 12th of December 2008.*

So the MDC did not vigorously object to the fact that SADC had claimed the power to impose a resolution on the parties, and one which almost exactly mirrored Mugabe's position. Instead, the MDC meekly accepted SADC's conditions, including the unrealistic instruction that the outstanding issues be dealt with by the inclusive government. In accepting this instruction the MDC-T and Tsvangirai discarded the last of the fist full of aces held after the June, 2008 election; that is, the refusal to enter into the inclusive government.

The MDC-T again raised these outstanding issues prior to the passage of constitutional amendment 19, weakly suggesting that their resolution was a precondition for the passage of this bill. Preconditions set by Tsvangirai and the MDC had, however, by then ceased to be taken seriously by anyone. In fact, not only did the MDC allow the passage constitutional amendment 19 through parliament without debate, but did so without any attempt to adopt any of the more favourable provisions of its own draft (with one exception[59]). The amendment incorporated article 20 (which

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[59] The exception was a compromise on the meaning of the term "consultation with". ZANU PF wished this term to have its usual and legal meaning. The MDC-T insisted that all had understood the term to mean "with the agreement of". The compromise was that "after consultation with" was

determined the structure of government) of the GPA wholesale into the constitution, thus infecting Zimbabwe's constitution with its many ambiguities, legal inconsistencies and absurdities.

Tsvangirai was then sworn in as prime minister on the morning of the 11th February, 2009, and constitutional amendment 19 signed into law by Mugabe that afternoon.[60] The MDC declared the arrangement a transitional one, to end with elections held under a new constitution that was to be crafted for the country. The GPA and bill presented to parliament contained an 18 month schedule for the drawing of the new constitution. However, on signing the amendment into law, Mugabe quietly (and without objection from the MDC) dropped this schedule from the amendment that had been passed by parliament (rendering the legality of the entire amendment suspect[61]). There is thus no constitutionally binding timetable for the introduction of a new constitution. Furthermore, contrary to the MDC's claims, there is nothing in the amendment providing that the government is to be transitional only. The MDC has once again claimed a verbal understanding in this regard.

On entry into office, Tsvangirai immediately held a rally at which he told supporters that the abductees would not be held in custody "any day or week longer"[62] – hardly a wise statement, when in fact he was powerless to prevent their incarceration for several more months. With the last rites being administered to Zimbabwe's currency in which the army and civil servants were receiving their wages, military commanders, nervous of restless troops, would also have been pleased to hear Tsvangirai state that the MDC-T intended to ensure that all salaries would be paid in foreign currency, thus solving a major problem for Mugabe in relation to one of his key constituencies.

With Tsvangirai's appointment as Prime Minister and legislation in place for the formation of the "inclusive government", a ceremony to sign in the new Ministers was held on the 13th February, 2009. It descended into farce. The concession Mugabe had made to limit the number of ZANU PF Ministers he could appoint was not insignificant. It limited Mugabe's ability to accommodate the various feuding factions of ZANU PF in a manner they would all find impartial. Stalwart supporters would have to be dropped, and his party was likely to become more fractious and weakened as a result. Mugabe thus simply ignored the now constitutional provision that the number of Ministers nominated by ZANU PF be limited to 15. All firmly loyal Ministers in Mugabe's previous administration were invited to be sworn in as Ministers. The MDC-T objected. However, any fears that the foreign dignitaries who had arrived to witness the ceremony would be disappointed, were allayed by the rapid capitulation by the MDC. The MDC formations agreed that Mugabe could swear in six extra Ministers if it were allowed four extra Ministers of its own. Similarly, the number of deputy ministers was to be increased to 20 from 15[63]. None of these additional appointments are legally valid in that, by incorporating article 20 of the GPA into the constitution, the number of Ministers is constitutionally prescribed and limited.[64]

Thus, in ignoring these constitutional provisions, the very entry into office by the MDC, a party that campaigns on the platform of the rule of law, violated the constitution of Zimbabwe. And the extra Ministers, with unparalleled irony, violated the constitution in the very process of swearing an oath

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given its ordinary and legally understood meaning and "in consultation with" was to mean after securing the agreement or consent of" – see further in the text.

[60] The constitution contains no provision for the swearing in of a prime minister. By a matter of hours then, Mugabe had technically compiled with the requirement of the GPA [article 20.1.3(j)] that Tsvangirai be appointed "pending" the enactment of constitutional amendment 19. However, this seems to have been more by accident than design. A government Gazette subsequently declared Tsvangirai's appointment as being with effect from the 18th February, 2009.

[61] For an Act to become law, Mugabe must sign the Bill as passed by parliament, and not any other version. Several sections incorporating other schedules were also removed from the Bill passed by parliament. The Minister of Justice who had introduced the Bill incorrectly claimed that the schedules were for "public information purposes" only and were not, despite the clear wording of the Bill, of any constitutional significance. Section 115 of the Constitution now makes reference to a schedule 11, which no longer exists as a schedule to the constitution.

[62] Inaugural speech by Morgan Tsvangirai 11/02/09 "*It hurts that as we celebrate here today, there are some who are in prison. I can assure you that they are not going to remain in those dungeons any day or any week longer."*

[63] *The Day Mugabe Will not Easily Forget* http://www.thezimbabwetimes.com/?p=12098 20/02/09

[64] The parties sought to defend these unconstitutional appointments by advancing the astounding and legally unsustainable argument that the number of Ministries was part of article 20 of the GPA (itself part of the constitution) and that the parties could alter the GPA by agreement amongst themselves. The suggestion is that the parties can thus adjust the constitution as and when they deem fit.

to uphold it. To add to the farce, while the swearing-in ceremony was taking place, Deputy Minister designate Roy Bennett was arrested on charges of "banditry". These charges had unsuccessfully been levelled two years previously at the Home Affairs Minister designate, Giles Mutsekwa, who had been indicted as Bennett's co-accused. Mutsekwa judiciously decided to miss his swearing-in and be out of the country "on business" on the day of the ceremony and Bennett's arrest.[65]

Since the appointment of 31 Ministers and 15 Deputy Ministers are appointments made by Mugabe in terms of the constitution, they must be made "after securing the agreement or consent of" Morgan Tsvangirai. The implication, therefore, is that while Mugabe formally appoints nominees to the portfolios, the nominees must be mutually acceptable. Tsvangirai made no attempt to exercise this power in relation to the appointment of Ministers and Deputy Ministers, allowing Mugabe a free reign in relation to ZANU PF appointees – despite the fact that the past record of some made them manifestly unsuitable for their positions[66]. Mugabe did not extend a similar courtesy to Tsvangirai. He refused to swear in Tsvangirai's nominee, Roy Bennett, as Deputy Minister of Agriculture, and *bete noir* of ZANU PF stalwarts, ostensibly on the grounds that Bennett now faced "serious criminal charges".

Unsurprisingly,[67] with an etiolated MDC now formally part of the government, Mugabe has no incentive to resolve the issue relating to his unilateral appointments and which the SADC communiqué had instructed was to be dealt with by the inclusive government. Recent pronouncements by ZANU PF officials have indicated that ZANU PF regards all these appointments as made in terms of Mugabe's powers under the constitution and not open for discussion. The only outstanding issues, so claim these ZANU PF officials, are "sanctions" and "interference" by the international community.[68]

Mugabe compounded the issue of unilateral appointments by further unilaterally and unconstitutionally appointing all permanent secretaries.

Following a by now familiar pattern, Tsvangirai declared these appointments "null and void" as having been made in violation of the constitution. Yet a few weeks later, in a MDC-T press statement released on 21st May, 2009 Tsvangirai disingenuously declared:

> *I am pleased to announce that we have reached agreement on these appointments. We went through each one of the persons proposed and satisfied ourselves that they were suitable in terms of experience and qualifications. We do not believe that civil servants should be appointed on a partisan basis, so there will be no civil servant from the MDC or ZANU-PF.*

The suggestion that ZANU PF stalwarts such George Charamba, permanent secretary in the Ministry of Information and orchestrator of ZANU PF's propaganda campaign[69] against the MDC and Tsvangirai in the state media, is a non-political appointment, was not believed by anyone.

The pattern of protest and capitulation was echoed at a ministerial level when Mugabe removed control of government's surveillance infrastructure, away from an MDC-T Minister, Nelson Chamisa, reassigning this duty to a ZANU PF Minister.[70] Chamisa called the reassignment "unacceptable" and said he would resign if the issue was not addressed. The following month, Chamisa, left with authority over telecommunications alone, in accordance with instructions from

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[65] *Zimbabwe Government in Crisis as Roy Bennett Charged with Treason* The Times 13/02/09 http://www.timesonline.co.uk.

[66] Mugabe himself had described the crop of Ministers he reappointed as his "worst cabinet ever". *Mugabe Appoints a War Cabinet, Excludes Youth.* See www. kubatana.net .

[67] *None of MDC's Demands Will Ever Be Met* http://www.thezimbabwetimes.com/?28.01.09.

[68] *Mugabe's Party Blames Sanctions for Zimbabwe's Woes* http://www.businessday.co.za Sapa-AFP 27/08/09

[69] *Tsvangirai Media-Onslaught Intensifies* http://www.radiovop.com 06/09/09.

[70] *Mugabe Clashes With Tsvangirai* http://www.thezimbabwestandard.com 11/04/09.

Tsvangirai, referred to his reduced powers as "a fairly reasonable compromise under the circumstances".[71]

Notwithstanding incidents such as these, Tsvangirai has continued to insist that he shares power equally with Mugabe. The following statement is fairly typical:

> *There is nothing he* [Mugabe] *does that I don't agree and nothing I do that he does not agree.*[72]

In the face of overwhelming facts and specific statements by Mugabe to the contrary, the best impression left by this statement is simply one of the pathos that attaches to the bravery of the humiliated confronting overweening power.

Tsvangirai's and the MDC's failure to exercise power extends beyond the arrogation by Mugabe of the power afforded to the MDC under the GPA and constitutional amendment 19. Outside of these instruments, the combined MDCs have significant power by virtue of their parliamentary majority. While they do not have the power to pass legislation without ZANU PF support[73], they have a majority on the powerful parliamentary Standing Rules and Orders Committee (SROC). This Committee is responsible for submitting lists of nominees to Mugabe from which Mugabe must choose Commissioners for various constitutionally established commissions. The most important of these are the Zimbabwe Media Commission (the ZMC)[74] and the Zimbabwe Electoral Commission (ZEC). It is hoped that these Commissions will bring about much needed reforms to the media and electoral environments respectively.[75]

It was thus expected that the MDCs would immediately ensure the establishment of the SROC at the first session of parliament. Yet it waited two months to do so. Despite being established in April, 2009 this Committee did not submit its list of nominees to Mugabe for appointment to the ZMC until August. ZANU PF stalwarts who had been responsible for suppressing media freedom in the past who had put their names forward to be included on the list were initially excluded. ZANU PF professed outrage at this exercise of power by the MDC parliamentarians and claimed that the manner in which the list had been compiled was procedurally defective (which it was not). However, the MDC-T again capitulated and allowed a revision of the list to include two ardent ZANU PF supporters.[76] Mugabe chooses nine of the list of twelve submitted to him, but more importantly, chooses the chairperson of this Committee from the nine.[77] There is little doubt that Mugabe will choose for this position one of the ardent ZANU PF supporters inserted onto the list and will again ignore the constitutional requirement that he gain Tsvangirai's consent before doing so.

SROC has not submitted lists for any of the other Commissions. This omission is particularly significant in relation to ZEC as not only is the establishment of a credible electoral body vital (as the last elections proved[78]), but also because some 15 by-elections to fill parliamentary vacancies are due. Mugabe has ignored provisions of the Electoral Act which require him to set the electoral process in motion on being informed of the vacancies by the speaker of parliament[79]. The absence

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[71] Quoted in The Zimbabwean 23/05/09.

[72] *Tsvangirai Now GNU's Public Relations Officer* Zimbabwe Times 4/05/09

[73] The legislature consists of parliament *and* the president who must assent to any legislation before it becomes law. The refusal to give consent may only be overridden by a two-thirds affirmative vote in this regard by the House of assembly.

[74] Set to replace the defunct MIC – see above.

[75] This may be somewhat misplaced. It is generally accepted that in a democracy the media should be self regulated and not subject to state power though a controlling body, such as a media commission. Furthermore, while it is generally assumed that the ZMC will assume the powers of the defunct MIC, the legislation in question does not provide for this.

[76] *Zanu PF Hijacks Selection of Media Commissioners* http://www.thezimbabwestandard.com 22/08/09.

[77] Section 100N of the Constitution. However, the Commission is also established in terms of the Access to Information and Privacy Act [Chapter 10:27] in identical terms section 38(2) and 38(3).

[78] See D. Matyszak ZEC Critique and ZESN 2008 Report.

[79] Section 39 of the Electoral Act [Chapter 2:13].

of the newly constituted ZEC is cited as a justification for this violation.[80]

Exigencies of time and space do not allow a complete account of the MDC-T's unwillingness to oppose Mugabe's unlawful arrogation of plenary power, capitulations made by Tsvangirai, and the lack of will by the MDC-T and Tsvangirai to exercise the little power they do have. It is, however, clear that this is a deliberate policy by the MDC-T leadership. The policy has been pursued in conjunction with one of conciliation, appeasement and propitiation by the MDC-T. Tsvangirai has repeatedly made statements indicating that he has a good working relationship with Mugabe, that they frequently share jokes together[81] and that Mugabe is "part of the solution".[82] The MDC-T went so far as to issue a eulogy at the funeral of military commander Vitalis Zvinavashe (who had been amongst those obliquely threatening a coup if Tsvangirai won the 2002 presidential election[83]) praising his "dedication, selflessness, conviction and patriotism".[84] Tsvangirai has also down played continued violations of human rights and the rule of law, in one instance disingenuously stating that the on-going invasions of white owned farms and violence against their occupants had been "blown out of all proportion".[85]A sharp departure from his statement two months earlier in relation to farm invasions that:

> *Those continuing to undertake these activities will be arrested and face justice in the courts.*[86]

The question thus arises as to why this policy has been adopted. It is explained by MDC-T apologists as follows. The MDC-T hopes that simply by being in the corridors of power that they can use their ability to improve service delivery to win support amongst ZANU PF voters. By adopting a conciliatory stance, even in the face of severe provocation by ZANU PF, the MDC hopes to remove the atmosphere of confrontation and antagonism between the parties which has led each side to dehumanise the other. This, together with a reformed constitution, will engender the conditions necessary for free and fair elections which they will win.[87]

A seemingly insignificant event in the rural Gutu South constituency provides a cameo of this policy. A donor agency agreed to fund a football tournament involving both MDC and ZANU PF supporters. The event generated considerable excitement amongst villagers looking forward to receiving the infrastructure, kit and refreshment that will accompany the tournament. Being western donor funded, ZANU PF security agents pronounced the tournament an MDC event and sought to have it cancelled. However, ZANU PF villagers, anxious that the event proceed, refused to co-operate with the security agents in this regard. The MDC believes that by replicating situations such as this on a small and large scale through the country ZANU PF power will largely disappear.

There are several necessary concomitants to this strategy. It is necessary for the MDC to present to the international community that the unity government "is working" – though exactly what "working means" is left undefined. The intention is to encourage aid flows into the country in order that the devastated economy can be repaired and service delivery restored. While the restoration of aid beyond the merely humanitarian may well have this effect, it will also remove the penultimate incentive for ZANU PF and Mugabe to introduce democratic reforms.[88] To show that the unity

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[80] The GPA and Constitution [schedule 8] provide that ZANU PF and the MDC formations will not oppose each other in by-elections for a one year period from the signing of the GPA [Article 21.1. The delay in holding these by-elections means that all the by-elections will now be contested, as the one year period will have expired.

[81] *Interview: Morgan Tsvangirai on Sharing power with Robert Mugabe.* http://www.guardian.co.uk/world/2009/ aug/18/morgan-tsvangirai-interview-zimbabwe-mugabe.

[82] *Tsvangirai Insists Mugabe is 'part of Zimbabwe's solution'* Guardian *1*0/05/09. http://www.guardian.co.uk /world/2009 /may/10/morgan-tsvangirai-robert-mugabe-zimbabwe.

[83] See below.

[84] *MDC's Condolence Message on the Death of Retired Army-General Zvinavashe* 11/03/09 http://www.nehandaradio.com.

[85] *Prime Minister Plays Down Farm Attacks* http://www.swradioafrica.com 25/05/09.

[86] *Tsvangirai Vows to End Impunity and to Arrest Farm Invaders* http://www.swradioafrica.com 27/03/09.

[87] See for example Eddie Cross *Zimbabwe: Is the Tide Turning Against Mugabe*?http://www.politicsweb.co.za 04/06/09.

[88] The remaining pressure point would be travel bans and targeted sanctions against senior Mugabe and ZANU PF supporters.

government is working and to remove the antagonism between the parties, the MDC has sought to avoid confrontation with ZANU PF in any area of governance. This has required the MDC-T to accept Mugabe's unlawful arrogation of power and violations of the constitution and GPA or to pass its complaints to SADC for resolution, despite SADC's record of deference to Mugabe.[89] It has also required Tsvangirai to ignore ongoing violations of the rule of law, particularly in relation to the continued violence against white farmers.[90]Tsvangirai also stated in relation to abductees still unaccounted for that claims of their abduction must be "taken with a pinch of salt"[91].

The MDC-T leadership has had some difficulty in justifying its repeated capitulations to its supporters. It has sought to do so by suggesting that there are "residual" elements within ZANU PF opposed to the unity deal[92]. It is these elements who are allegedly responsible for violations of the rule of law and its uneven application - manifested most prominently in the failure to arrest ZANU PF perpetrators of violence and assiduous arrest of 14 MDC MPs on dubious charges. Since the claimed aim of these residual elements is to collapse the unity government, the correct tactic , it is suggested, is to ignore these violations and provocations to keep the unity government intact and "working". Should the unity government collapse, MDC apologists warn darkly, a coup and/or bloodbath will follow.[93] Nothing should therefore be done to antagonise the "residual" elements in a way which provides a justification for this course of action. And, since the exercise of any power antagonises the residual elements, the best approach is thus to avoid doing so. Constant warnings about a coup serve as a convenient fig leaf for both Mugabe and MDC.[94]

In fact, it is doubtful that there are any "residual elements". There is no evidence that Mugabe and ZANU PF as a whole are setting policy which is opposed by elements within ZANU PF such as the heads of the armed forces and the Attorney-General. Heads of the armed forces hold office at Mugabe's pleasure and it is unlikely that Mugabe would have appointed Johannes Tomana as Attorney-General if Mugabe regarded him as likely to obstruct ZANU PF strategy. On the contrary, all evidence, both now and for the past 28 years, indicates that ZANU PF remains integrated, cohesive, and united under Mugabe and his lieutenants. The strategy outlined above, and violations of the Constitution are policy determinations of Mugabe and ZANU PF as a whole and not aberrations in a supposed policy of conciliation by a supposed residual minority of obstructionists.

The Result.

The result is a symbiotic relationship between Tsvangirai and Mugabe. Mugabe wishes to exercise plenary power in all aspects of governance of any importance, while Tsvangirai is unwilling to exercise any power of any significance whatsoever. ZANU PF is thus delighted with the unity government: the problem of legitimacy arising from the unrecognised election of the 27th June has been solved; ZANU PF has been sanitised by virtue of being part of a unity government; the MDC has been silenced as an opposition party and the criticism of western governments levelled against Mugabe's administration has been muted in tandem with the MDC's policy; the MDC has accepted the role that had been very deliberately created for it - to use its favourable relationship with western donor countries to resuscitate service delivery in Zimbabwe; and the MDC, after having

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[89] G. Kwinjeh.(2008) *Staring a Gift Horse in the Mouth. Death Spiral in Zimbabwe: Mediation, Violence and the GNU.* www.gracekwinjeh.bloggspot.com. And see *SADC and GNU Analysis with Ozias Tungwarara* http://www. Swradio africa.com /pages/hotseat150909.htm 11/09/09.

[90] According to the MDC there have been 480 violent incidents on white held farms since the signing of the GPA. *The Cost of the Farm Invasions* Zimeye 27/04/09 ZimEye.orghttp://www.zimeye.org/?

[91] Interview on the BBC's Radio 4 *Today* Programme 22/06/09.

[92] See for example the BBC interview footnote immediately above.

[93] See for example Brian Raftopolous quoted in The Zimbabwe Independent *Mugabe Support Plunges - Survey* http://www.thezimbabweindependent.com/ 04/09/09.

[94] See Eddie Cross *Street Fighting* http://www.eddiecross.africanherd.com/ 15/02/09 In fact the heads of the armed forces have been singularly coy about using the word "coup" or "take over". However, the fact that the military has been very wary of directly stating that they would instigate a coup suggests that the military is aware that this is perhaps the one line SADC will not allow ZANU PF to cross. The view occasions SADC and the AU have acted with any vim have been to condemn coups, such as that in Mauritius – however, it must be noted that these coups have deposed incumbents rather than kept them in power, as would be the case in the Zimbabwe scenario.

persistently and correctly stated that there are no sanctions against Zimbabwe, but rather targeted sanctions against senior ZANU PF supporters, has adopted ZANU PF terminology and called upon the international community to lift sanctions against Zimbabwe.[95] These advantages accruing to ZANU PF from the unity government indicate that the suggestion by some that ZANU PF wishes to collapse the unity government, is, at present, incorrect.

On the contrary like the MDC, ZANU PF wishes to portray the unity government as "working", but without conceding anything that will amount to democratic reform. To do this, all parties have agreed to roll out programmes relating to the drawing of a new constitution for Zimbabwe and "national healing" in line with the GPA. These programmes are held out as examples of co-operation between the parties and of a working unity government. Numerous conferences and workshops have been convened (with much fanfare) relating to these programmes and which have absorbed the bulk of donor governance funding[96] and the attention of civil society. None have achieved anything. It is specifically intended that they do not achieve anything. With over 250 MPs involved in "outreach" component of constitution making, the remaining 40 MPs in both Houses will not have the quorums necessary and parliament will be required to adjourn. There will thus be no possibility during this period of considering any reformist legislation, even if this were introduced as the GPA requires.[97]

The GPA contained a provision that once constitutional amendment 19 had been agreed, the parties would ensure its passage through parliament. There is no equivalent undertaking that any "people driven" constitution approved by the citizenry in a referendum will be passed by parliament. ZANU PF thus retains full control over this process as a two-thirds majority (and thus ZANU PF support) will be required to enact any new constitution. It is clear that ZANU PF will not allow any new constitution to contain clauses with which it is not comfortable - such as one rendering anyone (such as Mugabe) who has held office for more than two terms ineligible for re-election as president, or elections based on proportional representation. As a result, the MDC is aware that any constitution presented to the people for approval must be one capable of garnering the support of ZANU PF in parliament. This means that if a new constitution is to be adopted the MDC will have to ensure that it is one which is acceptable to Mugabe, and one that leaves his powers intact, rather than one which is "people driven".

Similarly the "national healing" programme required by the GPA has been deliberately couched as such rather than one of "transitional justice". It has been explicitly stated that the programme will focus on "forgiveness".[98] Thus there is no intention to address the restorative, truth telling and prosecutorial components of "justice". Victims of violence are simply to be exhorted to forgive, forget and move on. Yet this programme serves to provide a façade that the issue is being addressed, and addressed jointly by the parties in a working unity government.

Ostensibly, the constitution making process is to take 18 months and be followed by elections. It is unlikely that ZANU PF wishes these elections to take place as scheduled. A recent opinion poll has put overt support for ZANU PF at 8%. 31% - 33% of those polled allegedly did not wish to state a preference while 57% percent indicated support for the MDC[99]. The March 2008 elections have

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[95] *Tsvangirai Comes Out Against More Sanctions - Mugabe 'delighted'* The Zimbabwe Independent 20/11/08 http://www.thezimbabweindependent.com/. There have however recently been a few statements indicating a reversion to the MDC-T's original position see - *MDC Says There are no Sanctions on Zimbabwe* SWradio 04/09/09 http://www.swradioafrica. com/pages/hotseat070909.htm

[96] See for example *UNDP to Fund Zim's National Healing Campaign* http://www.zimonline.co.za 07/09/09.
[97] See Veritas Bill Watch 31/2009 (12/09/09)
[98] *Leaders to Launch National Healing Friday* http://www.thezimbabwetimes.com/?p=20074 22/07/09
[99] *Mugabe Support Plunges - Survey* http://www.thezimbabweindependent.com/ 04/09/09.

already shown that ZANU PF cannot win an election held under even a semblance of democratic conditions. ZANU PF can only win an election by repeating the bloody and intimidatory campaign of the June 27th run-off, and has established the militia bases necessary to facilitate this.[100]The militarization of rural villages established before the June 27th presidential run-off election continues, with the additional rural support of those resettled on the former commercial farms, whose continued tenure is wholly dependent upon ZANU PF patronage. However, a further violent election will again raise the issue of ZANU PF's and Mugabe's legitimacy, which the unity government and MDCs have presently kindly solved. ZANU PF officials have thus recently taken to pointing out that nothing in the letter of the GPA or constitution requires that elections be held before the end of the five year life of the current parliament.[101]

The only source of chagrin for the ZANU PF leadership is thus travel bans, the freezing of external assets and targeted sanctions against them and their businesses. Not only are these measures effective in themselves, they also hamper the ability of ZANU PF, deprived of its ability to loot the fiscus and use state resources, to raise funding necessary to conduct an effective election campaign and fund the militia bases. With ZANU PF's attention focussed firmly where that of the MDC formations and civil society is not, on elections, the leadership is desperate to have these restrictive measures removed.

It is unclear whether ZANU PF's apparent indignation in relation to these restrictive measures is real or feigned. It is possible that ZANU PF is a victim of its own propaganda in regard to the MDC's relationship with western powers. Having portrayed the MDC as "puppets" and "stooges" of western "imperialist" countries bent on "illegal regime change", ZANU PF may have expected that including the MDC in the government would result in a softening of the stance of these countries and that the aid necessary to revive Zimbabwe's economy would be forthcoming. It is generally recognised that there will be no significant improvement in the Zimbabwean economy without balance of payments support. ZANU PF may also have hoped that targeted sanctions imposed by the European Union against some 203 ZANU PF senior officials would be lifted. ZANU PF describes the lack of donor aid and targeted sanctions against its officials as "illegal sanctions against Zimbabwe" and responsible for Zimbabwe's economic melt down. The facts are somewhat different.

Zimbabwe is indebted to the Bretton Woods institutions in an amount of US$4.7 billion.[102] The rules of these institutions preclude the advance of further loans until debt arrears have been serviced. Zimbabwe requires donor assistance to clear these arrears. The refusal of the west to pay off debts incurred by successive Mugabe administrations can hardly be termed sanctions. However, after the violence of the presidential run-off election in 2008 in January 2009, the EU extended its sanctions to cover specified companies controlled by ZANU PF officials or persons perceived to be supporting ZANU PF. In so doing, the EU followed the lead of the United States which had imposed restrictions on trade with designated ZANU PF controlled companies and parastatals in terms of a 2001 Act, the Zimbabwe Democracy and Recovery Act (ZIDERA). This Act is the only measure that approaches anything that could be legitimately regarded as "sanctions" against Zimbabwe. However, it is unclear whether the provisions of this Act have had any effect on Zimbabwe, rather than on the individuals whose travel is restricted and assets frozen. Certainly no specific instances of the effects ZIDERA on Zimbabwe have been cited by the ZANU PF controlled

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[100] There is no evidence that military personnel (accused of perpetrating violence) have been withdrawn from the villages to which they were posted in the pre-presidential election run-off period. Militia bases remain intact or ready to be re-established at short notice. See *Army Units Deployed in Rural Areas Last Year, Are Still There* http://www.swradioafrica.com 03/06/09 and a September 2009 report by Crisis in Zimbabwe Coalition *Can Apples be Reaped from a Thorn Tree? – Zimbabwe's Road to Transition*.

[101] See *Idea of Five-Year GNU Gathers Momentum* http://www.thezimbabwetimes.com/?p=21589 23/08/09. Mugabe retains control over the timing of the elections. While the dissolution of parliament during the course of the unity government requires Tsvangirai's consent, Mugabe may withdraw from the unity agreement at any time of his choosing and his sole prerogative to determine the date of any election under the constitution would be restored.

[102] *Inclusive Government to Inherit US$ 4,7bn Debt* The Zimbabwean http://www.thezimbabwean.co.uk/ index.php?option=com_ content&task=view&id=18350&Itemid=103 07/02/09.

state media – which would not be likely to miss the opportunity to point such effects out. Instead, continual reference is made to the fact the ZIDERA requires the United States representatives on the boards of the Bretton Woods institutions to vote against the provision of loans to Zimbabwe. Since, as indicated, the rules of these institutions do not permit any loans to Zimbabwe until arrears are cleared, this US veto has yet to have any relevance.[103]

However, the stated and overt purpose of these provisions is not to compel Mugabe to cede power to the MDC-T. If ZANU PF's own propaganda led it to believe that is the case, it was bound to be disappointed that these measures remained in place after the formation of the inclusive government. The removal of the restrictions imposed by the EU and the United States is explicitly stated as conditional upon the restoration of the rule of law and opening of democratic space in Zimbabwe.

This then brings to the fore the incommensurability between the policies of ZANU PF and those of the MDC-T. It was pointless for the MDC to enter into any agreement with ZANU PF which did not ensure the restoration of democracy and the rule of law. Without this, no western aid would be forthcoming and Zimbabwe's economic recovery would not be possible. Yet ZANU PF could not enter into any agreement which did restore democracy and the rule of law as the result would be a loss of power. This dilemma remains the focal point of Zimbabwe's polity – ZANU PF's refusal to open democratic space in Zimbabwe, and the consequent lack of donor support to revive Zimbabwe's economy. The stalemate that existed after the June 27th run-off election has thus merely been papered over.

Since the elections of the 29th March, 2008 have demonstrated unequivocally that ZANU PF cannot currently win an election in Zimbabwe under democratic conditions, ZANU PF's strategy thus demands the retention of all levers of power that control democratic space and all aspects of executive power. While the MDC seeks to increase support by changing the "mind set" of ZANU PF supporters through service delivery and conciliation, the ZANU PF cabal setting policy has every intention, come the next elections, of unleashing its power to ensure that the voice of this support for the MDC is never heard. If western countries relent and provide non-humanitarian aid to clear arrears owed to the Bretton Woods institutions by Zimbabwe without concomitant democratic reforms, it is likely that a part of the funds then provided by the IMF will fund ZANU PF's patronage and electoral machinery. The task of ZANU PF will have been made that much easier.[104]And, in the absence of any realistic strategy or opposition by the MDC to the rule of Mugabe and ZANU PF the last impediment to full and unfettered hegemony will have been removed.

[103] Nor does the United States have a majority vote in these institutions.

[104] *I Am in Charge of IMF Funds'* – Gideon Gono http://www.zimeye.org/?p=8872 06/09/09. Money for patronage and electoral campaigns have previously come from the printing of money and the raiding of foreign currency accounts (see *Zim: Central Bank Raids Foreign Accounts* http://www.africanews.com 09/04/09), including those of international NGOs by the Governor of the Reserve Bank - options which are no longer available. The replenishment of the coffers of the Reserve Bank would solve one of the last remaining problems for ZANU PF.