

NOREF Expert Analysis

Towards another stalemate in Zimbabwe?

Brian Raftopoulos

Executive summary

The current stalemate over the constitutional reform process in Zimbabwe represents yet another example of Zanu PF's (Zimbabwe African National Union-Patriotic Front) consistent attempts to thwart reform in this area since the late 1990s. Moreover, the obstructive tactics currently being deployed by Mugabe's party reflect its persistent use of the constitution to undermine popular sovereignty and craft a party-state around centralised presidential powers.

The Constitution Select Committee (COPAC) process constructed under the Global Political Agreement (GPA) mediated by the Southern African Development Community (SADC)

provides a narrow window of opportunity to put in place the conditions for a generally acceptable election. Thus the ongoing attempts by Zanu PF to undermine this process present not only the danger of another contested election outcome in Zimbabwe, but the undermining of SADC's mediation role.

As a way forward it is therefore imperative that the democratic forces in Zimbabwe, SADC and the European Union develop a consensus on the need to respect the constitutional reform process set out under the GPA and in so doing narrow the diplomatic space for Zanu PF to once again frustrate this process. The building of such a consensus must be led by national political forces and SADC.

Brian Raftopoulos is the director of research and advocacy in the Solidarity Peace Trust, an NGO dealing with human rights issues in Zimbabwe. He was formerly a professor of Development Studies at the University of Zimbabwe from 1990 to 2006. He has published widely on Zimbabwean history, historiography and politics. Since 2009 Prof. Raftopoulos has also been a Mellon senior research mentor at the Centre for Humanities Research at the University of the Western Cape.

Introduction

Four years after the signing of the Global Political Agreement (GPA) facilitated by the Southern African Development Community (SADC) in Zimbabwe, the outcome of the process remains fiercely contested and in the balance. The Agreement, which set out to prepare the political process for a generally acceptable election after the debacle of 2008, has been marked by severe ebbs and flows, all too characteristic of the battle for the state that has constituted the politics of the GPA. At almost every stage of the mediation from 2007 and the implementation of the GPA from February 2009, intense conflicts over the interpretation of the accord have left their debris on the political terrain, at the heart of which has been the struggle over the meaning of “sovereignty”. Around this notion Zanu PF in particular has woven dense layers of political discourse combined with the coercive force of the state that it continues to control. The major aim of this strategy has been to manipulate and stall the reform provisions in the GPA, and to regroup and reconfigure its political resources after plunging to the nadir of its legitimacy in the 2008 electoral defeat.

The constitutional process

Between 2009 and the present an important area of contestation between the Zimbabwean parties has been the struggle for constitutional reform. Article VI of the GPA set out the “fundamental right and duty of the Zimbabwean people to make a constitution for themselves”, also stipulating that the process would be carried out by a Select Committee of Parliament composed of the parties to the agreement. Constitutionalism and constitutional reform is often a contradictory and highly contested process with different parties bringing different political agendas and competing imaginaries to the process. Zimbabwe is no exception to this trend, and the major political parties have since the late 1990s often fought out their competing conceptions of change and democratisation on this terrain.

For the nationalists coming out of the liberation movement, constitutionalism and the law have had a complicated history. On the one hand

these discourses were constitutive of their demands against the colonial state and helped to conceptualise their own legality and legitimacy, and have thus played an important role in both locating their demands and imagining the possible forms of a future state (Alexander, 2011). On the other hand, this generation of leaders also viewed the liberation struggle as an alternative to constitutionalism, with the war for liberation leading to the destruction of the colonial state and the establishment of “people’s power”, however nebulously defined (Mandaza, 1991: 72). The constitutional compromises agreed to at Lancaster House in 1979 were the result of a convergence of national, regional and international pressures that inaugurated the politics of the post-colonial state. Once in power, Zanu PF, as in the case of other post-colonial political parties, instrumentalised the use of the constitution to concentrate power in the presidency and used constitutionalism to reconstruct the power relations of the state to deal with political opposition.

With the signing of the GPA in late 2008, constitutional reform became one of the major issues of contention between the parties. After three years of delays, obstructions, logistical and financial squabbles, and a problematic outreach programme, a draft constitution was produced through the Parliamentary Select Committee process, COPAC, in July 2012. While the COPAC draft is clearly a compromise document, it contains some important changes such as controls on executive power, accountability of the security and judicial services, a more independent national prosecuting authority, devolution of power and citizenship rights. Importantly, in terms of process, all the parties to the agreement were signatories to the draft, leading to the logical assumption that at all times the principals of the parties and their respective leaderships were fully informed of the discussions of the COPAC team.

However, in a move that replicated previous moves to block constitutional reform and eschew its commitment to the GPA, Zanu PF initiated a strategy intended to foil a process that has the potential to unravel its political hegemony in the country. In August 2012 President Mugabe presented the leaders of the Movement for Democratic Change (MDC) formations with a Zanu PF redraft of the COPAC draft, on the

grounds that the latter was drafted in opposition to the “views of the people” gathered during the outreach process. This redraft, described by Zanu PF as “non-negotiable”, attempted to undo the COPAC process, undermine the GPA and once again force the Zimbabwean citizenry into a national election without a new constitution. Moreover the redraft effectively dismissed the major reforms included in the draft and proposed a return to the kind of executive powers and party-state rule that Zanu PF has crafted since 1980. Both MDC formations objected strongly to this Zanu PF position. After weeks of political haggling, the parties, under pressure from the SADC facilitation team, agreed to take the Copac draft to an All Stakeholders Conference to be held from October 21st to 23rd.

SADC and the constitutional impasse

The threat of an impasse in the process allowed for the invocation of a SADC resolution made at the Heads of State and Government Summit in Maputo in August 2012, which stated that, in the event of any difficulties “regarding the Constitution and implementation of agreements”, the Facilitator should be called upon to “engage the parties and assist them resolve such issues, bearing in mind the timeframes and the necessity to hold free and fair elections”.¹

Since the inception of the mediation in 2007, SADC and South Africa in particular have invested a good deal of diplomatic capital in the Zimbabwe facilitation. Moreover, since the time of the SADC summit in Livingstone, Zambia, in March 2011, the SADC leadership has consistently restated its commitment to the full implementation of the GPA, fully aware of the points of blockage in the Zimbabwe equation. This remains the position of the regional body even if it has been slow in following up on the implementation of its resolutions.

SADC’s commitment to ensuring that the regional body remain in control of the Zimbabwe facilitation was set out very clearly from the beginning of the

process, with Thabo Mbeki stating that the role of international players would be to “support” and not “direct” the process. This aspiration has not always been translated into smooth relations between the European Union, United States and SADC, with the ongoing debate over the efficacy of sanctions continuing to aggravate the facilitation process. However, notwithstanding such tensions and the difficulties they have created for SADC, the latter’s credibility is heavily at stake in this process. With Mugabe and his party clearly drawing a line in the sand over the constitutional draft and in the process openly flouting the modality set out in the GPA, it is clear that SADC is once again faced with a severe test of its standing as a mediation body.

The lead player in the SADC facilitation on Zimbabwe, South Africa, is currently in the midst of its own major challenges, with the ruling African National Congress (ANC) facing many questions over its leadership and authority in the face of the Marikana mine massacre. The moral and political authority of the ANC has been severely bruised and this has not been lost on Mugabe and his party. Against the background of a troubled history of relations between Zanu PF and the ANC, the former has, at critical points in the SADC facilitation in the last three years, already questioned the authority of President Zuma and his facilitation team. Yet South Africa remains the lead player in the facilitation process and SADC retains its primary authority over this process. Moreover, this factor has been the major obstacle to Zanu PF’s repeated attempts to destroy the GPA and move to an early election.

In the light of Mugabe’s continuing hostility to the West and his growing reliance on a “Look East” policy for strategic economic, military and diplomatic support, the diplomatic influence of the West remains confined to the “sanctions question”, humanitarian assistance and the difficult discussions with the international financial institutions. Thus the most fruitful area of diplomatic intervention for the Western powers remains strong support for the SADC mediation, and preparation for a fuller engagement with what could well be another reconfigured government of national unity after the next election.

¹ Final Communiqué of the 32nd Summit of SADC Heads of State and Government, Maputo, Mozambique, August 18th 2012.

The way forward

There are three strategic positions that need to be pursued at this juncture:

1. Both MDC formations must maintain their current unity against Zanu PF's attempt to subvert the constitutional reform process as set out under the GPA.
2. SADC must stand by the agreement that it has facilitated and guaranteed. In the process the regional body needs to fortify its position against the clear intention of Zanu PF to destroy the GPA. The purpose of such a strategy is once again to subject Zimbabwean citizens to a fraudulent election under a constitution that has been repeatedly amended to suit the distortions of executive power that have played so large a role in bringing about the country's current predicament.
3. The role of the Western countries must be to support SADC diplomatically, in its efforts to regroup and confront the dangerous path that Zanu PF has once again embarked on. This situation calls for renewed efforts to build an international consensus on Zimbabwe that must be led by SADC and national political forces inside Zimbabwe.

References

- Alexander, Jocelyn, 2011, "Nationalism, self-government in Rhodesian detention: Gonakudzingwa, 1964–1974", *Journal of Southern African Studies*, vol 37, no. 2, pp 551–569.
- Mandaza, Ibbo, 1991, "Movements for national liberation and constitutionalism in Southern Africa", Issa Shivji, ed., *State and Constitutionalism, An African Debate*, Harare, SAPES Books, pp 71–90.
- Raftopoulos, Brian, forthcoming 2012, "An overview of the politics of the Global Political Agreement: national conflict, regional agony, international dilemma", Brian Raftopoulos, ed., *The Hard Road to Reform: The Global Political Agreement in Zimbabwe*, Harare, Weaver Press.