



*ZIMBABWE'S FAILURE TO
MEET THE BENCHMARKS IN
THE COTONOU AGREEMENT*

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INTRODUCTION¹

On 23 June 2000 the Lome Agreement was replaced by the *Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States and the European Community and Its Member States*. Unlike its predecessor (essentially a trade agreement) the Cotonou Agreement, as it became known, expanded the cooperation between the parties into the political sphere, explicitly giving cognisance to the fact that issues of governance are inseparable from economic development. This aspect of the agreement has been successively strengthened, particularly through amendments introduced by Annexure VII, agreed in 2005. One such amendment was to article 9 which now is headed:

Essential elements regarding human rights, democratic principles and the rule of law, and fundamental elements regarding good governance.

Through this article the parties affirm their commitment to respect for all human rights and fundamental freedoms based on the rule of law and transparent and accountable governance in line with other obligations under international human rights treaties.

The Cotonou Agreement introduces various instruments designed to ensure compliance, firstly through dialogue under article 8 and then through the enforcement mechanisms of article 96. Section 2(a) of the latter article provides that if the political dialogue procedures fail to gain compliance, and the formal consultation procedures likewise fail to yield a solution acceptable to both parties, “appropriate measures” may be taken.

The flagrant non-compliance of the Zimbabwean government of its obligations under article 9 brought these procedures into play and rapidly led to the adoption of “appropriate measures”. These measures included a freeze on assets and visa restrictions for senior government officials.

As part of the consultation process, the European Union (EU) set various “benchmarks” and Zimbabwe's progress towards meeting these benchmarks determines whether the appropriate measures should be revoked or renewed. The measures were last renewed in February 2006 and are due for review in 2007. The purpose of this paper is therefore to consider the steps the Zimbabwean government has taken towards or away from these benchmarks in 2006.

¹ This paper can be read in conjunction with a more detailed analysis of the Cotonou Agreement and Zimbabwe's obligations under the Agreement. Here see *Zimbabwe Human Rights NGO Forum (2006), ZIMBABWE AND THE COTONOU AGREEMENT: A Briefing Paper. December 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.*

THE EU BENCHMARKS

General

The resumption of a constructive dialogue between ZANU-PF and MDC is a key condition for the democratic life of the country, aimed at re-establishing a national consensus on all aspects of governance, human rights and economic development. The achievement of mutually agreed, satisfactory results in this context would supercede some of the recommendations below. Moves toward the implementation of these recommendations would in any case demonstrate a commitment on the part of the Government of Zimbabwe to respond to the EU's concerns. These benchmarks are equally valid for any present or future government in Zimbabwe.

Short term

1. Political intimidation and violence

- Cessation of all forms of political intimidation and violence.
- Active prosecution of perpetrators.
- Closure of Border Gezi Training Camps and disbanding its militia.

2. Democracy and Human Rights

- Suspension of the implementation of the provisions of the Public Order and Security Act (POSA), (pending its amendment), relating to the conduct of political activities such as public meetings and demonstrations, which is limiting drastically the freedom of association and which is used as an instrument of political repression.
- Agreement between political parties on a code of conduct to apply in the framework of elections in accordance with the norms and standards of the SADC Parliamentary Forum.
- An Invitation to the UN High Commissioner for Human Rights to visit Zimbabwe to initiate an assessment of outstanding claims of human rights abuses.

3. Freedom of mass media

- Withdrawal of all existing charges against journalists under the Access to Information and Protection of Privacy Act (AIPPA).
- Suspension of the implementation of the AIPPA "pending its amendment", to ensure full freedom of expression and removal of unnecessary restrictions on accreditation.

4. Justice

- Immediate implementation of all court rulings.

5. Land reform

- Speed up the process by which farms that do not meet the criteria, are de-listed and move all occupiers from the de-listed or non-listed farms.
- Enforce all bilateral agreements on Promotion and Protection of Investments.
- Ensure an independent audit of the land reform, with full United Nations Development

Programme (UNDP) participation, as an equal partner, with a view to assessing the extent to which the programme has been implemented in a fair manner, in the interest of all the people of Zimbabwe, as agreed in the Abuja conclusions and make recommendations on how to resolve all outstanding issues including the revival of production.

6. Food and humanitarian assistance

- Provide accurate and transparent information to donors on the food situation in the country. Remove all administrative obstacles to fast-track all pending registration of NGOs.
- Remove legislative and administrative obstacles, which prevent the private sector from playing its role as regards food production, imports and distribution.
- Work with UNDP and World Food Programme (WFP) on all aspects of food security programmes in order to dispel concerns that in some instances food and relief operations are being carried out on partisan grounds and to ensure that food reaches all vulnerable groups.

Medium term

- Incorporate all SADC Parliamentary Forum's electoral principles in domestic law, with a view to holding free and fair elections in the presence of impartial observers.
- Amend AIPPA, through Parliamentary procedure, to ensure that full freedom of expression is respected.
- Amend POSA, through Parliamentary procedure, to ensure full freedom of association.

COMMENT ON THE BENCHMARKS

General

2006 has been marked by a period of political stasis. Despite the terrible suffering brought about by a collapsing economy, the ruling party continues to focus on retention of power by brutal suppression of all opposition and dissent rather than seeking to enter into dialogue with other stakeholders to seek to address the grave crisis in the country. There have been increasing levels of repression in 2006.

Democratic space remains extremely restricted or closed to all those critical of the government. Freedom of speech and freedom of assembly have all but been eliminated. Public protests and demonstrations by opposition groups are invariably declared illegal by the police and are brutally suppressed.²

² *"You Will Be Thoroughly Beaten" The Brutal Suppression of Dissent in Zimbabwe* Human Rights Watch November 2006 Volume 18, No. 10(A)

There are indications that the government is once again seeking ways to bring human rights organisations under control through the establishment of a “Human Rights Commission”³. Judging from pronouncements from the Minister of Justice, Legal and Parliamentary Affairs, the intention is that all complaints on human rights issues must, by law, be through a government appointed Human Rights Commission and that only Human Rights organizations registered through a government appointed board will be permitted to make such complaints. The process may be intended to prevent complaints to the African Commission on Human and Peoples Rights (which complaints have recently⁴ embarrassed the Zimbabwean government) before “exhausting domestic remedies”.⁵ The Minister of Justice, Legal and Parliamentary Affairs has frequently claimed that the human rights organizations are fabricating false reports of human rights abuses. He has maintained that they are doing this at the instigation of hostile foreign governments who fund them. Addressing the UN Human Rights Council the Minister repeated this line and called upon the Council to stop direct funding by developed countries of human rights non-governmental organizations in developing countries. It is clear that the Government will appoint to this Commission government supporters whose main task will be to cover up human rights abuses by government agencies.

In the context of continuing economic collapse and mismanagement, particularly of agriculture, it should be noted that only about 300 whites remain farming. Some reportedly carry out farming by “leasing” the land, effectively paying a portion of the profits of the farming as protection money from those who have been allocated the land by the Zimbabwean government. The extensive flurry of court applications (and consequent defiance of court orders) when the land “reform” process was at its height has thus abated. Coupled with new legislation effectively nationalizing all farm land and a constitutional amendment ousting the jurisdiction of the courts to consider the legality of acquisitions, some government officials have proclaimed that the “reform” process is now complete.

Accordingly, the relative absence of political protest is not indicative of government progress towards the benchmarks, but rather of a government that has attained its objectives and has achieved almost total control over a cowed populace. Its policies are now largely aimed at

³ Government previously sought to regulate Human Rights NGOs through a NGO Bill, which was not signed into law by President Zimbabwe after international protest and local protest, not least by the Governor of the Reserve Bank who pointed out the loss of desperately needed foreign exchange which might result from the effective banning of foreign funded NGOs. This Bill would have prohibited human rights and governance non-governmental organisations from receiving foreign funding.

⁴ See Zimbabwe Lawyers For Human Rights Press Release at http://www.zlhr.org.zw/media/releases/zlhr_ihrda.htm

⁵ *Zimbabwe: Storm Over Rights Commission* Africa Reports available at http://iwpr.net/?p=acr&s=f&o=321771&apc_state=heniacr200606 accessed 14/10/06 and see NANGO Online *The Human Rights Commission* at <http://www.nango.org.zw/news/view.asp?id=236>

managing the socio-economic fallout of its actions not, as the now notorious *Operation Murambatsvina* indicates, by any ameliorative mechanisms, but rather by rigorous enforcement of legislation designed to prevent dissent by sectors of the populace which the government seems to fear are approaching a position where they have little left to lose.

The 2005 *Operation Murambatsvina* continues to have grave social impacts upon the urban poor⁶ and in recent months the government has mounted further Murambatsvina-like operations in different parts of the country.

THE BENCHMARKS CONSIDERED

Resumption of constructive dialogue between ZANU-PF and MDC

This basic benchmark, which may be the key to meeting the others, has not been approached at all. The opposition split into two factions in October 2005. President Robert Mugabe has not sought to use this split to avoid dialogue on the ground that there is no clarity as to with whom he should negotiate. Instead, Mugabe has continued to insist that the opposition MDC is a front for the British Government's intention to seeking regime change and that negotiations must therefore be between himself and his British counterpart. A clear instance of this approach was manifested in July, 2006 when the Zimbabwean government withdrew an invitation to the United Nations Secretary General Kofi Annan to visit Zimbabwe after reports that Annan was seeking to play a role in resolving the Zimbabwe crisis. Thereafter, reports circulated widely that President Benjamin Mkapa (a long time vocal supporter of Mugabe) would play the role of a mediator, not between ZANU-PF and the MDC, but between Britain and Zimbabwe. Mkapa subsequently denied having taken up this role. Indeed, Mkapa has done nothing to indicate that he had such a mandate⁷. Accordingly, there have been no negotiations at all between ZANU-PF and the MDC in the period under review⁸.

Political intimidation and violence

Political violence and intimidation is most evident during election periods and during major demonstrations or meetings held by opposition groupings (see below). There were two Parliamentary By-Elections over the period in review and Rural District Council elections. Far from an adherence to the SADC Guidelines, these elections were conducted in a manner to which Zimbabweans have become accustomed. The By-Elections were in ZANU-PF strongholds, and as

⁶ See, for instance, *Political repression disguised as civic mindedness: Operation Murambatsvina one year later* Zimbabwe Human Rights NGO Forum November 2006.

⁷ "Mkapa Initiative Dead in the Water" *Financial Gazette* 9/11-16/11/06

⁸ "More of Mugabe's Magic Tricks" *Pretoria News* (South Africa) 04/09/06

happened in past elections in these constituencies, ZANU- PF declared them virtual no go areas for the opposition, rendering campaigning all but impossible in these areas⁹. In the Rural District Council election, additional registration requirements were introduced at the last minute, requiring prospective candidates to obtain clearance either from the police or village headmen to certify that they lived in the area for which they wished to stand. With both the police and village headmen seen to be beholden to the ruling party, the fact that 400 MDC candidates out of 1000 available seats were unable to get their nomination papers approved, is cause for concern. These seats were thus uncontested. Echoing patterns of the past, the elections were characterized by violence by ruling party supporters, youth militia and the army against persons wearing MDC regalia. In one instance a house belonging to an MDC activist was torched to the ground¹⁰. Just before the rural district council elections the president of the Chief's Council threatened to evict opposition supporters who voted for the opposition in the elections. He also said that the opposition would have nowhere to go as other chiefs across the country had also adopted the same policy of banning supporters of the opposition parties from their areas.¹¹ There were reports of food aid being used as a weapon against the opposition and of reprisals against MDC members following the elections.

Little of practical value has been done to comply with the SADC Principles and Guidelines Governing Democratic Elections and the legislation introduced prior to the 2005 elections pays little more than lip-service to these principles¹². In particular the management of elections remains firmly in the hands of partisan bodies with heavy involvement of military personnel and the supervisory body, the Electoral Commission is far from independent, being headed as it is by a noted supporter of the ruling party.

An interesting development has occurred in the prosecution of perpetrators of violence or past violence in that the period under review has seen the institution of a limited number of prosecutions¹³. However, some of these prosecutions must be seen in the context of the intra ZANU-PF rivalry being played out through the mechanism of selective prosecution¹⁴. A sub-benchmark, which would be an indication of a change of governmental policy in this regard, would be the institution of criminal proceedings on a charge of murder against government security agent, Joseph Mwale. In an election petition before the High Court a judge found

⁹ "Violence Rocks Zimbabwe By-Elections" *Zim Online* 07/10/06

¹⁰ "Violence and Intimidation Mar Rural Council Election Build Up" *SW Radio* 12/10/06

¹¹ "Chiefs' Council president threatens to evict opposition supporters" *Zim Online* 24 October 2006

¹² *SADC Principles and Guidelines governing Democratic Elections Analysis: A Bird's Eye View* Arnold Tsunga published by Zimbabwe Lawyers For Human Rights Zimbabwe & *Electoral Bill Fails to Meet Benchmarks* Human Rights Watch 11/04

¹³ See for example: "MP Langa's Trial Adjourned Zimbabwe" *Independent* (Zimbabwe) 04/08/06

¹⁴ "ZANU- PF Infighting Escalates to New Heights" *SW Radio News* 11/08/06

credible evidence that Mwale had petrol-bombed a vehicle carrying two Movement for Democratic Change (MDC) party activists, killing the activists. Although the Attorney General's office has recently shown some willingness to prosecute in this regard, the partisan nature of the police force continues to manifest itself in the implausible excuses they offer for inaction, allegedly on the instructions of the Minister of State Security¹⁵.

There are no indications from government of any intention to disband the Border Gezi youth militia, though some centres have closed due to a lack of resources. During youth militia training the youths are politically indoctrinated and are taught to hate and attack members of the opposition. Militia personnel are most active during important political events. The youth militia was deployed when the new currency was being introduced¹⁶. During the so-called "Operation Sunrise" roadblocks were mounted throughout the country and most vehicles subjected to search for large sums of cash, suspected to have been hoarded for illegal black market foreign currency transactions. The militia took part in this operation, reportedly harassing motorists and commuters, and in some instances, allegedly strip-searching members of the public and stealing cash.¹⁷ It is also reported that youth militia are being used to enforce price control regulations.¹⁸ A number of government training programmes now only admit youth militia graduates, such as nurse training and a training programme for media practitioners at a state institution. There are now plans to draft hundreds of youth militia graduates into the civil service in 2007. They will be employed as "*youth development officers*", mostly in the rural areas, but it is believed that the main function of these youths will be to campaign on behalf of the ruling party ahead of the elections in 2008.¹⁹

The Government is continuing to politicize the law enforcement agencies by rooting out officers perceived to be sympathetic to the opposition. The Minister of Home Affairs has announced that the size of the police force is being expanded from 23 000 to 50 000 and the budget for the police will be greatly increased.²⁰ The law enforcement agencies continue to play a key role in the suppression of opposition to the Mugabe government. There has also been an increasing militarization of the Zimbabwean state, with army officers being appointed to key positions on various government bodies and parastatals and the army being used in various roles, for instance in the agricultural sector.

¹⁵ "Security Minister Blocks Arrest of Zimbabwe Secret Agent" *Zim Online* 25/11/06

¹⁶ Inflation of over 1000% necessitated the introduction of a new currency.

¹⁷ "Soldiers, Militia on the Rampage Zimbabwe" *Standard* 6/08/06

¹⁸ "ZANU- PF youths enforce price controls" *Zim Online* 16 November 2006

¹⁹ "Mugabe to draft youth militia into civil service" *Zim Online* 15 November 2006

²⁰ "Government to increase police force" *Sunday News*, Zimbabwe 28 May 2006

Democracy and human rights

The indicators here are firstly, suspension of the implementation of the provisions of the Public Order and Security Act, (pending its amendment), relating to the conduct of political activities such as public meetings. Far from a suspension of this legislation, it has been used with increasing frequency over the period of review. The effect has been the *de facto* criminalization of any public protest by any opposition grouping for the period in question. The police prevent such demonstrations from taking place by mounting roadblocks around the city where the demonstration is due to take place, restricting access into the city by would-be demonstrators, cordoning off the site of the proposed demonstration and arresting the organizers in advance of the demonstration. Members of the riot squad often take it upon themselves to administer severe beatings upon unresisting protestors they have arrested before they take them into custody. Most of these assaults seem to be to punish and intimidate the protestors and not to break up violent demonstrations or to subdue those resisting arrest. The use of such force is blatantly illegal.

Accordingly, only a few organizations have been prepared to mount demonstrations which have largely been abandoned as a means of effective protest and, when called, serve merely to underscore the government's refusal to allow the expression of any dissent.

This is illustrated by the demonstrations called by the National Constitutional Assembly (NCA), Women of Zimbabwe Arise (WOZA), some student bodies and the ZCTU over the review period. None of these demonstrations could take place on any significant scale. The largest demonstrations have been by WOZA which have sometimes seen several hundred women demonstrating. On each occasion, of which there have been several by this group in 2006, almost all the women have been arrested.

A protest called by the Zimbabwe Congress of Trade Unions (ZCTU) in September 2006 was prevented in the manner indicated above and in effect consisted simply of 12 ZCTU leaders advancing to the point of the commencement of the march, being confronted by police and sitting down on the road. They were immediately placed under arrest and ordered into police vans. Film footage of this process shows that, despite compliance with this order, the police lashed out at them with truncheons as they moved into the police van, some police officers doing this in an almost insouciant fashion, hardly pausing in their conversation with fellow police officers, indicating an attitude that regards such violence as routine and mundane. At the police

station, the arrested ZCTU members were subjected to systematic torture consisting of *falanga* and brutal beating all over their bodies. The victims sustained serious injuries including broken limbs. Mugabe commented on the widespread condemnation of the assaults stating “When the Police say move, you move”²¹ thus condoning the assaults and falsely suggesting that beating had occurred after the refusal of the ZCTU members to move from the road. While various other implausible excuses to explain the demonstrators’ injuries were offered for the benefit of the international community (e.g. that the injured had “fallen off the police van on the way to the police station”) nationally, as Mugabe’s statement makes clear, the government was content for the public to take note of the assaults upon the demonstrators and to learn a salutary lesson.²²

In November 2006 a constitutional reform non-governmental organization, the NCA, tried to stage a demonstration to protest against a statement from President Mugabe that there was no need to have a new constitution. The head of the organization was arrested and taken away. The rest of the demonstrators were seated on the ground surrounded by the police in Africa Unity Square in the middle of Harare City. In full view of the public, the police officers viciously beat the unarmed and unresisting protestors all over their bodies. There is video footage of this beating. The police then ordered the protestors to run away.

Although MDC leader Morgan Tsvangirai has indicated mass demonstrations will be held, these have not materialized.

It is also clear that the human rights climate as a whole is deteriorating rather than improving. According to the statistics provided by the Zimbabwe Human Rights NGO Forum in its Monthly Political Violence Reports, there has been an increase in the number of violations recorded in 2005,²³ and the trend in 2006 is that this may well be the worst year on record since 2000. A total of 2,656 violations were recorded in 2004, and this increased to 4,132 in 2005, but already in the first 9 months of 2006 a total of 5,063 violations have been recorded.²⁴

²¹ This is what Mugabe said about the criminal assaults by the police upon unarmed and peaceful protesters whilst addressing delegates at the Zimbabwe Embassy in Cairo, Egypt, September 23, 2006:

‘We cannot have a situation where people decide to sit in places not allowed and when police remove them they say no. We can’t have that. That is a revolt to the system. Some are crying that they were beaten. Yes you will be thoroughly beaten. When the police say move you move. If you don’t move, you invite the police to use force’.

²² For a more detailed analysis of the use of torture by the Zimbabwe Republic Police see *Zimbabwe Human Rights NGO Forum (2006), Only bruises on the soles of their feet. The use of Falanga by the Zimbabwe Republic Police, November 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.*

²³ See *Zimbabwe Human Rights NGO Forum (2006), An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006. Published by the Zimbabwe Human Rights NGO Forum. June 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.*

²⁴ See *Zimbabwe Human Rights NGO Forum (2006), Political Violence Report for September 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.*

The second indicator is agreement between political parties on a code of conduct to apply in the framework of elections in accordance to the norms and standards of the SADC Parliamentary Forum. Not being an election year and in the absence of any inter-party dialogue there has been no movement in this regard. As seen above, the elections that were held, were conducted with flagrant disregard of the guidelines.

The third indicator is an invitation to the UN High Commissioner for Human Rights to visit Zimbabwe to initiate an assessment of outstanding claims of human rights abuses. The Zimbabwe government has remained obdurate in this regard and carefully ensured that there is no interference by the United Nations to the extent of the embarrassing the Secretary-General by inviting him to visit Zimbabwe in the wake of the notorious *Operation Murambatsvina* and then withdrawing the invitation, claiming that the invitation had gone “stale”²⁵.

There is legislation in the pipeline to allow the Government to monitor all electronic communications of its citizens.²⁶ This legislation will undoubtedly be used to monitor communications of those opposed to the government and to obtain evidence to prosecute them under various draconian laws that drastically curtail the right to criticize government and the President. These offences are now contained in the Criminal Law (Codification and Reform) Act which came into operation in 2006. One such offence is the nebulous offence of publishing a false statement prejudicial to the state. This speech offence now attracts a punishment of up to twenty years in prison. In November 2006 in what is seen as a further clamp down upon freedom of expression, two members of the opposition were charged with this offence on the grounds that they distributed a pamphlet which called upon people to help members of the army and police armed forces to do the right thing in the face of the massive suffering of the people and to say that enough is enough.²⁷

Freedom of mass media

The Access to Information and Protection of Privacy Act continues in full operation and no steps have been taken to amend it so as to remove all unacceptable restrictions on freedom of expression and the media. Prosecutions continue to be brought against journalists and newspapers for various offences under this Act such as making false statements.

²⁵ “Clean Up: Annan Visit No Longer Expected Zimbabwe” *Herald* 25/05/06

²⁶ Interception of Communications Bill, 2006

²⁷ “Rights activists allege crackdown on free speech” IRIN 13 Nov 2006

The regulatory body, the Media and Information Commission, continues to be headed by Tafatona Mahoso, whose antipathy to bodies not sympathetic to government has been noted in court rulings. Mahoso continues to make intimidatory remarks concerning independent journalists and recently directed his attention to the Law Society of Zimbabwe after it had published concerns relating to the rule of law. In addition, the government continues to place every possible hurdle in the way of *Daily News* publishers, ANZ. ANZ has had to return to court several times in an attempt to obtain legally prescribed registration (under the restrictive provisions of AIPPA) so that publications of the independent daily may recommence. This saga of obstructionism has stretched over a period of three years. The latest application in this regard was heard in the High Court in early October, 2006 and judgment is awaited. There is little doubt, if judgment is in favour of ANZ, that government will appeal to further delay the registration. The last appeal took a year to be heard by Zimbabwe's Supreme Court.

Journalists and independent papers continue to face harassment, the most recent being a raid by police on the independent weekly, *The Zimbabwean* on 6 October, 2006. The paper is published from outside the country and copies brought into Zimbabwe. Copies of the paper were taken by police who seemed concerned with investigating the newspaper's authority to import the publication. The government has continued its manoeuvres to place the *Mirror* newspaper under the ownership of the state's security agency, through the purchase of shares in the proprietary company.

Although charges of broadcasting without a licence brought against radio journalists, staffers and trustees of the radio station *Voice of the People* (which broadcasts from outside Zimbabwe after its offices were bombed in 2002) were withdrawn in September 2006, as the benchmark requires, this was not at the instance of the state, but occurred after a court refused to grant the prosecution a fourth request for a postponement by the state. By persisting in this prosecution without sufficient evidence, it is clear that the policy of harassment is set to continue.

In addition, the Zimbabwe government has forced all radio stations broadcasting to Zimbabwe – *Voice of the People*, *SW Radio* and *Voice of America's* Studio 7 broadcast, to change their frequencies to short - wave after jamming their medium wave signals. The majority of Zimbabweans do not have access to short - wave radio. However, even the short - wave signal now also has reportedly suffered interference²⁸. Equipment for this jamming and technical expertise has been supplied by the Chinese government and the jamming has been lauded by

²⁸ *Weekly Media Update* Media Monitoring Project Zimbabwe 31/06/06

government spokesmen.

No independent electronic media exist within Zimbabwe due to the restrictive provisions of the Broadcasting Act. The Broadcasting Services Act limits freedom of expression by making it mandatory for broadcasters to receive a licence from a government controlled regulatory body. No licences have been awarded to non-government public broadcasters since this body was established in 2002. Thus the sole television service and all the internal radio stations continue to be under the control of government and continue to broadcast pro-government propaganda.

Justice

The indicator here is the immediate implementation of court judgments. For reasons given above, over the period of review the defiance of court orders in high profile cases has not been evident. However, in the past there have been numerous examples of government officials and law enforcement agencies refusing to obey court orders. It is very likely that this pattern of flouting of the rule of law will be repeated in the future whenever government sees it as being expedient not to obey such orders.

Land reform

The situation with regard to land reform is constantly changing as the Government introduces further legislation in this regard in response to people trying to assert their rights. Many of the court orders that were previously disregarded were in relation to land. The object of recent legislation is essentially to provide a cloak of legality to actions that were previously being undertaken unlawfully. Constitutional Amendment No 17, amongst other changes, purports to oust the jurisdiction of the court in relation to all challenges to farm acquisition. As a result, all appeals in this regard to the Administrative Court have been struck off the roll. Most recently, in November 2006, the government repealed the Rural Land Occupiers (Protection from Eviction) Act and introduced the Land (Consequential Provisions) Act. The present procedure for land acquisition is that only persons in possession of "offer letters" issued by the Land Reform Ministry are entitled to farmland. Any person occupying land after it has been designated for acquisition commits a criminal offence. The Rural Land Occupiers (Protection from Eviction) Act was introduced to prevent farmers whose land had been unlawfully occupied from removing the persons who had invaded it. Now "new farmers" that have been allocated land by the government's offer letter can evict the persons who occupied the land in the first instance. There does not appear to be any transparent procedure for the issuance of the offer letters and there has been no audit of the allocation of land to date since the suppressed "Utete Report" of 2002. However the government has indicated that it will undertake yet another audit of the land

situation,²⁹ which should be complete by the end of November 2006. Government has started issuing 99-year leases to these “new farmers”,³⁰ as well as making offers of compensation to the former owners, although most former farmers are rejecting the offer as derisory.³¹

Government policy makers are not consistent in their statements with regard to “land reform”. While Vice President Mujuru has said that the process of reallocating land is complete, over 100 fresh eviction notices have been served on farmers in 2006. The Minister of Land Reform responsible for the process, Didymus Mutasa³², has clearly stated that the admitted criterion for eviction is that the farmer is white (with no regard as to how the land was acquired in the first instance). This contradicts the elsewhere-declared policy that the criterion is that of “one person, one farm”. Mutasa has also stated that no white will be allowed to apply for a lease of land on which to farm³³.

While several of these fresh invasions have taken place shortly before harvesting and by government officials, they have not been accompanied by the level of violence characteristic of preceding years.

Food and humanitarian assistance

The government has continued to maintain a firm grip on food distribution to the many that rely on it for survival and other forms of aid³⁴. A High Court Judgment delivered in October 2006 in a petition challenging election results, confirmed the use of food as a political weapon. Key institutions relating to food distribution are now headed by former military men and Mugabe loyalists. All NGOs require governmental permission to distribute food and the legislative structure in this regard remains unchanged³⁵. However, governmental pronouncements on the issue of food security are contradictory. In February, 2006 the Deputy Minister of Agriculture admitted that crop yields would be half the government’s original projections due to lack of fertiliser, expertise and inability to undertake farming on a commercial scale by new farmers. However, in May 2006, the state controlled *Sunday Mail* newspaper reported that a good harvest was to be expected. It stated that government had reacted angrily to forecasts of crop shortages

²⁹ “Yet Another Land Audit” *Financial Gazette* November 15, 2006

³⁰ It is necessary to place new farmers in quotation marks as many of those allocated land are not in fact farming the same, treating the farms as weekend resorts or farming on a part-time or limited basis.

³¹ “Zimbabwe to compensate dispossessed farmers” *Mail and Guardian* 16 November 2006; “White farmers shun compensation exercise” *Zim Online* 17 November 2006; “Farmers’ group calls Zimbabwe’s compensation offer for seized land a sham” *International Herald Tribune* 16 November 2006

³² Mutasa is also the Minister for State Security.

³³ See “No Land For Whites Mutasa Declares” *Financial Gazette* 126/10/06-01/11/06

³⁴ “ZANU- PF Politicises Aid Distribution” *Independent Zimbabwe* 29/09/2006

³⁵ For the details on this which are largely unchanged see *The Politics of Food Assistance in Zimbabwe* Human Rights Watch briefing paper 2004

by international aid agencies and maintained that only the Central Statistical Office had a mandate to issue such forecasts, thus indicating that the past lack of transparency and policy is to continue³⁶, at least in so far as the most widely accessed media is concerned. The weekly *Financial Gazette*, the cost of which is beyond those likely to require food assistance, reported in August, 2006 that the World Food Programme had pumped US\$31.4 million into Zimbabwe as food aid. The money had been received as a donation from the European Commission. It thus appears that there may be some behind-the-scenes co-operation with international food aid agencies while government continues to maintain the fiction of self-sufficiency in the mass media. This contradiction is illustrated by a *Voice of America* report that stated that Minister of Labour, Public Service and Social Welfare, Minister Nicholas Goche, had written a letter to Provincial Governors instructing them to allow international aid organisations to conduct unimpeded distribution of food aid. Yet when the Bulawayo governor was contacted in regard to the letter he repeated the governmental dogma that a bumper harvest was expected so no such aid would be needed³⁷. It is nonetheless clear that aid agencies remain subject to governmental whim in regard to the distribution of food. Permission is granted or withdrawn at any given time, the criterion appearing to be political expediency rather than need.

Registration of local NGOs under the Private Voluntary Organisations Act has been expedited, but foreign NGOs still require the government to agree a Memorandum of Understanding. This latter process is cumbersome, slow and frustrating and can take several years, at the end of which the application may be refused, without reasons furnished.

CONCLUSION

It is clear that the Zimbabwean government's policy of suppression of dissent and closure of democratic space remains unchanged. The government has not satisfied any of the benchmarks that were set.

In view of the change in circumstances in Zimbabwe, some of the benchmarks set are no longer appropriate indicators. The beneficiaries of government policies are almost entirely ZANU-PF officials. Given the kleptocratic nature of the Zimbabwe regime, it may be appropriate for corruption to be introduced as an indicator where the corruption is directly linked to these policies. There is provision for this in article 9 of the Cotonou Agreement. The recent suppression of a report on large scale corruption at Zimbabwe's Zisco steel manufacturer, when it became

³⁶ "Zim Maize 'to help inflation'" *News24* (South Africa) 14/05/2006

³⁷ "Zimbabwe Government Widens Scope for NGO Food Assistance" *Voice of America* 02/10/2006

apparent that senior government officials were involved, is further evidence of a country being run by the few for the benefit of the few. At the very least, the retention of an assets freeze and visa restrictions imposed on these beneficiaries remains singularly appropriate.