

Zimbabwe Election Support Network



COMPLIANCE ASSESSMENT OF THE GLOBAL POLITICAL AGREEMENT AGAINST THE SADC PRINCIPLES AND GUIDELINES FOR FREE AND FAIR ELECTIONS

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Promoting Democratic Elections in Zimbabwe

***For comments and further details contact Zimbabwe Election Support Network
+263 (04)250736/ 791443/798193/791803 zesn@africaonline.co.zw or info@zesn.org.zw***

Introduction

Following years of sustained political disputes between ZANU PF and MDC dating back to 2002, an agreement was finally reached and formally signed on the 15th of September 2008. The signing of the Global Political Agreement (GPA) signified the acceptance by the major political parties in the country that, the only way to salvage the country's ailing economy and dead governance culture was through a compromise agreement. The mediated settlement, in itself a mechanism of conflict management and resolution, however has the potential, in its implementation to be a vehicle for conflict transformation and regenerating the democratization of Zimbabwe.

The basis of the GPA was the Memorandum of Understanding signed on the 21st of July 2008. The understanding outlined the agenda of the SADC mediated talks to include the following:

- 1. *The economy***
- 2. *The political environment***
- 3. *Security***
- 4. *Communication***
- 5. *The framework of a new government***
- 6. *The implementation mechanism***
- 7. *The Global Political Agreement***

As it moves beyond signature, ZESN is undertaking the monitoring the implementation of the GPA, gauging the level of sincerity of the political parties in terms of representing the wishes and aspirations of Zimbabweans for the promotion of democracy and good governance. Such a monitoring exercise is put in the context of elections as the transitional establishment is meant to facilitate the drafting of a new constitution leading to fresh elections. In this regard, though the timeframes remain subject to various interpretations, it is anticipated that Zimbabwe should expect two elections during the life of the transitional inclusive government borne out of the GPA, the Referendum for the adoption of a new constitution and a Parliamentary and Presidential election thereafter.

The Global Political Agreement seems to set the tone for the conduct of democratic free and fair elections as it addresses issues such as full participation of citizens in the political process, freedom of association and political tolerance. However three essential principles for free and fair elections are not comprehensively addressed by the GPA. These are voter education, challenges of election results as provided for in the law and regular intervals for elections as prescribed by law. The omission of these three elements suggests that either the political parties to the agreement are not concerned about them or they feel that the governance crisis facing the country is not related to these issues. In any event, ZESN remains concerned that, the failure of the GPA to articulate the necessity for objective, voter and civic education to enable citizens to effectively assert their rights, articulate their interests and participate in the political process.

Noting that the proposed referendum to be conducted after 18 months from the date of the establishment of the inclusive government, is likely to be held under the already existing Electoral Act as amended by Amendment 18 and any future amendments that may occur between now and the date of the referendum, it will be interesting to see how the political parties in the agreement, those outside the agreement and civic society will play it out. Various interests

will have to be accommodated in the politics of the referendum which, once the result is a nod for the draft constitution, will pave way for fresh elections.

ZESN, in an attempt to ensure that its concerns are noted in the draft constitution, is adopting a proactive and will engage in the process so that aspects of the SADC Principles and Guidelines for free and fair elections that are not adequately tackled in the GPA and not legislated in both Amendment 19 and still lacking in the Electoral Act, are conclusively addressed in the new constitution.

ZESN will continue to monitor the political environment and report on compliance of the GPA in relation to the SADC principles and guidelines for free and fair elections. Below is a baseline assessment as at February 2009.

Compliance Assessment:

SADC Principles and Guidelines for free and fair elections	Global Political Agreement	Current Political Situation (both positive and negative)
1. Full participation of the citizens in the political process	ARTICLE XII FREEDOM OF ASSEMBLY AND ASSOCIATION 12. Freedoms of Assembly and Association 12.1 Recognising the importance of the freedoms of assembly and association in a multi-party democracy and noting that public meetings have to be conducted in a free, peaceful and democratic manner in accordance with the law, the Parties have agreed:- (a) to work together in a manner which guarantees the full implementation and realisation of the right to freedom of association and assembly; and (b) that the Government shall undertake training programmes, workshops and meetings for the police and other enforcement agencies directed at the appreciation of the right of freedom of assembly and association and the proper interpretation, understanding and application of the provisions of security legislation.	The clearance by the police, allowing MDC supporters to celebrate the swearing in of MDC President as the Prime Minister of Zimbabwe on the 11th of February 2009. Arrests of WOZA demonstrators in Bulawayo and Harare after the signing of the GPA. The assault of WOZA demonstrators at Parliament building on the 25th of February by the police while demonstrating peacefully. The use of live ammunition by the police to disperse protesters demonstrating against the incarceration of Roy Bennet in Mutare on the 13th and the 16th of February 2009 leading to at least four people sustaining serious injuries.
2. Freedom of association	ARTICLE X FREE POLITICAL ACTIVITY 10. Free political activity Recognizing that the right to canvass and freely mobilise for political	The continuous changing of charges to Roy Bennet and WOZA activists between the 13th and the 16th of February 2009 by the police apparently buttressing assertions that their incarceration was not procedural and

	support is the cornerstone of any multiparty democratic system, the Parties have agreed that there should be free political activity throughout Zimbabwe within the ambit of the law in which all political parties are able to propagate their views and canvass for support, free of harassment and intimidation.	was politically motivated.
3. Political tolerance	ARTICLE X FREE POLITICAL ACTIVITY 10. Free political activity Recognizing that the right to canvass and freely mobilise for political support is the cornerstone of any multiparty democratic system, the Parties have agreed that there should be free political activity throughout Zimbabwe within the ambit of the law in which all political parties are able to propagate their views and canvass for support, free of harassment and intimidation. ARTICLE VII PROMOTION OF EQUALITY, NATIONAL HEALING, COHESION AND UNITY 7.1 d) will strive to create an environment of tolerance and respect among Zimbabweans and that all citizens are treated with dignity and decency irrespective of age, gender, race, ethnicity, place of origin or political affiliation. ARTICLE XVIII SECURITY OF PERSONS AND PREVENTION OF VIOLENCE 18. Security of persons and prevention of violence 18.1 Noting the easy resort to violence by political parties, State actors, Non-State actors and others in order to resolve political differences and achieve political ends. 18.2 Gravely concerned by the displacement of scores of people after the election of March 29, 2008 as a result of politically motivated violence. 18.3 Recognising that violence dehumanises and engenders feelings of hatred and polarisation within the country.	The permission granted to the MDC by the police to stage a celebration for the swearing in of the Prime Minister The failure by the State Prosecution and the police to discharge their duties in an impartial and profession manner in the cases of failing to bring accused persons to court on the 13th of February 2009, and the flimsy excuse of a photocopier not working leading to delays in furnishing both the court and the defense with a police report on allegation of torture against the state on the 18th of February 2009. The failure by the state to furnish accused persons with trial dates nearly three months after their formal appearance in court on the 18th of February 2009.

	18.4 Further recognising that violence undermines our collective independence as a people and our capacity to exercise our free will in making political choices. 18.5 The Parties hereby agree: (a) to promote the values and practices of tolerance, respect, non-violence and dialogue as means of resolving political differences; (b) to renounce and desist from the promotion and use of violence, under whatever name called, as a means of attaining political ends; (c) that the Government shall apply the laws of the country fully and impartially in bringing all perpetrators of politically motivated violence to book; (d) that all political parties, other organisations and their leaders shall commit themselves to do everything to stop and prevent all forms of political violence, including by non-State actors and shall consistently appeal to their members to desist from violence; (e) to take all measures necessary to ensure that the structures and institutions they control are not engaged in the perpetration of violence. (f) that all civil society organisations of whatever description whether affiliated to a political party or not shall not promote or advocate for or use violence or any other form of intimidation or coercion to canvass or mobilise for or oppose any political party or to achieve any political end; (g) to work together to ensure the security of all persons and property; (h) to work together to ensure the safety of any displaced persons, their safe return home and their enjoyment of the full protection of the law. (i) to refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or unfairly undermine each other. (j) that while having due regard to the Constitution of Zimbabwe and the principles of the rule of law, the prosecuting authorities will expedite the determination as to whether or not there is sufficient evidence to warrant the prosecution or keeping on remand of all persons accused of politically related offences arising out of or connected with the March and June 2008 elections.	
4. Regular intervals for elections as provided for by the respective National Constitutions	21. Electoral vacancies Aware of the divisive and often times confrontational nature of elections and by elections; Noting the need to allow this agreement to take root amongst the parties and people of Zimbabwe; and Cognisant of the need to give our people some breathing space and a healing period; 21.1 The parties hereby agree that for a period of 12 months from the date of signing of this agreement, should any electoral vacancy arise in	This clause is an obvious compromise between the need for regular, periodic elections as provided by law and the lived realities of the skewed political playing field in Zimbabwe. The legal enforceability of the agreement's apparent introduction of a 'moratorium on by-elections' was raised by ZEC which announced that it was organizing the holding of by-elections as the law itself had

	respect of a local authority or parliamentary seat for whatever reason only the party holding that seat prior to the vacancy occurring shall be entitled to nominate and field a candidate to fill the seat subject to that party complying with the rules governing its internal democracy.	not been amended. The lack of clarity on this issue was worsened by the protracted delay between the signature of the GPA and Constitution of Zimbabwe Amendment No. 19. Amendment 19 however, does not seem to shed any light on the murky question as it is still arguable whether this clause should totally prevent by-elections from being held in terms of the electoral law or it is limited to prescribing candidature on the part of the signatories to the GPA. Both the GPA and Amendment 19 do not seem to give a definitive road map and timeline for the holding of fresh elections. This confusion has been exacerbated by the apparent omission of three schedules from the gazetted Constitution of Zimbabwe Amendment Act No. 19 which had appeared in the Bill.
5. Equal opportunity for all political parties to access the state media	ARTICLE XIX FREEDOM OF EXPRESSION AND COMMUNICATION 19. Freedom of Expression and Communication Recognizing the importance of the right to freedom of expression and the role of the media in a multi-party democracy. Noting that while the provisions of the Broadcasting Services Act permit the issuance of licences, no licenses other than to the public broadcaster have been issued. Aware of the emergence of foreign based radio stations broadcasting into Zimbabwe, some of which are funded by foreign governments. Concerned that the failure to issue licenses under the Broadcasting Services Act to alternative broadcasters might have given rise to external radio stations broadcasting into Zimbabwe. Further concerned that foreign government funded external radio stations broadcasting into Zimbabwe are not in Zimbabwe's national interest. Desirous of ensuring the opening up of the air waves and ensuring the operation of as many media houses as possible. 19.1 The Parties hereby agree:- (d) that steps be taken to ensure that the public media provides	The failure by the state media to fully cover the Prime Minister's address to MDC supporters on the 11th of February 2009. The relegation of the Prime Minister's speech to supporters of the MDC to page 2 in The Herald of the 12th of February 2009. The toned down use of derogative and abusive language in reference to some political parties. Comments made by Nathaniel Manheru in The Herald of the 14th of February 2009 to the effect that the Joint Monitoring Committee had no right or basis to express and address concerns around the use of hate language in the state and independent

	balanced and fair coverage to all political parties for their legitimate political activities. (e) 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 organizations. To this end, the inclusive government shall ensure that appropriate measures are taken to achieve this objective.	media.
6. Equal opportunity to exercise the right to vote and be voted for	ARTICLE X FREE POLITICAL ACTIVITY 10. Free political activity Recognising that the right to canvass and freely mobilise for political support is the cornerstone of any multiparty democratic system, the Parties have agreed that there should be free political activity throughout Zimbabwe within the ambit of the law in which all political parties are able to propagate their views and canvass for support, free of harassment and intimidation.	
7. Independence of the Judiciary and impartiality of the electoral institutions	ARTICLE XIII STATE ORGANS AND INSTITUTIONS 13. State organs and institutions 13.1 State organs and institutions do not belong to any political party and should be impartial in the discharge of their duties. 13.2 For the purposes of ensuring that all state organs and institutions perform their duties ethically and professionally in conformity with the principles and requirements of a multi-party democratic system in which all parties are treated equally, the Parties have agreed that the following steps be taken:- (a) that there be inclusion in the training curriculum of members of the uniformed forces of the subjects on human rights, international humanitarian law and statute law so that there is greater understanding and full appreciation of their roles and duties in a multi-party democratic system; (b) ensuring that all state organs and institutions strictly observe the principles of the Rule of Law and remain non-partisan and impartial; (c) laws and regulations governing state organs and institutions are strictly adhered to and those violating them be penalised without fear or favour; and (d) Recruitment policies and practices be conducted in a manner that	The nature and timing of the arrest and subsequent remand in custody of Roy Bennet on the 17th of February 2009 on charges that other accused persons were acquitted of in 2006 raises serious concerns on the possible political motivation. Questions have been raised over the office of the Attorney General's decision to use Emmanuel Machinga, a prosecutor from Bindura to prosecute Roy Bennet in Mutare. The directive by police and army to Manicaland judiciary and prosecutors to urgently and without compromise, set down cases of white farmers and ensure that they are convicted and evicted from their farms before the end of February 2008. Further, there have been apparent attempts by prosecutors and the judiciary to implement this directive as seen from the number of cases suddenly set down for hearing. There have been allegations of attempts by Attorney General to interfere with Peter Hitchman's right to lawyers of his choice and the threats and harassment against lawyers

	ensures that no political or other form of favouritism is practised.	defending Roy Bennet and Peter Hitchman both the Police and Attorney General representatives.
8. Voter education	Not addressed	
9. Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land	ARTICLE XI RULE OF LAW, RESPECT FOR THE CONSTITUTION AND OTHER LAWS 11. Rule of law, respect for the Constitution and other laws 11.1 The Parties hereby agree that it is the duty of all political parties and individuals to: (a) respect and uphold the Constitution and other laws of the land; (b) Adhere to the principles of the Rule of Law.	The invasion of Mazowe Estate by suspected ZANU PF supporters on the 10 th of February 2009.
10. Challenge of the election results as provided for in the law of the land	Not addressed	

Conclusion

A matter of weeks into the inclusive government, it is clear that a lot remains to be resolved for the GPA to be properly implemented. The inflation and expansion of the executive arm of government from the initially agreed 46 ministers and deputies to the current 61, illustrates that the conflict transformation anticipated through the agreement is still work in progress. To judge the inclusive government according to the challenges experienced in its first week would be unfair. However the very challenges noted indicate the urgent need for through engagement, monitoring, consultation and constructive criticism.

The basis for ZESN'S monitoring of the inclusive government is the indisputable fact that future elections, be they by-elections or the referendum, will be conducted under the prevailing constitutional and legislative framework. It is critical that the network assesses if such a framework, accompanied by the political sincerity of parties to the agreement can deliver an environment conducive for the conduct of free and fair elections.

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