



ZZZICOMP BASELINE REPORT

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Acknowledgements

This report is a culmination of a baseline study by the Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Election Support Network (ZESN) and Zimbabwe Peace Project (ZPP) Independent Constitution Monitoring Project. The report was compiled by ZZZICOMP Secretariat with the assistance of project officers from the three institutions.

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Abbreviations and Acronyms

AIPPA	Access to Information and Protection of Privacy Act
COPAC	Constitutional Parliamentary Committee
CSO	Civil Society Organisations
DCC	District Coordinating Committee
GPA	Global Political Agreement
JOMIC	Joint Monitoring and Implementation Committee
IPA	Inter Party Agreement
MDC-T	Movement for Democratic Change-Tsvangirai
MDC-M	Movement for Democratic Change-Mutambara
MOZA	Men of Zimbabwe Arise
NANGO	National Association of Non-Governmental Organisations
NCA	National Constitutional Assembly
POSA	Public Order and Security Act
WOZA	Women of Zimbabwe Arise
ZCTU	Zimbabwe Congress of Trade Unions
ZANU- PF	Zimbabwe African National Union – Patriotic Front

Executive Summary

It is a well grounded fact that Constitution-making is generally a highly contested political process. However, this is not surprising given the fact that a Constitution ideally should capture the fundamental political principles of a country. Seldom is there agreement on these principles, especially in countries marked by deep social, political and economic divisions like Zimbabwe. It is a truism that Constitutions generally limit the undue exercise of power by the State, and provide for the ratification of exercise of political power. Given this theoretical and often times practical assertion, the Constitutional reform process in Zimbabwe could have been no different.

Since the signing of the Global Political Agreement (GPA) in September 2008 and the attendant tripartite accord, with one of its key provisions, Article 6 giving impetus to *“the process of making a constitutionowned and driven by the people.....in an inclusive and democratic manner”*, the objectives set therein have proved to be no mean task. The process has been dogged by incessant challenges that have the potential of undermining this important process. The timeframes as set in the GPA have been completely missed notwithstanding that the Parliamentary Constitution Select Committee (COPAC) was set up according to the schedule. However, the work of COPAC has been shrouded in secrecy to the extent that very little progress has been made more especially in the commencement of the public outreach programme. In January 2010, COPAC suspended the outreach programme citing political party differences over secondment and impartiality of the outreach rapporteurs. The net effect of such cancellation was that COPAC continues to miss the set deadlines to the extent that the Referendum slated for July 2010 will not be met. Other challenges are related to resource constrains as well as the general modus operandi on how to relate to other key stakeholders like civil society. Talking points to guide the public outreach process have been developed albeit with very little consultation much to the chagrin of civil society under the National Association of Non-Governmental Organisations (NANGO) umbrella. Key to the reservations is the contention that the “Talking Points” were very prescriptive and suggestive with a high probability that the outreach programme will not adequately represent the views of the people. However, they have since been revised incorporating the input from civil society and other stakeholders.

The composition of the subcommittees of the Parliamentary Constitution Select Committee (COPAC) raised a lot of ire from civil society organizations who argued that the process was parliamentary-driven which was a departure from the letter and spirit of Article 6 of the GPA which advocated for a people-driven route. Resultantly civic society took three distinct positions. Some decided to completely stay out of the process and adopt a “Take Charge” stance, effectively condemning and proposing to campaign for a NO VOTE at the referendum, others decided to actively participate through strategic and meaningful engagement whilst others decided to monitor the process against established benchmarks and standards of constitutionalism and constitution-making; openness, inclusivity, transparency, legitimacy, accessibility and receptiveness.

The two main political parties have continued to send divergent signals over the reference document (s) to guide the process of constitutional reform. ZANU PF has insisted on the use of the Kariba Draft as the basis whilst the MDC-T’s contention has been that it is receptive to as many ideas and drafts as the people of Zimbabwe may have and/or propose as provided for in Article 6 of the GPA. The contradictory approach by the two parties has, to a large extent, led to the resurfacing of political tensions reminiscent to the period prior to the June 2008 run-off elections. Pockets of violence, repression, human rights abuses, “coaching” of ordinary citizens has been reported in most parts of the country more particularly in Manicaland,

Mashonaland Central, Mashonaland East and Masvingo. In January 2010 alone, about eight (8) cases of torture, assault and various forms of intimidation allegedly committed by ZANU PF youths, the Zimbabwe Republic Police (ZRP) and the Zimbabwe National Army (ZNA) personnel were reported in Mudzi, Kuwadzana, Domboshava, Chimhondoro, Chiramwiwa and Harare.¹ Attempts by civic society to conduct constitution awareness workshops and campaigns have been met with undue resistance from ZANU PF supporters, war veterans and others generally opposed to the constitutional reform process. Hence the operating environment has not been conducive for people to freely participate in the consultative and outreach processes.

The restrictive media framework has remained in place with repressive legislation very much intact notwithstanding the appointment of the Zimbabwe Media Commission. The public media and broadcaster have been consistent in their support for ZANU-PF condemning everything that appear to be pro-MDC. Reportage on the constitution has unfortunately reflected this editorial slant. The casualty therefore has been the reform process in that the input from the people might reflect opinion from the political divide as opposed to their views and aspirations as Zimbabweans.

Background

In Zimbabwe, political debate continues to centre around the full implementation of the GPA, which stipulates a number of political reforms agreed upon by the three major political parties in Zimbabwe, namely the Movement for Democratic Change-Tsvangirai (MDC-T), the Movement for Democratic Change-Mutambara (MDC-M) and the Zimbabwe African National Union-Patriotic Front (ZANU PF). One central element of the IPA concerns the constitutional reform, which has been an area of contestation between the parties since the late 1990's.

The IPA mandates the Inclusive Government to embark on constitutional and electoral reforms through the drafting of a new people-driven constitution for the country.² The three parties also noted that there was a need to create an enabling environment to ensure that a new constitution is drafted, and they acknowledged the existence of the Kariba Draft, which was agreed to by all parties to the agreement prior to the 2008 elections.³ In order to start the constitution-making process the IPA mandates the inclusive government to form a Parliamentary Select Committee (PSC) within 2 months of its inception, convene a first All Stakeholders' Conference 3 months after the PSC is appointed, and conduct a public consultation process within four months after the first Stakeholders' conference. Other processes will eventually lead to the preparation and debating of the draft in Parliament, a referendum, and its potential adoption. In a nutshell, the process is divided into three phases: preparatory, consultative, and lastly drafting and adoption.

Progress and transparency in this process has been marred by often times unnecessary political bickering from the onset. Since the formation of the PSC in April 2009 in accordance with the IPA time-line, the activities of the PSC have been shrouded in secrecy and confusion, with a general lack of information on progress. Some of the activities carried out have been disastrous, such as the July 2009 First All Stakeholders' Conference, which was disrupted by some retrogressive elements from within ZANU PF who remain intolerant of divergent views, and other similarly retrogressive state agents who have sought to fight for the imposition of the Kariba Draft as the new Constitution. The PSC also delayed in transparently

¹ Legal Monitor, ZZZICOMP is watching, 1 February 2010

²Article VI of the IPA

³ Article VI, Section 6 of the IPA

setting up 17 thematic committees,⁴ whose composition is largely made up of politicians though there are representatives of CSOs. The committees have now been finalized; the Deputy Chairpersons of these have been selected in a non-participatory manner, and include disputed individuals, including military personnel, although they are supposed to have been drawn from the civic sector.

In September 2009 following a meeting of the Principals to the IPA, and purportedly in order to improve the efficiency of the PSC (but again without consultation with the civil society), an Independent Secretariat was mooted to provide administrative services to the PSC.⁵ Other ways of purportedly improving the inclusivity of the PSC have been cited as the re-composition of the Management Committee of the PSC to include the negotiators of the three political parties and the Minister of Constitutional & Parliamentary Affairs to provide “policy direction” to the whole process. A Steering Committee also set up will be responsible for managing operations.

In spite of all these processes, the conditions which will make it possible for people to participate freely in the constitution-making process have not been created. In light of the conflicting signals sent by the GPA wherein, on one hand, Article 6 speaks about the people driving the constitutional reform process in an inclusive and democratic manner, it places the Select Committee of Parliament as the fulcrum of the process. Put differently this therefore means that Parliament will be driving the process. This scenario led to some members of civil society namely National Constitutional Assembly (NCA), the Zimbabwe Congress of Trade Unions (ZCTU) and the Zimbabwe National Students Union (ZINASU) deciding to oppose the process noting that it was being led by the politicians in sharp contrast to the provisions of Article 6 of the IPA.

As noted by Dr Lovemore Madhuku, Chairperson of the NCA⁶, “the reason why we are rejecting that process is because it is now heavy with influence of Parliamentarians. This means that Parliament has closed its doors on very effective participation of the citizens and the process is going to produce a predictable outcome” “We say no to a defective constitution born out of a defective process. We will repeat what happened in 1999. We are campaigning for a no vote.” The NCA has also strongly objected to the use of the Kariba draft as the key reference document to the process. However such a stance has been criticized by the Minister of Constitutional and Parliamentary Affairs who argued that such a process was reminiscent to the parallel one undertaken by South Africa wherein Parliament acted as a Constituent Assembly.

The other section of civil society under the NANGO and Crisis in Zimbabwe Coalition banner have taken a conscious decision “to harness the various efforts and to strategically engage with the constitutional reform process along mutually reinforcing tasks; engagement, non-engagement and a hybrid of the two⁷. This proposal was accepted and endorsed by the Civic Society Organisations (CSO) Leaders Conference on Constitutional Reform by;

- Restating the strategic value of allowing all tracks to exist and coordinate,

⁴ Founding Principles of the Constitution, Arms of the State, Systems of Government, Bills of Rights, Women and Gender Issues, Youth, Disabled, Media, War Veterans, Land -Natural Resources and Empowerment, Labour, Elections, Transitional methods, Independent Commissions, Executive State Organs (Public Service Commission, Police and Army), Public Finance, Traditional Institutions and Customs, Religion, Languages.

⁵ See Press Release by Honorable Eric Matinenga dated 18 September 2009

⁶ The NCA is a conglomeration of civic groups, women’s organisations, churches, opposition political parties, labour and student movements. The NCA has been championing the cause for a people-driven democratic constitution since 1997.

⁷ Civil Society Key Principles on Content and Process on the Constitutional Reform Process adopted at the People’s Constitutional Convention, held at the Rainbow Towers, Harare, 3-4 July 2009.

- Continuing efforts aimed at greater coordination of civil society on the constitutional reform process, and encourages and facilitates the continued meetings and joint actions of clusters represented at the convention.⁸

The CSOs also undertook to ensure the continuity of the process by engaging citizens on key issues related to content and process of the reform. They undertook to intensify civic education and information dissemination through the media, community outreaches, public discussion forums, road shows, marches and other forms of ensuring that the people are educated. Another key area of convergence was the setting up of an independent monitoring of the reform process. It is against this background that ZESN, ZLHR and ZPP; all of which are not formally participating in the constitution-making process through representation in the thematic committees, also recognize the need for action other than complete non-participation decided to effectively collaborate in independent monitoring of the constitution-making process. The three organizations then decided to set up a monitoring project under the name ZZZICOMP. The project focuses on independent civic monitoring of the constitution-making process in all constituencies in Zimbabwe with a view to increasing the transparency of the process, holding those leading the process to account, enhancing the development of a democratic constitution in Zimbabwe, and ensuring that the draft constitution produced reflects the wishes of those engaging with the process.

Monitoring this process will result in proper documentation of the operating environment in which the consultations occur, the activities of the Article 6 process (particularly the holding, content and outcome of the consultative meetings as well as any negative occurrences, and will also result in coordinated efforts to make rapid interventions when the participation of the people is being hampered or the process is being threatened. This documentation will form part of a “Shadow Report” which can be used as a basis for future interventions to be taken in relation to the constitution-making process, and will ultimately also function as a historical record.

Already 420 monitors, as well as provincial coordinators and other key personnel have been trained for this project. They are now on the ground across the country observing the operating environment in general, and are ready to commence the more intensive monitoring once the outreach teams have been deployed. They are dispersed nationwide in order to systematically gather information during the consultative processes, to comment on the operating environment and any breaches of the IPA in relation to the process, and to highlight any violations, violence, or other discrepancies which occur in the constituencies and wards in which they are operating.

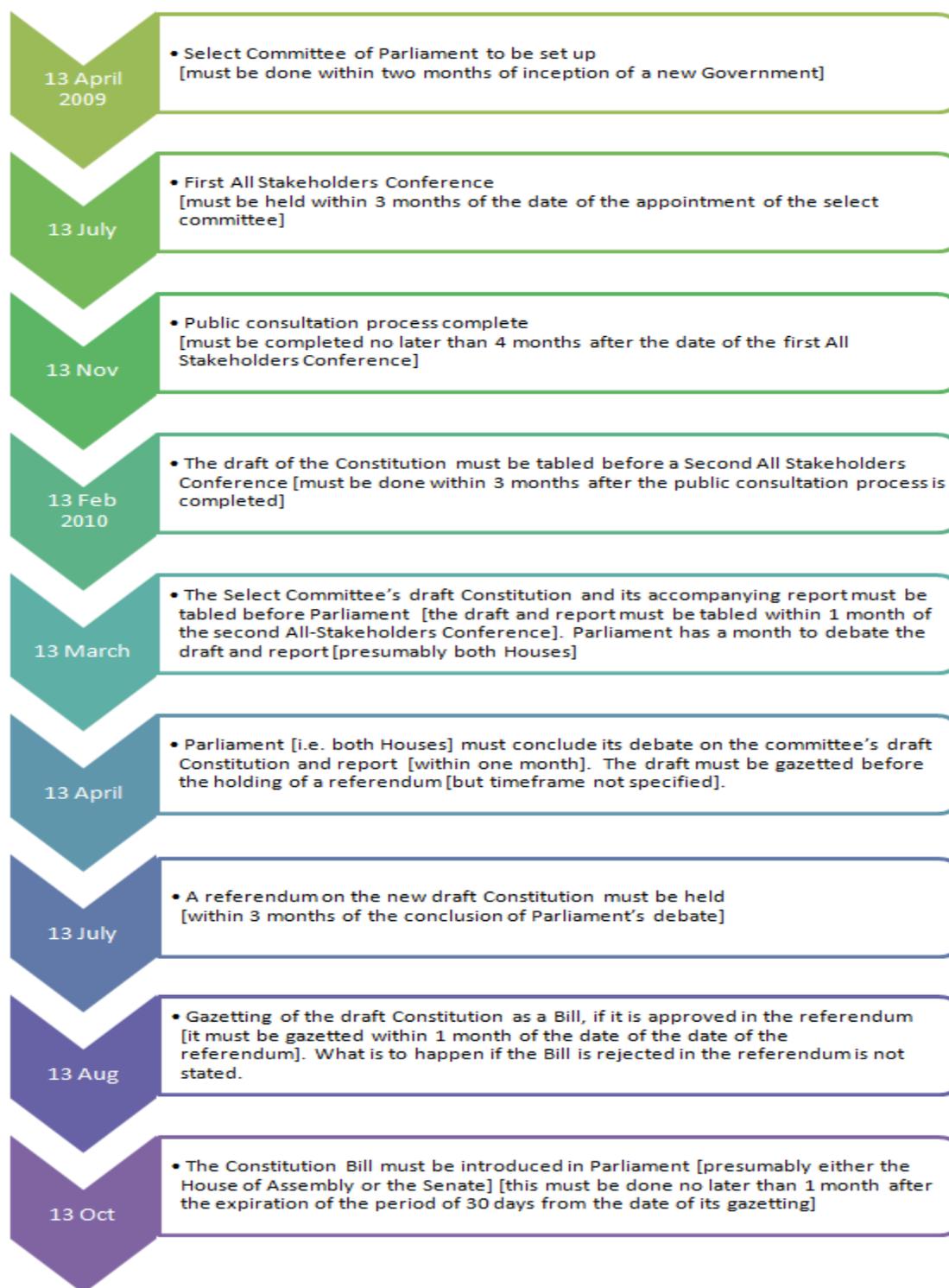
It is envisaged that the monitoring of the constitution-making process will also act as a confidence-building measure for the people by holding those leading the process to account and insisting on greater transparency, pressuring for a conducive operating environment, availability of diverse information relating to constitution-making, and ensuring that the draft constitution ultimately produced is a true reflection of the input provided by those participating in consultative and outreach processes.

Legal Framework

The constitution making process in Zimbabwe is premised on the provisions of Article 6 of the Global Political Agreement signed by the three major political parties in September 2008. Article 6 specifies the steps, timeframes and the procedure to be followed in the constitutional reform process. The table below

⁸ Ibid

summaries the timelines as agreed to by the parties although most of the deadlines have already been missed⁹.



⁹ Table courtesy of Veritas

As can be gleaned from the table above, the entire constitution making process is headed by a Select Committee of Parliament (PSC) comprised of nine members each from the MDC-T and ZANU PF and three from MDC-M, one chief and three members selected by presiding officers of Parliament. This committee is chaired by three members, one each from the three parties that signed the GPA. Although not expressly provided for in Article 6, extra structures were set up to ensure the smooth functioning of the Committee. A secretariat has been set up for the PSC as well as a Management Committee comprising the co-chairpersons of the PSC and the GPA negotiators including Honourable Tendai Biti (MDC-T), Professor Welshman Ncube (MDC-M) and Patrick Chinamasa (ZANU-PF).

Chairpersons of the thematic committees are all Parliamentarians. ZANU-PF and MDC-T have each been asked to put forward 7 chairpersons, MDC-M 2 and Chiefs 1. Vice-Chairpersons are non-Parliamentarians chosen and then appointed by the Select Committee. The initial planning was that there will also be 70 outreach teams to cover 210 constituencies, with about 12 members in each team and each team will visit 3 constituencies. The total number of people involved in the outreach teams for the public consultation process was set at 860 – made up of the 425 thematic committee members plus an extra 435. There will also have to be a number of support staff for each team. The Select Committee selected members taking into account skills, gender balance and political affiliation. 30% will be Parliamentarians while 70% are non-Parliamentarians¹⁰.

Names were put forward by civic society organisations but the final selection of deputy chairpersons and members of the thematic sub-committees was done by the Select Committee in a way they believed ensured a balance of people considered sympathetic to the main political parties. The 11 small political parties not represented in Parliament have been accommodated, each being allowed 5 nominees spread over the 17 thematic sub-committees. The Select Committee believes it has come up with a group of people truly representative of Zimbabwean society and characterised by gender balance and inclusivity. The Select Committee has also chosen an additional 135 individuals bringing to 560 the total complement of persons involved in the outreach programme to consult the people on what they want in the new constitution. 107 of the 135 extra outreach personnel are Parliamentarians, the idea being that they will use their influence to assist in smoothing out any problems arising in the field. The other 28 will come from civic society lists. The services of the extra 135 will be required for the duration of the outreach exercise only – they will not be members of the thematic sub-committees who continue their work after the outreach. However, the composition of the teams has been regularly changing to the extent that the exact totals can only be determined when the teams are finally accredited.

The Referendum

Article 6 of the Inclusive Government Agreement signed by the respective leaders of the three political parties on 15 September 2008 provides the process and timetable for the drawing up of a draft new Constitution for Zimbabwe and the submission of the Constitution to a referendum at which Zimbabwean voters will decide whether to approve or not approve this draft.

Before the referendum is held the draft must first be submitted to the Second All Stakeholders Conference. This Conference will debate this draft and, presumably, may decide to recommend changes to the draft if, for instance, it decides that the draft does not properly reflect what the people said they wanted in the Constitution during the outreach programme. Thereafter the draft Constitution and accompanying Report is to be debated within Parliament for up to one month. It is not clear what Parliament's role and functions are

¹⁰ Ballot Update, Issue No 5, August 2009

when it debates the draft Constitution. Mr Douglas Mwonzora, one of the co-chairs of the Parliamentary Committee steering the constitutional reform process, has categorically stated that Parliament will not be at liberty to amend the provisions of the draft and will simply debate whether the draft properly reflects what is contained in the Report. However, no indication has been made as to what will happen if the Parliamentarians resolve that the outreach programme was not properly conducted or that some provisions of the draft do not properly encapsulate the views of the people expressed during the outreach programme. But the draft is in effect draft legislation and under the Constitution the legislative authority lies with Parliament and it may amend any legislation brought before it. Even if it is agreed in Parliament that it will not make any amendments to the draft before it is put to a referendum, Parliament would still have the power to make amendments to the draft after it has been approved in the referendum when it is introduced into Parliament to be passed into law. It would be unlikely; however, that Parliament would do so after the draft has been resoundingly approved in a referendum.

It would seem that parliamentary and presidential elections would have to be held as soon as the new Constitution comes into operation. The new Constitution will surely change at least some aspects of the current Constitution relating to the nature and powers of the Presidency, the composition of the two houses of Parliament and other structures of government. If, for instance, the number of seats in the two houses is altered as well as the manner in which they are to be elected, the current parliamentarians will not be able to remain in office. Yet there is already talk that the Government of National Unity will remain intact for a full five years and elections will only be held at the end of this five year period. This however remains a matter of intense debate.

Constitutional right to free and fair referendum

There is a specific provision in the Constitution that provides that every citizen is entitled to free and fair referendums whenever they are called in terms of the Constitution or an Act of Parliament. [paragraph 23A(1)(c)].

The Constitution also provides that the Zimbabwe Electoral Commission is given the responsibility of preparing, conducting and supervising referendums to ensure that these are conducted efficiently, freely, fairly and transparently and in accordance with the law. [paragraph 100C(1)(a)].

The Referendums Act [*Chapter 2:10*]. This sets out how referendums are to be conducted. The full Act is appended to this document. In summary, the Act provides:

The President will issue a proclamation which is published in the Government Gazette declaring that a referendum is to be held to ascertain the view of the voters on a question or issue. [Section 3]. (Here the question will be whether the voters approved the draft Constitution. It would seem that voters will not be asked to approve or disapprove each and every segment of the constitutional draft.)

The proclamation will also appoint the day or days for holding the referendum and will state the hours at which voting will commence and will close. All ballot-papers used for voting in a referendum must state the question or issue to be determined at the referendum. [Section 5]. Any person who satisfies the presiding officer of a polling station that he or she is eighteen years or above and is eligible to be registered as a voter on the voters' roll is entitled to vote at a referendum. [Section 6]. The referendum will be decided on the basis of the vote of a majority of the voters. [Section 7]. The processes for the counting and

announcement of results are set out in detail in section 8. Section 9 deals with appeals to the Electoral Court as to the correctness of any decision of a returning officer in admitting or rejecting any vote.

Section 10 provides that subject to Referendums Act, the Electoral Act and the regulations made thereunder will apply to any referendum, in so far as they can appropriately be applied to it, as if the referendum were a general election held following dissolution of Parliament. It further provides that— references in the Electoral Act to an election are to be construed as references to a referendum; references in the Electoral Act to candidates and to candidates' election agents or polling agents must be disregarded; any forms used for the purposes of the Electoral Act may be used for the purposes of a referendum, with or without modification.

Section 11 provides that the Electoral Commission may issue regulations providing for matters necessary for the holding of the referendum including regulations providing for: the form of ballot papers; the establishment of polling stations outside the constituencies for which they are established, where voters who are not physically present in the constituencies in which they are registered or entitled to be registered may cast their votes; the establishment of multi-constituency polling stations, that is to say, polling stations where voters may vote if they are registered or entitled to be registered in any of two or more constituencies.

The Electoral Commission may also by regulation make such modifications or adaptations of the Electoral Act or the regulations made thereunder as the Commission considers necessary or expedient to give effect to this Act and for its proper administration, but any such regulation will only have effect after it has been approved by the Justice Minister.

The Zimbabwe Elections Support Network has proposed a series of further reforms to the electoral laws of Zimbabwe. It has proposed further constitution reforms and further reforms to both the Electoral Act and the Zimbabwe Electoral Commission Act. These are primarily aimed at Parliamentary and Presidential elections. However, most of these reforms would also have relevance in respect of a referendum. It is vitally important that relevant electoral reforms be put in place prior to the referendum and that there be a proper legal framework for the holding of the referendum.

This document seeks to prioritise the reforms that should be put in place before the holding of a referendum in order to ensure that the referendum is, and is perceived to be, free and fair and that the published result accurately reflects the electoral will of the people of Zimbabwe. It also proposes certain changes to the Referendums Act. It is also essential to note that independent observation of elections is a vital part of fair electoral process and lends credibility to the process. This also applies equally to the holding of a referendum to assess public opinion.

Given the heated debate over the process leading to the compilation of the draft constitution and what is likely to be heavily divided opinion over the acceptability of the draft, it is imperative that the referendum process be subjected to thorough independent observation.

Local and international observers should be allowed freely to monitor the pre-referendum environment, the voting process during the referendum and the post-referendum period. The presence of large numbers of observers will help to provide confidence in the process and will be some safeguard against intimidation of persons who wish to cast their votes. Thus as stated above, the present unreasonable restrictions on observers should be removed before the referendum

Operating Environment

It is a given that constitution making in Zimbabwe has remained a much politicised affair. The conditions under which this important process has to be undertaken are inhibitive. Whilst Article 6, provides a frame work for the free expression of people's will in relation to the current constitution-making exercise, the process has become almost untenable. Repressive legislation that inhibits freedom of assembly, association, expression and movement e.g. POSA and AIPPA have not been repealed or amended, and continues to be selectively applied by the authorities in sharp contrast to the Article 19 of the GPA. Article 19 is premised on the importance of the right to freedom of expression and the role of the media in a multi-party democracy. Despite the said article clearly outlining a roadmap for reforming the media landscape, as well as setting benchmarks, violations, hate speech and harassment of media personnel is still abound. Although the arrests and detention of journalists has somewhat declined from the levels prior to the consummation of the GPA, there are still pockets of arrests of journalists from the private media on spurious charges.

To make matters worse, the public media has remained largely unrepentant in its coverage of the democratic forces especially civil society and human rights defenders. The Herald and the Zimbabwe Broadcasting Corporation (ZBC)'s partisan reportage has continued to perpetuate the ZANU PF agenda littered with hate speech and suffocating vitriol. In February 2010, the Information and Publicity Subcommittee of COPAC lodged a complaint with the Minister of Media, Information and Publicity regarding alleged biased state-controlled media coverage of the constitution making process.¹¹

Even then, the quality of reporting on the process by both the private and public media has been largely superficial and lacks both investigative quality, and substantive information which will assist the public to access and be educated about the many diverse issues relating to the process and content of constitution-making. Of critical concern was the apparent media blackout on the progress of constitutional reform process. Much of coverage has centred on castigating the MDC-T and their "perceived" positions on various issues on the constitution. It is sad to note that the lack of balanced and factual reports in the public media which has a wider coverage throughout the country has a debilitating effect on the effective participation by ordinary Zimbabweans. So rampant is the ignorance over the constitution making process, and the Inter Party Agreement (IPA) that the majority of people are in the dark about the mandate and tenure of the provisional authority¹². Ironically according to Article VI of the IPA, the transitional government should create conditions "for our people to write a constitution for themselves". It is only with such information that people can decide for themselves whether they wish to contribute to the process or not, and what they want to see addressed in any new constitution.

Although civic society organizations, like Bulawayo Agenda, Catholic Commission for Justice and Peace (CCJP), Centre for Community Development in Zimbabwe (CCDZ), Crisis in Zimbabwe Coalition, Zimbabwe Election Support Network (ZESN), Zimbabwe Lawyers for Human Rights (ZLHR) and Zimbabwe Human Rights Association (ZimRights) made tremendous effort in educating the populace in some instances, they have experienced a lot of resistance in holding meetings in some parts of the country especially in Mashonaland Central, Manicaland and Masvingo provinces. In many instances, the credibility of the reform exercise has been tainted by reports of alleged violence and intimidation by soldiers and supporters of Mugabe's ZANU PF party campaigning for the adoption of the controversial Kariba Draft

¹¹ Copac lodges complaint against 'biased' state media, *The Zimbabwe Independent* 5 – 11 February 2010

¹² Legal Monitor, *Constitutional Darkness*, 25 January 2010

constitution as the basis for the proposed new charter¹³. In one such incident, the ZANU PF councilor and youths in Uzumba disrupted a Crisis in Zimbabwe Coalition constitutional outreach meeting on the basis that it had not been sanctioned by their party hierarchy. It is sad to note that one year after the official formation of the inclusive government, respect for human rights in Zimbabwe remains disappointingly low.¹⁴ The police continue to use the POSA, AIPPA and the Criminal Codification and Reform Act to restrict and disrupt meetings, arresting and detaining peaceful demonstrators especially members of WOZA/MOZA, University students and others¹⁵. It is given that years of political injustice, human rights violations and political violence and repression will have a telling effect in the manner in which people are going to participate in the constitutional reform process.

Selective application of the law targeting human rights defenders and perceived and real supporters of the Movement for Democratic Change is still rampant. In January 2010, MDC-T supporters were arrested in Bindura and Mount Darwin under POSA for holding internal meetings on the constitution. The institutions of justice delivery remain unreformed and continue to contribute to the culture of impunity. Incidents of political violence continue to be documented, and the polarization of society that marred the 2008 elections has not been addressed

In light of the foregoing, civil society organisations under the NANGO umbrella, attending the People's Constitutional Convention held at Rainbow Towers Hotel, Harare 3-4 July 2009, came up with resolutions among them;

1. That the State and other drivers of the reform process should ensure a conducive environment for meaningful participation of ordinary citizens and civil society in the constitutional reform process by, *inter alia*.

- Removing the legislative and non-legislative impediments that militate against the meaningful participation of citizens including, but not limited to repealing POSA, AIPPA and BSA.
- Allowing free flow of information and freedom of expression throughout the process, by opening up of the airwaves, greater media freedom and free citizens' access to the media, especially state-owned media.
- Ceasing the public use of hate speech.
- Disbanding terror bases.
- Setting-up effective human rights protection mechanisms thus ensuring human security and protecting people's right to engage with the process without fear of victimization.

2. That the possible unwarranted executive interference in the constitutional process should be avoided;

- Acknowledging that the Constitutional reform process is an independent national process, being run by national people's institution that should be protected from manipulation by political parties by political party heads, political parties, the executive and other interest groups.
- Instituting an independent monitoring mechanism of the constitutional reform process, by civic society.
- Refraining from the imposition of any document in particular the Kariba Draft as a basis for the new Constitution.
- Binding and guaranteeing the Constitutional Reform process through an enforceable Act of Parliament.

¹³ Zimbabwe Lawyers for Human Rights, *Zim not conducive for constitutional reform*, 28 January 2010

¹⁴ Civil Society Monitoring Mechanism, Annual Review Report, February 2009 – February 2010

¹⁵ Ibid

3. That, the Constitutional Reform process should be open and accessible to all Zimbabweans without regard to gender, age, place of origin, political and religious affiliation by;

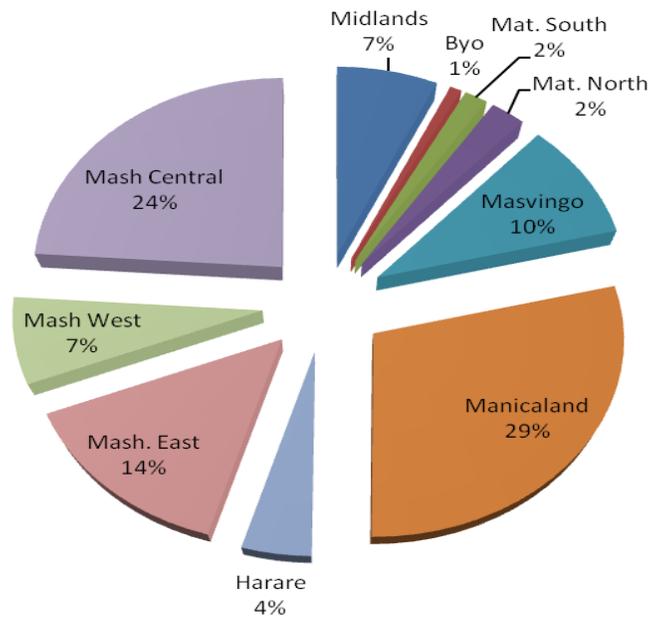
- Facilitating the participation of differently abled people by recognizing their unique needs to allow meaningful participation in the reform process through the use of accessible facilities, Braille, hearing aids and other related amenities.
- Preparing for and ensuring the participation of Zimbabweans in the Diaspora in an official and recognized way in the constitutional reform process.
- Using a proportional representation of men and women to ensure that women are meaningfully involved, engaged and represented at all levels of the process.
- Mainstreaming gender issues in discussions, deliberations and final outcomes of the process.
- Using and promoting the use of local languages and cultures in discussions, literature and other related processes.

It is against these benchmarks that the operating environment must be conducive for the full and meaningful participation of any individual or group which wishes to make input into the draft that will ultimately be produced. This must be monitored and any issues which prevent such participation need to be publicized and corrective action taken urgently in order for the process to remain acceptable.

Key Observations

Since the setting up of the Constitution Select Committee and the holding of the 1st All-Stakeholders Conference, the public outreach programme has failed to take off the ground. A number of reasons have been attributed to the failure by COPAC to work within the set deadlines. Budgetary constraints, lack of political will have been cited as the key impediments. In the provinces, violence, harassment and general intimidation have been employed as tactics to scare away people from freely and voluntarily participate in the historic constitutional reform debate. Below is a summary of the preliminary observations during the period under review.

Constitution Related Violence Prevalence Jan - Mar '10



Constitution related acts Jan - March '10

ACT	Midlands	Byo	Mat. South	Mat. North	Masvingo	Manicaland	Harare	Mash. East	Mash West	Mash Central	TOTAL
Murder	0	0	0	0	0	0	0	0	0	0	0
Rape	0	0	0	0	0	0	0	0	0	0	0
Kidnapping/Abduction	0	0	0	0	0	0	0	0	0	0	0
Assault	6	0	0	2	4	19	2	7	3	6	49
Theft/Looting	0	0	0	0	0	0	0	0	0	0	0
MDP	0	0	0	0	0	1	0	0	0	1	2
Torture	0	0	0	0	0	0	0	0	0	1	1
Unlawful Detention	0	0	0	0	0	0	0	0	0	1	1
Harassment/Intimidation	11	2	4	4	20	53	9	29	15	51	198
Displacement	0	0	0	0	0	0	0	0	0	0	0
Discrimination	0	0	0	0	0	0	0	0	0	0	0
TOTAL	17	2	4	6	24	73	11	36	18	60	251

A total of 251 cases of constitution related violations were reported between January and March 2010. Of these reported cases Manicaland and Mashonaland Central had the highest number of violations where 73

and 60 cases were reported for each province respectively. The majority of these cases fell under the harassment and intimidation category. Mostly cited reasons for violations were recorded as;

- Attending meetings organized by civic society organizations
- Wearing MDC-T regalia, civic society T/Shirts or any other T/Shirts inscribed anything to do with the Constitution-making process
- Criticising the Kariba Draft and supporting a people driven process
- Failing to attend ZANU PF meetings to discuss constitution issues.

Midlands

Constitution making activities have been highly politicized with several incidents in which constitutional deliberations ended up entirely a Kariba Draft issue. Hate slogans continued to grace meetings especially those addressed by war veterans and some ZANU PF party leaders. Human rights activists and teachers continued to be labeled fronts for the MDC-T with several cases in which their constitutional awareness workshops were disrupted. Assaults, harassment and threats were noted throughout the province especially in meetings convened in Mberengwa East, South; Gokwe , Kwekwe, Shurugwi and Chirumanzi.

Manicaland

Citizen participation in key ongoing transitional reforms was heavily restricted with several incidents in which constitution awareness workshops by NGOs such as NCA and ZimRights were disrupted and facilitators accused of advocating for regime change. In most cases, MDC-T supporters, have been victims of violence and intimidation for not attending ZANU-PF organized meetings on the constitution or alternatively for not supporting the Kariba Draft. Many of the victims have been threatened with unspecified action during and after the outreach programme. Cases of harassment and intimidation have been prevalent in Nyanga North, Mutare West, Headlands, Chimanimani and Buhera West. In one such incident at Rock Bell Estate in Nyanga South, the organizer of a public meeting was assaulted and the meeting disrupted by ZANU PF.

Mashonaland Central

Fear of retribution has reportedly gripped the province in the run up to the outreach programme. Villagers have been forewarned not to speak during the consultations since contributions will preserve of handpicked individuals. People are therefore generally exercising extreme caution before they speak out their minds on national issues in the public. Many of the victims were assaulted, threatened and harassed for putting on regalia that purport to support the constitution making process. Others were intimidated on allegations of mobilizing villagers to attend Crisis Coalition meetings on the constitution. In Bindura South, members of CIVNET were intimidated for conducting a meeting on behalf of their organization. At Kaverevere Shopping Centre in Guruve South, three ZANU-PF supporters lied to 8 Village Heads to congregate villagers for soap distribution. At the meeting, the people only found out that it was a constitution meeting at which the three addressed people to support the Kariba draft especially the citizenship, land and bill of rights or face a repeat of the June 2008 violence including abduction and other forms of violence.

Mashonaland East

Assaults, harassment and intimidation characterized most of the cases recorded in Mashonaland East. Generally, there was also visible resistance to the GPA, Inclusive Government and the constitution making process. Some A1 resettlements like Suffolk in Marondera East have been declared "ZANU PF liberated"

zones where the GPA does not apply. Villagers in this area have been discouraged from attending Constitution Workshops arguing that their inputs were not going to be considered in the final draft of the constitution. Civic education meetings organized by ZimRights and other institutions have been subject to disruptions with organisations facing the wrath of ZANU PF supporters. In other incidences, villagers of Arizona Resettlement were threatened with loss of their arable land for refusing to support the Kariba Draft. In January 2010 at Manyika Business Centre, Uzumba ZANU-PF DCC along with other supporters convened a meeting and forced villagers in Manyika 1, 2 and 3 to attend. At the meeting the villagers were threatened with beatings and eviction and forced to support the Kariba draft. 17 ZANU-PF members at the meeting were appointed to represent the people at the forthcoming consultative sessions and no one else was allowed to participate.

Mashonaland West

An anti-new order climate and anti-inter party spirit prevailed with those who were snuffed to have actively participated in constitution awareness workshops reportedly summoned by traditional leaders and party structures to account for their involvement. Incidences of harassment and intimidation were recorded in Zvimba North, Hurungwe North, Chegutu West and Mhondoro. In one such incident at Murambe School in Chegutu West, an MDC-T woman was assaulted for not telling her parents to attend a constitutional meeting that was taking place at the school. She was tortured and assaulted with a sjambok for the alleged “crime”. Such uncouth incidences have become commonplace in Mashonaland West to the extent that they will certainly have a bearing on the outreach programme.

Masvingo

Political tolerance continued to be a challenge, reports generally pointing to harassments for wearing own party regalia, publicly commenting on socio-economic developments, celebrating the swearing in of the president of the MDC T as Prime Minister, expressing views on the drafting of a new constitution, among others. In Malisanga, Chiredzi South, it is believed that Border Gezi youths have been deployed to monitor and report on any constitution making activities in the area. In some places like Makambe Business Centre in the same constituency, war veterans, the area chiefs are on record as threatening villagers with unspecified action and that their (villagers) activities were heavily monitored in terms of who defied the party (ZANU-PF) directive on the Kariba Draft.

The cumulative effect of such intimidation, harassment, violence and general repressive atmosphere is that the process of constitutional reform will not be people-driven as espoused in the GPA. The general populace in the provinces is afraid of the reprisals that will visit them after the conclusion of the consultations. Hence their participation in this cardinal process will be questionable.

As a result of the repressive operating environment, no meaningful civic education to guide the generality of the people on what to contribute during this exercise has been undertaken. It is an established fact that in any constitution making process, citizen participation and engagement must be the vanguard of all processes. However, since the inception of this process ordinary citizens have been left out and have remained largely ignorant.

Compounding the ignorance on the process is the lack of political will by the key players in the political arena to create conducive environment for participation by the ordinary citizens. This has the net effect of impeding the process and thus compromising the product that will emerge from this process.

Recommendations

ZZZICOMP therefore proposes a raft of recommendations to ensure that the constitutional reform process meets the set benchmarks.

COPAC

- There is need for broader publicisation of the outreach programme by COPAC to enable full participation by the members of the public.
- COPAC should ensure that there are no further delays to the public outreach process to ensure that the reform process is completed.
- Provide a clearer deployment plan and methodology to the public in time for the monitoring preparations.
- COPAC should adhere to the timelines set out in the GPA.
- COPAC should ensure that there is adequate security for all participating in the outreach process.

Political Parties

- There is need for the signatories to the GPA to have the political will during the entire constitutional reform process and to ensure that the people's will is respected.
- Strict compliance with the provisions of the GPA more particularly on the timeframes.
- Ensure that their supporters are not engaged in violence, threats and intimidation.
- Commitment to facilitate arrests and subsequent prosecution of perpetrators of violence.
- Parties should ensure that the process is depoliticized to ensure full participation by the citizens.
- Principals of the GPA must facilitate a conducive environment for all in ongoing national processes, as promised in the GPA to which they appended their signatures and commitment in September 2008.
- Ensure that Members of Parliament commit themselves to participating in the outreach programme

Donor Community

- The donors should remain patient and committed to the constitution reform process.

Conclusion

The Global Political Agreement's implementation has been marred by a series of high-profile disputes over key appointments, reform of the security services and the revision of legislation. It is imperative to ensure the constitutional reform process is brought back on track. It is cardinal to ensure that what transpired in 2000, wherein the drafts in circulation then were both written by a few individuals, and members of the public only got involved when they were asked to vote for or against the government's version, should never be repeated. Civil society should be allowed to conduct civic education and effectively monitor the constitutional reform process without undue interference from political parties. For any national process to be inclusive and people-oriented, there is a need to ensure a conducive environment which allows people to express their views in safety and with the assurance that they will not be arbitrarily targeted for harassment, intimidation and/or retribution by any political party, state actor, or other player.