

ZIMBABWE BRIEFING

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“Politicians are pre-occupied with the issue of processes and not issues that the average Zimbabwean stands for.”

On behalf of the civil society and women in particular, Mrs Virginia Muwanigwa raised quite a number of issues that she thinks need to be addressed to ensure the preparedness of Zimbabwe to hold free and fair elections. In her opening statement, Muwanigwa mentioned the significance of tackling substantial issues rather than just focusing on the procedural ones. She also stated that politicians are more concerned about the processes of holding the elections and not considering the “issues and challenges the average Zimbabwean is stands for.” Reference was also made to the electoral law in which she stated that women are being excluded from participation. In her words, “...democracy should include girls, women and men of Zimbabwe.” Mrs Muwanigwa also expressed concerns about the issue of “real or perceived violence.”

A balance must be made between the processes of holding an election and assessing whether the needs of every Zimbabwean are being addressed. Such needs are health and sanitation, food, water and electricity supplies, employment and housing, to name but just a few. It is only when these issues



Virginia Muwanigwa making her presentation at the Cape Town Seminar

are addressed that it becomes clear whether Zimbabwe is ready to hold a free and fair election. According to

A balance must be made between the processes of holding an election and assessing whether the needs of every Zimbabwean are being addressed

Muwanigwa, when politicians only focus on the process contained in the old or new constitution, it then becomes about them (politicians) and not

the people of Zimbabwe at large. The average Zimbabwean is defined by issues such as those mentioned above.

She said, the women are only prepared for an election when the party lists show those targets. It was stated that women are not seeing theo-

ry and practice coming together in the sense that what the law says and what is being implemented is quite different.

Due to the violence and challenges faced in the 2008 elections, women are unhappy to hold the elections under the old constitution. Women believe that the new constitution would be ideal to them if elections are held in alignment with it because it addresses issues such as equality in contrast to that of gender listed in the old constitution. It was further stated that if the new constitution is not going to be used for the elections, then at least there must be amendment of electoral laws. With regards to real or perceived violence, women want an environment that is completely free from violence. Violence should not be anticipated in any form.

Mrs Munaigwa briefly mentioned that there are no resources for elections to be held. She went on to say that if those resources are there it is important to assess “how is the ordinary person going to benefit from those resources?”

In her presentation, Virginia went beyond the processes of holding an election and raised other substantial issues beyond.

By Crisis SA Media Desk

“Elections by the end of June” (Gabriel Chaibva)

At a public seminar that was organized by the Crisis in Zimbabwe Coalition in collaboration with People Against Suffering Oppression and Poverty [PASSOP] and Zimbabwe Society [ZIMSOC] at the University of Cape Town on Friday 26 April 2013, Mr Gabriel Chaibva representing ZANU PF, reiterated his party’s position that according to the constitution, elections should be held by the 29th of June 2013 when the term of the current parliament expires.

According to Mr Chaibva, the constitution is the supreme law of the land that must be respected and having elections by June 29 2013 will make sure that Zimbabwe adheres to constitutional dictates. Not adhering to the constitutional dictates sets a dangerous precedent a situation which cannot be tolerated. He argued that the call for an election is not a call by President Mugabe or ZANU PF but a call for adherence to the dictates of the country’s supreme law.



Mr Gabriel Chaibva ZANU PF making his presentation at the seminar.

Responding to a question on the composition of the Zimbabwe Election Commission (ZEC) secretariat and impact of the composition on objectiv-

ity, Mr Chaibva argued that the ZEC secretariat is properly constituted as appointment of the secretariat was done by the President after consulta-

tion with the parties in government who recommended candidates like Justice Mutambanengwe. He said the same applies to the composition of the Zimbabwe Human Rights Commission and the Media Commission which parties in government like the MDC say are not properly constituted.

On the issue of the cleaning the voters roll, Mr Chaibva noted that the issue is being dealt with in government and mentioned that the Prime Minister, Morgan Tsvangirai has confirmed that position.

He agreed that there is need to make sure that there is realignment of those laws which are ultra vires the constitution.

By Crisis SA Media Desk

ELECTION PREPAREDNESS IN ZIMBABWE

Contextualising the Zimbabwean Election

The next election will take place against a political background that is defined by the events of 2008. It would be naive to look at election preparedness for the 2013 election outside the political context deriving from the experience of the 2008 election. The 2008 election is not a distant memory but is inextricably connected to and part of the present.

The facts are that the 2008 election did not produce a legitimate and universally acceptable outcome. *To put it crudely, it was a failed election process.* The legitimacy of the current GNU derives from the political curatorship provided by SADC and for that reason SADC remains a critical player in the current preparations for elections. *The major issue across political leaders and parties is to prevent a situation where the country goes through another failed election process; that is, an election that does not produce a legitimate outcome.*

One of the issues that has arisen in recent months is the role of political leaders in preparing for elections. The difference in approach derive from two ways of looking at the situation: *one is a legalistic way that looks squarely at legal provisions on electoral issues and is divorced from the politics; the other is a political approach that qualifies the legal provisions with the political realities informed by the political context.*

ELECTION ROADMAP

A good example is the contestation over the setting of election dates, which is part of the preparations for elections. The major point of contestation revolves around the concept of unilateralism in decision-making in regard to elections.

Legalistic Approach

The legalistic approach would simply look at the powers conferred on the President by the Constitution and the electoral laws but ignore completely the fact that there is a power-sharing arrangement whose spirit includes a consultative process with other political players and SADC. It says, the law allows President Mugabe to do A B C, and therefore he can do as he wishes without regard whatsoever to what his partners in the GNU think.

Political-Legal Approach

A more political approach however, qualifies the legal powers conferred on the President with the reality of the power-sharing arrangement and therefore regard a consultative process as one of the essential elements of the election process. Under this approach, President Mugabe cannot act unilaterally but he must and knows that he must work with his partners in the GNU. The reason is probably not that he now holds his political opponents in high regard but because he knows that this is an important process in achieving an essential element that is highly coveted. *That essential element is legitimacy.*

Legitimacy



Dr Alex Magaisa addressing the Crisis in Zimbabwe Coalition public seminar in Cape Town

President Mugabe is enjoying the sunset years of his political career. He must have been deeply wounded by the refusal of his peers to accept his "victory" in the June 2008 election from which his main rival, Morgan Tsvangirai, withdrew citing unmitigated state-sponsored violence against his supporters. He went into the power-sharing agreement to regain the legitimacy that he had lost. While he covets power, he is also conscious of the critical significance of legitimacy. He does not want another result which will be frowned upon by his peers. This will be his last election and he will want to avoid the scourge of illegitimacy that affected the last election.

This is why on issues of election dates; of deciding on issues relating to the electoral process, the point is that President Mugabe will not want to act unilaterally or act in a manner that diminishes the legitimacy of the next election.

The principals agreed that the electoral roadmap is both a LEGAL and POLITICAL issue; a legal issue because there are legal timelines provided for by the law and a political issue because of the political context in which the next election will take place in that there are political processes that must be carried out to expunge the limitations that caused the failure of the last elections. As we have observed, the GPA envisaged a number of political reforms in preparing ground for the next elections. Therefore, there is a major task of synchronising the legal and political roadmaps.

(The principals have tasked the Minister of Justice and the Minister of Constitutional Affairs with the mandate to synchronise the roadmap through a consultative process involving political parties and the SADC Facilitation team before submitting it to us as principals for the determination of the election date. The critical thing is that never mind the noises elsewhere, the principals agree that for the sake of the credibility and legitimacy of the elections, the process of setting dates is a consultative one as opposed to the idea of unilateralism.)

GPA AS A STANDARD SETTING INSTRUMENT

Therefore, when you assess election preparedness for the next election, you

have look at the problems of the 2008 election and the place of the GPA in that matrix as an election dispute resolution mechanism. Further, one ought to consider the propositions in the GPA of resolving the election-dispute and whether or to what extent the propositions have been fulfilled. In this regard one must recall Article 11 of the GPA wherein the main goal of the GPA is stated in the following terms:

... to create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation ... with the aim of resolving once and for all the current political and economic situations and charting a new political direction for the country."

Therefore, in large measure the GPA was as much a conflict-resolution instrument as it was a mechanism to prepare the country for the next election; an election that would avoid the problems that caused the illegitimacy of the 2008 election.

There were a number of priority areas in the GPA that were designed to achieve this outcome ranging from the economic and social to the political. They included constitutional and legislative reforms as well as practical reforms in areas of the media and the security sector. The idea was that these reforms would lead up to credible elections producing a legitimate outcome and that would ultimately define a background for a sustainable democracy.

When we consider the question of election preparedness, therefore, we must ask whether there has been any material progress in regard to those issues that affected the credibility and legitimacy of the 2008 elections and for this reason an assessment of the fulfilment of the GPA stipulations is critical. In other words, the golden question is:

Do the conditions prevailing in 2013 provide confidence that the next election will be free, fair and credible so as to produce a credible and legitimate result that will be universally recognised by the contestants, the people of Zimbabwe and the guarantors of the GPA, among other actors?

REFORM-DRIVEN ELECTIONS: FULFILLING PEOPLE'S LEGITIMATE EXPECTATIONS

Our position, as recently articulated by the party President is that elections must follow the implementation of key electoral reforms. This position is based on the appreciation of the fact that the country cannot go into an election under the same conditions that caused the failure of the 2008 elections and expect a different result. *It is unwise to do the same thing repeatedly and expect a different outcome.* Therefore, the conditions that caused the illegitimacy of the last election must be removed to ensure a free, fair and credible election.

No Fear of Elections

The notion, peddled in the state media in recent months, that we are playing delaying tactics or are otherwise scared of elections by demanding reforms should be dismissed with the contempt it deserves. That unfounded notion overlooks the fact that of all the major political parties, we are the only organisation that has set in motion the critical process of *primary elections*, itself a necessary and democratic process of preparing for elections whereas when you look around the political field some parties are not only struggling to even agree on elementary rules for their primary elections but are busy embroiled in very bitter factional fights.

Further, the wrong notion ignores the fact that our demands for reforms are based not on wild or speculative imagination but are *founded on agreements that are guaranteed by SADC and the new Constitution* that the people of Zimbabwe resoundingly approved at the last referendum. It was a Constitution that we championed against serious odds and the people of Zimbabwe have a legitimate expectation that the supreme law that they voted for will reconfigure the electoral playing field making it level and fair for all contestants. *By insisting on reforms and realignment of legislation and institutions before elections we are simply defending the legitimate expectations of the people of Zimbabwe.*

GPA & CONSTITUTIONAL-BASED REFORMS

LEGISLATIVE RE-ALIGNMENT: ARTICLE XVII LEGISLATIVE AGENDA PRIORITIES

The GPA parties agreed to the prioritisation for democratic reforms through legislation. According to Article 17.1, the Parties hereby agreed that:

(a) the legislative agenda will be prioritized in order to reflect the letter and spirit of this agreement;

(b) the Government will discuss and agree on further legislative measures which may become necessary to implement the Government's agreed policies and in particular, with a view to entrenching democratic values and practices."

Paragraph (b) would include the legislative agenda for the implementation of the Constitution, itself a major milestone of the GPA process.

This is critical in preparations for elections as it includes legislative and institutional realignment to conform to the new Constitutional dispensation. This process is yet to begin as the new Constitution has not yet been formally adopted by Parliament and the President who is constitutionally required to give his assent. The principals have agreed that the ministers of Constitutional and Parliamentary Affairs and Justice should work together on legislative re-alignment, in consultation with the political parties and the SADC Facilitators. The same agreement covers working on the agenda for setting the election roadmap - there being two types of roadmaps, one that is strictly legal and the other being the political roadmap. The two roadmaps have to be synchronised to ensure that there is one election roadmap that considers both the legal and political requirements.

ARTICLE XVIII SECURITY OF PERSONS AND PREVENTION OF VIOLENCE

The GPA recognised the prevalence of violence and intimidation by both state and non-state actors, which marred the 2008 elections. The security of persons was therefore included a key issue. The parties therefore agreed in Article 18, *to promote the values and practices of tolerance, respect, non-violence and dialogue as means of resolving political differences; to renounce and desist from the promotion and use of violence, under whatever name called, as a means of attaining political ends."*

The message of peace preached consistently by the principals in recent years is consistent with the letter and spirit of this provision. The major concern however is with inconsistent messaging, through words and conduct by subordinates of the principals. For example on independence day, while the President commendably preached the word of peace, one of his party officials was threatening the use of force to thwart the will of the people expressed through an election.

Further, while under the GPA, the parties agreed to ensure that the Government would *apply the laws of the country fully and impartially in bringing all perpetrators of politically motivated violence to book,"* there are concerns that this has not happened as some of those fingered in the commission of offenses have never been brought to book. When senior party officials threaten not to respect the outcome of election results and to deploy the military to thwart the people's will, they are not censured or brought to book.

In addition, despite agreeing under the GPA *to refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or unfairly undermine each other,"* both print and electronic state media continue to spew vitriolic sentiments against other political players, especially Tsvangirai and the MDC. The state media has not reformed and its mindset is still defined by intense opposition and hatred against anything that holds a different political view from ZANU PF.

ARTICLE XIX FREEDOM OF EXPRESSION AND COMMUNICATION: MEDIA REFORMS

GPA parties recognised the *"importance of the right to freedom of expression and the role of the media in a multi-party democracy."* At the

time of the agreement, there were no private broadcasters apart from the public broadcaster and the parties expressed a desire to ensure the opening up of the air waves to promote the operation of *its many media houses as possible."* The parties committed themselves to ensure wider licensing of broadcasters. To date, only 2 licences have been issued by the BAZ and the two were issued to operators that are linked or connected to one political party - one is run by the state-owned newspaper company and the other is run by an aspiring ZANU PF MP, further strengthening rather than ameliorating the skewed media landscape.

The parties also agreed to ensure *"that steps be taken to ensure that the public media provides balanced and fair coverage to all political parties for their legitimate political activities ... [and] that the public and private media shall refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or that unfairly undermines political parties and other organisations. To this end, the inclusive government shall ensure that appropriate measures are taken to achieve this objective."*

However, the public media continues to operate disproportionately in favour of one political party (ZANU PF) at the expense of others in flagrant disregard of the GPA provisions. There have been no substantive media reforms, including the reconfiguration of the state media corporate boards. The reluctance to change is part of the resistance to maintain power drawn from the knowledge/information structure of power. This circumstance means the media landscape controlled by the state remains largely in favour of one side of the political contestants. Hate and abusive speech remain prevalent both in the public print and electronic media.

SECURITY SECTOR REFORMS: ARTICLE XIII STATE ORGANS AND INSTITUTIONS

The main question in this regard is whether the security services sector has now got sufficient political will to recognise and accept the outcome of the elections.

Under this article, the parties agreed on the principles of impartiality and non-partisanship of state organs, including the security sector, which is probably the most sensitive area in regards to elections. This article states that *State organs and institutions do not belong to any political party and should be impartial in the discharge of their duties."* The parties agreed further to ensure *that all state organs and institutions strictly observe the principles of the Rule of Law and remain non-partisan and impartial"*

The reason is that the security sector has been accused of tampering with and negatively affecting the integrity, credibility and legitimacy of the electoral process, particularly in the run-up to the June 2008 presidential run-off election. In those and previous elections, the leadership of the security services sector had openly pronounced their preference among the electoral contestants, thereby disadvantaging the others. No actions were taken against those who had issued statements threatening to thwart the will of the people.

As Zimbabwe gears up towards another election, government ministers and senior members of the armed forces have made similar statements, effec-

tively threatening a coup if ZANU PF and President Mugabe lost the next elections. Further, despite agreeing to ensure that *laws and regulations governing state organs and institutions are strictly adhered to and those violating them be penalised without fear or favour,"* no action has been taken against persons issuing these blatantly threatening and unconstitutional statements and conduct. Such a situation does not augur well for a free, fair and credible election that is likely to produce a legitimate result.

The new draft Constitution contains further elaborate provisions on political non-partisanship and impartiality of state organs, including the security sector. The MDC has proposed a **Code of Conduct** for the security services sector, in part compliance with the requirements of the new constitution which requires a piece of legislation to ensure adherence to the principles of non-partisanship. It remains to be seen whether this will be actualised but it is a critical part of the election preparedness matrix given the alleged role of the security services sector in the failure of the 2008 elections. The principal factor is that for the sake of credibility and the legitimacy of the election process, it is necessary to define the appropriate role of the security services sector and its members in the electoral process. *The biggest single issue affecting the legitimacy of the electoral process is the extent to which the security services sector is prepared and willing to accept the election result and respect the will of the people.*

This depends not only on the legal framework regulating the conduct of members of the security services in the electoral process but also the mind-set of the leadership of that critical sector. If they are so minded as to respect the will of the people, it can be said that Zimbabwe is ready and prepared to host an election. However, if they are so minded to oppose an outcome that is not desirable to them, this would represent a serious threat to the credibility of the election process and the legitimacy of the result. It is obvious that the mind-set has changed from that of 2008, given the selective application of the law and the public pronouncements without censure of senior security services sector and ministerial personnel threatening to disrespect the Constitution in the event of an undesirable result. Such circumstances would suggest that Zimbabwe is far from being able to hold a free, fair and credible election.

VOTER REGISTRATION

There must be a ward-based nationwide voter education, registration and inspection by ZEC for a minimum of two months. The voter registration exercise must particularly target young first time voters and the so-called aliens previously disenfranchised but now liberated as full Zimbabwean citizens by the new Constitution which the MDC championed and drove.

In this regard, **impediments to the process of registration must be removed.** Issues of cost, inefficiency and other practical impediments must be addressed. The recent Cabinet decision on scrapping fees for replacing lost IDs was a culmination of intense lobbying to ensure that lack of means does not cause disenfranchisement of citizens. This must, however, extend to the so-called aliens whose IDs are marked with "A" to show that they are Aliens. To change the ID to one marked "C" to denote citizenship, we understand the RG's Office is demand-

ing \$40, which is too high by Zimbabwean standards.

The biggest problem however remains the **RESIDENCE** requirement, which has been elevated to the extent that it has subordinated the constitutional right to vote. Explain the problems faced by young people; by people in rural areas - locate the problem as a socio-economic issue which is being used to disenfranchise thousands of people. Explain that the **RESIDENCE** requirement should not matter in a presidential election.

VOTERS ROLL: INSPECTION & AUDIT

The voters roll must be easily accessible in searchable form. This is still the most elusive document, notwithstanding the legal provisions requiring otherwise. Transparency and accountability over the voters roll remain critical concern areas.

As part of the preparations, it is important to ensure that the voters roll is comprehensively and openly audited.

ZEC INDEPENDENCE

The independence of ZEC is critical and refers to a number of areas:

First, the independence of Commissioners.

Second, the non-partisanship, professionalism and impartiality of members of the ZEC Secretariat.

Third, the execution of critical functions such as voter registration or election logistics by non-ZEC functionaries, for example, the Registrar-General's Office and the National Logistics Committee. The same applies to quasi-ZEC committees such as the Observers Accreditation Committee (OAC), which are overly dominated by members of one political party, even at the expense of ZEC itself.

The major concern is that the current ZEC Secretariat is populated by virtually the same people who were running the body's operations during the 2008 elections and the question people are asking is with the same human agents in place, what guarantees are there that what happened in 2008 will not happen again in 2013? Among civil society there is a palpable lack of confidence in the Secretariat.

Presentation to the Crisis in Zimbabwe Coalition Seminar and South African parliament by Dr Alex Magaisa[MDC-T]