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Zimbabwe: does the new draft constitution pave the way for a smooth transition of power?

The deputy minister of Justice and Legal Affairs for the Zimbabwe Government of National Unity Honourable Obert Gutu was speaking at Idasa, in Pretoria on the 3rd of July 2012. Obert Gutu has held the position of Deputy Minister of Justice and Legal Affairs since June 2010. He is a member of parliament for the Chisipite constituency in Harare for the MDC-T.

This paper is based on the briefing given by the Deputy Minister as he considered the next 12 months of Zimbabwe's political transition, specifically the new constitution and the challenges remaining regarding the road to national elections for Zimbabwe. Opinions stated in this brief are those of the Deputy Minister. Zimbabwe's select committee mandated to draft a new constitution (COPAC) has passed a final draft to the Principles on the 18th of July 2012. The drafting of the new constitution is seen as pivotal to the governance reform processes in Zimbabwe, as many other reforms have not yet taken place due to the polarised and dysfunctional political establishment.

Drafting process

COPAC was established in August 2009. 25 members were selected from the three political parties to the unity government. The current constitution was written in 1980, as part of the Lancaster House agreement, designed as a transitional document for independence; it is still in use. It was amended no less than 19 times.

All parties to the process agree that a new constitution is needed to reflect the wishes of the Zimbabwean people. Disagreements between the parties concerning the content have led to a prolonged process of development. The document that has recently been released to the principles will thereafter go through a referendum and the parliamentary system of approval.

It is the deputy minister's belief that the new constitution will be a transitional measure that will ensure a smooth transition of power after credible elections, which will bring the power sharing agreement to an end. The MDC-T feels that the new constitution may not be the best it could possibly be but that a new document is needed to assist the transitional process. They therefore consider it a compromise document that at least all parties to the transition can agree upon. Once adopted the new constitution will pave the way for other reforms.

The deputy minister highlighted the following topics:

- The MDC feels that the powers of the Executive and the President should be diluted. Many appointments such as security chiefs, judges and provincial governors are currently attributed to the president and therefore open to manipulation. Even though the GPA states that all senior appointments of security and civil service will be made by the President in consultation with the

Prime Minister this does not actually take place. The GPA states that the deputy chair of the cabinet is the Prime Minister, yet he lacks executive power to execute cabinet meetings and the cabinet will currently not sit in the President's absence. The GPA states (article 19) furthermore that executive powers lie with the cabinet, the President and the Prime Minister. Yet the reality is that the executive power still lies with the president and ZANU-PF alone.

- Even across the political divide there is agreement that presidential elections should include a president with running mate, based on the American system. The running mate of the winner automatically becomes the first vice-president. The MDC-T compromised here as it was ZANU-PF that insisted on maintaining a system of two vice-presidents. They claimed that this has always been the approach in Zimbabwe and that it speaks to ethnic balance. To dilute an overbearing presidential system further the new constitution includes a two term maximum for a presidential appointee.
- The new constitution creates an even bigger parliament than currently exists. Parliament will have 250 seats in the House of Assembly and 60 extra seats specifically reserved for women by proportional representation. There will be 100 senators, 10 of whom will be traditional chiefs.
- In the current draft there is a lack of devolution; power is too centralised. ZANU-PF feels that devolution will break up the country. There will however now be elected governors. They will be directly elected through the provincial assembly. Even though the MDC feels this is not enough, it feels that some progress has been made in giving power to local structures and systems, thereby promoting democracy.
- The Supreme Court is currently the highest court in the country. The MDC considers it a major breakthrough that a new separate Constitutional Court will be established, because this means that new judges will be sworn in, whereas ZANU-PF would prefer to maintain the status quo as the courts are currently politicised in their favour.

Human rights abuses

According to the deputy minister the human rights situation in Zimbabwe has improved since the signing of the GPA, however it is still unacceptable. Even though the law states that the police merely need to be informed of meetings and gathering the police interpret these laws as needing permission, and use their power to obstruct meetings selectively. The security forces are highly politicised and often intimidate those supporting the MDC, especially in rural areas. There are many cases of MDC activists being arrested and being held in prison for months whilst being denied bail. No ZANU-PF activists are in jail as a result of being denied bail. There are still no-go areas for MDC supporters, areas in which MDC rallies cannot be held without lives being put at risk, such as in Mashonaland East and some areas of the Midlands. An MDC district chairman was murdered recently in Mudzi (Mashonaland East). At a summit in Luanda¹ that took place a few days after the murder, SADC announced it would be unwise for Zimbabwe to hold elections this year. Yet ZANU-PF has continued to call for elections in 2012. It was only through the intervention of South African President Zuma that President Mugabe acknowledged that 2013 was more realistic.

¹ extraordinary summit of SADC heads of state and government *Luanda, Angola* June 01, 2012

Political economy

The MDC-T minister of finance Tendai Biti has stated that the current national budget expects USD600 million in revenue from diamond sales from Chiadzwa and Marange in 2011. Yet to date the treasury has only received 30 million. The Deputy Minister claims that approximately 50% of Chinese diamond mining companies in Zimbabwe are controlled by Zimbabwe's security chiefs. Even though there is a freeze on employing new civil servants, the army and prison service are employing hundreds of new people. The finance minister says he is unaware of how these projects are being funded. A link has been made between the diamond revenue and a parallel funding system for the security forces. This has a major impact on the human rights situation and power nebulous in the country.

Top security chiefs state openly that they will not accept any election winner that does not have independence struggle credentials. This is clearly directed at Morgan Tsvangirai in an attempt to derail the results of any elections that will take place, because everyone agrees, even ZANU-PF members off the record, that if free and fair elections were to be held that Morgan Tsvangirai would win.

To ensure that a transition of power will follow an election win for the MDC the issue of security sector reform, otherwise referred to as realignment, must be addressed. Soldiers should not be actively engaging in politics yet the security forces are not simply going to relinquish the power that they have. To address this issue the current police commissioner general and army commanders cannot retain their position. This is due to the public contempt that they have shown for the Prime Minister. There would be a need to head hunt new security chiefs with the right credentials but whom are not as threatening to the political arena as the current ones are. Realignment should not be aimed at purging the whole army but at ensuring that the army will serve Zimbabwe. Amnesty would be an unpopular approach to security sector reform as there have been historical events (Gukurahundi, and Murambatsvina) whereby human rights abuses and other issues were not addressed leaving many Zimbabweans disenfranchised. There will be a need for a commission to address the human rights violations that have taken place.

Elections

The earliest possible time for new national elections to take place will be March 2013. June 2013 is perhaps more realistic. Constitutionally the current parliament must be resolved by the end of June 2013 so elections should be held before September 2013 anyway. The quality of President Zuma's mediation will be a deciding factor in what sort of elections take place. The MDC is hoping for credible elections. The MDC is confident that Morgan Tsvangirai will win and is capable of achieving 70% of the vote, without the violence and intimidation this percentage could be even higher.

Elections will not be completely violence free. Even though the political principles have made public anti-violence statements the army is still being deployed to intimidate and harass the public into voting for ZANU-PF. Some people have suggested that President Mugabe is not in control of the security forces however Deputy Minister Gutu suggests that he is fully aware and in full control of the state apparatus.

Some changes have been made to voting protocol. Citizens will be able to vote in a ward based polling station system. This will mean voters do not have to vote at a specific polling station but are free to use any station within their ward. They will therefore be less easily targeted for harassment. Yet impunity towards

violence and hate speech must be addressed before the elections. The no-go areas for the MDC must be made accessible. Furthermore outstanding issues such as state control of the media and the partisan electoral commission need to be addressed.

There has been money budgeted for a referendum and the 2nd All Stakeholder Conference, that will most probably take place in September 2012 and by the end of the year at the latest.

Sanctions have so far been a convenient political tool for ZANU-PF to blame foreign governments for Zimbabwe's troubles however Zimbabwe is in the place it is now because of corruption, looting and mismanagement and not sanctions. The deputy minister suggests that sanctions should stay in place at least until elections have taken place.

Monitors from the EU and USA will not be allowed, but the AU and South Africa will be allowed to play a role in monitoring of the elections. Technical assistance however will most likely not be acceptable, as it will be seen as compromising Zimbabwe's sovereignty.

Post-election scenario

According to Deputy Minister Gutu if free and fair elections are held it is obvious that Morgan Tsvangirai will win. However, due to the political interference and seemingly financial independence of the security sector major concerns arise around the actual transition of power. There is a possibility that the MDC will win the elections but that the security sector will prevent it from taking office. For this reason security sector reform must be addressed before the elections. President Zuma has stated that he, together with the political principles, will draft an election road map in the near future.

There is currently a parliamentary debate in progress concerning the post-election situation. The MDC has said it wants systems in place to ensure that whoever wins the next election is also in a position to take over power. ZANU-PF does not want to intervene and says that they cannot stop the security forces engaging in politics because of their independence struggle credentials.

The Deputy Minister does not see any prospect of another GNU due to the dysfunctional character of the current power sharing government, however an exclusively MDC government is also unlikely. For the sake of stability an MDC government will need to co-op progressive elements of ZANU-PF.