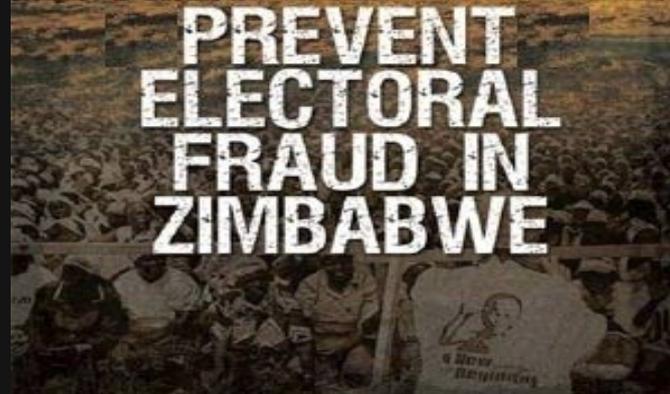


# ZIMBABWE TRANSITION BAROMETER

DECEMBER 2012

Bi-monthly Report Analysing The Zimbabwe Transition  
ISSUE 02



## TREKKING THE TRANSITION

As we approach 2013 it is likely that this will be an election year. We argue that the transitional process, as of early December 2012, is reflective of Transplacement, a process where democratization occurs from joint action by government and other actors.

From this premise, advocacy interventions from stakeholders have to continuously target government, civic as well as regional and international actors.

## Introduction

Our second edition of the Zimbabwe Transition Barometer (Issue 2) continues to focus on key transitional issues and how they affect the quest for democratisation in the country. Zimbabwe's transition is hypothetically supposed to lead to democratisation; beyond the immediacy of stability and elections.

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

The areas of focus are:

- \* National Security Institutions
- \* Electoral Amendment Act and related electoral reforms
- \* Timing of elections
- \* Zimbabwe Human Rights Commission Act
- \* Finalisation of the Constitution process
- \* Sanctions and measures (re-entry and acceptance on the international platform)

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

At a theoretical level, in the last edition, we focused on the transitional outcomes but given the political developments in the past two months we premise our theoretical understanding from a process paradigm to aid advocacy interventions by stakeholders so that Zimbabwe can have a democratic transition. In his seminal work, Samuel Huntington distinguishes four transitional processes. First, *Transformations* that is the process where the elites in power

took the lead in bringing about democratic change such as in India, Hungary, and Brazil. Second, *Replacements*, where opposition groups championed democratic change as in Portugal and Argentina. Third, *Transplacements* (as in Czechoslovakia and Nicaragua) where democratization occurred from joint action by government and opposition groups; and fourth, *Interventions* as in Panama where democratic institutions were imposed by an outside power. Which transitional process is Zimbabwe following?

# EXECUTIVE SUMMARY

As we approach 2013 it is likely that this will be an election year. Outstanding reforms (as highlighted in the election road map of 2011) and the constitutional process continue to lag behind. National security institutions continue to function in a partisan manner with senior officials and some politicians making statements that impact negatively on security towards, during and after the election. This tends to “crowd out” civilians and the general citizenry from occupying their natural political space as security sector interests in politics become over projected. Given the marked interest of the security sector officials in politics and elections there is a high potential for increased state sponsored violence and intimidation. The credibility of the election itself is threatened by threats of military involvement should eventual results not fall in favour of ZANU-PF. SADC’s role in arresting this misnomer as well disciplinary measures for aberrant officers and politicians (as stipulated in the GPA) are required. The National Security Council must be operationalized forthwith in order to align security matters to GPA guidelines.

The enactment of the Electoral Amendment bill has injected some hope in carving out a credible electoral framework. If implemented fully and without any political interference; the new law has potential to limit some of the deviant cases in the June 2008 election while improving the electoral environment. All is however dependent on political will to ensure that the new law is applied. The Zimbabwe Electoral Commission (ZEC) has made strides in partnering with a reputable regional electoral institute which is assisting with capacity building. Meetings and training for the media, political parties and other election stakeholders have been undertaken thereby imparting some levels of transparency in the current operations of ZEC. It is however hoped that at the crucial time of election tallying; and results tabulation and announcements, ZEC will discharge its duties with impartiality; professionalism and according to its guidelines and the laws of Zimbabwe.

One of the greatest limitations in the current process is the lack of concurrence on election timing. Whereas Mugabe has called for election in March 2013; other GPA parties and broader civil society have objected. The outstanding constitution process and the key election road map issues are seen as major hindrances to an election in March 2013 as inferred by Mugabe. One key tenant of a democratic society is the citizens’ capacity to predict political processes; in terms of when and how these take place. By virtue of being kept in the dark on election timing and being subjugated to politicians’ preferred self-serving election dates; the citizens of Zimbabwe are being denied a fundamental democratic entitlement. Should SADC fail to insist on an election timing that is determined by the reform process and the MDC parties relent on their road map demands; an election in March 2013 may still materialise. However the most convergent timing is seen as June 2013; given the most likely compromise timing that GPA parties and SADC are likely to settle for.

The Zimbabwe Human Rights Commission bill has been enacted paving the way for the operationalization of the commission. The Act however restricts the commission to considering only those cases falling after the 2009 cut-off date; the period in which the IG was formed. Although this limitation excludes other periods of gross human rights violations such as: Gukurahundi; the 2002 elections; and 2008 election period it is seen as a first step in preparing a sound political environment towards and beyond the next election. As much as the enactment of the bill provides a trajectory to-

wards democratisation; the limited extend of its scope precludes other components of our society from accessing full redress of historical deprivations; which in itself is a denial of democratic rights. Civil society is however still urged to lobby and advocate for other mechanisms that would still consider the pre-2009 periods of concern. Political will remains key to the full operationalization and committed application of the Act and this must be demanded. In the constitution writing process; although the second All-stakeholders’ meeting proceeded and ended peacefully; it is the post-meeting processes that have become of concern. The GPA parties have been grappling with how to address the ZANU-PF objections to the draft that were raised during the second All-stakeholders’ meeting. Mugabe indicated that the GPA principals will have to take-over the process and agree on how to tackle the impasse. This has been objected by broader civil society and some political players as it is seen as creating conditions for the executive to impose its will on the draft constitution; a scenario that would further dilute the “people-centeredness” intended out of the constitution process. The procedures highlighted in the GPA are clear on parliament and the referendum being the only two post-second All-stakeholder meeting processes. Cabinet has however established a sub-committee to address the impasse; which again is an abrogation of the stipulated GPA process. The tension and gridlock in the constitution process has a high likelihood of sustaining process stagnancy; which can lead to the total collapse of the writing and adoption of a new constitution. Completion of the constitution process must be prioritized and the citizenry must be allowed an opportunity to put to test the draft through a democratic referendum.

The case of “sanctions” and measures imposed on Zimbabwe seems to be progressing. The EU has relaxed “sanctions” and measures and is to restore support to Zimbabwean government under the European Development Fund in the 2014 funding calendar. The IMF has restored Zimbabwe’s voting rights and the government’s interaction with the Bretton Woods institution has increased over the last four years. The political parties in the GPA also seem to be in concurrence over the need to lift the “sanctions” and measures; given the joint Ministerial team’s harmonised approach in engaging with the EU earlier in 2012. The US government has however remained persistent on the conditions it set under the Zimbabwe Democracy and Economic Recovery Act of 2001. The US sanctions regime has also extended to the Zimbabwe Mining Development Corporation (ZMDC); which is highlighted as government’s top most diamond revenue channel. The US has incessantly questioned the lack of transparency in the diamond industry; Zimbabwe government has justified its reluctance to comply on the need to bust the imposed “sanctions” and measures. Although the remaining “sanctions” and measures have potential to inhibit further political reforms in Zimbabwe; their inducement for such reforms is also unclear.

Based on our empirical evidence, it is clear from a theoretical premise, that the Zimbabwe Political Transitional process is not reflective of a transformative, replacement or interventions process. The trajectory we have, as of early December 2012, is one of transplacement. From this premise, advocacy interventions from stakeholders have to continuously target all four major actors in the transition for maximum leverage. We refer here to hard-liners and soft-liners, as well as moderates and radicals.

## 3.0 Trekking the Transition

### 3.1 Barometer Indicator 1: National Security Institutions

#### 3.1.1 Source of Barometer Indicator

Article XIII of the GPA instructs that all state institutions be impartial; observe the rule of law; and that they should be apolitical in the discharge of their duties. Article also provides for the penalisation of state institution officials who violate this GPA stipulation. Article XI of the GPA also highlights the need for all individuals to respect the constitution and other laws. Under issue (E) of the election road map signed by the political parties on 6<sup>th</sup> July 2011 and under the heading “rule of law”, the parties committed to holding meetings with security sector chiefs in order to emphasize their need to operate in a non-partisan manner and “consistence with the GPA”.

#### 3.1.2 Key Prevailing issues

The Zimbabwe security sector chiefs have publicly proclaimed their support for ZANU-PF and have thus heavily politicised the security institutions. In June 2012 Major General Douglas Nyikayaramba declared that Morgan Tsvangirai of the MDC-T was a security threat to the nation and his involvement in politics therefore justified the need by the security sector officials to take positions on the side of ZANU-PF. While addressing an army graduation parade in October 2012, Nyikayaramba also called on the security forces to stand-by to deny any election win by the MDC parties. In May 2012, Major General Martin Chedondo told the media that “*as soldiers, we will never be apologetic for supporting Zanu (PF) because it is the only political party that has national interests at heart*”. In a speech to graduating police officers in February 2012; the Commissioner General; Augustine Chihuri reiterated his support for ZANU-PF. In October 2012 the ZANU-PF politburo members; Patrick Chinamasa and Rugare Gumbo made statements to the effect that the military will likely not stand by and allow a Morgan Tsvangirai win in the coming elections. There is therefore a blatant drabbling in politics by the Zimbabwe security sector officials. A group of serving officials including: Major-General Martin Chedondo; Air Vice-Marshal Shebba Brighton Shumbayaonda; Brigadier-General Herbert Chingo; Brigadier-General Mike Sango; Brigade Commander Brigadier-General Eliah Bandama; police Deputy Commissioner General Godwin Matanga are alleged to have also expressed an interest in participating in the next elections as parliamentary candidates; representing ZANU-PF.

#### 3.1.3 Effects on Democratisation Process

Huntington contends that, “*politics is beyond the scope of military competence, and the participation of military officers in politics undermines their professionalism... The area of military science is subordinate to, and yet independent of, the area of politics ... The military profession exists to serve the state*” The functionality of the security sector is primarily to the state rather than to individual political groupings.

Where the security sector becomes politicised this indicates an abrogation of duty and exposes the state and its citizens to the manipulation by political systems that are backed by the security sector. The security sector can also coerce citizens into compromised political allegiances or may simply scare off the citizens from occupying their civilian space in political processes. By design, the security sector is naturally a non-political entity as its coercive power is not supposed to contest in any civilian space. Democracy is about allowing equally matched political entities to compete for the popular vote and mandate of the people. Where the security sector takes partisan positions; this introduces political dis-equilibrium into political competition which ultimately destroys functional democracy.

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Zimbabwe Elections Roadmap with Timelines, issue (E) – Rule of law

Richard Lee, “Playing politics with military history”, November 2012

“Tsvangirai is a national security threat”, The Zimbabwe Guardian, 25 July 2012

“Army part of politics: Chedondo”, The Herald Newspaper, 9 May 2012

In an interview with the BBC on 11 October 2012

In an interview with the Daily News newspaper in October 2012

“Tensions rise in faction-riddled Zanu PF”, The Zimbabwe Independent newspaper, 6 July 2012

Huntington, S.P., “The Soldier and the State. The Theory and Politics of Civil-Military Relations”. Cambridge, Mass.: The Belknap Press, 1957

### 3.1.4 Barometer Indicator Scorecard

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

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		<ul style="list-style-type: none"> <li>◆ National Security Council has not been meeting regularly and neither has it formulated national security strategy.</li> <li>◆ The operations of the Joint Operations Command (JOC) are suspected to have been maintained</li> <li>◆ JOC stands as a major threat in running the logistics and election mechanism for ZANU-PF in the next election</li> <li>◆ Politicians and security sector chiefs who have continued to make treasonous political statements have not been brought to book</li> <li>◆ Arbitrary security sector recruitments continue across the country; this raises fears of a bolstered security sector to be employed for election purposes</li> </ul>

### 1.5 Possible Scenarios

The immediate effect of the security sector’s straddling into politics will likely be in election related processes. The security sector involvement poses challenges of: state sponsored violence and intimidation; overriding of electoral institutions such as ZEC; and possible resistance to power transfer should ZANU-PF be unfavourable of a particular election result. The security sector’s appetite for political involvement can possibly lead beyond just supporting ZANU-PF but to ultimately pursue the political interests of security chiefs; even if such interests are contrary and to the party’s. This will likely cause civil-military strain in the party which may also exacerbate current factionalism and succession battles within. Further instability in ZANU-PF will likely slow down transitional reforms as the party is known to draw back progress whenever faced with internal disharmony. Continued dominance of ZANU-PF by the security sector has potential for creating a military state.

### 1.6 Key Recommendations

- \* SADC must develop a specific code of conduct for security sector for the pending election
- \* Security sector officials and politicians who have made security-related threats to the election process since SADC’s June 2012 call for elections must withdraw statements or face censure.
- \* Any further election-related proclamations by or related to the security sector officials must face disciplinary action as stipulated in the GPA.
- \* The immediate operationalization of the National Security Council as a pre-election condition as well as dismantling any vestigial JOC operations and structures are both urgent.
- \* Civil society oversight on security sector conduct in political issues must be instituted and documented regularly.

## 3.2 Barometer Indicator 2: Electoral Reforms

### 3.2.1 Source of Barometer Indicator

At the Extraordinary SADC Summit of Heads of State and Government held in South Africa on 11th and 12th July 2011; President Jacob Zuma presented the Zimbabwe election roadmap. Included in the road map was an agreement by the three political party negotiators to enact amendments to the Electoral Act. The parties however failed to agree on the issue of the composition of the Zimbabwe Electoral Commission. While the MDC-T insisted on fresh recruitments of ZEC secretariat; the MDC merely called for the need for transparency and professionalism and ZANU-PF maintained that there should be no changes. The GPA also instructs that a legislative agenda be adopted with a “view to entrenching democratic values and practices”. The Electoral Act was identified by the GPA parties as being part of such legislation.

### 3.2.2 Key Prevailing Issues

The first working draft on the amendments to the Electoral Act was produced in 2010. By the beginning of 2011 the GPA parties had agreed on key issues; including the need to include polling station based voting system. In June 2012 the MDC-T however backtracked and began insisting on a ward based voting system, arguing that the polling station voting system allowed for tracking of voters and their victimisation before, during and after voting. ZANU-PF however complied with the MDC-T demands and the Electoral Amendment Act was gazetted on Friday 28th September as Act No 3/2012 after Presidential assent.

Although the MDC-T had called for fresh recruitments at the ZEC secretariat; that demand has however not been instituted and also seems to be fizzling away. ZEC has signed a capacity building partnership agreement with the Electoral Institute for Sustainable Democracy in Africa (EISA); a reputable and independent Africa-wide body. To date various joint activities have been held by EISA and ZEC; which have helped to somehow dispel the alleged secrecy of how the electoral body functions and its historical lack of transparency. Election administration incapacity and political suspicion are the two main hindrances that face many electoral bodies in different country contexts. They both need to be addressed if the general population is to gain any confidence in the electoral body. ZEC’s capacity building program as well as its broader engagement with civil society and citizens seems to be addressing this capacity/political suspicion complex.

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Under issue (D) – Electoral Reforms

Article XVII

A voting system by which the voters’ roll is specific to polling stations; voters therefore cast their votes at particular polling stations.

Voters are free to cast their votes at any polling station that falls within their ward.

Douglas Mwonozora, MDC-T spokesperson quoted in *Great Indaba news*, 4 June 2012, Vol. 43

EISA support to ZEC includes: providing voter education to Zimbabwe citizens through a consultative process with stakeholders; capacity to timely resolve elections related conflict; and sharing of information amongst the key stakeholders such as political parties and the media

In June 2012 EISA held a conflict management training for ZEC officials; rroundtable between ZEC, JOMIC, Organ for National Healing Reconciliation and Integration (ONHRI), Zimbabwe Human Rights Commission (ZHRC) and Zimbabwe Republic Police (ZRP). In July 2012 ZEC held roundtable with media decision makers. In

### 3.2.3 Effects on Democratisation Process

The Electoral Amendment Act now ensures that the voter's roll be available to interested parties in both electronic and printed versions. This allows for transparency and unhindered dissemination of information which further allows citizens and other civic bodies to verify the voter's roll; a key election tool. Given the 2008 experience of targeted political violence and intimidation, the ward based voting system allows voters to choose their most appropriate polling station and therefore limits the mentioned targeting. The bill also allows for other persons and bodies to carry out voter education besides the electoral commission; though they have to be qualified through ZEC's laid out procedures. An election Observers Accreditation Committee will now be set up by ZEC. Although four of the seven members will be ministerial appointees, this is an improvement from the previous sweeping powers the minister had in the accreditation process.

Specific mechanisms involving political parties and contesting candidates will be in place to resolve election related conflict and violence as these arise. However they still have to work through the judiciary system; which has previously been blamed for being partisan and for extending impunity. Election results will be posted outside each polling station, which will allow the candidates to trace their votes and ensure that the correct tallies are being conveyed to the National election command centre.

Presidential election results will now be released within 5 days from the day of polling. Illiterate and physically handicapped voters will now be allowed to nominate people that assist them unlike in the past where assistance was imposed. Police officers will no longer be allowed inside polling station; a phenomenon that had intimidated voters in previous elections as well as raised suspicion of tampering with ballot boxes. The electoral bill also makes it mandatory for the public broadcasters to cover all political parties equally and to allow them uniform coverage in their campaigns.

These clauses in the new bill are indicative of a democratic electoral framework and if fully implemented they can edify the quest for a free and fair election. However, electoral reforms without the backing of political will cannot achieve the set objective of credible elections; even in developed democracies. Though there are still some limitations on some of the provisions, the bill represents marked improvements in democratising electoral space as compared to conditions and legal frameworks that were in existence in previous elections in Zimbabwe. Given the background of the mystery around elections and electoral provisions; and association of elections with violence, it is critical to ensure that the general citizenry are aware of how the Electoral Act empowers and backs them in freely and voluntarily participating in the elections. It is good practice to ensure that the Electoral Act is available in all major languages for the sake of informing and empowering citizens.

### 3.2.4 Barometer Indicator Scorecard

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

EVALUTATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		<p>The Electoral Amendment bill has been passed.</p> <p>ZEC has moved significantly to: enhance its capacity; partner with a reputable and independent electoral institute; interact with all political parties; interact with media; and began activities of voter education.</p> <p>Full implementation of the Electoral Amendment bill however still holds the key to its ability to influence a transition to democracy</p> <p>Although ZEC has made strides in building capacity and enhancing its image, the body must protect its independence when it matters most; at vote counting and results announcement</p>

August 2012 ZEC held training in conflict management for political parties and EISA handed over voter education material to ZEC. In October 2012 ZEC and EISA began voter education programs for election officials and civil society as well as election reporting training for the media.

Robert A. Pastor, The Role of Electoral Administration in Democratic Transitions: Implications for Policy and Research, Democratisation-Frank Cass Journal, Vol. 6, No 4, 1999, p. 19

European Commission for Democracy through Law, Report on Electoral Law and Electoral Administration in Europe, 2005, p.4

Ibid, p. 6

## 3.2.5 Possible Scenarios

Given the enactment of the Electoral Amendment Bill there are possibilities of holding a free and fair election. The activities observed at ZEC also provide some levels of confidence in the body's ability to discharge a credible election.

However the consolidation of these reforms needs to be backed by disciplined politicians and the security sector officials who are able to restraining from interfering in these processes. Possibilities of interference cannot be totally overlooked if the politicisation of the security sector is sustained and SADC fails to compel the required restraint. The reforms at ZEC and those instituted through the Electoral Amendment bill can be eroded; should other key restraints to a discredited election and enablers of a credible election (in the roadmap) be circumvented.

## 3.2.6 Key Recommendations

- \* SADC must ensure that the ground covered by ZEC and through the Electoral Amendment Act be secured by ensuring that its monitoring role includes limiting political and security sector interference.
- \* ZEC must maintain its current momentum in preparing for elections through: continuous voter education; training programs; and interaction with political parties and civil society
- \* ZEC must begin public awareness campaigns for voter registration
- \* ZEC must monitor the operations of voter registration centres to ensure that they are accessible and available to citizens (since this function is still being run under the Registrar General's office).
- \* Civil society oversight on developments in ZEC and implementation of the Electoral Amendment Act must be documented and publicised.

## 3.3 Barometer Indicator 3: Election Timing

### 3.3 Source of Barometer Indicator

Issue (H) of the election roadmap indicates that there shall be a presidential proclamation of an election in consultation with the Prime Minister. This issue therefore makes provision for a concurred timing of holding elections; which will retire the GPA.

#### 3.3.2 Key Prevailing Issues

Election timing has been an evasive issue for some time. ZANU-PF has called for elections from as early as 2010. At its Extraordinary Summit of Heads of State and Government held on 1 June 2012 in Luanda, Angola; SADC called for elections in Zimbabwe within a period of twelve months. Although the GPA is not particular about the constitution process being the sequential predecessor of an eventual election; many found it in good judgement to have its completion before holding of elections. ZANU-PF has however been indifferent; at times arguing that the two processes are exclusive and that an election date must not necessarily be determined by progress in the constitution process. In other cases the party is alleged to be creating conditions for a gridlock in the constitution process in order to push forward a situation where the country goes to elections on the current constitution (Lancaster House constitution). In October 2012; Mugabe suggested that elections be held in March 2013; a call he repeated during the opening of the second All Stakeholders' constitution writing conference and many other times thereafter.

Mugabe's call has however been censured by other parties in the GPA and broader civil society; given the extent of outstanding pre-election reforms and the four months left until March 2013. ZANU-PF has however insisted that election will go ahead in March 2013 despite lack of consensus on the timing within the coalition government. Ordinary citizens have remained largely uncertain about when an election will be held and this has tended to induce fears of a surprise election or the possibility of not holding an election in 2013; resulting in an indefinite election timing.

#### 3.3.3 Effects on Democratisation Process

One of the growing tendencies in democratic culture is the demand by citizens "for more predictability in political processes" Over time political processes have become more intertwined with citizens' social and economic interests. They have become central to the multi-dimensional facets of livelihoods and related factors. There is therefore a growing interest by citizens to know when and how particular processes will transpire.

Democracy also entails the availability of accurate information which must dispel any uncertainties about political processes. In democratic societies; election dates are known ahead of time and though they are determined by political processes there are not set to serve partisan interests. More broadly election dates are also supposed to be considered based on the interests of the citizens and the capacity to provide them an environment for unrestricted expression of their political choice. The currently heckling on election dates and the uncertainty created, both serve against such democratisation hallmark.

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Resolutions of the 11th Zanu-PF Annual National People's Conference  
"Zanu PF never wanted a new constitution", *Newsday newspaper*, 31 August 2012  
José Luis Sardón, "Democracy without Political Parties", 2012

### 3.3.4 Barometer Indicator Scorecard

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

EVALUTATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		<p>Mugabe is calling for elections in March 2013            Other GPA parties are not in agreement with the timing and Mugabe has threatened to call for election without their concurrence            Pre-election reforms that are still required are: completion of constitutional process; and should a new constitution be passed - developing and passing new legislative framework (to support new constitution) in order for some of the new constitutional provisions to apply in shaping a credible election environment (this may include institutional re-alignment)</p>

### 3.3.5 Possible Scenarios

There is a possibility that Mugabe may continue to insist on a March 2013 election and the MDC parties may yield to that timing. Although SADC is in a strategic position where it can push for an election timing that it sees as most suitable; the regional bloc however seems obsessed more with stability than with full democratisation (refer to Zimbabwe Transition Barometer Issue 1). This has potential to influence election even before addressing the pre-election reforms necessary for a free and fair election. In this circumstance although a March 2013 election is highly unlikely it cannot however be totally dismissed.

There are also possibilities of holding the election in June 2013; which may be “middle ground” between Mugabe’s insistence for March 2013 and the furthest possible election time; September 2013 (three months after the life of current parliament).

### 3.3.6 Key Recommendations

- \* Election timing needs to be determined by progress in pre-requisite reforms and SADC is urged to develop a benchmark for assessing the electoral environment as a way to determining the timing.
- \* The MDC parties must remain principled to their election road map demands in order to ensure that they do not enter an election process whose credibility they will later challenge.
- \* Civil society must insist on completion of constitution process before holding of elections. Given the time and resources so far spent in the constitution process, it only makes sense to allow Zimbabweans an opportunity to go to referendum.

## 3.4 Barometer Indicator 4: Zimbabwe Human Rights Commission Act

### 3.4.1 Source of Barometer Indicator

The GPA recognises the relevance of free political activity as a cornerstone to any multi-party democratic system and with the parties agreeing to the presence of free political activity throughout Zimbabwe carried out within the ambit of the law; with all political parties being able to canvass for support, free of harassment and intimidation. The GPA requires the inclusive government (IG) to prioritise the legislative agenda to reflect letter and spirit of the agreement. Furthermore, the GPA instructs the IG to discuss and agree on further legislative measure which will enhance implementation of government policies and ultimately entrench democratic values and principles. The consummation of the Zimbabwe Human Rights Commission and enactment of the related bill is part of this broad legislative reform agenda.

### 3.4.2 Key Prevailing Issues

Cabinet agreed to the passing of the Zimbabwe Human Rights Commission Bill (ZHRCB), and this paved the way for House of Assembly and the Senate to pass the Bill on the 17<sup>th</sup> and 19<sup>th</sup> of July respectively. The ZHRCB was signed into law and gazetted in October 2012 despite its enactment process going through tumultuous process as ZANU PF youth invaded the public hearing processes in various parts of the country. This paves way for the operationalisation of the commission which had gone for almost three years without any law to facilitate its operations. The ZHRC Act is restricted to dealing with cases after the 13<sup>th</sup> of February 2009, which negates the gukurahundi atrocities, 2005 Murambatsvina and 2008 political violence cases. This has created disenchantment within civil society, as most of the organisations felt the human rights commission was supposed to investigate prior cases.

### 3.4.3 Effects On Democratisation Process

Human Rights observance has become a cornerstone of democratisation processes and one criticism levelled against Zimbabwe has been its failure to observe basic Human Rights. The gazetting of the Zimbabwe Human Rights Commission Act provides the opportunity to the Human Rights Commission to deal with cases of human rights abuse and violations.

Most critical is the operationalisation of the commission and having a professional secretariat. However, the negation of the pre-13 February 2009 cases of human rights violation has the potential effect of creating a culture of impunity. More so, ZLHR argues that, the Act does not specifically address the role of the commission in electoral processes and the minister's powers remain too wide, and discretionary; thus could block any investigation by the commission. On the other hand, whilst the omission of the pre-13<sup>th</sup> February 2009 cases may be seen as promoting a culture of impunity; this may also help in creating an environment where perpetrators of violence do not become belligerent because of fear of prosecution. The gazetting of the bill still therefore has a huge potential to contributing towards democratisation with particular regard to the coming referendum and elections.

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Global Political Agreement , Article X

Global Political Agreement , Article XVII:1(a)

Global Political Agreement , Article XVII:1(b)

Paidamoyo Muzulu, "Zimbabwe Cabinet Settles Electoral Reforms Row", The Zimbabwe Independent, 5 July 2012.

The Zimbabwean, "Bill Watch 33/2012 of 22<sup>nd</sup> July", <http://www.thezimbabwean.co.uk/human-rights/59621/bill-watch-332012-of-22nd.html>, accessed 14 November 2012.

Amnesty International, "Zimbabwe: Annual Report 2012", <http://www.amnesty.org/en/region/zimbabwe/report-2012>, accessed 15 November 2012.

Tichaona Sibanda, Zimbabwe: "Human Rights Commission Signed into Law", <http://allafrica.com/stories/201210160175.html>, accessed 15 November 2012.

See, Ditshwanelo, "Human Rights in Zimbabwe", [http://www.ditshwanelo.org/bw/zim\\_rights.html#viola](http://www.ditshwanelo.org/bw/zim_rights.html#viola), accessed on 15 November 2012.

The Zimbabwean, "Great Expectations for Zimbabwe Human Rights Commission But Vigilance Required", <http://www.thezimbabwean.co.uk/human-rights/61480/great-expectations-for-zimbabwe-human.html>

### 3.4.4 Barometer Indicator Scorecard

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

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		ZHRC bill has been enacted The commission has been constituted and mandated by the bill to commence operations The Act however excludes pre-2009 human rights cases and abuses Operationalization of the Commission and application of the bill still requires political will

### 3.4.5 Possible Scenarios

The passing of the ZHRC Act provides opportunities that seek to level the electoral playing field and observance of human rights. With elections slated for 2013, operationalisation and capacitation of the ZHRC may assist in addressing the question of human rights violations. However the effectiveness of the ZHRC hinges upon political will from the politicians and how it deals with breaches of human rights between now and the election.

### 3.4.6 Key Recommendations

- \* Civil society need to push for the operationalisation of the ZHRC and also ensure that it is adequately funded.
- \* Carry out civic education on the ZHRC and its related mechanisms in promoting an environment with sound compliance to observing human rights.
- \* Civil society to continuously lobby and advocate for the redress of the pre-13<sup>th</sup> February 2009 human rights violations.

## 3.5 Barometer Indicator 4: Finalisation of the Constitution Process

### 3.5.1 Source Of Barometer Indicator

Article VI of the GPA mandates the parties to establish a parliamentary select committee to spearhead the writing of a constitution. Article IV articulates the following key milestones in the constitution making exercise:

- set up subcommittees chaired by a member of 1<sup>st</sup> All Stakeholders Conference
- hold public hearings
- draft Constitution
- 2<sup>nd</sup> All Stakeholders Conference
- report and tabling draft to Parliament
- Parliamentary debate on the draft constitution
- Gazetting the debated draft
- Referendum
- Gazetting the approved draft.

### 3.5.2 Key Prevailing Issues

The implementation of the key milestones set out in Article VI was delayed and beset with various political challenges as political parties fought over the nature and form of the process. However most of the stages have been accomplished with the Second All Stakeholders Conference having been held on the 21<sup>st</sup> -23<sup>rd</sup> of October 2012.

In as much there have been these positives in terms of the progress on constitution making; there are a number of challenges facing the progress of the constitution making process. The first major challenge is the dispute over the form of content, with ZANU PF accusing COPAC of side-lining the people's views. On the other hand the MDCs have insisted on putting the draft constitution before the people through a referendum. This has led to impasse and leading to President Mugabe suggesting that the principals negotiate on the final content of the draft constitution. However, this impasse seems to be ending with the having agreed to set up a special cabinet committee look into the grid-lock. This however poses the threat of executive interference and renegotiating the constitution. The reported deal amongst the principals on resolving the impasse outside parliament may weaken the ability of the constitution in entrenching democratic values particularly to do with the separation of powers.

### 3.5.3 Effects On Democratisation Process

Completion of the constitutional exercises is a key necessity to Zimbabwe's democratic reform and transition. It is expected that the agreement on a new constitution will lead to a new political dispensation and democratic order. Linz and Stepan argue that;

*A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies de jure*

Therefore, the significance of the current constitution making process needs no over emphasis. Failure to address the prevailing impasse around the constitution may lead to a democratic regression. There is a potential threat that the process may fail and lead to the breakdown of government if the current polarisation maintains amongst the parties in inclusive government. More so, letting the executive override parliament may potentially lead to a failed transition, as political expediency may lead to marriages of convenience and ultimately sugar-coated reforms.

Global Political Agreement , Article 6:1(a)

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

New Zimbabwe, "MDCs send for Zuma over new Constitution impasse", <http://www.newzimbabwe.com/news-9536-Constitution+impasse+MDCs+send+for+Zuma/news.aspx>, accessed on 16 November 2012.

Ibid

The Herald, COPAC Saga: Principals strike deal, 27 November 2012, [http://www.herald.co.zw/index.php?option=com\\_content&view=article&id=58401:copac-saga-principals-strike-deal&catid=37:top-stories&Itemid=130#ULW3p-T5y5o](http://www.herald.co.zw/index.php?option=com_content&view=article&id=58401:copac-saga-principals-strike-deal&catid=37:top-stories&Itemid=130#ULW3p-T5y5o), accessed on 27 November 2012.

## 3.5.6 Key Recommendations

Civil society needs to continuously mobilise and exert pressure on COPAC and other governmental entities involved in the constitution making process. Transitions do not happen outside the people and the UNDP correctly observes that; “...transitions are the outcome of mass mobilization. Contrary to some observations, they are a result of elite pacts and empirical evidence informs us that no transition takes place without pressure exerted by social forces such as trade unions (in Europe and Tunisia), farmers groups, clerical groups and neighbourhood groups (in Latin America)”.

Civil Society needs to continuously exert pressure on the parties to the inclusive government to stick within the already established GPA framework; and at the same time remain committed to consolidating democracy without falling to idealism or cynism. Therefore, there is need to appreciate the political intricacies and complexities of a transition.

## 3.6 Barometer Indicator 6: Sanctions and measures (re-entry and acceptance on the international platform)

### 3.6.1 Source of Barometer Indicator

The parties to the inclusive government agree that Zimbabwe is under sanctions and agree to;

To endorse the SADC resolution on sanctions concerning Zimbabwe

That all forms and measures of sanctions against Zimbabwe be lifted in order to facilitate a sustainable solution to the challenges currently facing Zimbabwe, and

Commit themselves to work together to re-engage the international community with a view to bring to an end international isolation.

### 3.6.2 Key Prevailing Issues

Article VI speaks to sanctions which are a hotly contested topic in the GPA among parties in terms of their nature and genesis. Whilst there has been haggling about nature and genesis, Article IV represents an official admission by all parties that sanctions exist; and as such this paper will adopt the same text. However the sensitivity of the matter has always seen parties to the inclusive government blaming each for causing sanctions and at the same time doing little to fight sanctions. ZANU PF blames the MDCs for paying lip-service to the fighting of sanctions whilst they Nicodemously campaign for their continued existence. On the other hand the MDC accuses ZANU PF of being total responsible for sanctions by failing to observe human rights and democracy.

A ministerial re-engagement team was established and had some engagements with key institutions such as the EU. The Prime Minister has also taken opportunity to call for the removal of sanctions and this position has also been supported by his MDC colleagues in

Global Political Agreement, Article 4:1, 2 and 3.

Global Political Agreement, Article 4:1, 2 and 3

For the debate on the nature and genesis see, Heather Chingono (2010), “Zimbabwe sanctions: An analysis of the ‘Lingo’ guiding the perceptions of the sanctioners and the sanctionees”, African Journal of Political Science and International Relations Vol. 4(2), p 67; Stephen Cohen (1996), “Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims”, Human Rights Quarterly Vol. 18; Musiwo Ndakaripa (2011), “Sanctions or targeted restrictive measures? The United States and European Union ‘sanctions’ on Zimbabwe, 2001 to 2010”, <http://www.aegis-eu.org/archive/ecas4/ecas-4/panels/1-20/panel-19/Musiwaro-Ndakaripa-Full-paper.pdf>, Accessed on 12/11/2012; and Brian Raftopolous. (2007), “The Sanctions Debate on Zimbabwe”, <http://m.idasa.org/media/uploads/outputs/files/19%20Sept%2007%20%20Sanctions%20Debate%20in%20Zim.pdf>, Accessed on 10/11/2012

The Zimbabwe Mail, “ZANU PF Says Not Worried by EU Sanctions”, [http://www.thezimbabwemail.com/index.php?news=4576?print&output\\_type=txt](http://www.thezimbabwemail.com/index.php?news=4576?print&output_type=txt), Accessed on 12 November 2012.

Musiwo Ndakaripa (2011), “Sanctions or targeted restrictive measures? The United States and European Union ‘sanctions’ on Zimbabwe, 2001 to 2010”, <http://www.aegis-eu.org/archive/ecas4/ecas-4/panels/1-20/panel-19/Musiwaro-Ndakaripa-Full-paper.pdf>, Accessed on 12/11/2012

The Herald, “Zimbabwe: Country Re-engagement Team in Brussels”, cited in All Africa, <http://allafrica.com/stories/201205100283.html>, accessed 12/11/2012.

See, Gilbert Nyambavvu, “Biti Urges US Sanctions Re-think”, New Zimbabwe, <http://www.newzimbabwe.com/news-7769-Biti+urges+US+sanctions+re-think/news.aspx>, Accessed on 13/11/2012, and The Sunday Mail, “Coltart in Sanctions U-Turn”,

government. The Attorney General (Johannes Tomana) and ZANU PF Senator, Guy Georgias has also approached the European Courts challenging the legality and continued existence of sanctions on Zimbabwe and Trinity Engineering respectively. Furthermore, SADC and the UN Human Rights Commissioner have called for the Removal of sanctions on Zimbabwe.

The tackling of sanctions question has mostly been full of discord and mudslinging from the parties and little advocacy has been done. Nevertheless, there has been thawing of tension between Zimbabwe and some of the countries and organisations that have imposed sanctions. The EU has started engagement with Zimbabwe and indicated the lifting of sanctions if the Constitutional Referendum succeeds and Britain also warming up to the idea of lifting of sanctions on Zimbabwe. The IMF has gone further to remove the restrictions on Zimbabwe by restoring its voting rights in 2010. This should help in normalising Zimbabwe's financial relations with the world and promote investment.

Despite the positive movements towards the lifting of sanctions, the US has maintained its sanctions regime demanding for the GPA reforms to be fully implemented before removal of sanctions. This has seen the Zimbabwe Mining Development Cooperation, Individuals in government and ZANU PF and a number of companies remain under US sanctions. The signing of the GPA and inclusion of the MDCs in government have weakened the moral case of continued sanctions and rendered them almost obsolete.

### 3.6.3 Effects on Democratisation Process

The link between democratisation and sanctions has been a grey area, but most literature points to a disjuncture or contradictory evidence. According to Tostensen and Bull, *"There is thus broad agreement that due to their complexity, sanctions are problematic and have often produced paradoxical and contradictory effects"*. In some cases sanctions may produce result contradictory to the set goals and creating further complexities that may undermine democracy. There is a tendency that sanctions may create a rally around the flag effect, buttressing the perceived autocratic regime and undermine 'democratic forces. More so, growing globalisation and the financial interconnectedness of the world, aided with technology; assets can be easily moved anywhere with the click of a button.

Further to this Tostensen and Bull pontificates that, *"Yet, the most intractable problem Elites and members of the targeted regime must have assets abroad of a magnitude that their freezing or seizure would cause them serious problems"*. Sims et al makes the same observations and argues that *"First, the amount of money or assets belonging to targeted ZANU-PF leaders and their allies seized abroad to date has been negligible"*, and *"By August 2005, for instance, reports from the EU were that assets worth €825,000 had been seized and frozen by EU member states"*, with, *"The UK on its own had managed to freeze a paltry £160,000 by 2006; an amount so small that even the House of Lords Select Committee on Economic Affairs conceded that "both in absolute terms and relative to the probable resources of the targets it is doubtful whether asset freezes are effective as a means of inhibiting or changing the behaviour of those who are targeted"*. Maintaining continued sanctions on Zimbabwe has the potential effect of undermining the democratic transition as the sanctions have been overtaken by events. At best the sanctions serve more as an irritant.

[http://www.sundaymail.co.zw/index.php?option=com\\_content&view=article&id=29305:coltart-in-sanctions-u-turn&catid=37:top-stories&Itemid=130#ULYifuT5ySo](http://www.sundaymail.co.zw/index.php?option=com_content&view=article&id=29305:coltart-in-sanctions-u-turn&catid=37:top-stories&Itemid=130#ULYifuT5ySo), Accessed on 13/11/2012.

See, Katie Nguyen, "SADC Leaders Want Zimbabwe Sanctions Lifted", New Zimbabwe, <http://www.newzimbabwe.com/pages/sadc116189.html>, Accessed on 13/11/2012; The Chronicle, "Lesotho PM Urges SADC to Call for Removal of Sanctions", <http://www.newzimbabwe.com/pages/sadc116189.html>, Accessed on 13/11/2012 and Africa Eagle, "South Africa Reiterates Call for Lifting of Zimbabwe Sanctions", <http://www.africaeagle.com/2012/11/south-africa-reiterates-call-for.html>.

Andrew Grice, "UK Joins Plan to Ease Sanctions on Zimbabwe", The Independent (UK), <http://www.independent.co.uk/news/uk/politics/uk-joins-plan-to-ease-sanctions-on-zimbabwe-7953598.html>, Accessed on 13/11/2012. The Newsday Zimbabwe, "IMF Move Positive", <http://www.newsday.co.zw/2012/11/02/imf-move-positive/>, Accessed on 14/11/2012.

The Zimbabwe Guardian, "Zimbabwe Diamond Firms Added to US Sanction's List", <http://talkzimbabwe.com/zimbabwe-diamond-firms-added-to-us-sanctions-list/>, Accessed on 14/11/2012. And Rappaport, "US Sanctions Prohibit Trade With Zimbabwe's Diamonds Entities", <http://www.diamonds.net/News/NewsItem.aspx?ArticleID=37681&ArticleTitle=U.S.+Sanctions+Prohibit+Trade+With+Zimbabwe's+Diamond+Entities+>, Accessed on 14/11/2012.

Tamuka Chirimambowa, "The Strategic Relevance of Sanctions as a Democratisation Tool in an Emerging Multi-polar World: A Case Study of Zimbabwe", Master's Thesis, University of Zimbabwe, 2012 p.42; Sims B. M, Masamvu S, Mirell H. (2011), "Restrictive Measures and Zimbabwe: Political Implications, Economic Impact and a Way Forward", Idasa, <http://www.idasa.org/media/uploads/outputs/files/Idasa%20Restrictive%20Measures%20Study%20Zimbabwe.pdf>, Accessed on 14/11/2012 and Brian Raftopolous. (2007), "The Sanctions Debate on Zimbabwe", <http://m.idasa.org/media/uploads/outputs/files/19%20Sept%2007%20%20Sanctions%20Debate%20in%20Zim.pdf>, Accessed on 10/11/2012

Tostensen A and Bull B. (2002), "Are Smart Sanctions Feasible"? World Politics, Vol. 54, No. 3, pp. 378

## 3.6.4 Barometer Indicator Scorecard

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

EVALUATION COMPONENT	SCORECARD CODE	NOTES
IMPLEMENTATION PROGRESS		<p>There is concurrence among GPA parties that sanctions must be removed totally.</p> <p>EU has moved to relax sanction measures and will restore direct support to government in 2014 under the European Development Fund. EU also insists on further relief should the constitution referendum be democratic</p> <p>IMF has restored Zimbabwe’s voting rights</p> <p>Minister Biti also reports that there is progress and likelihood of part of Zimbabwe’s debt (estimated around US\$10b) to be relieved.</p> <p>The US however still maintains the sanctions regime</p>

## 3.6.5 Possible Scenarios

The continued maintenance of sanctions on Zimbabwe, may potential undermine democratic reform as they provide a red herring for anti-reform elements in the inclusive governments. At the moment the sanctions seem to have been overtaken by events and there is need for sanctioning states and organisations to employ the carrot approach. On the other hand there is a possibility that wholesale removal of sanctions may not automatically lead to expediting of reforms and send the wrong message. Therefore there is need to approach the sanctions case with much sensitivity and crafty diplomacy. In this case there maybe need for a SADC guaranteed process where sanctions are suspended pending the achievement of set democratic reform targets as enunciated in the GPA.

## 3.6.6 Key Recommendations

- \* Civil society to advocate for conditional suspension of sanctions within an agreed framework that speaks to the spirit of reforms in the GPA.
- \* Civil Society to lobby SADC to push parties to the inclusive government to expedite the necessary reforms that may create the basis for the wholesale removal of sanctions
- \* Civil Society needs to consider alternative positions such as the conditional suspension of sanctions pending achievement of reform targets set in the GPA.

## 4. Conclusion

In the previous edition, the Zimbabwe Transition Barometer Issue 1, we concluded that Zimbabwe was heading toward a flawed transition due to slow progress in the implementation of key reforms necessary to establish a democratic nation state. However, in the last two months there have been some positive steps which provide hope for a democratic transition if more is done and accomplished before the next election. As per our analysis in this edition, Zimbabwe’s prospects of holding a successful democratic transition hold on an understanding that the process is reflective of transplacement, where change hinges on action by both the incumbent and other oppositional actors. However, it is always important to bear in mind that political transitions are always fraught with uncertainties, as Adam Przeworski draws a parallel with the pin-ball machine, ‘once the ball has been sent spinning up to the top, it may come inexorably spinning down again’.