

ZIMBABWE ELECTION SUPPORT NETWORK



CONSOLIDATED BALLOT UPDATE 2011

**AN ANALYSIS OF 2011: RESPECT FOR HUMAN RIGHTS AND IMPLICATIONS FOR FREE AND
FAIR ELECTIONS**

INTRODUCTION

This ballot update seeks to provide an analysis of the human rights situation in Zimbabwe and implications for free and fair elections. It is a synthesis of the findings from 210 long term observers deployed by the Zimbabwe Election Support Network (ZESN) for the duration of 2011. In February 2011, the Government of National Unity (GNU) celebrated 2 years of existence and this has not been smooth sailing for citizens and the government. While the GNU has brought a semblance of normalcy to the country, on the political scene, it has been a mixed bag of successes and failures to implement its letter and spirit. This update is a synthesis of data from observers deployed from April to December 2011. 1800 questionnaires were collected and analysed using Statistical Package for Social Sciences (SPSS).

The Global Political Agreement (GPA) contains a declaration of commitment by the parties to work together to create a genuine, viable, permanent, sustainable and nationally accepted solution to Zimbabwe's situation. This commitment has not been fulfilled as the parties have not been able to work together in a way that charts Zimbabwe in a new political direction characterised by good governance, respect for the rule of law, peace and political tolerance.

This analysis will take cognisance of the provisions in the GPA as the measure of success and as a benchmark for implementation. The transitional government formed through the GPA is meant to ensure reforms that will lead to free and fair elections. ZESN recognises that the implementation of the desired reforms will create conditions for free and fair elections. Political leaders in Zimbabwe have realised that the fundamental problem in Zimbabwe is the politics and once this fundamental area has been resolved, all else will fall into place.

1. Respect for human rights and freedoms

Freedom of assembly and association

The GPA recognises the need for freedom of association which had been greatly hampered by partisan application of the law and the culture of intolerance that characterised Zimbabwe in the last decade. In light of this knowledge, parties in the GNU agreed to work together in a way that guarantees the full implementation and realisation of the right to freedom of association and assembly.

The implementation of these conditions to enable freedom of assembly and association is a variable that ZESN evaluated. ZESN observers reported that while political parties were able to conduct rallies, there were some parties which enjoyed this freedom more than others. To a large extent, ZANU PF was able to conduct meetings and rallies more freely than other parties. It seems as if ZANU PF was not subjected to the rigorous requirements for them to convene meetings as was required for the two MDC formations and civic organisations. At

times even when police clearance was obtained, meetings were disrupted and clearance was revoked on the pretext of lack of security or other excuses.

Observers reported that ZANU PF was able to conduct meetings to the exclusion of other parties.

Asked if people were forced to attend rallies in their areas, ZESN observers reported coercive attendance of political meetings by citizens. 33% of reports revealed that people were forced to attend ZANU PF meetings. This undermines the notion of voluntary participation in political party activities. Citizens have a right to attend or not to attend meetings. Political parties need to sell their manifestos to citizens and come up with interesting programmes to entice citizens and not rely on coercion which violates their rights.

27% of reports showed that citizens were forced to buy ZANU PF party cards. This behaviour is again inimical to freedom of association as citizens must freely choose which party to support. Some provinces experienced more coercive selling of party cards than others. Provinces such as Mashonaland East and Mashonaland Central recorded high percentages of people being forced to buy party cards whilst others such as Midlands and Manicaland recorded low percentages. The diagram below shows the percentage distribution in six provinces of the country.

Percentage of people forced to buy party cards

Province						
	Mashonaland East	Mashonaland Central	Mashonaland West	Harare	Midlands	Manicaland
Yes	64%	52%	40%	37%	29%	22%
No	36%	48%	60%	63%	71%	78%

Freedom of expression and communication

Parties recognised the importance of the right to freedom of expression and the role of the media in a multiparty democracy. In this vein, parties agreed to ensure media reforms through the issuing of print and broadcasting media licences to ensure the promotion of media pluralism. Parties agreed to reform public media so that it provides a balanced and fair coverage to all political parties, that private and public media refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred that would unfairly undermine political parties. A number of new publications have been licensed such as the Newsday, The Mail and the Daily News. Although two new radio stations belonging to

Zimpapers (Talk Radio) and AB Communications (ZiFM) were given the green light to operate, analysts have argued that there is no proper opening up of the airwaves as these stations are affiliated to Zanu Pf more than any other political party. Other stations have seen their license requests rejected such as Kiss FM. ZESN notes that more radio stations need to be licensed in order to promote media diversity and plurality.

ZESN observers reported inadequacies in the protection of citizens' freedom of expression and communication. Observers reported infringement of freedoms of speech. Asked if people were able to exercise their right to free expression, 64 % of reports show that citizens were unable to express themselves freely. Elections are a form of expression where citizens express their choice of leaders through the ballot, curtailment of the freedom of expression in the pre-election period is likely to harm the ability of citizens to fully express their wishes even during elections.

The political landscape of Zimbabwe was such that citizens were not able to express themselves even through wearing their party regalia. 53 % of reports show that citizens are not free to wear party regalia unless it is ZANU PF.

Security of persons and prevention of violence

Parties agreed that violence dehumanises and engenders feelings of hatred and polarisation within the country. The parties agreed to “promote values and practises of tolerance, respect, non violence and dialogue as a means of resolving political differences”. In addition, parties agreed to “renounce and desist from the promotion and use of violence under whatever name called, as a means of attaining political ends”. Political parties agreed that their leaders be committed to stopping and preventing all forms of political violence including non-state actors and to appeal to their members to stop violence.

ZESN reports show that violence remained a real threat in a number of provinces and constituencies in Zimbabwe. In 30 per cent of cases, observers reported political harassment to citizens such as threats of violence, forced attendances to political meetings and denial of the right to read newspapers of their choice.

37% of reports indicated the prevalence of human rights violations in the various provinces. Observers' reports also show that in 37% of rallies observed, threats of violence were prevalent.

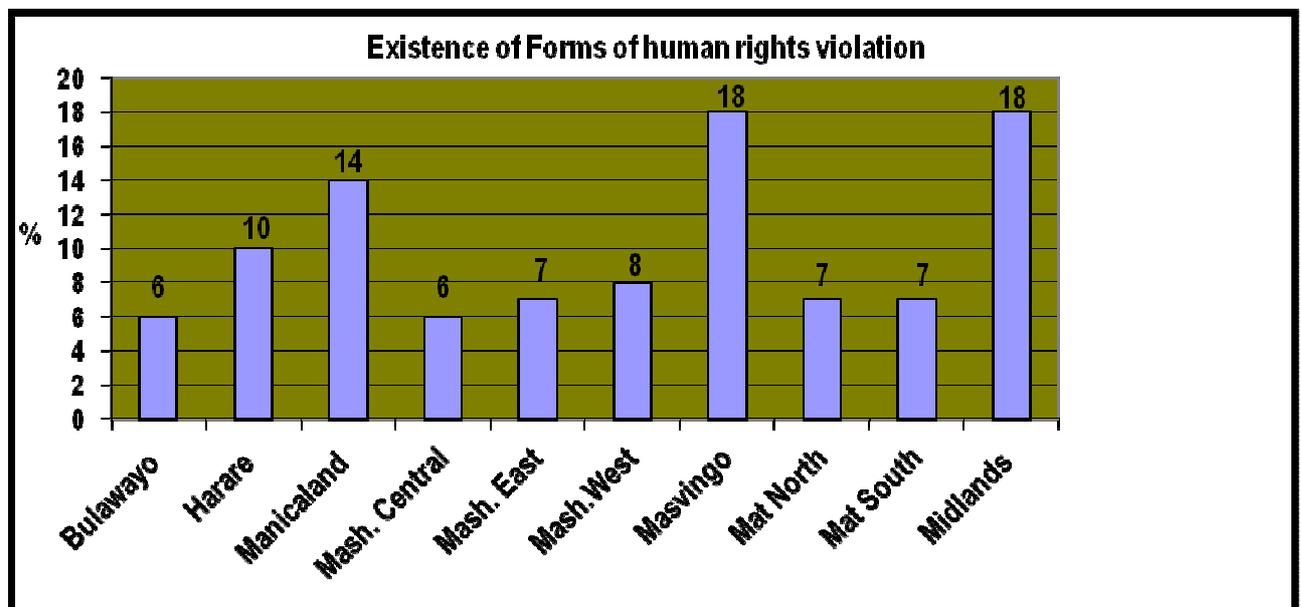
Violations included but were not limited to:

- Denial of the right to assembly and association
- Discrimination of the basis of political affiliation
- Infringements on the right to information

- Restrictions of the freedom of expression
- Increased insecurity of persons
- Mounting of places of torture in some areas
- Psychological abuse through reminiscing about violence e.g. liberation war songs and war cries /slogans

After the accelerated incidents of violence in Harare in Highfield, Chitungwiza, Hatcliffe and Lupane principals to the GPA and the national executives of the MDC T and MDC as well as ZANU PF’s Politburo members called an Indaba to denounce violence.

This shows that while parties have agreed to preventing violence on paper, the reality has not shown the same commitment. ***Below is a picture of the existence of forms of violence by province:***



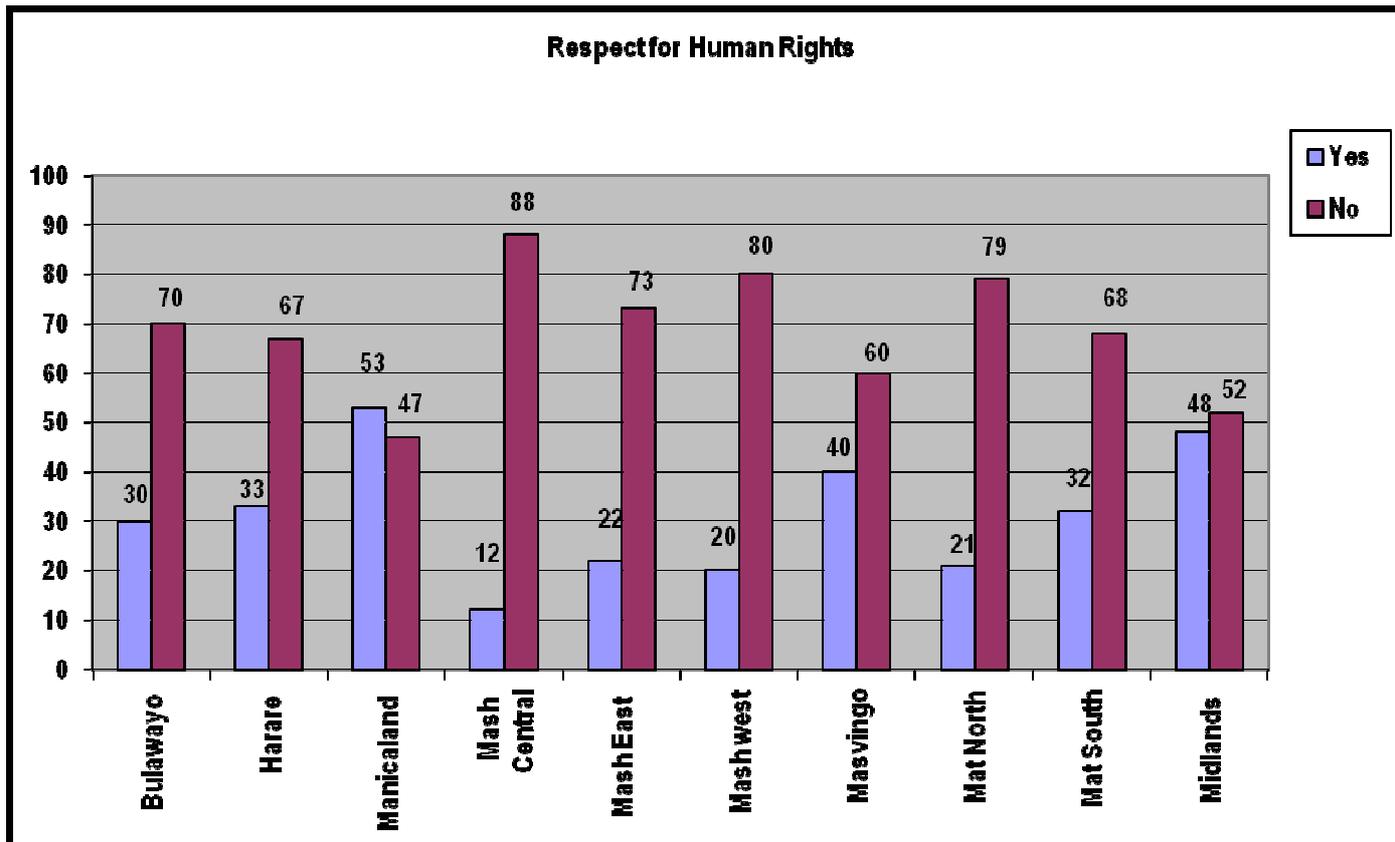
The existence of different forms of violence can be explained by the activities of various groups such as the Mbare based Chipangano militant group backing ZANU PF in Harare and the presence of war veteran leader Jabulani Sibanda in some provinces such as Masvingo in 2011. In areas such as Mashonaland West and Mashonaland Central, the presence of political “bases” which were later dismantled accounted for the presence of violence.

The erection of political bases

Throughout the period of deployment, observers were asked if political bases had been erected in their constituencies. ZESN notes that in some areas bases were mounted in several areas and later dismantled. 10% of reports reveal that some bases had been erected while 90% of the reports indicated that there were no bases in their areas. The mere

existence of these bases is a cause for concern. ZESN reports were validated by reports from the Zimbabwe Peace Project and ZimRights that also highlighted the mounting of “bases”. These bases served as places of torture and gross acts of human rights violations were perpetrated. It is critical that political parties respect citizens’ rights and their dignity as well as political choices without resorting to force.

Overall respect for human rights did not show much improvement during the period under review. The graph below shows that in the majority of provinces, respect for human rights falls below. The GNU has not resulted in a change in the levels of respect for human rights.



ZESN remains concerned about the pattern shown in the reports where human rights are disregarded particularly because the GNU was created to restore the dignity of Zimbabweans through respect for human rights among other things.

2. The constitution making process

In the GPA, the parties determined “to create conditions for our people to write a constitution for themselves ...and ensure that the new constitution deepens our democratic values and principles and the protection of the equality of all citizens...” In addition, the GPA

envisaged a process that is owned and driven by the people, which is inclusive and democratic.

The political will to come up with a new constitution has not been evident given the false starts to the process and the many disturbances once the process was underway. In 2011, ZESN observed the thematic committee processes and has kept up with the progress of COPAC during the drafting processes. Indications reflect that the desire for a people driven constitution has been overtaken by political party preferences which have taken centre stage and affected the progress of the process.

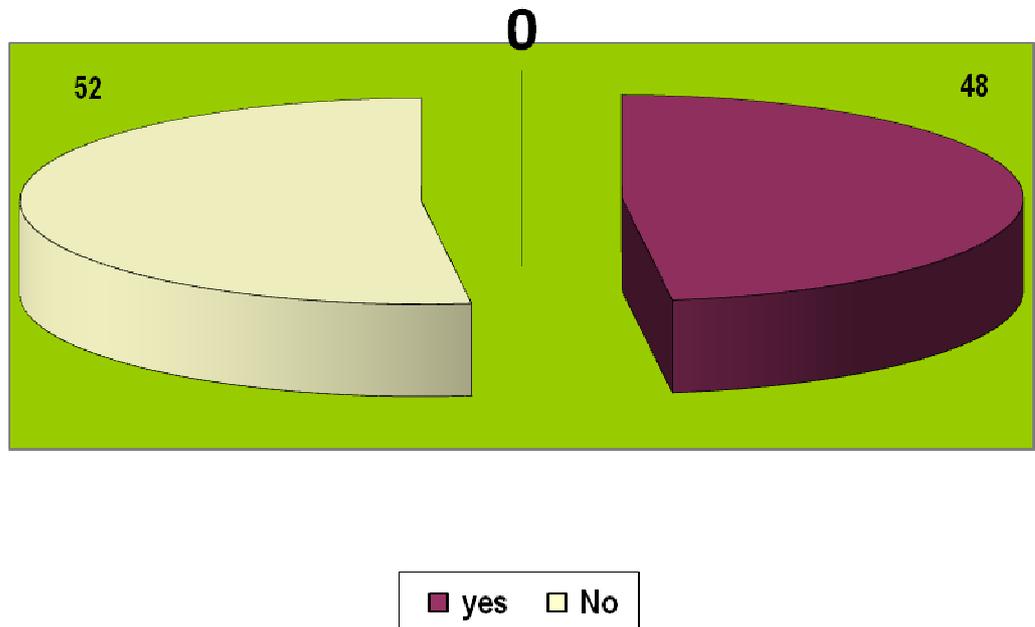
The thematic committee stage was marked by disruptions due to political parties misunderstanding on methodological issues. Questions of the quantitative against qualitative ways of interpreting data were central to the conflicts that ensued and delayed the work. The desire to include everyone and protect partisan interests led to a bloated structure at the onset of the thematic committee stage. The committees found themselves staffed by people that could not use Information Communication Technologies (ICTs) and who served to a large extent as gate keepers for political parties.

3. National healing

On the promotion of equality, national healing, cohesion and unity, the parties agreed to the creation of a new government that would ensure “equal treatment of all regardless of gender, race, ethnicity, and place of origin and will work towards the equal access to development for all.” In addition, the parties agreed to “strive for the creation of an environment of tolerance and respect among Zimbabweans and that all citizens are treated with dignity and decency irrespective of age, gender, race, and ethnicity, place of origin or political affiliation”.

Observer reports show that to a large extent aspirations have remained on paper and have not been felt in practice. Asked if there has been an improvement in tolerance in their area, observers reported a lack of tolerance in their areas.

Improvement in political tolerance

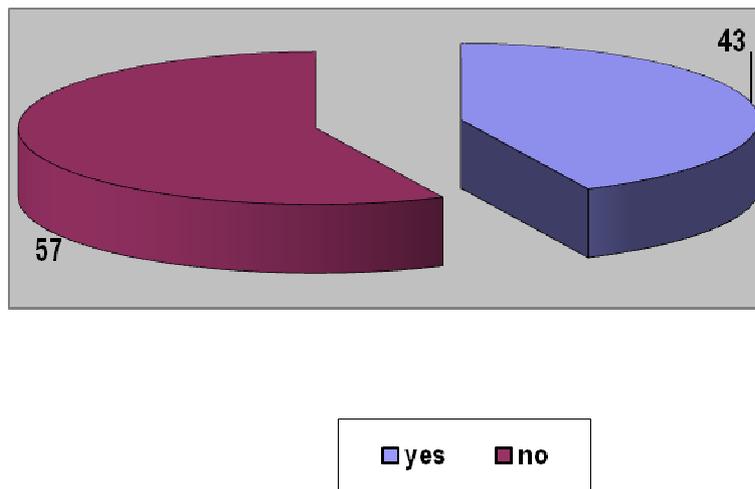


National healing and reconciliation is premised on the basis of respect for differences, acknowledging wrong doing and asking for forgiveness. Observers have reported that discrimination remains rife in constituencies and the party one belongs to is important for access to state institutions and services among others.

Observers also reported that citizens that had been displaced during the violence of June 2008 have not been able to return. Reports show that 57% of the displaced in these communities have not been able to return against the 43% who have returned.

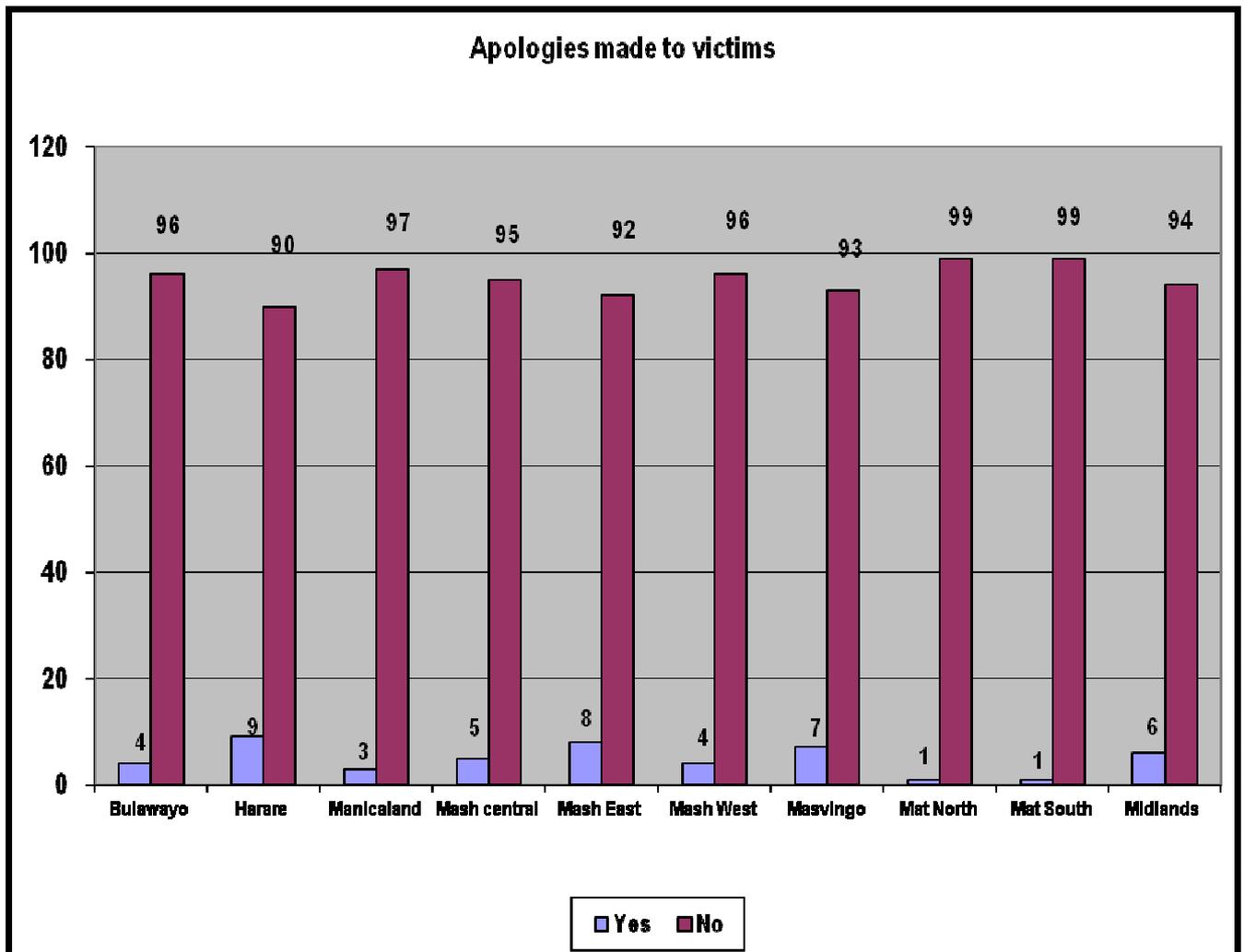
The chart below shows the percentage of the people who have returned and those who have not returned.

Have displaced victims returned to community



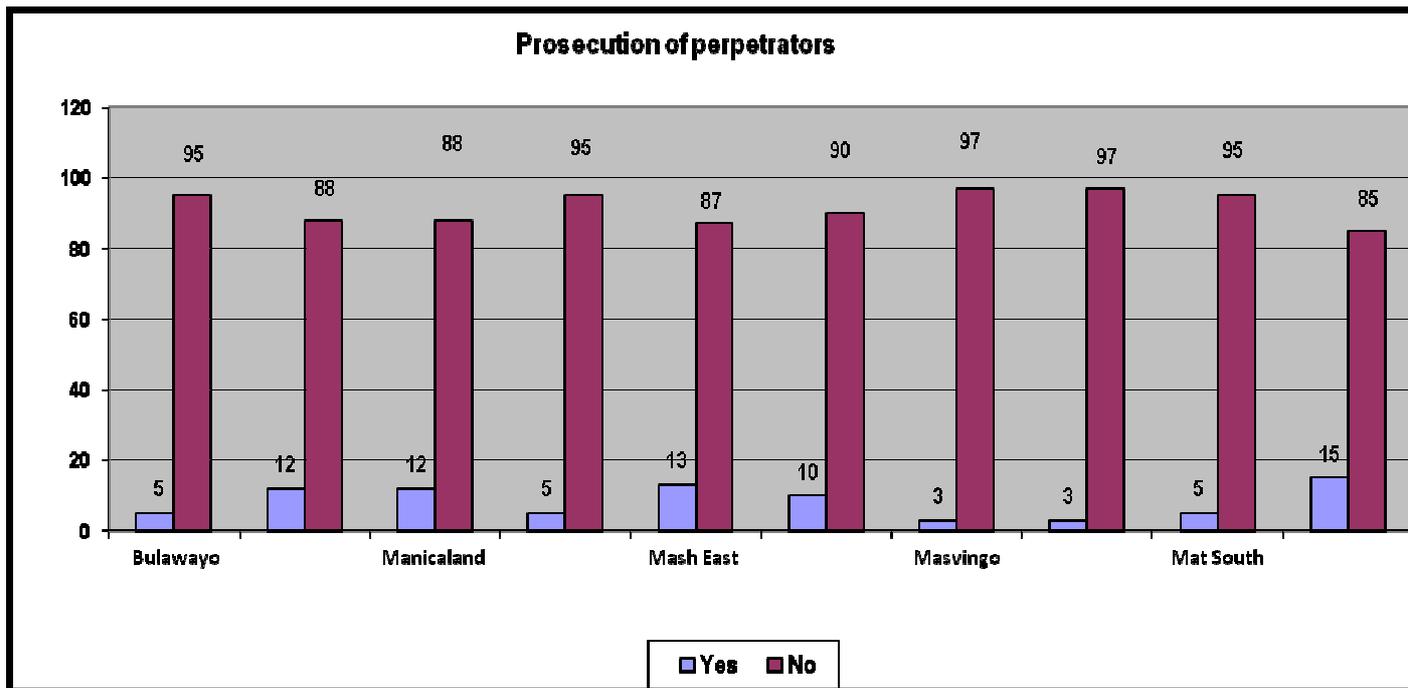
While compensation may not be possible in some instances, the demonstration of contrition and apologising assuages the victims' pain and shows acknowledgment of wrongs done. Observers were asked whether apologies have been made to victims in the communities, reports revealed that in 4% of the cases an apology had been made against 96% where no apology had been given. An apology is an inexpensive way of promoting peace and fostering healing in traumatised communities. Lack of apologies does not engender reduction of hostilities and sources of antagonisms in communities. This further belies shortcomings in the national healing process where no holistic programmes or actor has been taken to date by the Organ on National Healing.

In addition, reports indicate that compensation to victims has not taken place even using the existing traditional structures in communities. Observers' reports reveal that 96 per cent of the victims have not received any compensation for losses suffered due to human rights violations. A provincial picture below shows that perpetrators restitution initiatives outside of the national discourse though insignificant in numbers.



ZESN believes that a delicate balance has to be maintained between punishing perpetrators and national reconciliation in a country that has been torn by conflict. The culture of impunity that has been created by the in balance between reconciliation and justice which could explain the continued human rights violations that Zimbabweans have been subjected to notwithstanding the presence of the Government of National Unity. Measures to remove antagonism have not been put in place and reconciliation and national healing have been emphasised at the expense of the victims' right to justice. The absence of punishment has in fact led perpetrators to believe that they are above the law and indirectly resulted in victims taking the law into their own hands which begets more violence.

Asked if perpetrators have been prosecuted, the observers reported that the majority of perpetrators have not been prosecuted. The graph shows an illustrative picture by province:



The Organ on Reconciliation and National Healing has been viewed as ineffective by citizens in the execution of its mandate. Evidence from the Mass Public Opinion Institute in a survey conducted in 2011, indicated low levels of trust in the Organ by citizens. In addition, the Organ has not been able to fully articulate its mandate of bringing true national healing and reconciliation given its structural and functional problems.

While it is important to forgive, restitution is critical as victims of violence lost property among other things. The emphasis on healing and reconciliation has denied victims closure. It has resulted in denial and oblivion as well as encouraged impunity as opposed to justice.

4. State organs and institutions

Parties agreed that “state institutions and organs do not belong to any political party and should be impartial in the discharge of their duties”. Steps were to be taken to ensure that state organs and institutions adhered to the rule of law and remain non partisan and impartial. Reports from observers reveal the continued use of state institutions to serve political party ends. Observers reported on the partisan nature of state institutions such as the police and the district administrators in the discharge of their duties. This has resulted in continued discrimination that does not foster social cohesion which is critical for national healing and reconciliation.

5. The Elections Roadmap

SADC Summit of Heads of State and Government held in Windhoek on the 17th of August, 2010, it was resolved that the inclusive Government and the political parties should “*find an uninterrupted path to free and fair elections and the removal of all impediments to the*

same". Parties that are signatories to the Global Political Agreement assigned their negotiators to draw up a roadmap defining milestones to be executed and implemented before the next election. The roadmap intended to usher in free and fair elections after implementation of all provisions. These milestones and signposts include:

- a) the lifting of sanctions,
- b) the constitutional process,
- c) media reform,
- d) electoral reform,
- e) rule of law,
- f) freedom of association and assembly,
- g) Legislative agenda and the actual election.

The roadmap is supposed to usher in democratic elections which will bring to an end the transitional government. As of the end of the year five issues pertaining to, the staffing of ZEC, security sector, violence, repealing POSA and observers had not yet been finalised. Key issues of national healing and reconciliation were omitted from the document, yet there is need for restitution. The roadmap if finalised might pave the way for the holding of credible elections. Zimbabwe does not need a piece-meal approach. However what is critical is political will and commitment and to ensure that it is buttressed by complimentary electoral laws.

The failure to discuss and conclude on the road map means that reforms have been stalled once again.

6. The Legislative Framework

Various bills were gazetted in 2011. The GPA and Constitutional Amendment number 19 recognise that legislative reforms are of paramount importance for creating an enabling environment for credible elections. The Human Rights Commission Bill and the Electoral Amendment Bill were gazetted towards the middle of the year in 2011. Public hearings for both bills were conducted, albeit marred with violence. The Human Rights Commission Bill was introduced in Parliament. Progress on amending the POSA has been stalled in Parliament by the senate.

Electoral Amendment Bill

The following are the major issues that were covered by the Bill:

- Voter Registration and the Voters Roll
- Polling Station Based Voters Roll
- Presidential Elections and Results
- Pre-Emption of Results – the '*Biti*' Clause

-
- Vote Recounts
 - Voter Education
 - Election Observation and Accreditation
 - Nomination of Candidates
 - Voting Processes and Procedures
 - Voting By Illiterate or Physically Handicapped Voters
 - Postal and Special Voting
 - Politically Motivated Violence and Intimidation
 - Media Coverage of Elections
 - Electoral Court
 - Delimitation of Constituencies
 - Independence of the Commission

After the public hearing processes that were marred by irregularities, the bill did not make it to parliament. The session of parliament closed before the bill had been introduced to parliament. In addition, there was an apparent lack political will to see the bill through as the parties kept changing positions. While some aspects were progressive, others were problematic given the context of Zimbabwe's politics.

Implications for free and fair elections

James Nits in his book **Management Dimension of Free and Fair Elections** states that:

“To determine whether an election has been free and fair the election must be conducted under conditions that enable the voter to cast his or her vote as he or she wishes purely on his or her accord. The condition must be such as the voter is able to cast his or her vote for whomever candidate he or she wishes to vote for. There must be no obstruction, harassment, hindrance, threats or intimidation. There must be no bribery to induce the voter to vote in one way or the other. There must be no conditions creating fear in the minds of the voters for prosecution or victimisation after elections have taken place.”

Given the issues that have been raised above, threats and intimidation have been used and are still used as a way to interfere with electoral processes so as to bring about a certain electoral outcome. The continuation of human rights violations in communities will affect voter turnout and lead to further polarisation of already divided communities.

The prevalence of the various forms of human rights violations denying citizens a voice. The UNDP publication on Elections and Conflict Prevention (2009) states that, *“Elections that give voice to citizens are a critical means of conflict management through peaceful deliberations and decision making processes in which “winners” carry out promised policy initiatives and programmes and losers are given an opportunity to serve as loyal opposition and to try again in future elections”*. The muzzling of citizens voices is a threat to free expression of citizen choices and so this needs to be jealously guarded as the genuineness of an election hinges of freedom of choice.

Continued human rights violations have the effect of reducing voter turnout which has already plummeted and this is evidenced by the ZEC's 2008 harmonised election analysis. Zimbabweans are divided along fault-lines of political party affiliation creating an "either you are with us or them" mentality. The Organ on National Healing and Reconciliation needs to play a critical role in the achievement of social cohesion. This is a role they obviously cannot play alone given past performance, which gives impetus to the need for collaborative efforts between the organ and civil society.

Programming that seeks to ensure a free and fair election needs to focus on a number of activities which are not limited to:

- Legal reforms to strengthen the electoral processes
- Securing the independence of ZEC and strengthening its capacity to enforce the code of conduct for political parties
- Public awareness efforts on fundamental rights and freedoms such as the right to a free vote and freedom from intimidation and harassment
- Training political parties on peaceful methods of campaigning and cultivating a culture of tolerance
- Engagement with the media on reporting that promotes social cohesion and respects the rights of citizens to accurate information
- Creating community structures for community conciliation
- Peace campaigns
- Traditional leaders' forums on human rights and their role in the protection of these rights
- Strategic leadership development and training

In conclusion, the year 2011 was characterised by opportunities and challenges, successes and failures in the governance of Zimbabwe. The parties in the GPA agreed to the promotion of values and practises of tolerance, respect for human rights and non violence. However, differences in political ideologies as well as lack of political will to reform remain evident, characterised by increased polarisation, hate language, simmering violence and tensions in the Inclusive government. The need for political reform remains alive and critical in Zimbabwe as we prepare for the referendum and the general election. To bring finality to the Zimbabwean crisis, there is need for an election that ushers in a legitimate government chosen by the people. Elections are meant to provide citizens with real and genuine opportunities to make choices. Let the citizens speak through the ballot.

