TOWARDS ENSURING FREE AND FAIR ELECTIONS: SADC/ZIMBABWE ROAD MAP: CIVIL SOCIETY ROLE AND CHALLENGES

WORKSHOP REPORT

THE AFRICAN PUBLIC POLICY AND RESEARCH INSTITUTE (APPRI) IN COLLABORATION WITH THE INSTITUTE FOR JUSTICE AND RECONCILATION (IJR)

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Acknowledgements

The African Public Policy and Research Institute (APPRI) would like to thank all those who took their time to participate in this workshop on free and fair elections in Southern Africa with particular focus on Zimbabwe and the role of civil society. The efforts of the organizers are highly appreciated because without their enthusiasm and determination the workshop would not have been successful. Most importantly, the Institute would like to acknowledge the support it has received from its esteemed partner, the Institute for Justice and Reconciliation (IJR), without which the success of the workshop would not have been possible.
Executive Summary

The issue of democratic elections in Africa has remained a very problematic matter. This has become particularly the case because in many African countries elections have been attended by violence either at the point when they are taking place or after results come out. The general picture is that of a tendency not to accept the results if they are not favourable. Out of this emerges violence which plunges the countries into extended periods of political instability that also affects the economies of the affected countries. It remains a challenge for the emerging African democracies to address the issue of post-election violence if they are to enable their citizens to achieve the so much desired advanced quality of life.

While it may be easy to identify instances of post-election violence, it is more difficult to explain the genesis of such violence. While different people from different countries may advance different explanations that depict local situations, a general explanation may have to do with the process of failure to deepen democracy in the majority of the countries. For some analysts, the crisis of a shallow democracy arises from a failure to make a meaningful democratic transition. It appears that African democracies are not able to consolidate, hence the failure to internalize democratic principles that are essential for respecting election results even if they are not favourable. At another level, it has been argued that the failure of democratic consolidation arises from the adoption of liberal democracy which emphasizes personal accumulation through the state apparatus. Whatever argument is raised, the workshop noted that Southern Africa has a huge deficit of democratic transition and consolidation that needs to be addressed for purposes of both political and economic stability.

The case of election-related violence in Zimbabwe was deliberated upon and was considered to be a threat to regional security. It was argued that the Zimbabwe experience was informative to other states in the region, particularly on the handling of elections and their aftermath. Elections are a democratic mechanism of power transfer and they should be respected and the results should be accepted. There is a need for the states to reformat themselves such that some sectors are not allowed to influence the electoral process or the results of elections. Particular reference was made to the security sector which in the case of Zimbabwe was seen to be driving the violence that has ravaged the country resulting in the loss of many lives. The fact that the army has ceased to be the protector of democracy and democratic institutions lamented. The uniformed forces are manipulated by politicians to focus on the protection of regimes rather than the people. There is an urgent need for a paradigm shift from regime security to human security. Security sector players should not be aligned to any political party and should not be politicized. In some African states, the uniformed forces are partisan political actors who have assumed the responsibility of being ‘king makers’ and that does not work well for the consolidation of democracy. The workshop was of the view that there is a need to stop the politicization of the security sector in order to eradicate election-related violence.

The depoliticization of the security sector lies at the foundation of removing the uniformed forces from politics. The fundamental mechanism for this is security sector reform (SSR) which should be treated as a process rather than an event. If the countries of the region can undergo the SSR process, the military would be able to perform the mandate suggested by different African Union (AU) and Southern African Development Community (SADC) protocols to which many
of the member states are signatory. It is through genuine SSR processes that the paradigm shift suggested above can take place.

The role of civil society in African elections remains very paramount. It can be argued that where the civil society space is open, the pre-election ground can be better levelled, the electoral process would be better monitored, and the post-election environment would be healthy. All this is possible if civil society does not abdicate from its democratic mandate of oversight. The workshop emphasized that civil society faces numerous challenges, both internal and external. The case of Zimbabwe showed that internal squabbles and intense competition within civil society remains a big challenge. There is also the problem of state hostility in a politically polarized society. It was clear that in all the countries civil society remains weak and therefore not able to play its role of being drivers of democracy. In spite of all these challenges there is clear evidence that civil society continues to address issues of election-related violence. However, their ability to mobilize communities for political change and full democratization remains very minimal, especially if compared to the achievements of their counterparts in other parts of the world. It should be underscored that the workshop concluded that civil society remains the most viable and potentially effective way of dealing with the issue of election-related violence.
Introduction

The renewal of the political mandate in any constitutional democracy is through the electoral process, a mechanism that presents several challenges in order to regulate the competitive nature of interest groups and political parties. Held against the background of post-conflict and transitional governments, the electoral process assumes particular challenges of fairness, levelling the playing field and questioning the integrity of the whole process requiring independent observers, monitors and critical evaluators of the various stages including: delimitation, voter registration, campaigning, polling, collating the results, announcement of winners leading to the actual transfer of power to electoral victor(s). Against this background, the African Union (AU) has come up with the Post-Conflict, Reconstruction and Development framework, creating entry points, roles and mandates for civil society organizations (CSO) to be partners towards engaging meaningfully with the electoral processes on the African continent leading to comprehensive peace, stability and security.¹

The Institute for Justice and Reconciliation’s (IJR) Transitional Justice in Africa Programme and The African Public Policy and Research Institute (APPRI) convened a seminar to assess the role of civil society in ensuring free and fair elections in Zimbabwe as provided by the Global Political Agreement (GPA) of September 2008 which provided for a Transitional Government, mandated, amongst other tasks, with preparing the country to conduct free and fair elections through:

a) Drafting a Constitution
b) Holding a Referendum
c) Promoting Equality, National Healing, Cohesion and Unity
d) Recognizing the importance of Freedom of Expression and Communication
e) Undertaking Security Sector Reform
f) Reconstituting the 4 Commissions of:
   i. The Electoral Commission
   ii. Anti-Corruption Commission
   iii. Media Commission and
   iv. Human Rights Commission²

The provisions of the GPA have since been reinforced by several SADC Communiqués that consistently have called for the full implementation of the provisions of the agreement before free and fair elections are held.³

The overall objective of the seminar was to precipitate dialogue, informed analysis towards assessing what parameters have been met by the GPA as it moved towards its exit, the holding of a Referendum and Supervised Free and Fair Elections in which the role of Civil Society, as part of the independent monitors would be central. In addition, the meeting discussed the current challenges confronting the SADC Mediation process and the prospects for promoting political

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3 Beginning with the Seminal SADC Communiqué of 27 January 2009 to the latest 31 March 2011 in Livingstone and more recently, the Sandton SADC Communiqué of 12 June 2011.
consensus amongst the seeming antagonists in the Transitional Government in Zimbabwe? Finally, the seminar also assessed the role that Zimbabwean and South African civil society can play to create a conducive environment for peace, security and free political activity in Zimbabwe as spelt out by the recent SADC meetings in March and June 2011.

Objectives of the Workshop

There were five specific objectives of the workshop, namely, to:

1. Review the SADC Troika Livingstone and Sandton Communiqués and examine the implications and approach towards efforts to resolve the Zimbabwe crisis. Stated differently, dissect the full implications of the Livingstone Troika Summit Communiqué and evaluate its alignment with the call for free and fair elections in Zimbabwe
2. Assess how civil society organizations (CSO) can work with political parties and other relevant stakeholders to formulate guidelines that will assist in holding an election that will be peaceful, free and fair, in accordance with the SADC Principles and Guidelines Governing Democratic Elections
3. Critically examine how civil society can engage with the Joint Monitoring and Implementation Committee (JOMIC) to address the polarization of the political environment as characterized by the resurgence of violence, arrests and intimidation in Zimbabwe in order to ensure a ‘level playing field’
4. Provide a comparative perspective between Kenya and Zimbabwe coalition and elections drives
5. Reflect on Swaziland’s challenges towards democratization and in a comparative manner to Zimbabwe

Context

Efforts to resolve the Zimbabwe crisis, as represented by the Inclusive Government (IG) continue to challenge the guarantors of the GPA - SADC and its facilitator, South African President, Jacob Zuma and of course the AU. In a recent telling statement, President Zuma intimated that the SADC region has a limited window of opportunity to resolve the Zimbabwean crisis whilst the world’s attention is still turned towards issues in North Africa, the Sudan and more recently in Ivory Coast.

The last two SADC summits in March and June 2011, presented a fundamentally different public posture from what had come to be expected from the regional multilateral and security organization in its handling of the Zimbabwean political crisis.

A reading of the 30 March 2011 SADC Troika Summit Communiqué is riveting. The new approach is firmly rooted and resonates with global and continental sentiment on protracted political conflict and its resolution. Significantly, the SADC meetings in March and June called for:

1. an end to violations of the provisions of the GPA
2. the formulation of a clear road map to a referendum and free and fair elections
3. addressing of the outstanding issues including security sector reform as provided for in the GPA amongst other aspects
1. A Critical Examination of the Admitted Failure Towards Addressing Security Sector Reform by the Zimbabwean Negotiators’ And Its Implications?

Dr Martin R. Rupiya, Executive Director, African Public Policy and Research Institute

We are here because of the intervention by the security sector, soon after the overwhelming vote for change expressed by the majority of Zimbabwean voters during the March 2008 election.

30 months after the inauguration of the Inclusive Government (IG), on Wednesday 6 July 2011, the Zimbabwean negotiators met and signed a document indicating only partial areas of agreement and tentative dates for the Road Map to free and fair elections. Missing from the partial agreement was addressing security sector reform; the constitution of the Zimbabwe Election Commission as well as Elections Monitoring. Furthermore, Justice Minister Patrick Chinamasa and his negotiating colleagues from the three parties - ZANU (PF) and the two MDC Formations - also reported that these issues would be submitted to the “Principals for resolution.”

And yet, the Principals forum is but a tenuous body whose decisions have not necessarily been comprehensively implemented by the different and competing arms of the Inclusive Government. Here in lies the first area of concern. Secondly, the Bill Watch 27/2007 of 8 July 2011 [http://www.Bill-Watch@veritas.co.zw] raises interesting questions when it discusses the succession situation, “after the president resigns, becomes ill and indisposed or dies?” In other words, how would this influence the current preference by the security sector that has witnessed uniformed members trying to outdo each other in publicly asserting sole reverence to the sitting president? Finally, the hard question has to be acknowledged in that, no security sector reform during the Transitional Period equals to no free and fair elections reportedly in August/September 2012.

Whilst the IG had been established, through the intervention of SADC and the AU as a transitional arrangement after the disputed elections in March 2008, it has been expected, through several private exhortations and public communiqués, to speed up implementation of all the provisions of the September 2008 GPA in order to reach that critical exit point for the current transitional arrangement—free and fair elections. Hence, the inability of the negotiators to address to what is comprehensively provided for in the GPA may constitute the first warning signs of the imminent collapse of a political agreement that has shown tenuous and fragile characteristics during the transitional period. Meanwhile, since the inception of the IG, command and control of the Security Sector: unilaterally grabbed and shielded from the established mechanisms of the coalition arrangement before February 2009, has remained in the hands of the single coalition partner ZANU (PF), freezing any opportunity of altering power relations and creating conducive civil military relationships with the MDC formations. This point is important to grasp as we further reflect on the implications of the negotiators failing to engage with the security sector reform issues. However, we wish to point out that the use of violence by ZANU (PF), a revolutionary party, is something that they have in the past adopted—but for advancing a political agenda. This time, the violence is mindless, against citizens and is likely to further

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4 A select few of the salient SADC Communiqués include those of 27 January 2009; 31 March 2011; and 11 June 2011.
distance them from the political party. If this realization is made, then it is time that this self-destructive route is abandoned in preference for stability now and in the future.

In this brief analysis, the discussion is divided into three sections: first, the run up to the decision by the negotiators to be convinced to abandon security sector reform although provided for in the GPA; second, an examination of the power play between Zimbabweans from all political persuasions and the organized structures of the IG concerned with moving away from continued political polarization and insecurity, and finally, key recommendations based on the findings for policymakers, SADC and the AU and civil society groups to engage with finding solutions before free and fair elections are held in Zimbabwe. Before doing this, however, we must be clear on what informs this analysis as to what defines security sector reform in Zimbabwe?

Defining what constitutes security sector reform in Zimbabwe is useful in order to overcome the gibberish and incoherent attempts, especially by what has been cited as the hard line elements, working hand in glove with the uniformed generals, brigadiers and colonels who have equated a discussion of security sector reform as concerned with attacking the institution. Nothing could be further from the truth. In pinning down the definition we need to be remind ourselves of the theme and departure point for this analysis:

**We are here because of the intervention by the security sector, soon after the overwhelming vote for change expressed by the majority of Zimbabwean voters during the March 2008 election.**

At the time, the political parties - ZANU (PF) and the MDC Formations - were in the campaign mode leading to the citizens expressing an overwhelming desire for change at local government, parliamentary and presidential polls. Thereafter, the security sector-run Zimbabwe Electoral Commission (ZEC) took all of 5 weeks before announcing the election results. After much berating and exasperation by citizens, SADC, the AU and the international community, the results were announced, by an openly partisan ZEC. The announcement was accompanied by the launch of a violent presidential run-off election. The subsequent result - an 85.5% win for ZANU (PF) - was later annulled by the AU in Sham El-Sheik, Egypt directing SADC to intervene and motivate for a transitional arrangement. Meanwhile, several hundred people had been abducted, killed, tortured, maimed and rendered homeless with impunity by perpetrators that included traditional leaders, militia, uniformed forces, national service and war veterans in widespread incidents that have been carefully documented.

Hence, when we talk about reforming the security sector before the next free and fair elections, what we mean is: removing the capacity of the security sector to influence the electoral result in favour of a chosen party; restoring the dignity and human rights of citizens to make their own choice as to who governs; enjoy freedom of the press, association and access to independent sources of media and information. Anything else must remain in place, except of course for those who were 20 or older at independence and 33 years later, must naturally give way to up and coming youths, based on existing conditions of service as contained in the Police Act, Defense Act as well as the Prison Acts.

It must be said that the above cited behaviour witnessed in March-June 2008 has not disappeared, forcing the SADC Troika on Politics, Defence and Security in Livingstone on 31 March 2011 to issue a sharp rebuke and calls for the immediate cessation of the harassment, hate
speech and violence on defenseless citizens and political opposition by state organs. Because the negotiators have not addressed security sector reform, this aspect, condemned by SADC and the Facilitator still rears its ugly head in the body politic of Zimbabwe.

The brief background to the negotiators abandoning security sector reform discussions began to manifest in an internal ZANU (PF) politburo meeting reportedly held in May 2011. These reports have so far not been disputed. The hardliners, led by Minister of Defence, Emmerson Mnangagwa, attacked the party-appointed negotiators, Patrick Chinamasa and Nicholas Goche (Minister of Transport) accusing them of making “rubbish and reckless decisions to the party by letting many stupid concessions” during a politburo meeting as Item 3 on the Agenda. This was then followed through with a request to replace them “with tough guys.” In the heated debate that followed, Chinamasa and Goche were ejected from the meeting and only recalled afterwards. In the intervening period, President Robert Mugabe then held firm and suggested that the two continue as the party’s representatives at the negotiation table. However, at the end of this debate, both Chinamasa and Goche’s confidence had been mortally wounded. It is, therefore, not surprising that come July, the negotiators had been whipped into line to admit that they would not be able to communicate their concerns or secure implementation commitments for ZANU (PF) from Chinamasa and Goche.

With the negotiators making the startling recommendation for the principals to resolve security sector reform, it is useful to briefly examine the existing formal structures of decision making in the IG. The first layer appears to be at the party political level where both spokespersons have acknowledged on-going debates and attempts to find each other for the common good of the country (see comments by Douglas Mwonzora [MDC-T] and Rugare Gumbo [ZANU (PF)])

The second forum that has shown a willingness to engage, moderate and find compromise out of the political crisis is Parliament. We can cite that the re-election of the Speaker, Lovemore Moyo, after having been dethroned by the court action of Jonathan Moyo, Independent Member of Parliament, was as a result of cross-party support although members had to resist the whipping system. The third layer is Cabinet, in which again, a common consensus and respect in working together has begun to evolve during the transition. However, it is also at this level that the National Security Council (NSC) as a committee of Cabinet has failed to work as a result of the continued existence and dominance of the Joint Operational Command (JOC). The fourth and final is the Monday afternoon Principals forum, to which the negotiators have now chosen to direct the issue of security sector reform and related matters. Again, it has to be admitted that the President, Prime Minister and Deputy Prime Minister have quickly found common cause, respect and a working relationship previously unforeseen. But, in this, decisions taken appear to carry because the president is involved. A major example was the temporary disruption of the constitutional process by marauding bands of ZANU (PF) militia, war veterans and Women’s League that was quickly set back in place after the Prime Minister and Deputy Prime Minister simply went to State House and appeared as a unit on national television with the President calling for an immediate resumption of the process. The challenge then is, if we take out the President from the loop then chaos is likely to reign.

5 Lance Guma of SW Radio “Fireworks at Politburo Meeting as Chinamasa and Goche ejected”, 12 May 2011 and also Paidamoyo Muzulu an earlier version; “GNU Parties Fight Over the Security Sector”, 28 April 2011; see also comments by MDC-N Moses Mzila Ndlovu, reforms to Central Intelligence Organization (CIO), Joint Operational Command (JOC) under Article XIII (1) State Organs and Institutions of the Global Political Agreement.
Findings

1. The admission by negotiators to abandon security sector reform is the clearest evidence of the success of the hard liners unwillingness to implement the provisions of the GPA
2. The principals’ forum is but a fickle body that is likely to be rendered useless in the short-to-medium-term reminding SADC and the AU to move quickly in order to “contain” the situation.
3. There is growing consensus, moderation and a desire to work for the consolidation of democracy in the diverse levels of political parties; parliament; cabinet; the negotiating team as well as the principals
4. The discussion on security sector reform has been side-lined to convey an impression of it being anti-revolutionary and a way to dismantle the existing institutions
5. The capacity to influence the electoral process constitutes the key focus for reform in order to align the sector to a multiparty democracy as we saw in Tanzania during 1991
6. There is historical precedence in Zimbabwe, going back to pre-independence in April 1980 when previously warring factions set around the table in several places including Maputo to fashion an amicable way forward around worse but similar issues

Recommendations

1. SADC and the AU must immediately engage Zimbabwe now that it is clear the MDC Formations remain at the mercy of a mendacious leadership controlling the security sector
2. The SADC region should take full responsibility to ensure GPA compliance in order to level the playing field before the probable August/September 2012 supervised elections chosen date that may or may not be altered
3. Civil society groups must continue to monitor, analyze, support and/or build capacity of the emerging pillars of democratic consolidation such as political parties, parliament, cabinet, the negotiating team and the principals.
The people of Zimbabwe are staunch believers in the role of elections as a major building bloc for a sustainable democracy. However, there are sections of the country’s population that don’t view electoral processes and election results as a key element of building that democracy. They are always looking at how these processes are linked to the anti-colonial struggle and seem to be ready at any point to undermine any other route that challenges the dominance of the so-called Patriotic Front which ultimately consolidated itself with the 22 December 1987 Unity Accord where ZANU led by Robert Mugabe officially joined hands with ZAPU led by Joshua Nkomo under the name ZANU (PF). ZANU (PF) was the name that Robert Mugabe and his party were using since 1980 to distinguish themselves from another ZANU that was under the late Ndabaningi Sithole, a very important figure in Zimbabwe’s anti-colonial history.

Their natural political home will in the current conjuncture be ZANU (PF) led by Robert Mugabe and the war veterans association, which brings together former combatants from ZANLA and ZIPRA, the respective military wings of ZANU and ZAPU. Some of these people are concentrated in the current government and are found in key sections of the civil service. They are well represented in the judiciary, the legislature and the executive arms of government. In some very extreme cases, institutions they run are synonymous with their names. Some of these people have become too powerful and are literally a law unto themselves and only recognize President Mugabe as the only other authority they can have a discourse with or even threaten if they think his rationale behaviour, political pronouncement will undermine their tenure. A case in point is the Registrar General Tobaiwa Mudede, whose name features prominently in elections, capacity to determine who is a citizen or not and general processes of making sure that all Zimbabweans possess documentation entitling them to enjoy the full benefits of being Zimbabwean. As far as elections are concerned this is one authority that can disenfranchise people as has been the case with people whose parents came from out of Zimbabwe etal. Service chiefs have of late featured prominently.

A combination of behaviour by the above and their promotion of a mode of politics that destroys diversity and meaningful pluralism have led the Americans and the British in particular to mobilize public opinion against them globally and took to sanctioning them as a way of crippling their political power and undemocratic tendencies.

The people of Africa are not unanimous in dealing with the above, but all would be very happy if all contending forces will be subjected to the will of the people through free and fair elections. SADC and the AU have also featured as major players when it comes to issues of Zimbabwe, but with the former shouldering the burden of doing the everyday running around. The people of Zimbabwe have been short-changed by politicians both in MDC and ZANU (PF).

Liberal democracies promote change of government through periodic elections where society is presented with a plethora of players to choose from. This is often accompanied by public mobilization, debates on various platforms especially the media and also, government led processes where all know that they have been registered and will exercise their right to choose in a polling station that tallies with constituencies where there they are ordinarily resident.
Guarantees are put in place by the government of the day that the playing field will be level and in most cases people often expect a free and fair process before they ultimately cast their votes. SADC has followed closely the Zimbabwean case, but did not manage to resolve the matter through and election, but instead offered the contestants a government of national unity to avert further crisis when in fact the governance crisis be-devilling the country was directly linked to elections. Its communiqués covering Zimbabwe since April 2008 are very revealing. SADC Communiqués are largely inspired by quite diplomacy when they are addressing the ills of a sitting government but do capture enough ground to give one a direction of what it at stake in heavily contested areas. They often do not use language that leaves all the affected parties happy but do pick on issues that indicate the possible direction in terms of a solution. Their tone often sounds different depending on the host country for summit and even the different heads of state presiding over different processes.

When it comes to the political crisis, Zimbabwe has left many observers divided. Many people used to argue that former South African president Mbeki was very soft on Robert Mugabe of Zimbabwe and did not take any measures to make him feel isolated. As we deliberate today, there is clear evidence that the last summit in Livingstone followed up by the South Africa consultations changed and literally enhanced opportunities for megaphone diplomacy where the facilitation teams literally named and shamed the section led by Robert Mugabe in the country’s government of national unity as largely responsible for lack of progress on ironing outstanding issues largely of a constitutional nature.

Statements that have emanated from Zimbabwe show that processes in SADC are very good when collecting evidence on the ground and suggest that the technical committees do their professional work. This work tends to be undermined on implementation and interpretation when it comes to contentious issues. It has become the norm that various lobbying teams from Zimbabwe for example, undertake independent missions to try and influence the summit in an effort to influence the draft teams to come up with a language that is favourable to them.

In some instances, there is a great difference in understanding the meaning of a simple word like “note” when it creeps in into a statement. The interpretations of range from acknowledging that a matter has been discussed, action recommended and summit passed position unanimously to presentation in a technical committee, submission of written report and acknowledgement that something is happening behind closed doors.

For Zimbabwe, it is clear that Robert Mugabe’s team felt besieged as they increased their publicity to rebut any interpretation that didn’t suit theirs and literally undermined teams that constituted Zuma’s panels. In some instances they even interpreted that Zuma was facilitating in his personal capacity, and therefore only him had the right to speak and be heard and all other people in his missions should not be taken seriously.

In our opinion, Zimbabwe’s problem has been there and summit communiqués noted it but avoided gunboat diplomacy in highlighting the sticky elements. As early as April 13, 2008, the SADC heads of government and their representatives of SADC met in Lusaka, Zambia to discuss the political developments in Zimbabwe following the Presidential, Senatorial, National Assembly and Local Authority elections held on 29 March 2008. This was an Extra-ordinary
Summit and the SADC communiqué justified holding the meeting arguing that that it “was held in line with the SADC's objectives to promote common political values and systems transmitted through institutions that are democratic, legitimate and effective to facilitate the consolidation of democracy, peace, security and stability.”

The Extra-ordinary Summit noted and appreciated the brief by the delegation of the Government of Zimbabwe on the elections held in Zimbabwe. The Government of Zimbabwe indicated that the elections were held in a free and peaceful environment. The Government expressed concerns at instances of inaccuracy of some figures relating to the House of Assembly, Senate and Presidential elections. Informal consultations with Presidential candidates, Mr. Morgan Tsvangirai of the MDC and Independent candidate, Dr. Simba Makoni who confirmed that the elections were held in a free, fair and peaceful environment. Whilst they did not have a problem with the election results of Senatorial, Parliamentary and Local Authority elections, they expressed concerns on the delay in announcing the results as well as lack of their participation in the verification process of the Presidential results that were currently being conducted by the Zimbabwe Electoral Commission.

The Summit urged the electoral authorities in Zimbabwe release the results expeditiously and assumed that the verification and counting was going to be done in the presence of candidates and/or their agents, if they so wished, who must all sign the authenticity of such verification and counting. The summit offered to send Election Observer to be present throughout such verification and counting. It is the essence diplomacy to be generally quiet, but therein lies the problem for the people of Zimbabwe who were seeking an urgent solution to their situation. The most vocal were located in CSOs.

There is a lot in the SADC initiative that will help us locate key challenges we identified earlier on in the paper. For example, the involvement of the security chiefs can only be curtailed by Security sector reform which is also widely acknowledged through constitutional amendments commonly referred to as the Global Political Agreement. Security sector reform is gaining currency as a key intervention tool to enhance good governance, transparency and accountability especially for the Executive to the public notably through constitutional guarantees and institutions of government like Parliament. It has emerged over the years that old notions of security and treatment of information are fundamentally flawed as they are increasingly failing to cope with the demands of society in the new millennium. Key sections of our society are pushing for new forms of representation and participatory democracies.

In the past, it was commonly believed that information is power and the more “secrets” you had access to and kept them under lock and key, the more power one wielded. It subsequently emerged that society had experiences which seemed to suggest exercise of power was better if institutions and members of society shared information as an empowering exercise where citizens became more alert to their obligations through access to information and informed choices. Information systems that were hitherto impenetrable were increasingly becoming porous especially in the wake of new innovations especially in the information technology front which demanded new techniques for retrieval and storage. For example, the United States military had for a long time used the internet as a communication tool and let it go into the public domain to the extent that it became a world-wide jungle of information which we all utilize through
possession of personal computers and other gadgets that are now bombarding us every day. Transmission of the information has undergone a major revolution and it is one of the compelling reasons why any intelligence service worth its salt must not only consider reform programme but radically alter the ways it operates and bring about a revolution which will make society respect it and accord it the respect it deserves.

It is amazing that there are some stereotypes that have emerged globally of how intelligence services operates and a lot of these images have become key themes in movies to the extent that many people wish they could identify with perceived images in times of great acts and even the bleeps and blunders that some people serving make. We have stuck with the ugly Toton Macoute papa Doc Duvalier, dark glasses mode and heartless individuals whose behaviour used to make people disappear and end up like Zombies at the service of powerful politicians and completely ignoring the fact that the concept of state has evolved and society has individuals who now access and also process information into a commodity that is packaged for public consumption in many spheres of life.

No one seating in this room ever imagined that we will be driving cars that have global positioning systems and possess mobile phones with google maps giving us so much information on demand which a number of us used to brand top secret. Certain change is inevitable and the security sector reform discourse for Zimbabwe cannot be wished away. It emerged last month that the authorities running state influenced media were ranting and raving through commentaries on Zimbabwe Television (ZTV) largely from security experts who were tearing the global political agreement apart and displaying partisan positions which made them sympathizers of liberation war parties that coalesced into the current ZANU (PF).

The same assaults have been directed at SADC communiqués as noted earlier on. They successfully communicated to ZTV viewers that security sector advocates were enemies of Zimbabwe and largely located within western models of thinking that sought to demonize the liberation war which the patriotic front successfully prosecuted. This might be true as there are quarters that saw things from a different point of view. There is a lot of literature on the war written using a Rhodesian lens and others like Ken Flower’s serving secretly. Even their erstwhile leaders like the late Ian Smith wrote his book to also affirm his world view. At this juncture, we need to interrogate why we are stuck in world view that denies people fundamental rights to express their alternative thinking and even proposals on organizing society and institutions differently? A failure to look at the impact of our mistakes is one issue that causes erudite leaders and the security experts surrounding them to resist change especially if its revolutionary components might seem to suggest these individuals will be rendered invalid and redundant?

We have to draw lessons from our neighbours and friends who managed to liberate their countries later than us. They managed to develop space to advance certain conceptual frameworks which in the context of Zimbabwe were not possible. These breakthroughs can also be seen in the constitutions a number of African countries are developing and adopting with an active role for the legislature as an institution representing people through a leadership they elected.
The latest constitution in Kenya which was adopted in 2010 is a good starting point. National security is defined as “the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests” (Chapter 14. 238. 1) Its key organs are defence forces, National Intelligence Service and National Police Service. In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not—

1. act in a partisan manner;
2. further any interest of a political party or cause; or
3. prejudice a political interest or political cause that is legitimate under this Constitution
4. A person shall not establish a military, paramilitary, or similar organization that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament
5. The national security organs are subordinate to civilian authority

The Livingstone Troika summit helped to project some of the key challenges any government in SADC must address when it comes to preparations for Elections. The 22 paragraph communiqué from the March 2011 offers us a good note to conclude on. Robert Mugabe, Morgan Tsvangirai, Arthur Mutambara and Welshman Ncube were all present and not being consulted informally as was case in 2008. The points 13-16 of the Communiqué appreciated the frankness with which the report on Zimbabwe was presented by the facilitator and openly admitted that progress on GPA implementation was disappointing and insufficient. There was grave concern with polarization of the political environments characterize by, *inter alia*, resurgence of violence, arrests and intimidation.

Point 17 made many constituencies opposed to Robert Mugabe very happy. Why? It was a compendium of what should be done and it touched on key points that would naturally embarrass the key actors in Harare, but mostly the President as head of the executive and a political party deemed in the context of megaphone diplomacy as a key actor responsible for the failures SADC cited.

In conclusion, a close look at the SADC communiqués will facilitate in highlighting challenges the region is experiencing. The recommendations often put in these documents will have been made in vain if they do not carry an empathizing tone good enough to inspire those seeking remedial to act responsibly. There is evidently a paradigm shift in the context of SADC dealing with Zimbabwe and lessons from Cote d'Ivoire are very instructive as the same controversial Livingstone communiqué urged defeated incumbent Laurent Gbagbo to hand over power to avoid bloodshed.
3. **Assessing African Elections and Challenges**

*Professor Hamilton Sipho Simelane, Deputy Executive Director, African Public Policy and Research Institute*

One of the most important themes in the study of democracy is the occurrence and conduct of elections. Consequently, theories of democratic transition and consolidation have highlighted elections as one of the important pillars of democratization (Carothers, 2002: 7). Writing during the first half of the twentieth century Joseph Schumpeter argued that elections are the very heart of democracy (Schumpeter, 1942). Some scholars have pointed out that holding regular, free and fair elections is one of the most important signposts of democracy (McQuoid-Mason, et al.: 1994; Harrop, and Miller, 1987; Katz, 1997; Le Duc, Niemi and Norris (eds), 1996). In the same vein, the African Charter on Democracy, Elections and Governance emphasizes the centrality of elections in the process of change of power. From these over-simplistic assertions, it is assumed that a political election provides people with the opportunity to vote and decide what happens to the future of their country (Heywood, 2002). Such assertions give the impression that elections equal democracy, but that is an academic terrain with a lot of landmines. Democracy cannot be realistically taken to be the mere holding of regular elections. The above assumptions also give the impression that there is general agreement on the functions of elections, when in fact that is a highly contested issue. For instance, conventionally, elections are seen as a mechanism through which politicians can be called upon to account and be forced to introduce policies that somehow reflect public opinion. However, a more radical view is that elections are a means through which governments and political elites can exercise control over their populations, making them more quiescent, malleable, and, ultimately governable (Ginsberg, 1982; Gus Liebenow, 1986; Mazrui and Tidy, 1984). It is clear that the discussion of elections remains a contested terrain with no simple and straightforward issues. However, in spite of the numerous controversies surrounding the study of elections, there is a strong case for continued analysis of elections as they take place in different countries.

Conflicts attended by violence in the political relationships between political partners in different forms of governments in African countries has again forced academic attention back on the analysis of elections and their implications for security. In the case of Zimbabwe, speaking at a rally to an exclusively ZANU (PF) audience, President Robert Mugabe announced his intention to call for elections in order to put to rest the problematic Inclusive Government. Meanwhile, the Prime Minister, Hon. Morgan Tsvangirai has disputed the president’s interpretation of the provisions of the GPA, supposedly a binding document, supported by the two regional bodies, the AU and its sub-regional pillar, SADC. The latter have publicly stated clearly areas of implementation, related time lines and a reformed political environment including a draft constitution before free and fair elections are held. This lack of consensus has therefore created an impasse and possible constitutional crises although the leading actors appear oblivious to this development. Most importantly, this points to diverse interpretations and perceptions of the purpose of elections and the objectives to be realized. However, given the propensity for violence around elections and emerging evidence that mechanisms and instruments of violence in most African countries are still very much in place, it has become necessary to analyse the security implications of how elections are perceived and what outputs they are meant to attain. This presentation will first consider the concept of elections in a multiparty democracy and what this means in the realms of political power transfer? Secondly, it will examine the current position adopted by the AU; reflect on what have been the main
challenges vis-à-vis elections and the security services before looking at the role and function of the security sector in managing elections. The presentation will also provide a summary of the problems arising from the failure of African countries to fully embrace the dictates of democracy as inherited from Western colonialism.

**The Concept of Elections in a Multiparty Democracy**

Taken more broadly, elections in the emerging African Democracies, a group that makes up the majority of the 54 African States are a mechanism of transition from dictatorship to a new democratic dispensation. This issue continues to be an important milestone as it is assumed to be the only legitimate route for transfer of political power as Samuel Huntington has reminded us.

In his seminal work, Huntington argued that African countries have missed the three waves of democratization that have so far passed, beginning with the first (1828-1929), followed by the second (1943-1962) and finally the more recent third wave (1970s to 80s) (Huntington, 1992). During the last phase, the study acknowledged the progress made in Latin America and Asia, leaving the African continent still grasping at the bottom of the democratization ladder and more significantly, democratization, or lack of it, has had a direct correlation with socio-economic growth and development and therefore stability. It is logical to have sympathy for such a conclusion because in the past half century very few African ruling parties have relinquished power to its opposition despite the outcome or legitimacy of the electoral process (Bohler-Muller, 2011). In the majority of cases regime change has been determined by the gun or at the negotiation table. However, it should be noted that Africa has had her share of the impulse of the democratic wave. For instance, the fall of colonialism in the 1950s and 1960s, the success of liberation struggles in many countries of Southern Africa, and the fall of dictators in many parts of the continent signify democratic waves, which however, remained unconsolidated.

The notion of the need for democratization, and the role elections should hold in the transfer of power has also been emphasized by the Organization of African Unity (OAU) in the past, and later embraced by its successor, the AU. The Constitutive Act or the AU Charter, especially Articles 17 to 22 of Chapter 7 on Democratic Elections recommits to the principles of democratization and elections calling on State Parties to “regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa.”

**African Elections and the Limits of Liberal Democracy**

One of the problems faced by African democracies is the adoption of liberal democracy from the West. This form of democracy has failed to consolidate in Africa while at the same time perpetuating values that engender a consolidation crisis. An honest and genuine analysis of elections in Africa reveals several aspects that challenge the notions of democratic transition and consolidation. Elections are one of the most important fundamental pillars of democracy. However, in most of Sub-Saharan Africa elections have been misinterpreted leading to a distortion of democracy and difficulties of consolidation. The most important mis-conceptualization is that which equates democracy to elections. This is what some scholars refer to as “the belief in the determinative importance of elections” (Carothers, 2002). This view holds very high expectations of what the holding of regular genuine elections will do to the process of democratization. It is believed that elections will serve to broaden and deepen political participation and the democratic accountability of the state to its citizens. The danger
with this view is that it assumes that democracy equal elections and that holding regular, free and fair elections means democracy is consolidated in that polity. Advocates of this view have gone on to argue that election provide people with the opportunity to vote and decide what happens to the future of their country (Heywood, 2002). As it has been argued by some scholars (Simelane, 2010), this is an academic terrain with many landmines. In many African countries, elections have become a means through which governments and political elites can exercise control over the people, making them more quiescent, malleable and, ultimately governable. A close scrutiny of the reports of observer missions of regional and continental bodies such as SADC and AU, all concoctions of African elections are recognized as democratic elections, even in case where the elections are clearly used to legitimate undemocratic regimes. This distorts the value of people participation in elections.

There is, therefore, a need to revisit the archives of classical democracy to retrieve the real value of elections in a democracy. The essence of democratic elections is to give power to the citizens and not to create elites. This is not to advocate for a return to direct democracy, but reaffirming the principle of people first in any democratic dispensation.

In the analysis of the development of democracy in Sub-Saharan Africa and in other developing regions the general tendency has been to interpret elections from the perspective of liberal democracy which tend to limit citizen participation, to what Roger Southall refers to as, “restrict[ion] to occasional visits to the ballot box” (Southall, 2010: 2). This is contrary to participatory democracy in which the mass of the citizens are allowed to take part in the process of political decision-making on a regular basis and as a result, democracy is deepened. Southall notes that under participatory democracy:

> It is argued that decision-making should be taken away from the bureaucratic state and devolved to smaller communities that will enable individuals and groups to produce laws and policies directly related to their needs. Participation will also be facilitated by such devices as referenda and other means of ensuring close consultation between government and people (Southall, 2010: 10).

It must be noted that the liberal doctrine was very revolutionary when it first took root on the backdrop of absolutism. It highlighted the ability of citizens to replace one government by another, and protect themselves from the risk of political decision-makers transforming themselves into an immovable force. As long as governments can be changed, and as long as the electorate has a choice between broadly different party platforms, the threat of tyranny can be checked. According to the early liberal views, therefore, democracy is inherently participatory because it is a mechanism that allows the registration of the broad desires of ordinary people. It was never about leaders but about citizens and their interests of improving their quality of life.

However, the reality of Sub-Saharan Africa is that liberal democracy has not ‘deepened’ democracy, and as a result most Sub-Saharan states have huge democratic deficits. They have experienced burgeoning elitism largely generated through accumulation using the state pathway. The main problem with this elitism is that it alienates the leadership from the people and fails to foster effective and genuine citizen participation at both the economic and political levels. This in turn, leads to undemocratized economies characterized by high levels of
economic inequalities where the elites, who are comparatively few in number, consume the bulk of the nations’ economic products. This is arguably an indication of the failure to deepen democracy under liberal democracy and has reduced elections to a political ritual. Liberal democracy in Sub-Saharan Africa has reduced citizen political participation to visits to the ballot box. Thomas Carothers has observed that under liberal democracy, “Political participation, though broad at election time, extends little beyond voting” (Carothers, 2002: 10) and there is little if any citizen participation in decision-making in-between elections.

For some scholars have argued that the limitations of liberal democracy can be solved through an emphasis on participatory democracy and this has the capacity to evolve a different conceptualization of elections. Crawford Brough Macpherson is one of the first scholars to explore the principle of participatory democracy. Basing his analysis on some of the arguments that were advanced by John Stuart Mill, he argued that the realm of democracy can be extended from periodic involvement in elections to participation in decision-making in all aspects of life and this would concretize the reality that elections are only an aspect of the democratic process. One of the important enabling conditions for this is the reorganization of political parties because they are the instruments for effective citizen participation and deepening democracy if grounded on democratic principles. Political parties should create meaningful institutions for citizen participation and true democratization. It is paramount that the party system should be organized on less hierarchical principles, making political administrators and managers more accountable to the personnel of the organization they represent. For many, a substantial basis would be created for participatory democracy if parties were democratized according to the principles and procedures of direct democracy.

Carole Pateman has drawn upon the central arguments of Rousseau and Mill to argue that participatory democracy fosters human development, enhances a sense of political efficacy, reduces a sense of estrangement from power centres, nurtures a concern for collective problems and contributes to the formation of an active and knowledgeable citizenry capable of taking a more acute interest in government affairs. Through participatory democracy people apathy can be broken by making democracy count in people’s everyday lives. This can be done by extending democratic control to those key institutions in which most people live out their lives (Pateman, 1970). If people know opportunities exist for effective participation in decision-making, they are likely to believe participation is worthwhile, likely to participate actively and likely to hold that collective decisions should be binding. On the other hand, if people are systematically marginalized and poorly represented, they are likely to believe that only rarely will their views and preferences be taken seriously.

If we agree that liberty and individual development can best be fully achieved with the direct and continuous involvement of citizens in the regulation of society and state, what then are some of the conditions that need to be present in constructing a framework for consolidation of participatory democracy and deepening democracy? Economic production is the beginning of human life and it is an illusion to talk about an active citizenry without addressing the economic base. Therefore, genuine participatory democracy and democracy beyond elections can best be realized through addressing the poor economic base of all groups in society. This can be achieved in many ways, and one of them is through the adoption of the radical political economy approach and redistribute material resources.
Unaccountable bureaucratic power in both private and public life is an anti-thesis to meaningful people participation in political life. It creates elitism which contributes to people marginalization and thus increase security risks. If we are to achieve deepen democracy beyond elections, there is a need to minimize unaccountable bureaucratic power. Again, it has been shown that asymmetries of power impinge on democratic participation.

Conclusion

The analysis of elections and the manner in which they impact on security cannot be divorced from an analysis of the processes of democratic transition and consolidation. As long as African states continue to have huge democratic deficits indicating lack of completed transition and consolidation, elections will continue to be looked at as ends unto themselves and as simply a mechanism of installing leaders and not empowering citizens and enabling them to shape their own development. Presently, for many African leaders, elections are perceived as processes for confirming their leadership and perpetuating themselves in power. Once such perceptions are contradicted by electoral realities violence becomes an alternative. I would argue that the root cause of this is the failure of African democracies to deepen and consolidate. This failure is probably due to the fact that Africans have not fully realized that democracy needs to be worked on, on a continuous basis and allowed to evolve over time. There is need to realize that elections are only an aspect of democracy.

References


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4. Asserting CSO Roles and Mandate in Electoral Processes in Zimbabwe

Rindai Chipfunde-Vava, Director, Zimbabwe Election Support Network

Free and fair elections are an essential part of any democracy. The popular will of the people, expressed through popular democracy must be the foundation of any political system built on the rule of law and respect for human rights. This requires the active and responsible role of civil society and other mass movements. Historically civic society has played a major role in the democratization of Zimbabwe. Civic society emerged as a strong watchdog in the late 1990s. The role of civic society needs not be downplayed because Zimbabwe is not an easy country to work in but civic society has managed to deter malpractices in the political and electoral environments.

Zimbabwe’s civic society faces significant external challenges such as a constricted operating environment; repressive legislation; political polarization; lack of media pluralism; selective application of the law; impunity, attacks, arrests and intimidation of human rights defenders; as well as limited funding. Internal challenges, within and among the civic society, include CSO rivalry and competition; infiltration; duplication of activities; over concentration on matters of civic and political rights versus social and economic rights; and lack of coordination amongst local, and regional and international voices. However, while opportunities for the country’s civil society are not abundant the case of Zimbabwe remains topical in many for a and there is continued willingness of the international community to support the country’s CSO.

Notwithstanding the above challenges, Zimbabwe’s civil society has been able to actively monitor the use of state resources to influence the vote; conduct coordinated training and collaborations with the country’s election management body; perform a watchdog role in political accountability; conduct prediction polls before an election (the Mass Public Opinion Institute); establish civic society networks to promote free and fair elections; create domestic election monitoring and observation groups; conduct parallel vote count (PVT); conduct civic and voter education (public outreach activities); conduct research and advocacy on electoral reform; provide legal services; play a media monitoring role; offer medical services; conduct violence monitoring and documentation; deploy political advocacy; and contributed to the protection of the vote.

Elections are observed as a process and not an event in order to prevent, manage or transform election-related conflicts through timely reporting; to increase confidence in the electoral process; to deter electoral fraud; and to guarantee the integrity of an election process. It is important to monitor elections as public statements issued by monitoring groups may lead to changes in policies that promote a more equitable election process; monitors may help resolve disputes that emerge during campaign period; the presence of monitors in troubled areas may also serve to discourage intimidation; and monitors provide an unbiased source of verifying official results (PVT).

Monitoring elections entails intervening in the process when the monitor sees an anomaly. For example, Zimbabwe had monitors under the Electoral Supervisory Commission (ESC) before it became the Zimbabwe Election Commission (ZEC). Observers simply observe the process to compare with the electoral laws for compliance. Observers cannot intervene in the process or
raise any issues observed with relevant authorities so that they rectify the problem. In this regard, Zimbabwe’s civic society needs to advocate for the deployment of monitors especially by SADC, in future elections.

There are various forms of election observation. Long term observation covers all phases of the electoral process including voter registration, delimitation of constituencies, nomination processes and primary elections to glean the strengths and weaknesses of the electoral process. Short term observation is mainly limited to polling day activities. There are four categories of monitors: domestic groups; election officials; political parties (party agents or party poll watchers); and the local media. Other forms of monitoring include, media monitoring, and violence monitoring. Observers comprise of domestic, regional and international groups.

**Zimbabwe Election Support Network (ZESN)**

ZESN is currently engaged in a number of activities pertaining elections including public outreach and civic education on election-related issues throughout Zimbabwe. It advocated for legal reform on electoral issues and achieved success in issues such as the introduction of the translucent ballot box, voting in one day and counting votes at the polling stations. ZESN has become a key reference point for election-related information and has provided leadership to civil society on election issues. It has enhanced the capacities of journalists to report on election issues through the various media training programmes. ZESN has monitored political developments in the country and provided stakeholders with current and relevant information. It has also observed elections in the SADC region, on the rest of the continent and in the world drawing lessons on best practices. ZESN has gained recognition, regionally and internationally, for the work the organization has done to promote democratic elections as demonstrated by commendations from United States president, Barack Obama, in his July 2009 speech to Ghana’s parliament. It, has also successfully audited Zimbabwe’s Voters’ Roll for accuracy, completeness and comprehensiveness.

ZESN led Zimbabwe’s civic society to establish five specialized clusters to strengthen its role in promoting democratic elections, namely: 1) Media and Campaigns; 2) Civic education, voter education and electoral information, election observation and verification of Results; 4) Medical and legal support services and violence monitoring; and 5) Political advocacy and research, and protection of the vote. These clusters have resulted in coordinated and concerted efforts by CSO to promote democratic elections. Through the clusters civic society has asserted its role and become more visible in electoral processes. As a result of the work of the clusters, civic society came up with minimum conditions for free and fair elections, which have become a rallying point in its coordinated efforts for lobbying and advocacy to key institutions including SADC, the SADC facilitation team on Zimbabwe and the AU.

**Lessons Learnt**

The lessons learnt by CSO include that they must not wait until the last minute to prepare for elections. They must start the processes of building broad coalitions and networks of domestic election observers early enough in order to achieve meaningful results. Special attention must be paid to the neutrality of domestic election observers. Civil society groups must avoid intense
power struggles related to issues of donor funding and leadership of domestic election monitoring groups. International nongovernmental organizations should not delay the release of the results of their exit polls on political grounds. The institutional capacity of election management bodies needs to be enhanced to enable them to deliver credible elections.

**Recommendations**

Civil society groups should:

1. Standardize the processes of vote tabulation, the quick count, and the exit poll
2. Clearly define the legal framework of domestic election observation
3. Clearly define norms for international election observation
4. Strengthen and define the level of coordination between domestic, regional and international observers
5. Standardize data quality for the conduct and release of exit polls, vote tabulation, and the parallel vote
6. Reflect on the role and actions of civil society groups after electoral fraud and irregularities have been established
7. Implement sustained civic education and public enlightenment of the electorate as part of efforts to ensure credible elections
Towards Ensuring Free and Fair elections: The Role of Civil Society in Post-Conflict Reconstruction and Development: A case study of Kenya

Lyn Ossome, University of the Witwatersrand

Kenya’s coalition government, established after the signature of the power-sharing National Accord of February 2008 by President Mwai Kibaki of the Government/Party of National Unity and Raila Odinga of the main opposition political party, the Orange Democratic Movement (ODM), is wreaked by divisions that may stand in the way for the creation of a conducive environment for the conduct of the 2012 elections. There is concern that wrangling among the coalition partners risked obstructing International Criminal Court (ICC) interventions to deal with the 2007/2008 post-election violence thereby permitting impunity which could undermine progressive reforms to prevent violence leading up to 2012. The wider public perceives the elite, including President Kibaki and Prime Minister Odinga, to have lacked the political will to facilitate the work of independent and genuine justice mechanisms thereby undermining accountability for the post-election violence. Kenya’s deep ethno-regional divisions remain a challenge for genuine reconciliation. Splits in Kenya’s parliament, along political party lines, delayed the resettlement of the over 350,000 Kenyans who were internally displaced in the post-election violence. Subsequent efforts (or lack of) at resettling the internally displaced Kenyans can be seen by some as an indicator of reconciliation. Despite the Government/Party of National Unity and the ODM enacting the National Accord and Reconciliation Act 2008 to end the country’s political crisis under the framework of the Kenya National Dialogue and Reconciliation (KNDR), there has been little dialogue on the important framework. While Kenyans are generally happy with the coalition government that delivered the new constitution the majority are against the coblinng up of a similar power-sharing government in future.

Some positives steps have been recorded. In August 2010, Kenya adopted a progressive constitution aimed at ending political and ethnic violence. Statutory institutional reform, in accordance with the new constitution has, included the establishment of the Interim Independent Electoral Commission (IIEC), Kenya Anti-Corruption Commission (KACC), and Interim Independent Boundaries Review Commission (IIBRC). Transitional justice mechanisms such as the Truth, Justice and Reconciliation Commission (TJRC), NCIC were put in place in line with the power-sharing agreement. The August 2010 constitution contains provisions to address the erstwhile lack of independence of Kenya’s judiciary including the departure of Chief Justice Evan Gicheru, much-criticized for being a close ally of President Kibaki, in February 2011. A new chief justice has since been appointed by the president from a list put forward by a new Judicial Service Commission (JSC) and the appointment was subject to approval by the National Assembly. New judiciary appointments have inspired hitherto lacking high public confidence. A rigorous vetting process for judges is also provided for in the new constitution.

There have, however, been setbacks including the lack of media freedoms; limited public sector reforms; implementation snags due to funding and legitimacy constraints; and the Unga Revolution Movement- a mass-based civil protest lobby in Kenya directed at the government and pushing for lower prices of maize flour (unga), fuel and other basic commodities, effectively showing that the economic question still stands in the way of any substantive political, legal reforms being implemented.
Constitutional opportunities and hurdles include changes in government, legislature, judiciary and society. The failure to meet gender equity – 70 constituencies must elect women – at least 116 women parliamentarians and at least 23 women senators (lots cast by dividing 290 constituencies into 4 blocks, every election round each has to vote for a woman plus 47 county representatives plus 6 nominations = 125, which is slightly more than one-third of the 349-member National Assembly - may lead to a constitutional crisis. Other implementation challenges are due to the lack of public debate on major policy issues; lack of civic education with Kenyan citizens citing political interests, corruption and lack of cohesion as obstacles.

However, the public vetting system of members of the judiciary has widespread praise from public, endorsement of civil society. The adoption of a new constitution emplaced a framework for reform firmly in place and revived hope among Kenyans for a more responsive governance culture. It is critical that the Kenyan government, political parties, civil society an other relevant stakeholders live up to the constitutional “promise” otherwise enactment of Bills will be deliberately delayed and Agenda 4 issues – institutional and legal reforms; land reforms; poverty; inequity and regional imbalances; youth unemployment; ethnicity or national cohesion and unity; entrenching accountability, ending impunity - may not be resolved. The resultant public disillusionment may manifest negatively in violence.

Critical institutions and processed necessary for Kenya’s peaceful political transition are yet to be established including a new electoral management body; delineation of boundaries; and establishment of a fully functional independent judiciary. There is a huge demand for civic education for the Kenyan public and government. While Kenyans want a local judicial process to try middle and lower level perpetrators of the 2007/2008 post-election violence, politicians scuttled efforts to establish a Special Tribunal to deal with allegations including crimes against humanity. There is concern that the country’s constitution and Bill of Rights are being manipulated by political elites to justify withdrawal from Rome Statute. Yet, political and judicial corruption, as well as routine political interference in prosecutorial and judicial decision-making had further eroded public trust that domestic justice mechanisms for dealing with the post-election violence could be effective.

Security sector reform has been largely ineffective on account of the fragility of the coalition government, severe resource constraints, and donor distrust. Kenya has experienced increased military expenditure since 2003 amidst ineffective parliamentary oversight and public scrutiny. Policing is executive-dependent, undemocratic and inequitable. There is a need for balanced, consistent national ‘use of force’ policy. Colonial-era standard operating procedures still guide policy and laws. Kenya’s Agenda 4 Item called for the establishment of an independent police commission; review and definition of the role of the Administration Police; review of laws and issues related to security and policing including; formation of an independent complaints committee, citizen oversight, information disclosures, human resources management and capacity building. Some of these recommendations have been entrenched in various Acts of the new constitution. It is imperative for the Kenyan government to finalize and effectively rollout the National Security Policy. A concerted drive is needed to recruit and train more police to raise police-to-population ration as per international standards. There is concern that the civilian oversight board of 2008 remains amorphous without clear terms of reference, structure, reporting mechanisms and power.
Critically, a Police Reform Task force has been formed and reform of security sector agencies is encompassed in the First Medium Term Plan 2008-2012 of the Kenya Vision 2030 plan. The Independent Policing Oversight Authority Bill, 2010 could reduce the executions by and impunity of the security sector. The Kenyan government needs to effectively operationalize a Witness Protection Act to counter impunity and extra-judicial executions. It is important that Kenya formulates and implements legislation to regulate private security companies while also addressing the abundance of small arms and light weapons despite the country being signatory to the Nairobi Declaration on the Problem of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa of March 2000. Land reforms are also integral to national security as Kenya’s unresolved land question contributed to the post-election violence.

In the run up to the 2012 elections there remains concern that there are ideological differences among Kenya’s civil society on whether to pursue peace as an end in itself or sustainable through truth, justice and accountability. There is still a high possibility of violence if constitutional implementation is not taken seriously. Kenyan civil society has been strengthened by its role after the 2007/2008 election violence and is relatively unaffected by ethnic divisions. It is important that CSO expand engagement with security sector organs with regards to issues of democratic governance and human rights to ensure their professional and effective response to any future political tensions or violence. They should also monitor and ensure the successful completion of the reform of the judiciary that is underway under provisions of the new constitution. However, state dominance in economics and politics is a hindrance to civil society involvement in the promotion of a democratic and peaceful electoral environment in Kenya. Civil society should engage in research, evidence-based analysis, knowledge-led advocacy, reporting on trends, exposing corruption, violence, mismanagement in relation to electoral processes. There remains a need for strong intra-civil civil society collaboration and with state.
6. Conclusion and Recommendations

The issue of elections in Africa remains a very problematic issue. The problem has nothing to do with whether or not elections should be held, but a lot to do with the manner in which African states conduct elections and how leaders behave toward the results of elections. In the case of Zimbabwe the general populace still believes that elections are the best instrument for regime change, but is overwhelmed with the refusal of leaders to accept the outcome of elections. Of particular concern is the ability and willingness of the leadership to manipulate most institutions of the state to reproduce themselves in their positions in spite of the results of the elections. As is the case in most African states, the Zimbabwean leadership demonstrated a huge disrespect of election results, a condition that tends to lead the country into both economic and political instability.

Evidence indicates that elections are invariably accompanied by widespread violence that affects society in many ways. All forms of justice are dislocated and societal insecurity has tended to engulf the countries. Again Zimbabwe is one of the leading examples of the eruption of violence following democratic elections. This has been violence directed at the opposition and its supporters. If the opposition cannot be defeated through the ballot, then it must be defeated through targeted violence. This leads to political polarization that further fuels conflict.

It must be realized that election-related violence in Zimbabwe is not a spontaneous thing but is engineered through party politics. This indicates an unwillingness to democratize parties as political institutions, but to use parties as machines for generating and perpetuating violence against opponents. The main consequence of this is not just the loss of life, but the denial of both legal and economic justice. It also results in a traumatized society which exhibits a huge security deficit.

Civil society in Zimbabwe has been very active in its attempt to eliminate election-related violence, and also in trying to create a conducive environment for the conduct of free and fair elections. This has been done through processes of monitoring before, during, and after elections. However, such interventions are greatly compromised by the tendency of the party that imposed itself in power perpetrating violence against civil society groups. This eventually means that the oversight responsibility of civil society cannot be effectively conducted. For civil society to realize its potential, the culture of violence outside within the context of elections, should be cleared.

Recommendations

The robust deliberations of the workshop gave rise to six recommendations that if pursued could result in more genuine democratic elections in African states.

1. There is need for intense and widespread education on the central purpose of elections. A prevailing misconception is that elections are about leaders and their desires to ascend political offices of the state. It is this misconception that encourages leaders to refuse to accept election results if they are not favourable to them. Citizens should be educated that elections are about serving people in their struggles to improve the quality of their lives.
2. There is a general need in Africa to interrogate the values of liberal democracy, especially its emphases on accumulation. In the African context, accumulation is perceived as occurring within the medium of the state and the democratic process becomes distorted when ascendance to state positions becomes a path to accumulation. Consequently, elections are viewed as the shortest route to accumulation and people tend to perpetuate themselves in power as long as possible and through whatever means even through violence.

3. The issue of the security sector remains very central to eliminating election-related violence. This arises from the fact that many African leaders, Zimbabwe being the prime example, manipulate the security sector to keep themselves in power. This is particularly the case with the military which in Zimbabwe has declared that it cannot accept any president other than Robert Mugabe. The military should not be allowed to heavily indulge in politics and in the process distort the processes of democratic transition and consolidation.

4. African countries must undertake genuine SSR in order to build a non-partisan security sector anchored on human security rather than regime security. The mandate of the security sector in democratic elections should be reconstructed to ensure the sector does not determine the political party that should take over power and engage in election-related violence.

5. There is an urgent need for SADC to take a more serious responsibility towards eliminating election-related violence, particularly the role of uniformed forces in such violence. The regional body should take it upon itself to promote security sector reforms within member states, especially those in conflict or post-conflict situations, as it would be extremely difficult if not impossible for states to reform themselves.

6. Civil society should be empowered to be able to undertake its oversight responsibility more effectively. The challenges may differ from country to country, but a general observation is that in all the countries, the space created for civil society to function is very limited. The importance of a strong civil society in a democracy can hardly be emphasized. It assists governments to be anchored on the needs and aspirations of the general society, thus create a people-centred and productive environment.
# Annexure I

**Programme: 14 July 2011 Burgers Park Hotel, Pretoria, South Africa**

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<td>09:00 – 09:15</td>
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<td>A Critical Examination of the Admitted Failure Towards</td>
<td>Dr Martin Rupiya</td>
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<td>Addressing Security Sector Reform by the Zimbabwean Negotiators’</td>
<td>Executive Director, APPRI</td>
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<tr>
<td></td>
<td>And Its Implications</td>
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<tr>
<td>09:45—10-00</td>
<td>SADC Communiqués and role in Regional Elections: The Case of</td>
<td>Mr Thomas Deve</td>
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<td>Zimbabwe</td>
<td>UNDP</td>
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<tr>
<td>10:00-10:30</td>
<td>Assessing African Elections and Challenges</td>
<td>Prof H.S. Simelane</td>
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<td>10:30 – 11:00</td>
<td>Discussion</td>
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<td>11:00 – 11:30</td>
<td>Tea/coffee</td>
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<td>11:30 – 12:00</td>
<td>Asserting CSO Roles &amp; Mandate in Electoral Processes Zimbabwe</td>
<td>Ms. Rindai Chipfunde-Vava</td>
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<td></td>
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<td>ZESN</td>
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<tr>
<td>12:00-12.30</td>
<td>Electoral Institute for the Sustainable of Democracy in Africa</td>
<td>Mr. Victor Shale</td>
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<tr>
<td></td>
<td>(EISA), Civil Society Organizations (CSO) Participation, mandate</td>
<td>Programme Manager EISA[cancelled attendance at the very last minute as he was travelling]</td>
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<td></td>
<td>and options: the AU PCRD (2007)</td>
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<td>12:30– 12:30</td>
<td>Discussion</td>
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<td>12:30 – 13:30</td>
<td>LUNCH</td>
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<td>14:00 – 14:30</td>
<td>Towards Ensuring Free and Fair elections: The Role of</td>
<td>Lyn Ossome</td>
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<td></td>
<td>Civil Society in Post-Conflict Reconstruction and Development: A</td>
<td>PhD Candidate, Wits Univ</td>
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<tr>
<td></td>
<td>case study of Kenya</td>
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<td>14:30-1530</td>
<td>Discussion</td>
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<td></td>
<td>Tea/Coffee</td>
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<td>15:00 – 15:30</td>
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<td>15:30 – 16:00</td>
<td>Tea/Coffee</td>
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<tr>
<td>16:00 – 16:30</td>
<td>Conclusion and Summary of Take Aways</td>
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### Annexure II

**List of Participants**

<table>
<thead>
<tr>
<th>NAME</th>
<th>ORGANIZATION</th>
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<tbody>
<tr>
<td>1 Martin R Rupiya</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>2 Patience Ukama</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>3 Harry Flayser</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>4 Christine Rupiah</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>5 Kayla Potgiter</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>6 Ipeleng Bosilong</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>7 Portia Sindane</td>
<td>African Public Policy and Research Institute</td>
</tr>
<tr>
<td>8 MR Aaron Mundeta</td>
<td>VSO</td>
</tr>
<tr>
<td>9 Bongai Mundeta</td>
<td>VSO</td>
</tr>
<tr>
<td>10 Jarett S. MacDonald</td>
<td>US Embassy</td>
</tr>
<tr>
<td>11 Bheki Moyo</td>
<td>Trust Africa</td>
</tr>
<tr>
<td>12 Lyn Ossome</td>
<td>PhD Student, University of the Witwatersrand</td>
</tr>
<tr>
<td>13 Trevor Maisiri</td>
<td>APPRI Zim Desk</td>
</tr>
<tr>
<td>14 Hamilton S. Simelane</td>
<td>Professor, UKZN</td>
</tr>
<tr>
<td>15 Thomas Deve</td>
<td>Advisor, Global and Climate Change, UNDP</td>
</tr>
<tr>
<td>16 Rindai Chipfunye-Vava</td>
<td>ZESN</td>
</tr>
<tr>
<td>17 Van Zyl</td>
<td>Babhuti Research institute</td>
</tr>
<tr>
<td>18 Mr John Vilakazi</td>
<td>DIRCO</td>
</tr>
<tr>
<td>19 Ms Salome Masuku</td>
<td>DIRCO</td>
</tr>
<tr>
<td>20 Fani Du Toit</td>
<td>Institute for Justice and Reconciliation</td>
</tr>
<tr>
<td>21 Paulos Eshetu</td>
<td>Institute for Justice and Reconciliation</td>
</tr>
<tr>
<td>22 Aqualina Mawadza</td>
<td>Institute for Justice and Reconciliation</td>
</tr>
<tr>
<td>23 Lewis Ndhlovu</td>
<td>Masazi Development</td>
</tr>
<tr>
<td>24 Bertha Chiroro</td>
<td>IDAZIM</td>
</tr>
<tr>
<td>25 Maddy Halyard</td>
<td>Idasa</td>
</tr>
<tr>
<td>26 Emily Stramme</td>
<td>Idasa</td>
</tr>
<tr>
<td>27 Juliane Kaden</td>
<td>Idasa</td>
</tr>
<tr>
<td>28 Charles Kipkorir</td>
<td>Kenhya High Commission</td>
</tr>
<tr>
<td>29 Paul Allotey</td>
<td>Ghana High commission</td>
</tr>
<tr>
<td>30 Victor Ifumo</td>
<td>Nigerian High commission</td>
</tr>
<tr>
<td>31 Rebone Ramphomane</td>
<td>SALO</td>
</tr>
<tr>
<td>32 M E Sibanda</td>
<td>Sus dev Solutions</td>
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### Annexure III

#### List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>APPRI</td>
<td>African Public Policy and Research Institute</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organizations</td>
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<tr>
<td>ESC</td>
<td>Electoral Supervisory Commission</td>
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<tr>
<td>GPA</td>
<td>Global Political Agreement</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>IG</td>
<td>Inclusive Government</td>
</tr>
<tr>
<td>IIBRC</td>
<td>Interim Independent Boundaries Review Commission</td>
</tr>
<tr>
<td>IIEC</td>
<td>Interim Independent Electoral Commission</td>
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<tr>
<td>IJR</td>
<td>Institute for Justice and Reconciliation</td>
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<tr>
<td>JOC</td>
<td>Joint Operational Command</td>
</tr>
<tr>
<td>JOMIC</td>
<td>Joint Monitoring and Implementation Committee</td>
</tr>
<tr>
<td>JSC</td>
<td>Judicial Services Commission</td>
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<tr>
<td>KACC</td>
<td>Kenya Anti-Corruption Commission</td>
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<tr>
<td>KNDR</td>
<td>Kenya National Dialogue and Reconciliation</td>
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<tr>
<td>NSC</td>
<td>National Security Council</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<td>ODM</td>
<td>Orange Democratic Movement</td>
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<tr>
<td>PVT</td>
<td>Parallel Vote Count</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SSR</td>
<td>Security Sector Reform</td>
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<tr>
<td>ZEC</td>
<td>Zimbabwe Electoral Commission</td>
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<td>ZTV</td>
<td>Zimbabwe Television</td>
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