

## **A Critique of the 2008 Government of National Unity and Human Rights Protection in Zimbabwe**

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**ABSTRACT:** *The protagonists parties in Zimbabwe, namely ZANU-PF and the two MDC factions agreed on 15 September 2008, to work together to halt political and economic impasse that had crippled the nation in the new millennium. This agreement (affectionately known as the Global Political Agreement (GPA)) ushered in an array of hope and paved way for the formation of the Government of National Unity (GNU), which ended on the 29<sup>th</sup> of June 2013. The GNU receive mixed feelings when it comes to its successes and failures, especially on the promotion and protection of human rights, which were under-siege prior to the agreement. The calls for peace and human rights respect by GPA principals during the entire GNU era were worth noting, though not enough; as there was need for matching action to demonstrate their commitment to the cause. The parties, especially ZANU PF wielded power and state security institutions but paid lip service to the protection of civil and political liberties, hence the systematic, direct and indirect violations to notably the right to life, political participation, freedom of speech, association, assembly and expression at the hands of terror groups and security forces persisted. Even though the epoch under review witnessed the formation of Media and Human Rights Commissions, they were hampered by cheap partisan politicking, lack of funds and ambiguous mandates. This, combined with the lack of progress on institutional and legal reforms, Zimbabweans suffered during the entire GNU period, and will continue to endure abuse and live in fear of violence every day. This paper calls for constitutionalism, institutional and security sector reform as the basic and tangible efforts for human rights protection in Zimbabwe.*

**KEYWORDS:** *Government of national unity, civil and political rights.*

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### **I. INTRODUCTION**

On the 15<sup>th</sup> of September 2008, Zimbabwe entered into a historic Global Political Agreement (GPA) which gave birth to the Government of National Unity (GNU) to end political and economic impasse in the country as well as a foundation towards a new constitutional dispensation, founded on the protection of human rights. This most celebrated GNU between Robert Mugabe as President of Zimbabwe African National Union-Patriotic Front (ZANU-PF), Morgan Tsvangirai and Arthur Mutambara as Presidents of the two formations of the Movements for Democratic Change (MDC) parties ended on the 29<sup>th</sup> of June 2013, thereby making it prudent to critically review its promotion and protection of tolerance, right to life and liberty, freedom of expression, association and other civil liberties it promised to uphold. In the Preamble to this agreement, parties declared to resolve permanently the challenges faced by Zimbabwe and ‘the multiple threats to the wellbeing’ of Zimbabweans (GPA 2008:1). Accordingly, this paper evaluates the implementation of GPA articles to address various political, institutional and human rights issues ahead of the July 31 2013 harmonized elections. Precisely, the paper reviews implementation of Article 6 (constitution making), Article 10 (free political activity), Article 11 (rule of law, respect for the constitution and other laws), Article 12 (freedom of assembly and association), Article 18 (security of persons and prevention of violence), Article 19 (freedom of expression and communication). The method is based mainly on review of secondary data, newspapers and human rights reports of stakeholders in Zimbabwe to give a corpus view of the topic.

The aforementioned GPA clauses had direct and indirect bearing in the promotion and protection of peoples’ rights and their participation in the public sphere, which was hardly possible prior to the 2008 avowal. Political participation, as guaranteed by classic rights is *sine qua non* to democracy, reiterated by (UN 2005) as “a universal value based on the freely expressed will of people to determine their political, economic, social and cultural systems and their full participation in all aspects of their lives.” Tsvangirai the leader of the MDC-T faction reiterated at GNU inception that, it “...was not about power sharing” but “... about a return to democracy”, and restoration of the rule of law in Zimbabwe (Sokwanele 2009). As also posited by Zehra (1991:4), democracy depends largely on the extent to which it recognizes and enforces civil and political rights.

Therefore in the presence of democratic structures, the more strongly civil and political rights are reinforced in a society, the more democratic it becomes.

This paper envisages that civil liberties provide an environment for the protection and effective realization of all other human rights and development at large. Demonstrably, statistical correlations between democracy and human development for 19 Latin American states between 1970 and 2002 revealed that ‘democracies contribute greatly to human development’ (Acuna-Alfaro 2005). In essence, the allocation of public resources under pressure from interests civil rights groups, actually produces outcomes close to the social and economic optimum (Smith 2007:274). So the exercise of democratic rights is supportive to economic objectives through revealing where remedial action is needed, thereby applying pressure on government to swiftly respond. The paper starts by justifying review and then bequeaths brief history of civil and political rights situation in Zimbabwe prior to the 2008. It then gives a corpus critique of the Agreement in relation to legal traction, and end with analysing implementation of GPA clauses in relation to civil and political rights protection.

Mukoma (2008) equated a GNU to a coalition government, designed specifically to accommodate all participating political players in governmental structures. Among other actors, it includes the presidium, legislature, cabinet, security sectors and the civil service. It is believed that harnessing these actors to work together, despite it being difficult, is key to moving out of political and economic turmoil to the development trajectory. Chigora and Guzura (2011), Mapuva (2011) assessed the Zimbabwean GNUs in the lances of promoting and hindering liberal democracy and as a peace building strategy after protracted violence and human rights abuses. As such, research on GNUs among other things traced the history of GNUs in Africa and Zimbabwe to the contemporary era, unearthed the pros and cons of these marriages of convenience to democratic dispensation. The 2008 GNU was shrouded in secrecy, with civics and general public failing to contribute to their government, thus making an ex-post evaluation necessary. By and large, GNUs are a fragile, acrimonious, usually transitional arrangement with a high risk of disintegrating at the slightest opportunity and further degenerating into turmoil (Mapuva 2011). It is therefore important for researchers to promptly evaluate such alliances and recommend viable and lasting post-GNU solutions that inform policy making to the new governments. Considering that most research on the 2008 Zimbabwean GNU were done during the course of the GNU, and their results were based on projections of problems and successes likely to be encountered during implementation of the accord, the need for post June 29 2013 evaluation is vital. This paper has seen it prudent to compile a critical assessment of its achievements and failures, in the promotion and protection of civil and political rights. Against this backdrop, this paper assesses the reforms undertaken by the unity government and analyses the quality of those reforms in guaranteeing civil and political rights during the entire GNU era.

## **II. STATE OF CIVIL AND POLITICAL RIGHTS IN ZIMBABWE PRIOR TO THE 2008 GNU**

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status (UN 2013). They are protected and upheld by international and national laws and treaties to which Zimbabwe is a signatory. Essentially, the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly (UNGA) on December 10th, 1948, set the foundation of the international system on the protection of human rights. Civil and political rights generally restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights), and confer an opportunity upon people to contribute to the determination of laws and participate in government (political rights). This is at the centre of liberal democracy, where people are sovereign. These rights constitute the first portion of the 1948 UDHR, with economic, social and cultural rights occupying the second lot. The international effort to promote *civil and political liberties/first generation rights or classic rights* (as civil and political rights are affectionately called), was echoed through the UNGA on 16 December 1966, with the adoption of a multilateral treaty named the International Covenant on Civil and Political Rights (ICCPR), that commit parties to respect civil and political rights. As of May 2013, the Covenant had 74 signatories and 167 parties (UN 2012), including Zimbabwe who ratified it on 13 May 1991 (UNTC 2013). The ICCPR is monitored by the United Nations Human Rights Committee, a separate body to the UN Human Rights Council, which reviews regular reports of state parties on how the rights are being implemented. The African Charter on Human and Peoples’ rights is a regional version of UDHR that embraces the protection of human rights by member states, and Zimbabwe signed the African Charter on the 20th February 1986 and ratified it on the 30th May 1986 (CIA 2013). Civil and political rights ensure peoples’ right to life, liberty, conscience, and movement, right to fair trial, assembly, association and speech among others.

Even with the prodigious enshrinement in the Bill of Rights of the 1979 Lancaster House Zimbabwean constitution, the nation unfolded a history tainted with heinous human rights abuses. This ugly history of human rights abuses can be traced from the colonial era to the first decade of the new millennium. While the human rights situation in pre and post-colonial era had similar characteristics, one feature remains peculiar: human rights abuses in post-independence are being committed by fellow autocratic black Zimbabweans against perceived black political democrats. Before 1980, the minority white government was persecuting and discriminating the black natives. Accordingly, the Second Liberation war was fought by natives against the whites, so as to dislodge the blatant regime guilty of violence and human rights abuses. When the war ended in 1980, people were optimistic for democracy to prevail as a model for governance. Independence however brought disappointment and disillusionment, as post 1980 was also clouded with widespread human rights abuses. Between 1983 and 1987, Matabeleland and Midlands province residents witnessed terror, commonly known as the *Gukurahundi* massacres. The *Gukurahundi* massacres resulted in the deaths of about 20 000 innocent and unarmed civilians in Matabeleland and the Midlands by a government army battalion, the Fifth Brigade in the 1980s (CCJP 1989). This sad episode of the Zimbabwean history ended in 1987 with the signing of the unity accord between Joshua Nkomo and Mugabe of PF ZAPU and ZANU PF parties respectively.

The last decade of the 20<sup>th</sup> century and new millennium in Zimbabwe saw grave politically motivated abuses being committed against innocent civilians by organised political entities, security sector staff and government officials. This was mainly against the opposition political party members and vocal civil societies demonstrating against bad governance, that turned the once bread basket of Southern Africa into a 'basket case'. Often, civilians and MDC members, supporters and sympathizers were subjected to widespread and systematic violence – murder, attempted murder, torture, rape, disappearances and death threats – much of it carried out by the ruling party's (ZANU PF) youth militia group, police and the army (Raftopoulos 2009:215). The police, army and war veterans played a major role in the widespread and systematic abuses that led to the killing of at least 200 people, the beating and torture of over 5,000, and the displacement of about 36,000 others in the run up to 2008 harmonised elections (Mavhinga 2013). Subsequently, the government instituted draconian pieces of legislations such as the Public Order and Security Act (POSA) [Chapter 11:17] and the Access to Information and Protection of Privacy Act (AIPPA) [Chapter 10:27], to restrict the activities of civic society and the opposition forces in the public sphere and to manipulate press freedom. POSA was systematically used by police and other law enforcement agents in a partisan way to prohibit democratic meetings, arrest civic and opposition members, torture, assault and psychologically harass them (Raftopoulos 2009). Policies and events in the new millennium such as the chaotic fast track land reform programme, the 2000 rejected Constitution referendum, Operation Murambatsvina (Restore Order) and elections in 2000, 2002, 2005 and 2008 were marred with serious human rights abuses.

It was, however, the violence that preceded the presidential run-off at the end of June 2008, that plunged the country into further political uncertainty (Raftopoulos 2009: 229), and caught the interest of international and regional actors. The eon was characterised by abuse of civil and political rights as there was widespread intimidation and political violence – largely by pro-ZANU-PF militia and supporters against opposition MDC activists – that left over 200 people dead and thousands maimed and displaced (HRW 2013). Defiantly, the March 2008 harmonised elections, saw MDC-Tsvangirai scooping 109 seats against ZANU PF's 97, while on Presidential elections Tsvangirai of MDC-T won 47.9 per cent versus 43.2 per cent, but failed to deliver a winner with more than 50 per cent plus one vote on majority, thus necessitating run-off (Raftopoulos, 2009). In the run to June 2008 run-off elections, the violence was perpetrated by ZANU PF to the electorate, as punishment for not voting them in March harmonised elections and as a warning against the repeat of such a vote in June 2008 run-off. On the background of such heinous violence, Tsvangirai, the MDC-T candidate withdrew from the race, resulting in Mugabe of ZANU PF running a shameful lone battle that saw him being sworn in as President of Zimbabwe. Accordingly, the SADC Election Observer Mission concluded that the 2008 election did not conform to SADC standards, leading to negotiations and the signing of the Global Political Agreement (GPA) in September 2008 (HRW 2013), courtesy of the SADC facilitator; Thabo Mbeki, the then President of South Africa. The inclusive government was finally pitched in February 2009, as a high level solution to the political malaise that had become the order of the day in Zimbabwe. This was nowhere more apparent than in the GPA Preamble, as the following excerpt elucidates:

*"CONCERNED about the recent challenges ... faced as a country and the multiple threats to the well-being of our people and, therefore, determined to resolve these permanently"* (GPA 2008:1).

The agreement thus is a reflection of a determined effort by major political parties in Zimbabwe to create a democratic Zimbabwe that point to the promised free and peaceful society. As such this paper is guided by the

liberal human rights school, with antecedents to the writings of John Locke (1698), that the overriding purpose of the State is the securing and protection of its citizen's basic liberties.

### **III. CRITIQUE OF GPA IMPLEMENTATION AND THE PROTECTION OF CIVIL AND POLITICAL RIGHTS**

Looking at the GNUs from the pricks of democracy, people of Zimbabwe were robbed of their right to choose independently political leaders of their choice, as guaranteed by international law and the Zimbabwean constitution through this marriage of convenience. This is enshrined under Article 21 of the Universal Declaration of Human and People's Rights (1948), Article 13 of the African Charter on Human and People's Right (1986), and the Zimbabwean constitution both of which emphasize that;

*"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law"* (UDHPR, 1948; ACHPR, 1986).

To make matters worse, it was joining together of victors and the vanquished, victims and perpetrators of human rights violations, which made it impossible for co-existence and cooperation. To validate this claim, extracts from the Preamble of the Agreement may be eluded to parties of the GPA. It is apparent MDCs and their repeated calls for democracy pushed for this extract;

***RECOGNISING**, accepting and acknowledging that the values of justice, fairness, openness, tolerance, equality, non-discrimination and respect of all persons without regard to race, class, gender, ethnicity, language, religion, political opinion, place of origin or birth are the bedrock of our democracy and good governance (GPA 2008:1).*

On the other hand, ZANU PF must have called for this extract;

***ACKNOWLEDGING** the sacrifices made by thousands of Zimbabwe's gallant sons and daughters in the fight against colonialism and racial discrimination and determined to accept, cherish and recognise the significance of the Liberation Struggle as the foundation of our sovereign independence, freedoms and human rights (GPA 2008:1).*

In essence, the lingo of ZANU PF's sermon of 'patriotic history' appeared throughout and sat uncomfortably alongside (rather than incorporated with) the MDCs' liberal democratic claims for human rights and good governance (CISOMM 2013). It is not surprising therefore to note the discord in GPA implementation as its signing represented a continuation and perpetuation of incompatible views and aspirations; something that made it impossible for consensus in human rights protection. Indeed, the Zimbabwean experience with GNUs seems to reflect power sharing as impossible (Chigora and Guzura 2011).

Though people celebrated the GPA's relief and renewed hope in rebuilding Zimbabwe, it was mainly guided by political compromise. Except in article 20 (the framework for a new government) incorporated into the constitution through amendment 19, the GPA was legal anomalous. Consequently, ZANU-PF repeatedly undermined the GPA and put off implementation of essential reforms panacea to human rights protection the entire GNU aeon. Practically, President Mugabe, who signed the Agreement in his capacity found it wanting to limit his powers as for in the constitution by a mere contract (RAU 2013). Even though, it is legally believed that when an agreement is committed to paper and solemnly signed, it is assumed to have legal ramifications with regards to its implementation, obligations and enforcement (CISOMM 2013:18), the inconsistent legal nature of the GPA accord made enforcement through juridical channels problematic. A larger proportion of the accord had rhetoric and statements designed to facilitate political posturing but with no legal traction. Therefore, the aforementioned weakness of the GPA, made it impossible to institute reforms to amend repressive laws like Access to Information and Protection of Privacy Act (AIPPA), 2002; the Public Order and Security Act (POSA), 2007; the Criminal Law (Codification and Reform) Act, 2004; and the Presidential Powers (Temporary Measures) Act, 2007. In actual fact, the aforesaid draconian legislations laded the full implementation of the GPA, as the President was empowered to enact legislations and directives that mired human rights protection.

GPA implementation was monitored by Joint Monitoring and Implementation Committee (JOMIC) comprising of senior party representatives from ZANU PF and the MDCs. Preferably, civics and a committee made up of the general public would have been most efficient. Also, JOMIC had no legal status since it was not a statutory body, neither did it had mechanisms to ensure GPA implementation. In one instance JOMIC and MDC President Tsvangirai wrote to the Attorney General to find out what was being done to comply with the

provisions of Section 18.5 of the GPA, calling for security of persons and prevention of violence and the response from Attorney General's office was to refuse to act (CISOMM 2013:86). JOMIC can however claim success in training communities from all political divide about shunning violence, and preaching the message of peace through billboards and outreaches. The implementation of GPA was also hampered by the fact that the selected SADC Facilitator team to strengthen JOMIC in monitoring the GPA lacked sufficient long-term presence in Zimbabwe, thus human rights abuses were committed with impunity in their absence. Efforts to add three persons to help JOMIC in 2011, and presumably to provide feedback to SADC on human rights and violence was faced with strong opposition from ZANU PF until November 2012, when their mandate was clearly defined (Herald 2013). Previously, ZANU PF thought the move was tantamount to erosion of national sovereignty they always claim to preserve. However, the role of the representatives was also diminished from 'joining' JOMIC to being one to "work with the South African facilitation team and assist in meetings with JOMIC" (Fingaz 2013).

The inclusive government succeeded in establishing the Zimbabwe Human Rights Commission (ZHRC) which rekindled hope for the protection of human rights. The commissioners were appointed in April 2010, but only started work on October 12, 2012, when President Mugabe signed the Zimbabwe Human Rights Commission Act into law (Veritas 2012). Among other important aims the ZHRC was meant to:

- (a) promote awareness of and respect for human rights and freedoms at all levels of society;
- (b) promote the development of human rights and freedoms;
- (c) monitor and assess the observance of human rights in Zimbabwe;
- (d) recommend to parliament effective measures to promote human rights and freedoms (Veritas 2012).

Even with such crucial goals in the protection of human rights, the potential impact of Zimbabwe Human Rights Commission on the human rights environment, particularly curtailing impunity for serious abuses, was undermined by the commission's limited mandate and jurisdiction—it was insufficiently retroactive as it was only able to investigate and address human rights abuses committed since February 13, 2009 when the inclusive government was formed (Veritas 2012). Notably, the ZHRC was not fully operational to address human rights complaints or carry out its core mandate because of lack of resources to recruit technical staff and procure essential office equipment required. In essence, the commission can be criticised for sitting idly while human rights violations were being committed by political parties. The challenges of the ZHRC manifested themselves in December 13 2012, when the Commission's Chairperson, Professor Reginald Austin, resigned citing inhibiting laws and lack of resources that compromise the ZHRC's independence and capacity to carry out its mandate (SAPA AFP 2012). Besides weakening the commission ahead of its task to ensure human rights protection, Professor Austin's resignation brought into question its capacity to positively impact on the human rights environment in the country, including addressing human rights complaints. Even with the appointment of the new enthusiastic ZHRC chairperson Jacob Mudenda to replace the resigned Reg Austin and the recruiting of more commissioners to ensure a quorum, the Commission was still in limbo, failed to make a significant headway by investigating human rights abuses until the end of GNU on June 29.

In the quest to promote and protect human rights, the GPA principals pledged to create conditions for Zimbabweans to write a constitution that deepens democratic values and principles. In principle, parties in Article 4 agreed to draft a 'people driven' constitution that provides for some basic political and economic rights as guaranteed by international law. In spite of this need for a people driven constitution, in practice it was dominated by political parties, through a parliament-led constitution-making process under the direction of the Constitution Parliamentary Affairs (Select) Committee (COPAC), which defeated the voices of the people by making the whole process determined by inter-party negotiations. For instance, after public consultations and party principal signatures, ZANU PF party made 266 amendments to the draft to which the mass had contributed and party representatives had signed off (CISOMM 2013). The signature should have been sufficient to pass the draft to a Second All Stakeholders Conference, as outlined in Article 6 of the GPA. Still, people participated during the outreach programmes, whereby, they voted for the clauses they wanted to be included in the constitution. It is however, this syndrome of allowing the majority to determine specific clause of the constitution like that of minority rights which resulted in the document falling short of being liberal democratic on minorities (CISOMM, 2013:40). Accordingly, the voices of the minorities were suppressed and sexual minority rights were denied. It is not therefore, surprising that in August 2012 Gays and Lesbians of Zimbabwe (GALZ) members were arrested and beaten for distributing materials that promote homosexuality. Even though the constitution making process was flawed and falls short in protection minority rights, it is perfection from the old 1979 Lancaster House Constitution, and an essential future document for civil and political rights of Zimbabweans, if religiously respected.

Though the GPA is credited for ensuring a peaceful and free Constitution referendum voting in May 2013 and finally for coming up with a constitution on 22 May 2013, the processes significantly fall short in the context of protecting first generation rights, which the GPA sought to protect among other crucial issues. The constitution-making process had explicit steps including: public consultation hearings; writing a draft constitution; debating the draft constitution in parliament; holding a referendum; and then, if approved, submitting it to parliament for ratification (GPA 2008). It was however, the process of public consultations on the draft constitution which was marred by intimidation and violence leading to the disruption and cancellation of at least 23 constitutional outreach meetings in Manicaland and Harare (MISA 2010). This infringement to the freedom of expression and participation was predominantly by ZANU PF supporters, who went on rampage beating and coaching individuals to support their party position through reading the scripts they had prepared for them. In what was dubbed as *Operation Chimumumu*, villagers were instructed not to contribute at outreach meetings unless authorised to do so by ZANU PF militants (MISA 2012). As a result, many planned outreach meetings were suspended or could not be properly conducted in Harare province leaving out many Zimbabweans in the process of making their own constitution. The continued influence of the security sector in Zimbabwe's politics was highlighted once more by this exercise, as soldiers abetted the intimidation and police did little to curb violence and promote freedom of assembly and speech (SWR 2012).

Amidst the need to promote free political activity and security of persons and prevention of violence in Articles 10 and 18 of the GPA respectively, principals to the GNU urged the preferment for free political activity and non-violence, with no practical measures taken to ensure compliance. Zimbabwe witnessed vicious cycle of serious human rights abuses and malpractices during the GPA epoch, largely, at the hands of opposition supporters and human rights defenders. The operating environment under the GNU remained hostile and restrictive to MDC parties and civil society groups, as most rallies, peaceful marches and meetings were violently disrupted. Throughout the year 2012, Crisis in Zimbabwe Coalition, an NGO claimed to have recorded 23 events by civil society organisations and both formations of the MDC disrupted or barred by police and ZANU PF supporters (ZEN 2012). Paradoxically, the MDC-T faction led by Morgan Tsvangirai, a major player in the GNU of all opposition parties bear the brunt, as it had 18 political rallies and meetings disrupted by the police and ZANU PF supporters (CCZ 2012). It is during this period under review that there arose terror groups in major townships or suburbs of Zimbabwe, such as the *Chipangano* in Mbare, *Mandimbandimba* in Harare, *Jochomondo* in Hurungwe and *Top Six* in Chinhoyi to terrorise innocent Zimbabweans with impunity. On the 26<sup>th</sup> May 2012 Cephas Magura (67), MDC ward 1 chairperson in Mudzi North, Mashonaland Province was murdered while seven party members were injured after an attack by ZANU PF supporters at Chimukoko Business Centre at a police sanctioned rally (ZEN 2012). Surprisingly, this was followed with no arrests or investigations by the partisan police. In some extreme cases, victims of abuse suffered permanent injuries with some dying after succumbing to the attacks. Research by Zimbabwe Peace Project (ZPP) recorded 2186 incidents of human rights violations between January 2012 and May 2012 directly linked to electioneering and rising political tensions (ZEN 2012). In this regard, the GPA did not sufficiently address the clause on free political activity, security of persons and prevention of violence in Zimbabwe. In fact the agents of violence have continued to brutalise civilians with impunity.

It is also not astounding that during the entire GNU, the office of the Attorney General (AG) and the police have failed or were unwilling to implement the GPA provision to apply the laws of the country fully and impartially in protection of the rule of law and human rights of Zimbabweans. More so, the established Joint Operations Command (JOC) under GPA Article 22 had not had any impact on Zimbabwean's classic rights as the body failed to provide civilian oversight to the security forces. Instead, the Joint Operations Command (JOC), comprised Mugabe and his cronies with no representation from the MDC leadership or civil society, hence it continued to discuss and decide on national security issues on overtly partisan lines (Makova 2012). Accordingly, Human Rights Watch (2008) found JOC responsible for orchestrating widespread and organized violence throughout the country, which led to the killings of hundreds of perceived MDC supporters and the beating, torture, and forced displacement of thousands more (HRW 2013).

The GPA principals agreed in Article 12 to safeguard freedom of association and assembly. These rights were abated markedly in the early stages of the GNU, but abuse of legislation resurfaced in the later stages of the GPA. Members of the public and the civil society suffered this abuse most at the hands of the uniformed forces. Woman of Zimbabwe Arise (WOZA) noted with grave concern that the Zimbabwean police on February 13 and 14 2013, forcibly disrupted the annual Valentine's Day peaceful protests by about 190 its members (WOZA 2013). In fact, WOZA members were periodic victims of arbitrary arrest, detention and

beatings with batons in police holding cells (WOZA 2013). On the day in question, WOZA members were detained and eventually released without charges after spending several hours in police custody (WOZA 2013). In another blatant abuse of the freedom of association, police in February 11 2013, raided the offices of the National Association of NGOs (NANGO) and Community Tolerance Reconciliation and Development (COTRAD) in Masvingo and the Zimbabwe Peace Project (ZPP) offices in Harare, and arbitrarily arrested the workers (CCZ 2013). These sustained and systematic acts of harassment and intimidation of civil society organizations and human rights defenders also saw the arrest and detention of Okay Machisa, the Director of ZimRights, the detention of Jestina Mukoko of Zimbabwe Peace Project and the harassment and eight-day detention of human rights lawyer Beatrice Mtetwa despite a High Court order for her release. During the entire GNU period, individuals were arrested on trumped up charges, the objective being to frustrate and deter them from advocating for a democratic Zimbabwe.

Article 11 of the GPA called for restoration of the rule of law, respect for the constitution and other laws critical in multiparty democracy. According to Sen (2000:22), rule of law guarantees independent and neutral electoral processes, judicial protection of dissent, open and pluralistic politics, confidence in multiparty democracy, and participation that is ‘unrestrained – and most importantly fearless’. Even though Zimbabwe’s constitution and various laws that she is state party to requires the neutrality and impartiality of law enforcement agencies, the GPA principals and responsible authorities made rhetoric efforts to invoke and enforce the provisions. As such there were absolutely no members of the security forces that are known to have been disciplined or prosecuted for acting in a partisan manner in support of ZANU-PF or committing criminal offenses against the MDC and its supporters (HRW 2013). This was happening, despite clear provisions in Article (13) of the GPA which stipulate that “state organs and institutions do not belong to any political party and should be impartial in the discharge of their duties”. Contradictorily, it was those who strived to honour this sound pledge by GPA parties who were frustrated and sometimes relieved of their duties. A case in common is that of a High Court judge who issued the court order release for human rights lawyer, Beatrice Mtetwa, and was later charged with misconduct by the Supreme Court’s chief justice (Mavhinga 2013). Political infringements continued to subvert the rule of law, so as to humiliate judges that strived to honour the right of Zimbabweans to fair trial, regardless of their political opinions. In actual fact, the entire GNU era was characterised with selective application of the law, arbitrary arrests, long incarcerations, and impunity to violators of human rights. The most disgusting of all cases being the arrest and incarceration of 29 Glen View (Harare) residents and MDC supporters who were being falsely accused of killing a police officer at a public bar (HRW 2013). The accused spent more than 14 months in detention and being denied bail for more than four times by the state. With the Criminal Procedure and Evidence Act, section 121 effectively permitting prosecutors to overturn judicial rulings granting bail and extend detention time by seven days, prosecutors frequently used the clause against political and civil society activists who strive for human rights defending (Mavhinga 2013).

Furthermore, the failure by GPA parties, especially on the part of President Mugabe to call by-elections for parliamentary seats, and the swearing in of 10 more Ministers than what was allowed by the constitution was a negation to the democratic principles that the GPA sought to achieve. Accordingly, people of Zimbabwe were denied their constitutional right to freely choose people to represent them. Despite the ruling by the Supreme Court ordering the executive to do so, President Mugabe refused to call for elections in parliamentary constituencies left vacant by death and dismissals. The mere fact that villagers of the three Matabeleland constituencies spent four years without Members of Parliament (MPs) after their expulsion means that their rights as Zimbabweans were not represented in Parliament. Similarly, as per the agreement Section 23A was included in the constitution, providing the right for every Zimbabwean citizen to participate in free, fair and regular elections. As the wording was drawn from the South African Constitution, where it is interpreted there as requiring that South Africans outside the country be afforded the right to vote (CISSOM 2013:51), this section thus was expected to ensure Zimbabweans in the Diaspora to register and vote on 31 July 2013. This came to otiose, as Diasporans, and two million potential Zimbabwean voters (Moyo 2013), were disfranchised to register and exercise their right through unconstitutional means. The proclamation of the July 31 2013 Harmonised election date by the President, without consent of the MDC –T party as the GNU principal was against GPA, and part 111 of the 6th schedule of the Zimbabwean Constitution, which calls for an intense 30-day voter registration exercise (Tsvangirai 2013). Successively, the shambolic voter registration and education that followed Presidential proclamation denied many Zimbabweans the right to shape their political life. These flagrant and fraudulent breaches of the Constitution, to deny people their rights to vote discredited the GPA of its success.

The GPA showed great enthusiasm in promoting freedom of expression and communication as shown by the inclusion of article 19. As posited by Smith (2007), a free press is essential for exposing corruption, the purchase of favours, unwarranted secrecy, abuse of office, and violations of human rights. Zimbabweans rely on the media for much of their politics and development information, including not only party and state political decisions but also the critical minds of the civic forces. It was, however, pathetic to note that the ministry responsible for media, information, and publicity under ZANU PF unilaterally and controversially constituted the Broadcasting Authority of Zimbabwe (BAZ), outside the legal demands of GPA. BAZ which is filled with sympathisers of ZANU PF continued to shrink media freedom through issuing only two private commercial radio licenses as part of the commitment to free up the airwaves (HRW 2013). The first issued commercial radio station, Star FM, is owned by Zimpapers, a state-owned company that publishes all state-owned newspapers, including the ZANU-PF-aligned Chronicle and Herald daily newspaper. The only other private commercial radio license was awarded to AB Communications to run ZiFM Radio. As the owners of the radios are staunch supporters for ZANU PF party, it is obvious that independence and impartiality of the two radio stations is compromised (Bulawayo 24 News, 2013), thereby limiting the success of the GPA. The stations are an avenue for ZANU PF propaganda and over glorifying of the ZANU PF President Mugabe, ahead of Morgan Tsvangirai of the MDC-T. Not surprisingly, Supa Mandiwanzira, the founder and chief executive officer at ZiFM Radio, is the ZANU-PF Member of Parliament for Nyanga South constituency in Manicaland province (Ibid). This is a negation to GPA (2008) Article 19, where the parties confirmed their desire to open up the airwaves and ensuring the operation of as many non-partisan media houses as possible (GPA 2008). Kiss FM, Radio Dialogue and Community Radio Harare (CORAH) have seen their license requests rejected even though their applications were launched more than ten years ago and are fully equipped and ready to broadcast with the requisite structures in place (HRW 2013). Against the GPA requirements, police and Central Intelligence Officers (CIO) confiscated shortwave radios from people in order to prevent them from accessing SW Radio and Studio7 news, and continued to periodically jam the signals of these stations (Radio VOP 2011). Resultantly, ZANU PF described SW Radio and Studio7 radios as 'pirates' stations, as they offer a safe haven for MDCs, considering that ZANU PF controlled state radios do not cover objective political news. The GNU era, thus continued to deny people access to information, especially those in the remote areas, a reason why the nation is ranked 192<sup>nd</sup> of 197 countries on the press freedom index (ZimPress 2010). Hence, more diverse players need to be licensed in order to promote media diversity and plurality in post GNU Zimbabwe.

Considerable strides were, however, achieved in the print media under Zimbabwe Media Commission (ZMC). CISOMM (2013) regard this as the only part of Article 19 (freedom of expression and communication) agreement adhered to in any respect. Considering that there was no independent daily newspaper in Zimbabwe since the closure of the Daily News in 2003, the issuing of four licences to publishing houses by the ZMC in May 2010 is worth noting. It gave opportunity for Zimbabweans to access balanced national, regional and international news from independent print houses like the Daily news, which began circulation in June 2010. Coupled with further four licences in July 2010 and another ten in 2011 (FinGaz 2011), print media was freed. However, the continued harassment of journalists from these established independent media houses, by police and intelligence offices was noted with momentous concern during the GNU era. Also, the plaudits of the ZMC were hampered by cheap political party motives in its formation and functions to deny it the chance to excel. ZANU PF in fact, are claimed to have bulldozed the whole process of selecting independent commissioners, which delayed the process, and saw the discredited partisan chair of the former MIC, Tafataona Mahoso, re-emerging to head the Secretariat. Tongai Matutu, a parliamentarian claimed the list of non-partisan commissioners to have been altered since 'the politicians had their own list' and compromise was necessary to avoid an 'impasse' (Standard 2010). With the presence of political stewards like Tafataona Mahoso, it was not surprising that state newspaper, the Herald continued to be pro-ZANU PF, over glorifying the President and his cronies, whilst denigrating the then Prime Minister Morgan Tsvangirai and his MDC party members, with impunity.

Even though GNU recognised the importance of the right to freedom of expression and the role of the media in a multi-party democracy, it was saddening to note that the media remained under the shadow of repressive legislations that severely restricts freedom of expression and communication in Zimbabwe. For instance, the broad sections of the Criminal Law (Codification and Reform) Act on criminal defamation or publicly making statements that may cause feelings of hostility towards or cause hatred, ridicule, or contempt of the President—whether in person or in respect of the office of President (HRW 2013). These were always invoked by the Police to arrest MDC supporters, journalists and members of the public for the so-called insults on the President. In May 2013, MDC-T youth leader Solomon Madzore was arrested and held in a filthy Bindura prison for two weeks on charges of insulting President Robert Mugabe, by likening him to a "limping

old donkey” (SWR 2013). In another incident, a Great Zimbabwe University lecturer was convicted and sentenced for calling the 89 year old President Mugabe “dirt which should be discarded, a rotten old donkey”. Throughout the entire GNU, arrests for slandering the long-time serving President and breaching the strict public order law were common, while those from ZANU PF who insulted the Prime Minister were left scot free, despite that Article 18.5 (h) i. of the GPA’s calls for refrain from using abusive language that may incite hostility, political intolerance... or unfairly undermine each other (GPA 2008:12) and spreading hate speech.

#### IV. CONCLUSION

The Zimbabwean GNU between ZANU PF party and the MDCs’ success in human rights protection is limited. It was signed by politicians, minus civics representation after the fiercely contested election in 2008 which will go down the memory lane of Zimbabwean politics. Of peculiar interest to note, however, was the violent and political intolerant environment which saw atrocious human rights abuses, mostly to opposition MDCs supporters and human rights defenders prior to the accord. The accord was therefore entered into by parties with absolutely nothing in common in terms of political ideologies, motivations and human rights taste. When the MDCs were concerned about entrenching democratic conditions, ZANU PF was fixated primarily on power retention and legitimising President Mugabe, appointed following a flawed and violent June 2008 run-off election (CISOMM 2013:129). Regardless of such objectives that were incommensurate, the GNU made some notable strides, either willingly or by default in economic stabilisation and decreasing direct human rights violations. Innately, the GNU spearheaded a people driven constitution making process, gazetted the Constitutional Amendment 19, and established human rights and media commissions that issued new paltry print media licenses. However, the reforms fall far-short in fully protection of civil and political liberties. Established commissions were hampered by lack of funds, ambiguous mandates and in most cases filled with partisan commissioners, who in actual fact were the old guard guilty of human rights abuses. Accordingly, the commissioners learnt nothing and had forgotten nothing from the previous blatant era, and as such remained heavily biased in favour of ZANU-PF. Intrinsically, there was no remorse for having committed human rights abuses and perpetrators persisted with abuse, though in a manner not as pervasive as the pre-GNU epoch.

The failure to reform the security sector, as called for in the GNU Article 13 was the chief reason for arbitrary arrests, torture, and abuse of the freedom of speech, association and assembly during the period under review. The security personnel continued to violate civil and political rights of Zimbabweans with impunity, as they were in the hands of ZANU PF party with no desire for liberal democracy, while the so-called democrats were afforded no such control. Thus during the entire GPA monitoring period, ZANU PF’s highest clause breach percentage was 98% and the lowest was 86.4%, while for the MDC-T it was 7.1% and 1.4%, with the MDC-Mutambara faction scoring a highest mark of 6.5% and a lowest breach of 0.26% (Sokwanele 2013). Therefore, implementation of reforms to promote human rights as contemplated by GPA largely depended on the goodwill and willingness of the party which had power levers. These rampant human rights abuses were coupled by the failure by the GPA to repeal or significantly revise Presidential powers and draconian AIPPA and POSA laws. These loopholes saw the GPA being relegated to a document with lofty provisions if not political aspirations of different parties, with a dearth of provisions by which they could be implemented. It would have been prudent if the MDCs had insisted on a constitutional amendment with legal traction to all provisions of the GPA.

This paper believes legislative, security sector reforms and respect of the new constitution to be key but insufficient for respect of human rights. The new government should ensure independent and non-partisan institutions, such as the judiciary, media and human rights commissions that act swiftly to prevent violence, hold accountable perpetrators of abuses, and ensure equal access to the media by all political parties and candidates. A comprehensive approach to respect of human rights in Zimbabwe not only requires laws and regulations consistent with international standards, but it also comes with sector reforms which fosters the independence and professionalism of state institutions.

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