



Institute for Security Studies

SITUATION REPORT

ZIMBABWE'S TORTUOUS ROAD TO A NEW CONSTITUTION AND ELECTIONS

In July 2012, the Constitution Select Committee of Parliament (Copac) that was mandated to consult Zimbabweans and draft a new constitution finally accomplished its task after more than three years of acrimonious debate. This came after the Extraordinary Summit of the Southern African Development Community (SADC) Heads of State and Government held in Luanda, Angola, in June 2012, urged Zimbabwean parties to the Global Political Agreement (GPA) 'to finalise the constitution-making process and subject it to a referendum thereafter' ... 'assisted by the facilitator (South African President Jacob Zuma), to develop an implementation mechanism and set out timeframes for the full implementation of the roadmap to elections'.¹

This was amid a deadlock in Zimbabwe's constitution reform process, which is being driven by Copac. The adoption of a new democratic constitution, after consultation with the people, is a key requirement of the GPA signed in September 2008 by the three political parties represented in parliament – the Zimbabwe African National Union-Patriotic Front (Zanu-PF) led by Robert Mugabe and the two formations of the Movement for Democratic Change (MDC) – MDC-T led by Morgan Tsvangirai and MDC-N led by Welshman Ncube.

The GPA, brokered by SADC, ended the election wrangle between Tsvangirai and Mugabe, and put in place a transitional inclusive government (IG) in February 2009. This was pursuant to an African Union (AU) Summit Resolution on Zimbabwe on 1 July 2008, which had called for the formation of a government of national unity in a replication of the power-sharing model that had been used in attempts to resolve the 2007–2008 post-election conflict in Kenya.² Specifically, article 6 of the GPA required the IG comprising Zanu-PF and the two MDC formations to set up a select committee of parliament to produce a new constitution within 12 months of the government's formation, a timeline requirement that has not been met.³

This situation report evaluates Zimbabwe's constitutional reform process and the prospects of holding a credible referendum and elections in the context of the GPA. It does so in four parts: firstly, it examines the Copac constitution-making process; secondly, it critically assesses SADC's role in facilitating the implementation of the political and constitutional reform provisions of the GPA; thirdly, it examines the prospects and challenges of conducting a credible referendum to adopt and legitimise the constitution before elections; and, finally, it considers possible scenarios, assuming that Zimbabwe will hold elections with or without a new constitution.

CONSTITUTIONAL REFORM PROCESS

Zimbabwe's constitution-making process can be traced back to the Lancaster House Agreement of December 1979 through which Zimbabwe obtained independence from Britain in 1980. The British Government, the Patriotic

Front led by Mugabe (Zanu) and Joshua Nkomo (Zimbabwe African Peoples Union [Zapu]), and the Zimbabwe-Rhodesia government, represented by Abel Muzorewa and Ian Smith, negotiated the agreement. The Lancaster House Agreement resulted in a ceasefire, pre-independence arrangements and a constitution for the newly independent state. The constitution, which has been amended 19 times mainly to serve the interests of the erstwhile ruling Zanu-PF government, is widely regarded as deficient. Of particular note is the passage of the sixth amendment to the constitution in 1987 that eliminated the position of prime minister and centralised power in the newly created executive presidency, which eroded the autonomy and integrity of other branches of government.⁴

The GPA recognised the inadequacy of the constitution that was produced at the 1979 Lancaster House Conference ‘primarily to transfer power from the colonial authority to the people of Zimbabwe’ and made it imperative for ‘the Zimbabwean people to make a constitution by themselves and for themselves’.⁵ Zimbabwe represents a competitive authoritarian regime where Zanu-PF has been unwilling to relinquish its grip on power and has systematically employed violence and intimidation to influence election processes and outcomes. Given Zimbabwe’s well-documented history of election-related violence, the adoption of a new democratic constitution is central to the GPA’s goal of creating an environment conducive to a peaceful, free and fair election of a substantive government.

Copac was inaugurated in April 2009 within two months of the establishment of the IG provided by the article 6 timetable. Copac consists of 25 parliamentarians – 17 men and 8 women from both the Senate and the House of Assembly, reflecting the parliamentary gender structure and the strengths of the different parties in parliament (MDC-T 11, Zanu-PF 10, MDC-N 3, chiefs 1). Three co-chairpersons lead it from each party, namely Paul Mangwana from Zanu-PF, Douglas Mwonozora from MDC-T and Edward Mkhosi from MDC-N. Some analysts noted that the three are not key role-players in their respective political parties, which could explain the perceived occasional lack of support from their party leaders and other Copac members, a situation that may have contributed to the constitution-making process limping along.⁶

Two other structures were established within the Copac framework: a management committee and a steering committee. The management committee is composed of the six negotiators of the GPA (two from each party), the three Copac co-chairpersons and the minister of constitutional and parliamentary affairs. It provides policy direction to the constitution-making process. The steering committee consists of the three Copac co-chairpersons, their three deputies and two representatives from civil society. The steering committee oversees the

implementation of management committee decisions. A secretariat headed by a national coordinator provides overall administrative support of steering committee activities. The ministry of constitutional and parliamentary affairs is the focal point for the constitution-making process.

Based on an agreed procedure, the Copac process offered Zimbabwe’s main political parties a platform to develop a new democratic constitution for the country. However, some analysts and civil society activists argued that Zanu-PF and the two MDC formations had captured the constitutional project and narrowed it to a short-term struggle motivated by the pursuit of party political interests at the expense of the will of the people and the nation’s

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broad long-term interests.⁷ The National Constitutional Assembly (NCA), formed in 1997 by a grouping of civic organisations that included churches, human rights groups, trade unions, women’s organisations, youth groups and student movements to push for a new national charter, boycotted the Copac process. It even mooted an alternative people-driven process under the banner ‘Take charge!’ in protest at what it perceived to be a flawed parliament-led top-down constitution-making process.⁸ In 1999–2000, the NCA worked closely with the MDC to reject a Zanu-PF government-sponsored draft constitution in a referendum.

The members of the select committee attended courses on constitution making, and held workshops and consulted with civil society about the process, although some critics argue that not many of the assurances given to civil society were adhered to. Copac drew up a work plan and a list of 16 constitutional themes for which thematic committees were to be appointed after the first all-stakeholders conference. There was concern that the high number of themes would make both public consultation and drafting more difficult. Twenty-six constitutional principles were supposed to guide the constitution-making process.

The select committee managed to meet its first GPA deadline by holding the first all-stakeholders conference in July 2009 to build a national consensus on the constitutional reform process. Some 4000 delegates attended, including all the parliamentarians, nominees from political parties and civil society, and delegates chosen to represent special interest groups such as war veterans. The

broad participation was important to limit the perception of the constitutional reform process as being exclusive and driven from above by parliament. Despite lack of organisation and politically inspired violent disruption of proceedings on the first day and logistical problems on the second day allowing for only a few hours' consultation, the select committee declared the two-day conference a success. One more theme was added to the select committee's list, bringing to 17 the issues on which the public would be engaged.⁹

Notwithstanding the clear timeframe laid out in the GPA, enormous logistical, administrative and funding challenges subsequently delayed the constitution-making

Delays in the disbursement of some of the donor funds affected the execution of the constitutional reform process

process by over a year. The ministry of finance initially allocated a measly US\$1 million for the constitutional reform process in the 2011 national budget, which the unimpressed Copac dismissed as a 'joke'.¹⁰ The government's overall allocation, which later rose to about US\$20 million, has been complemented by comparable donor support under the current Zimbabwe United Nations Development Assistance Framework (Zundaf 2012–2015) that was jointly developed and signed by the United Nations (UN) and the government. Specifically, United Nations Development Programme (UNDP) support of the constitution-making process entails the management of a basket fund of donor contributions and the provision of technical and advisory expertise as requested.¹¹ By July 2012, the development partners had provided a US\$21,2 million grant to support the process.¹² The foreign funding of the process to establish the supreme law of the land is striking, given Zanu-PF's stance that certain donor funds interfere with the autonomy and sovereignty of domestic politics. It is perhaps unsurprising that the UNDP was forced to release a press statement reiterating the abovementioned terms of reference for its involvement in response to allegations by Zanu-PF politburo member Jonathan Moyo that the UN agency was working with 'regime-change-seeking donors', among other actors, to produce a draft constitution and subvert the views of the people.¹³ However, delays in the disbursement of some of the above donor funds affected the execution of the constitutional reform process.

The GPA's public consultation process to gather people's views and to ensure that the new constitution would be 'owned' by the people began only in June 2010 and was acrimonious and long drawn out. Zanu-PF and the MDC had been at each other's throats for years prior to their uneasy coexistence in the IG. Predictably, characteristic polarisation, political party influence and 'coaching' of participants, violence and intimidation mainly by Zanu-PF supporters and war veterans allied to the party threatened to undermine the legitimacy and credibility of the constitutional outreach programme.¹⁴ Frequent outbreaks of violence between Zanu-PF and MDC loyalists interrupted public consultations. This posed an obstacle to the active and effective participation of citizens in the constitution outreach programme.

Zanu-PF used the consultation process to promote its preferences, such as a powerful executive president, no prime minister and preservation of the current security structures.¹⁵ The party also allegedly coordinated Operation *Vhara Muromo* (Shut your mouth) to suppress dissenting voices.¹⁶ The police, in a prejudicial manner, reportedly disrupted several MDC-organised preparatory constitutional reform meetings by beating up and arbitrarily arresting participants. For example, in February 2010, the police disrupted MDC-organised preparatory constitutional reform meetings, beat participants, and arrested 43 people in Binga, 48 in Masvingo and 52 in Mt Darwin.¹⁷ The violence worsened in the capital Harare, and led to the suspension of 13 meetings in September 2010. Such incidents undermined the prospects of the production of a legitimate draft constitution representative of the will of the people.

Public outreach was conducted in all the country's ten provinces. A total of 71 Copac outreach team members met people countrywide to gather their views. Perhaps to deflate criticism of presiding over an exclusive project of the three GPA parties that was not people driven, Copac attempted to engage civil society during the outreach process. This included meetings with the Zimbabwe Independent Constitution Monitoring Project (Zicom), comprising three organisations, namely the Zimbabwe Lawyers for Human Rights, Zimbabwe Election Support Network and the Zimbabwe Peace Project. More than 600 civil society members were accredited to observe the outreach exercise, while about 70 per cent of the outreach team members were also from civil society.¹⁸ The role of civil society included providing specialist knowledge in crucial areas; mobilising people regardless of political affiliation to participate in the constitution-making process; ensuring that political interests did not derail the process, and educating people on what a constitution is all about.¹⁹

Special outreaches were carried out for children and people with disabilities to ensure a truly national constitution-making enterprise. Copac used its website to gather the views of people living in the diaspora. The

constitution outreach programme was concluded in October 2010 after Copac teams had reached 1 118 760 people. The ensuing data collation and uploading exercises were completed in March 2011. These were followed by the organisation of the data by the thematic committees in preparation for the constitution-drafting stage.²⁰

A constitutional drafting team led by three principal drafters – Justice Moses Chinhengo and constitutional experts Priscilla Madzonga and Brian Crozier – began work in December 2011. In a move that demonstrated that the constitutional review process drew lessons from comparative experiences in Africa, such as the approach used by South Africa to draft its constitution, the draft constitution is based on a list of agreed constitutional issues drawn by Copac from a national report of people's submissions. The chief drafters were assisted by seventeen constitutional experts – five from each of the three governing parties and two from the council of traditional chiefs. Copac also enlisted the consultancy services of South African constitutional law and constitution-making expert Hassen Ebrahim, who brought his experience of constitution-drafting in his native South Africa as well as Nepal, Somalia and Uganda. However, Zanu-PF hardliners who continuously discredited the constitutional reform process accused Ebrahim of working in cahoots with Copac to dump the people's views in a mafia-style operation.²¹

Some civil society organisations, such as the NCA, which boycotted the Copac process, expressed their dismay at being excluded from the constitution-drafting process, arguing that it undermined the representativeness and transparency of the process. Critics have also argued that the procedural choice to have a small drafting committee undermines public participation and deliberation at the crucial constitution-writing stage. Copac, to its credit, held regular civil society and media briefing meetings and issued press releases to keep civil society and the wider public abreast of the constitution-drafting process.²²

As did the preceding public outreach, the coalition partners turned the constitution-drafting process into a battleground. It was conducted in a deeply polarised political environment characterised by mistrust between Zanu-PF and the two MDC formations. Critics have charged that the parties are bent on manipulating the constitution-writing process to ensure the incorporation of their positions and interests at the expense of reflecting the will of the people. Indeed, at one point, Zanu-PF unilaterally attempted to stop the drafting process after the production of the first four preliminary draft chapters of the constitution, accusing the drafters of siding with the MDC and importing items not raised during the outreach process, thereby suppressing the views of the people. There remained concern that the process would fall victim to partisan capture, with political parties 'smuggling in' points that were not covered during

the outreach phase. This had the danger of delivering a draft constitution that could be palatable to entrenched political positions and interests, but that may fail to secure wide public support. As Bruce Ackerman rightly argues, 'A workable constitution is worthless unless [the framers] can get it accepted ...'²³

The constitution-drafting process moved forward in fits and starts. Problems of a general lack of political will by the GPA parties, politicisation and interference included disruption of Copac activities by war veterans allied to Zanu-PF, who accused Copac officials of slowing down the completion of the constitution-making process and manipulating it by ignoring views expressed during the outreach programme; leakage of documents to state media

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allegedly by Zanu-PF members in Copac, supposedly meant to put pressure on drafters to change certain positions; and military interference as the army chief allegedly summoned the Zanu-PF component of Copac for briefings, thereby aggravating suspicions and divisions within Copac.²⁴

In May 2012, Zimbabwe's constitution-drafting process reached a deadlock. The two MDC formations accused Zanu-PF of throwing spanners in the constitution-making process by producing a position paper demanding wholesale changes to the draft constitution.²⁵ Copac had to deliberate on Zanu-PF's demands, including giving more executive powers to the president, rejection of dual citizenship and devolution of power, and retention of control of the voter's roll in the office of the registrar general. This aroused fears that Zanu-PF would jettison the constitution-making process to allow Mugabe to call for elections under the current constitution and electoral framework that benefits his party.²⁶ These fears of possible Zanu-PF unilateral machinations were significantly doused by the robust and dismissive sentiment that emerged from the Luanda SADC Summit.

SADC AND CONSTITUTION-MAKING IN ZIMBABWE

The regional body that mediated Zimbabwe's GPA, SADC and the facilitator of the intra-Zimbabwe dialogue (at present, Zuma) are guarantors of the agreement alongside

the AU. Applying the principle of subsidiarity, the AU has largely delegated the resolution of the Zimbabwe political deadlock to SADC. SADC and Zuma arguably need to do more to ensure effective GPA implementation, including the adoption of a new constitution and the conduct of credible elections in Zimbabwe. Significantly, in its 1 June 2012 communiqué at the end of the Extraordinary Summit of SADC Heads of State and Government in Luanda, Angola, the regional body 'urged the parties to the GPA to finalise the constitution-making process and subject it to a referendum thereafter' and 'assisted by the facilitator, to develop an implementation mechanism and to set out timeframes for the full implementation of the roadmap to elections'.²⁷ This is critical to prevent Zimbabwe from

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plunging back to the catastrophe of 2008. It remains to be seen whether SADC will be able to hold the Zimbabwe parties accountable for fully implementing the GPA. This is no mean feat. Tellingly, soon after the Luanda SADC Summit, South Africa's ambassador to Zimbabwe accused the three GPA parties of delaying Zuma's visit to Harare to meet and assist the parties to resolve sticking points to fully implement the GPA, including finalising the constitution-making process.²⁸ The Zimbabwean parties have since stated that they felt it would be sensible to invite Zuma only after the completion of the constitution-drafting process.²⁹

The regional body has, in the past, registered its concern about the lack of implementation of the GPA, with limited consequences. For example, following much criticism of its monitoring of the implementation of the agreement, SADC appeared to be taking a harder stance on the GPA parties.³⁰ In March 2011, a Troika Summit of the SADC Organ on Politics, Defence and Security Cooperation (OPDSC) in Livingstone, Zambia, noted its 'disappointment' with, and expressed its 'impatience' at, the slow pace of fundamental progress and the risk of the country plunging into political and economic uncertainty.³¹ The regional body has, however, since missed the opportunity to appoint a team of officials to join Zuma's facilitation team and work with Zimbabwe's Joint Monitoring and Implementation Committee (JOMIC) 'to ensure monitoring, evaluation and implementation of the GPA'.³² That Zuma had to rely on his own team is a symptomatic structural flaw of SADC's lack of standing regional mediation architecture, for which it has

only recently initiated remedial action. Over the years, the regional body's mediation has been on an ad hoc basis, with eminent Southern African leaders, including former presidents Nelson Mandela and Thabo Mbeki of South Africa, Frederick Chiluba of Zambia, Eduardo dos Santos of Angola, Ketumile Masire of Botswana and Joaquim Chissano of Mozambique, being called upon to intervene in troubled countries such as the Democratic Republic of the Congo (DRC), Lesotho, Madagascar and Zimbabwe.³³ This and the general lethargic implementation of the GPA have resulted in widespread criticism of SADC for feebly facilitating an agreement that it had so painstakingly helped to negotiate.

Although SADC could have mounted a more concerted and engaged effort to support the implementation of the GPA after it was signed, the Zimbabwean signatory parties should also shoulder the blame for significantly failing to implement the agreement fully and jointly. Ensuring effective GPA implementation in Zimbabwe's polarised environment is a daunting task. Mugabe and fellow Zanu-PF officials have on record stressed that Zimbabwe is a sovereign state and will not countenance being dictated to by SADC on the implementation of the GPA.³⁴ Zanu-PF's argument about sovereignty and the willingness of Zimbabweans to be left to sort themselves out can, however, be seen as an attempt to deflect criticism of the party for non-adherence to the implementation of the provisions of the GPA. Zanu-PF is essentially in the IG subject to SADC and the AU's recognition of the undue external interest in regime change in Zimbabwe, and the two bodies' consequent call for the establishment of the transitional administration. Zanu-PF has indeed been isolated as the major obstacle to the deployment of a SADC presence in a sovereign Zimbabwe.³⁵ However, SADC has very few enforcement mechanisms and uses the power of persuasion, which may not be sufficient when faced with a recalcitrant party.³⁶ It is crucial that the regional body persistently stresses that it will not condone the violation of the GPA as well as another flawed and disputed election in Zimbabwe. The Southern African Development Community Electoral Advisory Council (SEAC), which was inaugurated last year, while constrained by its advisory mandate, would need to ensure that Zimbabwean polls are held in compliance with the SADC Principles and Guidelines Governing Democratic Elections.³⁷

ROAD TO A CONSTITUTIONAL REFERENDUM AND ELECTIONS: PROSPECTS AND CHALLENGES

In July 2012, more than three years after its inception, Copac finally produced the draft supreme law of the land.³⁸ There remains concern that the constant need to bargain and compromise to accommodate numerous

divergent political party interests resulted in the production of a draft constitution that may not mirror popular views. The proposed constitution provides for an overhaul of executive authority and devolution of power. Although an executive president will still rule the country, he/she will be constrained by checks and balances. Any decisions that must be made in relation to key issues, such as the declaration of war, state of public emergency and senior public appointments within state institutions, will not be taken unilaterally by the president but in consultation with parliament. The president and parliament will have fixed terms, with elections every five years. The draft limits the terms of the president, senior public officials and the chiefs of the security services, and clarifies the terms of succession in case of the sudden death, resignation or incapacitation of the president by providing for the vice president to assume the office of the president for the remainder of the term if the incumbent dies, resigns or becomes incapacitated. This raises the electoral stakes of selecting a vice-presidential running mate perceived to be capable of assuming office effectively upon the incumbent's departure. The draft constitution requires the security services to discharge their duties on neutral and non-partisan grounds and that an act of parliament provides for an effective and independent mechanism for receiving, investigating and remedying complaints from members of the public about misconduct by Zimbabwean security personnel. This could address the culture of impunity thriving in sections of the security forces.³⁹

One of the significant proposed changes is the devolution of governmental powers and responsibilities to provincial and metropolitan councils and local authorities to improve government efficiency and effectiveness, while enhancing people's participation in governance. An act of parliament will provide for the demarcation of the boundaries of the country's ten provinces. Provincial governors will chair the provincial councils, which will also include parliamentarians whose constituencies fall in the provinces concerned, chiefs, ten persons elected through proportional representation and extra staff. The new arrangement does not entail a fully-fledged federal system.

Crucially, the draft constitution provides the Zimbabwe Electoral Commission (ZEC) with a broader role in which the commission supervises the entire election process and whole environment in which elections takes place. There will be equal representation of women in all elected institutions and commissions. The draft charter provides for an Independent National Prosecuting Authority, while the attorney general currently handles legal advice to the government and prosecutes on behalf of the state. The document does not provide for compensation for land compulsorily acquired for resettlement under the agrarian reforms of 2000, except for improvements effected on it before its acquisition.

Once the GPA parties have endorsed the draft constitution, it is supposed to be translated into vernacular languages and Braille, and be circulated for Zimbabweans to comment. According to the timetable laid down in article 6 of the GPA, Copac is required to table the draft document swiftly for discussion and validation at a second all-stakeholders conference. Copac had planned to convene the conference by the end of August.⁴⁰ This meant that Zimbabwe would have had to meet the added demands of a referendum when it conducted its fourth census from 18 to 28 August 2012. However, given the procrastination that beset the Copac process and fresh calls by ZANU-PF for Copac to renegotiate and amend

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clauses of the draft constitution at odds with its interests, such as those tempering the imperial presidency and dealing with the devolution of power, the August timeline was overly optimistic.⁴¹

Notwithstanding the possibility of fresh obstacles, the draft constitution and accompanying report have to be presented before parliament for debate within a month of the conference. A referendum where Zimbabweans will vote to accept or reject the draft constitution should be held within three months of the conclusion of parliament's debate. A potential sticking point is the GPA's lack of clarity on parliament's legislative authority over the draft constitution, particularly whether the House will have the power to amend or revoke it, which would pose the danger of undermining earlier public participation. As we shall see below, the credibility of the constitutional referendum will depend on the preparedness and capacity of Zimbabwe's election management body, the presence of a democratic electoral framework and a conducive political environment.

While it is essential that the GPA principals and parties assume responsibility for the implementation of the agreement, they have different views about the constitutional timing of the country's next polls. The two MDC formations have maintained that elections should be staged only after the adoption of a new constitution and implementation of concomitant democratic reforms. At its December 2011 national conference, Zanu-PF declared 2012 a year of elections, with or without a new constitution, to terminate the life of the shaky IG that Mugabe and

Tsvangirai have conceded has become dysfunctional. Mugabe and other Zanu-PF stalwarts subsequently reiterated their determination to go ahead with elections regardless of the outcome of the constitutional reform process.⁴² Tsvangirai has, in the meantime, cited 31 March 2013, when parliament's term expires, as the constitutional deadline to conduct elections. In contradiction, Deputy Prime Minister Professor Arthur Mutambara indicated June 2013, the anniversary of the month in which Mugabe was sworn in, as the 'ultimate deadline'. Mutambara also mentioned that the GPA provides for elections under the current constitution if the three signatory political parties to the GPA reach a constitutional reform deadlock. Notably,

The ZEC was established amid concern that the registrar-general ran the country's election process

the GPA parties' fixation on constitutional reform and polls has resulted in the relegation of essential parallel processes such as voter education.

Although a new constitution is a significant precondition for free and fair elections, it is important to recognise that constitution-drafting is part of a broader democratic reform process. Set against the backdrop of violent elections in 2000, 2002, 2005 and 2008, it is imperative that a series of electoral reforms that have been tabled to prevent or handle cases of political violence and intimidation be completed. These include the requirement for the national police commissioner to appoint a senior police officer for each province who will be responsible for the expeditious investigation of cases of politically motivated violence and intimidation, in consultation with the Human Rights Commission (HRC). These should be assisted by provincial committees including representatives of the political parties contesting the election and chaired by a representative of the HRC. The police chief must also set up special police units in consultation with the HRC to investigate expeditiously cases of political violence. Special prosecutors and special magistrates' courts dedicated to dealing with such cases must also be established. However, professional intervention by politically impartial law enforcement agencies is necessary for these new measures to work.

To its credit the IG appointed the new ZEC in March 2010 in line with the provisions of the GPA and to reduce political tension in the country. However, the Electoral

Amendment Bill that was subsequently gazetted on 27 June 2011 and designed to promote free and fair elections has been stuck in parliament for over a year. The ZEC was established amid concern that the registrar-general ran the country's election process, including voter registration, provision of electoral staff, declaration of results, and custody of election materials (Zimbabwe Election Support Network [ZESN], 2002). The commission was composed to achieve a balance in the membership between the main political parties. However, the composition of the secretariat, whose staff include ex-army officers who are accused of manipulating the 2008 polls and are sympathetic to Zanu-PF, was not changed.⁴³ It is crucial that Zimbabwe passes a new electoral act and builds an effective and professional electoral commission that can promote democratic, competent and credible electoral systems.

The ZEC remains drastically under capacitated and would struggle to organise properly an election called at short notice. Meanwhile, the voters' roll that was first drawn up in 1985 is still a shambles, with a grave presence of 'ghost voters'. It contains the names of many dead voters and of persons who have left the country and no longer qualify to vote according to the current regulations.⁴⁴ In the run-up to the 2008 elections, the MDC-T had also accused Zanu-PF of manipulating the voter registration process by concentrating mobile stations in its traditional strongholds such as Marondera and Zvimba.⁴⁵

In February 2012, the ZEC met with Registrar-General Tobaiwa Mudede to discuss the production of an accurate, credible voters' roll – a fundamental prerequisite for a free and fair election. The commission, which is supposed to be independent from executive directions, argues that the country's existing electoral law gives it authority to supervise the voters' roll over the registrar-general, who reports to a line minister. The fate of the ZEC's proposal for a subordinate role for the registrar-general in the running of elections has not been decided.⁴⁶

Zanu-PF political appointees dominate the Observers Accreditation Committee, which compromises its independence. Mugabe has already insisted that election observers from the United Kingdom and the European Union (EU) be barred from the next polls to prevent 'meddling in our own electoral affairs'.⁴⁷ Against this background it would be important for SADC and AU observers to be deployed well in advance of the next elections to monitor the political environment and ensure the electoral process's conformity with regional and continental expectations.

In a context where systematic public media bias and deceptive political communication during election campaigns have served to promote Zanu-PF, resulting in well-grounded demands to free up the nation's airwaves ahead of future polls, there have been mixed developments

in the media reform arena since the establishment of the IG. A Zimbabwe Media Commission was created in March 2010. In a positive step, the commission subsequently licensed new print media players in May and July of that year. The country's mobile phone services received a major technical capacity upgrade. However, calls for the reconstitution of the Broadcasting Authority of Zimbabwe (BAZ), which is believed by some to be sympathetic to Zanu-PF, have fallen on deaf ears. In 2011, BAZ issued two commercial radio licences to the state-owned Zimbabwe Newspapers and to AB Communications – an entity critics allege is linked to Mugabe – thereby squandering an opportunity to build a truly diverse and independent broadcasting industry environment.⁴⁸ The Zimbabwe Newspapers-owned Star FM went live in June 2012, but is predictably expected to be loyal to Zanu-PF, as is the case with its sister newspapers. The unbalanced media coverage of politics by public broadcasters in favour of Zanu-PF has continued. The Zimbabwe Media Commission has not been able to reform the country's repressive media laws, such as the Access to Information and Protection of Privacy Act (AIPPA) and Censorship and Entertainment Control Act. Parliament has failed to conclude media legislation such as the Media Practitioners Bill and the Freedom of Information Bill that could foster the development of a diverse and pluralistic media environment in Zimbabwe.⁴⁹ Against this backdrop, the harassment of journalists and artists perceived to be disloyal to Zanu-PF continued, which thwarted freedom of expression, a cornerstone of democracy.

The security sector, which has a record of partisan involvement in violent political processes to influence the outcome of elections, has been shielded from reform by Zanu-PF despite constant pleas by the MDC.⁵⁰ Mugabe's 'power is ... tied to that of the military as a consequence of Zanu-PF's legacy as an armed liberation movement'.⁵¹ Significantly, some army commanders have recently made pronouncements crudely reminiscent of the run-up to the June 2002 presidential elections, when all five service chiefs affirmed their allegiance to Mugabe, publicly declaring that they would not salute or recognise any leader without 'liberation war credentials' in an apparent swipe at Tsvangirai.⁵² This is set against a politico-military and business environment characterised by the militarisation of public institutions following Zanu-PF's deployment of securocrats to key public positions and to head parastatals, and the security forces' involvement in diamond mining through front companies.⁵³ The army's previous political manoeuvres, commercial interests and control over means of violence, as well as statements that they would not recognise any elected leader without liberation war credentials, certainly raise red flags that they may once again step in and influence the outcome of an election.⁵⁴ The upper echelons of the security sector may also fear

investigation for alleged human rights violations and seizure of their assets in a post-Zanu-PF dispensation.

Another contentious, outstanding GPA issue concerns sanctions. The GPA committed the Zimbabwean parties to work 'together in re-engaging the international community with a view to bringing to an end the country's international isolation'.⁵⁵ In the April 2010 *Final report of the negotiators on the post-Maputo interparty dialogue*, it was also agreed that the GPA principals 'should meet and consider the issuance of a statement and the convening of a press conference restating commitment to the GPA, and the removal of sanctions ... and the implementation and execution of a consistent message on the question

The EU stated that it would suspend most sanctions against Zimbabwe, including the aid freeze

of sanctions'.⁵⁶ Mugabe has previously stated that he will not retire until the lifting of sanctions imposed by the EU, Australia, New Zealand, and the United States between 2002 and 2003, targeting himself and 200 senior Zanu-PF and government officials as well as institutions. Some sanctions relating to international financial institutions and government-to-government relations, including loans and credit, are preventing Zimbabwe from receiving official development assistance. SADC has been lobbying the international community to lift its sanctions. This stance should be understood in the context of preventing Zanu-PF hardliners from using the existence of sanctions as an excuse for not implementing fully the provisions of the GPA.⁵⁷

The EU retained Mugabe on its sanctions list in February 2012 when it ended measures against 20 entities and 51 individuals, citing progress in political reforms meant to facilitate a credible poll. Against this backdrop the mooted pre-emptive call for elections may be in line with Mugabe's declared stance that he will not step down until sanctions are wholly lifted. In May 2012, Zimbabwe's ministerial re-engagement team, comprising members of the three signatory parties to the GPA, launched an unprecedented, unanimous plea for a full, unconditional removal of sanctions.⁵⁸ In July 2012, in an important milestone towards the conduct of democratic elections, the EU stated that it would suspend most sanctions against Zimbabwe, including the aid freeze, conditional upon the holding of a credible referendum on a new constitution.⁵⁹ This was in

recognition of the concrete progress made by Zimbabwean parties in implementing the GPA and the commitment by SADC to support this process as expressed at its Luanda Summit. The sanctions would be lifted against most of the 112 Zimbabweans still under the decade-old EU asset freeze and travel ban, excluding Mugabe and his inner circle.

POSSIBLE SCENARIOS

In the light of the above developments, the following scenarios may unfold:

Scenario one: Zanu-PF triumphs in elections in 2013 following the adoption of a new constitution

This scenario assumes that the GPA parties will vigorously promote the consensus constitution produced by Copac to ensure acceptance by Zimbabwe's electorate in a referendum in 2012. The referendum would set the democratic tone of the framework to run the election, unlike the February 2000 referendum, where the defeat of the Zanu-PF-backed constitution served as a warning for the party to launch a violent campaign strategy instead of sleepwalking into the June 2000 parliamentary elections. SADC, acting as guarantor of the GPA, would firmly impress upon the Zimbabwean parties the need to implement an agreed roadmap to elections. Notwithstanding a record of little tangible progress under the IG, this scenario assumes the GPA parties would also collaborate to implement the institutional and legislative reforms required by the new constitutional dispensation to facilitate the conduct of credible and acceptable elections in 2013. This would include the reform of the much-maligned ZEC secretariat and the adoption of a clean electoral roll.

Harare would then allow SADC and the AU to deploy long-term election monitors to assess the political situation to prevent violence and intimidation, and ensure that the electoral process and outcome are credible. The election would be closely contested and the final result would be in favour of Zanu-PF. The political old guard would continue to rule and the interests of the securocrats would be protected. The elected Zanu-PF government would implement some reforms to shed its pariah status on the international stage. The nature of the reforms would depend on the intraparty succession battles pitching hardliners against moderates. The international community would be expected to respect the outcome, notwithstanding the antagonistic relationship with Mugabe and his party, and be ready from the onset to remove all remaining sanctions against Zimbabwe and assist the country in its socioeconomic recovery path.

Scenario two: MDC-T victory in elections in 2013 following the adoption of a new constitution

This scenario is similar to the first one but for the closely contested elections resulting in an MDC-T triumph. It pitches two key issues in the political transition. Firstly, MDC-T would have to seek a quiet rapprochement with the influential military chiefs so that they accept a government led by the party. This would set the platform for a subsequent reformative approach towards the democratic governance of the security sector. Secondly, SADC and the AU would have to guarantee the peaceful transfer of power to MDC-T amid possible reluctance by Zanu-PF hardliners to accept and respect the election results.

Scenario three: Government of national unity 2

In this scenario, none of the presidential contestants would acquire a large enough share of the vote – 50 per cent-plus-one – to be declared the outright winner. The runoff election between the two candidates that won the most votes would result in a close outcome. This scenario further assumes that both Zanu-PF and MDC-T will fall short of a parliamentary majority, raising the prospect of a new coalition government. In the event of a hung parliament after the election, the parties would negotiate potential arrangements for the foundation of the government. This scenario would be supported by Zanu-PF hardliners and securocrats as it would safeguard their influence and interests.

CONCLUSION

Zimbabwe is a constant reminder that politics is not always black and white. The outcome of the ongoing constitutional reform process and prospects for elections thereafter are difficult to predict. Zimbabwe's constitution-making process risked criticism from the onset for resembling a matter for the GPA parties to control or unduly influence. There remains concern that the process resulted in the production of a flawed negotiated constitution that does not reflect the views gathered during the outreach exercise. At the time of writing in early August 2012, it is uncertain whether the majority of Zimbabweans will vote for or against the proposed new constitution. The fact that the draft constitution was negotiated and contains some important changes could, however, stand it in better stead for endorsement in a referendum. If Zimbabweans decide to accept the proposed constitution, the battle lines have already been drawn, and the parties will square off in the elections. Although in Zimbabwean politics there are few absolutes, the military will most likely not stage an outright

coup but could try and continue to influence and control the country's political trajectory from behind the scenes to prolong Zanu-PF's grip on power, which is crucial to safeguarding its interests.

Given Zimbabwe's history of election-related violence it is fundamental that the parties demonstrate the necessary political will and commitment to implement an agreed roadmap to credible, peaceful and transparent elections. SADC and the AU would need to deploy monitors well in advance of the scheduled elections to inspect the political environment, and prevent violence and intimidation. SADC should ensure that the Zimbabwean polls meet the regional standards for democratic electoral processes to imbue the elected government with legitimacy through popular consent and bring the constitutional reform and transitional process to the end of a tortuous road, thereby ensuring Zimbabwe's advance to democracy.

NOTES

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ISS Pretoria Office

Block C, Brooklyn Court, 361 Veale Street
New Muckleneuk, Pretoria
South Africa
Tel: +27 12 346 9500
Fax: +27 12 460 0998
Email: pretoria@issafrica.org

ISS Addis Ababa Office

5th Floor, Get House Building
Africa Avenue, Addis Ababa
Ethiopia
Tel: +251 11 515 6320
Fax: +251 11 515 6449
Email: addisababa@issafrica.org

ISS Cape Town Office

2nd Floor, The Armoury
Buchanan Square
160 Sir Lowry Road, Woodstock
South Africa
Tel: +27 21 461 7211
Fax: +27 21 461 7213
Email: capetown@issafrica.org

ISS Dakar Office

4th Floor, Immeuble Atryum
Route de Ouakam, Dakar, Senegal
Tel: +221 33 860 3304/42
Fax: +221 33 860 3343
Email: dakar@issafrica.org

ISS Nairobi Office

Braeside Gardens, off Muthangari Road
Lavington, Nairobi, Kenya
Tel: +254 20 266 7208
+254 20 266 7198
Email: nairobi@issafrica.org