

ZIMBABWE TRANSITION BAROMETER APRIL 2013

Title: Toward a prolonged transition: bouncing within the grey zone.

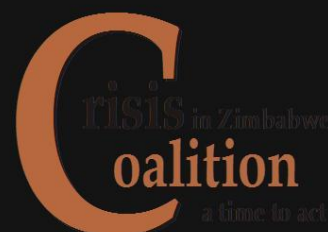
Bi-monthly Report Analysing The Zimbabwe Transition
ISSUE 04



TREKKING THE TRANSITION

In this analysis we conclude that if harmonized elections were to be held in the next two months, a more likely outcome will be a prolonged transition.

A well researched and balanced analysis that gives a better understanding of the Zimbabwe transition



Abstract

Series: Zimbabwe Transition Barometer (issue 4)

Title: Toward a prolonged transition: bouncing within the grey zone.

Zimbabwe's transitional period must be an interregnum of shifting sands, from a set of authoritarian political procedures to democratic ones. The contemporary political processes in Zimbabwe display continuity *here* and change *there* which justify the need for scientific trekking of the transition. Consequently, we premise our analytic framework on four possible transitional outcomes which are a precluded transition, blocked transition, flawed transition (*derailed and prolonged*) and democratic transition (*pacted or zero sum*).

We employ such lens to analyse political developments in March and April 2013, in particular the constitution referendum; the implementation of Global Political Agreement (GPA); the rule of law; elections monitoring; defining election dates and the role of SADC. From our analysis we conclude that, if an election were to be held in the next 2 months, a more likely outcome is a prolonged transition characterised by co-existence of some old authoritarian practices with some democratic gains. However, given the fluidity of transitional politics this remains a time bound analysis.

Whether Zimbabwe will progress toward a democratic transition will depend on smart interventions by local political parties, convergence of regional and international actors, (in) actions by civil society and the general citizenry and not less important political will by President Mugabe and the country's political, military and economic elites. Yet, we are conscious of the cardinal rule that elections alone are not a sufficient ingredient for establishing democracy and analysing transitional outcomes but it is the first brick without which democracy cannot otherwise be built.

Introduction

Zimbabwe's transitional period must be an interregnum of shifting sands, from a set of authoritarian political procedures to democratic ones. The contemporary political processes in Zimbabwe display continuity *here* and change *there* which justify the need for continuous trekking of the transition.

Consequently, our fourth edition of the Zimbabwe Transition Barometer (Issue 4) continues to focus on key transitional issues and how they affect the quest for democratisation in the country. Given the recently concluded referendum, this issue traces the relevant areas that are central for a democratic transition. Although the timing of the eventual election still remains elusive, there is a need for urgency in addressing outstanding reforms. This task will require the Southern African Development Community (SADC) facilitators and parties to the Global Political Agreement (GPA) to find consensus around a sustainable road map to that election. In this issue, we argue that the citizens of Zimbabwe, through the representation of civil society, faith based organisations, academia *et cetera* need to be more involved in formulating lasting solutions to deliver a democratic transition. Their historical exclusion has been one of the causes of the protracted transition as well as the political grandstanding synonymous with the political parties.

The focus in this issue is on six areas that have an impact on both the transitional process and the building and consolidation of democratisation.

The areas of focus are:

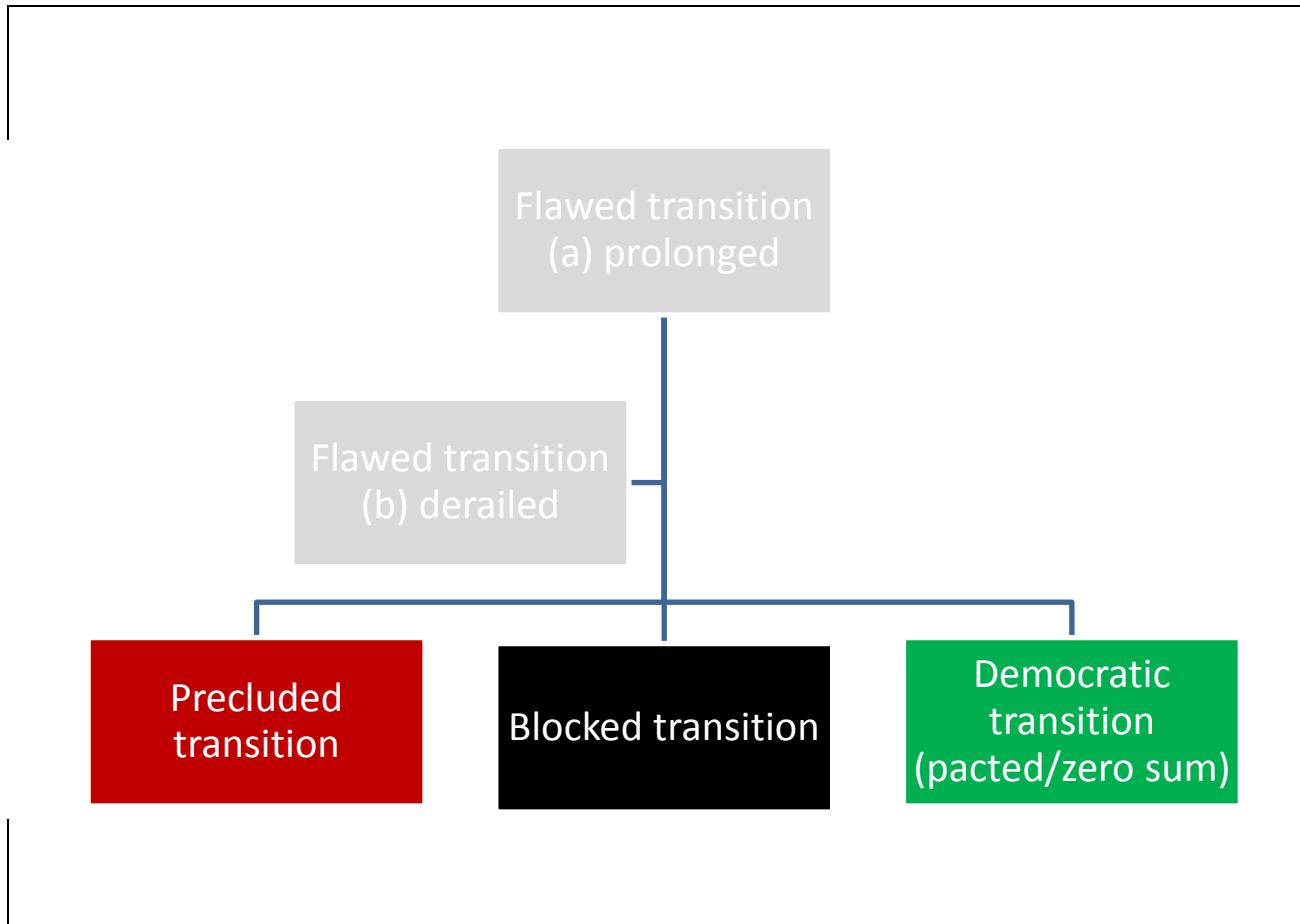
- i) The Constitution Referendum
- ii) Review of the implementation of GPA
- iii) Assessing the Rule of Law
- iv) Post referendum: monitoring the elections
- v) Defining Election Dates
- vi) The Role of SADC

Reform progress and impediments in each of these areas are assessed against the broader goal of democratisation. Their impact on political processes and the possible scenarios that arise from related prevailing matters are also highlighted. For each area of focus, some recommendations are also made in order to ensure that the ultimate goal of democratisation remains attainable.

From a conceptual perspective we continue to build on the seminal works of Michael Bratton and Nicolas van de Walle, which focus on regime transitions in sub-Saharan Africa. In their seminal book, 'Democratic experiments in Africa', they identify four possible outcomes of a transition, which we continue to employ as the baseline for our analytic lens. These are precluded transition, blocked transition, flawed transition and democratic transition.

However, we develop this framework by proposing two variants of a flawed transition outcome. The first variant is a premature end to the transition which we term derailed transition and the second is a prolonged transition. The common denominator of both variants of a flawed transition, we develop here, is that the incumbent will continue to occupy the saddle of state power. Unlike in the preceding edition of the Barometer we provide further conceptual clarity on the outcomes of a democratic transition. Beyond Michael Bratton and Nicolas van de Walle's useful blanket term of a democratic transition we make a theoretical proposition to further qualify such an outcome. As informed by Zimbabwe's empirical realities and specificities a democratic transition can either be a pacted one or a zero sum one. In both scenarios either the incumbent or opposition wins a free and fair election and choose to accommodate the losers (pacted) or go it alone (zero sum). Neither is less democratic. For now, we lay the possible transitional outcomes as below.

Possible Transitional Outcomes (PTOs)



In the next section, we explain the concepts and assess the political developments in Zimbabwe in the past 2 months against these possible outcomes. We start with Precluded Transition?

Precluded Transition:

A precluded transition signifies a dead end in negotiations among the warring parties. By 1994, there were only two African countries, Liberia and Sudan that went this way. In Liberia the different parties failed to come up with a timetable for elections. In Sudan, the incumbent used the war in South Sudan as an excuse to abort the transition. The situation is characterised by civil war (threats or real), armed rebels and warlords and loss of control by the central government. As of April 2013, can Zimbabwe be said to be regressing toward a precluded transition or rather a blocked transition?

Blocked Transition

As stated in previous editions, in blocked transitions ‘rulers make insincere and tactical concessions aimed at buying time to show up collapsing authority, *with no apparent intention of implementing elections* or surrendering power’ (Bratton and van de Walle 1997:170 my emphasis added). Examples by 1994 include Rwanda, Zaire and Somalia. Is this where Zimbabwe is heading at this

juncture? We have argued in our last edition that Zimbabwe faces prospects of a flawed transition. Is this still the case or there are new ways of looking at as informed by empirical realities.

Flawed Transition

In a flawed transition the incumbent allows grasshopper reforms to take place resulting in some positive democratic outcomes. However, in this process the incumbent is still determined to manipulate state institutions, economic resources to remain in power. In this scenario there are artificial elections that favour the incumbent. Examples on the continent included Gabon, Equatorial Guinea and Kenya. As we argued in the previous edition, the conceptualisation of a flawed transition by Bratton and van de Walle is too grand. Consequently, we made a proposition of two variants of a Flawed transition that is a derailed transition and a prolonged transition as explained below.

a) Derailed

In a derailed transition the incumbent ‘wins’ an election through subtle ways of manipulating state institutions and the electoral process. In this context the incumbent gains a semblance of legitimacy locally, regionally and internationally and is confident enough to form a one party government. The central feature of a derailed transition is that the incumbent will become a backslider that is abandon the democratic gains made and re-establish authoritarian practices.

b) Prolonged

In these circumstances, the incumbent will overtly manipulate electoral processes, economic resources and state institutions and emerge as a ‘winner’. Unlike in a derailed transition the incumbent fails to gain legitimacy, locally, regionally and internationally. As a result the incumbent is faced with two routes to attain political legitimacy. The first is to form a government with the protagonists for an effective government. Here we have a government of national unity. In addition to lack of legitimacy, other reasons for political concessions might include no clear majority in Parliament to pass budgets *et cetera*, prospects of international isolation, a wave of pro-democracy in the region and on the continent, policy bankruptcy on economic development, political agency of a tenacious opposition which can be through mass protests or diplomatic engagements.

Second, like in a derailed transition, the incumbent might be bold enough to dump the opposition, but, unlike in a derailed transition, the incumbent seeks legitimacy through committing to advance the democratic gains that were made during the transition. In this context, there is no return to closed authoritarian practices. Nevertheless, the democratic gains made during the transition will co-exist with some old authoritarian practices and the struggle for democratisation will continue. Where is Zimbabwe heading toward?

Democratic Transition (pacted or zero-sum)

A democratic transition occurs, at least, when there is a competitive, free and fair electoral environment that leads to a legitimately elected government taking or retaining state power. The election of Soglo in the March 1991 election in Benin marked a democratic transition where the incumbent was peacefully removed through an election. Another example is South Africa in 1994. Let us emphasise that in a democratic transition the incumbent can also win a free and fair election and manage to retain state power. At a theoretical level one can end up with a configuration of power that accommodates the winner and the loser (i.e. a democratic pacted transition) or a one party government (that is a zero-sum democratic transition). None is less democratic. What is essential is that there would have been a free and fair election and peaceful transfer or retention of state power. The winner if it is the opposition strategically accommodates elements of the old order for stability and

advancement of democracy. The elements include political elites, economic elites and military elites. If an incumbent wins he or she might opt for a pact to safeguard the democratic gains made together during the transitional period and to deepen and consolidate democracy. The pact is essentially driven by the political will to stabilise and advance democratic practices rather than insincere, merely tactical reforms for self-preservation as under the prolonged transition. The question remains, which trajectory is Zimbabwe following?

Executive Summary

The referendum process was concluded and the turnout of about 3.3 million was celebrated as the highest turnout in any elective process in the history of the country. Others have actually questioned these figures throwing suggestions of possible rigging and that ZANU-PF used the referendum process as a “dry run” for the election. Zimbabwe Electoral Commission (ZEC) has been reluctant to address these allegations. The lack of evidence by those claiming rigging in the referendum and ZEC’s reluctance to dispel this fear has contributed to this case remaining hanging. The completion of the referendum is commendable but it has also exposed the political parties’ manipulation of the process which stifled free citizenry participation. This is a major dent on the efforts to democratise Zimbabwe.

The GPA implementation has been one of the most contentious issues during the lifetime of the agreement. As from 2011, we saw SADC dropping its push for the full implementation of the GPA and settling for those issues considered central to the elections. This led to the development and signing of the election road map, endorsed by the regional bloc. From thereon only those reforms considered as election-related have been given attention while disregarding those seen as peripheral. This selective approach to implementation of the GPA, though seen as the most practical, has compromised the democratisation process. There are key reforms related to areas such as land reform, traditional chieftaincy, national youth program, national economic recovery and humanitarian and food assistance which have not been attended to with as much interest. Through these outstanding reform areas, political manipulation continues to be exercised by some politicians. The lack of attention afforded to these areas has therefore become a cause for concern given that they stand to be obstacles to the full democratisation process.

Since the conclusion of the referendum process there seems to be no consensus regarding the reform agenda that needs to be pursued before elections. Whereas ZANU-PF has insisted that there will be no more reforms after the referendum, the MDC parties have continued to push for these. SADC has weighed in and indicated that elections cannot be held until the following are addressed: security sector realignment; strengthening the role of the Joint Operations, Monitoring and Implementation Committee (JOMIC); cleaning up of voters’ roll; clarification on election observer invitations; and fund raising for elections. Early election observation still remains a key omission, as the political environment is already deteriorating. By the time election observers come, the fear is that the intimidation and election process irregularities will already be embedded in the system and difficult to detect or retract at that late stage. ZANU-PF’s insistence on excluding international observers is retrogressive considering that the African Union (AU) encourages this prospect. JOMIC presents a credible and possible platform upon which an early local observation mechanism can be set up, provided civil society, faith based organisations, academia e.t.c are included in such activity. SADC deploys to JOMIC, who are not yet on the ground, will strengthen the early monitoring and observation of the election environment.

The rule of law is one of the areas that still need attention as highlighted in the 2011 election roadmap. The recent spate of cases against the judiciary indicates its supposed lack of independence and the continuation of political manipulation. Justice Charles Hungwe is currently under probing for having handled cases, considered politically sensitive, and having made decisions seen by many as displeasing to certain political quarters. It remains unclear if his case is more about political persecution than it is about enhancing the quality of judgments by the judiciary. However, the lack of public confidence in the judiciary is testimony of fractures in the “rule of law” framework in the country. Crackdowns against human rights defenders, as in the case of Beatrice Mtetwa, and civil

society organisations, have continued. This targeting also exposes the gaps in the “rule of law”, which the election road map of 2011 insists must be mended before an election is held.

The election roadmap signed in 2011 provides the steps that must be taken in the actual election. Given the current disagreements about how to proceed to the elections and the extent of outstanding issues, even within this road map, there is a glaring chance the ZANU-PF proposed election timing of around 29th June 2013 will not be achieved. If elections are to be held by then, it is most likely that Zimbabwe will have a sham election. There are efforts to try and expedite processes towards elections including: parallel adoption of new constitution and alignment of the legislation framework; drawing out a road map; and the efforts by ZEC to “clean up” the voters roll. Within these processes, civil society must ensure it plays its role. Civil society must immediately engage in voter education, urging voter registration, monitoring of political environment, making propositions on legislative framework to align to new constitution especially before June 29, 2013 when the current Parliament will be dissolved by virtue of the operation of law. Civil society must also begin to lobby for an ideal election road map and election timing. These issues cannot be left to politicians to make arbitrary decisions, the input of the citizenry is crucial.

The role of SADC in Zimbabwe continues to be central to the country’s transition. Although there was a lapse in SADC’s push on the Zimbabwe situation after the combative Livingston meeting held in March 2011, the regional bloc seems to have resuscitated its concerted efforts. At the 9th of March 2013 meeting of the SADC double troika, SADC facilitator, President Jacob Zuma, was categorical about issues that need attention before an election is held (as highlighted earlier). One of the facilitators, Lindiwe Zulu, has also been insistent on having key reforms before an election is held. The SADC executive secretary, Tomaz Salamao, also castigated the GPA parties for failing to take their roles at JOMIC seriously and for wasting time in political manoeuvrings. Besides these proclamations, criticisms and good willed intentions, SADC needs to implement its decisions and enforce its decisions, something that has eluded the regional bloc in the lifetime of the GPA.

Consequently, as of April 2013, if general elections were to be held in the next two months, the outcome will be a prolonged transition. Whereas there are positive democratic reforms attained the incumbent is still in a position to manipulate state institutions and the electoral system in order to retain state power. (See Pre-Election Detectors: ZANU PF’s attempt to reclaim political hegemony). In this context, the incumbent will find it difficult to gain political legitimacy due to the fact that SADC, other political parties, civil society and the independent media keep trekking the transition and expose ZANU PF’s election manipulation strategies, subtle or overt. It is therefore difficult to gain enough legitimacy to lapse into a derailed transition. If elections were to be held on or before 30 June 2013 President Mugabe would need the cooperation of protagonists post the general election. It is also important to note that, under these circumstances, Zimbabwe is not likely to backslide into a closed authoritarian state but rather there will be co-existence of democratic gains made and some old authoritarian practices, marking a new terrain of political struggles for democratisation. In the next chapter, we give the detail from our systematic observations in the past months.

Trekking the Transition

Barometer Indicator 1: The Constitution Referendum

1.1 Source of Barometer Indicator

Article VI of the GPA speaks to the need of writing a new constitution¹. Pursuant to this objective the parties to the GPA agreed to form a parliamentary select committee to spearhead the process².

Article VI of the GPA articulates the following key milestones in the constitution making process:

- (i) set up subcommittees chaired by a member of Parliament
- (ii) 1st All Stakeholders' Conference
- (iii) hold public hearings
- (iv) draft Constitution
- (v) 2nd All Stakeholders Conference
- (vi) report and tabling draft to Parliament
- (vii) Parliamentary debate on the draft constitution
- (viii) Gazetting the debated draft
- (ix) Referendum
- (ix) Gazetting the approved draft³.

1.2 Key Prevailing Issues

The victory of the 'yes' vote on the 16th of March 2013 signifies the near completion of the constitution making exercise. The government further gazetted the Constitutional Bill on the 29th of March 2013 to give it the required 30 days' notice before taking it to parliament for debate on the 7th of May 2013⁴. This means that the constitution is now waiting for two thirds parliamentary endorsement before President Mugabe assents to it before it becomes law. On the other hand this also compels the re-aligning of the existing laws with the new constitution once it has got presidential assent. Based on the principals' meeting it is reported that Minister of Justice, Honourable Chinamasa and Minister of Constitutional Affairs, Honourable Matinenga have been tasked with the process to thrash out a framework and timeframes to harmonise the new constitution and existing laws⁵. In the same vein, it has been stated that work on the alignment of laws will begin now given the time constraints and the fact that parliament expires on the 29th of June 2013; and more so that the executive can only be in existence for four months after the dissolution of parliament⁶. It is only after this process that the principal will announce an election date and almost put a closed chapter to the constitution making process as the Constitutional Parliamentary

¹ Global Political Agreement, Article VI

² Ibid.

³ Global Political Agreement, Article 6:1(a, b and c)

⁴ The Herald, "Constitutional Bill GAZETTED", http://www.herald.co.zw/index.php?option=com_content&view=article&id=72477:constitutional-bill-gazetted&catid=37:top-stories&Itemid=130#.UXEyi6K9bf0, accessed on the 13/04/2013.

⁵ See Everson Mushava, "Mugabe and Tsvangirai Agree on Polls", Newsday, <http://www.newsday.co.zw/2013/04/17/mugabe-tsvangirai-agree-on-polls/>, accessed on 17 April 2013

⁶ Ibid.

Select Committee (COPAC) wind up its operations and handed to the Ministry of Constitutional and Parliamentary Affairs to complete the process⁷. Parties to the GPA have also agreed on a constitutional transitional mechanisms; the constitution ‘will take effect in stages, certain parts of the charter, such as the Bill of Rights, devolution, and chapters on elections, will take effect immediately and supersede the existing provisions that may be in conflict with them’⁸.

The key weaknesses of the constitution making were the outreach as military style operations such as ‘operation *chimumumu*’ and ‘*pungwes*’ were used by ZANU PF to coach villagers and undermine their participation. This limited the voice of citizens as they had been cowed into silence. The referendum presents a challenge as initially Justice Makarau gave an estimate of 2 million voters having voted by the close of the voting day, but the final result released by ZEC of actual voters was 3,317,695⁹. This was further compounded by the fact that there was insufficient monitoring of the polling by the pro-democracy elements within and outside government. Questions around whether the referendum process was used as a “dry run” for ZANU-PF election rigging machinery have emerged. Honorable Tendai Biti of the MDC-T has indicated that the voting figures at the referendum were inflated by between 10 and 15% and that there were constituencies where the turnout was much higher than the number of persons residing within it, as reflected by the 2012 population census statistics. The major weakness in these arguments has been the failure to provide evidence to back such claims. At the same time, ZEC’s reluctance to disprove these allegations has left the issue hanging.

1.3 Effects on Democratisation

Constitutions are social contracts between the ‘governed’ and ‘governors’. They play a key role to the creation of constitutionalism and democracy. The process equally matters as the content. Whilst the current constitutional making process was beset with certain procedural issues, and its content is not argued to be the best¹⁰, it presents an opportunity for stabilisation and building democratic institutions. This view is informed by the realist view that constitution making process may be informed by certain realities not concomitant with mechanistic interpretation of procedure. Hence the constitution making process needs to be seen within the concept of ‘likely imperfection’ as reflected in Article V of the US Constitution but at the same time makes it difficult to amend¹¹, or as ‘democracy’ in progress. Vivien Hart argues that, “*It is easy to say that public participation in constitution making is desirable. But this remains a matter of opinion and matters of opinion are hard to enforce*”¹². Therefore, it is difficult to conclude on the democratic practice in the constitution making

⁷ Veneranda Langa, “COPAC Winds up Operations”, Newsday, <http://www.newsday.co.zw/2013/03/21/copac-winds-up-operations/>, accessed on 19/04/2013.

⁸ Tichaona Sibanda, “New Constitution may come into Effect, End of April”, <http://www.swradioafrica.com/2013/03/20/new-constitution-may-come-into-effect-end-of-april/>, accessed on 19/04/2013.

⁹ Nehanda Radio, “Zimbabwe Referendum Results Announced”, <http://nehandaradio.com/2013/03/19/zimbabwe-referendum-results-announced/>, accessed on 19/04/2013.

¹⁰ See, arguments raised by the National Constitutional Assembly and its allies.

¹¹ Sanford Levinson, Ed. (1995), *Responding to Imperfection: The Theory and Practice of Constitutional Amendment-The Theory and Practice of Constitutional Amendment*, Princeton University Press

¹² Vivien Hart, “Democratic Constitution Making”, <http://dspace.cigilibrary.org/jspui/bitstream/123456789/4581/1/Democratic%20Constitution%20Making.pdf?1>, accessed on 19/04/2013

process in Zimbabwe, as the COPAC process was almost modelled along the much celebrated Conference for Democratic South Africa (CODESA).

The tacit admission by ZANU PF of coaching people, in ‘*pungwe*’ (night parties) style, and use of operation ‘*chimumumu*’ (Operation Dumb or don’t speak)¹³ during the outreach exercise poses questions for democratisation. These strategies have heavily been associated with intimidation of citizens and questions become abound on whether this would not be repeated during the forthcoming harmonised elections. Where repeated, this has the danger of intimidating voters and undermines democratic norms and standards. Furthermore, the failure to effectively monitor the referendum especially in rural areas and questions around the electoral results, in particular, accusations of inflating figures¹⁴, remains a latent threat to democratisation.

1.4 Barometer Indicator Scorecard

Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		• Constitution referendum concluded. • Processes to expedite its adoption and operationalization currently underway • Allegations of “rigging” in the constitution process either not proven or addressed by ZEC.

1.5 Possible Scenarios

The constitution is now almost a closed chapter after victory of the ‘yes’ vote. The agreement of political parties on the last minute served the process from falling apart. Furthermore the agreement on the constitutional transition mechanism pre-empted a potential conflict on the interpretation of the constitution. This agreement is captured in the views of COPAC co-chairpersons below

‘*We are still going to have a Prime Minister even after the draft constitution is signed into law until the day of the swearing in of the newly elected President*’, (Douglas Mwonozora, MDC-T), and ‘*It is provided for in the draft constitution that the PM will remain in office until a new government is formed*’, (Munyaradzi Paul Mangwana-ZANU PF)¹⁵. On the constitutional front it seems there is going to be more of less haggling between the political parties after the conclusion of the referendum and agreement on the constitutional transition mechanism. Moreover the reported agreement on the forthcoming electoral process also stumps out any room for further confrontation.

¹³ Richard Chidza, “Rugged Road towards New Charter”, <http://www.dailynews.co.zw/article/Features/10e8401b-44d9-4da6-ab08-db34bea23033>, accessed on 19/04/2013.

¹⁴ Alex Bell, “Zimbabwe: More Concerns Emerge of Referendum Rigging”, All Africa, <http://allafrica.com/stories/201304100356.html>, accessed on 19/04/2013.

¹⁵ Veneranga Langa and Everson Mushava, “Threat on PM Position an Un-informed Fallacy”, <http://www.newsday.co.zw/2013/04/11/threat-on-pm-position-an-uninformed-fallacy/>, accessed on 19/04/2013.

1.6 Key Recommendations

- There is need for CSOs to continuously put pressure on the inclusive government, to monitor the process of aligning the new laws with the constitution.
- There is need to view the forthcoming elections as an opportunity to create a base for the practice and implementation of the new constitution thus build a grand coalition of pro-democracy elements around election monitoring.
- There is also need for realisation by CSOs that the new constitution is not a perfect document but provides the grounds for a new culture of constitutionalism and democracy. Thus, there is need to begin to conceptualise the role of CSOs post the GNU, and how best to advance constitutionalism and democracy.

2.0 Barometer Indicator 1: Review of the implementation of GPA

2.1 Source of Barometer Indicator

ARTICLE XXIII of the GPA specifies on the periodic review mechanisms of the agreement. Further to that, Article XXIII reads, “this Agreement and the relationship agreed to hereunder will be reviewed at the conclusion of the constitution-making process”. The conclusion of the constitution making process, marked by the referendum, should have provided an opportunity to review the GPA as well as build a common understanding of how the agreement now needs to lead towards further processes, in this case, the elections. To-date, no such review has been undertaken.



The South African facilitation team to Zimbabwe, from left, Charles Ngacula, Mac Maharaj and Lindiwe Zulu

2.2 Key Prevailing issues

The relevance of the full implementation of the GPA continues to be ignored, given the political circumstances transpiring on the ground. Although the GPA is the only mechanism that legitimizes current political institutions and governance structures, it seems to be merely serving that purpose, without any due influence in how the remaining transitional issues shape out. Although SADC communiqués continue to highlight the need to fully implement the GPA, as part of the transition, the regional bloc seems to have settled for merely pushing for political stability rather than fully fledged reforms.¹⁶ At its 9 March 2013 meeting of the double troika in Pretoria, the SADC facilitator in Zimbabwe, Jacob Zuma, urged that the full GPA needs to be implemented before Zimbabwe can possibly proceed to elections.¹⁷ One of Zuma’s facilitation team members, Ambassador Lindiwe Zulu, indicated that the full GPA implementation remains a pipe dream and only those election-specific tenants of the agreement now need to be pushed.¹⁸

Besides the referendum process, it remains unclear just how much of the GPA has created ample ground for Zimbabwe transition, if at all. The reference by Lindiwe Zulu, and many others, to focus primarily on election-related issues of the agreement, though sensible given the complex political scenario in Zimbabwe, relegates the entirety of the GPA to being non consequential. At this stage there is need to acknowledge that even those unimplemented GPA tenants that are considered to be non election related, still have effect on the broader democratisation process. This is the reason why we still argue that full implementation of the GPA would have been relevant to shaping the Zimbabwe transition. Failure to review its implementation and the consequences of all outstanding issues necessitates a flawed transition with negative effects on the democratisation agenda.

¹⁶ Tanonoka Joseph Whande, “SADC hoarding and prolonging regional crises”, <http://www.swradioafrica.com/2012/10/25/sadc-hoarding-and-prolonging-regional-crises/>

¹⁷ The Report of SADC Facilitator on the Zimbabwe Inter-Party Political Dialogue, President Jacob Zuma, Pretoria, 9 March 2013
to the SADC Organ Troika on Politics, Defence and Security Cooperation

¹⁸ Lindiwe Zulu addressing public at the South African Liaison Office (SALO) meeting in Pretoria, 12 April 2013

2.3 Effects on Democratisation Process

Some of the outstanding issues in the GPA, considered to be non-election related, are around: restoration of economic stability and growth; the land question; traditional leaders; national youth training program; and humanitarian and food assistance. If the country is to go to elections without reforms in these areas, as is most likely to be the case, these issues will affect the democratisation process in one way or the other. The hypothetical proposition here is that; the full implementation of the GPA would have been given more impetus to Zimbabwe's transition rather than the current limited focus on those issues considered to be election related. The state of the economy plays a huge part in the democratisation process. Some scholars state that, economic development leads to democracy in broad contexts.¹⁹ In weak democracies, economic opportunities are employed as a political tool, which inevitably overrides the citizens' free political will and decision making. Zimbabwe is faced with a challenge where political players, especially in ZANU-PF, are employing the restricted economic opportunities to gain political mileage and "buy" political loyalty as before the GPA.²⁰ The failure to de-politicise food and humanitarian aid has also seen its use as a political tool especially in remote rural areas.²¹ Traditional leaders, who fall under the ministry of Local Government, Rural and Urban Development, have also been engaged as foot soldiers by ZANU-PF. They have used their jurisdiction and authority in rural areas to campaign for ZANU-PF thereby denying citizens their right to free political choice of association. The traditional leadership platform though encouraged to be of "political neutrality"²² and "*not to engage in partisan political activities at national level as well as in their communities*"²³ by the GPA has largely remained unreformed.

The national youth program has previously been used by ZANU-PF to train its youths while indoctrinating others. These youths became co drivers of political violence in 2008. Although the GPA urges the national youth training program to be non-partisan and be apolitical, reports of ZANU-PF youths being trained in these institutions still emerge.²⁴ Other political party youths have therefore not been involved in the capacity building or youth empowerment programs, largely being preserved for ZANU-PF loyalists. The youths remain one of the key voter categories in the coming elections and because ZANU-PF has controlled youths programs the party may once again use this as an election leverage.

2.4 Barometer Indicator Scorecard

*Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score*

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		- National youth training program has not been opened up to other political players other than ZANU-PF. - Food and humanitarian assistance continues to be politicised and used as a political tool - The economy has remained largely depressed and economic opportunities have been used as a political tool to reward loyalists to win allegiance.

¹⁹ Gang Guo, "Democracy or Non-democracy- from the perspective of economic development", University of Rochester, 1998

²⁰ Liz Martyn "Zimbabwe in Crisis", The Churches' Agency on International Issues, Issue 1, 2004

²¹ Tawanda Marwizi, "Food as a political tool", Newsday newspaper, 31 October 2012

²² GPA, Article XIV. (a).

²³ GPA, Article XIV. (b).

²⁴ GPA Article XV

		• Traditional chiefs have remained unreformed serving ZANU-PF interests
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2.5 Possible Scenarios

The pending election is likely to see ZANU-PF draw out to maximise on leveraging on the issues that have remained outstanding in the GPA. As much as SADC and even some political parties are being lured into focusing only on what they term as election-specific reforms in the GPA; some of the non-election related clauses will still negatively affect the broad democratisation agenda in Zimbabwe. The youth will likely be engaged for political campaign while partisan youth programs will be used to cow their vote. Traditional chiefs will likely replay their role in 2008 by intimidating and forcing those under their jurisdiction to vote and support ZANU-PF. Economic opportunities, arising from diamond mining activity and the economic empowerment and indigenisation program, will continue to be used as a political tool. Given the levels of low food production in some areas in the 2011/2011 agricultural season, food aid will be used as a political mobilisation tool. The NGOs involved in humanitarian and food aid programs will see more intimidation from ZANU-PF and restrictions in their operations, unless they are willing to cooperate with the party grand scheme protocol. In general, those outstanding and non-election related issues of the GPA will become significant in both the election and the overall democratisation process of Zimbabwe's transition.

2.6 Key Recommendations

- SADC needs to develop mitigation strategies need to be developed that will help monitor and ensure those considered as non-election related outstanding GPA issues are not used as leverages by political parties in the election.
- Civil society groups working with youths, food aid, humanitarian aid, economic development, land and agriculture and rural community development need to be capacitated to begin to monitor how their respective areas of jurisdiction are being manipulated for political mileage for the elections. These civil society groups must produce periodic monitoring reports that are channelled to JOMIC and to SADC facilitation team to help in developing a "helicopter view" of Zimbabwe's transitional environment.

3.0 Barometer Indicator 3: Assessing the Rule of Law

3.1 Source of Barometer Indicator

Article XI of the GPA speaks to the observance of the Rule of Law, respect for the Constitution and other Laws²⁵. The parties to the GPA thus, agree to that it is the duty of political parties and individuals to, “respect and uphold the constitution and other laws of the land”, and to, “adhere to the principles of the Rule of Law”²⁶. Furthermore, Section E of ‘Zimbabwe’s Elections Roadmap’, promise that there were be a meeting of the principals with the Attorney-General, Commissioner-General of the Police, Heads of the other security and intelligence institutions to ensure full commitment to operate in a non-partisan manner consistent with the GPA²⁷.



Judge Justice Charles Hungwe

3.2 Key Prevailing Issues

There have been quite a number of sticky issues regarding the rule of law. Section E of the elections roadmap clearly show that there has been disagreement on defining the rule of law as well as perceptions around it. The MDCs advanced the following demands;

- i. Instruct the security forces to issue a public statement declaring that they will uphold the Constitution and respect the rule of law
- ii. End military and police abuse of the rule of law and end all state sponsored/sanctioned violence
- iii. Sending back soldiers who are in the rural areas back to the barracks
- iv. Regulating the operations of the CIO through an Act.²⁸

ZANU PF has been evasive or in denial, thus leading to a deadlock on the way forward to deal with the issues raised above. Another emerging issue has been the attack on the judiciary whenever it gives decisions against the state. Justice Hungwe’s case is one in point where; some institutions and organs of the state have initiated campaigns to remove him from the bench as a punishment²⁹. This was so, in the case

²⁵ Global Political Agreement, Article XI

²⁶ Global Political Agreement, Article XI:1 (a) and (e).

²⁷ Zimbabwe’s Elections Roadmap with Timelines, Distributed by VERITAS.

http://www.kubatana.net/docs/demgg/sadc_zim_elec_roadmap_110706.pdf, accessed on 02/04/2013

²⁸ Zimbabwe’s Elections Roadmap with Timelines, Distributed by VERITAS.

http://www.kubatana.net/docs/demgg/sadc_zim_elec_roadmap_110706.pdf, accessed on 02/04/2013

²⁹ Nomalanga Moyo, “Besieged Judge referred to Mugabe for Action”, All Africa,

<http://allafrica.com/stories/201304160294.html>, accessed 16 April 2013

of Justice Fergus Blackie and former Chief Justice Anthony Gubbay who were forced to resign.

There have been reported cases of abuse of state institutions to persecute human rights activists. This abuse of state institutions and the law has been mainly through, arbitrary arrests, political motivated prosecution, raiding of CSOs, and lengthy incarceration through denial of bail or invoking section 121(3) of the Criminal Procedure and Evidence Act³⁰. There has been also reported increase of attack and intimidation of CSO organisations and human rights defenders by state organs such as the police³¹. This has seen the arbitrary arrest and prosecution of CSO leaders and Human rights defenders on spurious allegations and charges. It should be noted in most of the cases where the state has invoked S121 (3); it has failed to appeal, and where it has appealed, it lost them and only partially winning one case. For instance, VERITAS reports that the Zimbabwe Lawyers for Human Rights (ZLHR) documented the use of section 121(3) over the period April 2008-February 2009, and the figures indicate the following:

- out of the 30 cases listed by ZLHR in which section 121(3) was invoked, the State actually appealed in only 7
- of those 7 appeals, 6 were entirely unsuccessful, resulting in the release of the accused persons on the conditions originally granted
- in the single case in which the State had a partial success, its application for leave to appeal to the Supreme Court succeeded in respect of only one the three accused persons involved³².

These figures represent cases that had their traces to the aftermath of the March 2008 presidential elections, and with the current escalating trend of victimisation of CSOs and political activists there is a strong likelihood of the situation worsening. This is further compounded by the partisan nature of state organs and institutions. It should also be noted that more than 30 individuals were involved in these cases, because some of them featured multiple accused, e.g. the case involving Hon Douglass Mwonzora MP and 22 co-accused from his MDC-T party³³.

3.3 Effects on Democratisation Process

The importance of the rule of law to democratisation needs no emphasis. According to Linz and Stepan, ‘the rule of law’ is one of the pre-requisite, five elements in defining democracy³⁴. Furthermore, the Canadian Bar Association observes that, “*The twin principles of democracy and the rule of law are the two most important pillars of good governance. Furthermore, each is not truly sustainable without the other*”³⁵, and

³⁰ See, Court Watch: Prosecutors’ Record of Abuse of Power to Delay Bail, <http://www.swradioafrica.com/court-watch-prosecutors-record-of-abuse-of-power-to-delay-bail/>, accessed on 17 April 2013.

³¹ See Philani Zamchiya, (2013). “Pre-election Detectors: ZANU PF’s Attempt to Reclaim-Political Hegemony”, Crisis in Zimbabwe Coalition, Marshalltown: Johannesburg, pp21-22.

³² See, Court Watch: Prosecutors’ Record of Abuse of Power to Delay Bail, <http://www.swradioafrica.com/court-watch-prosecutors-record-of-abuse-of-power-to-delay-bail/>, accessed on 17 April 2013.

³³ Ibid.

³⁴ Juan J. Linz and Alfred Stepan. (1996), Problems of Democratic Transition and Consolidation. Baltimore: Johns Hopkins University Press, p7.

³⁵ The Canadian Bar Association, “Sustaining Democracy Through the Rule of Law”, <http://www.cba.org/cba/submissions/pdf/07-03-eng.pdf>, accessed on 16/04/2013.

further argues that, “Without the rule of law, democracy is not sustainable”³⁶. These observations are quite pertinent to Zimbabwe where, the lack of the rule of law has been one of the major stumbling blocks to the transition to democracy. The abuse of the law (rule by law) or failure to observe presents one of the greatest inhibitor to transition to democracy. Judge Mathonsi’s remarks in dismissing a State appeal against three Media Monitoring Project in Zimbabwe officers arrested in Gwanda in 2011, are telling:

Section 121(3) ... gives the appellant (the Attorney-General) power to veto the grant of bail to an accused person ... To the extent that it interferes with the liberty of a person who has been admitted to bail, that discretion should be exercised judiciously because the legislature, in its wisdom, entrusted the appellant with huge powers. For that reason, it is unacceptable for any representative of the Attorney-General to shoot up the moment bail is pronounced and invokes section 121 without applying his/her mind to the basis for such invocation. I have said that there is no merit in the grounds of appeal, which do not show any misdirection at all on the part of the court a quo. In fact those grounds are legendary by their lack of merit. One is therefore left wondering whether the appellant’s representative did apply his mind at all. The abuse of section 121 to keep persons in custody who have been granted bail has tended to bring the administration of justice into disrepute. It must be discouraged by all means and the time has come to announce to law officers prosecuting on behalf of the Attorney-General that section 121 should be invoked only in those situations where there is merit in the appeal ... Persons who have been properly granted bail should not be kept longer in custody merely as a way of punishment. That is an improper exercise of the discretion given to the Attorney-General by section 121³⁷.

Therefore, the rule of law needs to be promoted and protected if Zimbabwe is to sustain a transition to a democracy. Furthermore, the attack on the Judiciary, when it gives unfavourable decisions against the state is a further assault on the rule of law, as seen in the instance of Justice Hungwe. This undermines the independence of the judiciary in exercising their duties without fear or favour and ultimately supplants democracy.

3.4 Barometer Indicator Scorecard

*Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score*

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		• Politicisation of the judiciary continues to persist. • Impunity continues to persist • The clampdown on human rights defenders and civil society organisations continues.

³⁶ Ibid.

³⁷ See, Court Watch: Prosecutors’ Record of Abuse of Power to Delay Bail, <http://www.swradiofrica.com/court-watch-prosecutors-record-of-abuse-of-power-to-delay-bail/>, accessed on 17 April 2013.

3.5 Possible Scenarios

There is likely to be more continued attack on CSOs and political activists as we proceed towards the elections. The much politicised state security apparatus poses a threat to the rule of law either through selective prosecution of perceived opponents of ZANU PF, or scuttling of pro-democracy movement political activities. Peerenboon³⁸ observes that, “authoritarian regimes end up with rule by law, rather than rule of law, or at best a two track system with a more functional legal system for commercial law matters, but a dysfunctional system for civil and political rights”. Given high costs associated with the use of overt violence in the forthcoming election; the strategy of rule by law and persecution of CSOs and human rights defenders will be adopted more as a strategy to cow them into subjugation and silence³⁹. Therefore, the law will most likely be used as an instrument of coercion and break the political organisation of the pro-democracy movement. Furthermore, the persecution of Justice Hungwe will continue as the ZANU PF-linked authoritarian elements of the state seek to send a warning message to members of the judiciary who will dare give it unfavourable decisions. Thus, there will be an increase in undermining the judiciary, also as a way to cushion possibilities of a judiciary induced state power transfer in the event of a disputed election.

3.6 Key Recommendations

- Civil Society needs to keep tabling the need to reform laws, such as the Criminal Procedure and Evidence Act; Access to Information and Protection of Privacy Act (AIPPA); and Public Order and Security Act (POSA)..
- Civil society must continue to promote public dialogue on issues around the rule of law and ensure participation becomes citizen driven.
- Civil Society need to engage and lobby international organisations such as the International Commission of Jurists and like-minded organisations to apply pressure on the government to uphold judicial independence. The action initiated by the Center for Independence of Judges and Lawyers to request Chief Justice to stop the media trial of Justice Charles Hungwe⁴⁰, can be a building block. CSOs need also to voice their concern against the attempted muzzling of the judiciary by the state.
- Civil society must explore opportunities to extend the “rule of law” capacity building programs with public sector institutions and officials.
- Civil society must also focus on programs around the recovery of state institutions from historical and incessant politicisation towards broad ownership and accountability by the citizens. Although the pre-election period presents challenges, this agenda must be prioritised by civil society within the immediacy of the post-election period.

³⁸ Peerenboon R, “Rule of Law, Democracy and the Sequencing Debate: Lessons from China and Vietnam”, http://relooney.fatcow.com/SI_Expeditionary/deSoto_22.pdf, accessed on 17/04/2013

³⁹ See Philani Zamchiya, (2013). “Pre-election Detectors: ZANU PF’s Attempt to Reclaim-Political Hegemony”, Crisis in Zimbabwe Coalition, Marshalltown: Johannesburg, pp20.

⁴⁰ Ray Ndlovu, “Zim: Chief Justice Under Pressure”, Mail and Guardian, <http://mg.co.za/article/2013-04-19-zim-chief-justice-under-pressure>, accessed on 22/04/13

4.0 Barometer Indicator 4: Post referendum: Monitoring the elections

4.1 Source of Barometer Indicator

The election roadmap agreed to by SADC and the GPA parties in 2011 outlines the procedure towards the election, under Issue H (ix). It outlines the need to provide for the monitoring of elections (this remains an area of disagreement in the election roadmap).



Hon. Bernard K. Membe (MP), Minister for Foreign Affairs and International Co-operation. Hon. Membe led the SADC Observer Team to monitor Zimbabwe's referendum on the new Constitution, on behalf of H.E. President Jakaya Mrisho Kikwete, President of the United Republic of Tanzania who is also the Chairperson of the SADC Organ on Politics, Defence and Security Cooperation. He is seen here greeting President Mugabe

4.2 Key Prevailing issues

To-date the Prime Minister and President have had no consensus on how the election road map needs to be devised and implemented after the referendum process. There have been arguments across their parties on what needs to be prioritised and at what stage. Whereas Prime Minister Tsvangirai and his party have called for further reforms after the referendum and before the elections, President Mugabe and ZANU-PF have resisted these calls.⁴¹ SADC has weighed in and demanded that the critical issues related to: security sector realignment; role of the Joint Operations, Monitoring and Implementation Committee (JOMIC); cleaning up of voters' roll; clarification on election observer invitations; and fund raising for elections, must all be resolved after the referendum and before the election.⁴²

Election observation and monitoring is another major area of disagreement between the GPA partners. The MDC parties are open to international observers (including those from outside of the continent). ZANU-PF has been adamant on inviting only those from the region and continent. The recent case of the UN needs assessment team to Zimbabwe, which was initially denied entry into the country, is also about ZANU-PF's fears that funding from the global institution will inevitably lead to international observation of the elections. ZANU-PF

⁴¹ Patrice Makova, "Zanu PF hardens on security sector reforms", The Zimbabwe Standard newspaper, 7 April 2013; "MDCs can forget about reforms: Chinamasa", The Zimbabwe Independent newspaper, 1 February 2013

⁴² The Report of SADC Facilitator on the Zimbabwe Inter-Party Political Dialogue, President Jacob Zuma, Pretoria, 9 March 2013

has also denied the team the mandate to consult with civil society,⁴³ as such consultation will have led to independent input of the assessment of the political environment prevailing before elections.

The role of JOMIC towards the election remains contentious. Whereas the SADC appointed facilitator wants to work directly with JOMIC in order to aid its oversight of the political environment, ZANU-PF is resistant to such attempts.⁴⁴ ZANU-PF has also pushed back any attempts to utilise the JOMIC platform as an early election observation mechanism while the SADC officials supposedly deployed in 2011 have not yet permanently joined the institution. JOMIC remains one of the most viable GPA institutions which can be used as an early observation/monitoring platform. At the 9 March 2013 double troika meeting of SADC, a recommendation was put forward that the regional body must push for election monitoring rather than election observation. Monitoring will ensure that any election anomalies are addressed at source and this is a task that JOMIC could be ably mandated to do.

4.3 Effects on Democratisation Process

Elections, as a supposed forerunner of democracy, must not only be free and fair, they must be seen to be.⁴⁵ This means there must be ways and mechanisms of ensuring transparency of how the process concludes. The result of this will be public confidence in the process, not only locally but across the broad framework of other external stakeholders.⁴⁶ In this regard, open election monitoring and observation is central. Elections that are monitored by international observers facilitate the prevention or elimination of fraud and legitimises the outcome for universal acceptance.⁴⁷

JOMIC remains the only viable mechanism through which SADC and citizens can hold the GPA parties to account,⁴⁸ including their conduct and behaviour towards, during and after elections. In any democracy the role of the citizens in participating and holding politicians to account is fundamental.⁴⁹ ZANU-PF's insistence on having only the political parties play a role in JOMIC is self-defeating to democratic tenets. ZANU-PF's argument is that no external players must be involved in JOMIC as it is independent body of a sovereign state. If ZANU-PF is not desirous of SADC's involvement, which is regrettable given local political circumstances, then other local bodies as civil society and other political formations must at least be included. Democracy is about cross accountability.⁵⁰ It is about decentralised checks and balances. In what way does ZANU-PF insist on the three GPA parties to continue to hold themselves accountable without SADC and/or local non-political bodies; and yet still attempt to consolidate a democratic transition process? Intra-accountability is not a full measure of democracy; rather it has to be complemented by inter-accountability.⁵¹ The manner in which national decisions are being exclusively made by politicians also defy the democratic tenets of participatory democracy. ZANU-PF also needs to be open to election observation by a wider pool of players from the international community that will serve to legitimise the outcome of the election and assist in re-admitting Zimbabwe into the League of Nations where the country is currently being censured for undemocratic practices.

⁴³ Felix Share, "Zimbabwe: Govt Cancels Poll Funding Request", The Herald newspaper, 17 April 2013

⁴⁴ Lindiwe Zulu addressing public at the South African Liaison Office (SALO) meeting in Pretoria, 12 April 2013

⁴⁵ M. Abutudu, "Monitoring and Observation of Elections in Africa", African Association of Political Science, 2002

⁴⁶ African Union, Election observation and monitoring guidelines.

⁴⁷ *ibid*

⁴⁸ Lindiwe Zulu addressing public at the South African Liaison Office (SALO) meeting in Pretoria, 12 April 2013

⁴⁹ <http://www.lawanddemocracy.org/pdf/files/amazing.prin..pdf>

⁵⁰ Przeworski et al., "Democracy, Accountability and Representation", Cambridge University Press, 1999, Cambridge

⁵¹ *ibid*

4.4 Barometer Indicator Scorecard

*Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score*

EVALUTATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		• There is no early observation mechanism in place although violations of the Electoral Act are already being observed • JOMIC is still not fully empowered to hold political parties to account. • No prospects of JOMIC working freely with SADC members to enhance oversight of the political environment towards the elections. • ZANU-PF still insists on exclusion of international election observers, although this will enhance the legitimacy of the polls.

4.5 Possible Scenarios

Zimbabwe is likely to proceed to elections without an early election observation mechanism in place. JOMIC will continue being restricted to deal with sub-national issues of violation of the GPA without having oversight over the conduct of political leaders. SADC's deployees to JOMIC may join the institution late and have minimal effect in addressing environmental deviations to election guidelines. This will likely allow for political violence and intimidation to prevail, although not at the same levels as in 2008 but to a significant extent,⁵² that will shape the election process and outcome. Citizens will continue to be restricted in having oversight of the politics in Zimbabwe but will be cowed to ensure they vote in the elections. By the time that regional and even continental observers arrive, the damage will have already been done. Citizens will have been intimidated already and possible election process irregularities will have been instituted. ZANU-PF will continue to insist on exclusion of international observers and the international community will then have to rely on the African Union and SADC missions to ensure the election is credible and the outcome a true representation of the will of the Zimbabwean people.

4.6 Key Recommendations

- Civil society needs to push to build an early election observation mechanism in partnership with JOMIC.
- Civil society must continue to call for the immediate deployment of SADC officials to JOMIC
- JOMIC must work with civil society, faith based organisations, academia e.t.c in order to build a robust observation and monitoring platform of the Zimbabwe political environment. This will also enhance JOMIC's collection, analysis and presentation of information around the transpirations in the political environment.
- Civil society must continue to campaign for inclusion of international observers as this will enhance the acceptability and confidence in the outcome of the elections at a global level.

⁵² Philani Zamchiya, (2013). "Pre-election Detectors:ZANU PF's attempt to Re-claim Political Hegemony", Crisis in Zimbabwe Coalition, Marshalltown: Johannesburg.

- Civil society must create more platforms for dialogue and build consensus in order to unite towards the push for citizen representation in political transitional processes.

5.0 Barometer Indicator 5: Defining Election Dates

5.1 Source of Barometer Indicator

The negotiators to the Global Political Agreement (GPA) concluded and signed the Roadmap to Zimbabwe's Elections on the 22nd of April 2011. The Extraordinary Summit of SADC Heads of State and Government, held at Sandton, Republic of South Africa, on the 11th and 12th of July, resolved that the signatories to the GPA should urgently draw up the timelines for the implementation of the elections roadmap⁵³. Section H⁵⁴ of Zimbabwe's Elections Roadmap, states that, in terms of the constitution, the following shall be undertaken in implementing the actual elections:

- i. Presidential proclamation in consultation with the Prime Minister
- ii. Activation of Liaison committees particularly at local level⁵⁵

Therefore, it is agreed that a completion of the above processes will assist Zimbabwe in holding a free and fair election.



A police man looks on as people vote during the 2008 harmonised election

5.2 Key Prevailing issues

The completion of the draft constitution and its subsequent approval in the referendum on the 16th of March, 2013, signifies a clear-cut progression towards the holding of elections. On the 29th of March 2013, through General Notice 201A/2013, the Minister of Constitutional and Parliamentary Affairs published an Extraordinary Government Gazette for the Constitution of Zimbabwe Amendment **(No.20)** Bill⁵⁶. The Constitutional Bill is expected to be debated in parliament on the 7th of May 2013 for a period of a week or more; while in the meantime responsible ministries will start aligning laws with the new constitution and in most particular are laws to do with elections, i.e. Electoral Law and Local Government rule⁵⁷.

There is now common consensus across all political parties that the life of parliament will cease on the 29th of June 2013. The date of the elections has been a point of

⁵³ Zimbabwe's Elections Roadmap with Timelines, Distributed by VERITAS.

http://www.kubatana.net/docs/demgg/sadc_zim_elec_roadmap_110706.pdf, accessed on 02/04/2013.

⁵⁴ NB-The issue of delimitation of constituencies has been overtaken by events, while the other omitted stages on this indicator are not yet of any material substance as they are still to be implemented.

⁵⁵ Zimbabwe's Elections Roadmap with Timelines, Distributed by VERITAS.

http://www.kubatana.net/docs/demgg/sadc_zim_elec_roadmap_110706.pdf, accessed on 02/04/2013

⁵⁶ Human Rights Forum Bulletin of 8 April 2013. <http://www.hrforumzim.org/wp-content/uploads/2013/04/Current-position-on-the-new-constitution.pdf>, accessed on 09/04/2013.

⁵⁷ The Herald 29 March 2013.

contention with the MDCs arguing for a date after the 29th of June⁵⁸, whilst ZANU PF has been advocating for a date within the 29th of June time frame⁵⁹. Patrick Chinamasa (Minister of Justice) whilst travelling with President Mugabe in Rome hinted that, the life of the current parliament will end on 29 June 2013:

*“As the Minister of Justice and Legal Affairs, I am not entertaining the holding of the elections after June 29 unless circumstances beyond my control happen. We have a deadline to meet (June 29) and we have to abide by what the law says. The simple fact is that we are not overflowing into July or any day further than the expiry of the constitutional term of the Parliament”*⁶⁰,

Hence elections ought to have been done by then. This has seen parties to the GPA haggling over the elections date with the two MDCs arguing on the unrealistic nature of the 29th of June timeframe, and ZANU PF on the other hand arguing that it is realistic. More so, there has been resuscitation of the court case on by-elections, which has seen the Prime Minister challenging the validity of the 29th of June election date in court, to which President Mugabe’s lawyers conceded to the argument that the Prime Minister had not been consulted⁶¹.

The correct position in this case, is that pursuant to reading section 58(1)⁶²; the President is not constrained to set the date of the elections after the expiration of parliament but legally has a period of four months within which the dates can be set⁶³. The automatic dissolution of parliament on the 29th of June 2013 will not stop the government to function during the four month timeframe, but it will lead to an undesirable situation of the possibility of rule by decree as the executive will be left unchecked⁶⁴.

⁵⁸ See Silas Nkala, “Ncube Blasts ZANU PF Over Election Dates”, News Day, <http://www.newsday.co.zw/2013/04/15/ncube-blasts-zanu-pf-over-election-dates/>, accessed on 23/04/13, The Zimbabwe Mail, “MDC-T Blasts Chinamasa”, <http://www.thezimbabwemail.com/zimbabwe/16918-mdc-t-blasts-chinamasa.html>, accessed on 23/04/13.

⁵⁹ See Austin Zvoma, “Legal Truth: Elections Due by June 30”, New Zimbabwe, <http://www.newzimbabwe.com/opinion-10889-Legal%20truth%20Elections%20due%20by%20June%2030/opinion.aspx>, accessed on 23/04/13, Claims by Patrick Chinamasa on the elections date, New Zimbabwe, “Elections by June 29: Chinamasa”, <http://www.newzimbabwe.com/news-10622-Elections+by+June+29+Chinamasa/news.aspx>, accessed on 23/04/13

⁶⁰ The Zimbabwe Mail, “ZANU PF isolated on elections timing”, <http://www.thezimbabwemail.com/zimbabwe/16477-zanu-pf-isolated-on-election-timing.html>, accessed on 15 April 2013.

⁶¹ African Seer, “Zimbabwe: Mugabe Drops 29 June Election Date”, <http://www.africanseer.com/news/african-news/general/267760-zimbabwe-mugabe-drops-29-june-election-date.html>, accessed on 14 April 2013.

⁶² For a more nuanced debate on this read, Tererai Mafukidze, “Poll Date: Zvoma Got it Wrong”, New Zimbabwe, <http://www.newzimbabwe.com/opinion-10908-Poll+date+Zvoma+got+it+wrong/opinion.aspx>, accessed on 24/04/13, and Austin Zvoma, “Legal Truth: Elections Due by June 30”, New Zimbabwe, <http://www.newzimbabwe.com/opinion-10889-Legal%20truth%20Elections%20due%20by%20June%2030/opinion.aspx>, accessed on 23/04/13

⁶³ Tererai Mafukidze, “Poll Date: Zvoma Got it Wrong”, New Zimbabwe, <http://www.newzimbabwe.com/opinion-10908-Poll+date+Zvoma+got+it+wrong/opinion.aspx>, accessed on 24/04/13

⁶⁴ Ibid.

There seems to be a common understanding that, ZANU PF and the MDCs have agreed that an election roadmap be crafted by Justice Minister Chinamasa and Constitutional Affairs Minister Matinenga⁶⁵. It is further reported that:

The MDC-T leader said there needed to be at least two months of voter registration and inspection, but because of the limitations in time, this would be done parallel with the process of aligning the laws to the new Constitution...The ministers must consider constitutional and legal issues, for example, the fact that one month is required for voter registration, that Parliament will expire on June 29 and the Executive has only up to four months to organise elections⁶⁶. This may imply the impossibility of the 29 June election deadline. The referendum was successfully held on the 16th of March 2013, and it ran as a precursor to the forthcoming elections. More so, delimitation of constituencies has already been done as parties have agreed to use the previous elections constituency boundaries⁶⁷.

ZANU PF has also made a sudden U-turn on the elections date; with its chief negotiator Patrick Chinamasa stating that, “After the President has assented to the election amendments, that’s when the media can ask me when elections will be held. Anything before that will be premature”⁶⁸. This change seemingly points to a realisation that the 29th of June 2013 date is unrealistic, given the reforms that still need to be undertaken and implemented. The times of the actual elections in this case are not set in bold but were rather left to be determined by the process.

5.3 Effects on Democratisation Process

Elections are a central element to democratisation. Share identifies elections as a key tenet of democracy and argues that, “more concretely democracies must provide for (1) Free and contested elections for the selection of political representatives (2) basic civil rights, and (3) clearly established ‘rules of the game’ that protect these democratic liberties”⁶⁹. Elections therefore play an integral part to democratisation. They should be viewed as an important first step to democratic transition. However, not in all cases have elections necessarily led to sustainable democratic transitions, but in some cases they have entrenched authoritarianism. Despite the shortcomings or failures of elections to democratise, that cannot underscore the importance of elections as Lindberg argues that, “as a core institution of representative democracy, elections are supposedly the only means to decide who holds legislative or executive

⁶⁵ Everson Mushava, “Mugabe and Tsvangirai Agree on Polls”, Newsday, <http://www.newsday.co.zw/2013/04/17/mugabe-tsvangirai-agree-on-polls/>, accessed on 17 March 2013.

⁶⁶ Ibid.

⁶⁷ The Herald Online, “ZEC Slashes Poll Budget...No Cash for Delimitation, Constituencies Remain Unchanged”, http://www.herald.co.zw/index.php?option=com_content&view=article&id=60271:zec-slashes-poll-budget&catid=37:top-stories&Itemid=130#.UW747qK9bf0, accessed on 17 March 2013.

⁶⁸ News Day, “We’ve No Poll Date-ZANU PF”, <http://www.newsday.co.zw/2013/04/18/weve-no-poll-date-zanu-pf/>, Accessed on 24/04/2013.

⁶⁹ Share, D. (1987), “Transitions to democracy and transition”, *Comparative Political Studies*, 19(4), pp. 527.

power⁷⁰” and further, “...it follows logically that rule by the people requires equality of political participation”⁷¹

The failed attempt by President Mugabe’s legal team to manipulate judicial processes to validate the 29th of June election date was a clear affront to democratisation. This calls for pro-democracy movement, in particular Civil Society to begin to put pressure for the implementation of key electoral reforms as per Section H of Zimbabwe’s Election Roadmap. Civil Society needs to increase civic education campaigns, and its monitoring capacity around areas of voter registration and inspection, as these processes are going to be happening simultaneously with the alignment of the laws to the new constitution⁷². The possibility of automatic dissolution of parliament on the 29th of June 2013 provides for the continuation of government by the executive alone; which presents threats to democracy. It has the effect of the executive running government without legislative control, thus providing the potential of ‘rule by decree’. Furthermore, there is a very limited timeframe left to complete all necessary reforms and realignment of laws to the new Constitution as outlined in the GPA roadmap before the expiry of the parliamentary tenure.

5.4 Barometer Indicator Scorecard

Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		• Election dates are still unclear despite the end of the life of the seventh parliament being on 29 June 2013. • There are evident attempts to politically manipulate the timing of elections. • Despite it being a democratic right to know the dates of elections, this is only being viewed in how it is convenient for the political parties only, not necessarily about conducive conditions to the citizenry.

5.5 Possible Scenarios

The failure to rigorously monitor and push for implementation of the electoral roadmap may lead to a sham election. There is need to build institutions and ensure transparency and accountability by reducing chances of electoral fraud. It has been observed one of the strategies being used by ZANU PF is maintaining the ‘infrastructure of error’ to enable it to manipulate the electoral process⁷³. This

⁷⁰ Lindberg, S. I. “The Power of Elections Revisited”, Paper presented at the conference, *Elections and Political Identities in New Democracies*, Yale University, April 28-29, 2007

⁷¹ Ibid:8

⁷² Everson Mushava, “Mugabe and Tsvangirai Agree on Polls”, *Newsday*, <http://www.newsday.co.zw/2013/04/17/mugabe-tsvangirai-agree-on-polls/>, accessed on 17 April 2013

⁷³ See Philani Zamchiya, (2013). “Pre-election Detectors:ZANU PF’s attempt to Re-claim Political Hegemony”, *Crisis in Zimbabwe Coalition*, Marshalltown: Johannesburg, pp18

infrastructure of error has manifested itself through, concealed and selective voter registration exercise and the unfettered access of, and use by ZANU PF to state institutions⁷⁴. Furthermore, the conflation of voter registration and inspection with the process aligning laws with the new constitution, there is potential continuation of concealed and selective implementation of that process to the advantage of ZANU PF. Whilst, it is now reported that there is an agreement between the parties to the GPA on coming up with a timeframe for the elections and proclaiming the date; there is a high possibility of ZANU PF dragging its feet on certain key reforms once the date has been proclaimed. ZANU PF has persistently used this strategy to duck certain reforms that are inimical to its interests such as the reconstitution of ZEC⁷⁵ and Security Sector Reform. The uncertainty over the election date and ambiguity on the status of parliament after the 29th of June 2013 presents a scenario where the executive will govern without legislative control, thus 'rule by decree'. Furthermore, the limited time-frame and failure to resolve the tenure of parliament post 29th of June 2013 until the holding of the elections may see some of the outstanding reforms failing to happen particularly around institutions directly or indirectly related to electoral issues.

5.6 Key Recommendations

- Civil society must push for aggressive voter registration, inspection and awareness campaigns. There is need to explore various forms of media including social media.
- Government need to outline a clear electoral roadmap with set timeframes.
- Inclusive government to address the question of parliamentary life-span vis-à-vis the electoral roadmap and outstanding reforms.
- To continuously lobby SADC and insist on steadfast implementation of Section H elements in Zimbabwe's Elections Roadmap.

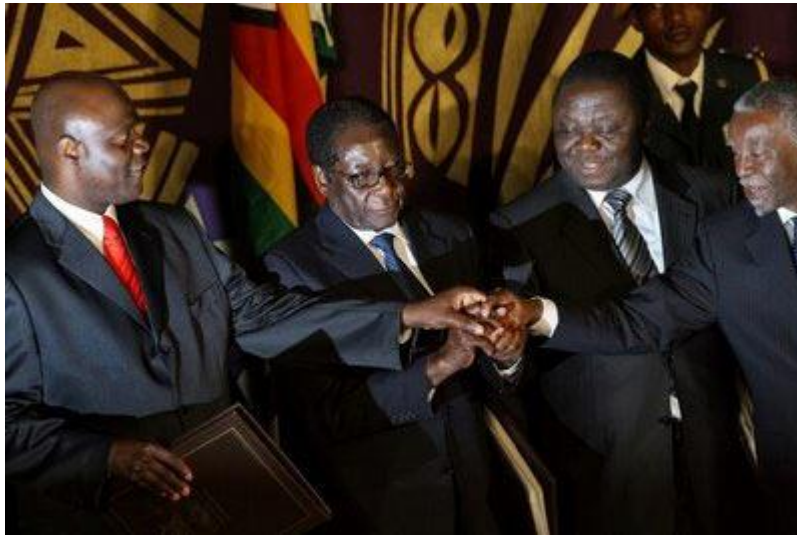
⁷⁴ Ibid

⁷⁵ Ibid

6.0 Barometer Indicator 3: Role of SADC

6.1 Source of Barometer Indicator

ARTICLE XXV of the GPA (Commencements) bears the declaration of entry into force of the agreement. President Thabo Mbeki, then SADC facilitator, appended his signature as witness. SADC had also been mandated by the African Union (AU) at its July 2008 Sharm el-Sheikh summit to facilitate negotiations in the country. Upon the signing of the GPA, SADC and the AU have been quoted as the “guarantors” of the GPA. In that regard, they are expected to ensure the full democratic transition of Zimbabwe, through a credible election in 2013.



From left- Deputy Prime Minister Arthur Mutambara, President Mugabe, Prime Minister Morgan Tsvangirai of Zimbabwe and former South African President Thabo Mbeki

6.2 Key Prevailing issues

The SADC Livingstone summit of March 2011 provided a shift in the regional bloc’s courage to tackle the Zimbabwe crisis head-on.⁷⁶ It was at that meeting that the facilitator, Jacob Zuma, presented a damning report which castigated ZANU-PF’s intransigence in the implementation of the GPA. Although the SADC position did not manage to leverage on this upsurge on pushing Zimbabwe towards a transition, 2013 seems to have presented such opportunity. The SADC double troika meeting held in Pretoria on 9th March 2013 indicates that Jacob Zuma once again managed to directly engage with the key issues that have retracted Zimbabwe from a smooth transition. Zuma courageously reported that Zimbabwe authorities need to take their roles seriously and address the issues mentioned in section 2.2 of this report.

On the 16th of March 2013, the SADC Executive secretary, Tomaz Salamao gave an interview in which he blasted the Zimbabwean political authorities for their lacklustre approach to the reform processes, especially the strengthening of JOMIC.⁷⁷ Lindiwe Zulu, a member of the facilitation team, has also been in the public space pushing more for reforms before elections.⁷⁸ This new SADC push needs to translate into action. SADC’s decisions in Zimbabwe have always been derailed by a weak enforcement and implementation mechanism, something the region needs to improve upon if there is to be a sustainable democratic transition in Zimbabwe.

6.3 Effects on Democratisation Process

⁷⁶ “Zimbabwe: Reality check for Mugabe at SADC” (editorial), The Zimbabwe Independent newspaper, 11 April 2011

⁷⁷ Hebert Moyo, “Sadc Chief lambasts Jomic, GPA commissions”, The Zimbabwe Independent newspaper, 22 March 2013

⁷⁸ Lindiwe Zulu addressing public at the South African Liaison Office (SALO) meeting in Pretoria, 12 April 2013

Among other things, regional blocks are by nature supposed to be custodians of political stability and democratisation processes in member countries.⁷⁹ They are the broad oversight and accountability mechanism for evolving internal political dynamics within members. Given the trajectory of Zimbabwe's political processes since the signing of the GPA, SADC intervention has to some extent managed to sustain the life of the agreement but seems to be failing to translate that into a smooth democratic transition. This seems to play to some political actors in ZANU-PF who have tried to keep the involvement of SADC at minimal levels. Unlike the AU charter which mandates for "the responsibility to protect"⁸⁰ the SADC Treaty shies away from direct intervention, no matter the pending risks in a member state. The broad intergovernmental status of SADC bestows full sovereignty in member states, which disempowers the regional bloc from being effective in being fully involved in member states issues.⁸¹ SADC's limitations in "putting action to its words" will negatively affect the full democratisation process in Zimbabwe.

6.4 Barometer Indicator Scorecard

*Barometer Score Card Code: **Green** - High Implementation Score; **Orange** - Medium Implementation Score; **Red** – Low Implementation Score*

EVALUTATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		• SADC has outlined a framework of key reform guidelines before elections • SADC facilitation team is making efforts to have direct working relationship with JOMIC • SADC has expressed interest in engaging with civil society and the views and needs of the citizens shaping the political transition in Zimbabwe • SADC's proclamations and intentions still lack a mechanism of implementation and enforcement.

6.5 Possible Scenarios

SADC will probably continue to try and take middle ground in Zimbabwe; by not directly confronting parties that are in contravention of the GPA, while at the same time ensuring there is some level of political stability. The most probable route that SADC will take is to play a balancing act. Should anything that glaringly threatens political stability emerge, the bloc will act; but should the impetus to then push for full democratic reforms present itself, this may not be taken. That way an election without the full nomenclature of being "free and fair" will be undertaken but acceptable enough to allow the country and the region to "move on". In this case, elections may still be conclusive but may not lay the groundwork for full democratic transition in Zimbabwe.

⁷⁹ As mandated by the AU Constitutive Act of July 2000

⁸⁰ Stephanie Hanson, "The AU's Responsibility to Protect", Council on Foreign Relations, October 2006; Powell and Baranyi, "Delivering on the Responsibility to Protect in Africa", The North-South Institute, May 2005

⁸¹ "Implementing Peace and Security Architecture (II): Southern Africa", International Crisis Group, 15 October 2012

6.6 Key Recommendations

- Election timing needs to be determined by progress in pre-requisite reforms and SADC is urged to develop a benchmark for assessing the electoral environment as a way to determining the timing.
- Election timing must not be independent of the reform process or reform achievements or lack thereof.
- SADC needs to develop an enforcement mechanism of its declarations and intents.
- SADC must also be aware of diversionary tactics being employed by political players in Zimbabwe, and continue to focus on the institution of key reforms before the forthcoming elections.
- SADC and its facilitation team must be open to creating constant engagement platforms with civil society.
- As the election period approaches, SADC must begin to moot the idea of early observation as conditions have already begun to deteriorate.

7.0. Toward a Prolonged Transition: Bouncing within the Grey Zone

Based on the six indicators used to assess Zimbabwe's transition in the past two months, we now need to conceptualise the possible transition outcome at this juncture. Given the fluidity of transitional politics this remains a time bound analysis as of mid-April 2013. We have highlighted the four transitional outcomes which are precluded transition, blocked transition, flawed transition (*derailed and prolonged*) and democratic transition (*pacted or zero sum*). We now revisit their analytic value in relation to our analysis of the constitution referendum; the implementation of GPA; the rule of law; post referendum: monitoring the elections; defining election dates and the role of SADC.

If Zimbabwe is going to have an election in the next two months we maintain that Zimbabwe is not heading toward a precluded transition because there are no prospects of a civil war, there is no armed struggle and the central state is in control. We also reaffirm that the past two months have not changed our view that the country is not precipitating toward a blocked transition. A fairly peaceful referendum was held on March 16 2013 paving way for an election. As we stated Minister Matinenga (MDC T) and Minister Chinamasa (ZANU PF) were tasked to determine the legal and political processes that will help in determining an election date. However, given the state of the rule of law, the absence of acceptable electoral observation and monitoring frameworks and SADC's failure to come up with a strategy that ensures full implementation of its progressive resolutions and the evident manipulation of electoral processes by the incumbent, Zimbabwe is still to head toward a democratic transition.

From our analysis we conclude that, if an election were to be held in the next 2 months, a more likely outcome is a prolonged transition. In as much as there are efforts by President Mugabe to engage in subtle ways of election manipulation that are less visible, a vibrant civil society, an engaged SADC facilitation team, the agency of tenacious political parties, the *trekking* by the independent media and a watching international community makes it difficult for ZANU PF to gain enough political legitimacy out of a manipulated election. Because of these factors it is also difficult for Zimbabwe to backslide into closed authoritarian practices characteristic of a derailed transition. As we have argued, a prolonged transition will reconfigure the political tenor of Zimbabwe in ways that redefine the political terrain and the struggle for Zimbabwe's democratisation. Precisely because some gains of democracy will be preserved, but will exist alongside other authoritarian practices.

Whether Zimbabwe will progress toward a democratic transition will depend on smart interventions by local political parties, convergence of regional and international actors, actions by civil society and the general citizenry and not less important political will by the incumbent, political, military and economic elites. We restate our case in the table below.

Zimbabwe's Transition Projection as of April 2013

Possible Transition Outcomes (PTOs)	Transition code	Is this Zimbabwe's trajectory?	Why?
Precluded transition		NO	Central state is in control No prospects of a civil war No military warlords
Blocked transition		NO	Referendum held on 16 March 2013 Elections date being negotiated Elections likely before October 2013.
Flawed transition (a) Derailed		NO	Less visible manipulation of state institutions and electoral processes difficult because of vibrant civil society, SADC facilitation team and tenacious political parties Political legitimacy difficult to attain Outright parliamentary majority difficult to get The cost of opposition too high for stability
Flawed transition (b) Prolonged transition		Yes	Manipulation of economic resources, state institutions and electoral processes eroding political legitimacy Contestation of electoral results at local, regional and international level likely Outright parliamentary majority difficult to win Regional pressure for a prolonged transition Trends of elite cohesion
Democratic transition (pacted or zero-sum)		NO	No security of persons Voter intimidation i.e. harvest of fear The military wild card Partisan voter registration Contested voters' roll Contested ZEC secretariat No money to fund necessary programs

In summation, we are conscious of the cardinal rule that elections alone are not a sufficient ingredient for establishing democracy. We do not ignore the important factor that beyond the elections it is the conditions for stabilising, advancing, consolidating and deepening democracy that ensures durability and sustainability. However, these would be different analytic questions. Let us emphasise that from our analytic premise elections are considered the first brick without which democracy cannot otherwise be built. As we limit our analysis to whether the immediate outcome of this transition will be a government borne out of a free and fair electoral process, our subsequent studies will explore whether and how the resultant regime can survive, consolidate or deepen democracy in the short, medium or long-term. Our next review will be in the month of June 2013

. ...The End...