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A NORDEM Special Report
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Preface

The Constitutional Referendum of Zimbabwe on 16 March 2013 marked the end of a lengthy process to pass a new constitution. The present report provides an overview of the electoral and constitutional history of Zimbabwe after independence, with a more in depth description of the developments in the period from 2008 to the referendum.

NORDEM has sent election observers to Zimbabwe since 2000, also as independent teams or experts when it has not been possible to participate in an international election observation mission. The author of this report, Kåre Vollan, has been central in NORDEM’s observations of elections in Zimbabwe. Vollan is an independent international election expert and has followed the electoral and constitutional processes in Zimbabwe since 2002, both through NORDEM and as an advisor to the Norwegian Embassy in Harare.

NORDEM and the author would like to express their gratitude to the Norwegian Ministry of Foreign Affairs and the Norwegian Embassy in Harare, which provided the financial and other support that made the writing and publishing of this report possible.

Hege Mørk
Programme Director
NORDEM
1. Introduction

This report has two objectives; to summarise the process from the violent elections of 2008, via the Global Political Agreement (GPA) to the passing of a new constitution for Zimbabwe in 2013, and to provide a historical overview of the constitutional development and elections from independence till present day. The main purpose has been to cover the period from 2008 to 2013, but in order to understand the recent history, the longer perspective is necessary. The section on history covers only selected aspects of the constitutions with successful and unsuccessful proposals and the related controversies. Elections during the first two decenniums after independence are only briefly covered but elections from 2000, when a significant opposition emerged, are described with more substance.

The author was in Zimbabwe during all elections from 2002 to 2008, except for the 2005 Senate elections, and he published NORDEM reports from all of them. He also visited Zimbabwe in 2008 after the GPA had been signed and then in 2009, 2011, 2012 and during the referendum in 2013. The report is to a large extent based upon primary sources, such as official documents and interviews conducted during the visits. The historical overviews are based on previous NORDEM reports and the legal documents from the various periods.

When discussing the content of the draft and adopted constitutions only form of government, the parliament structure, the power balance between the executive and the legislature, the legislative process and elections will be discussed. The bill of rights, the judiciary, constitutional bodies, land rights or other issues which are not directly related to power balance between the different state bodies, will only be covered briefly when needed to illustrate the disagreements on the drafts or amendments.

The report aims at giving an overview of the processes and the content of issues being in the forefront in the course of the elections and constitutional development. Hopefully it can be used as a reference for later studies. There are few political analyses or attempts to explain trends. The aim is to document the facts and to provide a source for those who need an overview of the facts and a chronology of events. Some assessments are made and those are the author’s only and do not necessarily represent the views of NORDEM, or the Norwegian Embassy in Harare or the Norwegian Ministry of Foreign Affairs, who have funded the studies at various stages.


This overview covers mainly the development of the state institutions and the balance between them. The Lancaster House constitution and its history of changes are covered here, whereas the initiatives to draft a new constitution during this period are covered in the next section.

The original Lancaster House constitution prescribed a parliamentary system where the main executive position was that of the Prime Minister. In 1987 the system changed to a
presidential system with an executive president. In the transition period starting with the Government of National Unity (GNU) in 2008 a hybrid system was adopted with power-sharing between the President and the Prime Minister.¹

Robert Mugabe was the Prime Minister from 1980 to 1987, and President from 31 December 1987.

2.1 The Constitution of 1980
The first constitution of the independent Zimbabwe was a result of the negotiations at Lancaster House in 1979 and came into force at the day of independence, 18 April 1980. The form of government was parliamentary with a mainly symbolic, indirectly elected, President as head of state and a Prime Minister leading a government which derived its power from the Parliament.

The Parliament
The Parliament was bicameral. The House of Assembly (the lower house) had one hundred members all directly elected:

- 80 members elected by voters on a common roll in single member constituencies²;
- 20 members elected by voters on a white roll in single member constituencies which had been drawn up by a Delimitation Commission in 1978 and were the same as those used in the 1979 'internal settlement' election. Voters who were registered on the white roll were ineligible to participate in the common roll election.

The Senate had forty indirectly elected and appointed members:

- 14 members elected by the common roll members of the House of Assembly;
- 10 members elected by the white caucus of the House of Assembly;
- 10 members indirectly elected by chiefs;
- 6 appointed by the President acting on the advice of the Prime Minister.

The Executive Powers
The executive powers rested with the President, the Prime Minister and ministers. The President was elected by a joint session of the two chambers of the Parliament. The Prime Minister would need the support of the majority of the House of Assembly. The President would act on the advice of the Prime Minister in the most important issues.

The first constitution described a parliamentary system with the Prime Minister as the important executive power and the President as a symbolic head of state.

¹ The constitutional draft adopted in the 16 March 2013 referendum changed the form of government back to a pure presidential system, as discussed in later sections.
² However, in the first elections there was no time to draw up constituencies so a proportional system was used instead.
The Legislative Process

The legislative process was fairly complicated, but the directly elected House of Assembly had the final say. A bill could be initiated in both chambers, but if any disagreement occurred between the two chambers the decision of the House of Assembly prevailed. Money bills were only to be passed by the House of Assembly.

The President should assent to laws duly passed in Parliament and could only withhold assent for formal reasons.

Constitutional bills were to be passed by seventy members of the House of Assembly and a two-third majority of the full membership of the Senate. However, even in the case of constitutional bills, seventy members of the House of Assembly could insist on a bill if 180 days had passed without a decision in the Senate.

Moratorium on Changes

There were sets of moratoriums on certain constitutional changes. These could only be broken by an affirmative vote of all members of the House of Assembly. There was a moratorium of ten years on issues relating to the bill of rights, the rules for changing the constitution and articles relating to emergencies and detention. There was another moratorium of seven years on the composition of the two chambers of the Parliament, including the white roll.

2.2 The Constitutional Changes of 1987 and 1989

At the end of the moratorium on changes to the composition of the Parliament the constitution was changed fundamentally: Amendment No 6 of 1987 abolished the white roll for election of both houses of Parliament. Amendment No 7 also of 1987 changed the system of government from a parliamentary to a presidential system. The post of prime minister was abolished. In 1989 Amendment No 9, the bicameral system was replaced by a unicameral Parliament. After the 1987 and 1989 changes, the power had shifted to the President in the composition of the government, in his substantial influence in appointing members of Parliament (see below), and in the division of powers between the President and the Parliament.

The Parliament

The one-chamber Parliament had 150 members with the following composition:

- 120 members elected in a first-past-the-post system in single member constituencies;
- Eight provincial governors;
- Ten traditional chiefs elected in accordance with the election law (which stipulates an indirect election where chiefs are voting);
- Twelve members appointed by the President.

The thirty members not directly elected would in practice be loyal to the President. Votes for the President would therefore give the President’s party extra weight even for the composition of the Parliament, violating the principle of equal suffrage. It also meant that in
order to get a majority in the Parliament, any opposition would need to win more than 62.5 per cent of the seats contested in a popular vote.

The Executive Powers
The executive powers rested with the President, who was directly elected. The President appointed the ministers. The government was not dependent on the confidence of the Parliament, but would have to leave office if a non-confidence vote had been passed with two-third majority. The President could appoint one or two Vice Presidents. In case of vacancy in the presidency a Vice President would, as the main rule, fill the role until a new election could be held.

The Legislative Process
The constitution stated that: ‘The legislative authority of Zimbabwe shall vest in the Legislature which shall consist of the President and Parliament.’

The role of the President in the legislative process was more than formal. Any bill passed by the Parliament needed the President’s assent to become law. If the President denied assent, a two-third majority was needed in the Parliament to force a bill through, and in such a situation the President could decide to dissolve the Parliament instead of signing the bill.

Other Constitutional Changes
When the ten year moratorium had passed, amendments of 1990 allowing for acquisition of land for resettlement were passed and the right to compensation was weakened. The exclusion of courts in issues of land acquisition was further confirmed in amendments of 1993 and 1996.

In 1996 the first section of the bill of rights was changed to a preamble without any particular rights and thus weakened an instrument which had earlier been used by the Supreme Court.

2.3 The 2005 Changes to the Constitution
In 2000 a referendum on a draft new constitution had failed (see below). The political parties and civil society wanted changes, but the opposition did not agree to the draft proposed by the government in the referendum. After the 2005 elections, both the ruling party ZANU PF (Zimbabwe African National Union – Patriotic Front) and the main opposition party MDC (Movement for Democratic Change) wanted to change the constitution. ZANU PF stated in their election campaign that they wanted to reintroduce the Senate. It was assumed that the modalities would be close to the 1999 draft. MDC also favoured the introduction of a Senate, but a fully elected one. They opposed keeping the power of the President as strong as in the 1999 draft and in the constitution in force at the time.

Following the March 2005 election where ZANU PF won 78 of the 120 contested seats, ZANU PF had, with the appointed members, a sufficient majority to change the constitution

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3 See Section 4 for the development of parties.
the way they wanted. Amendment No 17 which came into force on 30 November 2005 reintroduced, as expected, the Senate.

*The Parliament*

The two houses of the Parliament had the following composition after the changes:

The House of Assembly still had 150 members:
- 120 members elected in a first-past-the-post system in single member constituencies;
- Ten provincial governors;
- Eight chiefs from the non-metropolitan provinces, elected in accordance with the election law (which stipulates an indirect election where chiefs are voting);
- Twelve members appointed by the President.

The Senate had 66 members:
- 50 members, five from each of the ten provinces, elected in a first-past-the-post system in single member constituencies;
- Two members being the President and the Vice President of the Council of Chiefs;
- Eight chiefs from the non-metropolitan provinces, elected in accordance with the elections law (which stipulates an indirect election where chiefs are voting);
- Six members appointed by the President.

*The Executive Powers*

The executive power was not changed. The President was still the main executive who could appoint ministers, without consent of the Parliament.

*The Legislative Process*

The legislative procedure changed in accordance with the introduction of a two-chamber Parliament. A bill could be initiated in any chamber. After having been passed by one chamber, it was sent to the other. If in the end the two houses could not agree, it was the draft passed by the House of Assembly which was sent to the President for assent. Interestingly, this was also the case for constitutional amendments. This means that the House of Assembly had a stronger position in the 2005 amendment than in the proposal of 1999. However, since the House of Assembly was still not fully elected, the final legislative powers resting with the Parliament were not reserved for a house where all members were directly elected by the voters. Votes for the ruling party counted more than other votes, since the President could appoint members in the House of Assembly, thus violating the principles of uniform and equal votes, and the separation of powers suffered.

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The strong direct role of the President in the legislative process was also kept. He could deny assent of bills passed in the Parliament, unless the House of Assembly would pass the bill by two-third majority, in which case he had to sign the bill or dissolve the Parliament.

2.4 The 2007 Changes to the Constitution

In 2007 and in 2008 the SADC (Southern African Development Community) facilitated negotiations between the government and the opposition on changes to the election arrangements with the goal of having undisputed elections in 2008. The talks also included some important changes to the parliament structure, which were implemented through amendment No 18 (in force from 30 October 2007). The most significant and positive change was that the House of Assembly became a fully directly elected chamber of Parliament, and the balance of powers between the two chambers remained in favour of the House of Assembly.

The Parliament

After the amendment, the two chambers had the following composition:

The House of Assembly increased the membership to 210, all directly elected in single member constituencies.\(^5\)

The Senate had 93 members\(^6\):

- 60 members, six from each of the ten provinces, elected in a first-past-the-post system in single member constituencies;
- The ten provincial governors;
- The President and the Vice President of the Council of Chiefs;
- Sixteen chiefs, two from each of the non-metropolitan provinces, elected in accordance with the elections law (which stipulates an indirect election where chiefs are voting);
- Five members appointed by the President.

Ministers still had to be members of one of the chambers of Parliament and the President could use the five appointees to appoint non-elected persons to his Cabinet.\(^7\)

As the House of Assembly changed to a fully elected one, the Senate’s elected part was decreased from just below 76 per cent to below 65 per cent. From 1990 to 2005 the unicameral Parliament was only partly elected (120 out of 150), and those members not elected were either appointed by the President as members of Parliament, members by virtue of their positions as governors (who were appointed by the President) or indirectly elected by

\(^5\) A draft amendment gazetted on 8 June, 2007 included 200 elected and 10 appointed members in the House, but that was changed during the SADC-led negotiations in Pretoria in September.

\(^6\) The draft amendment included 84 senators out of which 50 were to be elected, but that was also changed during the SADC-led negotiations in Pretoria in September.

\(^7\) Ministers had to be members of Parliament since 1980 and the possibilities to appoint members of at least one house of Parliament had been used to accommodate appointed ministers who were not already members of a house.
the council of chiefs (which in reality were dependent of the executive). One argument given for the President’s right to appoint members was that it could be used to secure representation of women, disabled or other groups which would need special protection. It was, however, doubtful that such groups would feel represented when they could not influence the election of their representatives. That being said, the importance of appointees was much reduced since the House of Assembly’s position on legislation was decisive in case of disagreements between the two chambers.

**The Executive Powers**
The executive power was not changed. The President could still appoint ministers without consent of the Parliament. In the case of vacancy a Vice President should serve until the two chambers of Parliament in a joint sitting would elect a new President to serve for the rest of the term in office.

**The Legislative Process**
The legislative procedure was also not changed, which meant that the House of Assembly had the decisive powers if the two chambers disagreed. The President had, however, retained his powers to veto legislation, unless the House of Assembly passed the law with two-third majority, in which case the President had the possibility to dissolve the Parliament.

The powers of the President therefore remained strong both as head of the executive and with the strong veto power in the legislative process.

### 2.5 The 2008 Amendment No 19 following the GPA

After the violent elections of 2008, pressure from SADC resulted in negotiations, and finally an agreement, between the three main parties of Zimbabwe: ZANU PF, MDC-T and MDC-M. The global political agreement (GPA) instituted a government of national unity (GNU) for a transition period while a new constitution was to be drafted and adopted. The necessary constitutional amendments to accommodate the transition arrangements were included in amendment No 19 to the constitution which came into effect in February 2009.

**House of Assembly**
The House of Assembly would again include some additional non-elected members, but the balance between the parties would be the same as for the elected members: Persons appointed to the posts of Vice President, Prime Minister and Deputy Prime Minister and who were not already members of Parliament, became *ex officio* members of the House of Assembly. Should persons so appointed already be members of Parliament, the party of which that person was a member or nominee should have the right to appoint a non-constituency member of the relevant house of Parliament.

In practice this gave the two MDCs three (the Prime Minister and two Deputy Prime Ministers or equivalent) and ZANU PF two (the two Vice Presidents or equivalent) extra

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8 MDC had in 2005 split into two parties, one headed by Tsvangirai (MDC-T) and one by Mutambara (MDC-M).
members of the House of Assembly. The political balance was maintained, but the provision introduced an unhealthy element of non-elected members in the principal chamber of Parliament.

The Senate
The Senate had 33 appointed or ex officio members according to the constitution before the amendment. These were all more or less under the President’s control. The amendment created an additional six members appointed by the President, four after nomination of MDC-T and two after nomination of MDC-M. This did not correct the imbalance created by the existing non-elected members, but the amendment reduced it.

The Executive
The amendment split the executive power between the President, the Prime Minister and the Cabinet. The President was the chair of the Cabinet and the Prime Minister the deputy chair. When the Prime Minister was the chair, the Cabinet was called the Council of Ministers. The Prime Minister should take responsibility for the daily work making sure that implementation plans were being developed and that the planned tasks were conducted. The President was chair of the National Security Council were the Prime Minister was a member.

In Article 115 Transitional provisions, paragraph (1) a difference was made between the terms after consultation and in consultation:

“In this section and section 118 and Schedule 8—
“after consultation” means that the person required to consult before arriving at a decision makes the consultation but is not bound by the advice or opinion given by the person so consulted;
“in consultation” means that the person required to consult before arriving at a decision arrives at the decision after securing the agreement or consent of the person so consulted;”

For example, the President could, according to article 20.1.3 (q) of Schedule 8, dissolve the Parliament only in consultation with the Prime Minister, which meant that they both had to agree. However, according the same article paragraph (l), the ministerial portfolios were allocated by the President after consultation with the Prime Minister. Even if the number of posts given to each party was fixed, this gave the President a theoretical possibility to allocate only insignificant posts to the MDCs.

In its new Schedule 8 Transitional Amendments and Provisions, the constitution included not only which of the three parties were to fill specified positions but it even named the President and the Prime Minister:

“(1) There shall be a president, which Office shall continue to be occupied by president Robert Gabriel Mugabe.
(2) There shall be two (2) Vice presidents, who will be nominated by the president and/or Zanu-PF.
(3) There shall be a prime minister, which Office shall be occupied by Mr Morgan Tsvangirai.

(4) There shall be two (2) Deputy prime ministers, one (1) from MDC-T and one (1) from the MDC-M.

(5) There shall be thirty-one (31) Ministers, with fifteen (15) nominated by ZANU PF, thirteen (13) by MDC-T and three (3) by MDC-M.

(6) There shall be fifteen (15) Deputy Ministers, with (eight) 8 nominated by ZANU PF, six (6) by MDC-T and one (1) by MDC-M.

(7) Ministers and Deputy Ministers may be relieved of their duties only after consultation among the leaders of all the political parties participating in the Inclusive Government.”

*The Legislative Process*

A simple majority of the House of Assembly could still override the Senate in the legislative process. The President’s role in the legislative process was also unchanged; he could still refuse to assent a bill and only a two-third majority of the House of Assembly could force the President to sign it. That meant that the President without any consultation could stop laws which were passed by Parliament, and left the President with powers far beyond the balance which was otherwise established between the different instances of the executive.

*Other Issues*

The chapter on citizenship was replaced and a couple of clauses on loyalty were included. With the history of interpreting such provisions in almost absurd manners, it was an addition with a potential for misuse:

“(2) It is the duty of every Zimbabwean citizen—

(a) to observe this constitution and to respect its ideals and institutions; and

(b) to respect the national flag and the national anthem; and

(c) to the best of his or her ability, to defend Zimbabwe in time of need.”

The problem was that criticism may be taken as disrespect of, for example, the President, and “defend in time of need” might not be restricted to loyalty during for example an armed conflict with an external enemy, but could be used against general criticism of the authorities in particular if quoted abroad. ⁹

The amendment also introduced a provision for the Parliament to regulate by law the prohibition of double citizenship. The right to double citizenship had been guaranteed in the 1980 constitution but the guarantee was removed in 1983. The issue was still contentious

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⁹ In the new constitution of 2013 the language of the last line was modified to read: “to the best of their ability, to defend Zimbabwe and its sovereignty,” which restricts the interpretation somewhat.
when the new constitution was drafted in 2009 to 2013 when the MDCs wanted a liberal rule and ZANU PF a more restrictive one.

3. The Unsuccessful Attempts to Write a New Constitution from 1999 to 2007

There were a number of initiatives to replace the Lancaster House constitution before it succeeded in 2013. The ones which sparked the constitutional discussions was the one drafted in 1999 by a large commission appointed by the President and the one drafted by the NGO National Constitutional Assembly in 2001. These served as reference points for opposite sides of the constitutional discourse but the fronts got more blurred over time, but the content of the two drafts can shed some lights on both the constitutional amendments and the drafting of a new constitution as it happened later. Another draft came as a result of negotiations among only a few representatives of the parties (the Kariba draft) and was referred to explicitly in the Global Political Agreement of 2008.

3.1 The Draft Constitution of 1999

President Mugabe appointed a 400 member constitutional commission that drafted a new constitution which introduced reforms but did not reduce the power of the President significantly. The President added some controversial changes allowing land expropriation without compensation and the draft was presented to the public in a referendum in February 2000. The draft fell with 54 per cent of the votes against and 46 per cent in favour of the draft. The result came after a campaign where the constitutional commission, the government and ZANU PF supported the draft. Together these actors controlled radio and television and the government newspapers. The No-vote was supported by the National Constitutional Assembly in alliance with the newly formed Movement for Democratic Change, the MDC. The campaign was open and mostly peaceful with few violent incidents reported.

The constitutional commission draft reintroduced the two-chamber Parliament and had the following content regarding state structure and elections:

**The Parliament**
The National Assembly would have the following composition:
- 150 members elected in single member constituencies
- 50 members elected in a system of proportional representation.

It was not clearly stated whether the proportional race should work as compensatory seats, as in Germany (the Mixed Member Proportional system – MMP), with an over-all proportional representation as a result, or if the two ballots were to be totally independent of each other, like in for example Japan (the parallel system).

The Senate should have the following composition:
- 50 senators elected from the ten provinces, five from each, under a proportional system;
• 10 chiefs indirectly elected.

_The Executive Powers_

The executive powers should consist of the President, the Prime Minister and the Cabinet. The President would still be directly elected. The Prime Minister would be head of government, and was to be appointed by the President.

The Prime Minister should collect support from a majority of the Parliament. However, a vote of non-confidence would require a two-thirds majority of the members of the two chambers in order to be passed.

_The Legislative Process_

The legislature would still consist of the Parliament and the President.

Any bill would have to be passed by both chambers and assented by the President. A bill could start in any chamber. If the two chambers did not agree, the draft would come up for a joint session of the two chambers where at least half of the total members of the Parliament (not only those present and voting) would be needed to pass the bill.

After this, the bill would be sent to the President in order to obtain his assent. If he should decide to withhold his assent (which would have to be ‘on advice of the Cabinet’) the bill would be returned to the Parliament. If the Parliament and the President could not agree to changes to the law, a joint session would have to pass it with a two-third majority.

The President’s legislative powers would therefore have been strong even in the draft constitution of 1999.

_3.2 The National Constitutional Assembly Draft of 2001_

The National Constitutional Assembly (NCA) in 2001 drafted its own constitution as an alternative to the one worked out by the constitutional commission and amended by the President before presenting it for a referendum in 2000. Their draft gave much less powers to the President than the commission’s draft, but the powers of the Senate and the possibility for the President at the advice of the Prime Minister to veto legislation were quite similar to that of the commission’s draft. A directly elected Prime Minister maintained a strong executive leader which was not controlled by the Parliament.

_The Parliament_

The Parliament was to consist of the National Assembly (lower house) and the Senate.

The National Assembly would have the following composition:
• 70 members elected in single member constituencies
• 70 members elected in a system of proportional representation based on the votes cast in the constituencies
• The Prime Minister (who would be directly elected at the same time as the National Assembly).

It was not clearly stated whether the proportional race would work as compensatory seats as in Germany or if it was an independent race as in the parallel system.

The Senate should have the following composition:
• Eight members elected from each of Zimbabwe’s provinces, which were to be reduced from ten to five, and the election would be held in a system of proportional representation to be prescribed in an Act of Parliament;
• Ten chiefs elected in accordance with the provisions of an Act of Parliament;
• Eight members elected by the National Assembly at its first sitting from the following interest groups in such a way that each interest group must have at least one representative: women, disabled, youth, combatants of the armed struggle, trade unions, religious groups, businesses and farmers.

**The Executive Powers**
The President was to be a figure head, indirectly elected by all members of Parliament.

The executive powers were vested in the Prime Minister and the Cabinet. The Prime Minister was to be directly elected. The Prime Minister would appoint the ministers. The National Assembly could pass a non-confidence vote with two-thirds of its total membership in the Cabinet including the Prime Minister. The Prime Minister and the Cabinet would then have to resign and the National Assembly would elect an acting Prime Minister. The National Assembly could pass a non-confidence vote on the government excluding the Prime Minister by majority vote and the Prime Minister would then have to appoint a new government. In other words the draft introduces a Prime Minister as a strong executive leader who is for all practical purposes not responsible to the Parliament.

**The Legislative Process**
The legislative powers would be vested in the Parliament.

Any bill would have to be sent to both chambers and then assented to by the President.

If the Senate would make amendments to a draft bill, the National Assembly could insist on its version by at least one half of the membership of the National Assembly. If the Senate rejected a draft, the National Assembly could insist with at least two-thirds of its members. In other words the Senate would be stronger than it became with the later amendment of 2005 reintroducing the senate or with the 2013 constitution.

A bill was to be sent to the President for assent. If he or she should decide to withhold assent (which would have to be ‘reservations about its constitutionality’) the bill would be returned to the Parliament. If the Parliament and the President could not agree to changes to the law, a
joint session could pass it with a two-third majority in a joint session. The President’s legislative powers would therefore still be quite strong, even though the reasons for denying consent would be restricted to cases of unconstitutionality. Such review could alternatively have been left to a constitutional court to resolve in last instance.

3.3 The 2007 Kariba Draft
Following a period of violence against the opposition SADC gave a mandate to the President of South Africa Thabo Mbeki to negotiate arrangements for a peaceful 2008 election, see below. As part of this role he supported secret negotiations at Kariba between the Minister of Justice and the two secretary generals of the MDC formations, who on 30 September 2007 agreed to a draft. The draft was never adopted but it was referred to in the 2008 Global Political Agreement.

The proposal included a Presidential system and a bi-cameral Parliament.

The Parliament
The National Assembly was to have 210 members, all directly elected in single member constituencies.

The Senate was to have 93 members:
- 60 members, six from each of the ten provinces, elected in a first-past-the-post system in single member constituencies;
- The ten provincial governors;
- The President and the Vice President of the Council of Chiefs;
- Sixteen chiefs, two from each of the eight non-metropolitan provinces, elected in accordance with the elections law (which stipulates an indirect election where chiefs are voting);
- Five members appointed by the President.

Ministers would have to be members of one of the chambers of the Parliament and the President could use the six appointees as a possibility for appointing non-elected persons to his Cabinet.

The Executive Powers
The executive power would remain with the President, who chaired the Cabinet. The Parliament could only in a joint sitting of the two chambers pass a non-confidence vote on the government with a two-third majority.

The Legislative Process
Bills would have to pass both chambers with a simple majority. In case of disagreement between the houses a joint sitting had to pass the bill with the votes of at least half of the combined membership of the two chambers. This meant that the powers of the Senate would have been considerably strengthened compared to the constitution at the time and the later 2013 constitution.
The President would have powers to veto legislation, unless the National Assembly and the Senate in a joint sitting pass the law with a two-third majority. Also in this respect the Senate had a much stronger position than in the constitution at the time.

4. The Electoral History since 1980

4.1 The Early Elections
The first election in the independent Zimbabwe was held in February 1980. Eighty members of the House of Assembly were elected by voters on a common roll whereas twenty seats were reserved for voters on a voter roll reserved for whites. The intention had been to use single-member constituencies but due to a lack of voters’ registries, constituencies could not be delimited and a province based proportional system was used for the common roll election. Zimbabwe African National Union (ZANU) had split from the Zimbabwe African People’s Union (ZAPU) in 1963 and won a convincing victory gaining 57 out of the 80 seats which were reserved for the common roll election. ZAPU won 20 seats. The turnout was as high as 84 per cent. Robert Mugabe became Prime Minister.

From 1982 the unrest in Matabeleland - known as Gukurahundi – led to a massacre committed in a heavy handed crush-down by the Mugabe government. The fighting ended by a unity agreement between Mugabe and the ZAPU leader Joshua Nkomo and ZANU and ZAPU merged into Zimbabwe African National Union Patriotic Front (ZANU PF) in 1987.

In 1985 ZANU again won the elections and the turnout was reduced to 75 per cent. Mugabe remained Prime Minister. The constitutional changes of 1987 came into effect on 1 January 1988, which made Robert Mugabe President. According to the changes, the President was to be directly elected and in 1990 there were both parliamentary and presidential elections. Mugabe was elected President and ZANU PF won the parliamentary elections, but the turnout dropped to 48 per cent.

In 1995, ZANU PF won 117 of the 120 contested seats and in 1996 Mugabe was re-elected President. The turnout in 1995 was only 26.5 per cent.

In the time that followed, there were demands for a new constitution which would restrict the powers of the President. The draft made by the constitutional commission was rejected in the 2000 referendum with 54 per cent against 46 per cent in favour of the draft. The newly founded Movement for Democratic Change (MDC) had led the no-campaign together with the National Constitutional Alliance (NCA). This paved the ground for MDC’s growth and the party became a strong opposition force during the next decade.

4.2 The 2000 Elections
The 2000 elections were more competitive than any elections before, and much more was at risk for ZANU PF. The occupation of land owned by white farmers had started and the campaign became violent, a violence often initiated by land squatters.
The European Union sent an election observation mission\(^{10}\) to the elections which concluded that:

“High levels of violence, intimidation and coercion marred the election campaign. An assessment of violence and intimidation since February 2000 made by the EU Election Observation Mission, together with reports from EU observers operating throughout the country since early June, indicate that ZanuPF was responsible for the bulk of political violence.

ZanuPF leaders seemed to sanction the use of violence and intimidation against political opponents and contributed significantly to the climate of fear so evident during the election campaign. Calls for peaceful campaigning and efforts to restrain party supporters, including the war veterans, were often ambiguous. Overall, the conduct of the government has failed to uphold the rule of law and compromised law enforcement agencies.

MDC supporters were also engaged in violence and intimidation, but the degree of their responsibility for such activities was far less. Moreover, MDC leaders were clearer in their condemnation of violence.

The levels of violence and intimidation, and the ability to campaign in relative peace, varied considerably from one part of the country to another. EU observers monitored scores of political rallies in all provinces of the country organised both by ZanuPF and MDC.

In the major cities, although intimidation was far from absent, the campaign was robust. In many rural areas, however, the levels of intimidation by ZanuPF were so intense as to make it virtually impossible for the opposition to campaign.”

ZANU PF won 62 seats with 47.2 per cent of the votes and the MDC won 57 seats with 45.6 per cent of the votes, with ZANU Ndonga keeping a seat it had held since independence. The turnout had now increased to 49.3 per cent - much higher than the almost uncontested elections of the 1990s. The results encouraged the opposition even if they challenged the result based on the conduct of the election and the violent campaign.

4.3 The 2002 Elections

In 2002, presidential elections were held without EU observation. The EU withdrew their teams when their head of mission was not granted a visa. A number of international missions still observed the elections including the Commonwealth, SADC Parliamentary Forum and some missions from individual countries, including a Norwegian observation mission administered by NORDEM.\(^{11}\) The violence before the elections was again widespread and

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\(^{11}\) The Norwegian Election Observation Mission in 2002 was headed by the author of this report.
the capacity of the polling stations was deliberately kept low in Harare and Bulawayo where the opposition candidate Morgan Tsvangirai had his strongholds.

The NORDEM report\(^\text{12}\) concluded:

“The run-up to the election was marred by a pattern of intimidation and violence. Even though incidents have been reported from both sides, the evidence shows clearly that in the vast majority of cases the ruling party has been to blame. Numerous reports of harassment and assault of opposition officials, members and supporters and their homes have been documented by observers. Opposition offices have also been attacked in several places.

[...]

On election days, the capacity of polling stations in Harare was wholly inadequate. Despite advance warnings, the Registrar General decided to carry out elections with as many as 5,300 voters per polling station on average in Harare and Chitungwiza. In all other provinces, excepting Bulawayo, the number was around 1,000 per polling station.

[...]

The thousands of voters still in line both days were sent away by the police. Many of the voters who were turned away had been waiting for ten to twenty hours in vain. Inexplicably, the polling did not start until 11 am on the third day, despite polling material and staff being present from the morning onwards at all polling stations visited by our teams. The irregular closure of the polling stations on the second and third days together with the late opening on the third day removed the last chance to offer all voters a fair chance to cast their vote within a reasonable time.”

Mugabe won with 57 per cent against Tsvangirai’s 43 per cent (not counting the share of other candidates with little support). The turnout was 55.8 per cent.

4.4 The 2005 Elections

For the March 2005 parliamentary election, observation missions that had been critical to earlier elections, such as SADC PF, were not invited to observe the elections. NORDEM had a representative in country and the report concluded:\(^\text{13}\)

“The 2005 parliamentary elections represented an important improvement on the 2000 and 2002 elections in that the elections were performed in a peaceful environment without state-controlled violence. Despite this notable improvement from previous elections, the parliamentary elections in Zimbabwe failed to meet some key internationally recognised election standards. First of all, only 120 out of the 150 seats in the parliament are contested in direct elections. The remaining seats are appointed by the President or indirectly elected by traditional leaders who are normally loyal to the President. This violates the principles of equal and uniform suffrage. Secondly, the


suppressive legislation on association, meetings and media prevented the opposition from exercising their basic rights in the years prior to the elections and during the campaign itself.

The elections in 2000 and 2002 were marred by violence orchestrated by the ruling party. The violence continued till 2004, especially in connection with mass actions, before, during and after by-elections and even in the form of inter-party violence during primary elections.

After the President’s Address to the Nation in December 2004, the violence was significantly reduced and the 2005 elections were conducted in a peaceful atmosphere. The organised political violence had disappeared, and the opposition was able to campaign in all parts of the country, even though in some districts only with supporters brought in from outside the district itself.

[...] 

Election Day was conducted in a peaceful and well-organised manner. The voters were allowed to vote in polling stations with a sufficient capacity and domestic observers and party agents were present at almost all polling stations. The count was also carried out in a well-organised manner, up to the compilation of the polling station protocols.

However, intimidation and threats of violence were still apparent. The Public Order and Security Act, which limits the freedom of association, makes it extremely difficult for any opposition to organise and gather support in areas controlled by the ruling party. Not only must meetings be applied for four days in advance but the police also insist on being present at the meetings, which the participants obviously experience as intimidating.

All electronic media are state owned and their coverage of the campaign was very biased. On the positive side, special election programmes were transmitted where both sides got a fair chance to present their programmes. However, the news coverage and current affairs programmes were clearly in favour of the ZANU PF.”

ZANU PF won 78 and MDC 41 seats, and one seat was won by an independent candidate. The turnout was 46.6 per cent.

ZANU PF had a sufficient majority to change the constitution and they used this to reintroduce the Senate right after the elections. MDC was against the change but on the question whether they should participate in the Senate elections later in 2005, the party split into the Morgan Tsvangirai faction (MDC-T) and the Arthur Mutambara faction (MDC-M), later headed by Welshman Ncube.

MDC-T did not participate in the Senate elections that gave ZANU PF 43 seats, MDC-M 7 seats, and one seat to an independent candidate. The interest in the elections was low and the turnout was only 19.5 per cent.
4.5 The 2008 elections
The background for the 2008 elections is described by Mlambo and Raftopoulos:\(^{14}\):

“The 2007 SADC mandate to South Africa to broker an agreement between Zanu PF and the two MDC formations must thus be seen as an extension of Mbeki’s emphasis on multilateralism and the broader policy objectives described above. This intervention took on an added urgency after the public beating, arrest and torture of opposition and civic leaders on the 11th March 2007 and the brutal attacks on the MDC structures that followed thereafter. A combination of international pressure and concerned voices in SADC led to an Extra-Ordinary SADC Heads of State summit in Tanzania at the end of March 2007, at which South African was given the mandate to mediate between the contending political parties in Zimbabwe. From the onset of the mediation process it was clear that Mbeki’s efforts were concentrated on reaching an agreement that would result in a generally acceptable election process in 2008, as a means of settling the issue of international legitimacy, and

…begin the process leading to the normalisation of the situation in Zimbabwe and the resumption of its development and reconstruction process intended to achieve a better life for all Zimbabweans on a sustained and sustainable basis.\(^{15}\)

[…]

By the end of 2007 the SA mediation had resulted in some minimum agreement on creating conditions for a free and fair election, and despite the concerns of the MDCs that more reforms were required before an election could take place, Mugabe unilaterally announced an election date for the 29th March 2008.”

The parties managed to negotiate some changes to the electoral environment. In amendment No 18 of 2007, so-called harmonised elections were introduced. Election to the Parliament’s two chambers and the presidency should be conducted on the same day with the same terms in office. The number of seats in the House of Assembly was increased to 210 and they were all directly elected, which was an important reform. It would therefore be possible for the opposition to win control of this house of parliament.

The NORDEM Report\(^{16}\) from 2008 stated:

“The SADC involvement in 2007 came after an attempt already in 2004 to influence the conditions for the 2005 elections. SADC held a meeting in Mauritius on 7 to 14

\(^{15}\) Letter from President Mbeki to Morgan Tsvangirai and Arthur Mutambara, copied to Robert Mugabe, 4 April 2007.
August 2004 where they passed the SADC Standards for elections (see Appendix A). It was stated that they were not designed for one particular country or situation, but they clearly did have the then upcoming elections in Zimbabwe in mind.

The standards resulted in legal changes in January 2005 which introduced:

- An independent election commission (ZEC).
- The count to take place in the polling stations as opposed to in counting centres, and this significantly enhanced the transparency and security of the process.

In addition the following measures were taken:

- The elections were held on one day instead of two. This eliminated the doubts about the security of the voting material during the night between the first and second election day;
- The ballot boxes were translucent, which reduced the risks of ballot stuffing. (This is in accordance with a recommendation of the SADC Parliamentary Forum standard.)

The introduction of the ZEC came too late to have a real affect in 2005 but by 2008 the ZEC was written into the constitution, the Election Supervisory Body had been abolished and the ZEC was given all responsibilities for the conduct of the elections.”

The period immediately leading up to the March 2008 election was more peaceful than in earlier elections in the 2000s. The elections were observed by SADC, the Pan-African Parliament and delegations from some individual countries, in addition to the domestic organisations such as the Zimbabwe Election Support Network (ZESN), which had a massive observation operation. The results of the parliamentary elections were announced in an unusual slow process. It turned out that the opposition had won a majority in the House of Assembly and that the two blocks – the two MDC parties and ZANU PF – had won an equal number of the contested seats in the Senate. The publication of the presidential election results took five weeks and showed that Tsvangirai had the highest share of the votes but not sufficient to win in the first round, and a run-off was announced. This result was highly disputed by the opposition who claimed that Tsvangirai had won in the first round.

The NORDEM report summarised the elections of 2008:

“There were sharp contrasts between the elections on 29 March and the runoff and by-elections held on 27 June. Whereas the former was seen – with its faults and shortcomings – as being a legitimate expression of the will of the people the second was marred by pre-election violence, restrictions on campaigning, lack of transparency and total control of the media by the ruling party. The opposition candidate withdrew

17 Ibid.
from the race five days before the runoff, and none of the major international observer missions assessed the election to meet international standards.

[...]

On the backdrop of the 2000, 2002 and 2005 elections the main question asked before the elections was whether the elections would be conducted in a correct manner and whether the elections could produce a peaceful change of powers if the election results should require such change. Robert Mugabe stated in his rally meetings during the weekend immediately prior to Election Day that a vote for MDC would be wasted because Tsvangirai would never ever, ever, ever be allowed to rule the country. This could be interpreted as electoral rhetoric, but also as a very specific threat that every means would be used to keep Tsvangirai out of powers. At the same time government spokespersons stated that the ZANU PF would respect any election result.

Three heads of security agencies said publicly before the elections that their loyalty would always be with Mugabe. It was noted, however, that a number of such chiefs were silent on the matter, including the important heads of the air force.

The pre-election period was peaceful, and the candidates were able to rally all over the country. Technically the voting and the count in the polling stations seemed to be carried out in a correct manner, and even though the publication of parliamentary election results was slow, it seemed to be done in a professional and reliable manner.

[...]

The presidential results ZEC declared only on 2 May, five weeks after the elections, after tremendous domestic and international pressure to release the results. Representatives for the candidates had been invited to review the results before the publication but that process was not carried out with the same level of detail as for the parliamentary results.

The opposition (MDC-Tsvangirai and MDC combined) won a clear majority in the House of Assembly (the principal chamber of the Parliament) and half the seats in the Senate. Morgan Tsvangirai won the highest number of the presidential votes with the incumbent Robert Mugabe as number two. According to the official results Tsvangirai gained less than the 50% of the votes required to be elected in the first round and a runoff between him and Mr Mugabe is therefore required. The Movement for Democratic Change (MDC) Tsvangirai claimed that Tsvangirai had 50.3% of the votes and that a runoff is not needed, but decided to participate anyway.

By not publishing the results as they were produced the general integrity of the elections is highly questioned. Transparency in each step of the electoral process is a prerequisite for building trust and confidence in the elections. This includes an
immediate publication of results as they come into the central election authorities, even if they may be preliminary at the time of publication. On the other hand, the candidates’ party agents were, for the parliamentary election, allowed to verify the detailed results prior to the publications, and even though the process is unusual the results were generally credible.

It must be assumed that the delay of presidential results came by order from the ruling party. In addition wide-spread post-election violence and retaliation on opposition members and party agents have destroyed the impression from Election Day that this had been the best election organised in Zimbabwe so far.

After some hesitation Morgan Tsvangirai decided to participate in the runoff, provided that the election would be open for international and national observers. Following a period of massive ZANU PF sponsored violence, intimidation, ban on election activities, arrests and abuse of media by the governing party Morgan Tsvangirai withdrew from the runoff on 22 June, a race that had already become irrelevant due to conditions which could never support a free and fair election.”

In the House of Assembly elections ZANU PF won 97 seats (45.9 per cent of the votes) and the MDCs 109 seats (51.2 per cent of the votes), with Jonathan Moyo winning one seat as an independent. Three seats were filled in by-elections held during the second round of the presidential election, out of which two were won by ZANU PF and one by MDC-T.

The official, and disputed, results of the first round of the presidential elections gave Morgan Tsvangirai 47.9 per cent, Robert Mugabe 43.2 per cent, Simba Makoni 8.3 per cent and Langton Towungana 0.6 per cent. The turnout was reported to be 42.7 per cent.

In the Senate ZANU PF won 30 seats with 45.7 per cent of the votes and the MDCs 30 seats (MDC-T 24 seats and MDC-M 6 seats) with 51.7 per cent of votes.

Because of the extreme violence following the first round, Tsvangirai withdrew from the presidential run-off, which therefore was won by Mugabe (90.2 per cent of the votes).

5. The GPA and the Constitutional Process from 2008

5.1 The Global Political Agreement and the Road Map

Negotiations facilitated by SADC and SADC’s chairmanship, South Africa, started immediately after the disastrous elections of 2008. It ended first in a Memorandum of Understanding (MoU) signed by ZANU PF, the two MDC and SADC as facilitator on 21 July 2008, where one paragraph read:

“The Parties hereby declare and agree to commit themselves to a dialogue with each other with a view to creating a genuine, viable, permanent and sustainable solution to
the Zimbabwean situation and, in particular, to implement this Memorandum of Understanding.”

The negotiators then defined an agenda for the further negotiations, which ended in the Global Political Agreement (GPA) signed in September 2008. The GPA defined an interim structure of government (the Government of National Unity - GNU) and prescribed a process for drafting and adopting a new constitution. The composition of the interim government and other constitutional changes following the GPA is discussed under the section on constitutional changes.

The GPA in its Article 6 laid out both the framework and the timeline for the constitutional process. It prescribed a period of seventeen months from a parliamentary select committee in charge of the process was appointed to the final presentation to Parliament of a constitution which had passed a referendum. The schedule started with the inception of the Government of National Unity which took place on 11 March 2009. The process became considerably delayed with a referendum as late as 16 March 2013, more than three years behind schedule. The following table compares the GPA plan with the actual dates for the various milestones:
<table>
<thead>
<tr>
<th>Milestone Number</th>
<th>Result</th>
<th>Number of months after</th>
<th>Planned month</th>
<th>Actual month</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Appointment of COPAC</td>
<td>Two months after the inception of GNU</td>
<td>May 2009</td>
<td>April 2009</td>
</tr>
<tr>
<td>(ii)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; All Stakeholders conference</td>
<td>Three months after (i)</td>
<td>August 2009</td>
<td>July 2009</td>
</tr>
<tr>
<td>(iii)</td>
<td>Public consultation process completed</td>
<td>Four months after (ii)</td>
<td>December 2009</td>
<td>October 2010</td>
</tr>
<tr>
<td>(iv)</td>
<td>The draft constitution tabled to a second All Stakeholders Conference</td>
<td>Three months after (iii)</td>
<td>March 2010</td>
<td>October 2012</td>
</tr>
<tr>
<td>(v)</td>
<td>The draft constitution and the accompanying report tabled before Parliament</td>
<td>One month after (iv)</td>
<td>April 2010</td>
<td>February 2013</td>
</tr>
<tr>
<td>(vi)</td>
<td>The draft constitution and the accompanying report debated in Parliament</td>
<td>One months after (v)</td>
<td>May 2010</td>
<td>February 2013</td>
</tr>
<tr>
<td>(vii)</td>
<td>The draft constitution emerging from Parliament gazetted before the holding of a referendum</td>
<td></td>
<td></td>
<td>February 2013</td>
</tr>
<tr>
<td>(viii)</td>
<td>A referendum on the new draft constitution held</td>
<td>Three months after (vi)</td>
<td>August 2010</td>
<td>March 2013</td>
</tr>
<tr>
<td>(ix)</td>
<td>Draft constitution to be gazetted, in the event of being approved in the referendum</td>
<td>One month after (viii)</td>
<td>September 2010</td>
<td>29 March 2013</td>
</tr>
<tr>
<td>(x)</td>
<td>The draft constitution introduced in Parliament for promulgation</td>
<td>One month after a mandatory 30 days period after (ix)</td>
<td>November 2010</td>
<td>Passed the Senate on 14 May 2013</td>
</tr>
</tbody>
</table>

Despite the delays and a number of stalemates, the process moved according to the sequence of milestones. Many stakeholders claimed that the time schedule was unrealistic at the outset. In particular the actual drafting and negotiations of disagreements after the outreach campaign took much more time than predicted and included activities not covered by the plan in the first place. The outreach process also started a year later than planned. The constitutional drafting is discussed in more detail in a separate section.
SADC was the guarantor of the GPA with a facilitation team chaired by the South African
President. When little progress had been made, the negotiators of the three parties of the GPA
presented a roadmap to the SADC facilitation team after a meeting in Harare at the beginning
of April 2011. The roadmap included: sanctions, constitution, media reform, electoral reform,
rule of law (including security sector reform - SSR), freedom of association and freedom of
assembly, legislative agenda and commitments, elections (operations and monitoring). It was
implied in the GPA – and the roadmap was explicit about this – that the adoption of the
constitution was to be followed by an election in accordance with the new constitution. With
the delays in the process, demands for elections independent of the constitutional process
were raised from time to time but the negotiating team remained firm on the sequence:
constitution first and then elections. Without a new constitution the latest time for holding
elections would be 29 October 2013, four months after the expiry of the term in office,
according to the constitution at the time. This constituted in a way a final deadline for the
constitutional process.

At the time of the referendum, most issues of the roadmap had been addressed but some
remained unsolved, such as: The time for inviting election observers, media, staff of ZEC and
SSR. It did not seem that the MDC factions intended to put a lot of pressure on ZANU PF to
resolve them before the elections and rather relied on solving them after promulgation of the
new constitution and the first elections. Civil society groups warned, however, that in
particular SSR would be a precondition for a peaceful transfer of powers, should MDC win
the elections.

5.2 The Process at Large
The drafting process started with the appointment of the parliamentary selection committee
for the constitutional process (called the COPAC) and continued with an all stakeholders’
conference on 13 and 14 July 2009 with the participation of 4000 delegates. This event was
poorly planned and the first day ended in unrest.

The political discourse remained harsh and the political violence did not cease. It took long
time from the first stakeholders’ conference to the start of the outreach period and the
outreach met with obstacles and disagreements on the process itself. That being said, COPAC
managed to carry out the planned activities and resolve disagreements, despite public feuds
between the parties. The attitude and public statements security forces represented a high
risk, but at the level of the negotiators, there seemed to be a shared understanding of the need
to lead the process to a successful conclusion.

The consultation period ended in October 2010. After that, working out summaries of the
feedback from the outreach process took long time - an activity not reflected in the plan at all.
The drafting could only start in the second half of 2011. A first draft constitution was
presented by the drafting team to COPAC in December 2011. The second draft (meant at the
time to be the final) was published on 18 July 2012 and the second stakeholders’ conference
was held from 21 to 23 October 2012 with 1,200 delegates. A large number of amendments
were tabled, in particular by ZANU PF, which caused an impasse lasting till late December
2012. The MDC formations wanted the COPAC draft to be sent to the Parliament as it was, but ZANU PF wanted amendments to be made. The most prominent disagreements could be grouped in nine areas including devolution of powers, the independent prosecutor, homosexuality, and double citizenship - all issues which had been negotiated before COPAC presented its final draft.

Due to the difficulties in reaching an agreement, there were suggestions of putting two drafts out for a referendum, the COPAC draft and the ZANU PF amended draft. This would, however, have violated the spirit and letter of the GPA and made the referendum a ZANU PF – MDC competition rather than constituting an end to a consensus driven process.

There were also suggestions that one or two specific issues could be put on the ballot for voters to choose among should it prove impossible to reach a final agreement. Most stakeholders, however, found it preferable to give the voters a simple choice: “Yes” or “No” to the draft constitution.

At the end of November 2012 the principals of the three parties agreed to form a seven member cabinet committee headed by the Minister for Constitutional Affairs and with the COPAC co-chairs and the Management Committee as members. Their work is described in the section on the content of the draft below. In a meeting on 17 January 2013 at the State House the committee and the principals agreed on the remaining issues.

After that, the events moved fast. Mugabe wanted elections before 29 June 2013 when the term in office of all bodies ended (even though the constitution in force at the time would allow for later elections) and the draft was quickly presented to Parliament, which immediately passed the draft. The draft was gazetted and a referendum was held on 16 March 2013 passing the draft with 94.5 per cent of the votes against 5.5 per cent no-votes.

The general consultation on the draft was the victim of the rushed final process. Even with the public consultations and the stakeholders’ conferences the final draft had not been available for long and the possibilities to explain it to a large public were limited. The ‘No’ campaign had few resources and little time to conduct a credible campaign. The process reflected the broad political agreement and the belief that people at large would support the referendum.

Some leading politicians had pushed for elections to be held both in 2011 and in 2012, regardless of whether there was a constitution or not. Others emphasised that elections should only be held after important reforms had been implemented. The SADC facilitators made it clear that the drafting and adoption of a new constitution should be completed as laid out in the GPA.

The political violence seemed to decrease from 2012. That did not mean that it vanished but the atmosphere around the time of the referendum in March 2013 was better than the year
before and much better than after the first round of elections in 2008, peaking at the run-up to the second round and remaining high in a few years after.

The Government of National Unity was in office for more than four years with representation of the three main parties. The co-operation may not have been the best over these years. The Cabinet and the Council of Ministers did not work as efficient collegiums; each minister seemed to have governed his or her ministry often in competition with other ministers rather than in co-operation with them. The governing of national resources and the income from the diamond fields were prominent examples. The GNU was formed as a result of a necessary high level political agreement, not because the parties defined common policies. On the other hand the government lasted and survived a number of challenges including arrests of ministers and fierce attacks on each other in the media. The tone was sharp and often insulting in public but the government lasted till the end of the constitutional process.

5.3 The COPAC

At the outset the select committee (COPAC) did not have an approved budget or its own staff. The first stakeholders’ conference suffered from a lack of resources. Eventually, COPAC was partly funded by the State budget and partly by donors under the coordination of UNDP. The COPAC administration was set up outside of the Parliament’s premises.

COPAC set up seventeen thematic committees, each with forty members, to work on the public outreach and the results of the outreach. The chair and thirty per cent of the members were politicians, and the deputy chair and seventy per cent of the members were from the civil society. There were seventy-one teams of ten members travelling across the country to collect the views of the people. The outreach phase started in June 2010 and ended in December the same year.

The civil society reacted in different ways to the process. Whereas the majority said that they wanted to participate and make their best contributions to the process, three major players - the NCA, the Zimbabwe Congress of Trade Unions (ZCTU) and some factions of the student organisations - decided not to participate because they felt the process was flawed. The main complaint was that the process was controlled by the Parliament and not by an independent commission. There was also a fear that the political parties would not take the peoples’ input into account but rather negotiate a draft among themselves. Some NGOs stated that they would recommend a no-vote in the referendum based upon their criticism of the process rather than the actual draft. However, most NGOs agreed that even if the process was not as per their preference, they would assess the draft upon its own merit and recommend their members to vote according to the result of the assessment. In the end ZCTU came out with a recommendation of a yes-vote, whereas the Progressive Teachers’ Union (PTUZ) recommended a no-vote, both based upon an assessment of the content of the draft constitution, not the process.

Organisations such as NANGO and Crisis Zimbabwe decided to participate to make the process meaningful. ZESN did not take part in the committees because they felt such
participation might have challenged their role as observers during a later referendum. They did, however, carry out advocacy and educational programmes on electoral systems and they supported the process as such. They also observed the outreach programmes and the referendum.

The thematic committees worked out questionnaires where the public was asked to give their opinions on key questions. The responses were processed both quantitatively and qualitatively and the thematic groups were compiling reports at district, province and national level. A drafting committee of three respected lawyers was set up by COPAC and it is worth mentioning that the composition was agreed to as a team, not as appointees of each party. The drafting committee had a group of fifteen people to support them. The theory at COPAC at the time seemed to have been that the drafters would be able to make a single draft based upon the public outreach and that such a draft could be presented to the all-stakeholders’ conference. With the highly political issues involved, that was unrealistic, and in the end the senior political leaders (principals or negotiators) had to negotiate compromises both before and after the all stakeholders’ conference.

Even though the constitutional process faced a number of problems, both political and logistical, their activities were carried out as foreseen by the GPA. The outreach campaign was criticised for having been orchestrated by the political parties. In some places the process had to be repeated after criticism. However, more than 4,900 meetings were held and after a dispute on the methodology, the results of the outreach were summarised.

5.4 The Joint Monitoring and Implementation Committee (JOMIC)
The Joint Monitoring and Implementation Committee (JOMIC) was established by the GPA as a tool for reconciliation and for creating an environment conducive for future elections. SADC put a lot of emphasis on its role. The Zimbabwe Institute, an independent political think tank implementing a number of projects in Zimbabwe, helped setting up its administration and coordinated the donor support. JOMIC had four members from each of the three parties including the senior negotiators. The members formed four sub-committees: 1. Operational, 2. Land, 3. Media and 4. Sanctions. Under the Operational sub-committee each party appointed a liaison to form the team which was deployed to investigate complaints on political violence.

After a slow start, the political party liaison teams centrally and at province level worked well from the spring of 2011. In 2013 the capacity was further expanded to two teams per province, which were to be operational during the elections later in 2013. The members emphasised the value of representatives from all three parties delivering the same message of non-violence. They worked with the local authorities and with the police, and they took an independent position when the police was part of the problem.

The SADC summit at Sandton on 11 and 12 June 2011 decided to second three SADC troika representatives to JOMIC. They were able to take up their work only around the time of the 2013 referendum.
5.5 The Zimbabwe Elections Commission (ZEC)
The Zimbabwe Elections Commission (ZEC) was established in 2004 after pressure from SADC. It was tasked with all aspects of elections administration in accordance with the election law and amendment No 19 to the constitution. Staff was in place at all levels (central, province and districts) well before the 2013 referendum. The only exception to their full responsibility was the maintenance of the voter register, for which the Registrar General was still responsible, albeit in theory under ZEC’s supervision. Previously (before 2005) the elections were conducted by the Registrar General, who was not seen to be independent of the government in his conduct of elections. For the 2005 elections ZEC came so late into being that it had little impact. In 2008 ZEC was in charge of the elections but still had to rely on resources from the Registrar General, not least in the transmittance of results to headquarters.

In order to organise credible elections and referendum, ZEC needed to become a strong independent election management body. ZEC took control of the functions given to them by the constitution and the law but their supervision of the voter registration was still weak and the overhaul of its staff, demanded by the MDCs, was not conducted.

The voter register was under criticism from many stakeholders, including ZESN, and two independent audits conducted by the civil society concluded that there were an unacceptable number of dead and emigrated people as well as duplicates on the lists. The audits were in turn questioned, in particular on their estimates on how big the problem is, but everybody seems to agree that the voter register needed a thorough review and an effective clean-up. The high turn-out of the referendum in 2013 also indicates that there are a large number of eligible voters who are not registered. The new constitution therefore requires a one month long registration drive to be conducted before the first election after its promulgation.

UNDP was the implementing agency for the international community’s support to the ZEC. UNDP was, however, limited in their support because the UN Department of Political Affairs (DPA) with its branch Elections Assistance Division (EAD) needed to make an assessment of the needs prior to any additional election related support. They were able to build up an ICT infrastructure at the headquarters and down to province level prior to the referendum, which enabled the ZEC to transfer data, in particular the results, using their own infrastructure, but at lower levels they were still dependent on other agencies’ equipment.

5.6 Observation of Referendum and Elections
The Zimbabwe Election Support Network (ZESN) was the most important election related civil society organisation, being an umbrella organisation for a large number of NGOs that together were capable of conducting election observation covering close to every polling station in a professional manner.

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18 SADC had at its Mauritius summit in 2004 agreed to the “Principles and Guidelines Governing Democratic Elections” which stated in paragraph 7.3 that the member states should “Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel (…)”
The legal framework was improved considerably by requiring the polling station results to be given in copy to party agents and to post them immediately at the respective polling stations. In elections, the official tabulation was to be published by the ZEC from polling station to constituency and national level and it would therefore be possible for anybody to check that their copy of a polling station result had been correctly tabulated. However, the detailed tabulation was not implemented for the 2013 referendum.

ZESN had the capacity to do their own tabulation based upon copies of the polling station results. The law did not allow anybody to publish results before the ZEC had made their official announcement, but ZESN would have the capacity for parallel counts.

5.7 International Observer Organisations

Only regional organisations and individual countries were invited to observe the elections after 2002 and the referendum in 2013. SADC had the most important mission due to the position of SADC as facilitators of the GPA. MDC demanded that SADC observers should be in country six months before and after the elections but parts of the government structure did not want Zimbabwe to be treated differently from any other SADC members. The SADC rules from 2004 stated that the observation mission should be in place at least two weeks prior to the elections. Two weeks would not allow for first hand observation of the voter registration, nomination of candidates, campaigning including media coverage, the security situation and other key aspects of the election process. It was less controversial that an observation mission could be invited from the time the elections or the referendum were formally announced. With the short time from the announcement of a referendum day to the actual referendum it turned out that SADC were in country only a week prior to the vote.

The SADC Parliamentary Forum has a recognised capacity of observing elections based upon detailed standards. They had not been invited for elections in Zimbabwe after 2002, but they were invited for the referendum which they observed. They are likely to be invited also for the elections.

6. Negotiating the Content of the Drafts from 2011 to 2013

COPAC issued a total of three draft constitutions. The first draft of December 2011 was meant to be an internal one but it was published by the Herald in February 2012. After having resolved pending matters, COPAC issued a new draft dated 17 July 2012. Following the Second All Stakeholders’ conference in October 2012 and further negotiations within a cabinet committee, a third draft was agreed and submitted in February 2013. This draft was passed by the referendum on 16 March 2013 and is in the following referred to as the final draft, even though some changes regarding the time for the first elections were made and a few cross references were added to the draft before it was gazetted after the referendum, see the section on the next elections below.

After the December 2011 draft had been handed over by the drafters to COPAC, the latter discussed and resolved a number of disagreements. In March 2012 some remaining disagreements had to be handed over to the COPAC Management Committee, composed of
the chief negotiators (Patrick Chinamasa for ZANU PF, Tendai Biti for MDC-T and Priscilla Misihairabwi-Mushonga for MDC-N). The negotiators also added some further issues, such as the government structure.

Ultimately, the negotiations after the December 2011 draft centred on:

1) Dual citizenship;
2) The government structure;
3) Devolution of powers;
4) Death penalty;
5) Land;

A compromise was reached on the dual citizenship, leaving it to be decided by regular legislation (rather than in the Constitution) whether it should be prohibited for those who acquire Zimbabwean citizenship by descent or registration.

The government structure - whether to adopt a hybrid system including a prime minister or a presidential system - had not been an issue for COPAC and was raised later. In the end a presidential system was retained in the July 2012 draft.

The compromise on the devolution of powers was that there would be provincial councils but that many of their seats would be filled *ex officio* by members elected to the Parliament or local bodies. The July 2012 draft stipulated that all other seats – that is, all elected seats, not filled *ex officio* – would be determined based on the votes cast for the National Assembly rather than through a separate election. This would save money and efforts in the election process since it would not require separate balloting, and also possibly in the enumeration of members, but it would weaken the accountability of the provincial council members towards the voters.

On the death penalty a compromise was reached restricting it to aggravated murder, and with limitations in age and gender. High treason would not be a reason for a death penalty.

The compromise on land was that land compulsory acquired by the state before the constitution came into effect would only be compensated for indigenous Zimbabweans (not those of foreign descent). Others would only get compensated for improvements made to the land.  

The December 2011 draft had left the issue of the Prosecutor-General and the Attorney-General open. The compromise reached for the July 2012 draft was that the two functions should be separate, but that in a transitional period the Attorney-General will be appointed as the first Prosecutor General. The draft would grant the Attorney-General the authority to

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19 This is discussed in more detail in the section on the content of the draft.
attend meetings in the Cabinet and Parliament at his or her own will, without needing an invitation for each meeting, as had been the arrangement in accordance with the constitution valid at the time.

When the July 2012 draft had been published strong voices in ZANU PF opposed it and wanted it changed before the Second All Stakeholders’ conference. The agreement was, however, to organise the conference in October 2012 on the basis of the July 2012 draft as it was. The ZANU PF objections were presented at the conference. COPAC compiled a report following the conference categorising the issues of the constitution into:

1) Issues not commented upon in the conference
2) Recommendations which everyone agreed to (e.g. rights of youth in the Bill of Rights)
3) Recommendations not agreed to by all.

Naturally, the issues in the third category became the difficult ones. The MDCs’ position was that the issues had already been negotiated at the political level and starting again would not yield a different result. Some in MDC did, however, want to honour the outcome of the conference they had been pushing for a few months earlier and were willing to revisit some of the issues.

ZANU PF had proposed a long list of changes to the draft. The most prominent could be grouped in approximately nine areas including:

1) Dual citizenship;
2) Executive powers including the succession and the election of Vice Presidents;
3) Composition of the constitutional court: A bench of the Supreme Court or a separate court;
4) The independence of the prosecutor or an authority combined with the Attorney-General position;
5) Devolution of powers: Separate councillors province level or members of Parliament and mayors; the head appointed by the President or from the majority of the councillors.
6) Land issues;
7) National Peace and Reconciliation Commission;
8) Whether to outlaw homosexuality;
9) The Ombudsman.

On 26 November 2012 the principals met to discuss the proposal by the Minister of Parliamentary and Constitutional Affairs, Eric Matinenga, that a seven-member cabinet committee headed by Minister Matinenga and consisting of the parties’ chief negotiators (as mentioned above: Patrick Chinamasa, Tendai Biti and Priscilla Misihairabwi-Mushonga) and the co-chairs of COPAC (Douglas Mwonzora, Edward Mkhosi and Paul Mangwana) should
resolve the remaining issues. After some objections, in particular from some in MDC-T who were sceptical about negotiating issues already agreed to, the committee was appointed.

It was soon down to seven points of disagreement. The committee had problems finding compromises and a deadlock seemed close. Mwonzora and Mangwana and a lawyer from MDC-N then discussed informally the remaining disagreements. They had made a lot of effort to reach an agreement during the last close to four years and did not want to let the process fail at the end. They negotiated over the Christmas holidays and were in the end able to present a solution that the principals – and the rest of the committee – finally agreed to. The last issue revolved around vice presidential candidates as running mates in the presidential election. This was resolved in a final meeting at the State House on 17 January 2013, which paved the way for the release of the final draft in February 2013.

On the seven issues the conclusions reflected in the final draft were:

1. Devolution of powers:
A preamble was added to explain what devolution did not imply and the office of governor was replaced by a Head of Provincial Council, who is to be elected by the full council from the list provided by the party with the majority in the council.

2. National Prosecuting Authority
There will be an Attorney-General and a National Prosecuting Authority as in the COPAC draft and the transitional arrangements will combine the two functions in the first appointment of Prosecutor General, as was also suggested in the July 2012 draft.

3. National Peace and Reconciliation Commission
The change was that the life of the commission was limited to ten years.

4. Executive Authority
The wording was changed from “The executive authority of Zimbabwe vests in the President and the Cabinet” to “The executive authority of Zimbabwe vests in the President who exercises it, subject to this Constitution, through the Cabinet.”

5. Land Commission
The commission changed from being an independent commission to being an executive commission, but still with protection against dismissals as was the case for the proposed independent commissions and with the same mandate.

6. The Succession of Presidential Powers and the Election or Appointment of Vice Presidents

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20 Homosexual practice was not singled out as a crime, which many in ZANU PF wanted. They were in the end satisfied that “other crimes” (sic!) were not mentioned in the constitution, just in the criminal acts, so explicit mention of homosexuality was also omitted from the constitution. The ombudsman was not reintroduced. There was no change in the citizenship arrangements from the July 2012 draft.
The provision for the Vice Presidents to be elected on the same ticket as the President is kept but the transitional provisions allow the President to appoint and dismiss the Vice Presidents for the first election and for any election held within ten years of the constitution coming into force, which would under normal circumstances be for the next two elections. In the event of the death of the President in the transitional period, the first Vice President would act until the party of the deceased President would appoint a new President.

7. Constitutional Court

The Constitutional Court remains but transitional provisions were introduced so that not only the President of the constitutional court but even its members would be judges of the Supreme Court for the first seven years.

The agreements were included in the final draft of 1 February 2013, which was accepted in the 16 March 2013 referendum.

7. Some Important Elements of the 2011 to 2013 Drafts of the Constitution

In the following some of the issues related to the state and government structure and elections are discussed in more detail. In addition some of the controversial issues regard land and the judiciary are included. The draft discussed is the final draft unless there is a clear reference to one of the other drafts.

7.1 Form of Government

The GPA and Amendment 19 to the Constitution introduced a hybrid system of government with power-sharing between the new post of Prime Minister and the President. Parts of MDC had favoured a parliamentary system or at least a hybrid system, but all the COPAC drafts kept a pure presidential system, with no post as prime minister.\(^{21}\)

The draft contains provisions for votes of non-confidence in the government. To be passed, such a motion needs the support of a two-third majority of the total membership of both houses in a joint resolution. In other words, it is unlikely to be used to resolve regular political disagreements between the Parliament and the government. In fact, the final draft also contains strong disincentives from a parliamentary perspective to adopt such a motion: Should a vote of non-confidence be passed, the President could choose to dissolve the Parliament. Even if the President does not dismiss the government within a certain time limit after a successful vote of non-confidence, the Parliament would stand dissolved. The dissolution of Parliament in this situation was a change introduced in the July 2012 draft. According to the December 2011 draft the President was deemed to have resigned in such a case.

\(^{21}\) The Kariba draft constitution, which had been agreed between the three parties on 30 September 2007 and which was “acknowledged” in the GPA, had also included a presidential system. It had been seen by the opposition’s negotiator to be the best possible compromise at the time. For those favouring a presidential system the system in the interim period was seen as an ad hoc power-sharing agreement which should not take precedence for the future.
Comment:
One may think it is surprising that an agreement was reached that easily on a presidential system since the demand by the opposition was to reduce the power of the President. One reason is clearly that key MDC leaders see a possibility to win the presidential election and therefore take a more pragmatic or even opportunistic view on the issue. It was argued that along with a presidential system more checks and balances would be implemented. However, the presidential veto on legislation remains.

With harmonised elections the presidential and parliamentary elections are held on the same day and the risk of having an executive without the support of the Parliament is reduced, but it will still happen from time to time. The problems of such a situation may have been underestimated.

7.2 Parliament Structure
Parliament will be bi-cameral: The National Assembly (the lower house) shall have 270 members for the first two terms and then 210 members, and the Senate 80 members (with no transitional arrangements).

In the National Assembly the 210 members are elected by first-past-the-post (FPTP) in single-member constituencies (the current system) and the 60 extra members are all reserved for women. To fill these 60 seats, six women shall be elected from each of the ten provinces under a system of list proportional representation (List PR). See further discussion below, under electoral system.

The Senate shall consist of:
(a) six members elected from each of the ten provinces, by a system of proportional representation;
(b) sixteen chiefs, of whom two are elected by the Provincial Assembly of Chiefs from each of the provinces, other than the metropolitan provinces;
(c) the President and Deputy President of the National Council of Chiefs; and
(d) two members are elected in the manner prescribed in the Electoral Law to represent persons with disabilities.

This composition of both houses was different from the two earlier drafts. The December 2011 draft had left the number of seats in each house empty but had prescribed a mixed electoral system for both houses. The Senate would in addition to those elected by the mixed system have representatives of marginalised groups (women, youths and persons with disabilities) and chiefs.

In the July 2012 draft the system was defined in detail and provisions for women’s representation were strengthened, at least for a transitional period. The composition of the National Assembly was foreseen as in the final draft, but the Senate was to have eight more
seats, to be filled by the governors of the provinces other than the metropolitan provinces (Harare and Bulawayo).

Generally speaking, in a bi-cameral system the balance between the two chambers is defined by the role each house has in the legislative process. Of particular importance is the method of solving disagreements between the two chambers. In the case of Zimbabwe, the final draft gives the National Assembly the final say. This was a change adopted in the July 2012 draft different from the December 2011 draft, in which disagreements were to be settled by a plenary session. Since the National Assembly will be the only fully directly elected house, this change was an improvement and resembled more closely the rules of the constitution in force until 2013.

The constitution prescribes that a Member of Parliament that ceases to be a member of the party nominating him or her, would lose the seat in Parliament. All drafts had the same provision as had the constitution valid at the time of drafting. The drafts brought one more regulation whereby a person who was elected as an independent would lose the seat if he or she would join a party during the term. That provision had not been there before.

Comment:
Many stakeholders found a second chamber unnecessary and it may be an arrangement which at least some may want to see changed in the future.

The constitutional arrangement whereby the parties own the seats in Parliament violates international good practice. Members of Parliament should be accountable to voters and parties should not be able to expel elected people from Parliament. Parties have an important role in nominating candidates but once elected they should keep the seats for the whole term in office. It is understandable that parties want to prevent party splits but party discipline should be enforced in a way that does not reduce the accountability to the voters.

7.3 The Relationship between the Parliament and the President
The power balance between the executive and the Parliament has much to do with the executive’s role in passing legislation. Is there a full division of powers or does the executive have a final or substantial say? All the drafts stated that “[t]he Legislature of Zimbabwe consists of Parliament and the President acting in accordance with this Chapter” of the constitution. According to the final draft the President may deny assent of a bill for any reason, not only if he or she finds it to be unconstitutional. The National Assembly may then by a two-third majority of its total membership force the President to assent anyway, provided that the constitutional court does not find the bill unconstitutional.

22 The possibility for parties to expel members from the party, who as a consequence lose their seat in Parliament, is found in a number of new democracies and is often said to protect against corruption and possibilities for parties or the executive to buy support in Parliament. This is, however, a practice criticised by many international experts because it shifts the balance from the voters to parties in an unreasonable manner and reduces the transparency and predictability of an election.
In the December 2011 draft the President could only deny assent if he found a law to be unconstitutional. In such a case, a joint sitting of the two houses could force the President to sign the law, unless the constitutional court ruled it to be unconstitutional. In the July 2012 draft the President could deny assent for any reason. In this draft, there was an inconsistency between one article which stated that two-thirds of the National Assembly could force assent and another which required two-thirds of both houses, provided that the constitutional court ruled that it was constitutional. The inconsistency was resolved in the final draft.

If there is a disagreement between the President and the National Assembly, one would normally expect it to be along political party lines and a two-third majority would be possible only in very rare circumstances. The right to deny assent is therefore a very powerful tool given to the President.

The President would not have a general right to dissolve Parliament, unlike what is provided for in the constitution in force when the drafts were negotiated. It is the houses of Parliament that can, sitting separately, make such a resolution with at least a two-third majority and the President must follow such decisions. In the December 2011 only a two-third majority vote of the National Assembly was needed. One situation in which the President may dissolve the Parliament is if the National Assembly has not been able to pass the budget bill. In such cases the decision may be set aside by the Constitutional Court. In addition, if the President does not dismiss the government after a successful vote of non-confidence (with a two-third majority of both houses) he or she can choose to dissolve the Parliament. Even if he or she does not act, Parliament will stand dissolved after a certain time limit.

Comment:
The President’s possibility to deny assent for any reason means that the executive also have strong legislative powers and the division of powers is not as clear as it would have been if the President had only had a delaying veto power. There are other presidential systems providing such strong veto powers to the President but this does prevent the legislature from the final say in law-making and the division of powers which is often used as the strongest argument in favour of a presidential system, is reduced.

7.4 Devolution of Powers
In the discussions on the devolution of powers, the financial cost of keeping representative bodies at several levels was an important element. The discussion was more about the structure of the bodies than the amount of powers given to such bodies. Previously the provincial governors appointed by the President headed the provincial administration. Provincial Councils will be a new form of governance at this level and they would mainly consist of members who were elected for other purposes, such as the members of both houses of Parliament and heads of the municipal councils elected from the respective province. The draft differentiates between Provincial and Metropolitan Councils. All of them consist of:

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23 According to Amendment No 19 «acting in consultation with the Prime Minister». 
• all the members of the National Assembly whose constituencies fall within the province concerned;
• the female members of the National Assembly who are elected by List PR from the province concerned;
• the Senators elected from the province concerned; and
• the mayors and deputy mayors and the chairpersons and deputy chairpersons, by whatever title they are called, of all local authorities in the province concerned.

The Provincial Councils other than the metropolitan ones would in addition have these members:
• a chairperson of the council, elected by the council;
• the two senator chiefs elected from the province concerned;
• the President and Deputy President of the National Council of Chiefs, where their areas fall within the province concerned;
• ten persons elected by a system of proportional representation.

For the proportional election the distribution of seats is done on the basis of the votes cast for the FPTP in the National Assembly elections held on the same day. The candidate list must have male and female candidates listed alternately, every list being headed by a female candidate.

The previous position of a governor is now replaced by an elected chairperson. The first meeting of the council shall elect the chairperson from a list of at least two candidates proposed by the party winning the highest number of seats in FPTP for the national assembly or if there are more such parties the party with the highest number of votes in the same election.

The Metropolitan Councils have the following additional members:
(a) in the case of Bulawayo, the mayor of the City of Bulawayo, who is the chairperson of the Bulawayo Metropolitan Council;
(b) in the case of Harare,
   (i) the mayor of the City of Harare, who is the chairperson of the Harare Metropolitan Council; and
   (ii) the mayor or chairperson of the second-largest urban local authority within the province, who is the deputy chairperson of the Harare Metropolitan Council;

The elected mayor of the city of Bulawayo and Harare are the chairpersons of the respective Metropolitan Council.
The arrangement was one of the issues negotiated at the end. In the July 2012 draft the provinces other than the metropolitan council still would have a governor as chairperson. They were to be appointed by the President, but the choice was restricted to one out of two candidates nominated by the political party that gained the highest number of National Assembly seats in the province concerned; or if there was no such political party, the party that received the highest number of votes cast in the province for members of the National Assembly (FPTP). In the December 2011 draft the chapter on provincial councils had been kept empty.

The local authority level councils under province level were not defined in the old constitution or in the December 2011 draft, but they were referred to for example in terms of electoral districts and the duty of the election commission to organise the elections. The bodies were regulated by law. In the later drafts they were defined and to be elected directly but the electoral systems were to be regulated by law. It was not clear how many such types of councils will be elected. Currently there are 59 districts with approximately 1200 wards.

**Comment:**
The draft defines the levels of government and the composition of the bodies but leaves the actual division of labour between the levels to regular laws. That is not uncommon in unitary states. However, the mixture of members of provincial councils partly elected to Parliament and partly elected for this purpose is uncommon and may reduce the identity of the province level. This was a controversial issue and the rules may be sought changed in the future.

### 7.5 Electoral Systems

*The President* is to be directly elected on a ticket consisting of the candidate for the President and the first and second Vice President. They are elected together in accordance with the election law. The constitution does not specify whether it is a two-round system requiring at least fifty per cent of the votes or a plurality vote (first-past-the-post), but a two-round system has been prescribed by law so that has become the practice.

ZANU PF wanted to keep the arrangements of the old constitution where the President could appoint and dismiss the Vice Presidents. As a compromise the final draft included transitional articles allowing Presidents elected during the first ten years after the first election following the promulgation of the constitution, to appoint and dismiss the Vice Presidents at any time. If the presidency becomes vacant the first Vice President will act as President until the party of the President who vacated the post has appointed a new person to fill the post for the rest of the term in office.

*The National Assembly* will have 270 members for a period of two terms. 210 members are to be elected by a first-past-the-post system in single-member constituencies (FPTP) and the 60 extra members are all women, elected six from each of the ten provinces under a List PR system. There will not be a separate ballot for this race. The votes for the candidates in the FPTP race are added up for each party by province (i.e. all votes cast for the candidates of
each party who ran in the FPTP race in each province are added up). The party totals in each province are then used for the distribution of the List PR women’s race.

_The Senate_ shall consist of eighty members out of which sixty are directly elected by List PR, six from each of the ten provinces (for details of composition see section 7.2 above). There is no separate balloting process for the 60 elected Senators: here too, the total votes won by each party in the FPTP race of the National Assembly are added up by province, and the six seats in each province are distributed based on the respective share of each party. This arrangement was introduced in the July 2012 draft. In the December 2011 draft, there was one ballot for the two National Assembly races and one separate one for the Senate.

There will be separate lists of candidates for these seats and they must have women and men alternating starting with a woman. This means that in this particular race, fifty per cent – and possibly even more – of the 60 elected Senate seats will be women. The remaining twenty non-elected members are, however, likely to be predominantly men.

The two Senators representing persons with disabilities are to be elected in accordance with arrangements to be decided in the election law.

_In provinces outside of the metropolitan provinces_, ten members of the councils are elected by a List PR system, again using the votes cast in the FPTP National Assembly elections in the manner described earlier for the reserved seats for women and for the 60 elected Senators. Only the heads of the metropolitan councils are directly elected for the purpose of the province management.

_Mayors for the metropolitan provinces_ shall be elected in accordance with regulations in the Election Law. It does not necessarily mean that they are to be directly elected, so in principle there is a choice between a direct election and the council electing them.

There shall be elected _urban and local authorities_. In both cases a council is directly elected. In the case of urban authorities the mayor is also directly elected but in the case of local authorities the mayor (or chairperson) is elected by the local council.

_Terms of office_ for all elected bodies are five years. The elections are held concurrently for President, the two houses of Parliament and for local elections. All direct elections apart from by-elections are therefore held on one single day.

_Ballots_ are to be cast for the following races:

1) _The President;_

2) _The National Assembly by FPTP in single-member constituencies. The votes are also counted for the elections of the List PR women’s race for the National Assembly, the List PR members of the Senate and the ten List PR members of the provincial councils. Votes cast for an independent candidate in the National Assembly election will not have an effect in the other races;_
3) The members of local councils;
4) The mayor of the metropolitan councils (if directly elected);
5) The directly elected mayors in urban local authorities, if any.

All voters will cast three ballots on Election Day; one more where the mayor is a directly elected.

Comments:
The FPTP system was kept for the principal chamber of the Parliament except for during the first two terms when a mixed (parallel) system was to be applied. The List PR race is open only to women. When a mixed system is adopted it is normally chosen as a compromise between those favouring a majoritarian system which gives extra seats to the largest party and those favouring proportional systems. In Zimbabwe the sole justification seems to be to provide for a gender balance. This is done by introducing an element of proportional representation which affects the balance between parties as well as the genders. This is unusual and a more logical approach would have been to agree to the most appropriate electoral system (which could be a mixed system) and then to find the most effective affirmative action for women based upon the agreed system. It may prove difficult to go back to a pure majoritarian system when an element of proportionality has been used for two elections. In particular smaller parties will have a large disadvantage at the return to a majoritarian system. Also, it is not likely that affirmative action for women will be unnecessary after only two terms.

Under a mixed system, there are a few examples were the FPTP ballot is counted twice, first for the single member constituency and then for the List PR race, but it is not common. One of the advantages that a mixed system offers is for voters to split the vote for the two races. The suggested system would mean that any electoral alliance between parties in FPTP also will have an effect on the List PR race. Counting one ballot for races in both houses of Parliament and even for provincial councils is probably unique and defeats part of the purpose of having two houses. In a bi-cameral Parliament, there are normally different principles of representation in the two houses. If there is a provincial representative council it is usually elected for that purpose. The accountability of those elected for the Parliament or based upon parliament ballots in their capacity as provincial council members will be very weak. There may be money saved on the elections and on salaries in the case of double membership, but the councils are supposed to deal with local issues and should therefore be accountable to people for their achievements in that function.

The number of FPTP seats is kept as it is today, 210 seats. This may have been proposed because current MPs do not want “their” constituency to disappear. A more logical approach would have been to first decide on the size of Parliament, then the electoral system and then on the mixture between FPTP and List PR.

The women’s representation guaranteed with the system is 22.2 per cent. In order to get for example one-third women members in the National Assembly 5.3 per cent of the FPTP seats
(thirty seats) need to be filled by women. In 2008, thirty women were elected but it is questionable whether the parties will nominate that many women in electable constituencies when there is a separate women’s race.

The Senate is composed of partly directly elected representatives and partly indirectly elected members. The composition should be seen in relation to the powers of the upper house. The more powers to an upper house the more representative the membership should be. With some exceptions the Senate is now given a reviewing and delaying role so a combination of directly elected and indirectly elected and *ex officio* members may be acceptable (see the discussions of the legislative procedures).

The women’s representation in the Senate will be at least 34 per cent. Most likely it will be more since all lists will start with a woman, but the indirectly elected members will probably not be women. With some luck the Senate may have 45 – 50 per cent women. The guaranteed female representation is a clear improvement from the earlier draft and the old constitution.

In the harmonised elections the voters may cast up to four ballots, if mayors are to be directly elected. That is at the upper end of what is practical in a polling station but with sufficient staff and space it may be feasible.

7.6 Dual Citizenship
To what extent Zimbabwe should allow double citizenship was a controversial issue. The MDCs wanted a liberal practice whereas ZANU PF wanted the rules to be restrictive. The draft leaves it to a regular law to regulate “the prohibition of dual citizenship in respect of citizens by descent or registration”. This would seem to exclude a prohibition of dual citizenship for those who had acquired citizenship by birth.

The July 2012 draft had similar regulations whereas the December 2011 draft was less specific on dual citizenship.

7.7 Death Penalty
The death penalty was another controversial issue. The compromise was to allow such penalties only for a person convicted of murder committed under aggravating circumstances, and not for women or for men younger than 21 or older than 70 years at the time of the crime. The old constitution had left the criteria for death sentence to be regulated by law.

The July 2012 draft had the same regulations, whereas the December 2011 draft had a general prohibition of death penalties.

*Comment:*
There was a movement within the civil society that wanted to abolish the death penalty all together. The compromise excluded imposing the death penalty for high treason which was important for the MDCs so that the death penalty could not be misused, including as a threat, against political opponents in tense situations. The limitations of gender and upper age limit are unusual.
7.8 Land Issues
The regulation of land issues had been controversial since the early nineteen nineties. The draft states that a law should regulate payment of fair and adequate compensation in most cases. If the purpose is re-settlement of farmers or land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources, the compromise was that land acquired by the State before the constitution came into force from indigenous Zimbabweans or from those whose property rights at that time were guaranteed or protected by an agreement concluded by the Government of Zimbabwe with the government of another country, would be compensated, both for the value of the land and for improvements made to the land. The rule for expropriation of land for the purposes mentioned above would in the future be that only improvements are compensated regardless who it is acquired from. Land acquisition for those purposes cannot be challenged in court. The draft further states that former colonial powers should pay compensation when land is acquired for resettlement.

One of the issues negotiated at the end was the appointment of a Land Commission. The compromise was that the commission is to be appointed by the President without the appointment procedures of the independent commissions but with the same functions as the ones proposed for an independent commission. The members are protected against removal as if it had been an independent commission. In the July 2012 draft the Land Commission was an independent commission where the Parliamentary Committee on Standing Rules and Orders was involved in the appointment, similar to the rules for other independent commissions.

The December 2011 draft did not specify that only improvements should be compensated and it left much to be regulated by law. However, that draft clearly stated that the acquisition could be tried by courts which the later drafts prohibited. The language of the July 2012 draft was similar to the final draft, except that the Land commission was an independent commission and not an executive one.

Comment:
Land issues remain controversial. It is surprising that land bought by an indigenous person may be compulsory acquired for resettlement and for forestry, wildlife and natural resources purposes without any compensation unless the land has been improved. If this is a mistake it may be amended later. The decisions cannot be tested in court, which is a drastic limitation to a person’s civil rights and to the division of powers.

7.9 Attorney-General and the Prosecutor-General
The independence of the Attorney-General and the splitting of the function of Prosecutor-General from the advisory role of the Attorney-General position was also an issue which was negotiated up to the last minute.

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24 Whether it is the intention that the value of land acquired in the future in legitimate manners would never be compensated for in terms of its value is unclear.
According to the final draft the Attorney-General shall be the principal advisor to the government, and shall represent the government in civil and constitutional cases and draft laws. He or she may attend meetings of the Cabinet and both houses of Parliament with the right to speak but not to vote, and attend civil court proceedings also when the government is not a party. Earlier he or she had been member of the Cabinet and the Parliament without the right to vote. The difference between being member without a right to vote and the meeting right may be only in the language, but may have some symbolic value.

The position of an independent Prosecutor-General is introduced with an appointment process as for judges. The functions of the prosecutor had earlier been covered by the Attorney-General. The Attorney-General can be dismissed by the President and is therefore expected to come and go with governments, unlike the Prosecutor-General.

The July 2012 draft had the same content. Both in the July 2012 and the final draft, there were transitional sections stipulating that the position of the Prosecutor-General would be filled by the person having the position as Attorney-General at the time when the constitution came into force. That meant in practice that for the first six years - which is the term in office for the Prosecutor-General - the Attorney-General would keep both positions.

In the December 2011 draft the Attorney-General was to be appointed by the President on the advice of the Judicial Service Commission and with the approval of the Parliamentary Public Appointments Committee. He or she could only attend meetings in Cabinet upon invitation by the President and the houses of Parliament upon invitation by the concerned speaker. The Prosecutor-General position had been named but the actual regulations had not been worked out in the draft.

It seems that the July 2012 draft strengthened the position of the Attorney-General somewhat compared to the December 2011 draft, but it was weakened compare to the old constitution.

7.10 Appointments to the Judiciary
In the December 2011 draft a Parliamentary Public Appointments Committee had a strong role in appointments to key positions in for example the judiciary. This role was taken out in the July 2012 draft and the final draft. In these drafts the President appoints judges at the recommendation of the Judicial Service Commission only.

Comment:
Excluding the parliamentary committee from the appointment of judges connects the judiciary tighter to the executive and may reduce its independence over time.

8. The 16 March 2013 Referendum
All three main parties supported the draft constitution. There were therefore few worries about the conduct of the referendum and any other result than a massive yes-vote would be a sensation. There was opposition, however. The most articulated came from the National
Constitutional Assembly who had been against the process as such because they felt it was driven by the Parliament and not by the people. Other groups opposing the draft included some labour unions, such as Progressive Teachers Union (PTUZ), who claimed that their labour rights were not sufficiently protected and that there was a dual scheme of labour rights, one for the private sector and one for the civil service, which they represented.

The referendum was proclaimed on 15 February 2013; only a month ahead of the referendum day and there was little time to prepare a campaign for either side. COPAC spearheaded the yes-campaign. The no-campaign was much less visible and the organisations on this side complained that they had very little access to the media.

The referendum was held under the referendum act of 1990 with some modifications. The act referred to the election act wherever it was relevant and it had exchanged the Registrar General with the ZEC whenever it was appropriate in accordance with the electoral developments since 1990.

It was decided that the referendum was to be held without the use of the voter register. Voters were allowed to vote on the basis of their identity card only and the protection against multiple voting relied on indelible ink. Each voter’s identity was entered in protocols so that (at least in theory) any multiple voting could be disclosed (and punished) after the vote.

In 2008 the electoral act was amended after the SADC led negotiation in 2007 to explicitly state that the police could be inside the polling stations only upon request of the presiding election officer. This was, however, reversed by a presidential instrument before the 2008 election (Statutory Instrument 43 of 2008). The later changes which came into effect in 2010 did not have as clear language as the 2008 amendment and the polling station manual for the referendum stated that police officers could be inside the polling stations. This was widespread practice according to diplomatic observers covering a large number of polling stations. Even though there were few reports of misuse of authority people might feel intimidated in a future competitive election and the law should again be amended to avoid any ambiguity for the elections.

The referendum results were to be reported in a number of steps: The count was done in the polling stations and then aggregated at the ward, constituency (the 210 House of Assembly constituencies), district and province levels before being sent to the national level. At each level all the subordinate results should follow. The official results were announced on Tuesday 19 March 2013 three days after the referendum day. It was said that this time was necessary for the review of the results at all levels, which might mean that polling station results were added up to each of the levels of aggregation. The final results were published down to province and constituency level but not to polling station level.

The turnout was reported to have been 3,316,082 out of which 3,079,966 voted in favour of the draft constitution, 179,489 voted against and 56,627 ballots were rejected. That means that out of the valid votes 94.5 per cent were cast in favour and 5.5 per cent against the constitution.
The development of the turnout for the elections since 2000 is presented below. However, with a voter register containing deceased people and people having left the country, the figures do not reflect the real turnout in the elections.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Registered voters</td>
<td>5,048,815</td>
<td>5,607,812</td>
<td>5,789,912</td>
<td>5,934,768</td>
<td>NA[^27]</td>
</tr>
<tr>
<td>Turnout in per cent</td>
<td>49.3</td>
<td>55.8</td>
<td>46.6</td>
<td>40.8</td>
<td></td>
</tr>
</tbody>
</table>

Breakdown of the referendum results by provinces:

<table>
<thead>
<tr>
<th>Province</th>
<th>Yes-vote</th>
<th>No-vote</th>
<th>Rejected Votes</th>
<th>Total Votes Cast</th>
<th>Turnout in the 2008 House of Assembly election</th>
<th>Ratio turnout 2013/2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulawayo</td>
<td>121,108</td>
<td>8,514</td>
<td>1,529</td>
<td>131,151</td>
<td>85,112</td>
<td>1.54</td>
</tr>
<tr>
<td>Harare</td>
<td>468,176</td>
<td>41,060</td>
<td>8,222</td>
<td>517,458</td>
<td>311,439</td>
<td>1.66</td>
</tr>
<tr>
<td>Manicaland</td>
<td>388,397</td>
<td>22,586</td>
<td>6,802</td>
<td>417,785</td>
<td>365,375</td>
<td>1.14</td>
</tr>
<tr>
<td>Mashonaland Central</td>
<td>340,290</td>
<td>9,703</td>
<td>6,980</td>
<td>356,973</td>
<td>228,601</td>
<td>1.56</td>
</tr>
<tr>
<td>Mashonaland East</td>
<td>374,045</td>
<td>15,405</td>
<td>7,377</td>
<td>396,827</td>
<td>288,791</td>
<td>1.37</td>
</tr>
<tr>
<td>Mashonaland West</td>
<td>340,597</td>
<td>17,662</td>
<td>5,365</td>
<td>363,624</td>
<td>245,512</td>
<td>1.48</td>
</tr>
<tr>
<td>Masvingo</td>
<td>376,713</td>
<td>20,717</td>
<td>7,459</td>
<td>404,889</td>
<td>315,652</td>
<td>1.28</td>
</tr>
<tr>
<td>Matabeleland North</td>
<td>162,236</td>
<td>11,663</td>
<td>3,378</td>
<td>177,277</td>
<td>148,902</td>
<td>1.19</td>
</tr>
<tr>
<td>Matabeleland South</td>
<td>129,959</td>
<td>10,040</td>
<td>2,577</td>
<td>142,526</td>
<td>109,629</td>
<td>1.30</td>
</tr>
<tr>
<td>Midlands</td>
<td>378,445</td>
<td>22,139</td>
<td>6,938</td>
<td>407,522</td>
<td>323,974</td>
<td>1.26</td>
</tr>
<tr>
<td>Total</td>
<td>3,079,966</td>
<td>179,489</td>
<td>56,627</td>
<td>3,316,082</td>
<td>2,422,987</td>
<td>1.37</td>
</tr>
</tbody>
</table>

[^26] The published turnout figures have often been relative to the September 2004 registration figures used by the Delimitation Commission when they drew up the constituencies. The figure given here is relative to the final registration figure published by ZEC on 23 March 2005. The figure is for the parliamentary election, not the Senate election the same year.
[^27] Voter registers were not used for the referendum.
[^28] Valid votes only.
[^29] Valid votes only.
[^30] Valid votes only.
There was no reason to question the result and the turnout might well have been genuine. However, the credibility would have increased considerably if the whole tabulation from polling stations to constituencies and national level had been published. Then all observers would have been able to check their observed polling station against the full tabulation and massive parallel counts would be less necessary. This would also be a good exercise for the future elections, where the law requires transparency at all levels.

Another good election practice, which has not been in place in Zimbabwe, is for the ZEC to publish partial and preliminary results. For each election they have only published results after having completed the verification of each result – be it constituency results for the Parliament or national results for the presidential elections. This has caused delays, which at times have been mixed with political considerations and possibly pressure, and it has increased the suspicion among stakeholders and the public that results have been tampered with. If ZEC had published all results as they received them before reviewing them carefully the trust had increased. It could then have been necessary to correct mistakes later but with full transparency that is something which is understood and accepted in countries where partial results are fed into the media continuously. In Zimbabwe one has the opposite extreme where it is forbidden for media or others to publish aggregated results based upon already published polling station results.

There were a number of incidents of crackdown on civil society in the period before the referendum. Some domestic organisations were denied accreditation as observers.31 ZESN could not accredit their observers under the umbrella name but had to do it as individual organisations which created unnecessary work for them. On the positive side, accreditation could for the referendum be done in three centres in the country, instead of two as during the 2008 elections. For the elections it would be much easier if accreditation could be done in every province.

The day after the referendum, four persons working at the Prime Minister’s office were arrested in a much publicized case, along with their lawyer when she came to assist them. The lawyer was released on bail on 25 March and the four others on 27 March. Even if the arrests were not linked to the referendum, many commentators interpreted them as a way of signalling that the security apparatus was still in charge and would use their powers even when SADC and the rest of the international community had their eyes on Zimbabwe.

The SADC and SADC PF published mainly very positive reports after the referendum. They had arrived in country only a week prior to the vote and had therefore not been able to cover the whole process. They had some suggestions for improvements and they mentioned some deficiencies but their main message was positive.

31 ZIMRIGHTS and the Director of the Zimbabwe Peace Project (ZPP), Ms Jestina Mukoko, who was also a Board member of ZESN, were denied accreditation, on the grounds that they were “under police probe.”
9. Promulgation of the Constitution

After having passed the referendum, the draft was gazetted on 29 March 2013. According to the constitution and the GPA the draft would have to be gazetted for at least thirty days before being presented for the final readings in the Parliament. A few changes were made to the draft before it was published. Some references aimed at resolving the inconsistencies between articles 72 and 295 on compensation when the state makes compulsory acquisition of land, and the transitional provisions regarding the first elections were changed. The draft sent for referendum stated that the next elections were to be held in accordance with the new constitution, and it also stated that the election should be held not more than 30 days prior to the expiry of the term in office of the elected bodies, which was on 29 June 2013. This would have provided a very short time for the preparation of elections, since the constitution would be likely to be promulgated by the Parliament by the middle of May and there was supposed to be a month of voter registration drives after that and before the elections. Therefore, Schedule 6 Part 2 of the constitution gazetted on 29 March 2013 was changed to the effect that section 158, which dealt with the date for elections, would not come into effect at the publication day of the constitution. This meant that the provisions for the first Election Day would be set in accordance to the old constitution.

The draft constitution passed three readings in the House of Assembly on 7, 8 and 9 May 2013. The changes introduced in the gazetted version after the referendum, remained in the constitution that passed the Parliament and a few uncontroversial corrections were made during the readings. On 14 May 2013 the Senate passed the constitution. There were no votes against the draft in any of the two houses.

The President signed the constitution at a ceremony at State House on 22 May 2013, which became the “publication day”. The constitution specifies which parts come into force on that day and which parts will come into force on the day that the President elected in the next harmonised elections, is sworn in.

10. Perspectives and Recommendations for the First Elections in Accordance with the New Constitution

The date for the first elections has not been announced at the time of drafting this report. According to the last minute changes to the transitional provisions of the new constitution the date is to be set according to the old constitution, which means that elections must be held within four months from 29 June 2013.

Clearly the ideal scenario for the harmonised elections following the promulgation of the new constitution would be a free election campaign followed by an undisputed peaceful and free election and an orderly transfer of powers if the results require this. Many observers would not hold this as the most likely scenario. However, seen from the international community’s point of view the essential question may rather be what can be done in order to promote such a scenario.
The over-riding condition for a correct process is the positive will of the parties. With a strong commitment from all involved, credible elections and potentially a peaceful transfer of powers, are possible. Without such a will this positive scenario may have little chance. Here we will not analyse the possible good will of the parties or discuss to what extent there are factions within the power which may or may not want to conduct a process that will be acceptable to all involved. We will rather discuss some elements which will be important in the support of such a process.

Based on the history of elections in Zimbabwe the main risk is that following an acceptable Election Day the election results are not implemented. The personal stake for some of the incumbents, in addition to the political one, may be so high that an implementation of an election result in their disfavour may be hampered, delayed or simply ignored. This is a risk that will mainly be mitigated by SADC as the guarantor of the GPA. However, also the general international community’s ability to put pressure on stakeholders after the elections is important.

Some of the conditions for elections in accordance with international standards are related to the changes mentioned in the SADC facilitated roadmap which are still pending: The media laws, the staff of the ZEC, the security sector reform and the Public Order and Security Act (POSA). With an early election it is unrealistic that these will all be implemented before the elections. Fairness of the media coverage of the campaign and the practicing of the POSA will therefore be very important indicators of the will of the parties to conduct fair elections.

The restrictive measures (sanctions) are prominent in the political rhetoric of Zimbabwe. Even if they are meant to target persons rather than the country as such they do restrict the US, the EU and a number of other countries from the interaction with government institutions. According to the GPA the parties agreed “that all forms of measures and sanctions against Zimbabwe be lifted in order to facilitate a sustainable solution to the challenges that are currently facing Zimbabwe.” Many would argue that the sanctions gave ZANU PF one of its best campaign issues for elections. It was also argued that the major achievement of forming the GNU should have been rewarded by lifting sanctions. On 25 March 2013 the EU Council lifted its restrictions on a large number of persons and institutions leaving only ten persons including the President, his wife, the head of the war veterans’ organisation and the heads of the security branches on the list. In addition, Zimbabwe Defence Industries and Zimbabwe Mining Development Corporation were kept on the list.

In the following we will discuss how the threats of the electoral process can be reduced mainly by supporting institutions and processes already in place.

Reducing Violence and Intimidation
Violence has been the most serious offence before or during elections in Zimbabwe. Sometimes the violence has been obvious and highly visible - sometimes the intimidation has been more subtle. A number of measures are in place to reduce politically motivated violence
and intimidation and a continued support of these mechanisms is important. The bodies working on the ground should pay particular attention to intimidation which is less visible but equally efficient as more obvious violence.

JOMIC has expanded their capacity to two teams per province. It is important that they are able to utilise their new capacity. They operate at grass root level and are able to address issues fast. They also set good examples for peaceful interparty relationships.

Interparty liaison committees have been set up by the ZEC supported by EISA. This is an important addition to the work done by JOMIC. Their work is coordinated with other actors and EISA may be able to offer training to other agencies if needed.

The Zimbabwe Human Rights Commission (ZHRC) is given a specific role in the election law regarding investigation of intimidation and violence. In every province they shall establish and head a Special Investigation Committee consisting of a special police liaison officer and two representatives of each party contesting the election. The committees shall investigate intimidation and violence and warn parties, candidates and supporters that they may be prosecuted. The first Chairperson of the ZHRC, Professor Reg. Austin, resigned from the commission in December 2012, giving a number of reasons for this, one being that the involvement in the Special Investigation Committees would “undermine the integrity of the ZHRC.” He wanted the ZHRC to have the resources and legal framework to independently investigate any complaints of election violence or intimidation: “Had the legislators focused on passing a good ZHRC Act, ensuring a really independent and well-resourced ZHRC in good time, the odd, confusing idea of the SIC would have been, as it should be, unnecessary.”

Anyway, it seems that the Human Rights Commission so far has not been equipped to take up any task related to elections as they do not have adequate offices or any other tools at their disposal. Any assistance that can help them settle in temporary offices and give them the possibility to actually handle complaints from the public would be an important improvement.

The police shall establish special teams for investigation, there shall be specially designated magistrates to deal with the cases and the Attorney-General shall provide sufficient resources for prosecution of such cases. In order to get this elaborate system of interaction to work it is important that the Human Rights Commission has capacity in all provinces, and training should be provided to all actors prior to the elections.

Other important preventive actions include both domestic and international observer teams. They should be visible all over the country and preferable well before the elections. Support of ZESN and other domestic observer organisations would be important and the observation activities of SADC and SADC PF should be supported.

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Results Production and Publication

In 2008 the ZEC was under heavy pressure during the process of releasing results. The detailed tabulation was not published and when, after six weeks, the presidential election results were published, the public had lost confidence in the process.

Election results are like perishables which should be consumed immediately. The first stage in the chain was in place in 2008 with the requirement for posting results at polling station level. This is further improved by the amendments to the law that require party agents to be provided with copies of those results. The results are then aggregated to constituency and national levels. This process needs to be quick, reliable and transparent and should not be dependent on other agencies such as the police or Registrar General. The ZEC has, with the support of UNDP, established an ICT network to province level and ZEC has plans (but no funds) to expand to district level. Such an expansion needs to be reasonable and will have to rely on public networks. It is, however, important that ZEC personnel have the equipment they need at the local level to transfer the results in an efficient manner and for that still equipment is needed locally. It is also important that the polling stations are given the possibility to meet their obligation to give copies of protocols to party agents by using printers or copy machines.

The parties and observers will have access to the polling station results immediately. For that to have a value, organisations need to collect the information and compare it with the official results. ZESN is the independent observer group that could have the capacity to collect results from nearly all polling stations and that seems to be more important than to give quick sample based predictions that will be illegal to publish.

Party agents are given copies of the protocols at the polling stations. They should also be encouraged to establish a system for collecting such copies so that they can check the official result and make complaints if needed.

Credibility and Integrity of the Full Electoral Process

The first precondition for credible elections and for people to trust elections is an independent, professional election management body. All efforts should be made to support ZEC’s ability to take the full responsibility for the elections in a professional manner as regulated by law. This involves everything from capacity building and infrastructure to the running costs of the elections and the referendum.

A request for support of the ZEC was sent to UNDP from the Minister of Justice and the Minister of Finance in February 2013. Such support from the UNDP is dependent the conduct of a Needs Assessment by the Electoral Assistance Division of the UN Department of Political Affairs. Such a mission was on its way to Zimbabwe at the beginning of April 2013, but was ultimately unable to conduct an assessment due to a disagreement over the scope of the mission and the access to national interlocutors. On 17 April 2013, the Government announced that it had withdrawn its request for UN electoral assistance. Other ways of channelling the support to the ZEC, such as for example EISA, may be considered.
Building capacity has been done within the EISA and the former UNDP projects. If the ZEC enters an MoU with IFES they will also be able to support the whole process, from polling station kits, manuals, training, results reporting systems, election dispute resolution, etc.

**Increased Trust in the Voter Register**

The voter register has been criticised for including ‘ghosts’ (non-existing people), duplicates and a too large portion of dead people and emigrants. There have also been reports of people not being included even if they are eligible voters.

The ZEC has a role of supervising the Registrar General’s registration of voters. The new constitution leaves it with the ZEC to either have an agency to register voters or for them to take over the registration. For the first election, the arrangement will be as it was before the new constitution came into force.

A full validation of the current register will not be carried out by the ZEC before the first election. There will, however, be a month’s registration drive before the elections, and it is important that the ZEC takes an active role in that process ensuring that every eligible voter is registered upon request.

In addition, the voter register is by the new law made available to those who request it against a fee. The fee was at the beginning set very high, but has later been significantly reduced. After the election has been called, the parties may get an electronic copy of the register free of charge. It is very important that parties and civil society organisations are using the opportunity to obtain it. Good projects including validation of the voter register should be supported by donors.

**Updating the Election Law**

With the new elements of the electoral system, such as the introduction of proportional elections, the election law must be regulated to include issues like:

- Nomination procedures
- The distribution formula (how to transfer votes into seats for each party)
- Filling Vacancies
- The possibility of running in more than one race, for example in FPTP and List PR for the National Assembly.

**11. Conclusion**

The referendum on 16 March 2013 concluded a long and difficult process. The optimistic view is that it represents a promising new start. It succeeded despite delays and extreme difficulties including serious intimidation and violence. The first elections in accordance with the new constitution will be the litmus test of how far the parties have come in signing up to a fair and transparent democratic system. It is beyond doubt that a number of persons within the power structure have a lot to lose also personally in terms of possible prosecution or loss
of wealth. This represents a significant risk of failure. A success will in the end depend on the good will of all political leaders and other stakeholders. The international community can only do its best to support institutions and processes that will try to accommodate free and fair elections and a peaceful transition of powers should the election result so require.
The Author

Kåre Vollan is the director and owner of the company Quality AS. He has been working on elections in thirty countries and territories including Nepal, Kenya, Iraq, Palestine, Sudan, Egypt, Bosnia and Herzegovina and Zimbabwe. He has since 2006 provided advice to the Election Commission and politicians in Nepal, in particular on the group representation system. From 1999 to 2000, Vollan was the Deputy Head of the OSCE mission to Bosnia and Herzegovina, organising two elections. In the period from 1996 to 2009 he headed twelve OSCE/ODIHR and NORDEM election observation missions or teams. From 2003 he has issued opinions on election laws for the Council of Europe Venice Commission. Vollan, who is an applied mathematician by profession, has published a number of articles and reports on electoral and decision making issues.

NORDEM

NORDEM, the Norwegian Resource Bank for Democracy and Human Rights, is a civilian capacity provider specialised in human rights and democratisation. NORDEM’s main objective is to enhance the capacity of international organisations working in these fields. NORDEM’s expertise includes good governance, institution building, rule of law, human rights monitoring, elections and other related fields. NORDEM has for two decades provided Norwegian observers to international election observation missions. NORDEM also develops election related trainings and hosts various election management body or parliamentary delegations, mainly from countries in political transition. NORDEM recruits, trains and deploys qualified personnel and is fully funded by the Norwegian Ministry of Foreign Affairs.