

Rule of Law, Respect for the Constitution and other Laws

INTRODUCTION

The Rule of Law is one of those concepts that are notoriously difficult to define precisely. Attempting to pin it down by definition is as vexatious as trying to do that to, for example the elusive concept of happiness. The concept of the rule of law has therefore been defined in a manner more akin to description. The concept of the rule of law in Zimbabwe today arises against a backdrop of the dramatically changed and changing political landscape whose watershed was the signing of the Global Political Agreement on 15 September 2008. This event arguably marks the single most important change in the balance of power in Zimbabwe's long and painful limp to multi-party democracy since independence from Britain in 1980.

This paper will firstly discuss the general concept of the rule of law and skim through Zimbabwe's recent rule of law history. It will discuss facets of the rule of law in the Global Political Agreement not least of which is its article 11, which dedicates the parties to the agreement to upholding the rule of law and the constitution. The paper then discusses progress in upholding the rule of law in the life of the attendant coalition government. The paper will then proceed to discuss the structural and environmental difficulties hampering the promotion and upholding the rule of law in the Global Political Agreement government set-up, and will conclude by suggesting possible opportunities in the same albeit unusual environment, for enhancing the rule of law.

CONCEPT OF THE RULE OF LAW

The classic rendition of the rule of law is to be found in A.V. Dicey's 1885 Introduction to the study of the law of the constitution. It is depicted here by the following qualities: supremacy of the constitution or law as opposed to selective application of the law, separation of powers as opposed to wide discretionary arbitrary executive power, equality before the law accompanied by the right of audience in courts of law, and a judge-made constitution. The notion of a judge-made constitution has unsurprisingly been, over centuries of democratic development, been discarded because of the necessity of constitutional development. In short, Dicey's definition of the rule of law means no one is above the law, which must be applied equally to all.

The German concept of Rechtsstaat is another renowned attempt to define the rule of law. It is a useful complement to Dicey's version as it refers to government by law as opposed to by force in both the formal and material sense. The formal aspect of Rechtsstaat demands adherence to certain formal criteria such as the separation of powers, legal certainty, and due process of law. The material aspect of Rechtsstaat on the other hand transcends the formal in that it ensures that state authority is also bound by higher legal values enshrined in the constitution. It also requires the use of state authority to result in a materially just legal condition.

Another renowned theorist, J. Raz opined that for the rule of law to be potent, it must be obeyed in order to control and exercise

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the provisions of the constitution. For the law to be supreme, it must therefore be generally acceptable. The machinery law of enforcement should seek to ensure that the law is not distorted but is supervised in conformity with the law and provides effective remedies where there is deviation from it.

THE WORLD JUSTICE PROJECT PRACTICAL CRITERIA FOR ASSESSING THE RULE OF LAW

What is arguably one of the most practical approaches to assessing progress made in adherence to the rule of law is that devised in recent years by The World Justice Project. The Project is a high level, multi-national, multi-disciplinary, and politically neutral initiative to strengthen the rule of law and access to justice worldwide which was spawned by the American Bar Association and its luminaries a key one being Bill Neukom. The World Justice Project bases its definition of the rule of law on what it terms four universal principles, which are

1. The government and its officials and agents are accountable under the law
2. The laws are clear, publicized, stable and fair, protect fundamental rights, including security of persons and property
3. The process by which laws are enacted, administered and enforced is accessible, fair and efficient; and
4. The laws are upheld, and access to justice is provided, by competent, independent, and ethical law enforcement officials, attorneys or representatives, and judges who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve

The World Justice Project proceeded to use the above criteria to develop a rule of law index whose broad parameters and indicators are as follows

1. Accountable government

a) The powers of government and its officials and agents are defined and limited by the constitution

b) The powers of government and its officials and agents are limited by governmental and non-governmental checks

c) Government officials and agents are held accountable under the law

d) The military, police, prison officials and their agents are held accountable under the law

e) The government is bound by international agreements to which it is a party and by customary international law

2. Clear, publicized, stable and fair laws that protect fundamental human rights

a) The laws are clear, publicized and stable

b) The laws are fair and protect fundamental rights

c) The laws protect security of the person

d) The laws protect security of property and the right to engage in private economic activity

3. The law-making, administering and enforcement process' accessibility, efficiency and fairness

a) The laws are enacted, administered and enforced through a process of that is accessible to the public

b) The laws are fairly and efficiently administered and enforced

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4. Access to justice
 - a) Judges, prosecutors and judicial officers are impartial and accountable
 - b) The judicial system is efficient, accessible, and effective
 - c) Persons are represented by competent and independent attorneys or representatives
 - d) Alternative dispute resolution mechanisms provide independent, impartial, fair and efficient access to justice
 - e) Traditional ,communal and religious dispute resolution systems provide independent, impartial, and fair access to justice

This paper will apply the World Justice Project's instrument to measure the performance of the Inclusive Government in upholding the rule of law.

HIGHLIGHTS OF ZIMBABWE'S RECENT RULE OF LAW HISTORY

Zimbabwe's recent rule of law history, even immediately preceding the transitional coalition government is characterised by major setbacks ranging from the mutilation and erosion of the Bill of Rights, disregard of judicial decisions, unconstitutional and violent land reform, and the enactment of repressive laws.

Chapter 3 of the Zimbabwe constitution provides for separation of powers and specifically an independent and impartial judiciary, which is charged with providing a system of checks and balances against the executive and the legislature, by interpreting the law 'without fear or favour'.

An independent judiciary is a vital pulley of any constitutional democracy. The selection of judges must be done in a transparent, professional and ethical manner. The Zimbabwean constitution endows the President with wide and sweeping powers which were

only scotched, not killed by the 19th amendment that created the transitional coalition government. These vast powers have the potential to undermine the separation of powers and ultimately the rule of law. They include the power to effectively appoint superior court judges, albeit via a commission. This renders appointments vulnerable to political considerations, and undermines the independence of the courts at the very least in the eyes of the public. It is not surprising therefore that the public sentiment would be the apprehension that the judiciary may not be able to hold its own against the executive.

In 1990 two journalists from The Standard newspaper were jailed unlawfully and tortured for writing an article about a failed military coup. The President then imposed bans on the media and outlawed strikes and allowed the military to arrest civilians, thereby making the executive a villain against the rule of law. The High Court ordered the release of the journalists thrice but to no avail. Supreme Court judges then resorted to writing to the President urging him to uphold the rule of law. The President responded by daring the judges to resign retorting that they had no authority to issue him with instructions and that they were biased and no longer trustworthy in matters involving the executive. This dark episode in Zimbabwe's legal history sadly set the pace of judicial/executive relations that haunts Zimbabwe to date. A disconcertingly high turnover of judges from the bench ensued.

The judiciary increasingly became embattled as demonstrated dramatically by the land reform cases where court decisions exhibited a lack of zeal to safeguard the rule of law from erosion particularly regarding the right to property. The courts then condoned several enactments of constitutional amendments introducing unwarranted derogations to the right to property, i.e. constitutional amendment nos. 13, 14, 15, 16, and 17. The judiciary became so paralysed that it got to the point of decrying, in *Commercial Farmers' Union v Minister Of Lands and others*, that '.....the rule of law in

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commercial agriculture has been overthrown.'

Subsequent decisions of the judiciary endorsed and ratified a raft of controversial and unconventional pieces of legislation which were passed in order to retrospectively clothe, with legal authority the violent land reform programme. A case in point in *The Minister of Lands, Agriculture and Rural Resettlement and others v The Commercial Farmers' Union* the Supreme Court ruled that from that point onwards the land reform programme was lawful and that the Rural Land Occupiers (Protection from Eviction Act) was constitutional. This Act 'legalized' all land occupations which occurred between 16 February 2000 and 1 March 2001. A different approach, which would have been more aligned to the rule of law and human rights, would not have condoned such actions by government, simply because compliance with an unjust law does not amount to adherence to the rule of law. The rule of law means adherence to fair, just and generally acceptable laws¹. Government's actions clearly fell short of the standards of the rule of law and therefore not justifiable before the courts. It was the duty of the courts to address this injustice by ensuring the proper administration of justice in terms of the standing laws in order to protect the of the applicant farmers. Every individual is entitled to the protection of the law (section 18 of the constitution) and that same law should not be used to take away the rights so protected.

Zimbabwe's rule of law credentials were sullied further when in May 2005 the government embarked upon forced evictions and demolitions of homes under the code name 'Operation Murambatsvina' whose literal meaning is to totally reject or clean out all filth. The operation apparently aimed to destroy 'the parallel (foreign exchange) market and illegal dealings in city centres'. The exercise resulted in the destruction of sources of livelihood which left the ordinary citizens in distress. Vast and radical violations of human rights to property, security

of the person, health, education, shelter and even a livelihood, without regard to basic procedural fairness requirements. The government made no effort to give alternative accommodation to the victims who lost their homes and instead directed them to their rural homes through Vice President Mujuru who is thus quoted in *The Herald* of 31 May 2005 The government only made feeble and slapstick efforts to provide alternative accommodation for evictees through 'Operation Garikai/ Hlalani Kuhle' after international pressure. A non-responsive judiciary failed to come to the rescue of victims of these gross human rights abuses. In *Batsirai Children's Care v Minister of Local Government, Public Works & Urban Development HCH 2566/05* the applicant children's home sought an urgent spoliation order to be restored occupation of its premises. It was filed on 6 June 2005 and was placed before a judge on 10 June; which judge postponed its hearing to 17 June, again to 23 June whilst refusing to grant a provisional order yet the matter was clearly urgent. Clearly the judiciary exhibited a lack of enthusiasm for the protection of human rights.

Legislative travesty of the rule of law

The rule of law requires that government powers are limited by the constitution and that therefore laws are clear, publicized, stable and fair and protect fundamental rights, including the security of persons and property. The Declaration of Rights in Zimbabwe's constitution is bad enough in being deficient in guaranteeing fundamental rights. It is vertical meaning it can only be exercised against the state, it has excessive and unwarranted claw-backs, on the limited rights it has and does not guarantee economic, social and cultural rights.

No mercy has been shown to even this emaciated bill of rights. It has been the site of attacks in the form of a spate of legislation and amendments that clearly contravene the Bill of Rights. The following enactments are of great concern to the development of human rights.

¹ Article by Dr. Lovemore Madhuku

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www.kas.de/zimbabwewww.kas.de**Public Order and Security Act² (POSA)**

The Act is a reinvention of its colonial predecessor Law and Order (Maintenance) Act³ which was used during the colonial era to oppress and suppress the black majority and was later repealed sometime in the post colonial era. Ironically it was reincarnated by the new black government and it still has the same oppressive and suppressive provisions.

The Act mainly contravenes the freedom of expression⁴ by prohibiting public gatherings⁵ and requiring police notification⁶ to exercise such freedoms. Like any other country the requirement of police notification is a reasonable one but in Zimbabwe the police force has taken it to mean that one requires police permission and therefore some people are actually refused this right even if they make police notification. This has resulted in the arrest of many peaceful demonstrators⁷. Clearly, this process of notification seems to undermine the freedom of association. The police should not use stringent and cumbersome rules to suppress the freedom of assembly and association. The purpose of notification should be to alert the police in the event of any mishaps that may require their assistance as well as for security reason and not to be a hindrance to the mere idea of meetings. Therefore it should be free of restrictive conditions so as to allow exercise of individual freedom of association and assembly.

Access to Information and Protection of Privacy Act⁸ (AIPPA)

The Act has resulted in the restriction of the print media and the creation of the Media

² Chapter 9:07

³ Chapter 11:07

⁴ section 20 of the Constitution

⁵ section 26 of the Act

⁶ section 24 of the Act

⁷ WOZA women are often arrested and assaulted by police for holding peaceful demonstrations without notifying police

⁸ Chapter 10:27

Commission whose mandate is to monitor "responsible journalism in Zimbabwe". As a result of the Act an independent daily newspaper, "The Daily News" was closed for not conforming to tedious licensing requirements. It is undeniable that freedom of expression needs to be curtailed in so far as the protection of other rights like privacy are concerned, but excessive limitations to the freedom of expression constrain the media and civil society to participate in both political and social debates to also ensure the accountability of the government to their people.

This clearly contravenes the right of individuals to have access to information. In other countries journalists and publishing houses do not need accreditation but simply publish what they want and if they defame anyone then the law takes its course.

Interception of Communications Act⁹

The Act was enacted despite criticisms against its repressive legal implications. Sections 6 and 9 of the Act are a reverberation of sections 98(3) and 103 (respectively) of the Post and Telecommunications Act¹⁰ which were formerly struck off because of their repressive connotations in the case of *The Law Society of Zimbabwe v The Minister of Transport and Communications and Attorney General*¹¹. The Act contravenes the freedom of expression and freedom of traders' choice. Section 12 of the Act makes it mandatory for telecommunication service providers to install surveillance equipment to enable their systems to ensure interception of communication, at their own expense (my emphasis). Surely, a service provider has freedom to choose whether or not to install any form of equipment to his machines and forcing him to install interception, not only takes away his freedom of choice but also breaches his duty of confidentiality and privacy to the customer.

⁹ Chapter

¹⁰ Chapter 12:05

¹¹ SC 59/03

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Further, the equipment is rather expensive therefore it imposes a strenuous burden on the service provider which he might fail to fulfil. To worsen the matters the Act threatens closing down service provider's business if he/she fails to comply. This clearly leaves the customer who relies on the service provider to exercise his or her freedom of expression stranded. The whole concept of interception is contrary to the freedom of the individual to be protected from interference with his correspondence as well as freedom of privacy.

Broadcasting Services Act¹² (BSA)

The Act restricts the access to the media airwaves in Zimbabwe¹³, denying citizens the opportunity to receive diverse opinions. Generally in Zimbabwe the state has monopolized the media and as such alternative radio and television stations are heavily restricted and become prime targets if found operating in Zimbabwe. For example Voice of People station board members were on put trial for allegedly violating the Act.

National Income and Pricing Commission Act¹⁴ (NIPCA)

The Act was enacted during the radical hyper inflation in the era of the Zimbabwean dollar when prices of basic commodities were constantly hiked. The act was an inroad into the rights of a business trader as well as the right to property and protection from entry. The Act permits an inspector to enter¹⁵ the premises of a business trader and inspect or search his/ her property without a search warrant. This clearly contravenes the right to protection from arbitrary search and entry¹⁶ as well as contrary to the right to property¹⁷ by allowing confiscation of

goods subject to "suspected pricing violations".

The Act also criminalizes the idea of profit making¹⁸. Surely, the main purpose of any business is to make profit. If then a business trader is forced to reduce prices or a price is dictated to him/her without consideration of his/her input, whether monetary or not, defeats the whole purpose of business. A trader needs to be protected from this kind of exposure.

Constitutional Amendment No 17 (2005)

The amendment ousted jurisdiction of the courts in the land invasion matters which is contrary to section 18 of the Constitution which provides for the right to secure protection of the law and also contrary to section 16 which protects the right to property. This is a clear deprivation of the fundamental rights in the Bill of Rights and enactments like these are disrespectful of human rights and ultimately the rule of law.

The amendment also infringes upon freedom of movement¹⁹ by providing that if a Zimbabwean citizen goes abroad and engages in activities that could damage the image, economy or security of the country the state can take away his/her passport. Clearly the provision is vague and portrays a radical infringement upon the freedom of movement.

Constitutional Amendment No 18 (2007) Electoral Laws

The amendment changed the rules for electing a new president should the post become vacant during the presidential term. Previously, if the post became vacant, presidential elections would be held in 90 days. With the new law, if the post becomes vacant, the legislature, and not the people will appoint the president. This takes away the right of the people to elect and determine

¹² Chapter 12:06

¹³ section 38 of the Act

¹⁴ Chapter 14:32

¹⁵ section 20 of the Act

¹⁶ section 17 of the Constitution

¹⁷ section of the Constitution

¹⁸ Section 26 (2)- (4) of the Act

¹⁹ section 22 of the Constitution

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their own leader which is a serious inroad into the concept of state democracy.

Indigenization and Economic Empowerment Act

Recently ZANU- PF unilaterally gazetted the enabling regulations of the Act in contravention of the GPA. The gazetting was also in an arbitrary manner inconsistent with legislative process standards of the rule of law. While the act seeks to empower the 'indigenous Zimbabwean' it has brought a havoc of controversies pertaining to ownership of companies and resources in Zimbabwe. It becomes doubtful to trust in the commitment of some of the parties to the GPA. The Act provides that each public company has to have 51% share ownership vested in the 'indigenous Zimbabwean' (section 3(1a)). Companies are already being forced to comply with 51% requirement which means that whatever investments or inputs they had made into their business all comes to nothing.

It further imposes that in the event that a person wants to relinquish controlling interest and the value of the business is above the prescribed threshold he or she has to relinquish it to an indigenous Zimbabwean (section 3(1d)). This means that even if the person were to get an option for a higher bidder from a foreigner he/she is not allowed to sell his/her shares to the foreigner. Surely this defeats the whole purpose of doing business in any given environment. Suffice to mention that this works against the current need for foreign investors. The move is bound to make a negative effect on the economy.

While this Act is purported to empower the indigenous Zimbabwean, one wonders how many ordinary Zimbabweans are going to benefit from the move. Chances are a very small group of people is going to benefit and the rest will languish in the effects of the instability of the economy due to the same move. It is therefore difficult to foresee conformity with the rule of law in a situation like this.

The Rule of Law in the GPA

The orgy of violence and gross and rampant human rights abuses that characterized the 2008 elections precipitated a constitutional crisis of executive power without popular legitimacy. The GPA was thus a paramedic attempt to save the life of a severely traumatized and mortally wounded nation. The Zimbabwe body – politic is in a critical care ambulance on the way to radical and invasive surgery (which may even require major organ transplants!) involving a new constitution and ultimately free and fair elections. The rule of law, after years of brutal and incremental abuse, finally suffered a potentially lethal blow in the bloody 2008 elections which recorded no less than 230 deaths. It is not surprising therefore that The GPA is preoccupied with and specifically mentions the rule of law 5 times; twice in its preamble and four times in its body. It further repeatedly commits the parties to various facets of the rule of law in at least 14 of its 25 articles. In the preamble the parties stated that they emphasised their

Shared commitment to reorient our attitudes towards respect for the constitution and all national laws, the rule of law, observance ... (albeit alongside respect for national symbols, events and institutions!)

The preamble proceeds to state that the parties were

Recognising and accepting that the Land Question has been at the core of the contestation in Zimbabwe and acknowledging the centrality of issues relating to the rule of law, respect for human rights and democracy and good governance.

Article 11, the shortest article of the GPA is specifically devoted to and entitled 'Rule of law, respect for the constitution and other laws. By it the parties agree that they, and all other political parties and individuals have a duty to uphold the constitution and other laws; and adhere to the principles of the rule of law. Article 13.2 entitled 'State Organs And Institutions' requires the parties to take steps

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(b) Ensuring that all state organs and institutions strictly observe principles of the Rule of Law and remain non-partisan and impartial...

Article 18.5 (j) which is about security of persons and prevention of violence states that

While having due regard to the Constitution Of Zimbabwe and the principles of the rule of law, the prosecuting authorities will expedite the determination as to whether or not there is sufficient evidence to warrant prosecution or keeping on remand of all persons accused of politically related offences arising out of or connected with the March and June elections.

The preamble makes repeated mention of facets of the rule of law such as the need for equal protection of the law, principles of fairness, justice, non-discrimination, and generally human rights. The following articles specifically deal with their respective aspects of the rule of law

- a) Article 7- equality in issues of national healing and unity
- b) Article 6- the participatory constitution-making process required to deepen democratic values and principles and equality of citizens, particularly women
- c) Article 9- rejection of unlawful, violent and undemocratic and unconstitutional government change in rejecting external interference
- d) Article 10 – free political activity
- e) Article 12 – freedom of association
- f) Article 14- traditional leaders' need to ensure equal treatment of their subjects
- g) Article 16 non-discrimination in the administration of humanitarian assistance

h) Article 19- freedom of expression and communication

i) Article 20 – the constitutional limitation of government in the framework of a new government.

THE TRANSITIONAL COALITION GOVERNMENT RULE OF LAW SCORECARD

A desk application of the World Justice Project's Rule of Law Index may very well reveal the following ratings out of a total score of 5 per category

- 1) ACCOUNTABLE GOVERNMENT
 - a) *Government powers limited by the constitution*
Article 20 of the GPA limited the unbridled executive power of the President who before it had, in terms of Section 31H of the constitution, had exclusive executive authority, even Cabinet was not vested with such power but could only exercise it if delegated. Article 20.1 of the GPA which was incorporated into the constitution by Amendment No. 19 parcelled out the executive and vested it in and to be shared amongst the Prime Minister, Cabinet and the president. The unilateral refusal to conduct the formality of swearing in Sen. Bennet into government is in breach of the GPA; and hence unlawful, is a blemish though. Score 3/5
 - b) *Governmental & Non Governmental Checks*
The very existence of opposition inside government is a formidable check on hitherto unquestioned power. The publication of the Comptroller – Auditor General's report of abuses of state resources resulting in some ministers returning looted vehicles is a good sign, as well as the pressure being applied by Parliamentary Portfolio committees, notably the one on Mines and Local Government is. Harare City Council's investigations of public land allocation the

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same light. Civil society is not however visible in exploiting this new window of opportunity to scrutinize government. Score 3/5

c) *Accountable government officials and agents*

This is similar to the aspect above. Score 3/5

d) *Accountable military, police and prison officials*

The GPA –induced National Security Council Act and its procedures Mark a de jure improvement in reining in the security forces and making them subservient to the people by introducing more democratic means of defence policy formulation. The practice is however yet to produce de facto accountability. Police and army activity inconsistent with the constitution and GPA, such as diamond mining and brutality still occurs in an environment where the commissioners and equivalent themselves still report directly to the President thereby circumventing institutional checks and balances. Score 2/5

e) *Compliance with international law*

There has been little improvement in this arena. Zimbabwe is deep in controversy over its 'pulling out' of the SADC Tribunal which, whatever the technical arguments may be, smacks of clear contempt of the international law. Reports to the majority of human rights treaty bodies remain outstanding. Yet more international human rights treaties signed, including even international and regional conventions on children's and women's rights remain embarrassingly ungratified. Score 2/5

2) PUBLICISED AND STABLE LAWS THAT PROTECT FUNDAMENTAL RIGHTS

a) *Laws are clear, publicised and stable and protect fundamental rights including to property*

Political caprice has come to charac-

terize legislation with the advent of the GPA government. The Indigenisation Act's Regulations, as well as the statutory instrument that parcelled out the administration of Acts to ministries were gazetted in a totally chaotic manner. The two instruments have caused so much confusion as to their meaning that it is almost criminal. The Government Gazette whose printing had almost ceased returned fitfully with the new government but its production and circulation is still poor. Discrimination and arbitrary deprivation of property is still promoted by the law e.g. the Indigenisation Regulations and Sections 16B and 23 of the Constitution. Repression continues with AIPPA, POSA and the Broadcasting Services Act. Score 2/5

3) ACCESSIBLE, FAIR AND EFFICIENT PROCESS OF ENACTING, ADMINISTERING AND ENFORCING LAW

Some parties within the GPA government themselves have no equal access to passing statutory instruments as demonstrated by the Indigenisation and Acts administration sagas. The legislative process is still inaccessible directly to the electorate as it is still Cabinet – driven, hence ministers who do not want media reform will for example just sit on pro-GPA legislative agenda reforms. The people-driven Article 6 constitutional reform process is as yet moribund. Decisions to investigate and prosecute criminal offences are still done in a selective and partisan manner totally inconsistent with the GPA. The Senator Roy Bennett maize and treason intrigues, the Thamsanqa Mahlangu sagas vs the Bindura hospital administrator's corruption trial that the AG's office stopped, the recalcitrance of the police in investigating the Phillip Chiyangwa and Minister Chombo's alleged corrupt acquisition of public land in contrast to their zeal in arresting the investigating council-

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lors themselves. The increasing resort to criminal prosecutions of prosecutors for exercising their professional discretion against directives is alarming. The stark failure to expedite criminal proceedings against 2008 elections violence perpetrators as required by Article 18.5(j) of the GPA is damning to the performance of the GPA government. Score 1/5

4) ACCESS TO JUSTICE

The judicial system is mired in suspicion over its impartiality given years of the erosion of confidence in it. The spectre of benefit from the violent land reform programme still hangs over it. The victimisation and hounding of independent-minded magistrates and hapless court support staff persists. Lack of access to legal services due to financial and information constraints persist, as well as increasing corruption in the legal sector, the very core of the justice system are a serious indictment on Zimbabwe's rule of law credentials. So are an underdeveloped alternative dispute resolution mechanism, and traditional justice systems. However remarkable gains have been made in the Ministry Of Justice by reducing the prison mortality rate by over 90%, equipping court facilities, and setting up and an anti-corruption committee which is developing a programme. Score 2/5

All in all there seems to be very little progress in the rule of law as there are still outstanding matters in the GPA for example the president stills refuses to reverse his appointment of the Reserve Bank Governor and the Attorney General as well as implement reforms to ensure an independent Judiciary. The land reform issue has not been resolved neither has there been a land audit that was agreed in the GPA. In other words the same weaknesses that our constitution had before the GPA are still in existence and are still going to result in disregard of the rule of law. The same laws that are used to propagate contravention of the rule of law

are still in the books and they do not seem to be on their way out any time soon..

WAY FORWARD

Constitutional Reform

The most important thing would be to start with making a people-driven constitution to adhere to the principle of constitutionalism then eradicate all repressive laws according to the agreement.

The constitution must address the issues of separation of powers, rule of law, independent judiciary; reduce the wide arbitrary powers of the executive and mainly the president's powers, provide for a more autonomous Attorney-General. It must provide mechanisms that ensure adherence to the constitution and not centralize power to the extent of abuse.

The constitution must eliminate all emergency laws that give the executive the ability to do things that are of questionable legal means.

The constitution must further provide for free and fair elections so that we have a legal system that is fully prepared for the next elections.

There is also need for media reforms.

The constitution must have an extended Bill of rights that ensures adequate protection of the law that is a justiciable Bill of rights. This should include the right to health, right to food, right to shelter, freedom of association, freedom of expression, and security of persons, e.t.c.

Human Rights institutions must be fully independent.

The constitution must provide the mechanism for a land audit and orderly, fair, pragmatic and efficient land distribution.

Policy Recommendations

There is need to come up with a program to reform politicized legal institutions including

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the judiciary, and strengthen civil society, including press institutions, labour institutions and academic institutions in line with Article 13.2(a) of the GPA.

Government needs to develop a prosecution policy and thus save public prosecutions from the clutch of political whim and vice, and actually streamline and reform the constitutional and institutional mandate of the Attorney General's Office. This will ensure prosecutions are done truly in the name and benefit of the State instead of that of a political party.

There should be a peace policy on the protection of individuals from government institutions, especially the uniformed forces. These institutions must be trained to know how to protect persons and not use their power to abuse ordinary citizens.

They should value the protection of an individual more than just using their power. Protection of civilians should be one of their top priorities.

Government institutions must be trained on human rights and freedoms so as to be made aware of the rights of people in general. This way they get to understand what it means to have a right and what the implications of disregarding or abusing these right are.