



CIVIL SOCIETY MONITORING MECHANISM (CISOMM)

is a non-partisan collective of non-governmental organisations dedicated to monitoring and evaluating implementation of the Zimbabwe Global Political Agreement (GPA)

**SIX MONTH SHADOW REPORT ON THE
PERFORMANCE OF THE INCLUSIVE
GOVERNMENT OF ZIMBABWE
2010**

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INTRODUCTION

Few can forget the desperation of economic hardship, political uncertainty and violence that surrounded the harmonized elections on 29 March 2008 or the presidential run-off on 27 June 2008. Of major significance was the Southern African Development Community (SADC) mediation process that resulted in a power-sharing agreement that was signed on 15 September 2008. This culminated with the formation of the Inclusive Government (IG) on the basis of that Global Political Agreement (GPA) in February 2009. The Six Month Review follows on the Annual Review which was launched in February 2010, in order to review and analyse the extent of implementation of the GPA by the IG in several critical sectors. To use the favoured metaphor in Zimbabwe, of a reluctant marriage: it has been 18 months and the parties have not yet sought a divorce. On paper, they remain committed to fulfilling the GPA. This report, using information collected by CISOMM members in the course of their work in the field, juxtaposes the evidence of the Government's implementation of the GPA with the benchmarks set out therein.

One of the biggest concerns remains a failure to deliver on pre-nuptial promises. These persistent 'outstanding issues' continue to hinder progress by the IG in key areas of reform and aggravate suspicion and polarisation between the political parties. SADC, and most particularly, Jacob Zuma's leadership in South Africa, continues to urge the reluctant parties to adhere to the GPA in the hope that this will provide a lasting solution to the Zimbabwe crisis by ushering in political tolerance and reform while preparing the terrain for future elections. Nevertheless, the political arrangement in Zimbabwe is a highly precarious one; meaningful reform is not a foregone conclusion. Elections loom large as a spectre on the horizon, and it seems difficult for the political players not to set their agendas to this objective. Thus, certain processes of reform are either obstructed or protracted. Areas of critical, but limited, reform concern the media, the freedoms of assembly, political association, and speech, as well as in those state institutions that have a stake in protecting or hindering these, such as the police force and the courts. The anticipated elections pose a serious catch-22 scenario: On the one hand, elections are the only acceptable way to affect a political hand-over that represents the will of the people and, given the perpetual contestation and compromise that accompanies any reform or decision, to effect real change in the system. On the other hand, without reforming those flawed institutions, repressive legislation and the situational environment, the elections are sure to transpire in exactly the same manner as before.

Nonetheless, there are certainly sectors in which members of the IG have cooperated to achieve progress. The economic situation stabilised with the introduction of foreign currencies, namely the US dollar and the South African Rand as a credible medium of exchange, and the introduction of new fiscal policies. The Parliamentary select committee on the constitution (COPAC) has demonstrated some political will to carry out its mandate as a unified national initiative and other institutions such as JOMIC, the Constitutional Commissions, and other Parliamentary groups are similarly learning to work together.

Others, unfortunately, remain the bastion of one political party and as such, have seen little reform. In fact, in many cases, in complete disregard for the dynamics of power-sharing, they continue to be used to repress opposing voices and are intended to ensure the concentration of coercive power in the hands of one party. The security services and the Attorney-General's office are still extremely politicized. Additionally, while the country struggles to raise the funds to ensure its continuity, natural resources that should be available for developing the nation, such as the diamonds in Chiadzwa and the agricultural land have remained tightly controlled by ZANU-PF. Partisan politics still inhibits progressive policymaking and national reconciliation. This is an auspicious time for change in Zimbabwe. But it is still unclear whether political actors possess the mettle to follow through on past promises.

BACKGROUND

Civil Society Organisations formed an independent monitoring and evaluating mechanism in order to assess how the implementation of the GPA would lead to a restoration of democracy, human rights and the rule of law. It must be noted that the GPA has an inbuilt monitoring body, the Joint Monitoring and Implementation Committee (JOMIC), which comprises of representatives of the three principals. However, CSOs realised the compromises that can befall this body, hence the decision to set up an independent monitoring mechanism.

Civil Society Organisations are non-partisan, independent and impartial bodies whose main functions are to foster a culture of human rights, justice and social and economic improvement and to promote and advance the interest of marginalised and victimised people.¹ They remain authoritative voices for a large portion of the population through their representative grass-roots structures. The establishment of this monitoring mechanism, on 25 February 2009 – just after the formation of the IG, was itself a culmination of meetings held with various civil society organisations at which specific benchmarks were agreed upon and allocated to particular organisations based on resources, capacity and technical expertise. CISOMM reports continue to operate as a coordinated effort by a number of CSOs in the gathering of information from the activities on the ground juxtaposed against the provision of the GPA, which were adopted as benchmarks in the following analysis. The thematic issues considered in line with the setting up of the clusters include economic recovery, constitutional reform, human rights, institutional transformation, humanitarian and food assistance, media reform as well as freedom of expression and national healing. The format of presentation used in this report entails a focus on each cluster, dwells on issues of compliance with the GPA on the basis of empirical evidence and then moves on to a discussion on cases of non-compliance grounded on empirical cases. The discussion on compliance and non-compliance for each cluster is capped by recommendations which may assist policymakers in the future. These reports are shared with parliamentarians, JOMIC, civil society and other regional groups.

¹ Symposium Declaration: Civil Society and Justice in Zimbabwe. Johannesburg, South Africa, 13 August 2003.

EXECUTIVE SUMMARY

ECONOMIC RECOVERY

Compliance

- Several policies introduced to improve financial accountability by government.
- Steps taken to establish the National Economic Council.
- RBZ Bill is signed into law by the President, enabling the Central Bank to focus on monetary policy.
- The government began a process to revamp the Central Statistics Office, which has been renamed Zimbabwe National Statistics Agency (ZIMSTAT).

Non-compliance

- Shareholdings and market confidence plummet as a result of the gazetting of the Indigenisation and Economic Empowerment (General) Regulations. In addition, these resulted in acrimonious debate between the Inclusive Government.
- National Economic Council is still not operational.
- Controversy surrounding Chiadzwa diamonds revenues and rights.
- Government revenues remain meagre.
- Liquidity constraints continue to challenge all sectors of society.
- Disagreement over Prime Minister Tsvangirai's signing a bilateral trade pact with South Korea.
- Farm invasions continue to delegitimise the land resettlement programme.

HUMANITARIAN AND FOOD ASSISTANCE

Compliance

- Health issues, particularly the various epidemics, are being addressed by Government in collaboration with donors. A measles vaccination campaign successfully targeted over 5 million children. A cholera outbreak seems to have been contained, and new guidelines for the enhanced treatment of people living with HIV/Aids have been adopted.

- The food security situation remains poor however food distribution was conducted freely in most of the country, with a 65% target being achieved. Government is monitoring planting, inputs and other agricultural concerns.
- The Education sector has received a major financial boost which will allow it to provide better materials and teaching facilities to schools, to complement initiatives already aimed at assisting Orphaned and Vulnerable Children.
- The IOM is greatly assisting the Government in providing humanitarian assistance for returning refugees by establishing Reception and Support Centres and offering training to strengthen response mechanisms.

Non-compliance

- The deterioration in health, water, sanitation and hygiene infrastructure is largely responsible for continuing outbreaks of disease, and until these are fully addressed by the IG with adequate resourcing and rehabilitation, people will continue to die of preventable diseases.
- Agricultural output is reduced by low and late levels of input, sparse irrigation, and continued land invasions. An estimated 1.3 million people will not be able to feed themselves next year and will require food assistance.
- The Prisons remained unreformed and inadequately resourced leading to conditions in holding cells that can only be considered degrading and inhumane, with malnutrition and starvation of prisoners, a serious threat.

CONSTITUTIONAL REFORM

Compliance

- The cooperation in the Constitutional Parliamentary Committee (COPAC)
- The establishment and training of 70 outreach teams took place, each comprising of 11 members drawn from all political parties, civil society and the media.
- The talking points that had been drafted were criticised for being too prescriptive and unclear. These were redrafted in line with the recommendations by civil society and other stakeholders, resulting in somewhat clearer and more concise talking points.
- The Constitutional Outreach phase was launched in mid-June. Teams were deployed across the country to conduct meetings with the population to elicit their views on the constitution. At time of reporting, over 1,212 meetings had been conducted.

- COPAC has constructively engaged civil society organisations in the process, despite a rocky start. Regular briefing meetings are held with civics and the press, and the co-chairs welcome feedback. In addition, COPAC sought to legitimise the role of civic monitors by giving them accreditation. In theory, this should decrease the harassment of monitors by police and other agents.

Non-compliance

- Logistical problems hampered the start of the outreach. This was mainly due to issues with disbursement of funds for outreach teams, to ensure their travel and accommodation costs. Some equipment was outstanding by the start of the outreaches which also slowed proceedings.
- The environment was not conducive to the start of open and democratic consultations given the existence of legislation which curtails people's right to assembly and association; and the wide-spread intimidation that was occurring in rural areas, advocating one draft above another.
- Political parties sought to dominate the process. Many appointments to the teams were on a party ticket, and parties were active in promoting party positions to the constitution amongst their supporters, and other unwilling members of the public. Reports of coaching and bullying were rife.
- Related to the above, participation at the meetings has not met expectations. There was low youth turn-out, and less women contributing than men. This is partly attributable to the tense atmosphere in some of the meetings combined with the fear of repercussions; but also due to COPAC's non-adherence to their publicised calendar of meetings.

MEDIA REFORM AND FREEDOM OF EXPRESSION

Compliance

- The gazetting and formalization of the Zimbabwe Media Commission as per CA 19; whose mandate it will be to issue broadcasting licenses.
- The Zimbabwe Media Commission established and starts operations by inviting applications for registration of media houses and practitioners. By end of review period, 8 new players were granted licenses.
- The government workplan includes other elements of legislative reform for the media.

Non-compliance

- The government-controlled media continue to report in a discriminatory and inflammatory fashion, undermining political rivals of ZANU -PF.

- Cases of harassment and the arrests of journalists continue.
- Non-constructive polarization between the public and private media- with exiled radio stations being one important source of information in the 'private' domain.
- No actual reform or repeal of repressive media and access to information laws.
- Former Chairman of the Media and Information Commission (MIC), Tafataona Mahoso, was retained to serve as the ZMC's secretariat. Under Mahoso's dubious management, the MIC was responsible for suppressing all independent media development.
- Appointment of facilitators for ZMC instigates vitriolic debate amongst political parties.
- State still shows no desire to free the airwaves.

HUMAN RIGHTS AND OPERATING ENVIRONMENT

Compliance

- Some rallies, meetings and demonstrations were allowed to go ahead unimpeded. Additionally, most civil society initiatives in communities have proceeded. However, the operating environment remains very insecure and changeable.
- Political agents appear willing sometimes to participate in civil society workshops with a greater level of independence and freedom than would have been possible previously.
- While police and local authorities have insisted that they be notified of all events and workshops taking place, in general they have not sought to prevent these from occurring, and on occasion have apprehended those who would disrupt civic activities.
- Launching of COPAC Constitutional Outreach Process on 16 June, where GPA principals condemned political violence and intimidation.

Non-compliance

- POSA is still being used by the police to curtail freedom of association, expression and movement. Its Amendments have not passed through the final reading stage in Parliament yet despite its urgent need.
- Unlawful arrests and detentions of human rights defenders have continued, with the intention of frightening people into silence or to cease their activities.
- ZANU-PF- sponsored coercion has escalated in the rural areas in a bid to curtail the expression of opinions in the upcoming constitutional outreach. The abuses are mainly being perpetrated by soldiers, youth militias, war veterans and some village headmen.

- Activities carried out by CSOs around the constitution-making process seen by security agents as a particular threat, as CSOs monitoring the outreach process have been assaulted.
- Traditional leaders have failed to remain politically neutral.
- Organ on National Healing has been ineffectual.

INSTITUTIONAL AND LEGISLATIVE REFORM

Compliance

- A number of the Bills passed during the Parliamentary Session were compliant with the GPA in that they promote better accountability and transparency (Public Finance Management), and independence of Magistrates (Judicial Service Act). In addition, several progressive motions were passed. The POSA Amendment Bill is a critical piece of legislation for ensuring greater social and political freedom, but this has not been finalised by Parliament.
- The establishment and commencement of activities of three out of four of the Commissions required by the Constitution is also welcomed.
- Several Parliamentary Portfolio Committees have sought to exert their role of oversight on the Executive, and have facilitated greater participation by the public in their hearings.
- Some state institutions, such as COPAC and JOMIC, have attempted to rise above their political differences by working in cooperation to further the provisions of the GPA. JOMIC has still not made public their GPA-required review of the performance of the Inclusive Government however.

Non-compliance

- State actors and institutions continue to wilfully disregard international and national laws and regulations when these do not suit some of their interests. There has been a failure to punish those actors violating such laws, further exacerbating the culture of impunity.
- The 'outstanding issues', particularly in relation to unilateral appointments and the allocation of responsibilities in Government are severely undermining the unity and parity of the power-sharing agreement. In addition, these actions are in direct obstruction of the GPA.
- There has been no improvement in respect for the Rule of Law. In fact, the law is being used to persecute individuals on behalf of ZANU-PF, through the Office of the Attorney General. Independence of the Bench remains a distant dream. Furthermore, there is a failure on behalf of law enforcement agencies to correctly and impartially implement judgments or the law.

- Parliament has failed to prioritise the legislative agenda as required by the GPA due to limited effort. The passage of Bills fell far short of the expected outcome, as outlined in the Government work plan and the PM's speech.

TRANSITIONAL JUSTICE AND NATIONAL HEALING

Compliance

- Political violence between party members, on the whole, has decreased since the formation of the Inclusive Government.
- The three Principals have, on several occasions, including Independence Day celebrations and the launch of the Constitutional Outreach, advocated strongly for non-violence.

Non-compliance

- Political violence and intolerance resurged in advance of the constitution making outreach. Military and quasi-military agents were deployed to threaten and intimidate citizens. Traditional Leaders are also complicit.
- The Organ on National Healing has achieved nothing tangible and has failed even to issue statements condemning violence or investigate claims.
- Violence continues to take place on the Commercial Farms with no cessation of the land invasions, harming farm workers and farmers.
- The state media's continued use of hate language and partisan reporting is hugely detrimental to the project of national healing.
- Ideological differences, mutual distrust, lack of transparency and disrespect are causing considerable friction between parties to the GPA, evidenced in public squabbles by Government members.
- Those with political, constitutional or other social views, including members of the Gay and Lesbian community, that conflict with ZANU-PF's ideology find themselves being targeted for persecution.

ECONOMIC RECOVERY

SUMMARY

This report which covers the months of February through July 2010 assesses the performance of Zimbabwe's inclusive government based on three benchmarks deriving from the inter-party agreement, namely 1) strategies aimed at economic recovery, stabilization and improving food security, 2) establishment of a national economic council and lastly 3) resolution of the land issue. It first looks at areas where the government complied with the tenets of the agreement before considering those areas it failed to live up to the agreement.

During the period under review two main issues raised controversy— diamond mining in the Eastern province of Manicaland's Chiadzwa area and contestations around the country's Indigenization and Empowerment laws. Other issues of serious concern and directly speaking to the inclusive government's mandate to stabilize the economy include; a surge in year on year inflation to 6, 1% from the lower levels of nearly -5% at the beginning of the year, tight liquidity, high interest rates, decreasing industrial productivity, erratic supply of service utilities such as water and electricity, low wages, low investor confidence, continued reports of disturbances at some of the farms and poor prices for farm produce, among other things. Growth projections for 2010 have been revised downwards from 7% to 5,4%.² Positive developments recorded include the introduction of measures to reform and restructure the central bank, revamping the collection of important national statistics, the surpassing of revenue collection targets and efforts to widen the tax base *inter alia*. Progressive legislation introduced includes, the Public Finance Management Act, the Reserve Bank Amendment Act and the Audit Office Act which are all set to enhance public accountability in the management of national finances. The much talked about Mid Term Plan (MTP) was yet to be implemented as of June 30 2010 despite being announced earlier this year.

COMPLIANCE

Benchmark 1: Develop and implement economic recovery strategies and plans to address issues of production, food security, poverty and unemployment and the challenges of high inflation, interest rates and the exchange rate.

Economic policy: In the first quarter of 2010 the government announced a new economic blue print named the Medium-Term Plan (MTP) to succeed the Short Term Emergency Recovery Program (STERP). Media reports suggest that consultation work which had delayed the implementation of the plan has been finalized. The MTP would be the overall guiding economic framework giving direction to the budget formulation process on the basis of the targeted Gross Domestic Product for the five-year period starting this year until 2015.³ The implementation would rely on three main pillars— foreign direct investment, joint ventures and attracting investment for development of infrastructure⁴. A few

² Ministry of Finance n 2010 Mid-Year Fiscal Policy Review, 14 July 2010.

³ 15 April 2010 on www.zimtreasury.org

⁴ Cabinet Concerns on MTP Draft Addressed; *The Herald*, 14 June 2010, pp:b1

changes were made to the controversial indigenization and empowerment Bill. The word “cede” was replaced by the word “dispose of” to make it explicit that the shares will be sold and paid for. This was in response to fears that the ambiguity found in using the word cede might pave the way for chaotic grabs such as witnessed with the violent land seizures. While the act maintained the 51% indigenous ownership objective it now provides for the setting of various sector specific thresholds and time frames to be determined by sectoral and sub-sectoral committees. According to the Indigenisation, Youth and Empowerment Minister, discussions are ongoing with the Finance Minister on modalities to establish an empowerment fund to finance the acquisition of shares. As a way of encouraging investment in the country, the government introduced a one stop shop to make it easy to start business in the country.

Government also announced plans to raise US\$50 million from the Diaspora through the issuance of a special government and African Export-Import Bank (Afreximbank) guaranteed bonds targeted at Zimbabweans living outside the country. The efforts to raise funds for economic revival in the short to medium term is commendable, instead of government depending on traditional sources which are still hesitant to commit for various reasons.⁵

Tourism: The Ministry of Tourism and Hospitality hosted a Pan-African Investment Climate Summit and the inaugural International Conference on Investment Opportunities in Tourism and Related Sectors in February 2010. The first quarter of 2010 saw an increase in tourist arrivals to 319 788 from 317 592 for the same period last year. According to the Ministry of Finance the average bed occupancy rate is projected to increase to 37% from 2009’s 35% and the sector is expected to grow by 3, 5% in 2010.

First quarter tourist arrivals 2008 - 2010

	2008	2009	2010
Africa	252 948	254 911	282 528
Overseas	58 417	62 681	37 260
Total	311 365	317 592	319 788

Central Bank Reform: The RBZ Bill was signed into law by the President. This will see the central bank focusing on its core business of monetary policy formulation, stabilising the local currency and the supervision of financial institutions. The law also established the RBZ Board and a Monetary Policy Committee whereby the latter will determine monetary policy, ensure price stability in line with government inflation targets and determine interest rates, among other responsibilities. There will also be an Audit and Oversight Committee to review the bank’s operations. These reforms also involve a strategy to settle debts owed by the bank which had, until the government’s intervention, seen the bank’s assets being auctioned as domestic lenders sought to recover their money. Government has since moved to stop the stripping of the bank’s asserts by its creditors while at the same time coming up with a strategy to resolve the bank’s outstanding debts.

⁵2010 Mid-Term Fiscal Policy Review, Ndamu Sandu iZim in bid to raise US\$50 million from Duiaspora in the Standard 21-27 February 2010.

Government Revenue: The Ministry of Finance announced that tax regulations would be reviewed to ensure that the country optimised benefits from its mineral resources.⁶ In April, the Public Finance Management (PFM) and Audit Office Bills were signed into law. The PFM Act provides the regulatory framework for the management of public finances, promotes good governance as well as strengthening the current accounting system. The Audit Office Act strengthens the provisions of the Audit and Exchequer Act on audits by the Comptroller and Auditor General. It also separates the Auditor General's management function from the audit and oversight role. The Ministry of Finance is now in the process of drafting the necessary Statutory Instruments to enable prompt operationalisation of the two Acts to ensure improved accountability over the use of public resources.⁷ The government also convened a four-day workshop on Public Financial Management focused on result-based management and enhanced accountability in using public resources.⁸

Meanwhile the Ministry of Finance reported that the government had collected more than its revenue targets netting US\$411,5 million against a target of US\$317,7 million for the first half of 2010. This was complimented by the increase in revenues from mineral exports. According to the Minerals Marketing Corporation of Zimbabwe (MMCZ) exporting earnings from mining rose to US\$403 million in the first five months to May, up from US\$191, 9 million realised during the same period last year. In the first week of July 2001 the Ministry of Finance had just promulgated a proposed draft of a new Income tax Law. The aim, according to the Finance Ministry, was to expand the income tax base as well as bring the legislation into line with international best practice.

Bilateral Issues: On 3 March, Parliament ratified the Bilateral Investment Promotion and Protection Agreement (BIPPA) that was signed by Zimbabwe and South Africa on 27 November 2009, a move aimed at stimulating investor confidence.⁹ The Grain Marketing Board (GMB) secured funds to purchase maize and started accepting deliveries, pledging timely payments to farmers.¹⁰ The Prime Minister, Morgan Tsvangirai also signed the BIPPA Agreement with South Korean government and he encouraged Korean business people to invest in Zimbabwe¹¹. In line with the above, Zimbabwe and China also signed bilateral pacts¹².

Re-engagement with IFIs and other multilateral agencies: The Minister of Finance met officials at the International Monetary Fund (IMF) on 19 February 2010. Following these engagements, the Executive Board of the IMF has restored Zimbabwe's voting and related rights, and its eligibility to use resources from the Fund's General Resources Account (GRA) subject to clearance of US\$ 140 million arrears to the Poverty Reduction and Growth Trust (PRGT). The country had lost its voting rights in the IMF in 2003 due to non-payment of overdue obligations to the Fund. Though superficial, this is a critical step for the country to regain its international creditworthiness and boost investor confidence. The US, UK and the African Development Bank (AfDB) have publicly expressed willingness to assist Zimbabwe noting the improvement in the implementation of specific targets in STERP¹³.

⁶ iGovt to review tax laws| The Herald 9 March 2010 page B1

⁷ iPublic Finance Management and Audit Office Bills Signed Into Law| 7 April 2010 on www.zimtreasury.org

⁸ iAfDB to assist Zim in debt management| 28 April 2010 on www.zimtreasury.org

⁹ iParly ratifies BIPPA| in the Herald 4 March 2010 page 2

¹⁰ iGMB secures funds to buy maize| 14 April 2010 on www.zimtreasury.org

¹¹ PM Courts South Korean Investors; *The Herald*, 26 May 2010, pp:1

¹² . Zim, China Sign Bilateral Pacts; *The Herald*, 2 June 2010,pp:1.

¹³ AfDB willing to assist Zim; *The Business Herald*, 26 February 2010, pp:2.

Debt: On 15 March, the Ministry of Finance convened a multi stakeholder Debt and Arrears Clearance Strategy Forum to deliberate on current thinking, and various options on addressing Zimbabwe's debt. At this meeting, Deputy Prime Minister Arthur Mutambara announced the creation of a Debt Management Office (DMO) in the Ministry of Finance which will coordinate work on managing the public debt.¹⁴ Creation of a DMO follows precedents in the region and best practices towards the creation of professional 'one stop' structures within finance ministries to manage public debt. The meeting also assessed in detail various options for Zimbabwe to address its current debt situation.

National Statistics: With the support from the African Development Bank, the Government, in a bid to improve national statistics and update surveys that have been lagging behind, commenced a process to revamp the Central Statistics Office which has been renamed Zimbabwe National Statistics Agency (ZIMSTAT). Media reported that the new agency had started "carrying out surveys on the CIP, the Quarterly Employment Inquiry, the Business Tendency Survey, the Volumes of Manufacturing Index and the Use of Information Communications Technology by Businesses Survey"¹⁵. Additionally, the preparatory –mapping– stage for a national census is underway.

Food security: An inter-ministerial committee was established to rehabilitate irrigation schemes focusing mainly on low rainfall areas. The agricultural minister claims that work was already underway to evaluate present schemes and come up with appropriate methods of intervention.

On benchmark 2: Formation of National Economic Council: Efforts finally took off to establish the NEC. The government has invited members of various sectors to nominate representatives to serve on this body. The broad terms of reference of the NEC is to give "advice to Government, formulating economic plans and programmes for approval by government and such other functions as are assigned to the Council by the Government."¹⁶ This is a first step; however, the NEC has not yet been established, 18 months since the formation of the Inclusive Government.

NON-COMPLIANCE

On Benchmark 1; Develop and implement economic recovery strategies and plans to address issues of production, food security, poverty and unemployment and the challenges of high inflation, interest rates and the exchange rate.

Economic Indigenisation and Empowerment Regulations: While the cabinet agreed on a few amendments to the Bill, controversy and uncertainty still persists. Government officials continue to issue contradictory statements on the policy. While empowerment is welcome it should not negatively affect existing businesses, but rather aim at increasing current investment and productivity levels¹⁷. For the period under review the Zimbabwe stock exchange suffered negatively from the promulgation

¹⁴ Debt and Arrears Clearance Strategy Forum, Wilde Geese, Harare, 15 March 2010.

¹⁵ *The Financial Gazette*, Thursday 20 May, 2010

¹⁶ iNEC to be formed by March in the *Sunday Mail Business*, 14-20 February 2010.

¹⁷ iEconomic Empowerment: Fine Words but Flawed Ideas, *The Zimbabwean on Sunday*, 21 March 2010. iImminent Pitfalls of Indigenization; *The Financial Gazette*, 17-23 June 2010.

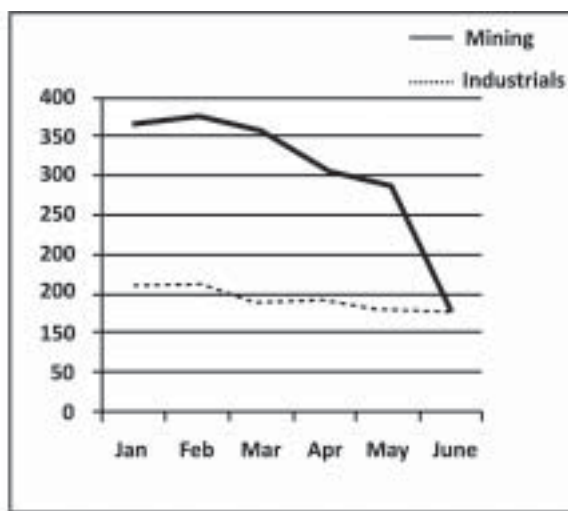
of these laws. The industrial index which started the year at a high of 156, 52 had declined to 127, 46 by June 2010, while mining and market capitalisation fell from 209, 8 and US\$3, 97 billion to 143, 08 and US\$ 3, 19 respectively. Government has identified mining, energy, agriculture and agro-processing, transport and motor industry, telecommunications and ICT, manufacturing, engineering and construction and financial services as some of the sectors of the economy which will be targeted for indigenisation under the law. The Indigenization regulations were also a source of conflict between Zimbabwe and Botswana's BIPPA negotiations¹⁸.

Meanwhile the Ministry of Indigenisation, Youth and Empowerment has been issuing out application forms to those interested in acquiring part of the 51% equity. Of concern is the politicized and secretive manner in which this process is being done. There are also questions as to whether resources are available to support the purchasing of shares by locals. A worrying strand is the continual use of political affiliation to expropriate businesses. *The Herald* of 2 July reported that Martin Mutasa, son of ZANU-PF Secretary for Administration Didymus Mutasa, businessman Temba Mliswa and George Marere, all linked to ZANU-PF, seized shareholding worth US\$1 million from a company—Noshio Investments. The trio allegedly claimed Indigenisation, Youth and Empowerment Minister Kasukuwere had allowed them to take over the company and that they had President Mugabe's backing. They were arrested and later released amidst allegations that Mutasa and home-affairs co-Minister Theresa Makone attempted to illegally secure their release.

Market Capitalisation Jan – June 2010



Mining and Industrial Index



Source: Zimbabwe Stock Exchange and Ministry of Finance

Chiadzwa Diamond Mining: By far the most contentious issue during the period under review was the certification of diamonds mined at Chiadzwa in Manicaland's Marange area. This has caused further friction in the inclusive government, and even fuelled divisions within ZANU-PF. The Kimberly Process monitor, Mr Abbey Chikane, came to Zimbabwe and recommended that the country be cleared to sell diamonds from Chiadzwa. This was criticised by CSOs who claimed that there are still human rights abuses at the Chiadzwa diamond mines. In a crackdown, the Director for Centre for Research and Development, Farai Muguwu, was arrested and charged for publishing falsehoods against the government. Maguwu wrote a report that highlights the ongoing human rights abuses at Chiadzwa diamond fields.

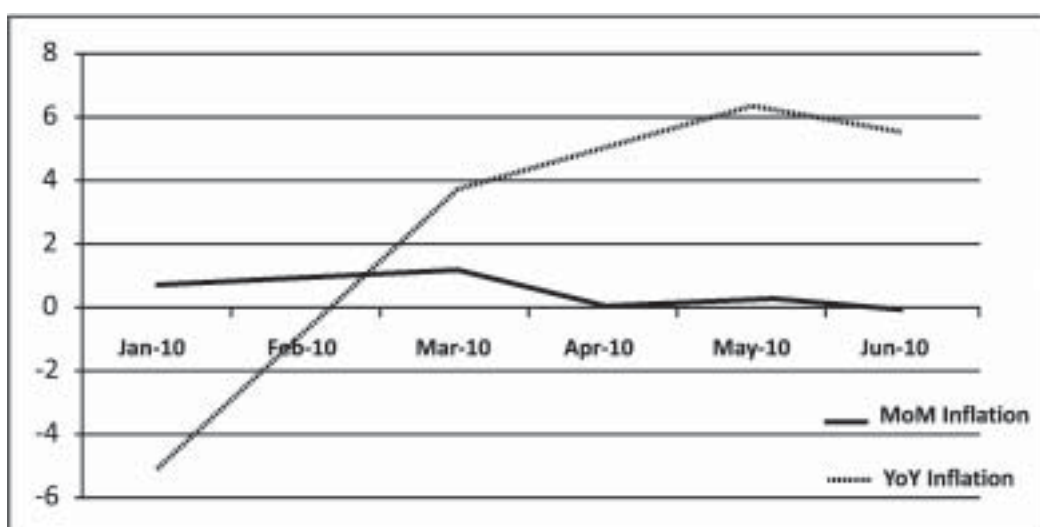
¹⁸. Indigenisation Stalls BIPPA Negotiations; *Zimbabwe Independent*, 4-10 June 2010, pp:4.

Twice the Ministry of Mines and Mining Development barred a fact finding parliamentary team from touring the Chiadzwa diamond fields in Marange. Meanwhile the battle for diamond mining rights at Chiadzwa between government and ZMDC on one hand and African Consolidated Resources (ACR) on the other continued unresolved. ACR approached the High Court seeking an interim order interdicting the Minerals Marketing Corporation of Zimbabwe, ZMDC and the two companies from selling the precious stones from Chiadzwa. The Minister of Finance, in his mid-term budget review, suggested an out of court settlement with ACR. This is yet to be done.

A Kimberly Process Certification Scheme (KPCS) meeting to consider Chikane’s recommendation to readmit Zimbabwe ended inconclusively¹⁹. The mere arrest of activist Maguwu is argument against clearing Zimbabwe diamonds as conflict-free. The Minister of Mines has been misleading the nation on the country’s KPM status, with news reports at one time suggesting that he had told the cabinet that Zimbabwe had been granted clearance to sell its diamonds. This turned out to be untrue.

Economic Stabilisation and Growth: Even though government revenue collection exceeded its targets, gross revenues remain very small and incapable of adequately meeting expenditure requirements. This is seen by the fact that still 61% of the revenue goes to the wage bill. This is despite the fact that civil servants wages remain pathetically low. This is worsened by the bloated cabinet, a political necessity for the fragile inclusive government. The government has so far not been able to invest sufficiently in infrastructural and social development. The finance ministry reports that 82,9% of revenue is going towards recurrent expenditure. Projections of Zimbabwe’s Economic Growth have been revised downwards by both the Government and the IMF. Local industries are also experiencing shorter working ours due to the incessant power cuts as well as water shortages. Captains of industry and commerce have expressed concern over delays in the implementation of the Medium Term Plan (MTP) which is expected to provide a platform towards consolidating economic gains²⁰.

Consumer price inflation Monthly % change: As the first half of 2010 came to an end, the inflation outlook was depressing. This is due partly to low levels of productivity in the economy. Staring at a



Source: ZIMSTAT (CSO)

¹⁹ KPCS decisions are made by way of consensus. After lengthy negotiations a compromise deal was struck where Zimbabwe was to export a limited amount for diamonds in a limited period of time under strict KPM supervision. Chikane was to be replaced by a committee of monitors.

²⁰ Zimbabwe Broadcasting Corporation (ZBC) 30 July 2010 see www.zbc.co.zw/.../2089-industry-concerned-over-mtp-delay.html

low of -7,7% by December 31st in 2009 year on year inflation swelled to 6, 1% in May before easing at 5, 3 % in June. This represents a reversal of the positive trends witnessed in 2009 and threatens to worsen the plight of Zimbabwe's poor against constricted real wages. With the exception of milk, eggs, cheese and hot beverages all other basic food items experienced a price increase from June 2009 to June 2010²¹.

Debt Overhang: Zimbabwe's debt remains unsustainably high at almost US\$7 billion, amounting to 150% of the country's GDP²²—by far the highest in the SADC region²³. Other estimates have placed it in the region of US\$7,1 billion and projected it to grow to US\$9,8 billion by 2015²⁴. A year and half after the formation of the inclusive government, Zimbabwe has not moved an inch to pay, let alone clear, outstanding debt arrears. The country is thus unable to access external sources of finance to support economic recovery.

Tight Liquidity: Liquidity constrains continue to be a major challenge for both business and ordinary citizens. Consequently, banks have little room to maneuver and tend to stick to risk-averse strategies. For those reasons interest rates remain high, from around 15% to as high as 30%. The fact that Zimbabwe is depending largely on the US Dollar despite relying heavily on South African imports has not helped matters. Bank loans remain short-term, thus limiting consumption and further placing a constraint on the local industry. Banks' own risk-averse approaches expressed through stringent borrowing conditions and unwillingness to consider long-term borrowing has meant very few takers. In turn banks have had to resort to exorbitant bank charges and services fees. In real terms, due to the absence of capital liquidity, political uncertainty and other factors, local industry remains less competitive in comparison to food and other imports from South Africa. A snap survey conducted by ZIMCODD on local retail outlets revealed that they are struggling to raise cash to pay suppliers. It is no wonder that on 1 July 2010, *The Zimbabwe Independent* reported that Zimbabwe's banks are heading for a major crisis— noting that 10 out of 25 banks had recorded losses for the first quarter of the year. The current business reporting season is showing that companies are taking longer than expected to recover and that in fact there is a deceleration in the economy²⁵. Trading at the Zimbabwe stock exchange continued to be depressed, hamstrung by the challenges cited above, with only five listed companies reportedly active for the most part.

Policy Contradictions: Different arms of the Inclusive Government sent mixed messages to investors and other stakeholders, clearly signaling a lack of policy coherence. For instance, an embarrassing public spat between President Mugabe's spokesperson Goerge Charamba and the Prime Minister's Office ensued after the Prime Minister's signing of a bilateral Agreement with South Korea. The former castigated the Prime Minister arguing that he has no legal authority to preside over such matters. This has not helped investor confidence. Contradiction in government's approach to economic empowerment and indigenisation has also been noted.

²¹ See CSO consumer price index June 2010, released 15 July 2010.

²² This is when one is using GDP nominal value. Juxtaposed to real GDP (about 3, 6 %) the country's debt to GDP ratio is in the region of 200%.

²³ 2010 *Mid-Year Fiscal Review*, pg 85, 98 - 99.

²⁴ ZIMCODD, Policy Brief, June 2010, No. 3/2010 pg. 10

²⁵ The *Business Herald*, 7 July 2010

On Benchmark 3: Land and Agriculture - According to the STERP policy, the IG should have established a diverse and fully representative mechanism to conduct a comprehensive land audit that is non-partisan and transparent.

Land Audit: Nothing of this sort has materialised thus far. At the moment there are no concrete steps to conduct a comprehensive land audit. This, according to Lands Minister Hebert Murerwa, is due to a lack of funding. Murerwa said that although the government is receiving some funding from the United Nations Development Programme (UNDP) to set up the data capturing infrastructure, more was needed for the real audit to begin. "We are being assisted by UNDP to set up data structures across the provinces, but we need US\$31 million for the audit which has not been found," he said²⁶.

According to the STERP policy, the IG should have established a diverse and fully representative mechanism to conduct a comprehensive land audit that is non-partisan and transparent, but nothing has materialised yet. The Minister of Agricultural Mechanisation, Joseph Made, has been quoted widely arguing that a land audit will only be conducted after sanctions have been removed, claiming that these sanctions are affecting agricultural production.

Farm Invasions: Farm invasions continue to characterise the land resettlement programme, targeting mainly commercial white farmers. Zimbabwe's remaining white farmers say continued farm invasions as well as human and property rights abuses by partisan groups are keeping international investors away from the poverty-stricken country. According to the Commercial Farmers' Union (CFU), 152 of the 300 commercial farms still in operation are now being targeted for eviction²⁷. The CFU has rounded on the inclusive government, slamming the troubled administration's failure to stop a few extremists from openly threatening, physically attacking and illegally evicting commercial farmers and their workers. The selective application of the law and disregard for property rights, investment agreements and court orders has also been noted.²⁸

The government has failed to protect even farmers whose properties are protected under government-to-government agreements. For instance, despite the signing of a Bilateral Investment Promotion and Protection Agreement (BIPPA) with South Africa on November 27, 2009, attacks on South African nationals operating productive commercial farms have increased. Since Christmas, there have been numerous attacks and evictions and these acts of lawlessness are continuing. On 17 January, the South African government officially raised its concerns with the Harare administration against the grabbing of farms from its citizens. The German embassy in Harare also wrote to the Zimbabwean government protesting against the continued violation of an investment protection agreement between the two countries, and warned this could harm further aid from Berlin. The embassy acted after farm invaders – alleged to be members or supporters of ZANU-PF – moved onto three properties belonging to German citizens. The letter to Foreign Affairs Minister Simbarashe Mumbengegwi identified the properties occupied as Makandi Tea and Coffee (Private) Limited, Border Timbers Limited both in Manicaland province and Forrester Estate (Private) Limited in Mashonaland Central. They are all

²⁶ "Funding problems stall land audit: Ministeri; Friday 04 June 2010: www.zimonline.co.za

²⁷ "Zim farm invasions keep investors away"; *Mail and Guardian*, 10 January 2010.

²⁸ CFU slams GNU over continuing invasions; *The Zimbabwe Times*, 25 January 2010 and "Farmers Flee as Invasions Resume in Matebeleland"; *Newsday*, 4 June 2010, pp:9

owned by German citizen Heinrich von Pezold. "The German embassy notes with great concern that property rights of German nationals and their investments in Zimbabwe are being put under threat, in clear violation of international law". The letter added: "Despite repeated confirmations of high ranking representatives of the Zimbabwean government about its intention to honour the BIPPA (bilateral investment protection and promotion agreement) in full, the development on the ground so far shows insufficient commitment to follow up on its declarations."²⁹ The embassy said continued violations of the bilateral trade agreement between the two nations will jeopardize chances of the southern African country receiving financial support from Germany through a multi donor trust fund (MDTF) — a basket fund coordinated by the international community to support the inclusive government.

Pricing of Agricultural Commodities: Another issue to dominate news headlines has been the poor prices for cotton farmers. This comes at a time when cotton production has already decreased from last year due to poor prices. Government, cotton farmers and buyers have been at loggerheads over pricing. Farmers unions report that the current pricing system, if not improved, will throw farmers (most of them rural) into poverty and make them unable to produce for the next season. In a move that flies in the face of government's public posturing on indigenisation and empowerment, the Ministry of Agriculture is reported to be refusing to formerly register an Association of Cotton Growers from Bindura.

Food Security: National wheat production is set to decline drastically to record low levels (lower than 2009) for the 2010 winter season owing to power shortages, disruptions at the farms, lack of funding and inputs, among other reasons. By 1 June 2010, only 8,963³⁰ hectares of wheat had been planted representing 13% of the government target, less than 3% of national requirement and 47% of 2007 production. Projections reveal that only 10 000 tonnes out of a national requirement of between 400 000 to 450 000 tonnes will be harvested according to the Commercial Farmers Union (CFU). To worsen matters, the then Energy and Power Development Minister Alois Mudzuri³¹ announced that farmers will have to manage with even fewer supplies as he directed the national power supplier to prioritise FIFA World Cup viewers – by making sure that there is no rationing during the matches and that those with outstanding bills are not disconnected³². "I have directed ZESA to suspend disconnections to allow the public to enjoy this once-in-a-lifetime opportunity," he was quoted in *The Herald* of June 10. A food deficit has been reported in 11 of the country's districts³³.

²⁹ Trade pact violation endangers aid: Germany by Sebastian Nyamhangambiri Friday 18 June 2010:www.zimonline.co.za

³⁰ *The Herald*, 1 June 2010.

³¹ Mudzuri was sacked in June 2010 by Prime Minister Morgan Tsvangirai over poor performance.

³² This is despite the fact that several places among them Chegutu town 100 km south west of Harare continued to experience power disruptions even during live matches.

³³ Tendai Biti (Minister of Finance), 2010 Mid-Term fiscal Policy review.

CONCLUSION AND RECOMMENDATIONS

The government should quickly ensure that the NEC becomes operational. Hopefully the NEC will become a platform for genuine consultation between government and citizens on economic policy. All parties in the inclusive government must at all times demonstrate genuine commitment to the goals they set out in the GPA on reviving the economy. Comprehensive and extensive consultations with relevant stakeholders must take place before drafting legislation and economic policy. Government should also demonstrate genuine commitment to protect BIPPAs that it has signed with several countries. The government should further ensure that the new MTP is in place and that there are no conflicting statements from various parties in the IG such as those described when the Prime Minister signed BIPPA with South Korea.

The few positive steps in reviving the economy must be consolidated. The mining of diamonds at Chaidzwa needs to be properly and transparently regulated to satisfactorily meet the KPM criteria, attract genuine investors, and meaningfully contribute to national revenue. Problems related to the erratic supply of electricity and water need to be addressed urgently. There is also need to rethink the current currency regime with a view to address liquidity challenges. Efforts must be taken as a matter of urgency to address the country's debt overhang, starting with a comprehensive debt audit³⁴. And to reiterate, it is imperative that a comprehensive, transparent and non-partisan land audit be implemented after the current farm disruptions are stopped.

HUMANITARIAN AND FOOD ASSISTANCE

INTRODUCTION

The humanitarian situation in Zimbabwe is still fragile due to the prevailing degradation of infrastructure in the basic sectors of health, water and sanitation, and food security. The country also faces continuing underlying economic and political challenges. As a result, Zimbabwe remains at a crossroads. While some early recovery activities are ongoing as part of humanitarian actions, the lack of major government funding for recovery and development remains one of the key hindrances to moving the country out of a situation of generalized humanitarian need.

Health issues are being addressed; with the Government having just completed a survey on malnutrition in children, and conducting a large-scale measles vaccination campaign that was a resounding success. The harvest for the 2009/10 agricultural season has just finished. Recent crop assessments have estimated that, despite some extended periods of drought in parts of the country, food production has slightly increased vis-à-vis 2008/9. Timely agricultural inputs and extension support provided by humanitarian partners during the 2009/10 planting season played a major role in further reducing food insecurity levels. The education sector has received a major economic boost towards reviving

³⁴ Zimbabwe Peoples Convention, 2008; Debt audits are comprehensive examinations of the public debt. These should be public, transparent and participatory, involving political mobilization of civil society. ZIMCODD used the 4th edition of the Zimbabwe Social Forum (ZSF) in October 2008, to put its campaign for a Citizens' Debt Audit on the public agenda, and encourage the creation of a broad based movement in support of a Citizens' Debt Audit.

the delivery of basic education in the country. This boost will ensure that schools have materials and teaching aids, which will also go a long way in motivating both the teachers and students. In the operating field, there has also been a notable increase in cooperation between the Government and the humanitarian community, and between international and national humanitarian partners. Key priorities for the remainder of 2010 will include: improving food security levels, prevention of and rapid response to disease outbreaks, protection-related issues and response to natural disasters.

BENCHMARKS

Article XVI of the GPA on “Humanitarian and Food Assistance” commits the Inclusive Government to the following:

- That in fulfillment of its obligations....the Government and all State Institutions shall render humanitarian and food assistance without discrimination on the grounds of race, ethnicity, gender, political affiliation or cause
- The humanitarian interventions rendered by Non-Governmental Organisations, shall be provided without discrimination....
- That all displaced persons shall be entitled to humanitarian and food assistance to enable them to return and settle in their original homes and that social welfare organisations shall be allowed such assistance as might be required; and
- That all NGOs rendering humanitarian and food assistance must operate within the confines of the laws of Zimbabwe

COMPLIANCE

During the period under review, compliance to the stipulated benchmarks has been noted in the following areas:

Health: Following the severe outbreak of measles in September 2009, that witnessed many fatalities, a National Immunisation campaign took place from 24 May to 4 June 2010, targeting children aged six months to 14 years with the measles vaccination, as well as vitamin A supplementation and all the other antigens for children under age 5. Mop up campaigns were conducted in Beitbridge, Bulawayo, Gokwe South and Seke districts. The campaign reached 5,164,307 children with the measles vaccination, representing 97% of the target; as well as 1,629,190 with vitamin A supplements representing 93%. Reported cases of measles continued to decline, with no new deaths recorded by the end of June. From September 2009 to end of June 2010 a total of 9,152 cumulative cases and 517 deaths occurred. Most, 53 out of 62 districts, had reached the epidemic threshold of three laboratory confirmed cases.

The cholera outbreak appears to be under control, with three suspected cases being reported throughout June. The new cases were confined to Chimanimani district in Manicaland province and reported among illegal diamond miners from the Chiadzwa mining area. A cumulative 599 cholera cases and 18 deaths have been reported, out of which 76 cases were confirmed by laboratory tests. The crude case fatality rate is 2.9%. Most of the cases in the current outbreak, 68.6%, are from rural areas. The outbreak has affected 18 districts since February 2010.

Zimbabwe's government has adopted new guidelines set by the World Health Organization (WHO) for treating people living with HIV, but there may not be enough money to implement these policies. The new WHO guidelines recommend that countries start giving antiretroviral (ARV) treatment to HIV-positive people with a CD4 count (which measures immune system strength) of 350 or less, rather than at the previously recommended count of 200. Around 226,000 people are obtaining ARVs from Zimbabwe's public health system, leaving a treatment gap of about 340,000, but the new guidelines mean that at least half a million people will now qualify for treatment, at a cost of US\$7 per person per month. This is a positive move in terms of ensuring access to drugs treatment for people living with HIV/AIDS.

Food Security: Food distribution has been carried out in districts across the country. As of 30 June 2010, the Safety Net (SN) programmes led by WFP reached a total 190,470 people with 3,536 MT of food, equivalent to 65% of both planned food delivery and beneficiaries. Distributions were completed at 65% beneficiary and tonnage achievement owing to contractual negotiations which had not been finalized.

Planting of the 2010 winter wheat crop is underway. As of 25 June, a total of 12,723 Ha had been prepared and 9,764 Ha planted. The Government has set the target area for the crop at 45,000 Ha requiring 5,400 MT of seeds as well as 22,500 MT Compound D and 18,000 MT ammonium nitrate fertilizer. The crop stage varies from emergency to early vegetative and the condition is fair to good across the provinces.

Indications from the 2010 Zimbabwe Vulnerability Assessment Committee (ZimVAC) reveal that the food security situation is similar to that which prevailed last year at the national level, but different at the sub-national level. A total of 1.3 million rural people, comprising about 221,000 households (HH), will not be able to meet their minimum cereal needs during the peak hunger period from January to March 2011. This represents about 15% of the total rural population. In the current quarter from July to September 2010, about 540,000 people or 86,000 HHs require food assistance. The total cereal entitlement gap summed across all households is estimated at 98,000 MT.

Due to the improved availability of cereals, the price of maize grain has continued to decline. The average price of a bucket of maize is US\$5 in Beitbridge district in Matabeleland South, whilst for Gokwe South and Shurugwi districts in the Midlands province, the prices are lower at \$2.45 and \$3.67 respectively. Gokwe South and Shurugwi districts are better cereal production regions than Beitbridge hence the lower maize grain prices. Owing to favourable rainfall conditions received in Matabeleland North province, traditionally semi-arid districts such as Bubi and Tsholotsho districts have reported high production levels of small grains that they are only failing to market due to low demand. The livestock situation indicates fair grazing and cattle conditions. Water is still currently available for livestock use. However, as the year progresses water shortages are anticipated and livestock will have to travel long distances to the nearest water source.

Education: Zimbabwe's education sector received a boost through a US\$10.5 million grant from the European Commission (EC) for the Education Transition Fund (ETF). The signing ceremony between the Government of Zimbabwe, the European Commission (EC) and the UN took place on 24 March.

The funds will be used for providing learning materials, particularly textbooks to schools and will complement the Basic Education Assistance Module (BEAM), which supports orphans and vulnerable children (OVC). The EC's contribution is part of US\$52 million so far committed to the ETF, a pool fund that is being managed by UNICEF in support of the sector. Donors include the Governments of Australia, Denmark, Finland, Germany, Japan, the Netherlands, Norway, Sweden, the UK and the USA. The signing ceremony was a key step in ensuring that education continues to receive the attention that it deserves from senior level Zimbabwean government officials and donor partners. The education system is in need of urgent support as evidenced by public examination results that reflected a 16% pass rate. Although the consolidation of grade 7, Ordinary (O) Level and Advanced (A) Level examination results is in progress and these are yet to be fully analysed, initial reports from provincial directors indicate very poor performance. One province has reported a sharp decline in grade 7 pass rates from over 80% in 2000 to 16% in 2009. This is also mirrored in the "O" Level examinations, which reflect a national pass rate of 16%. Schools however were seen to be turning away students for non-payment of fees at the beginning of the term despite a government directive that children should not be turned away. Parents have been failing to pay the high levies charged by schools and, as a result children are being turned away.

Internally Displaced People: In addition to the current humanitarian assistance provided to returned migrants, totalling 105,795 from Botswana and 313,912 from South Africa through the Reception and Support Centres located in Plumtree and Beitbridge respectively; the International Organisation on Migration (IOM) has responded to the call for assistance from the local authority to assist the displaced victims of xenophobic attacks that occurred in a De Doorns, Western Cape in November 2009. Consequently, in addition to 38 displaced victims already assisted under the IOM's Assisted Voluntary Return (AVR) programme on 16 May, another group of 68 migrants departed from South Africa on 16 June. With many uncertainties surrounding the safety of migrants during and after the FIFA World Cup, the IOM, in collaboration with the Ministry on Labour & Social Welfare and other humanitarian agencies are working on strengthening its backstopping capacity to respond swiftly should the need for additional humanitarian assistance arise.

In anticipation of a possible mass influx from Botswana, the IOM conducted capacity building for 30 stakeholders from both Botswana and Zimbabwe in an effort to enhance service delivery and absorption capacities in terms of putting together a Gender-based violence prevention and response mechanism.

NON-COMPLIANCE

Health: Zimbabwe continues to battle disease outbreaks, largely as a result of continued deterioration in health, water, sanitation and hygiene infrastructure. After cholera, measles and typhoid outbreaks, malaria is the latest disease to afflict the country. By 30 June, a cumulative 117,038 cases of malaria and 183 deaths had been reported through the National Health Information System— in an outbreak that started in January 2010. Outbreaks were fairly localised and attributable to late and prolonged rains, and reduced population immunity because, in recent years, malaria seasons have been light leading to community members sleeping outside sprayed structures, and not using insecticide nets consistently.

Food Security: The following section demonstrates that the Government is taking food security seriously but that there are still major problems that need to be addressed in terms of planning, agricultural inputs, and the non-performance of the Grain Marketing Board (GMB).

The Prime Minister conducted a three province tour to assess the humanitarian situation in the country. During this tour it was noted that crops had wilted, irrigation systems were down and there was no electricity for those few irrigation systems struggling to work. There are some places where farmers did not even plant because either they had no rains or they had no seed. "The situation's bad. The food security situation in this country is a very critical issue," Prime Minister Tsvangirai added. Secretary to the Prime Minister and Council of Ministers, Ian Makone, several MPs from the local government, and Provincial Governor and Resident Minister for Masvingo, Titus Maluleke, all accompanied the Prime Minister throughout the tour of his province. In the three provinces he visited, Prime Minister Tsvangirai discovered how the lack of proper planning for the agricultural season affects yields. He was told that farmers received inputs and fertilizers very late with some organisations still distributing inputs. Sparse rains were received in some parts of the country. "We did not get seed and fertilizer so we had to use what we gathered last year as seed. We literally took seed from our barns that is why it did not do well. The other problem was fertilizer," said Simon Majuta, a farmer from Mutimutema, Gokwe North.

The Prime Minister has also promised to look into the irregularities at the GMB where he was quoted as saying "We have already resolved that GMB must be investigated. We want an audit because there's so much corruption at GMB." The Head of Government said that they would ensure timely preparations for the 2010/2011 agricultural season and ensure that inputs were available closer to the people. "The Government must ensure that no one will starve. We have to mobilize resources and enough food a drought mitigation plan. We should prepare on time so that we do not repeat the same mistake," Prime Minister Tsvangirai said.

Prisons: The Zimbabwe Prison Services has banned food hand-outs from inmates' relatives at Chikurubi Maximum Prison, in an attempt to curb trafficking by prison officers. This has raised fears that the prison, which recorded the highest prison mortality in 2008, might once again experience the same thing, as the government is not yet capable of feeding the crowded prisons. This has a great impact on more than 1800 inmates who mostly rely on food brought in by their relatives. At the moment the prison is not able to provide even a single meal, and is relying on the Red Cross and other donors for food to feed the inmates. Over 720 male prisoners in between May 2008 and June 2009 succumbed to severe hunger and treatable diseases at Harare's Chikurubi Maximum Security Prison. The situation at that time was so dire that the Inclusive Government had to appeal to charity organisations to come to the rescue of the prisoners with food aid, clothing and drugs to prevent mass deaths at the country's largest jail. At least 721 prisoners died from diseases linked to serious food shortages such as pellagra, a deficiency disease caused by a lack of vitamin B3 and proteins.

CONCLUSION AND RECOMMENDATIONS

CISOMM's assessment of the humanitarian assistance sector shows that compliance with the GPA terms has so far been progressive. Progress in the Health, Education and Food Assistance sectors has been commendable, with deficits being noted in the Prisons and the Farming sectors. Following the 2009-10 harvests, results indicate strongly that once again we will be in need of food aid and imports. The operating environment has greatly improved in the period under review with NGOs and Government collaborating. International and local agencies are operating without any adverse interference, which is in positive compliance of the GPA, which asserts the fundamental right of citizens to access humanitarian aid and assistance without discrimination. Inhumane conditions continue to prevail in the state penitentiary institutions. Already dire, the hunger situation and health conditions have worsened.

Key priorities for the remainder of 2010 will include improving food security levels, prevention of and rapid response to disease outbreaks, protection-related issues and response to natural disasters. All activities will be undertaken while ensuring humanitarian and Government priorities remain complementary in all sectors. On a related note, efforts should be made to address the root causes of resurging humanitarian needs through basic sector restoration and a livelihood programme.

Prisons:

- Prisoners suffering from all serious illnesses should be freed or attended to immediately.
- The Ministry of Health or Social Welfare could also establish a command centre for prisons conditions control and reporting.
- Humanitarian organisations and churches must be invited to provide assistance to the prisoners.
- Legislation, which specifies minimum sanitation, hygiene, diet and recreation requirements for prisons should be put in place.

Agriculture:

- De-politicise government sponsored distribution of agricultural inputs and food aid.
- An audit of the operations of the Grain Marketing Board must be performed.
- Timely distribution of inputs to ensure optimal preparation and planting.

Education:

- The state should intervene when schools turn away children for non payment of fees as they are depriving the children of their right to basic education.

CONSTITUTIONAL REFORM

SUMMARY

In terms of the benchmarks set for reviewing the Constitution Making Process, and expectations of what was supposed to take place within it, the review for the 6 month period demonstrates that the process registered significant progress after some initial delays. It, however, continues to be dogged by a multiplicity of problems and challenges including but not limited to:

- inadequate resources,
- poor publicity,
- logistical challenges,
- security sector and political party influence and interference.

These challenges have slowed down the process and continue to pose the threat of undermining the final product. According to timelines set out in the GPA, the draft constitution was to be completed in February 2010 however, the consultation phase is still underway with reports that it will only end in the middle of September 2010. If calculated according to the original GPA time frames, the draft constitution could be concluded by mid-December 2010, more than 10 months behind schedule.

BENCHMARKS

The following benchmarks extracted from Article 6 of the GPA, have been used to measure the period under review.

- Transparent and timely establishment of the Select Committee of Parliament with diverse composition and sub-committees;
- Meaningful representation of, and powers for, civil society within sub-committees for contribution purposes to the constitutional process;
- Widespread national consultations with public and all civil sectors on all relevant processes and content of the constitutional process;
- Full involvement of all stakeholders in both All Stakeholders conferences;
- Timely publications of the report, recommendations and Draft Constitution presented to Parliament;
- Meaningful inclusion of public input through impartial and comprehensive publicity and information dissemination of Parliamentary debate on the Draft Constitution (broadcast and print media);and
- No substantive amendments by Parliament of the Draft Constitution so as to deny the will of the people as expressed during the public consultation process and All Stakeholders' Conferences.

COMPLIANCE

Establishment of sub-committees and outreach teams: In January 2010, the Constitutional Parliament Committee (COPAC) trained Parliamentarians and the Public Outreach Teams. The three day trainings were meant to provide adequate information on how the outreach programs would be conducted. 70 outreach teams were established in total, which comprise of 10 members each (3 core members – one from each party, 3 rapporteurs, and 4 members from civics³⁵) plus a technician to operate video and voice recorders.

COPAC published the names of the 210 rapporteurs in the Sunday Mail of 4 April 2010 and their training took place later that month. The rapporteurs are tasked with recording the people's views expressed during the consultative outreach meetings. COPAC has also included members of other political parties in the outreach process.

Talking points: Technical teams were constituted to draft the talking points for the outreach programs, albeit being seconded from the political parties represented in parliament. Later, the talking points were revised following concerns raised by civic groups that they were too prescriptive. Thus, they have been reduced in number and are much clearer and it is hoped that this will promote more discussion and permit freer input³⁶. COPAC reported at a briefing meeting held on the 28th of July 2010 that participants at outreach meetings are not allowed to read from pre-written scripts so that they allow people to articulate their own views.

Widespread national consultations: During the period under review, although delayed, the second stage of the constitution making process which is the outreach stage was launched on the 16th of June 2010 at Harare International Conference Centre by the three principals, breathing confidence into the process and calling for inclusivity and non-violence. The accreditation of the outreach teams was undertaken on 21 June and the induction on 22 June. The nationwide public consultations commenced on 23 June when the outreach teams were deployed to the ten provinces to facilitate and capture the people's views. In order to mitigate the issues of intimidation and violence COPAC has allowed citizens to submit written views with some form of identification. However disclosure of identification on the written submissions has raised concerns around security of the persons, given the legacy of victimisation which has dogged the country over the last decade.

COPAC engagement with civil society and the press: Since the launch of the outreach phase, COPAC has been holding press conferences with journalists and briefing meetings with civic society each Wednesday to engage and give an update on the constitution making process. For example, COPAC held a meeting with civil society leaders on 6 July to regularise monitoring by civics after media reports claimed that COPAC had called for the arrest of monitors, and had called Civic organisations monitoring the process 'bogus'. Although COPAC was quoted in the media several times threatening to arrest monitors and calling civil society names, it later allowed civics to deploy observers into the

³⁵ The rapporteurs were however appointed on political party tickets, with each party seconding one person to record events.

³⁶ Veritas, *Constitution Watch- 6/2010 eRevised Outreach talking points*, 20 May 2010.

field: "All those organisations which have an interest in monitoring the process are free to deploy their observers and COPAC shall issue them with special identity cards..."³⁷ It was encouraging to note that COPAC was willing to constructively engage with civic society on issues of mutual concern. The Wednesday meetings have markedly improved the image of COPAC and enhanced its ability to provide Civic Society and Zimbabweans in general, with information and feedback on the constitutional reform process.

NON- COMPLIANCE

Since January 2010, there have been cases of non-compliance with Article 6 of the Global Political Agreement (GPA) by the inclusive government. These cases can be categorised under logistical problems, prohibitive environment, political party influences and public accountability.

Logistical problems: Over the six months under review, COPAC experienced logistical problems which had negative bearings on the outreach meetings. The training of outreach teams, which began in January, got off to a rocky start — including the fact that the initial training was flooded by people who had attended the All Stakeholders Conference in July 2009, who were under the impression that they were invited. COPAC however, managed to resolve this challenge.

The first day of the constitution making process outreach phase was marred by confusion amid reports that COPAC failed to provide adequate resources to outreach teams. In the Mashonaland East town of Marondera, on 23 June it was reported that the Outreach Teams had failed to conduct meetings as COPAC had delayed the disbursement of Shona versions of the talking points. In addition, recording equipment had not yet been availed to the teams.

In the initial phases, civics monitoring the Constitution making process (ZZZICOMP)³⁸ reported that most COPAC outreach teams were arriving at venues late, resulting in low attendance at meetings, particularly in the Matabeleland provinces. Some opportunists were reported to have taken advantage of these delays to address the people gathered and giving them their party positions, as was the case in Mwenezi. COPAC justified this problem with the excuse that it was caused by the distance travelled to fuelling stations in the different provinces and the places of residence of the outreach teams. There were also reports that some of the teams were evicted from hotels because of non-payment. For example, the Midlands team had to travel back to Harare for accommodation. Another example was that on 27 July a meeting that was scheduled to take place at Batanai Hall in Zvishavane was postponed as the COPAC team responsible for the meeting had to relocate from Gweru to Zvishavane. It took the team about three hours to find accommodation in Zvishavane.

Prohibitive environment: The environment under which the meetings are being held remains prohibitive owing to the continued existence of repressive laws which inhibit citizens' full participation. Although reports surfaced of the suspension of the Public Order and Security Act (POSA) and Access to

³⁷ Constitutional Parliamentary Committee co-chairperson Honourable Paul Mangwana at a press conference held on the 07/07/10 at COPACiS Head Office in Milton Park.

³⁸ ZZZICOMP (Zimbabwe Peace Project, Zimbabwe Election Support Network, Zimbabwe Lawyers for Human Rights Independent Constitutional Monitoring Project) is an initiative to independently monitor the outreach process in all of its meetings at ward level.

Information and Protection of Privacy Act (AIPPA) ahead of the constitutional outreach phase in June, the Government -through Information and Publicity Ministry Permanent Secretary, George Charamba and Minister of Constitutional and Parliamentary Affairs, Honourable Eric Matinenga- refuted these claims. The laws remain in place and over the period under review, people have been arrested for contravening the draconian laws.

On 24 June, three ZZZICOMP observers, Tapera Mavherevhedze, Godfrey Nyarota and Cornelius Chengu were arrested in Mukuni, Manicaland province for allegedly practicing journalism without accreditation in contravention of Section 81 (3) of AIPPA. The three were arrested while observing a COPAC outreach meeting. In January, MDC supporters were arrested in Bindura and Mount Darwin under POSA for holding internal meetings to discuss the constitution without police clearance. At the same time, two Crisis in Zimbabwe Coalition monitors Gift Muti and James Gonese were detained and questioned in Mutare for allegedly practicing journalism without accreditation.

Political party influence and Interference: Although the GPA clearly stipulates that, 'it is the fundamental right and duty of the Zimbabwean people to make a constitution by themselves and for themselves', political parties and concerns have dominated the constitution making process in Zimbabwe. The period under review saw the appointment of rapporteurs on political grounds while political party liaison committees³⁹ were set up with representatives of ZANU PF and the two MDC formations at community level. While it is acceptable that political parties should play a part in the process, it is remiss to assume that they are representative of everyone in society and by allowing the process to almost become the preserve of the MDC and ZANU PF, these actions are in direct contravention of the spirit and notion, contained in the GPA, of the sacrosanctity of the people's right to craft their own constitution.

Some political parties, particularly ZANU PF, have gone ahead to coach citizens on what to say during the COPAC meetings. At a meeting held at the Quill Club in Harare on 12 July, both the MDC and ZANU PF⁴⁰ justified the coaching of citizens arguing that each political party is permitted to lobby its positions. In Mashonaland Central Province there have been numerous reports of people who requested to make opening prayers and sought to influence the flow of discussions through these prayers. For instance at a meeting held at Wynchwood Farm in Mazoe one man made such a request and in the course of his prayer, answered three questions on the Preamble, Bill of Rights and Land.

Of greatest concern are the numerous reports of intimidation and coercion of citizens, particularly in the rural areas, by the military, para-military and (mainly ZANU PF) party supporters; with reports of uniformed forces in Chegutu, Masvingo, Matebeland North, Matebeleland South and Manicaland campaigning for the ZANU PF-backed Kariba Draft and threatening MDC supporters with assault. There is widespread evidence that in a bid to silence citizens, ZANU PF launched *Operation Chimumumu (Operation Dumbness)* where citizens were instructed to remain silent and allow a selected few to contribute during COPAC meetings. Cases of intimidation by ZANU PF were recorded in mostly the Mashonaland provinces.

³⁹ These committees were set up to disseminate information on COPAC itineraries.

⁴⁰ The political parties were represented by Jessie Majome (MDC) and Patrick Chinamasa (ZANU PF)

It seems apparent that the three political parties have allowed themselves to interfere in the full participation of citizens despite the fact that the constitution which comes out of the process should be reflective of the views of the people in their totality, not just those who belong to political society.

Citizen attendance and participation: COPAC, as a public institution, should remain accountable to the people of Zimbabwe yet during the past six months the committee operated largely in secrecy. Of particular concern was the failure to furnish Zimbabweans with schedules of meetings well ahead of time, to allow for planning. The schedules, which originally appeared in the public media, are now appearing at district level resulting in limited access by citizens. This has ultimately affected the level of attendance in mostly rural communities with COPAC indicating that as at 22 July, 1212 meetings had been held with a total attendance of 212 155 people. On average, 175 people have attended each meeting.

However attendance does not translate to meaningful participation. In most areas in Mashonaland Provinces, people attend the consultation meetings but only a handful of them participate meaningfully. On 28 June, 1200 people attended a meeting held at Sikosana Primary School in Makonde district Mashonaland West Province, but only five people are reported to have contributed.

Some participants have also said that the talking points which are used to gather views by COPAC are too technical and as such affect the levels of participation. Observation of outreach meetings revealed that some COPAC officials are unable to fully explain 'Systems of Government' and 'Transitional Mechanisms' resulting in participants simply saying that the areas should be kept as they are.

Despite the fact that there are millions of Zimbabweans resident abroad, COPAC has not yet engaged this critical group. It is the fundamental right of each and every Zimbabwe to participate in the constitution making process regardless of their geographic location. COPAC pointed out that a website is under construction, which will service Zimbabweans living abroad. However, this site remains under construction more than one month after the outreach phase began. Fears are rife that the site might not be launched owing to ZANU PF's insistence on blocking participation of Zimbabweans in the diaspora.

Compliance to publicised schedule: Although COPAC publicised meeting points and dates there has been numerous cases of non-adherence to publicised schedules. For example in the *Sunday Mail* of 28 June, COPAC indicated that public consultations were going to be conducted in Guruve District, Mashonaland Central but later decided to cover Shamva district without any prior notifications.

Conduct of COPAC outreach teams: Although the talking points have been revised, participants complained that the translations are too technical and team leaders are failing to interpret them which results in people repeating the same things or saying they want what is in the old constitution. Some of the monitors reported that outreach teams were not giving people enough time to articulate their issues: for example, at a meeting held at Chinhamora Hall on 3 July the outreach teams were taking five people per question. At an outreach meeting held on 24 June at Mankunzani Business

Centre one of the team leaders, Thandiwe Mlilo was reported to have influenced people during the discussion on war veterans.

RECOMMENDATIONS

In light of cases of non-compliance above and to ensure that the constitution making process meets the set benchmarks, CISOMM recommends that;

- COPAC should adhere to stipulated timeframes and ensure that there are no further delays to the constitution making process.
- There is need to intensify civic education and increase publicity so that people are informed and can participate meaningfully during the constitution making process.
- Political parties should desist from coaching people on what they should say during the hearings and acknowledge that it is a fundamental right for the people of Zimbabwe to write a constitution for themselves and by themselves.
- Political parties should condemn the use of violence and intimidation during the process and also restrain their supporters from disrupting meetings.
- Signatories to the GPA should ensure a conducive environment for the constitutional reform process to allow people to participate freely.
- The state should direct security forces to stop interfering with the constitutional reform process as well educate them about their fundamental role to protect Zimbabweans regardless of political affiliation.

MEDIA REFORM AND FREEDOM OF EXPRESSION

The first half of 2010 has brought a mixed bag of fortunes and uncertainties for the media fraternity in Zimbabwe. The parties have by and large failed to adhere to the full implementation of the Global Political Agreement (GPA), specifically article 19 which deals with media reforms:

Article 19.1 *The Parties hereby agree:-*

- (a) that the government shall ensure the immediate processing by the appropriate authorities of all applications for re-registration and registration in terms of both the Broadcasting Services Act as well as the Access to Information and Protection of Privacy Act;*
- (b) all Zimbabwean nationals including those currently working for or running external radio stations be encouraged to make applications for broadcasting licenses, in Zimbabwe, in terms of the law;*

- (c) *that in recognition of the open media environment anticipated by this Agreement, the Parties hereby:-*
- (i) *call upon the governments that are hosting and/or funding external radio stations broadcasting into Zimbabwe to cease such hosting and funding; and*
 - (ii) *encourage the Zimbabweans running or working for external radio stations broadcasting into Zimbabwe to return to Zimbabwe; and*
- (d) *that steps be taken to ensure that the public media provides 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 organisations. To this end, the inclusive government shall ensure that appropriate measures are taken to achieve this objective.*

Of the five key areas of agreement noted above, there have been few instances of compliance. Most of the provisions have been ‘forgotten’ almost two years after the signing of the agreement. There has been no registration of new broadcasters which explains the continued existence of foreign based radio stations. The state-controlled media is on the war path, strongly supporting ZANU (PF) while denigrating the other political parties. The single area of compliance is the activity of the Zimbabwe Media Commission (ZMC) which called for applications for registration of new print-media and the accreditation of journalists on 5 May 2010. However, the contested Broadcasting Authority of Zimbabwe (BAZ) board has not issued any licenses to prospective broadcasters leaving a major lacuna in the public dissemination of information.

COMPLIANCE

The licensing of new media players on 26 May 2010 — *The Daily News, NewsDay, The Weekly Worker, The Daily Gazette* and *The Mail*— was seen as a watershed moment which brought hope that more media reforms will be instituted. One of the licensed newspapers, *NewsDay* has started publishing amid high expectation that ANZ, the publishers of *The Daily News*, will be following suit this September. These developments are not only seen as employment opportunities for scores of journalists and graduates of media training institutions. More importantly, this will allow and afford citizens access to alternative sources of information and assist them in making informed choices on matters affecting their daily lives. On 29 July, the commission issued four additional licenses to *Cable News Agency, African Open Media Initiative, Zimceleb*, and *Sport 24 Magazines* respectively.

NON-COMPLIANCE

During the period under review, there has not been any discernible movement towards reforming the broadcasting industry and admitting new players, as it evidenced by the continued monopoly of the Zimbabwe Broadcasting Corporation (ZBC) in the industry. ZBC urgently needs to be transformed into a truly independent public broadcaster in order to fulfill its public service mandate as stipulated in terms of the African Charter on Broadcasting, the SADC Principles and Guidelines on the Conduct of Democratic Elections and Article XVIII of the GPA.

Harassment of journalists and media violations on a rise: While cases of media violations relatively declined with the advent of the inclusive government and during the period under review, media stakeholders remain concerned due to sporadic cases of harassment and the arbitrary arrests of journalists.

This situation arises from the continued existence of repressive legislation such as the Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA), and the Criminal Law (Codification and Reform) Act. In calling for the repealing of these pieces of legislation, we also urge the Inclusive Government to condemn these violations and ensure the safety and security of journalists as they conduct their professional duties.

The acknowledgement in article 19 of the GPA that reforms in the media will be done under AIPPA and the Broadcasting Services Act (BSA) shows that genuine reform in the media remains a contested terrain given the restrictive nature of the acts. It is foolhardy to believe that the acts which led to the closure of the media space for the past decade can be the foundation of reforming the very same media space.

The ZMC's status under AIPPA is, at best, a precarious one. AIPPA is a draconian piece of legislation that perpetuates a highly restrictive media environment in Zimbabwe. Under AIPAA, no one is allowed to run a mass media service until registering with the ZMC. Yet the procedures for registration are onerous and the ZMC lacks the capacity to streamline them. Furthermore, non-citizens are prohibited from holding shares in mass media companies; meaning that it is nearly impossible for these media outlets to receive foreign funding. AIPPA also determines that only citizens and permanent residents can work as journalists in Zimbabwe. While aliens and non-residents can get accreditation through the ZMC, it will not last for more than 60 days. Unless AIPPA is repealed or significantly modified, genuine media freedom in Zimbabwe will remain illusory.

As of June this year, MISA-Zimbabwe issued 27 Alerts— some of which involved the harassment, arrests and appearances of journalists in the criminal courts, namely Vincent Kahiya, Constantine Chimakure, Feluna Nleya, Nevanji Madanhire, Stanley Kwenda, Mashundu Netsianda and Golden Maunganidze. More specifically, on 21 March 2010 freelance photojournalist Andrison Manyere was arrested at Harare Magistrates Courts for merely filming the arrival of individuals charged with attempting to overthrow the Zimbabwean government. On 31 March 2010, journalist Stanley Gama was summoned to Harare Central Police Station. There Gama was interrogated because of an article published in *The Sunday Times* Zimbabwe edition. The article outlined an alleged urban land acquisition scam and involved Minister of Local Government Ignatius Chombo and businessman Philip Chiyangwa.

Community Radio Initiatives in Masvingo and Gweru have also been denied police clearance to undertake their outreach activities.

Broadcasting monopoly: Despite the parties' pledge to democratize the broadcasting sector, ZBC still enjoys a broadcasting monopoly. This is because the coalition is yet to appoint the Broadcasting Authority of Zimbabwe (BAZ) that would license aspiring private broadcasters. Although the Information Ministry unilaterally tried to set up the board in October 2009, it was subsequently rejected as a nullity as the move was in violation of the GPA, which compelled parties to consult

before making such appointments. While the two main principals are on record as having acknowledged the need to reconstitute BAZ, there is little public evidence of progress on the matter.

While it has since emerged that the parties have agreed to reform ZBC and restore its public service mandate, doubts remain as to whether government will implement this—especially since similar promises have been made in the past with no accompanying action. In fact, despite the parties' undertaking to restore professionalism within the public media in the GPA, nothing has been done yet.

We therefore await tangible evidence of a commitment to fulfilling the agreement and instituting wholesale broadcasting reforms compatible with regional instruments such as the Banjul Declaration on the Principles of Freedom of Expression in Africa, the Windhoek Declaration and the African Charter on Broadcasting (ACB).

Biased government-controlled media: The public media is still extremely politicized. The implications of this have been underlined by their partisan coverage of national events. This is despite the undertaking by the parties to “ensure that the public media provides balanced and fair coverage to all political parties for their legitimate political activities,” and to “take appropriate measures” to ensure that all media “refrain from abusive language that may incite hostility, political intolerance and ethnic hatred or that unfairly undermines political parties and other organisations”.

Ever since the prolonged political dispute over the partial fulfillment of the GPA started, the government-controlled media led by *The Herald* and ZBC has been launching offensive and abusive attacks on other arms of government, with complete disregard for the political agreement. This has been seen by the new wave of ‘jingles’ and/or ‘songs’ that are being aired every half hour on ZBC in gleeful praise of ZANU (PF) as the dominant party in government. During the period under review, the public media has remained unrepentant. In the broadcasting spectrum, reforms have not been implemented.

CONCLUSION AND RECOMMENDATIONS

Media stakeholders met during the second All Stakeholders Media conference at the Rainbow Towers on 28 May 2010 and came up with the following resolutions which are here reproduced as the considered recommendations to ensuring media reform by practitioners:

- The Zimbabwe constitution must guarantee freedom of expression, including clear and specific clauses on media freedom, access to public information, academic freedom and artistic activity.
- We urge the government of Zimbabwe to immediately repeal all repressive laws affecting media practice such as AIPPA, POSA, the Interception of Communications Act, Criminal Law (Codification and Reform) Act and The Official Secrets Act.

- We do not agree with plans to replace the repressive AIPPA with a Media Practitioners Bill and a Freedom of Information Act that attempt to control media freedom and diminish citizens' rights to access information.
- There should be no compulsory registration of journalists or prescriptive qualifications. Any accreditation of journalists should be a simple administrative exercise that does not carry the option of rejection and only for the purposes of professional identification.
- Zimbabwe media stakeholders will only support a Freedom of Information Act that provides for easy access to information held by public bodies with clearly but narrowly defined limitations subject to appeal to an independent body.
- We reluctantly recognise the Zimbabwe Media Council as a transitional mechanism towards voluntary regulation of the media, and urge all stakeholders to commit themselves to this goal.
- We urge all media stakeholders to resist any attempts to co-opt the Voluntary Media Council of Zimbabwe into the Zimbabwe Media Council to implement repellent and repressive legislation.
- We acknowledge the licensing of new newspapers by the Zimbabwe Media Council but are seriously concerned about the silence and inaction on establishing an independent and effective body to issue licenses for the broadcasting media.
- We call on stakeholders working on community and commercial radio station projects to submit their applications to existing licensing authorities to test their commitment to media freedom.
- While we are obliged to recognise the legal existence of the Broadcasting Authority of Zimbabwe as a transitional entity, we consider the appointment of the present board to be null and void. In addition, we demand the immediate establishment of an independent and professional broadcasting authority and urge it to consider applications for broadcasting licenses immediately upon being established.
- All legislation affecting the broadcasting environment must encourage a diverse range of broadcasters to operate at national, local and community levels.
- We call upon all media stakeholders to give maximum support to strengthen the Voluntary Media Council of Zimbabwe so that it becomes truly representative and effective in its operations.
- Registration of any print media should be a simple administrative exercise that does not carry the option of rejection, and that any media business should not be subjected to any special levies beyond those imposed on other businesses.

RESPECT FOR HUMAN RIGHTS AND OPERATING ENVIRONMENT

SUMMARY

The first six months of 2010 brought no change in the political stalemate facing the Inclusive Government over several sticky outstanding points, among them, appointment of permanent secretaries, senior diplomats, provincial governors, the Reserve Bank Governor, the Attorney General and refusal by President Mugabe to swear in Deputy Agriculture Minister – Designate, Roy Bennet. The deadlock not only threatens the stability of the Inclusive Government but also casts a black shadow over the political developments crucial for democratisation, these being the roll out of constitution making exercise to produce a credible outcome, and thereafter, the referendum and elections.

The three reports produced by the Cluster between January and June, of which this is a consolidation, show that although there may not be wholesale failure to implement and adhere to the terms of the agreement, certain breaches to the agreement continued to occur resulting in human rights abuses. Although many activities proceeded without hindrance, the operating environment for civil and political organisations remained restricted, characterised by instability and inconsistencies. The Zimbabwe Republic Police continues to invoke repressive legislation like POSA, AIPPA and the Criminal Code to arbitrarily impose bans on some political and civil organisations' activities, as well as to interrupt and disperse them.

More worrying were the actions of individuals, abusing their authority to further their political affiliations or to ban participation in certain meetings and gatherings. Numerous incidents of politically motivated violence and intolerance centred on the constitution making process; although many of these did also take place peacefully.

The following are the specific GPA benchmarks identified by CISOMM to measure compliance and non compliance with regards to protection of human rights, and civil liberties and the creation of a conducive operating environment for civil society.

BENCHMARKS

- Political meetings /rallies held without hindrance
- Police do not invoke Public Order and Security Act (POSA), Access to Information and Protection of Privacy Act (AIPPA), & Criminal Code to restrict meetings.
- No unlawful detentions, arrests, human rights abuses committed by police and other state and non-state actors.
- State sponsored political and other violence ceases.
- Education and peace building initiatives unimpeded.

COMPLIANCE

Article XII of GPA acknowledges the importance of freedom of assembly and that public meetings should be conducted in a free, peaceful and democratic manner in accordance with the law. The cluster reports already referred to point to the existence of some improvement in the operating environment for civil society organisations, although it is limited and characterised by instability and inconsistencies. Some civic society groups were, in some cases able to hold meetings and demonstrations without police interference. For example, in February 2010, Women of Zimbabwe Arise (WOZA) and their male counterparts, MOZA were able to hold 3 successful marches in Harare, Bulawayo, and Mutare to commemorate Valentine's Day. In the past, such marches always met with police violence, and thus, the fact that these activities among others proceeded without interference shows some compliance.

Some sessions/campaigns on constitution awareness and peace building were rolled out by different civic groups and most of them proceeded unhindered. However, to demonstrate the inconsistencies alluded to, there are also many incidents of interferences, threats and harassment around some such sessions. For example, on the 18th and 19th March 2010 in Harare, in Budiriro 1 and 5 two constitutional awareness campaigns were poorly attended amidst allegations that ZANU PF hardliners threatened repercussions on those who wanted to attend. In Makoni South, an NGO on a constitutional awareness campaign faced threats from members of the CIO on 12th February in Rukweza. Some incidents were also reported in Matebeleland North, one of them involving a civic society activist who was arrested for holding meetings with government heads without notifying the police.

One significant positive event was the acquittal on 10 May 2010 of MDC- T Treasurer General, Roy Bennett on charges of plotting to overthrow the former ZANU PF government. High Court Justice Chinembiri Bhunu ruled that the State, represented by Attorney General (AG) Johannes Tomana had failed to prove that the e-mails linking Bennett to arms dealer Peter Hirschmann were genuine. However, on 12 May 2010, the Attorney General filed a Chamber Application in the Supreme Court seeking leave to appeal against the acquittal. After the court's ruling, the AG commented to the press that the AG's office was accepting the judgement and would respect the court; the chamber application was only filed after media reports quoted Emerson Mnangagwa and Jonathan Moyo commenting that the AG could appeal against that decision.

Another event showing compliance to article VI on making of a new constitution was the much awaited roll out of the Constitution Parliamentary Committee (COPAC) outreach programme as already noted. On, 16 June 2010 the three principals to the GPA, President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara finally launched the outreach programme expressing political commitment and non-violence. The roll out was generally chaotic, but some meetings were reportedly being held in a conducive atmosphere with people being encouraged to participate. However, as already noted, and as will be discussed in more detail, the main cases of harassment and intimidation experienced centred on the constitution making exercise.

A positive development to reform security laws was the introduction in Parliament of the Public Order and Security Act (POSA) Amendment Bill in February. The Bill gazetted in November 2009 as a Private Bill by MDC-T MP for Mutare Central, Innocent Gonese went through its first reading in Parliament but appears to have been shelved as focus is now on the constitution making exercise.

NON-COMPLIANCE

Article XII, as already noted, recognises freedom of assembly and association, a right police officers and law enforcement agencies have yet to appreciate. The reality on the ground is that there is no compliance. In fact, the police continue to invoke repressive legislation like POSA, AIPPA and the Criminal Code to arbitrarily impose bans on political and civic organisations' gatherings, and demonstrations, as well as to interrupt and disperse them. Such interruptions are often accompanied by unfounded arrests and detentions in clear breach of GPA. For example, a meeting organised by the Plumtree Legal Advice Centre (LRF) in collaboration with the NGO Forum, on transitional justice, failed to take off on the 5th of February in Plumtree town because the police refused to clear it. On 21st March 2010, two Bulawayo Agenda Programme Officers in Nkayi were arrested for not obtaining police clearance for a meeting. Nkabazwe Community radio initiative, based in Gweru, was on 19 May denied police clearance to hold a road show scheduled for 22 May 2010 for 'security reasons'.

Students have also continued to bear the brunt of state sponsored acts of violence and human rights abuses. On 14th January, police in Bindura arrested 25 students from the Bindura University for holding a demonstration over exorbitant tuition fees. Again, on the 19th January, 2 student activists at the National University of Science and Technology (NUST) were arrested and severely beaten up by police in Bulawayo being accused of trying to incite violence. Another 4 students were also arrested in March 2010, and only got bail on 31 March 2010. Their charge was participating in a gathering with intent to promote public violence, breaches of the peace or bigotry under the Criminal Law Code. In addition to the over-zealousness of the police, the inhumane and degrading conditions at police cells have been widely reported, yet complaints being made by those arrested in court are not being investigated, which deprives them of the protection of the law.

Reports were also received pointing again to the fact that repressive legislation; POSA and the Criminal Code have continued to be used against the MDC to deny it operating space. Incidents were reported of police refusal to clear MDC rallies and where these then proceeded without such clearance, either the organisers or those who would have addressed such rallies were subsequently arrested. For example, MDC-T Senator, Morgan Komichi was arrested in January after addressing a rally at Chiwaridzo Shopping Centre in Bindura and charged for undermining the authority of, or insulting, President Robert Mugabe when he addressed the rally. MDC-T Eliah Jembere and another party official were arrested on the same charge as Senator Morgan Komichi while addressing an 'unsanctioned' rally in Shamva.⁴¹ The MDC-T's constitutional awareness meetings were reportedly banned by ZANU PF activists in Maramba Pfungwe.⁴² Former St Mary's MP, Job Sikhala, was arrested alongside two other officials from the MDC-99 by the police and charged under POSA for launching his party on the 8th of May without police clearance for the meeting.

The continued banning of MDC-T rallies and meetings is not only a breach of the article on freedom of association and assembly but also such action is in contravention of Article X of GPA which recognises the right to canvas and freely mobilise for political support.

⁴¹ *The Standard*, 6 June 2010.

⁴² *Studio 7*, 14 June 2010.

More worrying were the actions of individuals, abusing their authority to further their political affiliations or to ban participation in certain meetings and gatherings. Such incidents were noted in the March-April CISOMM report. For example, the ZANU PF governor for Mashonaland Central banned meetings organized by the Zimbabwe Election Support Network (ZESN) scheduled for 7 and 8 April meant to discuss electoral reforms as part of the new constitution. The Ministry of Women's Affairs, Gender and Community Development in Gweru instructed their staff not to engage NGOs in outreach around the constitution as they had their own Ministry programme. A councilor in Mberengwa stopped a meeting on transitional justice saying it was not acceptable to discuss issues of healing in his area. Some particularly disturbing cases occurred, which showed that police continued to stifle free and peaceful civil society activities through disruptions, unlawful arrests, detentions, searches as well as threats and intimidation. For example, the General-Secretary of GAPWUZ, Mrs Gertrude Hambira had to flee the country after, police threatened and intimidated her and her staff concerning a documentary, *The House of Justice*, and the accompanying report, *If Something is Wrong*.

In another incident the Zimbabwe Human Rights Association (ZimRights) photo exhibition depicting human rights violations during the violent 2008 Presidential Elections run-off only went ahead in Harare on 14 April after the High Court ordered police to return the photographs they had confiscated. ZimRights Director, Okay Machisa, was detained for several hours when the police first seized the photographs on 13 April and threatened him with unspecified criminal charges. Although the exhibition went ahead uninterrupted in Mutare, the police later seized the pictures in Masvingo and detained the Provincial Chair, although he was later released without being charged. Another incident was the arrest of Farai Muguwu of the Centre for Research and Development (CRD) by the police in Mutare on 27 May 2010. The police officers raided the offices and took away some documents. Farai Maguwu was denied bail for several weeks. The CRD has been exposing rights abuses in the diamond fields in Chiadzwa, Marange.

Independent media journalists, editors and other staff members also continue to be victims of harassment by the police. For instance, Golden Maunganidze the editor of *The Masvingo Mirror* was on 10 May 2010 interrogated for six hours by the police following publication of a story that allegedly criminally defamed Walter Mzembi, the Minister of Tourism. In another incident, two staff members from Zimbabwe's first independent daily newspaper in seven years (*NewsDay*) were arrested when the paper hit the streets for the first time. The *NewsDay* staff members and two distribution agents were picked up by police while distributing a special free edition of the paper.

Article XII of GPA prohibits the use of violence to achieve political ends, and despite a rhetorical rejection of violence, the Inclusive Government has failed to curb politically motivated violence between their supporters. Conducive conditions for meaningful citizen participation in the constitution making process to produce a credible people driven constitution have not been created. In fact, the reality on the ground as already noted is that the constitution making outreach programme has become a major source of coercion and intimidation, intended to muzzle meaningful debate and input into the process. Perpetrators of such violence are, according to most reports, ZANU PF hardliners, officials, Youth militia (or the so called Border Gezi members), Zimbabwe National Army members in districts, war veterans and some traditional leaders.

The May–June report of this Cluster cited a number of such incidents of intimidation, physical attacks, and threats of violence around the constitution making exercise, which it derives from its own grassroots work. For example, in Mutasa South, members of the Border Gezi were reportedly being sent out by ZANU PF hardliners to disrupt the constitution awareness campaigns and as a result of such resistance, on 16 April an awareness campaign was almost abandoned. Studio 7 and Newsday (17/06) reported the alleged burning of homes belonging to MDC-T supporters by suspected ZANU-PF activists to frighten them from participating in constitution outreach programmes in Muzarabani. In some cases, it was alleged that ZANU PF had pre-selected people to represent everyone in presenting views to COPAC, threatening violence to anyone apart from those selected who would dare to elaborate their views. Other reports of threats and violence around the constitution were received from Uzumba Maramba Pfungwe, Buhera, Gokwe, Mt. Darwin, Muzarabani (as has been reported), Mhondoro, Makoni, Mutoko, Mudzi and Epworth. Similarly in a move seen as a move to stifle discussion on sexual orientation, Gays and Lesbians Association of Zimbabwe (GALZ) officials Ellen Chademana and Ignatius Mhambi, were arrested following a police raid at the GALZ office in Milton Park and were held at Harare Central Police station on charges related to the contravention of the Censorship and Entertainment Control Act (Chapter 10:04)

MDC supporters, real or perceived, continue to suffer politically motivated violence and castigation. In this regard, some traditional leaders who continue to engage in partisan political activities were cited as perpetrators of such violence. For example, a chief from Chimanimani was reported to have summoned MDC supporters to his homestead and fined them US\$10 each as punishment for belonging to a political party of their choice. Similarly, a chief from Muzarabani North evicted a family from the Independence celebrations at Sone Business Centre because they are members of the MDC-T. On June 14 in Muzarabani District, an MDC supporter's home was burnt and the victim chased away from the area in Machaya village.

There has also been an increased number of church related violations in Mashonaland Central. This has been reported in Mazowe, Mt Darwin and Muzarabani constituencies where villagers were being forced to denounce their certain political parties in order to be allowed into the church assemblies. Again in the same province, two MDC activists were excommunicated from the Johane Masowe Apostolic Church on the basis that they openly supported the party of their choice. Similarly, Anglican Church parishioners who are allegedly anti- Bishop Nolbert Kunonga continue to be denied use of the congregations' premises by anti-riot police officers, clearly in contravention of Article XIII that requires state organs and state institutions to be apolitical. For example it was recorded in Chitungwiza, that about fifteen anti-riot police officers allegedly denied parishioners access to use the Anglican premises at St All Saints congregation in Unit K. In Manicaland, senior Zanu PF politicians hijacked a Passover ceremony for the Johane Marange Apostolic sect and ordered the leaders to denounce MDC-T leader Morgan Tsvangirai as well as excommunicate all MDC-T supporters.

Some incidents of continued human rights violations of commercial farmers were reported as well. The evictions of two commercial farmers, Trevor Gifford and Michel Fyd'herbe from their farms in Chipinge and the intimidation of another, Matthew Taylor, in Nyamandlovu were reported in SW Radio Africa & *The Zimbabwean*, 14 and 17 June.

It has been mentioned in this report that some peace building initiatives by civil society had proceeded unhindered. However, such efforts were isolated, uncoordinated and therefore hardly effective. The

Organ on Politics and National Healing, Reconciliation and Integration remains by and large inactive. No concrete steps have been taken by the law enforcement agents to bring to book all those responsible for past human rights violations and provide redress to the victims of violence. In fact, reports were received of the abusers actually continuing to haunt their victims. For example, in June 2010 in Mt Darwin District, six women from Mukumbura, raped in 2008, reported that their assailants were now revisiting their homes threatening them with further violence, even telling the victims' husbands how they enjoyed their crimes. On June 12, eight villagers, all victims of the 2008 violence, left their homes after they had been visited by state security agents, looking for MDC activists who had filed intentions to sue the people who assaulted them in 2008. In both incidents the police refused to intervene.

CONCLUSION AND RECOMMENDATIONS

During the first six months of the year 2010, some civil society activities proceeded without hindrance but the benefits of such developments were overshadowed by a significant number of activities either banned or disrupted. Unlawful arrests, detentions, intimidation and threats were rampant. Key GPA provisions were breached, in particular: Article X that guarantees free political activity, Article XI that pledges rule of law and respect for the constitution and other laws, Articles XII and XIX that guarantee freedom of assembly, association, expression, and communication and Article XVIII on measures to protect the security of persons and prevent violence.

To ensure implementation of GPA provisions on respect for human rights and operating environment by the Inclusive Government, CISOMM recommends the following:

- Parties to the GPA must once and for all resolve the stalemate facing the Inclusive Government in order to focus full attention to implementation of political developments crucial for the restoration of human rights, democracy and good governance.
- Police and other law enforcement agents should desist from unnecessarily invoking POSA, AIPPA and the Criminal Code to ban and disrupt peaceful gatherings, meetings, rallies and demonstrations. The Public Order and Security Act (POSA) Amendment Bill should not be allowed to die a natural death.
- The arbitrary arrest and detention, as well as harassment of political activists, civil society members and journalists should come to an end.
- Politically motivated interference detrimental to the constitution making process should come to an end to enable full citizen participation. COPAC should be accorded the space and resources to produce a credible draft constitution. It must therefore thoroughly investigate all reports of violence and intimidation and come up with solutions to correct these.
- Parties to the Inclusive Government must take concrete steps to halt politically motivated violence, promote national healing and unity, rebuild and reform law enforcement institutions and ensure that the Human Rights Commission become operational.

INSTITUTIONAL AND LEGISLATIVE REFORM

INTRODUCTION/SUMMARY

The GPA serves as a roadmap to guide Zimbabwe through a transitional phase in the wake of the disputed 2008 elections to a point at which the population can freely express its will in the making of a constitution, and then elections. In order for these outcomes to be achieved, it is essential that state institutions and actors as well as the legislation are not used to repress human rights as they were in the past. Without significant reform of problematic institutions such as the police, army, Central Intelligence Organisation, the Attorney-General (AG)'s Office and repressive pieces of legislation such as POSA, AIPPA, the Criminal Law (Codification and Reform) Act, there can be no different outcome than the scenario that gave rise to the GPA. A few areas of compliance were recorded with the creation and initial actions of certain Commissions – Zimbabwe Electoral Commission (ZEC), Zimbabwe Human Rights Commission (ZHRC) and Zimbabwe Media Commission (ZMC). There have also been a limited number of encouraging acts by Parliamentary Portfolio Committees in exerting their oversight role on the executive and in conducting public hearings, as well as a few welcomed pieces of legislation. On the whole though, the performance of Parliament in delivering real legislative change has been very disappointing. It seems as though 'rule by law': the use of repressive legislation to further a political agenda, has emerged as a preferred tactic of ZANU-PF with numerous cases of trumped up or spurious charges brought against MDC-T politicians, supporters and ordinary civil society actors, through the office of the AG. This reveals serious problems in the justice delivery system. In addition, perpetrators continue to enjoy complete impunity for their crimes. The dismissal of rulings by the SADC tribunal by the Minister of Justice, as well as several other examples of disregard for international and regional standards and treaties, leaves Zimbabwe something of a pariah. From the protracted negotiations around outstanding issues, the disruption to Parliamentary work due to the constitutional outreach and insulting cases of unilateral decisions being made by the executive without any consultation of the other parties, institutional and legislative reform has not progressed well.

BENCHMARKS

- Duty of all political parties and individuals (state actors) to respect and uphold the constitution and adhere to principles of the Rule of Law, including respect for regional and international standards.
- All state organs and institutions strictly observe the principles of the Rule of Law and remain non-partisan and impartial in the discharge of their duties.
- Recruitment policies and appointment practices are conducted in a manner that ensures no political or other favoritism.
- Training curriculum for uniformed forces on human rights, international humanitarian law and statute law so that they can appreciate and understand their role in a democratic society.

- The legislative agenda will be prioritized in order to reflect the letter and spirit of the GPA.
- The IG will discuss and agree on further legislative measures which may be necessary to implement the agreed policies, and in particular, with a view to entrenching democratic values and practices.
- Regardless of race, ethnicity, gender, political affiliation and religion, all Zimbabweans have the right to benefit from and participate in all national programmes and events without let or hindrance.

COMPLIANCE

Although GPA Article XVII exhorts the parties to prioritize the legislative agenda, the number of Bills passed in the last six months fell far short of the forecast referred to in STERP and the Prime Minister's speeches. The Public Finance Management Bills, although passed in December 2009, still have the possibility, if properly applied, to ensure regular reporting to Parliament and thus better transparency. The Judicial Service Act (came into force on 18 June) was also welcomed as it removes the magistracy from executive control under the Public Service Act and could thus ensure greater independence for the bench. Early in the year there was also an amendment made to the Electoral Act, asserting rights of privacy in voting for the visually impaired. Finally, the introduction of a Private Member's Bill to amend POSA was a long-awaited move. However, the Bill was only halfway through its second reading when Parliament was prorogued leaving this critical piece of legislation unreformed – it has however been restored to the Order Paper, although not in time to ease repression of public gatherings for the constitutional outreach.

Additionally, positive motions included approval of the SADC Protocol on Gender and Development, approval of the BIPPA between South Africa and Zimbabwe, acknowledgement that the conferment of hero status should not be decided by one party alone, and calls for Codes of Conduct for the Executive, Judiciary and Legislature. It was unfortunate that the motions calling for the appointment of a select committee to investigate the 2008 election violence, and an audit of the voters' role, were not concluded within the parliamentary session.⁴³ It must also be positively noted that Parliament conducted widespread public hearings on the POSA Amendment Bill, as well as on the state of the public media, the Indigenisation Regulations and several others. Parliamentary Portfolio Committees also accomplished good work, attempting to exert their oversight role by going to investigate areas of concern. These attempts were met with hostility by some Ministries, for example the Ministry of Mines, which refused to cooperate and obstructed the work of the Committees (see further in Non-Compliance below). Hearings were also open to the public, an opportunity that was not missed by a range of civics, journalists and interested citizens. Lastly, new arrangements were made in order to accept e-mail submissions for consideration by the Parliamentary committees by concerned members of the Diaspora.

The Commissions that were established by Constitutional Amendment 19 in February 2009 certainly took an inordinate amount of time to set up. Nevertheless, in the case of 3 out of 4 (with only the

⁴³ Veritas, *Bill Watch 30/2010*, 31 July 2010

Anti-corruption Commission having failed to lift off) the Commissions are up and running. What follows below is a brief review of the established commissions; these are welcomed in the sense that they have very important service mandates and are a constitutional requirement very much in line with the objectives of the GPA. However, it is clear that each has to deal with some serious impediments which make it likely that they will not be able to deliver the anticipated results.

The Zimbabwe Media Commission (ZMC) did not need to be sworn into office and finally had its first meeting on 18 March. They promised 'expeditious fulfilment' of the Commission's mandate to develop freedom of the press, ensure equitable and wide access to information, and also to advise government on which laws and regulations should be reviewed in furtherance of the freedom of expression. The ZMC has now licensed 8 new media players, but does not seem to have addressed any issues of legislation – which in the current state, undermine its own independence. Please see the 'Media Reform and Freedom of Expression' chapter for more details.

The Zimbabwe Electoral Commission (ZEC) was sworn in on 31 March. Its main responsibility will be to 'prepare for, conduct and supervise' Presidential, Parliamentary and local authority elections as well as referendums. Due to the President's reallocation of Ministerial functions, the administration of the Electoral Act now falls under the Ministry of Justice and Legal Affairs, which means that the Commission would require Minister Chinamasa's approval for making regulations and so forth. There are further serious impediments to ZEC's ability to ensure free and fair elections, both institutional and legal.⁴⁴

The Zimbabwe Human Rights Commission (ZHRC) was also sworn in on 31 March 2010. However, its composition remains unconstitutional, as section 100R(3) stipulates that, in addition to the chairperson, there must be a gender balance of the Commissioners - 4 women and 4 men. Unfortunately, only 3 women were sworn in. While the Constitution refers to the powers and functions of the Commission, the details and its additional powers are to be set by Act of Parliament. While the Commissioners may be in a position to advise on what should be included in a forthcoming Bill, there is as yet no enabling Act. Although this Commission comes about through the Constitution and is set to deal with human rights, it also falls under the Ministry of Justice and Legal Affairs.

There are only a few other state institutions which have successfully attempted to work together in a non-partisan way. The Constitutional Parliamentary Committee (COPAC) is one such example, as are some of the Parliamentary Portfolio Committees and the Joint Monitoring and Implementation Committee (JOMIC). The latter has even sought to conduct outreaches with traditional leaders to urge their neutrality in light of the Inclusive government. The shared Ministry of Home Affairs on the other hand has completely failed to ensure that the Zimbabwe Republic Police operates impartially; with the misguided actions of Theresa Makone – the new MDC-T co-Minister- during her first few weeks not seen as particularly encouraging. Additionally, the National Security Council seems to be achieving nothing, with reports that the Joint Operations Committee is still directing operations of the security services. It is with these institutions that the biggest concerns lie as their means of coercion can be used in fundamentally undemocratic ways, as they have in the past. The reports of

⁴⁴ See Veritas, *Bill Watch 14/2010*, 1 April 2010.

intimidation and violence from rural areas prior to the outreach process, mainly accused the army, police, war veterans and ZANU-PF youth groups. These have not as yet received training on human rights and international law as was agreed to in the GPA.

NON-COMPLIANCE

The Inclusive Government has, on several occasions, failed to comply with national and international laws and treaties. Unfortunately this relates to the established culture of impunity, whereby no meaningful censure is ever incurred for misdemeanour. Domestically, the parties compromise to let laws slide. SADC, the African Union and international bodies such as the diamond reviewing mechanisms need to take a much firmer approach in dealing with a government that is so contemptuous of legitimate regulation, at the expense of its people.

First of all, there is the government's failure to comply with its obligations under the SADC Treaty and honour the rulings of the SADC Tribunal. The Minister of Justice rejected the Tribunal's jurisdiction and dismissed its rulings as "null and void". Justice Patel followed suit by declining to register the Tribunal's judgement in domestic courts. A finding of contempt against Zimbabwe was made in June 2009, and reiterated on 16 July 2010, and referred to the SADC Summit for 'appropriate action'.

The shady dealing of diamonds from Chiadzwa has been another persistent area of concern, involving the government's rejection of international diamond watchdog recommendations, Parliamentary contempt, human rights violations and displacement of residents, and the illegal and unwarranted detention of a human rights activist working in the field. In early March, the Kimberley Process Monitor to Zimbabwe, Mr Abbey Chikane observed "too many government agencies are involved in monitoring and handling rough diamonds. This poses the danger of diamonds being swapped or stolen in the process". The Ministry of Mines repeatedly blocked access to the Chiadzwa site by the Portfolio Committee for Mines and Energy who were investigating discrepancies - in spite of the clearance that they had received from the Ministers of Home Affairs. In addition, it was at the instigation of the Minister of Mines, Obert Mpofu, that the various companies involved, Mbada and Canadile, resisted interrogation by the Portfolio Committee. The diamond fields remain largely under the control of the army, with partnerships springing up covertly and millions of dollars in diamond revenue escaping the country unaccounted for. However, in the 2010 Mid-year Fiscal Policy Review, Minister of Finance, Tendai Biti, outlined a new approach to Zimbabwe's diamonds which would return the revenue to the national coffers, ensure that operations are conducted within the parameters of the law and allow greater transparency. The proposed Diamond Act should be expeditiously drafted and set strong measures against the corruption and exploitation that has preceded it.

Locally, there have been several other instances of non-compliance with the law by the parties, including for example, Minister of Local Government and Urban Development Ignatius Chombo, who was reported for abuse of office in the illegal acquisition of prime urban council land and then tried to have the investigators arrested. There is also the issue that, in the period under review, vacant constituency seats rose to 16. No by-elections have been held as yet to fill the vacant seats, which is in breach of the Constitution and the Electoral Act.⁴⁵ This latter case is just one example that

⁴⁵ Veritas, *Bill Watch 30/2010*, 31 July 2010.

demonstrates that when national laws or the constitution are not seen as convenient to the interests of the Inclusive Government they agree to ignore them.

While the outstanding issues seem to have stalled on the appointment of three major political players – Gideon Gono as Governor of the Reserve Bank, Johannes Tomana as Attorney General, both of whom were appointed unilaterally by the President; and the latter's refusal to swear in Roy Bennett as MDC-T Deputy Minister of Agriculture (in contravention of Article XX of the GPA) – there are several other appointments that were made unilaterally by the President, with the intention of concentrating critical machinery in the hands of ZANU-PF and further weakening cooperation in the fragile alliance.

The appointment of 10 provincial governors remained ZANU-PF's advantage at the start of the IG, with MDC conceding they would wait for the equitable division of governorships until *last August*, the deadline has now long since past and the appointments are only due reportedly, at the end of August.⁴⁶ This has meant that ZANU-PF continues to hold a majority in the Senate (Zanu-PF 56; MDC-T 27; MDC-M 8), and due to various convictions -awaiting appeal- of MDC-T legislators, the current strengths in the House of Assembly are almost equal (Zanu-PF 96; MDC-T 96; MDC-M 7)⁴⁷.

Then there was the President's surprise allocation of powers to Ministries controlled by members of his own party from where they should rightfully have remained within MDC Ministries, including significant control over the electoral machinery. Further, in May, the President appointed Justice (Brigadier-General) George Chiweshe as Judge President of the High Court, replacing the perhaps outspoken Justice Rita Makarau. This "key" appointment, as well as of three other new judges, was done without any consultation of the GPA partners, a move sure to increase the tensions between the parties. When it is noted that it was Chiweshe himself who presided over the astounding delay in releasing the March 2008 Presidential election results, as chairman of ZEC, it becomes abundantly clear that power is being concentrated in strategic areas by ZANU-PF by the appointment of party loyalists; to the point where it will be ZANU-PF who control the machinery in future elections. The fact that these appointments are all in defiance of the GPA provisions is most often countered by the MDC with 'shock' and perhaps a letter.

There has been no improvement, and quite possibly a further decline, in the rule of law since the signing of the GPA, according to a recent study done by the Bar Human Rights Committee.⁴⁸ Significant concerns remain with regard to all aspects of the justice delivery system and the rule of law in Zimbabwe. While the Judicial Service Act is welcomed, and may improve the independence of the Magistracy from the Executive, as a whole the Bench suffers from a lack of independence; with the fact that many judges are the particular beneficiaries of land, cars and other goods as an external sign of their state patronage. Those who have delivered judgments unpalatable to ZANU-PF have sometimes been threatened, intimidated or even prosecuted. The Attorney-General's Office has stepped up its harassment of perceived opponents, including members of the legal profession, legislators, civics, journalists, students and MDC supporters, with a litany of absurd charges and the

⁴⁶ Veritas, *Bill Watch 11/2010*, 22 March 2010.

⁴⁷ Veritas, *Bill Watch 30/2010*, 31 July 2010.

⁴⁸ Bar Human Rights Committee, *A place in the sun: A report on the state of the rule of law in Zimbabwe after the Global Political Agreement of September 2008*, June 29 2010.

repeated use of Section 121 of the Criminal Procedure and Evidence Act (which serves to postpone bail after this has been granted to allow the State to appeal). Even cases which have been stupendously lost by the State are protracted by appeals against acquittals, e.g. Roy Bennett. Lastly, law enforcement agencies continue to disregard the law when judgments are made, operating, apparently under 'other orders'. This is particularly evident in the complicity that the Police have had with land invaders, refusing to come to the assistance of farmers and farm workers, even when these have the benefit of a legal right to remain on land.

RECOMMENDATIONS

- A Human Rights Commission Act is urgently needed to establish the legal capacity of the Commission, its conditions of service, powers of investigation and so on. Public consultations should be undertaken in the development/finalization of this Bill. The Bill must also comply with the Paris Principles, relating to the status of national institutions for the protection and promotion of human rights, adopted by the UN General Assembly in 1993.
- SADC must address Zimbabwe's willful contempt of the SADC Tribunal if this court is going to have any lasting credibility and authority in the region. It should not be left up to countries to decide whether or not they are interested in accepting an unfavourable judgment once they themselves have ratified and seconded judges to that institution.
- The Government of Zimbabwe should demonstrate compliance with the rule of law by: conducting the long overdue by-elections; rejecting corruption and bringing political individuals to account for offenses. Ending impunity in politics is essential for the development of this country.
- The proposed Diamond Act should be drafted expeditiously, ensuring transparency in the process and legitimacy in the diamond industry. The human rights violations that have occurred, the need for compensation for victims of displacement and previous court judgments relating to rights on the terrain must be addressed.
- Rule of law institutions must be strengthened, financially and technically to allow them to carry out their mandate professionally and independently.
- All Members of Parliament have a responsibility to their constituents to deal with the passage of legislation. Far too little was accomplished in the last Parliamentary Session to justify the huge expenses that accrued.
- Finally, law enforcement agencies and the security services in general need to perform their duties in an impartial and non-partisan way. They should be reminded of their role to protect the people, and undergo human rights training to enable them to distinguish between acceptable and unacceptable behaviour in their professional contexts.

TRANSITIONAL JUSTICE AND NATIONAL HEALING

SUMMARY

This bi-annual report demonstrates the parody the GPA has become, particularly in meeting one of its noblest objectives, that of national healing, unity and cohesion. Article VII of the GPA provides for national healing or transitional justice. It states that there shall be an agency for national healing which shall facilitate, during the life of the GPA, the process of national healing and transitional justice. Through its projects and the assistance of the civil society, the Organ of National Healing (hereafter, the Organ) was going to provide the necessary political will to effectively bring political tensions, violence and vilifications to an end, such that the transition to democracy would begin smoothly.

Violence has continued unabated with reports of the return of the political re-education bases across the country and regrouping of the militias. The public media has remained intransigent, fanning violence through its insinuating jingles and partisan reporting. The re-conceptualisation of the national youth training programmes and training of police in human rights are yet to be commenced. The organ has remained ineffectual and undecided, failing to lead in this project of national importance.

The period under review does not only show how this has failed, but who has caused these problems, and how the Organ has responded in every circumstance. This report shows a general renegeing on the GPA principles and proposes that the Organ be reconstituted with more power, focus and finances to enable it achieve its objectives under Article 7 of the GPA.

BENCHMARKS

- End acts of intolerance against select groups
- Practical measures put in place to address historical imbalance in development of different regions
- Full consultation with victims and survivors before the establishment of a national healing mechanism
- Full civic participation leading to the establishment of the national healing mechanism
- Displaced persons allowed returning home without retribution and restoration issues addressed
- Promotion of initiatives to resolve the differences resolved through tolerance and mutual respect
- Concrete measure (legislative and administrative) put in place to ensure political neutrality of traditional leaders

COMPLIANCE

Up to April 2010 there had been a commendable decline in political violence across the country. The so called "No-go Areas" hitherto controlled by ZANU-PF had been opened and civil society reported

MDC political activity in those areas, indicating a mellowing of tensions. In March the principals of the GPA, took a position against violence and also called upon their supporters to shun it. At independence celebrations President Mugabe maintained his call for ending political violence. Such important calls were expected to filter to the rank and file, the victims and perpetrators of political violence.

On 16 June 2010, the principals to the GPA, President Mugabe, Prime Minister Tsvangirai and Deputy Prime Minister Mutambara made a statement at the launch of the Constitution Outreach Programme calling for the avoidance of intimidation and violence.⁴⁹

The important gestures were intended to set the tone and encourage political transition on one hand and the people's participation in the constitutional making process on the other. At face value, the collective stand by the leaders of the GPA against violence can be viewed as the most welcome and definite position against the resurgent momentum of political violence in the wake of the constitutional outreach. Instead, the calls appeared to have fanned the vitriol and violent spirit that has generally descended on the country, particularly during the constitutional outreach period.

NON-COMPLIANCE

Compared to the pre-GPA era, the period under review can be regarded as relatively stable with a decline in the incidence of political violence, intimidation and aggression. However, many acts of violence were recorded on commercial farms, where invasions persist. Other incidences involved attacks at party gatherings or attacks made because of party affiliation. These involved aggressors from both the MDC formations and ZANU-PF.

Most of the violence was meted out on MDC supporters by ZANU-PF, resulting in the loss of property and internal displacement. In Mashonaland East there were reports of torture, theft of livestock, and destruction of property belonging to individuals who had refused to attend ZANU-PF party meetings. In the same area, there were also reports that security forces launched an operation ahead of the constitutional outreach meetings, called *Chimumumu*, ostensibly to influence citizen views on the constitution making process in favour of the Kariba Draft.

At the outset of the constitutional outreach meetings there were reports of a resurgent violence led by some elements from the CIO, the army and ZANU-PF in Karoi, Chinhoyi, Mberengwa, and some parts of Mashonaland East and Central. In Chinhoyi, a constitutional outreach meeting organized by COPAC was disrupted. There are also reports of encamped youths at the venues where consultations are supposed to be held, in Bindura, Masvingo and Gweru, and toy-toying soldiers threatening residents who dare go against the ZANU-PF position in Karoi⁵⁰ on the constitution.

There are reports that the civil societies monitoring the outreach process were assaulted by ZANU-PF supporters. Some traditional leaders were alleged to be setting curfews and calling out registers in their villages to determine the whereabouts of the villagers and the circumstances of their travel, exacerbating a situation already rife with fear and intimidation.⁵¹

⁴⁹ Veritas, *Constitution Watch 10/2010*, 21 June 2010.

⁵⁰ The Zimbabwean, 'iChaos Mars Outreach exercise', June 25, 2010

⁵¹ Radio VOP

In light of extensive non-compliance, the conspicuous silence of the Organ is deeply troubling. With the media awash with reports of the continued escalation of violence, the Organ has not even issued a press statement or carried out an investigation to verify these allegations. The Organ has only managed a few road shows in the provincial capitals where it spelt out its objectives, but clearly it has no practical plan on what to do next, complaining of lacking the financial means and expertise. Even now, it has not produced a report for its road shows from six months ago.

The state media remained intransigent, racist and sectarian in its reporting on the acquittal of the MDC secretary general Roy Bennett. He was vilified in *The Sunday Mail* (16 May) as an "Insult to the struggle", "a former member of the notorious Scouts" and "unrepentant Rhodie". It seemed that the state media did not care about the implications of this stance on the GPA and national healing, and is doing nothing to support the national healing programme. Through hate speech, unbalanced reportage and obsequious jingles on national television and radio, the public media has dealt a mortal blow to the spirit of national healing and fomented sectarian violence and the widening rift between political parties.

Challenges are being experienced in the promotion of initiatives to resolve the political differences through tolerance and mutual respect. There were reports of the Finance Minister Biti storming out of the Cabinet after clashing with ZANU-PF ministers over the Reserve Bank's debt restructuring plan. The ideological differences, mutual distrust, lack of transparency and disrespect are causing considerable friction between parties to the GPA. The down stream effect has been the continued polarity at grass roots and the attendant violence which is borne by the populace.

There have been no concrete measures put in place to ensure the political neutrality of traditional leaders. In Karoi, reports allege that traditional leaders coerced villagers into attending ZANU-PF sanctioned constitutional meetings, where people were supposed to have been coached. In some cases these leaders are said to be calling out registers weekly to see who traveled to towns and why. Such "curfews" at a time when people needed to be free to contribute in the constitution-making process violated the people's freedom of movement and intimidated them in a manner that destroys confidence in the GPA's ability to protect individuals from perpetrators of political violence.

Police arrested two employees of The Gays and Lesbians of Zimbabwe (GALZ), Ellen Chadehama and Ignatius Mhambi, for posting a letter in their office from Willie Lewis Brown, the former mayor of San Francisco, criticising the Zimbabwean president's opposition to homosexuality. They were arrested on allegations under Zimbabwe's censorship law. Police said the letter, mounted on an office wall, "undermined the authority of the president", an offence that falls under sweeping security laws carries a penalty of a fine or brief imprisonment. President Robert Mugabe has described same-sex partners as "lower than dogs and pigs". It is believed that the arrest was motivated by the utterances of the principals of the GPA concerning gays and their rights at an International Women's Day celebrations in March 2010.

RECOMMENDATIONS

The civil society stated, in their minimum demands for transitional justice, that "a credible and independent truth seeking inquiry into the conflicts of the past which holds perpetrators to account and which provides victims the opportunity to tell their stories with a view to promoting national

healing” was the way to go, among other demands. The Organ was supposed to facilitate this process. Without question, it has failed.

- There is a need to ensure that the Organ is reconstituted with credible legal support, financial aid and technical support in order for it to achieve its mandate.
- The GPA needs to have the legal force to ensure that its provisions are binding.
- There is need to demilitarize politics and ensure that the military are back in the barracks.
- The political environment is still tense. The GPA principals need to do more to demobilize their activists who are fomenting violence or intolerance, including traditional leaders.
- The constitution-making process is one element in the range of mechanisms of transitional justice and therefore if healing is to be achieved through this constitution, partisan politics must be set aside. The problems of caused by coaching and pushing particular party position would compromise the quality and legitimacy of the final constitutional text.
- Politically motivated arrests, violence, intimidation and torture need to come to an end as these undermine the GPA .
- ZANU-PF needs to disband the militias and torture bases in the wake of the announcements by the principals that there would be elections soon. Political parties must campaign peacefully.
- Hate speech and partisan jingles on national radio or television is anathema to national healing and must be stopped immediately.

CONCLUSION AND GENERAL RECOMMENDATIONS

Economic Recovery continues to be the sector where the most marked improvement is evident. Progressive legislation and moves to reform and restructure the central bank will further transparency and accountability. However, tight liquidity, high interest rates, decreasing industrial productivity, erratic supply of service utilities such as water and electricity, low wages, low investor confidence, and continued reports of disturbances at some of the farms and poor prices for farm produce, negatively affect fulfilment of Article III, to ensure economic growth and stability.

- The Mid-Term Plan (MTP) should be implemented as promised.
- A National Economic Council should be immediately established, representing diverse interests to input into economic policies.
- Government should take sincere steps to protect BIPPAs, the land invasions must be stopped/addressed, and a comprehensive land audit should follow.
- Mining of diamonds and other natural resources needs to be transparently regulated and its revenue should benefit the people of Zimbabwe.

On Humanitarian and Food Assistance, numerous examples of compliance were noted. Progress in the Health, Education and Food Assistance sectors has been commendable, with cooperation taking place between NGOs and Government. However, deficits were noted in the Prisons and the Farming sectors. Analysis of the harvest also shows that once again, Zimbabwe will be in dire need of food aid.

- In addition to the point mentioned above, adequate agricultural inputs and proper planning would improve Zimbabwe's food security situation.
- The health and nutrition situation in Prisons must be improved drastically.
- Water, health and sanitation infrastructure must be rehabilitated to prevent further large-scale outbreaks of preventable disease.

Media Reform has made a little progress but the situation is still antithetical to freedom of expression. The establishment of the Zimbabwe Media Commission, and its licensing of new players is welcomed. However, journalists continue to face persecution and the opening up the airwaves needs to be prioritised.

- Hate speech and partisan reporting by the state media should cease; equal and fair coverage of the parties on radio, television and newspapers is a fundamental requirement of the GPA.

- The Broadcasting Authority of Zimbabwe should be transparently and urgently established, and undertake the issuing of broadcasting licenses.
- Harassment of journalists in the conduct of their work severely limits the freedom of expression

The Constitutional Reform agenda has taken some of the essential steps, with the outreach stage currently underway. Concerns raised relating to the outreach should be sincerely addressed, and the timeframe for the remainder of the process should be adhered to.

- There is a need to intensify civic education and increase publicity so that people are informed and can participate meaningfully during all stages of the constitution making process.
- Reports of violence, intimidation and coaching must not be ignored as these instances delegitimise the constitution making process.

Regarding Human Rights and the Operating Environment, the situation remains unstable, with many of the key rights and freedoms being violated. Threats against civics and the disruption of their work by the use of repressive legislation such as POSA or intimidation by state or political party agents should be condemned. The GPA assures the right of free political association, expression and security of persons.

- Allow free political activity, such as rallies and meetings to take place unrestricted, without a partisan application of the law.
- Repeal repressive laws which violate the rights of all Zimbabweans, and cease discrimination on the basis of gender, race, nationality, age, creed, sexual orientation etc.
- Rejection of political violence must filter down from the principals, through their party structures so that it is not considered acceptable at the grassroots.

Institutional and legislative reform has been completely stalled by the constitution-making process and the persistence of the outstanding issues. In addition, the inclusive government has done nothing to address issues of impunity when state actors or institutions violate domestic or international laws. This trend cannot be left unaddressed.

- Members of Parliament must address the backlog of legislative reform issues in the next session of Parliament without wasting time and resources.
- Conduct trainings with all members of the uniformed forces on the rule of law, the rights of the accused, and human rights.

- Ensure compliance with the Rule of Law by bringing perpetrators to account, regardless of their station; developing the independence of the judiciary; removing the partisan Attorney-General, and ensuring that the police comply with and enforce legal judgments.

Transitional Justice and National Healing has also stalled in the period under review, as the mechanism created to map the way forward has done little. In addition, inflammatory political statements mean that community level healing cannot begin when hostilities are kept inflamed as politically expedient.

- Traditional leaders and the national youth programmes must remain neutral and reject political violence.
- The Organ must be replaced with an effective mechanism to consult and develop a clear strategy for National Healing.
- Political parties should seek to overcome polarisation on issues and agendas.

