

SOUTH AFRICA'S DIPLOMATIC RELATIONS WITH ZIMBABWE
FROM 1990 TO 2010

Thesis submitted in partial fulfilment of the requirements for the degree

Doctor of Philosophy in African Studies

by

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ABSTRACT

There is a political conflict in Zimbabwe between the ruling Zimbabwean African National Union-PatrioticFront (ZANU-PF) and the opposition party, the Movement for Democratic Change (MDC). Political conflict is a battle that occurs between two or more sides with different beliefs. Although Zimbabwe is a sovereign state, South Africa used a foreign policy of “quiet diplomacy” to contribute to the peaceful resolution of Zimbabwe’s political conflict. A sovereign state is a state which administers its own government and is not dependent upon or subjected to another state.

Dissent in Zimbabwe centres around the land issue, land ownership, land reform, and land appropriation – problems caused as a result of parliamentary and presidential elections. Land reform led the government to introduce “Operation Murambatsvina” which was a campaign to forcibly clear slum areas across the country. The government depicted the operation as a crackdown against illegal housing and commercial activities and as an effort to reduce the risk of the spread of infectious disease in these areas.

South Africa’s “quiet diplomacy” succeeded in the peaceful resolution of the Zimbabwean political conflict because the land issue was deemed legitimate; however, the methods used for land reform seem to be problematic. For a way forward, the Zimbabwean government needs to be accountable, transparent and democratic.

The researcher used a qualitative research method to gather an in-depth understanding of human behaviour and the reasons that govern such behaviour. The researcher asked broad questions and collected word data from participants. The researcher used different approaches in collecting data, such as narratology, storytelling, classical ethnography and shadowing. In addition the researcher used primary and secondary sources.

Keywords: Dispossession, majority rule, operation Murambatsvina, sanctions, quiet diplomacy.

DEDICATION

This thesis is dedicated to my wife, Yvonne Busisiwe Nematswerani and my children, Mukovhe, Balanganani, Rofunwa, Ronewa and Muneyi. It is also dedicated to my mother, Mrs Masindi Nematswerani. It is further dedicated to my elder brothers, Nkhumeleni Samuel Nematswerani and Dr Humbulani Ephraim Nematswerani and my younger brothers, Ntakadzeni Nematswerani and Khwathelani Nematswerani.

DECLARATION

I, **Mbulaheni Nematswerani**, hereby declare that the thesis for the PhD in African Studies at the University of Venda submitted by me has not been previously submitted for a degree at this or any other university and that it is my own work in design and execution and that all reference material contained therein have been duly acknowledged.

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Lastly, I thank, the Almighty God who gave me strength and good health to achieve this goal.

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ABBREVIATIONS

AFP	Agence France Press
AIPPA	The Access to Information and Protection of Privacy Act
ANC	African National Congress
AU	African Union
AZAPO	Azanian People's Organisation
DFA	Department of Foreign Affairs
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
IDASA	Institute for Democracy in South Africa
MDC	Movement for Democratic Change
MIC	Media Information Commission
NGO	Non Governmental Organisation
OAU	Organisation of African Unity
PAC	Pan Africanist Congress
POSA	Public Order and Security Act
SA	South Africa
SADC	Southern African Development Community
UN	United Nations
UNSC	United Nations Security Council
US	United States
ZANU-PF	Zimbabwe African National Union Patriotic Front
ZBC	Zimbabwe Broadcasting Cooperation
ZCIO	Zimbabwe Central Intelligence Organisation

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CHAPTER 1

1. 1 Introduction

There is a political conflict in Zimbabwe between the ruling Zimbabwean African National Union-Patriotic-Front (ZANU-PF) and the opposition party– the Movement for Democratic Change (MDC). Because of the diplomatic relationship between South Africa and Zimbabwe, the South African government decided to contribute to the solution of Zimbabwe’s political conflict. Therefore, this research study intends to discuss the role played by the South African government in trying to contribute to the resolution of the Zimbabwean political conflict from 1990 to 2010.

The problems in Zimbabwe centred on (1) the land reform, (2) land ownership and (3) land appropriation. This means that the way in which the Zimbabwean government dealt with the land issue directly led to the conflict between the opposition MDC and the ruling ZANU-PF. The problem was not necessarily land, but political interest between the ruling ZANU-PF and the main opposition party, the MDC. The land issue has been manipulated politically.

On the other hand, there was a conflict of land between white farmers and ZANU-PF. The government began forcing white farmers off their land in 1999. Along with these, there was forced and often violent removal of white farmers in the land redistribution programme, which led to the destruction of much of Zimbabwe’s agricultural base. Over 100 000 farmers, farm workers and their families lost their homes and jobs. Although majority rule had been implemented, 70% of commercially arable Zimbabwean land was owned by whites, who constitute one percent of the population. Only a tiny proportion of the land had been reallocated to blacks.

The MDC’s first opportunity to test opposition to the Mugabe government came in February 2000, when a referendum was held on a draft constitution proposed by government. Among other things, the new constitution would permit President Robert Mugabe to seek two additional terms in office, granted government officials immunity from prosecution, and authorised

government seizure of white-owned land. Government organised a group of war veterans and sanctioned an aggressive land redistribution programme that was characterised by forced expulsion of white farmers and violence against both farmers and farm employees.

The Southern African Development Community (SADC) has been involved with Zimbabwean politics since 2001. In 2007, SADC formally designated President Thabo Mbeki to mediate the dispute between ZANU-PF and the MDC after Tsvangirai was severely beaten by government security services in March of that year. South Africa adopted a policy of “quiet diplomacy” in dealing with Zimbabwe, for which it has been extensively criticised.

1.2. Background to the study

1.2.1. From 1960 to 1980: Political relationship between South Africa and Zimbabwe

From 1960, Zimbabwe had been a country of two factions, namely, the ruling white minority who wanted complete independence from Britain and the indigenous African majority who wanted greater control of their country and an end to institutional racism. Raftopoulos and Mlambo (2009:141) state that “In 1965, Zimbabwe declared unilateral independence from Britain with minority white ruling government under Prime Minister Ian Smith”.

In 1974, the Zimbabwe African National Union (ZANU) under Robert Mugabe, and Zimbabwe African People's Union (ZAPU) under Joshua Nkomo united to form a “Patriotic Front” against the segregationist regime of Prime Minister Ian Smith. The name of the new party became ZANU-PF under the leadership of Robert Mugabe. In 1976 the Smith government agreed in principle to majority rule and to a meeting in Geneva with Black Nationalist leaders to negotiate a final settlement of the conflict. Blacks represented at the Geneva meeting included ZAPU leader Joshua Nkomo, ZANU leader Robert Mugabe, the United African National Council (UANC) and its chairman, Bishop Abel Muzorewa, and former ZANU leader Rev. Ndabaningi Sithole. The meeting failed to find a basis for agreement because of Smith’s inflexibility and the inability of the black leaders to adopt a common political front.

On 3 March 1978, the Smith administration signed the internal settlement agreement in Salisbury with Bishop Muzorewa, Rev Sithole and Chief Jeremiah Chirau. Following the elections in April 1979, in which his UANC party established a majority, Bishop Muzorewa assumed office on 1 June 1979, becoming “Zimbabwe-Rhodesia’s” first black Prime Minister. However, the implementation of the new black majority government did not end the guerrilla conflict.

On 21 December 1979, parties signed an agreement at Lancaster House calling for a cease-fire, new elections, a transition period under British rule, and a new constitution that would implement majority rule while protecting minority rights. The agreement specified that upon the granting of independence, the country’s name would be Zimbabwe.

In 1980 free democratic elections were held in Zimbabwe. According to Raftopoulos and Mlambo (2012:166), the British government formally granted independence on 18 April 1980 to the former Rhodesia. Throughout this time, South Africa was ruled by the white minority apartheid government. Two strong liberation movements, namely the African National Congress (ANC) and the Pan Africanist Congress (PAC) existed in South Africa.

1.2.2. From 1980 to 1988: Political relationship between Zimbabwe and South Africa

In 1980 Zimbabwe became a democratic state under the leadership of Prime Minister Robert Mugabe. At that time South Africa was still under the apartheid regime led by Prime Minister PW Botha. Engel (2003:68) comments that the relationship between Zimbabwe and South Africa was determined by suspicions and threats. As far as suspicions were concerned Mugabe accused the South African government of training and harbouring “Zimbabwean dissidents” consisting of former members of auxiliary forces of the UANC who were about to commit acts of sabotage in the country. Secondly, Prime Minister Mugabe was dissatisfied with the Botha regime because it refused to acknowledge the results of the March 1980 elections in Zimbabwe. When the South Africa government refused to accept the March election results in Zimbabwe, President Mugabe indicated that South Africa would not be allowed to retain its diplomatic office in the Zimbabwean capital, Harare. President Mugabe also refused Zimbabwe to have a “political relationship” with South Africa and that the future of the South African diplomatic mission in

Zimbabwe was under “active consideration”. There was no political and diplomatic relationship between Zimbabwe and South Africa because of the South African policy of apartheid, although a trade and economic relationship between two countries continued.

1.2.3. From 1989 to 1994: Political relationship between South Africa and Zimbabwe

When FW de Klerk became South African President in 1989, he announced major reforms including the unbanning of South African Liberation Movements, the African National Congress, (ANC), the Pan African Congress (PAC), Azanian People’s Organisation (AZAPO) and the release of ANC leader, Mr Nelson Mandela. President Mugabe welcomed the reforms. As a result, bilateral relations between Zimbabwe and South Africa became more readily evident in three areas: political contacts, visa regulations and security policy.

As far as political contacts were concerned, Neil Van Heerden, former South African Director General of Foreign Affairs was permitted to visit Harare in 1990 to hold informal talks with Zimbabwean officials. In addition, six South African members of Parliament led by Tommy Abrahams also visited Zimbabwe. Engel (1993:96) states that “these political contacts were paralleled by visits of Zimbabwean politicians to South Africa. For example, three ZANU-PF Ministers attended the funeral of the late PAC President Zeph Mothopeng in Johannesburg”. In 1991, Desmond Krogh, a special advisor to the governor of the South African Reserve Bank and former governor of the Reserve Bank of Zimbabwe was allowed to meet President Robert Mugabe. In the same year, the South African trade representative Nico Nel attended the opening of the Zimbabwean Parliament.

These developments culminated in the first official contact President Mugabe had with a South African Cabinet Minister when he met Foreign Affairs Minister, Pik Botha, at the signing ceremony of the Rome Peace Accord on Mozambique. Finally, a delegation of the South African Parliament arrived in Zimbabwe at the invitation of the Zimbabwean Speaker of Parliament and held discussions with various Zimbabwean members of Parliament.

According to Engel (2003:79) the parameters for future bilateral co-operation were laid out by

the Zimbabwean Foreign Affairs Minister Shamuyarira and the South African Foreign Affairs Minister Pik Botha who met in the South African border town of Messina. The meeting was regarded as a prelude to the establishment of very strong and clear links between South Africa and Zimbabwe.

The talks between Shamuyarira and Botha paved the way for the first face-to-face meeting between the presidents of Zimbabwe and South Africa. The meeting took place in Botswana, hosted by Botswana's President, Sir Ketumile Masire, the ANC President Nelson Mandela and Lesotho's deputy Prime Minister, Selomatsi Baholo. The meeting emphasised both the importance of Zimbabwe as a regional power and its role as one of the mediators in the region. The meeting commenced with a symbolic handshake between FW de Klerk and Robert Mugabe.

The fifteen years of confrontation between the two states finally came to a formal end. Zimbabwe's Foreign Minister announced the establishment of diplomatic relations between South Africa and Zimbabwe with effect from 29 April 1994, just two days after South Africa's general elections. This was proof that the new democratic government in South Africa was ideologically acceptable to Zimbabwe.

1.2.4. From 1994 to 1999: Political relationship between South Africa and Zimbabwe

On 27 April 1994, the apartheid government was replaced by a new era of democratic government of majority rule when South Africa held its first democratic elections. The ANC won the elections. Nelson Mandela became the first black South African president and the ANC formed a Government of National Unity composed of different political parties. Since South Africa gained her democracy in April 1994, Zimbabwe had experienced problematic relations with her neighbours, including South Africa.

Zimbabwe's problem with South Africa was that President Robert Mugabe did not want President Nelson Mandela to become chairman of SADC. Another problem was that many Zimbabweans moved illegally to South Africa, Mozambique, Malawi, and even Zambia due to the economic crisis in Zimbabwe. However, on the formal level of politics, security and the

economy, the relationship between the South African government and the Zimbabwean government was not affected as there was an understanding between the two countries.

Zimbabwe experienced a lot of violence and torture against those who opposed the ZANU-PF government. The international community, like the countries in the Southern African region, could not afford to ignore the unravelling of an untenable situation in Zimbabwe. Engel (2003:80) observed that the crisis in Zimbabwe adversely affected economic and trade flows, investment and tourism in the region, as well as burdening neighbouring economies with a significant flow of migrants. Organisations such as SADC and the Commonwealth were equally concerned about the crisis in Zimbabwe and its possible spill-over effects.

According to Engel (2003:83), “between 1994 and 1999, the political and economic conditions of Zimbabwe deteriorated”. This means that from being one of the industrialised economies in Africa and an agricultural breadbasket, Zimbabwe experienced an economic contraction of more than 30 percent and a massive food deficiency. The import and export of goods and products between Zimbabwe and South Africa were very high.

As far as security was concerned, armed forces from both sides resumed interchanges at both bilateral and regional levels. This was the South African foreign policy towards Zimbabwe between 1994 and 1999.

From 1994 to 1999, bilateral relations between South Africa and Zimbabwe were reasonably good. A degree of competition existed between the two leading figures in the region, Mandela and Mugabe. The rivalry between them may have also affected certain aspects of the bilateral relationship. For instance, negotiations on the renewal of a trade agreement that had expired in 1992 took a long time to conclude. In summary, the first phase of the bilateral relationship of the two independent states was marked by a simmering rivalry over regional leadership and this spilled over into trade and economic issues.

1.2.5. From 1999 to 2004: The Use of Quiet Diplomacy

The Government of South Africa under President Mbeki in 1999 introduced a policy of quiet diplomacy towards Zimbabwe. The reason of introducing quiet diplomacy was to make a contribution to the solution of the Zimbabwean political conflict. Lodge (2003:34) argues that quiet diplomacy was the South African foreign policy towards Zimbabwe based on an amiable contribution to the solution of Zimbabwean political conflict, while diplomacy can also be defined as the peaceful conduct of relations among political entities, their principals and accredited agents.

This “dialogue between states” can also be defined as “the peaceful conduct of international relations by negotiation rather than by force, propaganda, or recourse to law, and by other peaceful means, goodwill, which are either directly or indirectly designed to promote negotiations” (Meredith, 2002:98). Among other things the Zimbabwean political conflicts included the following: land ownership, land occupation, and problems caused by the results of both Parliamentary elections in 2000 and Presidential elections in 2002. The land occupations and year 2000 elections campaign following the referendum of the ZANU-PF government were characterised by widespread violence and lawlessness. The situation in Zimbabwe posed a difficult challenge to the Mbeki presidency, as it did to SADC. South Africa accepted “quiet diplomacy” as a means to contribute to the solution of the Zimbabwean political conflict. There was some hope that the land question would somehow be resolved once the parliamentary election was out of the way. The position of South Africa appeared to be that Zimbabwe had a genuine grievance on land issue, and that the British government and the white farmers should play facilitative roles in the resolution of the issue. Mbeki called for an end to the violence in the land reform programme and the year 2000 election disputes.

The relationship between South Africa and Zimbabwe was, so far, not bad. Between 2000 and 2001, there was a series of visits to Harare by President Mbeki and other government officials to Bulawayo to open Zimbabwe’s International Trade Fair. Bilateral meetings after the year 2000 elections included the engagement of senior South African ministers with their Zimbabwean

counterparts on post-election plans for economic recovery and a possible South African contribution to such a programme, with a particular focus on trade and financial issues.

Through quiet diplomacy, South Africa also played a role in persuading the United Nations (UN) to dispatch an envoy to Harare to discuss possible assistance for the land reform program. Lodge (2003:69) that “the envoy, Mark Malloch Brown, visited Harare in December 2000 for high-level talks relating to the land issue.” The Mbeki government sought to draw upon a third party from outside the region to weigh in on its diplomatic overtures. President Obasanjo of Nigeria accompanied President Thabo Mbeki to Harare to discuss both the land question and the breakdown of the rule of law.

These were the first of several visits by Mbeki-Obasanjo during 2001, 2002 and 2003. President Mbeki was unable to convince President Mugabe to change course. Mbeki also needed an astute move to cover himself in case there was some negative fall-out from the discussions. In 2001 and 2002, both Presidents Mbeki and Obasanjo pursued the same goal through the Commonwealth. All these parties tried with difficulty to restrain the Commonwealth heads of government by meeting the chairperson, John Howard (Prime Minister of Australia) who pushed for tougher measures against the Mugabe government. There was little to show for these diplomatic initiatives by the Mbeki government. They wanted to end political violence and implement land reform in an orderly and transparent manner.

Several developments from March 2002 put South Africa’s mediating approach to severe test. The first related to its government’s assessment of the 2002 Presidential elections. The second was its response to the position taken by the Commonwealth on Zimbabwe’s suspension in 2002 and the extension of the suspension in 2003.

When Jacob Zuma was appointed ANC president, he defended President Thabo Mbeki’s quiet diplomacy on Zimbabwe and said other countries had undermined South Africa’s efforts to resolve the crisis. Zuma indicated that quiet diplomacy on Zimbabwe will continue and that South Africa has confidence in it. President Zuma insisted that South Africa’s efforts to resolve the crisis in Zimbabwe had achieved more than that of any other country, including countries that

applied sanctions. When the Southern African Development Community (SADC) appointed President Zuma as its chief mediator for Zimbabwe in 2009, President Mugabe's critics hoped he would take a tougher line on Zimbabwe's president than his predecessor, Thabo Mbeki.

1.2.6. From 2004 to 2010: South Africa and the Role of SADC

South African President Jacob Zuma visited Zimbabwe to try and break the deadlock on the political agreement which had developed by the formation of the inclusive government in Zimbabwe. President Zuma arrived in Harare amid growing signs of stalemate in the 13-month-old unity government. Just a day before his arrival, Zimbabwe's Prime Minister Morgan Tsvangirai was already weighing in. He said the unity government had failed to institute significant democratic reforms and accused President Robert Mugabe of blocking them. Tsvangirai appealed to President Zuma to intervene in his key position within the regional body of Southern African Development Community (SADC), which had guaranteed the political agreement. President Mugabe stripped several MDC ministers of their powers and replaced them with his own ZANU-PF allies. The ministry that controls elections is headed by the Minister of Justice, Patrick Chinamasa.

For most of 2009 until the present several outstanding issues around appointments, decision-making in the Inclusive Government, the proposed constitutional reform process, and the issue of sanctions against key members of ZANU-PF, ruined the agreement. In addition, the military and security sector persistently blocked the process of state reform. As ZANU-PF's continued existence is largely based on the coercive apparatus of the state, this became an issue. Also, the challenges of security sector reform were not included in of the mediation discussions and the final terms of the Global Political Agreement (GPA). ZANU-PF firmly reiterated that the current standing and future of the military was not up for discussion. This position needs to be understood against the background of ZANU-PF's reliance on the military to remain in power.

Hitherto, the MDC maintains that it wants to persuade President Zuma that the only solution to the deadlock is fresh elections. Ironically, President Mugabe has also called for new elections. Apart from the MDC ministers having been stripped of their jobs, the MDC says it will tell

President Zuma that its main concern remains the appointment of the pro ZANU-PF attorney-general, Johannes Tomana, as the MDC accuses him of selective prosecutions focusing on the MDC. The MDC insists that the appointment of Tomana was unilateral and, therefore, in violation of the political agreement.

1.2.7. 2005 Parliamentary Elections in Zimbabwe

A parliamentary election was held in Zimbabwe on March 31, 2005 to elect members to the Zimbabwe House of Assembly. ZANU-PF won the elections with 78 seats to the MDC's 41 seats. ZANU-PF had a two-thirds majority in the legislature, allowing the government to change the Constitution. The MDC denounced what it called "the sham elections", which it said had been marked by massive electoral fraud. MDC emphasised that the elections had not been fair and free. Although South Africa and other African countries accepted and declared the elections free and fair, European countries, in particular UK and the US, did not agree that the results were free and fair.

The parliamentary elections were preceded by several years of political repression, human rights violations and growing economic hardship, inflicted on the country by its own government. The opposition MDC was a prime target for intimidation and violence.

The humanitarian crisis deteriorated sharply since May 2005 because of Operation Murambatsvina (A government campaign of demolition and evictions directed against 'illegal' small traders and informal housing in Harare and other urban centres).

1.2.8. 2008 Presidential Elections in Zimbabwe

In April 2007, the South African President Thabo Mbeki, at the behest of SADC and the international community, was designated to serve as mediator between President Mugabe's government and the MDC. The mediation aimed to define a mutually agreed election date and procedures to rewrite the constitution. President Mugabe announced that harmonised elections

would be held on 29 March 2008, despite Morgan Tsvangirai's protests that the mediation was still underway and that there was not enough time to campaign.

Presidential elections were held in 2008. Election Day was largely peaceful, with observers from the African Union, SADC, and the Pan African Parliament present. Observers from the Western nations, including the United States, were not invited.

The Zimbabwe Electoral Commission announced that the MDC won presidential elections by 47.9 percent of the votes and ZANU-PF got 43.2 percent of the vote. The election results necessitated a second round presidential run-off. Due to the widespread political violence, Tsvangirai withdrew from the run-off, leaving President Mugabe as the only active participant in the second round elections, which was won by an overwhelming margin. Following widespread condemnation of the electoral process, the ZANU-PF and MDC factions concluded in September 2008, under the mediation of President Mbeki, a power-sharing deal to create an all-inclusive government. Negotiations faced a problem when Mugabe and Tsvangirai failed to reach any agreement on the allocation of government ministries.

1.2.9. SADC and Zimbabwe

The regional body had taken steps to specifically address the political violence in Zimbabwe. Yet, any direct mediation was left to South Africa. Chikane (2012:135) "In 2007, SADC formally designated President Mbeki to mediate the dispute between ZANU-PF and the MDC after Tsvangirai was severely beaten by government security services in March 2007." While the mediation produced some changes to the electoral law, many felt that the MDC was coerced into supporting the changes. The African Union and the SADC advocated the formation of a government of national unity. In the meeting organised before the African Union summit in Sharm el-Sheikh, Mbeki attempted to foster discussions between the MDC and the ZANU-PF to form a Government of national unity.

1.2.10. Memorandum of Understanding (MOU)

Following domestic and international protests regarding Mugabe's inauguration, ZANU-PF and MDC resumed negotiations with President Mbeki as leading SADC mediator. On 21 July 2008 the leaders of the two MDC factions and ZANU-PF signed a memorandum of understanding (MOU) which set terms for the forthcoming dialogue. The MOU envisaged that the parties would form an inclusive government. On 15 September 2008, Morgan Tsvangirai, President Mugabe and Arthur Mutambara signed a Global Political Agreement (GPA) to establish an inclusive transitional government. Under the agreement, Mugabe would retain the presidency and Tsvangirai would become prime minister. Each would have two deputies. Ministries would be divided among the three political parties.

After five months of negotiations to resolve issues left unaddressed by the GPA of 15 September 2008, the MDC agreed to enter into government alongside ZANU-PF. Many key issues still remained unresolved, such as the appointment of senior government officials, the release of political detainees, and the creation of a national security council to curtail the authority of the security chiefs. Despite these issues, Constitutional Amendment 19 was passed by Parliament on 05 February 2009, paving the way for the creation of a transitional government.

1.2.11. Government of National Unity 2009

The coalition government was formed after the disputed and violent elections that had been held in March 2008. The Government of National Unity refers to Zimbabwe's coalition government that was formed on 13 February 2009 following the inaugurations of Morgan Tsvangirai as Prime Minister and Thokozani Khuphe and Arthur Mutambara as Deputy Prime Ministers. It is a coalition organised among President Robert Mugabe's ZANU-PF, Tsvangirai's MDC and Mutambara's MDC, as agreed to during negotiations. The South African government and the Southern African Development Community (SADC) played a significant role in the formation of the Zimbabwean coalition government.

President Jacob Zuma of South Africa gave an optimistic assessment of Zimbabwe's government of national unity, saying he believed the worst of the country's troubles were over. President Jacob Zuma held talks in Harare with President Robert Mugabe and Morgan Tsvangirai in a bid to end feuding between the coalition partners. President Robert Mugabe said the country's power-sharing government should end with fresh elections in 2011. The power-sharing government was formed after President Mugabe had signed a political agreement with his long-time rival, Morgan Tsvangirai, leader of MDC. The political agreement had a two-year span and was due to expire in February 2011.

1.2.12. Power-sharing in Government

Under the terms of the deal, President Mugabe remained Chairman of the National Security Council and the cabinet, while Tsvangirai would hold the positions of Chairman of a Council of Ministers and deputy Chairman of the 31 member cabinet, comprised of fifteen ministers from Zanu-PF, sixteen from the MDC, as well as three ministers from Arthur Mutambara's breakaway MDC faction.

Acting in his capacity as the SADC appointed mediator to resolve outstanding issues under the GPA, South African President Jacob Zuma recommended at an August 2010 SADC summit that the parties to the GPA resolve outstanding matters (namely the swearing in of deputy Agriculture Minister Roy Bennett, the appointment of Attorney-General Johannes Tomana and the appointment of Reserve Bank Governor Gideon Gono) within one month.

1.3. Hypothesis

Widespread political violence and conflicts in Zimbabwe have led to the South African government introducing a policy of quiet diplomacy towards Zimbabwe to contribute to the solution of Zimbabwean political disputes that were affecting neighbouring countries, especially South Africa.

1.4. Problem Statement

World-wide, policy formulation is the core of any government. No government can rule without policies. Policy gives a government direction which takes into account the specific concerns, needs and vision of that government. Therefore, government should make sure that all government policies are functioning. Government should ensure that there is policy enforcement and implementation. Its policy must achieve its aims, objectives and purposes. The South African government introduced a policy of quiet diplomacy in order to assist with the resolution of the Zimbabwean political dispute.

1.5. Theoretical Framework

1.5.1. Liberalism Theory

This research study is informed by the liberalism theory. Liberalism theory is the belief in the importance of liberty and equal rights. It goes on to support fundamental ideas such as constitutions, liberal democracy, free and fair elections, human rights, capitalism, free trade and the freedom of religion.

The South African Government tried by all means to convince the Zimbabwean government to resolve their differences in a democratic way and to hold free and fair elections. The South African government also strengthened the relationship between the two countries by advising the Zimbabwean government to form a government of national unity and to respect human rights. These ideas are widely accepted, even by political groups that do not openly profess a liberal ideological orientation.

Liberalism rejects foundational assumptions that dominate theories of government such as hereditary status, absolute monarchy and the divine right of kings. It holds that the rule of law should replace absolutism in government, that rulers are subject to the consent of the governed, and that private individuals have a fundamental right to life, liberty and property. It also endorses the idea of a polity administered with regard to equal rights, equal freedom of speech and the

idea of a kingly government which mostly respects the freedom of the governed. In this sense liberalism contrasts with realism where the state is seen as a unitary actor.

It is also noted that the South African government emphasised the rule of law in Zimbabwe not to dictate over its people. The South African government should also advise President Robert Mugabe to step down in favour of the Zimbabwean people, as he had been in power since 1980. The relationship between South Africa and Zimbabwe started long ago during the era of colonial rule. Although their foreign policies differ, the countries have many things in common such as their political, economic and trade relationships.

Political realism prioritises national interest and security over ideology, moral concerns and social reconstructions. Idealism on the other hand differs from realism and liberalism because it holds that a state should make its internal political philosophy the goal of its foreign policy. Idealism supports the idea that ending poverty at home should be coupled with tackling poverty abroad.

Idealism is also marked by the prominent role played by international law and international organisations in its conception of policy formation. One of the most well-known tenets of modern idealist thinking is democratic theory, which holds that states with similar modes of democratic governance do not fight one another.

The revolutionaries in the American Revolution and the French Revolution used liberal philosophy to justify the armed overthrow of tyrannical rule. Liberal democracies triumphed in two world wars and survived major ideological challenges from fascism and communism. Conservatism, fundamentalism and military dictatorship remain powerful opponents of liberalism. Today, liberals are organised politically on all major continents. Therefore, liberalism theory is likely to be the theory of choice with regard to the political situation in Zimbabwe; it may be said that liberalism is the answer of which modernity is the question.

1.6. Aim of the Study

The aim of this research project is to focus on and reflect about the contribution of the South African government to the solution of the Zimbabwean political conflict and the formation of the Government of National Unity (also known as the coalition government) in Zimbabwe.

1.7. Objectives of the Study

The objectives of this study include the following:

1. To analyse quiet diplomacy in order to find a reliable decision about proper foreign policy planning.
2. To analyse the impact of quiet diplomacy on the Zimbabwean people.
3. To create an understanding of the Zimbabwean conflict by using quiet diplomacy as a policy.
4. To analyse the role of the Government of National Unity and to establish an understanding of the power sharing government.

1.8. Research Questions

The study attempts to answer the questions posed to contribute to the solution of the Zimbabwean political conflict and the formation of the Government of National Unity in Zimbabwe. Any research is conducted with the aim of acquiring knowledge through findings and suggesting solutions to the problems. The original research question is a directive that leads the researcher immediately to examine a specific performance; the site where the events are occurring; documents; interact with people or interview informants. It is unethical to conduct research without first identifying a question(s) or problem(s).

1. Is quiet diplomacy a solution to the Zimbabwean political conflict?
2. Has quiet diplomacy succeeded or achieved its aims and objectives so far?
3. How do Zimbabwean people understand quiet diplomacy?
4. How does the Government of National Unity function to solve its problems and has it been effective in its attempts so far?

With the above-mentioned questions, data concerning quiet diplomacy towards Zimbabwe were collected, presented, interpreted and analysed. The data were also analysed to illustrate South Africa's contribution to the Zimbabwean political disputes.

1.9. Research Methodology

Research methodology refers to the operation within which facts are placed so that their meanings may be clear. Research methodology entails the instruments or tools and techniques which a researcher uses to collect, analyse and interpret data.

In this study the researcher used the qualitative research method. Qualitative research method is employed in many different academic disciplines, traditionally in the social sciences, but also in market research and other contexts. Qualitative researchers aim to gather an in-depth understanding of human behaviour and the reasons that govern such behaviour. The qualitative method investigates the *why* and *how* of decision-making, not just what, where and when. Hence, smaller but carefully focused samples are needed more often than large samples. Qualitative research asks broad questions and collects word data from participants. Researchers look for themes and describe the information in the themes and patterns pertaining specifically to that set of participants.

Qualitative methods produce information only on the particular case studied and any more general conclusions are only hypotheses. Qualitative research is often used to gain a general sense of phenomena and to form theories that can be tested using further quantitative research. For instance, in the social sciences qualitative research methods are often used to gain a better understanding of such things as intentionality and meaning.

Qualitative researchers may use different approaches in collecting data, such as the grounded theory practice, narratology, storytelling, classical ethnography or shadowing. Examples of data that may be collected include interviews and group discussions, observation and reflection field notes, various texts, pictures and other materials. Qualitative research often categorises data into

patterns as the primary basis for organising and reporting results.

Qualitative researchers typically rely on the following methods for gathering information: participant and/ or non-participant observation, field notes, reflective journals, structured interviews, semi-structured interviews, unstructured interviews and the analysis of documents and material. In the social sciences the most frequently used qualitative research approaches include the following types: ethnographic, critical, foundational, historical, phenomenological and philosophical research; grounded theory and ethical inquiry.

The researcher interviewed twenty Zimbabwean people who live in South Africa. The purpose of the interviews was to find out whether they knew and understood the policy of quiet diplomacy. The researcher interviewed both illiterate and educated people from Zimbabwe between the ages of twenty and sixty years. The researcher ascertained that those who were educated knew about quiet diplomacy and they believed that it favoured President Robert Mugabe's Zanu-PF. The researcher also found that the uneducated did not know anything about quiet diplomacy. Some Zimbabwean people said that they were not satisfied with the way that the Zimbabwean government was treating its own people. They mentioned unhappiness regarding farm invasions, land reform policy and land appropriation.

Some Zimbabwean people said that they were not in favour of President Mugabe's leadership style and they regarded him as a dictator. They said that he should step down because he had been ruling Zimbabwe since 1980 when Zimbabwe gained its independence from Britain. Others said that there were no jobs in Zimbabwe just because of President Mugabe and his Zanu-PF government. However, they all appreciated that the South African government had done all it could to advise the Zimbabwean government to rule by democratic principles.

Although the Zimbabwean people showed various understandings about the relationship between South Africa and Zimbabwe, they all shared similar views with regard to the rule of law in Zimbabwe.

1.10. Primary and Secondary Sources

Primary sources provide detailed information of current research, theories and methodologies used to investigate the problem. The secondary sources consulted consist of existing documents, books and journals that were assimilated by the researcher.

1.11. Research Design

A research design is a roadmap or a blueprint for research. It involves deciding not only how many people would be used as subjects but also what their particular characteristics should be and under what circumstances the data would be gathered. Both qualitative and quantitative methods were used in this study.

1.12. Contribution of the Study to the Body of Knowledge

This research study investigated whether the South African government was capable of contributing to the solution of international and regional conflicts. The research would confirm South Africa's status of being recognised by the international community as a country capable of solving conflict amongst and within countries. The research project purports to analyse how the Zimbabwean political conflict could be solved through quiet diplomacy and how this policy could contribute to improve international relations between South Africa and other countries, especially the relationship between South Africa and Zimbabwe.

The research study would emphasise that it is important for South Africa to have a hearty relationship with neighbouring countries, like Zimbabwe. It would give policy-makers an idea on how to formulate better foreign policies. The research project would also contribute to knowledge for academic purposes. It examines the problems which lie behind "quiet diplomacy".

The research project would help us to learn that political conflict leads to the migration of people from one country to another. Also, it would indicate that political conflict destroys the economy of the country.

1.13. Delimitations of the Study

The researcher attempted to conduct the research in all areas without undue limitations. However, the availability of funds and time played a significant role.

1.14. Ethical Considerations

Ethical considerations in research protect the respondents against any harm that could be caused by the research. The following principles guided the entire research study.

1.14.1. Informed Consent

A common understandable language was used for interviews. Basically, researchers should use the language which is best understood by participants in order to obtain their appropriate informed consent (source).

1.14.2. Protection from Harm

The researcher must ensure that participants are protected from any physical or psychological harm, which the researcher may cause.

1.14.3. Data Analysis Procedure

In this study, data collected using the questionnaire and the interviews are presented in the form of tables. Qualitative data are presented and analysed in the form of themes.

1.14.4. Anonymity and Confidentiality

The anonymity of participants is maintained, and all participants were given the assurance that data collected from them would be treated as confidential.

1.14.5. Deception of Participants

Deception of participants has to do with falsifying information and giving false information about the performance of participants (source). Deception is an unethical way of procuring information from the respondents.

1.15. Organisation of the Thesis

Chapter One introduces the study and provides an overview. It also details the background to the study; specifies aims and objectives, states the hypothesis and methodology to be used. It also formulates the problem statement.

Chapter Two reviews relevant literature. The purpose of this chapter is to review other works done in this area in order to avoid duplication. It also serves to situate the study, and provides a theoretical framework that provides context to the study.

Chapter Three presents, interprets and analyses the data collected.

Chapter Four discusses the formation of the Government of National Unity.

Chapter Five deals with the impact and problems of the Government of National Unity.

Chapter Six concludes the study and suggests the way forward.

CHAPTER 2

2. LITERATURE REVIEW

2.1. Introduction

Land reform in Zimbabwe began in 1979 with the signing of the Lancaster House Agreement i.e. an effort to more equitably distribute land between the disenfranchised blacks and the minority whites who ruled Southern Rhodesia from 1890 to 1979. The government's land distribution is the most crucial and most bitterly contested political issue surrounding Zimbabwe. Zimbabwe was divided into two periods namely, from 1979 to 2000, where a principle of willing buyer, willing seller was applied with economic help from Great Britain and secondly, beginning in 2000, the fast-track land reform program. President Robert Mugabe targets were intended to alter the ethnic balance of land ownership.

2.2. Land Distribution Prior To The Fast-Track Land Reform Programme

Land ownership at Zimbabwe's independence was highly unequal and heavily skewed in favour of white farmers who constitute a tiny minority of the total Zimbabwean population. "The difference in land size was also paralleled by the difference in land quality: land in the best agro-ecological zones and best suited for intensive farming was occupied by white commercial farmers" (Mumbengegwi, 1985: 269). Expectations were high among peasants for the immediate redistribution of land upon independence, but very little was achieved in redressing the land situation and this partly explains why, two decades after independence, white farmers found themselves victims of farm invasions and farm seizures that mirrored the land seizures of the colonial period. Between 1980 and 1990, the Zimbabwean government was constrained by the Lancaster House Constitution which basically sought to protect white property ownership through the "willing seller – willing buyer" principle and compensation for land had to be paid in foreign currency. Expropriation of land was only allowed in the case of under-utilised land but with compensation at full market value. Upon expiry of the Lancaster House guarantees in 1990, the Zimbabwean government set the wheels in motion for a more effective land reform

programme. Little had been achieved during the period when the original Lancaster House restrictions were in place.

2.3. Land Acquisition Act Of 1992

Amendments were made to the Constitution (Amendment Act No 30 of 1990; Amendment Act No12 of 1993) to allow for the acquisition of land by government for resettlement purposes. Section 16 of the Constitution, on property rights, and previously guaranteeing white property ownership was amended and the Land Acquisition Act (LAA) of 1992 was promulgated. “Although the LAA was mostly a compromise to serve the Zimbabwean government’s conflicting interests, it was met with tremendous criticism both locally and internationally, particularly from some international donors and financial institutions” (Mumbengegwi, 1985: 223). The LAA empowered the President of Zimbabwe to acquire any land where it was reasonably necessary for purposes set out in the Act. This designation was necessary both for planning purposes and enabling the government to acquire larger blocks of land for “proper resettlement schemes where the necessary infrastructure could be economically provided” (Buckle, 2002: 181). Although this was largely meant to pacify the rural electorate that needed land, this land legislation only went to benefit the rich and ruling elite who engaged in a massive “scramble” for the best land. The taking and allocation of land was riddled with corruption and political clienteles. The majority of processed applications and allocations of land went to the newly created elite black farmers, aspiring black investors and agriculture graduates. There was a shift from allocating land to the needy to those who are “capable” to develop the land and from 1991 onwards the long-standing land resettlement lists were simply shelved. The LAA was not such a drastic departure from the Lancaster House Agreement.

Despite the above-mentioned efforts, the land question remained largely unresolved for most of the 1990s. Although the demand for land was always there, it did not have enough voice to make its demands felt, while on the government’s part, land reform remained largely in the realm of rhetoric throughout the 1980s and 1990s. The late 1990s saw a surge in political opposition to the ZANU-PF as well as civil society organisations demanding good governance and participation in policy-making (Buckle, 2002: 176). Zimbabwe was also going through an

economic crisis towards the late 1990s. Improperly implemented, the Economic Structural Adjustment Programme (ESAP) had devastating consequences for the majority of Black lobby groups. The Affirmative Action Group and the Zimbabwean Farmers Union (ZFU), which claimed to represent the rural landless, were fighting for the same constituency as government and, as a result, they were “controlled politically and co-opted financially”.

2.4. Land Resettlement

The Government launched the second phase of land resettlement in 1997 where farms were to be acquired on the basis of the guidelines set out in the 1990 Land Policy Statement. Progress under this land resettlement programme was very slow and the number of families resettled by the end of 2000 still fell short of the 1980 targets. The referendum defeats of 2000 led to the government orchestrating a radical process of sixteen Farms were to be acquired according to the following criteria: a) the farmer is an absentee,

b) the farm is derelict or under-utilised or

c) the farm borders on a communal area.

Constitutional and legislative amendments at issue in the Campbell trial despite its referendum defeat in February 2000, the Zimbabwean government preceded with constitutional reforms in order to fast-track its land reform programme. Section 16A (1) of the Constitution articulates the foundation and the basis for land reform, the nature and history of land dispossession of the Zimbabwean people. It evokes nostalgia for the nationalistic impetus that drove people to fight against the minority rule and for land. The land reform and resettlements have come to be called the “Third Chimurenga” since they operate on the same nationalist doctrine as in the war of liberation. Most importantly, this constitutional amendment shifts full responsibility for the payment of compensation for compulsorily acquired farms from Zimbabwe to Britain as the former colonial power. The amendments provide that where compensation is deemed to be payable, a variety of factors will be taken into account: the resources available to 18 Section 16 A of the Constitution of Zimbabwe sets the foundation and basis of land reform; the nature and history of land dispossession of the Zimbabwean people; shifts full responsibility for the payment of compensation for compulsorily acquired farms from Zimbabwe to Britain as the

former colonial power; and sets out ambiguous factors to be considered in determining compensation.

The compensation assessment principles in the LAA were changed, with compensation payable only for improvements on or to the land. The land itself would be taken without compensation and echoed the same sentiments, placing an obligation upon the British government to set up a special fund for the payment of compensation to farmers whose land is compulsorily acquired (Meredith, 2002: 221). Given the deepening economic crisis in Zimbabwe since 2000 and the level of inflation at present, it is obvious that these factors would be used to justify payment of a pitiful small amount of compensation. It would also be possible for the government simply to create further restrictive criteria through an Act of Parliament, something which the government has not shown an aversion to, particularly when it serves its political interests. “With these constitutional amendments in place, the government speedily proceeded, without much discussion, to amend the LAA” (Meredith, 2002:114). The compensation assessment principles were changed, compensation being payable only for improvements effected on or to the land. The land itself would be taken without compensation. According to the Constitution, claims for compensation would have to be directed to the British government as the Zimbabwean government disowned responsibility for paying compensation. “As expected, the amendments to the LAA echoed the same sentiments, placing an obligation upon the British government to set up a special fund for the payment of compensation to farmers whose land is compulsorily acquired” (Hill, 2003: 264).

Part 1 of the new Schedule to the Act sets out the assessment principles for compensation for specific kinds of improvements but it does not clarify how an improvement is to be valued. What is clear, however, is that the original cost or the approximate cost of the improvement at the time of acquisition is not the basis of the assessment. Payment of compensation continues to be payable in instalments, but with a reduced initial payment. Only one quarter of the compensation is payable at the time of acquisition or within a reasonable time thereafter, with another quarter payable within two years and the remainder in five years. There is no provision for payment of interest on the compensation. Other influencing factors specified are: the history of land ownership, use and occupation of the land; the price paid for the land when it was last acquired;

the cost or value of improvements on the land; the current use to which the land and any other improvements on it are being put and any investment which the State or the acquiring authority may have made which improved or enhanced the value of the land and any improvements on it.

These radical amendments to both the Constitution and the LAA rendered the land designation process redundant, for, having divested itself of the obligation to pay compensation for acquired land; there was no need for the government to earmark farms for future acquisition. As from 31 July 2000 an intensive land acquisition process began, complemented by farm invasions led by the war veterans. In September 2002, further amendments were made to the Constitution to expedite the land acquisition process. The 90days' eviction notice that was previously required was reduced to seven days and the fine for failure to comply with an eviction order was increased. The government's radical methods for acquiring farms were so effective that by the end of October 2002 only an estimated 600 to 800 of the 4500 white farmers remained on their land. Despite the above amendments to the LAA, farmers continued with court challenges to the acquisition of their farms and sought eviction orders in respect of the government-sponsored squatters on their properties.

The government needed to prevent these legal challenges to its competence to acquire farms compulsorily. The failure by the police to evict war veterans from farm properties prompted farmers to approach the courts for relief. An order to evict the land invaders was issued but this was not enforced. Further legislation was passed in 2005 that expedited the process of land expropriation and precluded farmers from contesting the expropriations in court. The government has since continued to acquire farmland belonging to white farmers. It is against the above history and background that the said amendment is being challenged in the SADC Tribunal.

2.5. Implications For The Region

The Zimbabwean land crisis resonates widely across the region. Progress on land reform has not been impressive in the Southern African region. In Zimbabwe such progress was only accelerated by the fast-track land resettlement programme. The Campbell case goes way beyond

Zimbabwean legislation; whatever ruling the Tribunal makes will have an impact on land reform in the region. SADC as a whole is affected by the following land issues:

- Land distribution that is inequitable, with limited rights and access for the majority; there is no land use classification in resettlement.
- Weak capacities of government agencies responsible for reform process and administrative processes that are government driven, with little participation of civil society; and
- A judiciary whose capacity is weak and often elite centred and lengthy court processes that delay resettlement and the payment of compensation.

Although applicable to the whole region, such issues are especially relevant to South Africa which inherited the same land iniquity when they gained independence and whose land distribution mirrors that of Zimbabwe.

It is clear to see that the fast-track land reform of Zimbabwe is hanging over these countries and there is pressure on government to expropriate land. Such developments, however, have an adverse impact on regional integration in SADC. While South Africa might be able to handle their expropriations differently in such a way that their economies and the general standard of living of their people are not affected, unfortunately, there exists a catalogued example of the effects of an intensive expropriation and land reform drive. Investors would definitely be worried, wondering if these countries are going down the Zimbabwean way. This does not augur well for the prospects of increased regional integration in the region. It is amidst the political and economic crisis gripping Zimbabwe that the SADC Free Trade Area has been launched. As previously mentioned, the land crisis goes to the core of Zimbabwe's problems.

2.6 Trade Protocol and Free Trade Area

The Free Trade Area is a product of the SADC Trade Protocol which was signed in 1996. The Trade Protocol contains the legal and structural framework for trade liberalisation in the region. It was signed pursuant to SADC's objectives which include the achievement of economic and economic growth for the region and the enhancement of the standard of life of the people of the

region, and the promotion of self-sustaining development on the basis of collective self-reliance and the inter-dependence of SADC member states (SADC treaty, Article 5).⁴³ The SADC FTA was declared at the 28th SADC Ordinary Summit of Heads of States and Government in Johannesburg, South Africa on 17 August 2008.

Although the Free Trade Area has since been opened, there are still some challenges that inevitably affect its viability. A bigger market created by the Free Trade Area will not guarantee an increase in intra-regional trade. Countries still need to develop and strengthen their industrial base so as to counter the supply side constraints that affect manufacturing output. At the same time, industrialisation will ensure the production of competitive and diversified products. As SADC countries struggle to achieve this, however, the de-industrialisation taking place in Zimbabwe and the destruction of an industrial base that was once second only to South Africa negates this effort and is at variance with the objectives of the region. It will be especially difficult for SADC to build and develop its infrastructure when other, already existing infrastructure is being allowed to decay. It is also highly debatable whether the region will be able to piggy-back Zimbabwe in its integration efforts amid the political and economic uncertainty. Eventually, the quiet diplomacy adopted by the region will become a liability for SADC. Part of the funding for the region's development, infrastructural and otherwise, is anticipated to come from foreign direct investment. However, the Zimbabwean political and economic instability make the region an unattractive investment destination. Having entered into a Free Trade Area, the region markets itself as a whole, and indeed, happenings in one country will reflect on the other countries. Action in regard of Zimbabwe is necessary if the region wants to be taken seriously and have influence on the global market.

As the region gears itself for 2010, it is uncertain how the Zimbabwean political and economic climate will be. The unity talks between the ruling party and the opposition, which spelled hope for the future of the country, have reached a deadlock. Once again the crisis seems unending. This will have an impact on tourism in the region, which would otherwise be boosted by the 2010 World Cup to be hosted in South Africa.

The Zimbabwean situation has an adverse impact on regional integration and threatens to further drag a process that, at best, is a very slow one. Peace and security are fundamental to regional economic development and integration. Whatever political and economic instability in one country will always spill-over to the neighbouring countries and affect the whole region. This is unfolding in SADC. The Regional Indicative Strategic Development Plan (RISDP) identifies poverty alleviation as one of the most important priority intervention areas, alongside trade, economic liberalisation and development. There is no food security in Zimbabwe, there is rampant inflation, and literacy levels are being threatened by the massive brain drain that has seen professionals leave the country for greener pastures; unemployment has reached crisis levels and, in general, the standards of living for the people of Zimbabwe have decreased dramatically. In a sense, Zimbabwe is contributing to the exacerbation of the poverty problem in SADC. “As people escape Zimbabwe in droves, Zimbabwe has become the source of migrant labour, particularly South Africa which, as the better developed economies, has had to absorb the bulk of Zimbabwe’s migration problem” (Knight, 2002:102).

This illustrates clearly the urgent need for the resolution of the Zimbabwean crisis as its effects go to the depth of every regional integration initiative and negate SADC’s core objectives. Once order and stability have been restored, it is unclear how the land situation will be resolved. A reversal of the land allocations will clearly not be welcomed by the poor, especially the rural electorate; at the same time, the agricultural economy, which once saw Zimbabwe as the breadbasket of Africa, has to be restored.

In principle, the case for land reform is watertight. The need for the urgent redistribution of land cannot be ignored. Had the Tribunal found in favour of the Zimbabwean government, there is ample evidence that the practice of compulsory acquisition of property is viable and well established in international law. But, however valid the concept of land reform, there are certain human rights norms that have to be adhered to in implementing it. The individual rights of a person must, at all times, be respected. There is no doubt that farmers in South Africa are apprehensive of a spill-over effect from the Campbell case.

The record of SADC in dealing with the Zimbabwe situation has not been impressive, to the extent that SADC can be said to have been complicit in the unravelling of Zimbabwe. President Mugabe has cleverly used the language of anti-imperialism to draw the support of SADC leaders, notably Sam Nujoma, former president of Namibia. The whole land crisis has been skilfully turned into a struggle between Third World and First World countries. The British protests at the land reform process and the decay of the rule of law in Zimbabwe are seen as veiled attempts to reinstate its imperialism. Notably, the South African government under the leadership of former president Thabo Mbeki has been most supportive of Mugabe and his land policies, and has chosen to ignore the failure of democracy and the rule of law, preferring instead to use quiet diplomacy in dealing with the situation. At times the South African leadership echoed Mugabe's sentiments in lambasting Britain and the West as the root cause of all of Zimbabwe's social, economic and political ills.

This is particularly significant in view of the fact that South Africa is probably the only country in SADC that has the "economic and political muscle to exert pressure on the Mugabe government" and the Zimbabwean government is heavily reliant on South Africa for its trade, oil and electricity supplies. SADC has largely been supportive of the Zimbabwean Government and has, to date, failed to condemn explicitly the human rights abuses that have accompanied the chaotic land reform programme. Only Zambia and Botswana have ventured to criticise Robert Mugabe and his government, but only in their country's capacity and not on behalf of SADC.

Zimbabwe has violated a number of provisions of the SADC treaty. Some of the reluctance to act might stem from the importance that is given to the concept of sovereignty by most African states which have resulted in the failure to establish strong regional bodies. By taking action against Zimbabwe, SADC states would be making themselves vulnerable to such actions themselves. This neglects the fact that integration as a principle entails the violation of sovereignty to a certain extent. In attempting to deal with the Zimbabwean situation behind the scenes, while expressing solidarity with Zimbabwe on the international front, SADC has set up an alliance. This is also highly significant when one considers that Namibia is also a former settler colony grappling with iniquities in land redistribution.

2.7 Fast-Track Land Resettlement

Beginning in 2000, the government began implementing its fast track land resettlement programme after the invasions began. In 2002 it passed the Land Acquisition Amendment Act to put a formal structure to the on-going fast-track land reform programme. They planned to acquire farms and resettle the farm invaders who had settled themselves in some farms they were not able to manage with crops they could not farm. Also, some farms were overcrowded and they also needed land to settle many other Zimbabweans and the displaced farm workers. The government designed two models for the fast track land resettlement programme. The Model A1 is to resettle people from the overcrowded communal farm areas onto acquired farmlands. Vice President Msika stated that “This model is government’s top priority.” Model A2 was designed to establish small to medium-sized commercial farms operated by black indigenous farmers.

The government gave 2,900 white farmers 90 days to cease production and vacate their farms. The Commercial Farmers Union membership dropped from 4,500 in 2000 to 3,200 in 2002. 3,178 farms with a settler capacity of 160,340 households were sub-divided by the government for resettlement in the Model A1 scheme, while 54,000 new commercial black farmers have been resettled under the Model A2 scheme. What was failed in a space of ten years, resettling 172,000 families in post-independence land reform, was achieved in a space of 4 years, as a total of 350,000 households have been resettled. Most farmers have been allocated 12-acre plots and carry out almost all the farming manually. Government had plans of support and assistance for these resettled farmers; however they have been very slow to be implemented. Yet the farmers are doing the best they can and the harvest looks promising. Silver Chinyane, a resettled farmer, says “We had to scratch to find some inputs, because backup facilities like tractors are so scarce.” With little by way of equipment, farmers manually tend their crops in Zimbabwe.

However, the land reform programme is far from over and successful despite the successful resettling of this significant number of people. During this period of resettlement between 2000 and 2003, agricultural production fell by 25%. Although some of this drop can be attributed to the 2002 drought, a significant portion of this drop is due to the fast track land resettlement and invasions of 2000 to 2003 which resulted in resettled farmers not knowledgeable in commercial

farming, especially large scale and in farming of some of the cash crops such as tobacco and cotton. The majority of these resettled farmers also lack the necessary capital to invest in cash crop farming which is capital intensive as they require chemicals, fertilizers, implements, and machinery.

Promptly providing these materials and monetary resources to these farmers will see production rapidly increase to pre-2000 levels and even exceed as these farmers will now be more motivated to work knowing they will reap the benefits and rewards of their hard work.

2.8. The First Phase Land Reform Programme

Immediately after the attainment of independence in 1980, the new government launched the first phase of the resettlement programme in September. “Besides redistributing land, this phase also focused on developing rural areas through the provision of infrastructure and other socio-economic services as to ameliorate the plight of the people negatively affected during the war of liberation” (Knight and Jenkins, 2002:288-289). Politically, it was seen as a vehicle that would enable the government to achieve peace and stability. Socially, it intended to address issues of equity in the distribution of land with a long term effect of ameliorating poverty among the rural populace. Economically, it was designed to improve agricultural productivity among the resettled families. This view was echoed by Joshua Nkomo who argued that “new settlements in the commercial areas must be real productive farm communities.” In this regard, the need to achieve national stability and progress in the country saw the resettlement programme being implemented in a planned and systematic manner. The need to achieve these objectives in turn dictated the criteria that were used to select beneficiaries and these included:

- Effectively landless people/families;
- Unemployed and poor families with dependants between the age of 18 and 55 years, and prepared to forego all land rights in communal areas;
- Returned Zimbabwean refugees;
- Experienced communal farmers prepared to forego communal land rights and relinquish any paid employment;
- Communal farmers with master farmer certificates.

2.9. Shortcomings of The First Phase

Although the first phase of the land reform was relatively well planned and supported, it failed to achieve set targets. Considerable amount of land was available through the willing buyer willing seller basis. Some white commercial farmers made their farms readily available as they abandoned their land during the war and just after independence. Donors were also forthcoming with financial assistance. For instance, in 1983, the British government gave about £40 million to the Zimbabwe government for the purpose of land redistribution. Other donor organisations, including the World Bank, USAID, Overseas Development Institute and the European Union (EU) also showed great interest in supporting the land reform. The real contribution however remained minimal. Particular reluctance was shown when it came to contributions for the actual acquisition of the land. On its part, government failed to vigorously pursue the land redistribution plan in order to resolve the land imbalance that existed.

For example:

- The government aimed to settle 162000 families during the period 1982 - 1985
- Acquire 8.3 million hectares from white farmers
- Managed to settle only 60000 families
- Managed to settle only 10000 families between 1985-1990.

The issue of land redistribution almost vanished from the national agenda during the mid-1980s, prompting some observers to claim that land was not the real issue in Zimbabwe as previously thought. It is also during this period that warning signs of the imminent land occupation problem became clear. Although isolated, squatting on vacant state and private land became common. Government reaction was to swiftly evict the squatters so as to make clear that invasions or squatting would not be tolerated as a way to speed up land redistribution. In a few cases, it bowed down to the squatters demands and acquired the land in question for resettlement. Commercial farmers, whose land had been occupied, sought legal action through courts and once empowered with eviction orders, they ruthlessly chased away the squatters.

In 1989, a vibrant opposition party, Zimbabwe Unity Movement (ZUM), led by Edgar Tekere, an erstwhile revolutionary colleague of Robert Mugabe was formed. This happened behind growing

disapproval of the slow pace of land reform by the rural population and over growing disillusionment over hardships caused Economic Structural Adjustment Programme (ESAP) by the urban dwellers. Government's response was to re-introduce land redistribution as a key issue on the national agenda. In 1989 government amended section 16 of the Lancaster House crafted constitution, which had governed the country for the past decade (Zimbabwe Amendment Act No. 11).

According to the amendment, all land– not just under-utilised land –was subjected to compulsory acquisition. In addition, all land for sale should be offered to the government first, before sold to a third party. Government would pay “fair compensation” within a “reasonable time” as opposed to “prompt and adequate compensation” as previously stipulated by the Lancaster House constitution. The amended constitution further provided that “no law shall be called into question by any court on the ground that the compensation provided by that law is not fair.”

The new constitutional framework was followed by The Land Acquisition Act in 1992, which implemented the principles set out in the amended constitution. The constitution was further amended twice in 1993 (Zimbabwe Amendment Act Nos. 12& 13). Despite these amendments, not much progress was made in terms of resettling needy people. About 400 farms were acquired, but unfortunately it is alleged that the bulk of these farms went to senior party officials.

Much could have been achieved in the first 20 years after independence and this could have avoided problems the country is facing today. Official reasons given by government for the slow progress in land reform are lack of resources, limited capacity of implementing agencies, constitutional constraints (e.g. willing buyer– willing seller basis) and the rise in land prices. The Lancaster House Constitution, which governed the country for the first ten years, only allowed government to acquire land through the conservative means of willingseller-willingbuyer. This approach was restrictive in that it denied government the right to purchase large tracts of land for large-scale resettlement schemes in one block. Land that was coming on the market was that which the whites were off-loading in marginal areas of the country. In a short space of time, land prices shot up drastically, making it difficult for the government to acquire land. This explains why 81% of the land acquired for resettlement in the first phase was in the more arid agro-

economic regions of the country. Even after the expiry of the Lancaster House Constitution on 18 April 1990, the government failed to raise adequate funds to acquire farms for resettlement. “Land prices shot up drastically from \$ZW 15.67/ha in 1980/81 to about \$92.24 in 1987/88” as cited by Palmer (1990). Government could not raise adequate funds for the buying of land, particularly considering the severe drought of 1982-84. By the mid-1980s it became clear that government gave more priority to immediate socio-economic needs such as education, health and rural development. The severe drought of 1982 to 1984 made the situation worse by forcing government to divert funds from land redistribution in favour of people’s immediate needs such as drought relief in the form of food rations.

Post-acquisition support for the resettled farmers also turned out to be very expensive for the government. In addition to providing agricultural support services (seeds, fertiliser, extension), government needed to provide adequate technical infrastructure in the form of roads, schools, clinics and other essential services which were previously non-existent in these areas.

2.10. Government Complacency

It is however argued that there are more fundamental causes to failures of the first phase of the land redistribution programme. Key among these are government complacency and lethargy, class interests as well as the lack of political will to implement agreed policies. A huge rise in communal agricultural production during 1981-87 may also have persuaded government to slow down the pace of land redistribution, thinking that it was not very necessary. In 1984 for instance, communal farmers delivered about 925 000 tonnes of maize to the market and this was almost enough to feed the entire nation that year.

Government’s complacency is demonstrated by minimal budget allocated for the purpose of land redistribution during the period 1980 to 1993. While the constitutional obligations imposed such a restrictive operational environment, the government’s rhetoric to resettle people did not match with its financial commitment. The government’s naivety is reflected in its short-term crisis management based on fiscal policies that evolved around the annual budget. The systematic nature in which the programme was being implemented meant that financial support was

required to provide the necessary infrastructure before the beneficiaries moved onto the land. Unfortunately, budget allocations were far below expectations.

2.11. The Second Phase Land Reform Programme

The second phase of the Land Reform and Resettlement Programme came into being at a time when the ruling government was reeling under a number of negative developments. Among such developments was the introduction of the Economic Structural Adjustment Programme (ESAP), whose impact on the economy and the general populace was negative. On the other hand, new political parties emerged that were determined to challenge the vanguard ZANU-PF government. The efforts from the opposition parties were complemented by the rise of the private media and civil organisations that also helped to disseminate information to the general public. These helped to a large extent in moulding the second Land Reform and Resettlement Programme.

Apparently the rising political opposition forced government to seriously think about resuscitating the resettlement programme, which had slowed down over the years. In April 1996, the National Land Acquisition Committee was formed at the ruling party's congress. The committee was sanctioned with the task of identifying land for resettlement. The tasks of this committee were by the Provincial Land Acquisition Committees at provincial levels. The formation of these institutions and the amendment of the Land Acquisition Act in 1996 accelerated the rate at which land was identified for acquisition. Hence by November 1997, the National Acquisition Committee had identified close to four million hectares of land countrywide.

This was a very important preparatory stage for the second Land Acquisition and Resettlement Programme. Once the farms had been identified and listed for acquisition, a preliminary notice of acquisition was sent to the property owners who were expected to respond. The preliminary notice of acquisition remained in force for a period of one year before the initial acquisition process began as by the provisions of the Land Acquisition Act (Chapter 20:10). Some authorities argue that this was the formal initiation stage for the second phase of the land reform programme. However, the farm owners contested most of these farms in the court of law.

Although government was now determined to deal with the land problem, it was again dogged by financial problems. It estimated that it would need about US\$ 1, 9 billion (about \$ZW 42 billion), which it hoped to raise from international donors. The government went on to unveil a US\$ 1, 9 billion budgets in the Revised Phase II.

Report on Zimbabwe's Land Reform Programme: For the A1 model that was targeted towards the poor and the landless, it was projected that 80% of the budget (about US\$1, 5 billion) would be committed to their support. The remainder (about US\$ 387 million) would be channelled towards the A2Model, which is a full-cost recovery model. The other funds for the A2 model would be obtained from lease rentals, agricultural land tax and from the actual purchase price from those who opted to buy their farms. The projected costs and expenditure up to 2004 is divided into two levels.

2.12. New Land Reform Policy 1991 To 1998

The government came up with a new and revised land reform policy after 1990, passing the Land Acquisition Act in 1992, which was supposed to speed up the land reform process by the so-called Land Designation and Compulsory Acquisition. This policy allowed government to acquire, for compensation, land that it deemed unproductive. Statistics showed that large-scale commercial farmers were utilising less than half of the 11million hectares of land they owned. However, this law was only applied to rural land as the government also relied on the economic output of these farmers. For almost similar reasons as in the 1980's, not much headway in terms of resettling the landless families was made. By July 1997 government had only acquired 3.5 million hectares. They had only managed to resettle 71,000 families out of the 162,000 target. Out of Zimbabwe's 12 million population in 1997, 4 000 white farmers still owned over 50% of land, an average of 2 000 hectares each.

One million black families were still living in overcrowded communal lands on an average of three hectares per family. This phase of the reform had failed as well. Britain, the US and other donor countries stopped donating to the land reform as they deemed it corrupt and unfair if the government compulsorily acquired farms. This led to the government, which was also now

facing other economic problems due to the ESAP programme, to run out of money for land reform.

The resettled families did not get much assistance from the government in terms of loans, training and infrastructure such as schools, clinics, and roads and other necessary infrastructure. With pressure from the thousands of landless Zimbabweans who wanted to be settled and those settled but lacking development and resources, the government convened the Land Reform Donor Conference in Harare in 1998 to present and involve them in their plans for the second phase of the Land Acquisition process.

2.13. Donor Conference, September 1998

This conference was attended by 48 major countries and donor organizations such as Britain, the United States, African countries such as South Africa, Middle Eastern and Asian countries as well as the UN, AU, IMF and the World Bank. The government published its policy framework for the Land Reform and Resettlement Programme Phase II (LRRP II) and gathered financial support for it. The government estimated that it would need US\$1.1 billion for the land reform process for the land acquisition, development, infrastructure and services such as roads, schools, clinics and farming implements. The government also required money to provide as credit for the resettled farmers as banks were not willing to lend the money. This plan intended the compulsory purchase over five years of 5 million hectares from the 11 million hectares owned by black and white commercial farmers, parastatals, corporations and multi-national companies. The government intended to purchase 1 million hectares every year for five years from 1998 to 2003 for redistribution. All the participants at this conference agreed and passed a resolution that land reform was essential for poverty reduction, economic growth and political stability. They also agreed with the urgency and fast track aspect of the programme. However, there was little commitment financially, with the major donors only pledging US\$100 million. This came with conditions such as that from Britain which insisted that the land acquisition should not be compulsory but on a willing buyer– willing seller basis.

2.14 Compulsory Acquisition Of Land

The policy proposed to compensate the infrastructure and capital improvements made on the farms. However, this was challenged constitutionally by the farmers and led to donors cut aid with only US\$ 100 million being pledged at the conference. The 1992 Land Acquisition Act was enacted to speed up the land reform process by removing the “willing seller– willing buyer” clause, limiting the size of farms and introducing a land tax, although the tax was never implemented. The Act empowered the government to buy land compulsorily for redistribution, and a fair compensation was to be paid for land acquired. Landowners could challenge in court the price set by the acquiring authority. Opposition by landowners increased throughout the period of 1992 to 1997.

British contribution in terms of aid to Zimbabwe stood at a half billion pounds since independence. Of this total, £47 million was targeted for land reform, and approximately £100 million was budgetary support which could have been used for land reform. Britain’s initial £44 million resettlement grant, which ran out by 1988, formally expired in 1996.

In the 1990s, less than 1 million hectares (2.47 million acres) were acquired, and fewer than 20,000 families were resettled. Much of the land acquired during what has become known as “phase one” of land reform was of poor quality, according to *Human Rights Watch*. Only 19 percent of the almost 3.5 million hectares (8.65 million acres) of resettled land was considered prime, or farmable.

In 1997 the government published a list of 1,471 farmlands it intended to buy compulsorily for redistribution. The list was compiled via a nationwide land identification exercise undertaken throughout the year. Landowners were given thirty days (as the Act demanded) to submit written objections.

On 5 November 1997, Britain described the new Labour government’s approach to Zimbabwean land reform. The British government did not accept that Britain had a special responsibility to meet the costs of land purchase in Zimbabwe. Notwithstanding the Lancaster House

commitments, Short stated that the government was only prepared to support a programme of land reform that was part of a poverty eradication strategy.

The British government stated that the programme of rapid land acquisition would be impossible to support, citing concern about the damage which this might do to Zimbabwe's agricultural output and its prospects of attracting investment.

In June 1998, the Zimbabwe government published its “policy framework” on the Land Reform and Resettlement Programme Phase II (LRRP II), which envisaged the compulsory purchase over five years of 50,000 square kilometres from the 112,000 square kilometres owned by white commercial farmers, public corporations, churches, non-governmental organisations and multinational companies. Broken down, the 50,000 square kilometres meant that every year between 1998 and 2003, the government intended to purchase 10,000 square kilometres for redistribution.

In September 1998, the government called a donors’ conference in Harare on LRRP II to inform the donor community and involve them in the programme. Forty-eight countries and international organisations attended and unanimously endorsed the land programme, saying it was essential for poverty reduction, political stability and economic growth. They agreed that the inception phase, covering the first 24 months, should start immediately, particularly appreciating the political imperative and urgency of the proposal.

The Commercial Farmers’ Union freely offered to sell the government 15,000 sq. kilometres for redistribution, but landowners once again dragged their feet. In response to moves by the National Constitutional Assembly, a group of academics, trade unionists and other political activists, the government drafted a new constitution. The draft was discussed widely by the public in formal meetings and amended to include restrictions on presidential powers, limits to the presidential term of office, and an age limit of 70 for presidential candidates. This was not seen as a suitable outcome for the government, and subsequently the proposals were amended to replace those clauses with one to compulsorily acquire land for redistribution without

compensation. The opposition mostly boycotted the drafting stage of the constitution, claiming that this new version was set to entrench Mugabe politically.

2.15. Chimurenga War or “Revolutionary Struggle”

Chimurenga is a Shona word which means to fight or struggle. *Chimurenga* or *Bongozozo* is a fight in which everyone at hand participates. It is a struggle for human rights, political dignity and social justice. Beginning in 2000, led by the war veterans of the Chimurenga war, landless blacks began to invade farms and seize white-owned land. With the government allowing them to do so without reproach, they invaded about 1000 farms. Of the 300 000 farm workers living and working on the farms, 150 00 lost not only their jobs, but homesteads in these invasions.

2.16. Farm Workers

These were the only homes they knew. However, after the invaders drove them off the farms, they now became the landless, forming squatter camps. These farm workers who had been born and who had worked on the farms all their lives are the ones who would have had knowledge and know-how on how to run the farms and equipment. This is because the new settler invaders had no knowledge or training in commercial farming, let alone large-scale commercial farming.

They also did not have the capital required to purchase the necessary inputs required for farming such as tractors, fertilizers, seeds and other expensive inputs. There was no coordination or cooperation whatsoever, the settlers farmed their own little pieces of land, under-utilising the land and making it inefficient. The government in the meantime did not plan or put into action any programme to help them, as it did not have adequate financial resources or trained human resource personnel to provide training and assisting them with inputs and implementation.

2.17. Human Rights In Zimbabwe

Human rights developments in Zimbabwe in 2012 were dominated by the drafting of a new constitution and the implementation of the Global Political Agreement (GPA), signed in 2008, which created the power-sharing coalition between the former ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), and the opposition party Movement for Democratic Change (MDC). There had been little progress in implementing key aspects of the GPA, notably the need for institutional and legal reforms, ending political violence, and ensuring accountability for past human rights abuses.

2.18. Operation Murambatsvina or Operation Drive Out Rubbish

Operation Murambatsvina, officially known as *Operation Restore Order* is a large scale Zimbabwean government campaign to forcibly clear slum areas across the country. The continuing erosion of human rights in Zimbabwe was highlighted in 2005 by Operation Murambatsvina, the government's programme of mass evictions and demolitions of shacks and deprived 700,000 men, women and children of their homes, their livelihoods or both, throughout the country. The evictions and demolitions occurred against a background of general dissatisfaction in many of Zimbabwe's urban areas over the political and economic situation in the country. The country is currently spiralling into a huge economic and political crisis.

2.19. Conclusion

For as long as it remains unresolved, the issue of land in Zimbabwe will be an emotional issue that is highly susceptible to manipulation from politicians. It will always create irrational inclinations towards harmful radical land reform programmes. The level of human rights violations that have come out of the process of land reform in Zimbabwe is unacceptable. This should not detract from the fact that unresolved land iniquities will foster anger and frustration from the landless, directed at those who have the resources. Unfortunately, race will always play a role; as a legacy of the past political dispensation of minority rule, Whites own most of the

resources, especially agricultural land. The next chapter presents, interprets and analyses the data collected in the course of the research.

CHAPTER 3

3. PRESENTATION, INTERPRETATION AND ANALYSIS

3.1 Introduction

The Zimbabwean government has introduced a number of policies in order to control Zimbabwean people and Media. Some of the policies are the following. The Public Order and Security Act (POSA). The POSA gave powers to the Zimbabwe Republic Police (ZRP) to control public gathering. The POSA prescribe the time at which the public gathering may commence and its maximum duration. It prohibits persons taking part in the public gathering from entering any public place specified in the directions. It indicates that precautions to be taken to avoid the obstruction of traffic along any thoroughfare. It also prescribes the route to be taken by any procession. The law further requires the organiser to appoint marshals to assist in the maintenance of order at the public gathering. The Act severely restricts freedom of assembly and movement, and provides the police with wide discretionary powers. The government further introduced The Access to Information and Protection of Privacy Act (AIPPA). The AIPPA was enacted to oversee how the print and electronic media operated in the country. It was enacted in 2002 by a ZANU-PF-dominated parliament. The law has a provision for a Media and Information Commission (MIC), a body whose first chairman was Tafataona Mahoso. Since it was introduced, foreign news organisations have been banned from reporting in Zimbabwe while some newspapers in Zimbabwe have been shut down. Prof. Jonathan Moyo and Patrick Chinamasa were credited with writing that piece of legislation.

3.2 Public Order And Security Act 2002 (POSA)

The Public Order and Security Act (POSA) is a piece of legislation introduced in Zimbabwe in 2002 by a ZANU-PF dominated parliament. The Act was amended in 2007. The chief architects of the Act when it was formulated were Jonathan Moyo and Patrick Chinamasa. Many regard POSA as an Act that helped Robert Mugabe consolidate his power. The law gave untold powers to the police, the Zimbabwe Republic Police (ZRP). The draconian Public Order and Security

Act (POSA) is set for amendment following the proposition of a Private Members' Bill supported by Mutare Central Member of Parliament, Innocent Gonese. Amendments are targeted to remove harsh provisions of the law. The proposed amendment comes at the backdrop of a stuttering constitutional reform process that has failed to be rolled out. The Parliamentary Portfolio Committee on Home Affairs and Defence chairperson and Glen View South Member of Parliament, Paul Madzore said the committee plans to hold nationwide consultations to seek for people's views on the proposed amendments.

Defending the Private Member's Bill during a committee hearing convened to solicit his response to concerns raised by officials from the Ministry of Home Affairs; Gonese disputed claims that "the Bill is contrary to the Global Political Agreement (GPA)". He noted that "whilst the GPA is committed to the freedom of association and assembly, POSA on the other hand limits freedoms by placing inordinately wide and sweeping powers in the hands of officers of the Zimbabwe Republic Police (ZRP)" (Darnolt and Laakso 2003: 219). Enacted in 2002, POSA has been excessively used by the police to curtail freedom of association and assembly. The proposed bill now seeks to vest the powers to prohibit public gathering in the hands of Magistrates, and will also seek to redefine public gathering so as to be relevant only to those gatherings which pose a threat to public safety.

According to the proposed bill, "the regulating authority will only be able to apply to a judicial officer to impose conditions on a public gathering, rather than arbitrarily restrict peaceful protests" (Raftopoulos and Mlambo, 2009: 214 and 224). Gonese has dismissed the assertion by the Home Affairs' officials that the Bill is a negation of the doctrine of Separation of Powers and proved to the portfolio committee that the Constitution of Zimbabwe provides for the introduction of Private Member Bills, as do the Standing Orders and Rules of Parliament.

Since its enactment, the State has not achieved a single conviction on cases brought on the strength of the harsh provisions of POSA proving the failure by the police to correctly interpret and apply the law.

According to POSA, the organisers of a public gathering shall give at least four clear days' written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held: Provided that the regulating authority may, in his discretion, permit shorter notice to be given. For the avoidance of doubt, it is declared that the purpose of the notice is required by subsection:

- (a) to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; and Public Order and Security Act (Chapter 11:17) as amended in 1st March, 2007.
- (b) to facilitate co-operation between the Police Force and the organiser of the gathering concerned; and
- (c) to ensure that the gathering concerned does not unduly interfere with the rights of others or lead to an obstruction of traffic, a breach of the peace or public disorder.

Furthermore, any Saturday, Sunday or public holiday falling within the four-day period of notice referred to in subsection (1) shall be counted as part of the period, where there are two or more organisers of a public gathering, the giving of notice by any one of them in terms of subsection (1) shall be a discharge of the duty imposed upon the other or others by that subsection, this section shall not apply to public gatherings of a class described in the Schedule. Lastly, any organiser of a public gathering who fails to notify the regulating authority for the area of the gathering in accordance with subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

The Public Order and Security Act (POSA) were enacted on 10 January 2002, just before the presidential elections of 2002. POSA was condemned by lawyers, human rights activists and journalists on the grounds that it contained several of the anti-democratic features of the Law and Order Maintenance Act (LOMA) which had been introduced by the colonial authorities in 1960. LOMA was widely used by the Rhodesian authorities to suppress civil dissent and many nationalists, including President Robert Mugabe, were victims of this repressive legislation, being detained for periods ranging up to many years. "The Act severely restricts freedom of

assembly and movement, and provides the police with wide discretionary powers” (Darnolf and Laakso, 2003: 211).

3.2.1. Aims and objectives of POSA

The police may prohibit demonstrations in an area for up to three months if they believe this is necessary to prevent public disorder. Public gatherings will not be allowed unless seven days notice is given to the police. The police are allowed to take measures including lethal measures to suppress an unlawful public meeting. POSA also contains a number of provisions restricting freedom of expression. POSA further indicated that it is an offence to publish or communicate false statements which may be prejudicial to very broadly defined State interests, in the absence of reasonable grounds for believing they are true. According POSA it is a crime, punishable by imprisonment of up to a year, to make statements “knowing or realising that there is a risk or possibility” of engendering feelings of hostility towards, or cause hatred, contempt or ridicule of, the president (Hill, 2003: 168).

3.3. The Access To Information And Protection Of Privacy Act 2002 (AIPPA)

Access to Information and Protection of Privacy Act (AIPPA) is law in Zimbabwe. It was enacted to oversee how the print and electronic media operated in the country. It was enacted in 2002 by a ZANU-PF-dominated parliament. The law has a provision for a Media and Information Commission (MIC), a body whose first chairman was Tafataona Mahoso. Since it was introduced, foreign news organisations have been banned from reporting in Zimbabwe while some newspapers in Zimbabwe have been shut down. Jonathan Moyo and Patrick Chinamasa were credited with writing that piece of legislation.

The Zimbabwean Access to Information and Protection of Privacy Act of 2002 applies to information that is being held by public bodies only. The right of appeal where access to information has been denied lies to the Zimbabwe Media and Information Commission. As well as the records that are normally subject to exemption in other jurisdictions, the Act exempts what is called protected information from disclosure. This includes advice relating to policy,

information relating to inter-governmental relations or negotiations and information relating to the financial or economic interest of public bodies or the State.

The Access to Information and Protection of Privacy Act, commonly referred to as AIPPA, was passed by the Parliament of Zimbabwe on 31 January 2002 and signed into law by President Mugabe on 15 March 2002” (Darnof and Laakso, 2003: 219-220). It may accurately be described as the leading weapon of the government and the ruling Zanu-PF party in their ongoing campaign to stifle independent media reporting in Zimbabwe. Crafted by the Minister of State for Publicity and Information in the President’s Office, Jonathan Moyo, AIPPA’s trail of destruction can be traced to its enactment in 2002 and the plethora of arrests, intimidation, harassment and measures of control which immediately followed. These have been directed at media workers of all sorts – journalists, photographers, vendors and even drivers as well as media outlets and, in particular, the independent print media. The closure, on 12 September 2003, of Associated Newspapers of Zimbabwe (ANZ), publishers of *The Daily News* and *The Daily News on Sunday*, ranks as AIPPA’s severest blow against freedom of the press in Zimbabwe.

A brief history of the adoption of AIPPA provides some context as to why such a repressive piece of legislation was adopted. An important part of the context is the growing challenge within Zimbabwe to ZANU-PF’s political dominance. By 1999, ZANU-PF was confronted with an increasingly popular opposition party, the Movement for Democratic Change (MDC), as well as an increasingly independent and assertive print media. This led to an intensification of attempts to muzzle the independent media. “The 22 February 2000 Constitutional Referendum marked a turning point in the fortunes of the ZANU-PF party and was an important milestone in the political history of Zimbabwe” (Meredith, 2009:214). In the referendum, the people resoundingly rejected the government’s sponsored draft constitution, the first time that ZANU-PF had ever been defeated in an election.

A key concern was that, even though the Constitutional Commission that produced the draft had been handpicked by the government, the executive insisted on a number of clauses in the draft constitution, including one mandating official acquisition of land, on a compulsory basis and

without compensation. The referendum loss was the first indication that ZANU-PF was starting to lose its former almost total grip on political power. It also heralded in a period of political violence and economic decline, after a period of relative calm and prosperity. The Referendum was followed by parliamentary elections in June 2000. The MDC won a significant number of parliamentary seats, close to an overall majority of those which were openly contested (the president appoints 20 members of parliament directly), becoming the first party outside of government to wield parliamentary influence since the 1987 unity agreement between ZANU-PF and ZAPU.

After near defeat in the parliamentary elections of 2000, ZANU-PF, as governing party, put in place a number of measures to increase its control over the media, access to information and the electoral process. These measures intensified in the lead-up to the presidential election of March 2002, although AIPPA was passed into law only after Mugabe had been declared the victor in that election. A particular aspect of these measures was the emergence on the Zimbabwe political scene of a new breed of State-sponsored militias, created to terrorise political dissent, regardless of the form it took. The government trained youths in military strategy under the guise of the controversial National Youth Training Service. The brutal violence perpetrated by these militias is well-known and more than 180 people were reportedly murdered in the name of land redistribution and the oft-abused concept of sovereignty between February 2000 and March 2002.

The government also acted to further tighten its already considerable control over the government media, both print and broadcast, including the Zimbabwean Broadcasting Corporation (ZBC), as well as leading newspapers such as *The Herald* and *The Chronicle*. Measures included changing the governance systems to give it more direct influence and removing independent-minded editors and senior journalists. At the same time, there was a sharp increase in attacks against the independent media, both verbally and physically. *The Daily News*, for example, suffered two very serious bomb attacks, one against its premises on 22 April 2000, just before the parliamentary elections and another on 28 January 2001, which destroyed its printing presses. Numerous copies of independent newspapers have been seized by pro-government groups, journalists and readers of the independent media have been attacked and

beaten, and independent newspapers have even been banned from entering certain areas. These “unofficial” actions have taken place in the context of repeated lambasting by officials, including the executive, of the independent media, suggesting that the latter are not only trashy and full of libel but also injurious to the national interest and even security.

The government also introduced a number of repressive laws, starting with the Broadcasting Services Act 2001, passed on 3 April 2001, which gives the government very extensive control over any future private broadcasters, should licences ever be issued (so far, none have). This was followed by the Public Order and Security Act (POSA) 2002, adopted on 10 January 2002, shortly before the presidential elections and then, more or less concurrently, by AIPPA. POSA imposes a number of stringent content restrictions on the media and also poses strict limits on demonstrations and public gatherings.

“AIPPA itself seeks to control the independent media in a number of key ways” (Hill, 2003:168). It grants wide-ranging powers to a Media and Information Commission, which is firmly under government control, and imposes registration/licensing requirements on both media outlets and individual journalists. It also imposes a number of strict content restrictions on the media. These measures have, cumulatively, resulted in a high degree of control on the part of the government over the flow of information and a corresponding shrinking of the space for freedom of expression in Zimbabwe. They have also coincided with an extremely severe economic crisis, which has seen unprecedented contraction in the economy, as well as a period of serious social and political unrest, and violence.

This report focuses on the first two years of AIPPA, describing the legislation, critiquing it and providing an overview of the way in which it has been implemented and the impact this has had on the free flow of information and ideas in Zimbabwe. It also provides an overview of the context in which AIPPA operates, including other repressive laws and measures which prevent independent perspectives from being voiced.

3.4. The Media And Information Commission (MIC)

AIPPA establishes a Media and Information Commission (Article 38) and gives this body a wide range of regulatory powers over the media, including in relation to refusals to disclose information, registration of the media, accreditation of journalists and monitoring media content (Articles 9(3) and 39). The Commission is governed by a board, all of whose members are appointed by the Minister responsible for information, after consultation with the President (Article 40). Significantly, the requirement that thereof the five members of the Media and Information Commission should be nominated by journalists' or media associations was removed by the 13 October 2003 amendments.

The Minister sets the term of office, as well as other terms and conditions of office, including allowances, appoints both the chair and the vice-chair, and may remove a member on a number of grounds, some of which are highly subjective (for example, where the member has conducted him- or herself in a manner which “renders him unsuitable”) (Fourth Schedule, pursuant to Article 40(3)). The commission has broad investigative powers; more or less equal to those granted under the Commission of Inquiry Act (section 50) and has broad powers to impose severe sanctions, including termination of a media outlet's registration or of a journalist's accreditation.

It is well established that bodies which exercise direct powers in relation to the media must be protected against political interference (i.e. that they must be independent of government). The reasons for this are obvious; otherwise, there is a very real risk that media freedom will be undermined for political reasons to the detriment of the public's right to know and democracy. The greater the powers of the body, the more important are the need for independence. As stated in the Declaration of Principles on Freedom of Expression in Africa, in relation to broadcast authorities: Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature. The same principle applies with greater force to regulatory bodies with powers over all media. Clearly the commission lacks the required independence.

3.4.1. Registration of the Mass Media

AIPPA requires all bodies which disseminate mass media products to obtain a certification of registration. Dissemination is defined to include “sale, subscription, delivery, diffusion or distribution.” Furthermore, mass media products are defined to include an advertisement, any part of a periodical publication, “any electronically transmitted material, or audio or video recorded programme.” As a result, this formally includes Internet providers, very small circulation, such as nongovernmental organisation (NGO) publications, any store that rents videos, or even sells newspapers or music tapes, and newspaper vendors.

The certificate of registration must be obtained from the Media and Information Commission, and renewed every two years. The registration fee is set by the Minister, who is given broad discretion to apply higher fees to certain types of media services. Only individuals who are citizens and companies where citizens have a controlling interest may own mass media outlets. Strict rules also relate to owning shares in media services restricting this to citizens, permanent residents and companies controlled by citizens or permanent residents. This means that residents may invest in mass media services, but not own them. Non-resident foreigners may invest in the mass media, but only indirectly, through companies controlled by Zimbabwean citizens or permanent residents.

The commission is given broad powers to terminate or suspend the activities of a mass media service upon upholding a complaint against it or for breach of the law. Individuals who operate mass media services without a registration certificate are guilty of an offence and may be fined up to Zim\$300,000 (value in US\$ varies) and/or imprisoned for up to two years. In addition, a court may declare any equipment used in connection with the offence forfeited to the state. News agencies are also required to obtain a registration certification, with similar consequences in case of breach.

Foreign mass media may set up representative offices only with the permission of the Minister. Technical registration requirements for the mass media and/or news agencies are not, *per se*, a breach of the guarantee of freedom of expression. However, such requirements are unnecessary

and hence discouraged and they will fall foul of international guarantees if they are subject to political interference or if they are too broad in application. As the three specialised international mandates for protecting freedom of expression the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression stated in a Joint Declaration of 18 December 2003:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided.

Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical. The system established by AIPPA, overseen by the commission, with certain powers, for example in relation to fees, given to the minister, clearly lacks sufficient protection against political interference. This problem is exacerbated by the excessively short registration period of only two years, which means that political interference can be brought to bear at regular intervals. The registration requirement is massively overbroad, covering all publications, no matter how small or irregular, and all forms of electronic communication, including the Internet.

Most serious, however, is the power of the commission to refuse to register a media outlet, as it has in the case of *The Daily News*. This transforms it into a licensing system, not a technical registration system, which, at least for the print media, is quite clearly contrary to international law. Ownership rules relating to broadcasting in other countries illustrate the illegitimacy of the AIPPA restrictions. For example, in South Africa, “foreign persons” are barred, directly or indirectly, from exercising control over a private broadcasting licensee, from owning more than 20% of the financial or voting interests in a licensee or from holding more than 20% of the directorships (Independent Broadcasting Authority Act, No. 153 of 1993, section 48).

There are also serious problems with the system of sanctions for non-registration, and for other breaches of the law, in particular that it is excessively harsh and grants discretionary powers to the Minister, a political actor. Suspension and termination are, for media outlets, the most

extreme sanction possible and should be applied, if at all, only after repeated and gross abuse of the law, as determined by a court. Similarly, for individuals the threat of imprisonment for non-registration, particularly where the scope of the registration requirement is so broad and unclear, is bound to exert a chilling effect on freedom of expression.

3.4.2. Accreditation of Journalists

AIPPA only defines a journalist for purposes of Part XI (dealing with registration of the mass media), where they are defined broadly as anyone who “gathers, collects, edits or prepares messages and materials for the office of a mass media.” AIPPA does establish some rights for journalists, mainly in relation to access to information and to report in a manner consistent with their conscience. However, it also requires journalists to obtain accreditation and prohibits mass media outlets from employing anyone as a journalist who is not accredited.

Accreditation lasts for just 12 months, but may be renewed depending on the situation at that particular period. The Media and Information Commission is responsible for overseeing the process of accreditation. No one may be accredited as a journalist who does not possess the “prescribed qualifications” or who is not a resident citizen of Zimbabwe, although representatives of foreign mass media may be accredited for a limited period. The Commission has broad powers to discipline journalists for breach of the code of conduct, including terminating or suspending accreditation, to impose fines of up to Zim \$50,000, to impose such conditions as it deems fit on their right to practise, and to refer them for prosecution.

Any obligation on individuals to be accredited as a journalist is incompatible with the right to freedom of expression. In an Advisory Opinion concerning a licensing scheme for journalists in Costa Rica, the Inter-American Court of Human Rights clearly stated the principle: The compulsory licensing of journalists does not comply with the right to freedom of expression because the establishment of a law that protects the freedom and independence of anyone who practices journalism is perfectly conceivable without the necessity of restricting that practice only to a limited group of the community.

This problem is exacerbated by the requirement that journalists must have certain “qualifications.” The right to freedom of expression, which applies to all media, means that the State may not place conditions on individuals seeking to express themselves through the media, as the above quotation makes clear.

Furthermore, as had already been stressed, no powers in the area of the media should be exercised by bodies which are not independent. This condition is clearly not met in relation to accreditation of journalists, given the extensive roles of both the Commission and the Minister. Again, this problem is exacerbated by the excessively short accreditation period of only 12 months. The powers of the Commission to discipline journalists for breach of the code of conduct are unjustifiable not only because the Commission is not independent, but also because they apply in largely undefined circumstances and are excessively harsh. The only conditions placed on these powers are that there is a breach of the code of conduct and that the Commission gives the journalist a fair hearing. The power to terminate or suspend the right to practise journalism for breach of professional rules can never be legitimate.

The MIC imposes a number of restrictions on journalists, including: publishing falsehoods; and collecting and disseminating information on behalf of someone other than his or her mass media employer, unless he or she is a freelance journalist. The breach of these provisions can lead to a fine of up to Zim\$100,000 or imprisonment for up to 2 years.

3.5. The Broadcasting Services Act 2008

Until 2000, broadcasting in Zimbabwe was legally a State monopoly pursuant to section 27 of the Broadcasting Act, 1957. Capital Radio sought to obtain a broadcasting licence and, as part of this process, challenged the State broadcasting monopoly before the Supreme Court of Zimbabwe. Capital Radio started broadcasting on 28 September 2000 but the government quickly responded by raiding its offices and closing it down. It also promulgated the Presidential Powers (Temporary Provisions) Broadcasting Regulations, 2000, in early October, under the Presidential Powers (Temporary Measures) Act. Under the latter, regulations have a duration of six months. These regulations set up a framework for broadcast regulation, including by

requiring broadcasters to be licensed, and established a regulatory authority to undertake this task, the Broadcasting Authority of Zimbabwe (BAZ), under effective government control. Until the present, no private broadcaster has been licensed under this legislation.

After the regulations expired in March 2001, the government tabled the Broadcasting Services Bill before Parliament. Despite strong criticism from national and international groups and an adverse Parliamentary Legal Committee report, which said eight sections of the Bill were in breach of the Constitution, the Bill was passed by Parliament on 4 April 2001.

3.5.1. Key Problems With The Act

The regulatory body, the Broadcasting Authority of Zimbabwe, is firmly under government control. The licensing system is controlled by the minister in his or her almost complete discretion. The BAZ simply makes recommendations regarding licenses. The licensees are required to allocate one hour a week to the government as well as to carry any messages of national interest as directed by the minister, only one national free-to-air broadcasting service for each of radio and television may be licensed not including services provided by a public broadcaster, only resident citizens may invest in or hold a directorship of a licensed service and no one is permitted to hold more than 10% of the shares of a licensed service. Meaning that, ownership of any broadcasting outlet must be shared among at least 10 different parties, for television stations, at least 75% of all programming must be from local or African sources, unless BAZ directs otherwise, and at least 40% of the local programming must come from independent sources; the rules for radio are even stricter, 10% of all programming must be in national languages other than Shona or Ndebele, the broadcasting of any false or misleading news is prohibited. Capital Radio challenged the Act in a hearing before the Supreme Court in July 2002.

As a result of that, the Court struck down some of the more egregious provisions of the Act, including the following: the minister and not BAZ should be the final licensing authority; providing that only one signal carrier licence could be issued; and providing that only a public broadcaster could hold both broadcasting and a signal carrier licence.

The Court, however, upheld all of the other challenged sections of the Act. It specifically held that BAZ was a legitimate regulatory authority, even though it is clearly not independent; the minister appoints the members of its board, after consultation with the President. This is inconsistent with international standards in this area which quite clearly require bodies with regulatory powers over the media to be independent of government, for fairly obvious reasons.

3.5.2. Control over the Public Media

After the shock of the June 2000 parliamentary elections, the government moved to strengthen its control over the public media, both print and broadcast. Jonathan Moyo, appointed Minister of Information and Publicity in the President's Office and cabinet after that election, played a key role in these developments, as well as in the legislative developments described above.

In September 2000, the government dissolved the Zimbabwe Mass Media Trust (ZMMT), which had managed the government majority equity in *Zim Papers*, publishers of *The Herald*, *The Sunday Mail*, *The Chronicle* and a number of provincial newspapers. The ZMMT, a trust, was intended to provide a buffer between the government and the newspapers, offering some protection to the latter against direct government control and ensuring a partial degree of editorial independence, although in practice the government had always exerted a varying degree of influence over these newspapers. As a result of the dissolution of ZMMT, both *Zim papers* and the Community Newspapers Group (CMG), now called *New Ziana* (it now runs a news agency and various local newspapers) came under the direct control of boards appointed by Mr Moyo. Through the boards, the government controls the appointment of senior editorial staff and influences policy.

Several editorial changes were instituted at *Zim Papers*, resulting in the removal of veteran journalists like Bornwell Chakaodza, *The Herald* editor, Funny Mushava of *The Sunday Mail* and Ednah Machirori of *The Chronicle*. These were replaced by relatively inexperienced journalists believed to be Moyo loyalists. Similar structural changes were instituted in relation to the Zimbabwe Broadcasting Corporation (ZBC). On 13 November 2000, the Department of

Information and Publicity gazetted a new law for the ZBC – the Zimbabwe Broadcasting Corporation Commercialisation Act.

3.5.3. Zimbabwe Broadcasting Corporation Commercialisation Act 2001

This law splits the ZBC into two companies- one concentrating on transmission and the other on broadcasting and programming. The former– the transmission company, is called Transmedia, while ZBC Holdings performs the latter function. Both are wholly owned and controlled by the State. Subsection 3 of the Act states: “In the performance of their functions, the successor companies (ZBC holdings and Transmedia) shall give priority to serving the needs of the state, to the extent that it is compatible with sound business practice.” It is thus clearly a state, rather than a public, broadcaster. Section 8 of the ZBC Commercialisation Act gives the minister the power to supervise and direct the transition and future operations of the ZBC and Transmedia. The board and senior management of ZBC are appointed by the Minister of Information, in consultation with the President. As in the print sector, several veteran journalists and broadcasters were retrenched from ZBC and replaced by individuals loyal to the governing party.

The importance of broadcasting in a country like Zimbabwe cannot be overestimated. Much of the population is illiterate or semi-literate and, for this reason, cannot access newspapers. Furthermore, newspapers are excessively expensive for many people and distribution in the rural areas is difficult. This no doubt helps explain why the government has been so reluctant to license private broadcasters. There are numerous examples of biased reporting by the public media, as well as examples of them routinely echoing statements and positions of the government. The murder of Bulawayo war veterans’ leader, Cain Nkala, is a good example of the way in which the State-controlled media seeks to serve the interests of the ruling party by inflaming government supporters against the opposition and, inevitably, the independent press. On 5 November 2001, Nkala, a senior war veteran and member of the ruling party, was abducted from his home in Zimbabwe’s second city of Bulawayo, Magwegwe West suburb, by a group of armed men and killed, allegedly by being strangled. Nkala had earlier been arrested and charged in connection with the disappearance of an MDC election agent.

Another example of the State media undermining the opposition involves allegations that presidential candidate Morgan Tsvangirai was involved in a conspiracy to murder President Mugabe. The story, which broke on 13 February 2002, during the heat of the presidential election campaign, involved allegations that Tsvangirai had approached a former Israeli intelligence officer, Ari Ben Menashe, now with a Canadian consulting firm, Dickson and Madson, to arrange the assassination. ZTV carried extensive coverage of the story amounting to some 35 minutes over 5 days but allocated only 70 seconds to MDC denials of its veracity. In its coverage, ZTV omitted to mention that were at that time employed by the ZANU PF government on a consultancy basis to undertake promotional work for them.

3.6. Harassment of the Media

The independent media have been subjected to wide ranging forms of harassment in recent years. These have included harsh verbal attacks involving officials right up to the President, as well as direct physical attacks, such as bombing of media premises, beatings of journalists and readers, destruction of copies of newspapers and even blocking independent newspapers from reaching certain parts of the country, mostly rural areas. These physical attacks have, for the most part, not been carried out directly by officials but rather by supporters of the ruling party, such as so-called war veterans and student groups.

The verbal attacks, which have involved a wide range of officials, as well as the government media itself, represent a concerted attempt to undermine the credibility of the independent media and, indeed, to create a climate of hatred towards them. Journalists working for the independent press have been referred to variously as agents of imperialism, sell-outs, enemies of the State and lapdogs of the former colonial master, Britain, bent on derailing the land reform programme. These verbal attacks have provided the context, and arguably the impetus, for the physical attacks. A few examples give a sense of the nature of these verbal attacks, which frequently contain veiled threats of serious consequences, employ language which suggests violence and/or contain allegations of treason or undermining State Security. In December 2001, President Mugabe told church leaders that those journalists who wrote “libellous reports “would be arrested, stating: “The media has been assaulting the integrity of private citizens.”

3.6.1. *The Herald Newspaper*

On 5 September 2003, Minister Jonathan Moyo lambasted the independent press at the launch of the New Ziana, a multi-media organisation charged with publishing government information, stating: “These papers are trash, and they injure our national interests.” A thinly veiled threat to the independent media was echoed by the now retired commander of the Zimbabwe Defence Forces, General Vitalis Zvinashe. At a press conference in Harare on 10 January 2002 he stated: The statements (in the foreign and local private media) have caused insecurity, uncertainty and confusion and tarnished the credibility of the country’s security arms.

The statements in question were reports that the army had organised illegal farm seizures while the police stood by and watched, a matter of some public interest. The war veterans and the State-controlled media have branded the independent press, together with the MDC, as sell-outs, traitors and stooges. These groups have even demonstrated against the independent media. For example, on 24 January 2001, hundreds of war veterans and ruling ZANU PF supporters, led by war veteran’s leaders the late Chenjerai Hunzvi and Joseph Chinotimba, demonstrated against *The Daily News* in central Harare.

These verbal attacks provide the background for the direct physical actions against the independent media and journalists. For example, during the mass action on 1-6 June 2003, called by the Opposition, alleged ZANU-PF supporters beat readers of independent newspapers such as *The Daily News*, *The Financial Gazette* and *The Zimbabwe Independent*. Thousands of copies of these newspapers were destroyed during this period and war veterans and other pro-government militias “banned” the independent press from certain areas of the country.

An example of the hazards faced by journalists working for the independent press was the beating of four staffers of *The Daily News*, Collin Chiwanza, Mduzuzi Mathuthu (both reporters), Urginia Mauluka (photographer) and Trust Masola (driver) at a farm near Hwedza on 31 November 2001. The four, who had visited the farm to report on attacks on farm workers by alleged ZANU-PF supporters, were punched and kicked, resulting in them seeking medical attention. Police officers were present when the attack took place but took no action.

A number of bombings have also been perpetrated against the independent media and, in particular, against *The Daily News*. Its offices were bombed on 22 April 2000, shortly before the parliamentary elections, and its presses were destroyed in a bombing on the night of 27-28 January 2001. A further bomb attack targeted its Bulawayo offices on the night of 10-11 February 2002. Significantly, no one has been arrested and brought to justice for these attacks. Following the bombing of *The Daily News*' printing presses, in an apparent attempt to deflect criticism, the war veterans association told the ZBC that, "the Rhodesian elements which support the MDC and *The Daily News* were behind the attack."

3.6.2. Restrictions Of The Media

As noted above, both AIPPA and POSA contain restrictions on the content of what may be published or broadcast. The main content provision in AIPPA is section 80, which originally prohibited the publication of falsehoods. As a result of the AIPPA, many journalists have been detained and/or charged under section 80. The history of section 80 of AIPPA is both interesting and significant. In the case of *Chavunduka and Choto vs Minister of Home Affairs & Attorney-General*, decided on 22 May 2000, the Supreme Court of Zimbabwe held that the false news provision at section 50(2) of the Law and Order (Maintenance) Act (LOMA) was manifestly unconstitutional. Section 80 was quickly challenged by journalists as being in breach of the Constitution and, on 7 May 2003, the Supreme Court ruled that it was indeed unconstitutional. As a result, all of the charges which had been laid under this section had to be dropped.

The government quickly introduced amendments, including to this section, in October 2003. The false news offence was retained, but substantially narrowed, so that it is now only an offence to publish false information if the author knows it is false or does not have reasonable grounds for believing it is true and if he or she publishes it recklessly, or with malicious or fraudulent intent. This is still constitutionally suspect, but less obviously a breach than its predecessor. This amendment to section 80 of AIPPA has made it more difficult for the government to bring content-related charges under AIPPA, leaving POSA and other criminal rules, such as criminal defamation provisions, as the preferred means of limiting criticism.

Since March 2002, more than 80 media workers have been arrested or detained under AIPPA, POSA and other laws such as criminal defamation. In 2002 alone, 44 media practitioners were arrested, 13 journalists in the first 10 weeks after AIPPA was enacted. In May 2002, for example, 11 independent journalists were arrested. Chakaodza, editor of *The Standard* (formerly of *The Herald*), was charged on five occasions in one week for allegedly publishing falsehoods. Only two of the 44 arrests in 2002 have proceeded to prosecution and been concluded. In six, the charges were withdrawn, in 22 those arrested were released without charge, one person was deported and 13 cases were still pending. In some cases, journalists were detained over weekends only to be released without charge, in an apparent attempt to intimidate them. It is significant that not one journalist or editor working for the state media has so far been arrested or charged under these laws, although in many cases those media reported on the same stories that attracted arrests of independent journalists.

The barrage of cases against independent journalists seems set to continue judging by events in the first part of 2004. On 10 January 2004, for example, three journalists working for *The Zimbabwe Independent* were arrested and detained for two nights for a story alleging that President Robert Mugabe had commandeered an Air Zimbabwe airplane to travel to the Far East. The three, Iden Wetherell, Vincent Kahiya and Dumisani Muleya, the weekly publication's editor, news editor, and chief reporter, were each charged with criminal defamation and released on \$20 000 bails.

On 21 May, Chakaodza, editor of *The Standard*, and Valentine Maponga, a reporter, were arrested over a story headlined "Family of slain boss blames government officials", which alleged that relatives of a murdered mine boss accused government officials of involvement in the murder. In its case outline, the State argued that the two had published false news that was likely to cause public disorder, incite public violence and endanger public safety. The claim of falsity is based on the State claim that the relatives of the slain mine boss denied ever speaking to the paper. The police also argue that they have since arrested the murder suspects, who also deny the involvement of any senior government official in the murder. The police allege the story was meant to tarnish the image of the government and has charged the two under section 15 (1) of the

Public Order and Security Act (POSA). Chakaodza and Maponga, however, insist their story is true and that they can quote the names of the relatives they talked to.

The facts of some of these cases provide a clear indication of the abuse to which these repressive content restrictions are put. For example, Collin Chiwadza, of *The Daily News*, was detained overnight for a story in which he had played no role whatsoever publishing. On 23 April 2002, *The Daily News* carried a story alleging that two young girls had witnessed the beheading of their mother in the rural area of Magunje, supposedly by ZANU-PF supporters and allegedly for having supported the opposition MDC. The story turned out to be untrue and it had been based on reports by someone claiming to be the husband of the woman and who claimed to have witnessed the incident; the paper published an apology on 27 April 2002. Chiwadza's role was limited to follow-up. After the story had been dismissed by the police, but before the apology was published, Chiwadza was dispatched to Magunje to check the facts. The story was in fact written by Mr Lloyd Mudiwa.

Andrew Meldrum, correspondent for the UK-based *Guardian* newspaper, was charged under section 80 of AIPPA on 20 June 2002 for abuse of journalistic privilege and, in particular, for publishing falsehoods in relation to the same "beheading" story published in *The Daily News* on 23 April 2002. The story was later published in the *Guardian*, having been reported by Meldrum. The High Court found Meldrum not guilty of publishing falsehoods with the intention of tarnishing the image of Zimbabwe. The court found that he had taken reasonable steps to verify the facts by contacting the police spokesman, who declined to comment on the allegations. After being acquitted, Meldrum was immediately served with deportation orders by immigration authorities. The court then suspended the order pending appeal but, despite this, Meldrum was deported on 16 May 2003.

3.6.3. Closure of *The Daily News*

The closure of *The Daily News* is without doubt the most significant blow to freedom of expression in Zimbabwe under AIPPA. The only independent daily newspaper in the country, *The Daily News* was a constant thorn in the side of the government, exposing its abuses and

providing a platform for political voices other than ZANU-PF. Its closure has led to a significant narrowing of the space for freedom of expression, leaving only government-controlled dailies in place.

Under AIPPA, all newspapers were required to register with the Media and Information Commission. On 19 October 2002, a meeting was organised by MISA-Zimbabwe, in conjunction with the Zimbabwe Union of Journalists, the Independent Journalists' Association of Zimbabwe, the Media Monitoring Project Zimbabwe, the Federation of African Media Women in Zimbabwe and the Foreign Correspondents Association, to discuss how to respond to issues regarding the registration and accreditation of mass media outlets and media practitioners, respectively, under AIPPA. Over 120 media practitioners attended this meeting.

Those present at the meeting were largely of the view that, although AIPPA was designed to muzzle the independent press, it would be strategic to register first and then to fight the legislation in various ways, including from newsrooms and editorial offices. The management of Associated Newspapers of Zimbabwe, which published *The Daily News* and *The Daily News on Sunday*, however, decided not to register with the Media and Information Commission and, instead, to challenge the constitutionality of AIPPA in the Supreme Court. Furthermore, its journalists did not apply for accreditation. All the other leading independent newspapers, together with their journalists, were duly registered / accredited in accordance with the provisions of AIPPA.

In a decision of 11 September 2003, the Supreme Court ruled that it would not hear the ANZ challenge because the newspaper had approached it with 'dirty hands', having refused to apply for registration. The government closed the newspaper down the next day and subsequently seized most of its equipment. ANZ then applied to the Media and Information Commission (MIC) for registration but was refused, and a series of court battles followed. The newspaper challenged the refusal by the MIC to register it before the Administrative Court, and the seizure of its equipment by the police before the High Court. It was successful on both fronts, with the Administrative Court ruling that the MIC was improperly constituted and had wrongly denied

ANZ registration and the High Court ordering the police to vacate the premises and return the seized equipment.

The Daily News, which had been off the streets more-or-less constantly since 12 September 2003, briefly came back into production on 22 January 2004, after the police finally responded to High Court orders to vacate the property. In a cruel twist, however, it closed again after 5 February 2004, when the Supreme Court, in a separate case, upheld the AIPPA requirement for journalists to be accredited, which the ANZ journalists were not. Furthermore, in a manipulative move, the MIC then refused to accredit ANZ journalists on the basis that they were not working for a registered newspaper.

In March 2004, the Supreme Court heard the various cases relating to the ANZ newspapers but reserved judgment, effectively maintaining the status quo, which is that the newspapers are effectively banned. There are fears that the Court might take some time to resolve this situation, given the long time it took to come to decisions in the broadcasting and registration of journalist's cases.

3.6.4 Journalists Charged For Practising Without Being Accredited

The *Daily News* journalists, Philemon Bulawayo, Margaret Chinowita, Kelvin Jakachira, Sydney Saizi, George Muzimba and Lawrence Chikuvira, were charged with practising without being accredited. This brought to 15 the number of journalists from the Associated Newspapers of Zimbabwe (ANZ) who have been charged for this offence under AIPPA. The other nine, charged on 25 September 2003, were Luke Tamborinyoka, Pedzisai Ruhanya, Fanuel Jongwe, Precious Shumba, Chengetai Zvauya, Conelias Mabasa, Conway Tutani, Gladwin Muparutsa and Darlington Makoni and Francis Mdlongwa.

3.7. Conclusion

The POSA effectively allowed the government to prosecute anyone for anything including criticism of the President. Many people were prosecuted in Zimbabwe under this act. Many

people in Zimbabwe regard POSA as an act that helped President Mugabe to consolidate his power while on the other hand foreign news organisations have been banned from reporting in Zimbabwe and newspapers have been shut down under AIPPA. Chapter four will discuss the formation of the Government of National Unity.

CHAPTER 4

4. FORMATION OF THE GOVERNMENT OF NATIONAL UNITY

4.1. Introduction

Since Mbeki assumed the presidency of South Africa, he had been at great pains to assure fellow Africans that South Africa will not adopt a “big brother” attitude on the continent. He often declared that South Africa claims no right to impose its will on any country and will act only “within the context of its international agreements.” Mbeki’s preference has always been for a multilateral intra-African approach to Zimbabwe. While the rest of the world remains stunned by South Africa’s response to the crisis, Mbeki wants the international community to leave it to the AU and Southern African Development Community (SADC) to resolve it in “the African way.”

It has been suggested that behind the scenes Mbeki is only too aware of how disastrous a leader Mugabe is, but feels that he would have more impact on the situation if he used “an attitude of sympathy and friendship to nudge Mugabe in the right direction”. Such was the atmosphere when Mbeki, Mugabe, Sam Nujoma (from Namibia) and Joaquim Chissano (from Mozambique) attended the Victoria Falls summit in April 2000 to persuade Mugabe to stop the illegal occupation of white-owned farmland. The international community, particularly the UK, viewed this summit as a good opportunity for South Africa to take a stronger stand against Zimbabwe, but Mbeki continued his constructive engagement policy. Mbeki’s spokesman declared that Mbeki and his three counterparts had managed to convince Mugabe to stop the violence and withdraw the war veterans from white farms, while Mbeki had also asked Mugabe to stop his public attacks on Blair and Britain.

In return, Mbeki and the other presidents would give Mugabe their full and public support and Mbeki would press Britain to provide funding for land reform in Zimbabwe. Mbeki was apparently so confident that he phoned Blair and told him that “a new chapter had been opened on the land reform question” and that there would be swift progress in settling all of the other

remaining issues. However, Mugabe failed to stop the violence and continued to show disrespect for the rule of law. Mbeki's hopes that Mugabe would fulfil his promises were dashed.

4.2. South Africa's "Quiet Diplomacy" Towards Zimbabwe

This study is a contribution to the literature on South Africa's foreign policy since 2000-2004. It provides a theoretical framework within which South Africa's foreign policy could be understood. It attempts to explain the apparent contradictions in South Africa's foreign policy by looking at the constraints inherent to South Africa's position as an emerging middle power. It argues that South Africa's pluralist inclinations are constrained by Africa's evolving multilateral forums and that South Africa's preference for an Afro centric approach undermines the achievement of her foreign policy in its principles and goals. It also argues that as a realist middle power, South Africa is constrained by the ambivalence shown by the region towards her exercising leadership in the region, due to South Africa's history of destruction in the 1980's.

South Africa's quiet diplomacy towards Zimbabwe provides the focal point for the study. The study argues that it is not true that South Africa is not concerned with human rights abuses in Zimbabwe. Instead, this concern has been expressed in ways that do not tarnish South Africa's own image in Africa. This was done by engaging Zimbabweans through multilateral forums.

"Diplomacy is the most widely used instrument of foreign policy" (Stiff, 2000:288). The changing international environment, brought about by the end of the Cold War and the increasingly popular approach of humanitarian intervention, altered the nature of diplomacy. "Quiet diplomacy" progressively became the *bon mot* of international relations. However, quiet diplomacy is a loose term in reference to many kinds of "soft" diplomatic approaches. This study is an attempt to provide some clarity on the conceptualisation of quiet diplomacy, through the comparative analysis of its use by two successive South African Presidents – Mandela and Mbeki – in two African crises. The study proposes a set of indicators of quiet diplomacy, namely:

- personal or direct diplomacy between heads of state or government or senior officials;
- little (or no) media involvement;
- the appearance of limited action or even inaction;
- calm and tactful but persistent negotiation or dialogue in a non-threatening atmosphere; constructive engagement with the target country in an effort to solve the problems as quietly as possible; and finally,
- diplomacy often carried out in the context of bilateral or multilateral efforts.

These indicators are operationalised during the course of the study by applying them to Mandela's use of these tactics in the Nigerian crisis in 1995 and then Mbeki's quiet diplomacy towards the Zimbabwean government in 2000-2004. The new South Africa was instantly placed under enormous pressure to assume responsibility, both economically and politically, for the revitalisation of the African continent. In addition, Mandela was regarded as a supreme symbol of peace and reconciliation and the international community looked to him to resolve Nigeria's woes. According to Stiff (2000:198), "Mbeki's soft approach to Mugabe has been the target of international speculation and criticism, especially in the light of Mbeki's stated commitment to the African Renaissance and good governance in Africa." The successes and failures of South Africa's quiet diplomacy in these two situations are discussed. Notable findings are Mandela's shift from quiet to coercive diplomacy during the Nigerian crisis and the negative consequences of that decision. The implications of this undertaking are considerable because it was South Africa's use of coercion and its subsequent failure in Nigeria that prompted South Africa's government to pursue quiet diplomacy only with regard to Zimbabwe.

In the beginning, it may have been a murmur. It might have been whispered in the security of private enclosures. It is the question that, 27 years ago might have been contemptuously dismissed, given the euphoric atmosphere attendant upon the advent of *Uhuru* in Zimbabwe. But it has now become uncomfortably audible and fairly commonplace, a sad sign of a heartbroken nation beginning to doubt itself and the foundation of its existence. It has become like the pungent odour that slowly invades the trapped atmosphere of a small room, creating an enforced silence and imposing a sense of collective guilt.

It is, in our current circumstances, a question that is at once painful and pertinent; requiring the mind to enquire whether, given the physical decay that has been visited upon Zimbabwe, independence (and the struggle for it) was worth the sacrifices that had been made. Was it, after all, a lost cause, it is painful because thousands of lives were sacrificed to achieve *Uhuru*.

Indeed, some would consider such a question to be an insult to the memory of those who paid with their lives to displace the colonial system, arguing that they cannot be condemned for the gross failures of their compatriots who lived on to assume power and whose inept political and economic management brought harsh consequences upon the country. It might also be said that the sacrificed souls must surely now rest rather uneasily, given the manner in which the dreams for which they fought appear to have been jettisoned by their living comrades.

It is a pertinent question because it goes to the very root of the nation's existence, for the definition of Zimbabwe, as we now know it, is inextricably connected to the encounters, both harsh and sweet, between the peoples of different races and tribes who constitute it. Its future too, is dependent upon how these constituents are able to negotiate a reasonable co-existence. Part of this process involves finding common ground and a shared understanding on the key aspects that define the nation – including the liberation struggle, the contribution of the settler and immigrant communities, and overcoming the bitter and divisive aspects such as *Gukurahundi*.

Citizens are asking this and related questions more openly because of the physical degeneration of the country since independence and the negation of the idea and spirit of independence by those who led the fight for its achievement. The struggle, after all, was intended to achieve freedom and to lead to the improvement of material conditions. Yet most people are now worse off materially than they were at the time of independence in 1980. The emasculation of their freedom is no different from their position in colonial Rhodesia. In short, they have not seen the fruits of the struggle for freedom.

There is an important distinction that must be made between the ideals of the struggle for independence and the outcome of that process as seen today. It would, in my opinion, be unfortunate to nonchalantly dismiss the notion of independence on the basis of the failures of the leadership. Campbell (2003:131-132) asserts “Freedom is a natural right and to the extent that the colonial system deprived other people of that right and claims to allied rights, it was necessary to fight for independence.” The post-independence regime appears to have failed dismally to deliver what was envisaged in the struggle for independence; however, that cannot be used to detract from the notion of independence. It is important always to distinguish between ZANU-PF’s failures and the idea of independence which, by all accounts, is still to be achieved.

A troubling trait of the debate about the value of independence is the attempt, in some circles, to impose collective blame for the failures of ZANU-PF on the black people. Accusatory statements are sometimes recklessly thrown about, implying that the failures of ZANU-PF provide conclusive proof that black people cannot govern. This claim has not been challenged by the chaotic land reform programme, the poor implementation of which has caused a dramatic fall in agricultural productivity.

It is important, in my opinion, to avoid being unnecessarily divisive on racial or other grounds by denigrating a whole race or tribe on the basis of the incompetence of a particular regime. The generalisations have unwittingly turned otherwise well-meaning people into defenders of what is ordinarily indefensible, simply because the issue would have shifted from one about the incompetence of particular leaders, to one about racial or tribal responsibility. The truth is that during both colonial Rhodesia and independent Zimbabwe the political landscape had been dominated by extremists on either side. Unfortunately those extremists have held positions of power to make key decisions that have sown the seeds of polarisation along racial and tribal lines. It is a historical fact that Zimbabwe consists, broadly speaking, of both white and black people, the latter from various ethnic tribes.

The challenge has always been and remains achieving reasonable co-existence, respecting the dignity and equality of every man and woman who claims it. You cannot blame every white person for the excesses of the Smith regime, nor blame every black person for the excesses of the

Mugabe regime. And yet this appears to happen with reckless abandonment, causing bitter and unproductive division in the community.

Despite both colonial Rhodesia and independent Zimbabwe having the common denominator of pursuing unsatisfactory politics, the latter regime has the unfortunate distinction of having performed dismally on the economic front. Their colonial predecessors appear to have fared better in economic management, which even when it guaranteed unequal treatment, still had some excess to cushion the marginalised. It is a fact of life that socio-economic conditions remain the core interest of citizens. There can be an unfavourable political system, but they will thrive so long as they can get by economically. Citizens who say they were better off before independence are not necessarily condoning the repressive political system of that time; they are simply confirming that they care more about their economic well-being.

This, of course, is a lesson for any future government: that whatever you do, the most important aspect is the economy. The same message to every politician is that the key lies in finding a pragmatic solution that reverses the economic decline. People care less about *who* does it; they just want to see *something* done, whether by ZANU-PF, MDC or whoever can deploy the necessary skills and resources towards that end.

The bitter lesson for Zimbabweans is that regardless of their worthy efforts, liberators are not always the best governors. The science of leading a liberation struggle is significantly different from the science of governance. Experience has shown that the liberators lacked the transferable skills that could be deployed in the process of government. A militaristic approach in handling party and government affairs is common, which probably explains the frequent resort to military personnel and methods in governance matters. If there is any lesson to be learnt by those at the forefront of today's liberation, it is that when the time comes, instead of clamouring for power and staying there until the end of time, they ought to defer to those of their own who have the skills to manage the economy.

At the end of the day, it is important not to allow the understandable bitterness that people have against the current regime to detract from the idea and struggle for independence. This was and

remains a key ideal, because true *Uhuru* is yet to be achieved. It is not about rhetoric and slogans – it constitutes finding ways of promoting co-existence of the people, regardless of the bitter past, and creating systems for the management of resources, both human and material, to improve the socio-economic wellbeing of the entire nation.

As we have seen, the erosion of the socio-economic status of the people caused people to openly question the whole idea of independence. It is sad because in some ways, it represents a decline in collective self-confidence; a psychological crisis that will drag down a whole nation. That collective mental fall will be harder to recover from than the rebuilding of the physical structures that have deteriorated.

The research project begins with the land reform programme in Zimbabwe between 2000 and 2008. Under colonial rule, Britain took most of the arable land from the indigenous Zimbabweans and gave it to the white (minority) settler population. The research attempts to look at how, after independence, “President Robert Mugabe has handled the issue of land in an effort to reverse this situation. Some of the consequences of land reform include the collapse of the economy, political instability and social incoherence” (Zungu, 2003:66). Together, these consequences have led to the “crisis” which is a description of social and political life in Zimbabwe. Most importantly, the project analyses South Africa’s approach in dealing with this “crisis”. Therefore, South Africa’s approach is the key subject upon which this investigation will focus. Initially, the approach that was adopted and implemented by South African government towards Zimbabwe was termed “quiet diplomacy”.

The reasons for this approach are several. Firstly, this approach was one way of respecting the sovereignty of Zimbabwe. In other words, this was an attempt to honour and respect the internal affairs of Zimbabwe. Secondly, former President Thabo Mbeki’s government was of the view that using economic muscle to sanction Zimbabwe would worsen the situation; Zimbabwe was dependent on South Africa in terms of electricity supply and other resources. However, as quiet diplomacy appeared to be ineffectual in halting Zimbabwe’s slide into further disarray, much criticism has been generated. Critics state that the approach did not work and has made the situation worse in Zimbabwe. In addition, therefore, it is hypothesised that “quiet diplomacy”

was not a viable approach to deal with the Zimbabwean crisis. In making this claim, the study observes both the strengths and weaknesses of quiet diplomacy. Finally, the study also seeks to identify possible options other than quiet diplomacy that the South African government should have considered. Recommendations on options such as “smart” sanctions that could be used to address the situation in Zimbabwe are provided in conclusion.

4.3. How “Quiet Diplomacy” Impacts South Africa’s Democratic Consolidation

The outcome of the first democratic elections that included all South Africans in 1994 was that former president Nelson Mandela became President of the Republic of South Africa. One of the key objectives of the new government was to articulate an image of the republic as a progressive world citizen. As such, the diplomacy conducted by the new government was to imprint South Africa’s image as a mid-level power broker between the economic north and south. In this role it intended to bring development to African countries still suffering from the aftermath of colonialism by assuming the role of spokesperson for the developing world.

When former President Mandela stepped down from government in 1999, Thabo Mbeki, by then deputy President, came to power and began to imprint his strategic and technocratic vision on the republic’s foreign diplomacy. A pragmatic pan-African, his rise to power saw an important shift in policy based on his views on race and Africa’s place in the world order. At his best as a behind-the-scenes negotiator, what he lacked in aura he made up for through calculated political manoeuvring and negotiations. He has managed to link South Africa’s future to that of the entire Southern Africa region.

In comparison to former President Mandela who attempted to promote the culture of human rights and an ethical approach to diplomacy, Mbeki created a rule-based global order that was aimed at redressing injustices from the colonial and apartheid past. While Mandela pursued a foreign policy that stressed bridge-building between the developed and developing world, Mbeki took this policy further in developing a south-south solidarity that translated into cooperation on foreign policy between these groups of nations.

South African foreign policy has been a serious concern for Southern Africa as well as the world as the economic and political crisis in Zimbabwe deepened. The presidential election in Zimbabwe effectively threw the country into full economic and political meltdown, as the respect for law and order were flagrantly disowned by Mugabe's regime. The abuse of opposition leaders and their followers have drawn worldwide criticism, with one notable exception: the Republic of South Africa. To ever realistically solve the issue of Zimbabwe, a consolidated democracy must exist in South Africa. South Africa's policy towards Zimbabwe must be examined in a way to determine whether it is currently helping or hurting prospects for consolidation in the Republic of South Africa. To understand South Africa's current policy towards Zimbabwe, a historical account must be examined. Secondly, the reasons behind the continued adherence to the so-called quiet diplomacy must be discovered. After these answers have been obtained, a breakdown of how the foreign policy of South Africa affects democratic consolidation will give an answer to those who wonder how South Africa can ever consolidate its democracy while at the same time supporting the world's number one thug, Robert Mugabe.

4.4. Zimbabwe Takes Centre Stage

The crisis and former President Mbeki's strategy towards Zimbabwe came to the fore in 1998 as Zimbabwean forces intervened in the conflict in the DRC to support Laurent Kabila. This intervention coincided with the start of mass political and economic crisis in the country. Acts of sporadic violence and land invasions on white Zimbabweans land, dubbed by the Mugabe government as "fast-track" land restitution, the disputed presidential elections of 2002 and 2008, voting discrepancies, and numerous human rights violations became regular incidents in the Zimbabwean political scene. Hammar (2003:140) commented in this way: "A virtual meltdown of the economy has commenced since the seizing of white farms, leading to high inflation, unemployment, and a spiralling poverty level."

In response, quiet diplomacy was consistently used by South Africa, instead of taking a hard-line approach towards Zimbabwe. Former President Mbeki attempted to bring about a negotiated settlement between Mugabe's liberation party ZANU-PF and the opposition, Movement for Democratic Change (MDC). Landsberg (2002: 172) comments that this happened while

balancing “historical considerations, regional balance of power politics, inter-personal dynamics, self-interest calculations, and implications for Pretoria’s geo-strategies in engaging Harare.”

However, various actors abroad, including the United States and the United Kingdom, have criticised quiet diplomacy, while think tanks, the Democratic Alliance, newspaper editors, and Zimbabwe lobby groups similarly voiced their displeasure of the Zimbabwe policy in the Republic. In the face of this criticism, Mandela came out in support of quiet diplomacy, stressing that through diplomatic channels a positive result is more likely to prevail.

According to Mbeki quiet diplomacy was the best technique to bring about change in Zimbabwe. This argument was based logically on the fact that Mugabe is a “proud and stubborn man and any public criticism of him would have deepened his stubbornness and provoked a denunciation of Mbeki as a tool of the imperialists” (Sparks, 28 May 2008). Such a condemnation would have been difficult for Mbeki to accept, on a political as well as personal level. His desire to press for south-south solidarity and his ideal of an African Renaissance rely on a politically strong bond between South Africa and her neighbours.

4.5 “Quiet Diplomacy”– A Strategic Policy

According to Meredith (2002:126), quiet diplomacy is essentially a trade-off between Zimbabwe and South Africa. In exchange for helping to rebuild Zimbabwe’s economy and helping to construct an acceptable strategy for Mugabe to step down from power, Mugabe is expected by South Africa to commit towards creating free and fair elections, and mapping out a political strategy that incorporates negotiations with the MDC. The Pretoria government takes this stance, stressing that isolating Mugabe and imposing sanctions would only accelerate the meltdown of the economy and create greater political instability in their neighbour (Landsberg,2002:173). However, based on current facts that will be discussed later, this definition of the situation seems to be incorrect.

Landsberg reports that as the crisis continued, behind the scenes in South Africa there was growing scepticism of the Mugabe regime, albeit realising that these concerns could not be

voiced publicly while engaged with Zimbabwe. Land reform seemed to be the main cause of the economic crisis in the view of insiders, but there was much confusion over why a skilful politician like Mugabe would not have seen the potential outcome of the repossessing of large white and profitable farms by poor and uneducated blacks. Some believe he could have achieved his goals by simply following international law and procedure. However, for Zimbabwe at least, land reform had become tied intrinsically tied to violence and the violation of human rights.

By 2004, Mugabe was beginning his preparations for the 2005 parliamentary elections. His strategy at this point was clear: he would attempt to re-legitimise his administration through apparent free and fair elections. However, if staying in power was not possible through these means, he would resort to any and all means of producing a favourable electoral outcome. While this was underway, democratic movements in the country claim to have been discredited by South Africa and feel as though they have been ignored by quiet diplomacy.

This investigation aims to articulate less prominent, but more rational explanations why the South African government favoured a policy of quiet diplomacy over more aggressive and punitive means. Admittedly the study does not dwell much on the one-dimensional focus of the policy-making by the South African government in response to the Zimbabwe crisis. Landsberg's research looked at Pretoria's global and regional objectives and places their initial response to Mugabe's administration in this geo-political perspective. However, a concurrent study by McKinley argues that South Africa's foreign policy was driven by the class interests of the country's emerging (black) and traditional (white) bourgeoisie. He claims that this is a renewed form of South African sub-imperialism. This argument will be used as the basis for discussing South Africa's prospect of democratic consolidation. The Landsberg argument, while at one time seeming possible, now seems to either be outdated or out of touch with the situation on the ground in Zimbabwe.

In South Africa the public opinion and scholarly analysis on the republic's policy towards Zimbabwe have generally been divided along racial lines. This is due to the primary perception that the land "reform" policy of Mugabe is fundamentally defined by issues of race. This reform policy is the component of the Zimbabwean crisis that has become central to South Africa's

debate on Zimbabwe. For Mbeki and many black South Africans, Mugabe's land policies are representative of an attempt to address one of colonialism's enduring legacies. Domination by white ownership of the land in Zimbabwe seems just as enduring in South Africa.

However, white South African political opposition have seen Mugabe's policies as politically motivated in an attempt to keep power and appease black Zimbabweans at the expense of white Zimbabweans, and to an extent, the black Zimbabweans who do not support ZANU-PF. Since Mbeki came to power, the divide over race has been fuelled by the constant playing of the race and liberation struggle cards by Mbeki and the ANC when it came to domestic political and economic discourse. This has, predictably, created the liberal white and victim responses. McKinley calls this the discourse of "the arrogant and the deaf that has only served to cloud meaningful debate/analysis of South Africa's post-1994 political economy" (Jenkins and Knight, 2002: 86-87).

This divide along race is also reflected in the international arena. The nations that have positioned themselves against the Mugabe regime are principally northern and white, while those on the other side of the debate are largely southern and not white. The Mugabe regime has taken full advantage of the discourse by relating land distribution programmes as an integral part of post-independence reform in the Third World: an "anti-imperialism" platform designed to set Zimbabwe "free" from the western (white) interests that still chain Zimbabwe in its poverty. Mugabe has found a willing and active partner in pursuing development world solidarity in Thabo Mbeki at the regional and global level. As discussed before, there are geo-political reasons for Mbeki's stance.

The racial polarisation that has predictably emerged has plagued much of the debate on the political origins of Zimbabwe's crisis and the current dimension in which they exist. McKinley provides an example of what he calls the very narrow analytical approach of explaining factors behind the foreign policy of South Africa towards Zimbabwe. His classic example is that of Dr Siphon Buthelezi, who says the primary factor is the desire of the South African government to make sure that the Zimbabwean economy does not collapse and therefore a desire to prevent civil war. McKinley writes that Aziz Pahad, former deputy Minister of Foreign Affairs, has

repeated this explanation. McKinley says that this argument is underlined by fears of South Africa creating a South African hegemony in the region and on the continent. The argument goes that there is great desire to see a consensus reached by the regional bodies, SADC and the AU, in order to respect national sovereignty. This explains why the region and South Africa have declined to come down hard on Mugabe's policies of repression and the regime's poor human rights record as a way of preventing the collapse or the start of a civil war.

McKinley exposes the shortcomings of this explanation by pointing out that this argument makes the assumption that a collapse of the Zimbabwean economy has not already occurred, as well as the fact that a *de facto* and low intensity civil war does not already exist. McKinley says that according to the realities of factual information out of Zimbabwe, this argument is intrinsically flawed. The concern of creating a political hegemony on the continent is only raised by Pretoria when it suits the political and economic interests of the ruling class, encompassing both the public and private sectors. The involvement of both these sectors is important to understanding the rationale behind McKinley's explanation of Mbeki's Zimbabwe policy.

In 2000, just before the parliamentary election in Zimbabwe, South Africa sent a rescue package worth nearly one billion rand to the Mugabe government. The explanation behind this package given by Mbeki loyalists went that it was a pre-emptive move by South Africa to curtail the decline of the economy in Zimbabwe and its effects on neighbouring countries. However, when McKinley focuses our attention on the targets of the relief, the beneficiaries are seen to be the government parastatals of the South African government, not the Zimbabwean. By 2000 many of the governmental organisations and infrastructure authorities in Zimbabwe were heavily reliant on South African loans to keep what little remained of the economy afloat. Much of the debt was owed to their South African counterparts, including the Electricity Supply Commission and the South Africa Coal, Oil, and Gas Company (SASOL). In addition to what equated to debt relief, which consequently went back to South African capital, there were 20 joint investment projects started in Zimbabwe under the package. These were primarily in the areas of tourism and exploration for natural gas. The funding for these ventures came from corporations such as the Development Bank of Southern Africa, which is incidentally owned by the South African government.

McKinley examines how Mbeki expands a black bourgeoisie, who are tied to the ANC, through the direct and/or indirect manipulation of state resources and power. Sizable stakes in South African parastatals have been attained through the government's promotion of black economic empowerment and the connections with ANC leaders in government who provide financial backing for the launch of private corporations. Continued privatisation of public assets and organisations has made many former politicians reliant on government contracts for their continued economic success. It should now be evident that the so-called rescue package given to the Zimbabwean government was in fact a stimulus package directed at black capital in South Africa.

McKinley sees this as a race against Mugabe and the time ticking on his regime to secure a foothold, through debt, in Zimbabwe by emerging black South African capital. While McKinley says all this was done under the smokescreen of foreign policy, the real political support given to the Mugabe regime had consequences that could affect this takeover by South African capital of the Zimbabwean economy. If the Movement for Democratic Change (MDC) was to come to power, there is a factor of uncertainty on what would happen to the South African capital in the country. Until now, it appeared that Mugabe was willing to "sell" off, through increased indebtedness, his country to South Africa as a way of maintaining power. However, the MDC might not be so willing to allow their economy to rest in the hands of black South Africans and may take steps to reverse this course plotted by Mbeki. As should be evident by now the South African government and black capital would rather deal with the dictator they know and can control, than take their chances with a democratically elected party of which they have little knowledge and even less control. "Giving legitimacy to the Mugabe regime protects the economic investments made by the black capital of South Africa, while at the same time, handcuffing any future Zimbabwean capital to their patrons in South Africa" (Zungu, 2003:79).

This policy towards Zimbabwe benefited President Mbeki by providing political cover from all sides by South African capital. The initiatives taken by the government in Zimbabwe had given space to white capital within South Africa to continue expanding, while the support for the Mugabe regime played to the black constituency of the ANC. This reassurance was given to ZANU-PF at the same time that Mbeki was by contrast assuring white capitalists that Mugabe's

policies of nationalisation and land reform would never be undertaken by the ANC government. This support was often repeated in the form of a racialised defence of Mugabe by Mbeki saying that the “clamour over Zimbabwe reveals the continuing racial prejudices in South Africa”.

As Mbeki has provided political cover for Mugabe at the international level by providing legitimate backing of the regime and staunchly defending Zimbabwe against sanctions or condemnations by international organisations, Mbeki drew more and more criticism from domestic and international groups and individuals calling on him to change his course and his policy. However, what many failed to grasp, according to McKinley, is that Mbeki had little concern for the rights of ordinary Zimbabweans and the abuses against them. As emphasised before, Mbeki looked at this from a purely capital-centred perspective. So while he may tour the continent and the world promoting the republic’s foreign policy of respect for human rights and everything democratic, he allows the Mugabe regime to carry out systematic abuse, torture, vote-rigging, and the passing of legislation that basically bans everything not approved by ZANU-PF.

These facts severely discredit Landsberg’s idea that quiet diplomacy is a trade-off in which Mugabe is supposed to reform while South Africa “gives” him economic assistance. Clearly no reform on the political level occurred, especially when facing the facts of the current state of the country –when the recent winner of the presidential election could be detained for nine hours on the charge of “drawing a big crowd” (Campbell, 2003:153).

Mbeki responded to criticism levelled against him by wondering what all the fuss is about. After defending Mugabe against the “white world” that tells Africa how to act with the race card, Mbeki faced opposition at home with the story of how South Africans “occupied the same trench of struggle with the people of Zimbabwe” and how they “battled to end white minority rule” and thus “we have no choice but to lend a hand to the effort of the people of Zimbabwe to enjoy the fruits of their hard-won liberation, of independence, freedom, democracy, peace and stability, and prosperity.” These words resounded during Mbeki’s speech in 2003, after the crisis was well established, and grew worse in 2004 as more and more Zimbabweans crossed the Limpopo River to escape the oppression in their country.

4.6. Effects On Democratic Consolidation

This brings up the question of how these policies affected democratic consolidation in the Republic of South Africa. As any map can show, it is possible to have a rich and consolidated democracy next to a poor and undemocratic state. In the cases of both the United States of America and Western Europe, they have in fact benefited economically from the suffering of their neighbours. Thus, should South Africa not be able to carry out the exploitation of their neighbours as well as consolidate their democracy? My answer to this question is that South Africa should be able to continue to consolidate their democracy through the current policies towards Zimbabwe. However, this must be prefaced by the fact that these policies themselves do not help the consolidation, but it is the *consequences* and *reactions* to South Africa's foreign policy that will help South Africa secure its democracy. Dale McKinley's explanation will be taken as the most reasonable account based on the facts that he presented, for the current state of affairs of Zimbabwe. His breakdown of quiet diplomacy will help show how democratic consolidation can be achieved in South Africa.

According to many sources, including Williams, Mattes, and Mottiar, democratic consolidation is a process of creating a society in which democracy has been internalised in terms of behaviour as well as constitution. This occurs through a growing economy that reduces inequality, creates political institutions that are stable and predictable, produces a political culture that is supportive of these institutions, and a creation of a political identity, also known as a national identity. On top of all of this Williams points to the performance of each of these areas in terms of efficiency and legitimacy. Important for the study of South Africa's foreign policy is the economic success created by the policy, but also by products of dissension of the policy which influences and possibly creates a stronger political culture inside of civil society.

According to Mottiar democracy is consolidated constitutionally when government and non-government services submit to the resolution of conflict through the limits of the institutions and their laws and procedures which have been set in the formation of the democratic process. Unfortunately for South Africans there is no institutional format for citizens to express

discontent with their government other than the ballot box. There is no feasible way for a resolution of the conflict over the Zimbabwe crisis to emerge from the current institutions.

As it is difficult to effect policy change mid-stream when the ANC has such a hold on Parliament, in this case a near 2/3 majority in the National Assembly, there is no other legitimate party for black South Africans to channel their dissatisfaction of the ANC. A now-apparent flaw in the constitution in this regard is the lack of a direct link between the constituency of the ANC and its members of Parliament. Mattes says that “constitutional provisions also eject from Parliament any member who leaves or is forced out of a political party”, which reduces the motivation on the part of MPs to represent public opinion that runs counter to the ANC party line because it jeopardises their political careers. An ability to address the shifting changes in voters’ perceptions and desires by the ANC and the government must be created in order to consolidate democracy. A constitutional amendment could solve this issue and thus appropriate legislators to represent certain districts. However, this would disable the South African constitution from holding some of the most inclusive elections in the world, which Mattes says “induced virtually all parts of political society to play the electoral game” (Campbell, 2003:164).

Arguments that would suggest that the policy of quiet diplomacy has hindered democratic consolidation would no doubt point to the tone taken by opposing sides of the Zimbabwe issue. The race card played by Mbeki, while seemingly criticizing elements in the South African government for the coloured view on the Zimbabwe issue, simply reinforces the perception that racialisation of issues for political gain is an acceptable political technique in South Africa. Fears would logically abound for what effect this could have on an impressionable electorate who faithfully follows the ANC. However, a report out in 2002 on the Mattes article indicated that racism or discrimination is increasingly becoming a non-issue in the “new” South Africa.

However, an overflow of xenophobia struck the southern tip of Africa. Based on the frustration of being jobless because of their South African citizenship, many believe that foreigners are hired because they do not demand the same rights as South Africans. Many readily state this as a fact after many years of being dislodged by immigrants from Malawi, Mozambique, Somalia, and of course Zimbabwe (Bearak and Dugger, 20 May 2008). This is a direct result of the policy

of quiet diplomacy. “While many Africans are attracted to the better wages and possible improved standard of living in South Africa than their home country, it was only after many years of political repression and utter collapse of the economy that Zimbabweans fled across the Limpopo border” (Bearak and Dugger, 19 May 2008). The enormity of the problem had only recently been recognised. Reports by the International Organization for Migration in *The New York Times* claim that in 2006, South African officials were expelling six times the number of illegal Zimbabwean immigrants than in late 2003. This equates to nearly 4,000 Zimbabweans every week. Another rise in statistics was the number of Zimbabweans claiming political asylum in South Africa.

As the situation built towards the climax of xenophobic attacks, there were signs of South Africans attempting to show their support to the people suffering under Robert Mugabe. Previous studies of South African political culture that compared South Africa to other countries in Southern Africa, showed that South Africans are among those most likely to resort to protest, given the opportunity and right reason to participate in protest action. Mattes say these rules out any notion of an apathetic culture of the citizens of South Africa.

Protest marches about the human rights abuses taking place in Zimbabwe have taken place as recently as May, when activists marched towards the Union Buildings in Pretoria. Many of the participants were part of the Treatment Action Campaign, of HIV/AIDS policy implementation fame (Stewart, 26 May 2008). COSATU organised weekly marches of those who disagree with the current political policies taken in Zimbabwe and were meant to be Anti-President Robert Mugabe. All of these actions taken by South Africans must be regarded as a good sign for the prospects of democratic consolidation. It must seem ironic that the ANC’s refusal to listen to the ground swelling of emotion on the Zimbabwean issue in fact helped to create a more involved society that was willing to take action against their government, in a peaceful manner, to express their displeasure on issues. As discussed earlier, there was little reason for the ANC to respond to this outburst (even when it took the form of violence) other than to curtail its effects on South Africa’s world image. For one, the benefits of continuing quiet diplomacy were great for the ANC and its black bourgeois since there was no challenge to their rule of government. Thus, as the ANC becomes more out of touch with the grass roots movements of its base, there must

come a day when demands are made for constitutional change, or a new group emerges, in order to create the connection necessary between the electorate and the government. This would be beneficial for democratic consolidation because it would show that civil society has enough power to effect political policy change and create institutions– in this case a political party that will respond to their demands.

While this process may take another decade, real discontent with the policies of the ANC had begun to brew. While no ANC-card holding member is willing to abandon the liberation party, if a non-racial alternative emerges that has a greater propensity to listen to its constituents, there is a possibility for great democratic consolidation. This alternative may emerge from within the ANC, or from without, but it must be said with some degree of certainty that the ANC cannot continue with policies that do not benefit and are not supported by a growing part of their constituency and hope to remain in power at the same time.

4.7. South African Foreign Policy And African Driver Programme

The political and economic crises that have riddled Zimbabwe for over a decade have created two serious challenges for South Africa's government. The first challenge is external: SA's quiet diplomacy approach towards Zimbabwe's ruling ZANU-PF has raised important questions about SA's position and reputation as a regional power and global actor. The second challenge is internal and can be described as an immigration and asylum crisis. This domestic crisis has deepened as the political situation within Zimbabwe has remained unresolved. One to three million Zimbabweans is estimated to be living in SA, most of them as undocumented migrants.

The two challenges are closely linked. Despite this, there has been little co-ordination of SA's immigration and foreign policies towards Zimbabweans. The political significance and opportunity, both for SA and Zimbabwe, of having a vast Zimbabwean diaspora in SA have been mostly ignored, at least at the level of public policy. As SA's immigration and asylum crises have been left to simmer, the results have been detrimental to the country's internal stability and international reputation. At the same time, South Africa has not harnessed the potentially positive political role the Zimbabwean diaspora could play in helping to resolve the crisis in their homeland.

4.8. Parliamentary and Presidential Elections In Zimbabwe

4.8.1. Parliamentary Elections Held On 24-25 June 2000

The strong challenge posed to the ruling Zimbabwe African National Union-Patriotic Front (Zanu-PF) by the Movement for Democratic Change (MDC) which was formed in September 1999 made the 24-25 June 2000 parliamentary elections the most closely contested since independence from Britain in 1980. Although Zimbabwe has never been a one-party state, the ZANU-PF has ruled the country since 1980.

In February 2000, ZANU-PF suffered its first defeat in the country's history in a constitutional referendum in which the government polled 45 per cent of the votes as against 55 per cent for the opposition. The opposition rejected the draft constitution which would have increased President Robert Mugabe's executive powers, allowing him to dissolve the cabinet and parliament and rule by decree.

In political violence during the period between the constitutional referendum and the general elections, 30 lives were lost (including those of many opposition activists). Over 100 civilians were injured, at least 6500 were displaced and substantial damage was caused to property. On 16 May 2000, President Mugabe announced the date of the elections, dismissing speculations that he might cancel the polls (initially scheduled for April). This slight postponement was explained as time to allow for adequate preparation.

The electoral campaign was launched on 7 April 2000, a day after the outgoing Parliament, dominated by the ZANU-PF, approved a bill empowering the government to seize hundreds of white-owned farms without paying compensation. Under its land reform programme, the government wanted white farmers – who owned more than 70 per cent of the country's arable land – to give up half of their land holdings for redistribution to landless peasants. Opponents of the President accused him of using the land issue to secure support among the rural poor; straining race relations and plunging Zimbabwe into a crisis.

The electoral campaign focused on political violence: the MDC complained that it could only campaign safely in 25 out of 120 constituencies. Another main topic of the campaign was the disastrous economic situation, including a dire shortage of foreign exchange and extremely high inflation.

Many international observers were denied accreditation to monitor the elections. An American observer group was pulled out of Zimbabwe after describing the election as the worst it had ever seen. UN observers also withdrew from the country.

Unlike past parliamentary elections which had been characterised by voter apathy, more than five million people registered to vote and a total of 566 candidates stood for the election; the first in which the ruling ZANU-PF party was opposed in all 120 constituencies. Despite months of fierce pre-election violence, on the day of the elections, Zimbabweans voted peacefully, although the head of the European Union observers described the process as seriously flawed.

Results showed that ZANU-PF had gained a narrow victory while suffering serious losses. It won 62 of the 120 directly elected seats, while the MDC won 57. The remaining seat went to an independent candidate. Under the constitution, President Mugabe could appoint 20 members of the 150-member parliament and 10 more MPs were elected by traditional chiefs.

Nearly a month after the elections, on 18 July 2000, the newly elected members of Parliament were sworn in. As Speaker they elected by secret ballot the former Justice Minister Emmerson Mnangagwa, the government's candidate for the post.

Statistics

Round no 1 (24 June 2000): Elections results

Number of registered electors	5 049 815
Voters	2 490 556 (49 %)

Round no 1: Distribution of seats

Political Group	Total
ZANU-PF	6 2

Movement for Democratic Change (MDC) 57

Independents 1

Comments:

The other 30 seats: 20 appointed by the Head of State and 10 traditional leaders

Distribution of seats according to sex:

Men: 136

Women: 14

Percent of women: 9.33

4.8.2 Presidential Elections Held March 2002

President Robert Mugabe extended an invitation to the Norwegian Prime Minister on 7 February 2002 to send observers to the presidential elections in Zimbabwe on 9 and 11 March 2002. The European Union was planning to deploy a fully-fledged observation mission to Zimbabwe, which was to be led by Ambassador Pierre Schori of Sweden. “In the parliamentary elections in Zimbabwe in 2000, Norway took part in the EU Election Observation Mission. Ten long-term observers from Norway were fully integrated in the European Union” (Meredith, 2002:110). The same model was planned for the 2002 election observation mission. Four long-term observers from Norway were recruited to the mission through the NORDEM stand-by force, at the request of the Norwegian Ministry of Foreign Affairs. On 18 February 2002, the EU found the preconditions set by Zimbabwean authorities not to be supporting the integrity and work of the European Union and they decided to withdraw the EU Election Observation Mission. The EU also decided to impose so-called smart sanctions on the government of Zimbabwe.

The international community, the opposition and civil society in Zimbabwe underlined the importance of international observers being present during the elections. The Norwegian government decided to keep the four observers already in Zimbabwe and decided later on to increase the number of observers to 21 and to setup a Norwegian Election Observation Mission. Following this decision, NORDEM recruited a total of 21 observers. Mr Kåre Vollan was

appointed head of the mission and arrived in Zimbabwe on 25 February. In addition to the 21 observers recruited in Norway, four from the Norwegian Embassy staff in Harare were also part of the Norwegian Observation Mission.

The observers worked in teams of two; one team in each of the ten provinces in Zimbabwe. The observers worked according to commonly accepted observation methodology, observing the pre-election process, analysing the legal framework, observing Election Day procedures and the post-election environment, meeting with representatives of the government, judiciary, electoral commission, political parties, civic society, media and voters. Based on all the reports from the different regions, the Head of Mission made an analysis of the electoral process and drew conclusions that were presented in the preliminary statement of 12 March 2000. This NORDEM report includes the preliminary statement and the final report of the Norwegian Observation Mission. The report also includes a number of statements from other international and regional observer groups.

4.9 The Electoral Framework and Administration

It is regrettable that the Electoral Act had not been passed in an impeccable manner well before election days. The amendments to the Act passed in January 2002, were annulled by the Supreme Court as late as 27 February 2002, and a Presidential Decree modified the code on 5 March 2002. Such last minute changes in themselves reduce the transparency of the process. The January amendments included some important changes to the Electoral Act. They introduced a distinction between monitors employed by the Electoral Supervisory Commission (ESC) and observers, they prohibited Non-Governmental Organisation (NGOs) other than political parties or those appointed by the ESC from providing voter education, they prohibited the use of foreign donations for voter education, they gave the Registrar General extensive powers to make corrections to voters rolls, they restricted the postal voting option to diplomats, military and police, and they prohibited posting election material on any building, lamp-post, etc. without the consent of the owner. The amendments also introduced harsh penalties for violating of the amendments, such as up to five years imprisonment and fines for ‘defacing property’ with campaign material.

After the annulment by the Supreme Court most of the provisions of the amendment were reinstated by the Presidential Decree of 5 March 2002, by use of the regulatory powers of the President to suspend or amend the Act (Section 158). These regulatory powers are presently being challenged in court. Apart from the highly questionable power this gives to the executive, it also allows one of the candidates to change the rules of the game at his own discretion.

4.10. Presidential Elections Divided Into Election Bodies

The election administration is divided between the Elections Directorate, the Registrar General and the ESC. All the electoral bodies are appointed by either the President or the Government. The Registrar General has the key operational role in the conduct of elections, as well as in maintaining the voters' rolls. The Registrar-General takes his instructions from the Elections Directorate which is also part of the executive structure. The Registrar-General failed to work in a transparent manner, and crucial information about the process was either not submitted or was published very late.

The Norwegian observers were not able to meet with the Registrar-General despite a number of requests for a meeting. The ESC has supervisory and monitoring functions. In order to enhance confidence in the electoral process, independent electoral authorities should be created. Multiparty representation in the commission and decisive powers would be one way of achieving transparency and increasing trust in the process. The polling stations are staffed with election officers appointed by the Registrar-General. In addition the ESC deployed monitors, who were all civil servants.

4.11. Polling Agents

The law also gives candidates the right to appoint their representatives (polling agents and election agents) in every polling station and counting centre. This is the only involvement of the contestants in the electoral administration, and is therefore crucial to the checks and balances of

the process. The electoral legislation requires that parties must publish the names and assigned polling stations of their polling agents, before these can be accredited by the Registrar-General.

The MDC published the names of their polling agents as required, but did not assign polling stations since at that time the party still had not received the final list of polling stations from the Registrar-General. The Registrar-General would not accredit the agents until the party published the names of the agents together with their assigned polling stations, and MDC therefore made arrangements with *The Daily News* to issue a special edition the evening before Election Day containing the new list. It is hard to understand the need for publishing the list of polling agents. In light of the reprisals against MDC supporters after the election, it is clear that the lists were used to find and harass people working for the opposition.

4.12. Observers

The law provides for domestic observers to be accredited to observe the elections in the polling stations. However, the NGOs and individuals must receive an invitation from the Minister of Justice before being accredited. It is to be regretted that the Zimbabwe Election Support Network (ZESN), the main umbrella organisation for NGOs observing elections, did not receive such invitation for more than 470 out of their 12,500 nominated observers. The observers from NGOs could have added a very important element of transparency to the process, and would have offered an independent view on the polls in addition to the civil servants and the party agents. For future elections a simpler form of accreditation, not involving any kind of political screening of the organisations, should be implemented.

4.13. Postal Voting

The postal voting arrangements were restricted to officials organising the elections, the disciplined forces, and diplomats and their spouses being absent from their constituency on Election Day. Civilians such as students temporarily living outside their constituency were not covered. If the postal voting system is retained, one should consider extending it to other groups. Reports were received to the effect that the secrecy of the vote was not maintained during the

postal voting of the security forces. The safeguards against double voting of those casting a postal vote were not fully in place.

The number of voters having been issued with a postal ballot was not published before the election, and it is not clear what the deadline was for submitting applications for postal ballots. The amended law prescribed ten days prior to Election Day as the deadline for applications, whereas the Presidential Decree left it with the Registrar-General to set a deadline. As far as the observers were able to establish, such a deadline was not published. The postal voting with its limited scope allowing only a small section of the electorate to benefit from the arrangements represents a high risk of violating both the secrecy of the vote as well as the integrity of the process.

4.14. Voters' Register

The cut-off date for registering to vote in the Presidential elections was changed several times. The date publicly known until 3 March was 27 January 2002. However, on 3 March 2002 the Registrar-General published a notice dated 01 March 2002 extending the deadline for registration to 03 March 2002. In the meantime observers had reported hectic registration of voters in strongholds of the governing party. This procedure raises serious doubts about the voter registration process. A comparatively high number of voters were rejected at polling stations because their names did not appear on the rolls, which shows that the registration process should be improved.

4.15. Transparency

Key information was not made publicly available either in a timely manner, or at all. This includes the final number of registered voters per constituency, the number of polling stations per constituency, the list of polling stations, the final deadline for applying for postal ballots and the number of ballot papers printed.

4.16. Political Violence

The campaign period was characterised by high levels of fear and intimidation, a pattern of serious political violence and heavy restrictions on opposition campaigning. In some of the incidents reported, MDC supporters were at fault. However, as an overall assessment there is no doubt that the majority of cases were directed against the opposition party. Indeed, reports from observer teams deployed in all ten provinces of the country are so consistent as to suggest a deliberate campaign of violence and intimidation against the opposition and its known or suspected supporters, condoned or even sponsored by state organs. Numerous reports of harassment and assault of MDC officials, members and supporters and their homes have been documented by observers. Some of these cases have involved extreme and indeed shocking levels of violence. MDC offices have also come under attack in several places. The net result of this systematic violence and intimidation has been that certain areas of the country, in particular Mashonaland East and Mashonaland Central, as well as parts of other provinces, have effectively been no-go areas for opposition campaigning. In some rural districts of Masvingo and Manicaland, the level of intimidation has been such that MDC supporters have been forced to flee, seeking refuge in urban areas.

Observers have also noted a pattern of harassment and intimidation of certain sectors of the electorate. There is convincing evidence that the establishment of ZANU-PF youth bases in many areas has been instrumental in restricting political freedom, freedom of movement, and spreading fear among the electorate. In a number of confirmed cases, ZANU-PF youth bases were relocated at or near known polling stations, suggesting a deliberate strategy to intimidate voters. Allegations of torture against known or suspected opposition supporters at such bases have been verified by observers in Mashonaland Central, Mashonaland East and Matabeleland South.

4.17. The Police

Observers have noted with concern numerous incidents in which members of the security forces, in particular the police, have acted in a partisan manner. A pattern was observed where the police

regularly failed to respond to or investigate reported violence against opposition supporters, while reacting swiftly and with disproportionate force against real or alleged opposition offences. In some cases, relations between violent supporters of the ruling party and police and Central Intelligence Organisation (CIO) operatives appeared so close as to suggest collaboration toward a common goal.

The adopted Public Order and Security Act gives the police far-reaching powers to restrict key civil and political rights such as the freedom of speech, movement, association and assembly. Both in the pre-election period, on polling days, and in the immediate aftermath of the election, police used these powers to control, intimidate and harass the opposition.

Numerous cases of police using the Act to restrict opposition campaigning have been documented. MDC offices and MDC officials' homes have been searched by police in the run-up to the election, in some cases in the presence of observers. The application of the Public Order and Security Act has been such as to place wholly unreasonable limitations on the freedom of assembly, with civil society coalitions, domestic election observers and some NGOs apparently being targeted. Accredited local journalists have also faced police harassment. There have been many disturbing reports of detentions of opposition members, polling agents and supporters under the Public Order and Security Act or other legislation, a number of which have been verified by observers. In many cases, observers have found it difficult not to conclude that the detentions were politically motivated. There have also been worrying reports of detainees being denied fundamental civil rights such as access to legal counsel and medical attention.

4.18. Charges of High Treason Against MDC Leaders

Following the release of a video tape allegedly showing the MDC President and presidential candidate, Mr Morgan Tsvangirai, the Secretary-General, Mr Welshman Ncube and other party officials plotting against President Mugabe, Mr Tsvangirai was arrested on 25 February 2002 for questioning on the allegation of high treason.

4.19. Elections Days

4.19.1. Voting in Harare and Chitungwiza

The voting in Harare and Chitungwiza must be assessed differently from the voting in the rest of the country. The capacity of the polling stations was far too low to accommodate the more than five thousand voters on average per site. With only one processing line in each polling station, it was clear well before the election days that the number of polling stations in Harare would be too low. In some constituencies the number of voters even approached 7,000 per polling station. Already in the morning of the first day of polling the queues at some polling stations had up to 4,000 people. The polls were re-opened on the third day, but only in Harare and Chitungwiza, not in the whole country as ordered by the High Court. The voting did not start before 11am, despite the fact that the polling stations were ready to open earlier. A few actually opened at 7 am, but closed again by order of the Registrar-General. Queues were building up since morning, in some cases by the thousands. At seven in the evening all the polling stations closed, regardless of the queues at the time. In some polling stations there were still a thousand voters in line.

4.19.2. Voting outside of Harare

In the provinces outside of Harare the average number of voters per polling station was around 1,000 except in Bulawayo where it was around 3,000. The polling was therefore carried out in a generally efficient manner. However, in many areas, there are reports of a strong fear of expressing political opinions. Observers reported on clear instances of fear among voters. Despite several instances of intimidation of polling agents and police raids on opposition party offices, polling agents of the two major candidates had been deployed in an impressive manner. At some polling stations it was noticed that villages were voting together under the direction of the chief. This was explained as a measure to ensure that the polls were conducted in an orderly manner. However, since the ballots carry serial numbers, the arrangement also has the potential of controlling that there are no defectors within a village, by checking the number series afterwards.

4.20. The Count and Aggregation of Results

4.20.1. The Counting Process

The count was performed at central counting centres, one for each of the 120 constituencies. It was conducted in two steps: verification of the voting material brought in from the polling stations as well as the postal votes, and the count itself. The counting staff seemed to be well versed with this tedious process, even though small anomalies during the reconciliation were not always addressed. Only in one counting centre observed were the postal ballots checked against the voter registers for double voting. This is a very time-consuming process, but it is the only way to ensure that voters who have cast a postal ballot have not also cast a regular vote.

Since the ballots are numbered, it is relatively simple to check who had cast a postal vote. The system for postal ballots should be re-assessed. In a number of counting centres, the constituency registrar was not willing to announce the result of the count to those present at the counting centre before having communicated the results to the command centre in Harare. Even though the observers could make their own estimates based upon the piles of ballots, this did not strengthen the general confidence in the process.

Once the results had been received at the command centre, the results of the constituency were published. This was an important positive feature of the process. Some inconsistencies in the protocols signed at counting centres and published as part of the official results, such as in Mufakose constituency in Harare, needed to be carefully corrected and explained to the public.

4.20.2. The Election Results

The figures presented below are based upon various sources and President Mugabe was declared the winner of the election. The results can be summarised as in the following table.

As can be seen from the figures, the turnout increased in the ZANU-PF strongholds whereas there was little change in areas where MDC has its main support. There is no doubt that the will to

cast a vote was very strong in Harare and Chitungwiza and those voters there were effectively prevented from doing so. Outside of Harare reports were clear that fear and intimidation had raised the turnout. The number of registered voters also increased drastically in areas with ZANU-PF support.

All together it can be concluded that the political intimidation before election days and the limitation of polling capacity in Harare and Chitungwiza affected the figures, and that the outcome of the elections thus could have been different.

Statistics

Candidate	Party	Votes	%
Robert Mugabe	ZANU-PF	1,685,212	56.2
Morgan Tsvangirai	Movement for Democratic Change	1,258,401	42.0
Wilson Kumbula	ZANU-Ndonga	31,368	1.0
Shakespeare Maya	National Alliance for Good Governance	11,906	0.4
Paul Siwela	Independent	11,871	0.4
Invalid/blank votes		132,155	–
Total		3,130,913	100
Registered voters/turnout		5,647,812	55.4

4.20.3. Check Of Results Against Observer Reports

Allegations have been brought forward that the official turnout figures in certain constituencies are higher than expected based on the actual turnout in the polling stations. It is very difficult to assess this on the basis of our sample. However, in the Uzumba Maramba Pfungwe constituency, the official turnout per polling station on average amounted to more than 1300 voters. The reports from observers on turnout in the afternoon of the second day of voting indicate that only one out of eight polling stations had surpassed 1300 votes, and that most of them were down at around 800 votes. Only a very high turnout in the final hours of the second day could have produced the turnout reported from the constituency.

To enhance the transparency of the process, it is vital that the detailed figures of turnout per polling stations be made publicly available, together with the figures of number of rejected voters. This will enable the observers, polling agents and monitors to verify that their polling station had been correctly added to the aggregated figures.

4.21. The Post-Election Period

4.21.1. Harassment of Polling Agents

Norwegian observers remained in their areas of deployment for several days after the official announcement of results. During this immediate aftermath of the poll, a number of highly disturbing developments were noted. It quickly emerged that ZANU-PF supporters around the country had embarked on systematic reprisals against opposition members or supporters. In particular, opposition polling and election agents were targeted by violent youths and war veterans reportedly using the list of polling agents published in national newspapers before the election. Numerous cases of assault, beating, torture, looting, arson, and at least one killing of a suspected MDC supporter were reported to observers in the first few days after the poll.

There were also reports of violent attacks on commercial farmers and farm workers. Given the time constraints, only a few of the reported incidents could be independently verified before the observers' departure, but both the consistency of the reports and the threatening rhetoric used by ZANU-PF officials during the party's pre-election house-to-house campaign lend credibility to the claims of systematic reprisals by the opposition, the independent media and civil society groups.

Police action in the immediate wake of the poll also gave cause for alarm. While in a few cases action appears to have been taken against perpetrators of post-election violence, in the majority of reported incidents those carrying out the reprisals have been able to operate with impunity.

4.21.2. Arrests on Allegations of Double Voting

Meanwhile, according to the Press and Public Information Department of the Police, approximately 270 persons in Harare and near 600 nationwide had been arrested by 15 March 2002 and would face charges for allegedly voting twice. Observers attempted to visit some of those detained in Harare, but were denied access by police and prison authorities. However, some of those later released claimed to have been kept in overcrowded cells and denied access to food or toilets for up to 24 hours during their detention. The evidence produced against the alleged “double voters” to date is that their hand or hands were allegedly found to be stained with ink when they attempted to vote. However, given the practice of dipping both hands into the ink and the ease with which the liquid is transmitted to others (via handshakes etc.); it is highly possible that a number of those arrested may have been innocently accused.

4.21.3. Detention of the MDC Secretary-General

On 13 March 2002, MDC Secretary-General, Welshman Ncube was arrested and detained by police at a roadblock near the Botswana border. The police were acting on orders from the Law and Order Division of the Criminal Investigations Department in Harare, which had previously questioned Mr Ncube over his role in the alleged assassination plot against President Mugabe. Later released on bail, Mr Ncube was obliged to surrender his travel documents to a Harare magistrate and ordered to report to the authorities every week. A number of other high-ranking MDC members were reportedly in hiding for fear of arrest or violent reprisals by members of the ruling party.

4.22. Conclusion

South Africa’s experience in engaging the rest of Africa has left its mark on Pretoria’s dealings with Zimbabwe. In Nigeria, the ANC learned that it would find little success in a go-it-alone strategy. In Lesotho, an experiment in military intervention provided mix results. In the DRC, South Africa is learning that regional solidarity comes at a cost to their other foreign policy goals. Thus the current policy in Zimbabwe draws from all of these experiences; however, this

situation is unique in how it serves the interests of the black bourgeoisie of South Africa to keep Robert Mugabe in power. Quiet diplomacy has served as a contentious point of debate on the world stage as well as in the republic. The consequences of this policy have impacted on the possibility for democratic consolidation.

Quiet diplomacy has created the possibility for a civil society to realise that their desires for change, both domestically and internationally, have not been affected by the current ANC administration. How the electorate and the government resolve these lines of communication are paramount in the chances of consolidation. However, the most likely of choices, the rise of a powerful alternative political party or a constitutional amendment resulting in direct accountability of MPs to the electorate, would create increased democratic consolidation. In addition, Mbeki's quiet diplomacy has served the nation in creating an economic stability that is necessary for the consolidation of democracy. Thabo Mbeki is especially knowledgeable on politics but equally indoctrinated in the belief of neo-liberal economic policies.

While this chapter created a sharp critique of his policies and the response created by his constituency, no effort has been made yet to say that the policy of quiet diplomacy is incorrect or wholly flawed when it comes to creating an environment beneficial to the consolidation of democracy. In the description by McKinley, one can clearly see Mbeki's thought process behind the "stay the course" attitude when it comes to quiet diplomacy. His black economic empowerment programmes have only benefited the black upper class that is linked to the ANC so far. The growth of black and white capital in the country will definitely provide a substantial possibility for growth of the South African economy, domestically and regionally, that will undoubtedly create benefits for the population as a whole. The suffering of the Zimbabwean people must be taken into account when assessing the prospects for democracy in the region. Looking solely at the prospects of South Africa's democracy, it has been demonstrated that the effects on civil society and the economic foundation created by quiet diplomacy will be favourable for the consolidation of South African democracy. The following chapter discusses the impact and problems of the Government of National Unity.

CHAPTER 5

5. IMPACT AND PROBLEMS OF THE GOVERNMENT OF NATIONAL UNITY

5.1. Introduction

The South African led mediation on Zimbabwe had been received with mixed results, both within the country and internationally. The Global Political Agreement, signed in September 2008, intended to put in place a temporary inclusive government that would attempt to stabilise the country politically and economically. This would prepare the ground for an election result that could be accepted by all the major contenders. With the GPA still in play, the results thus far have been mixed, but with a growing apprehension around the slow movement in implementing its central tenets. It is such diplomatic initiatives that are most likely to open up political spaces in Zimbabwe.

In 2007 the Southern African Development Community (SADC) gave President Thabo Mbeki, then President of South Africa, the mandate to negotiate a political agreement between the major political parties in Zimbabwe, ZANU-PF and the two MDCs in the face of a rapidly declining political and economic situation. The major objectives of the mediation were to:

- endorse the decision to hold parliamentary and presidential elections in 2008;
- agree on steps to be taken to ensure that the elections would be generally acceptable to all concerned and be representative of the will of Zimbabwean voters; and
- agree on the measures that needed to be implemented to create the climate that would facilitate such acceptance.

The three political parties agreed to the mediation for different reasons. For ZANU-PF a combination of the free fall in the country's economy, increasing international criticism from the west, and perhaps most importantly, pressure from SADC, made it difficult for President Mugabe's regime to avoid the process. In the case of the larger of the two MDCs, the Tsvangirai formation, a negotiated settlement looked like the best route to power, in the context of the severe weakening of other strategic alternatives, while for the smaller MDC-Mutambara, the negotiated route to power would for the moment avoid its almost certain demise at a future poll.

5.2. Mediation Efforts Since 2007

In 2007, Thabo Mbeki, then president of the South Africa, was appointed by the Southern African Development Community (SADC) as facilitator to mediate a solution to the political and economic crisis in Zimbabwe. As a result an agreement to have harmonised presidential, parliamentary and local government elections was reached. Elections were held in March 2008 and the election date was decided by the president in post, President Mugabe.

The 2008 elections were a blow to ZANU-PF's enduring rule. For the first time, the party lost its majority in the House of Assembly to the MDC. In the meantime, SADC had called for an emergency meeting urging the release of the official results for the presidential poll. Tsvangirai was said to have received most of the votes during the presidential poll, but lacked an overall voter majority to avoid a run-off against President Mugabe. As a consequence, President Mugabe and Tsvangirai had to compete in a second round for the presidential role. The violence that ensued, however, led Tsvangirai to withdraw from the second round so as to end the ongoing violence and intimidation against his supporters.

After the one-person election run-off, President Mugabe re-assumed the role of president. Following his inauguration, the African Union urged for the creation of a Government of National Unity in Zimbabwe with President Mbeki playing the facilitating role.

This was important on two accounts: "It reflected an unusual readiness to break a general continent-wide reluctance to intrude in other nations' business" and "it was another departure from the continent resistance to treating President Mugabe as anything less than a hero of the struggle for liberation" (Campbell, 2003:23).

5.3. Zimbabwean Political Negotiations

President Mbeki met with President Mugabe on 5 July 2008; Arthur Mutambara, Welshman Ncube, and Priscilla Misihairabwi-Mushonga of the MDC-Mutambara group also participated in the discussions. Although Tsvangirai's MDC organisation was invited to participate, it declined

to do so, reiterating its refusal to recognise Mugabe as President and saying that discussions should take place only in the presence of a mediator appointed by the African Union (AU). President Mbeki nevertheless expressed hopes that Tsvangirai's party would participate. Patrick Chinamasa stressed that the government was committed to dialogue with both MDC groupings, but said that Tsvangirai had committed "an act of utter disrespect" by failing to appear at the talks. Mutambara also stated that the involvement of all parties was necessary.

Talks between the parties began in Pretoria on 10 July 2008. ZANU-PF and both MDC groupings were present for the talks, although Tsvangirai said that his group's delegation, led by Biti, was present to explain its conditions for negotiations which included an end to the violence, the release of MDC prisoners, and the appointment of an AU envoy not to actually participate in negotiations. Nelson Chamisa described the discussions as merely "talks about whether to have talks, really just a consultation." ZANU-PF was represented in the talks by Chinamasa and Goche.

Chamisa said on 13 July 2008 that no agreement had been reached and that the two sides "still have to clear the course for meaningful talks". According to Nelson Chamisa, violence against MDC members and supporters was continuing, and he said that it was "difficult to engage in meaningful dialogue" under the circumstances. Zimbabwe's *Sunday Mail*, however, reported on the same day that an agreement had been reached on a "working framework" for talks (Hill, 2003:119).

The 2008 to 2009 Zimbabwean political negotiations between the opposition Movement (led by Morgan Tsvangirai), its smaller splinter group, the Movement for Democratic Change-Mutambara (led by Arthur Mutambara), and the ruling Zimbabwe African National Union-Patriotic Front (led by Robert Mugabe) are intended to negotiate an end to the partisan violence and human rights violations in Zimbabwe and create a framework for a power-sharing executive government between the two parties. These negotiations followed the 2008 presidential election, in which President Mugabe was controversially re-elected, as well as the 2008 parliamentary election, in which the MDC won a majority in the House of Assembly.

Preliminary talks to set up conditions for official negotiations began between leading negotiators from both parties on 10 July 2008, and on 22 July 2008, the three party leaders met for the first time in Harare to express their support for a negotiated settlement of disputes arising out of the presidential and parliamentary elections. Negotiations between the parties officially began on 25 July 2008 and are currently proceeding with very few details released from the negotiation teams in Pretoria, as coverage by the media was barred from the premises where the negotiations took place. The talks were mediated by South African President Thabo Mbeki.

A final deal was reached on 11 September 2008, providing for President Mugabe to remain President while Tsvangirai would become Prime Minister. The deal was signed on 15 September; negotiations continued regarding the composition of a new cabinet.

5.4. Return Of Mbeki And Failure Of Negotiations

On 13 October 2008, President Mbeki arrived in Zimbabwe to facilitate negotiations. Mugabe and Tsvangirai met for over seven hours on 14 October 2008, but no agreement was reached. Talks over the next two days did not produce an agreement, but on 16 October 2008, President Mugabe expressed optimism about the possibility of an agreement being reached on the next day, stressing the “need for compromise on both sides”. Nelson Chamisa said that there was “some movement, but not enough.” Reportedly, control of the Home Affairs ministry remained a key sticking point; ZANU-PF was said to offer the Finance ministry to the MDC and to have proposed that the parties’ alternate control of the Home Affairs ministry, but the MDC reportedly rejected this proposal.

By 17 October 2008, Tsvangirai announced to the press that the talks had failed due to the conflict over the Home Affairs ministry, and that both he and President Mugabe had agreed to refer a resolution of differences to SADC; President Mugabe stated that the talks “went in the wrong direction.” On 16 October 2008, SADC officially acknowledged that it did not recognise President Mugabe as the legitimately-elected president in response to a legal application filed against it by the Zimbabwe Exiles’ Forum, but it rejected a request from the forum for the rejection of President Mugabe from SADC meetings due to SADC’s belief that Mbeki’s role as

moderator in the negotiations would facilitate an end to the deadlock and bring the power-sharing deal to fruition. SADC, according to Tsvangirai, would meet on 20 October in Swaziland to discuss further proceedings; in the meantime, neither party would walk away from talks.

However, on 20 October 2008, the scheduled meeting took place without Tsvangirai in attendance due to a boycott called by the MDC after Tsvangirai was given a temporary one-way exit document by the Zimbabwean government that was only meant for travel to Swaziland. The meeting, instead, brought President Mugabe to discuss matters with the SADC troika of heads of state from Swaziland, Mozambique and Tanzania, also known as the “Organ on Politics, Defence and Security.” In addition, it was announced that the current South African president, Kgalema Motlanthe, would join the organ. Meanwhile, negotiations between the three parties were suspended for a week.

A new meeting was scheduled to be held in Harare on 27 October 2008. MDC-T spokesman Nelson Chamisa said on 24 October 2008 that Tsvangirai would attend that meeting. On 25 October, Tsvangirai said that while the MDC respected SADC and the regional leaders, it would not sign an unsuitable deal at their behest. The SADC meeting in Harare was unsuccessful, with control of the home affairs ministry remaining the key sticking point. A communiqué issued afterwards called for a new SADC summit to be held as a matter of urgency.

5.5. Mbeki Is Recalled From the South African Presidency

Only a few days after the agreement was signed, President Mbeki was forced to resign as President of South Africa by his party, the African National Congress (ANC). This raised additional concerns about the future of the agreement; it was unclear if President Mbeki would continue to act as mediator, and it was unclear if South Africa, under new leadership, would remain so heavily involved in resolving Zimbabwe's political situation. Jakaya Kikwete, the President of Tanzania and Chairman of the African Union, said on 24 September that “the South African government...will continue to focus on the issue,” while SADC spokesman Charles Mubita said that President Mbeki would continue to act as mediator. According to Mubita, President Mbeki was appointed as mediator “based on his knowledge, understanding and acumen

of the situation” and did not necessarily need to be a sitting president to serve in that role. For his part, President Mugabe was quoted in *The Herald* on 25 September 2008 as saying that President Mbeki's removal as President of South Africa was “devastating” and “very disturbing”, while also stating that it was “the action of the South African people” and that as a Zimbabwean he was in no position to judge. President Mbeki’s successor, Kgalema Motlanthe, said on 2 October 2008 that he wanted President Mbeki to continue mediating. On 3 October 2008, a spokesman for the South African government announced that President Mbeki had agreed to continue in his role as mediator.

5.6. Negotiations Came To A Standstill

On 28 July 2008, an MDC official said that the talks had stalled due to disagreement on the question of who would lead the government; according to the official, Tsvangirai had been offered the position of Vice-President, but the MDC was unwilling to accept any deal that did not place Tsvangirai at the head of the government. Speaking on 29 July 2008, however, President Mbeki said that the talks were continuing and that they were going “very well”. The talks adjourned on 29 July 2008. President Mbeki said on 30 July 2008 that “the talks were adjourned so that the negotiators could consult with their leaders” and that they would resume on 3 August. He met with Tsvangirai in Pretoria on 29 July 2008 and with President Mugabe in Harare on 30 July. For his part, President Mugabe said that the talks were going well and that the negotiators were working towards a compromise (Stiff, 2000:81).

Speaking on 30 July 2008, Tsvangirai expressed his hope that the negotiations would result in an “honourable exit” for President Mugabe; he also said that President Mugabe was “just as human as every one of us”, while asserting that he was “ignorant, or chooses to be in denial, as far as the violence is concerned.” During a visit to Senegal in which he met with Senegalese President Abdoulaye Wade, Tsvangirai said on 31 July 2008 that he was “fairly satisfied” with the way the negotiations were proceeding, while acknowledging that some “sticking points” remained.

The talks resumed on 3 August 2008. On the same day, as part of its “Let’s Talk for a Change” campaign, the MDC had an advertisement published in *The Standard*, in which it acknowledged

that President Mugabe had taken a positive step by accepting power-sharing negotiations. South Africa said on the next day that the renewed negotiations were proceeding well and that the negotiating parties were not concerned about meeting the deadline, which had been set for 4 August 2008.

5.7. Deadlock During Negotiations

In a statement on 7 August 2008, President Mugabe said that the reports regarding a draft agreement were “utter nonsense”; he also denied reports that he was planning to meet with Tsvangirai. According to President Mugabe, the talks were “going on very well”, and he said that “the people of Zimbabwe shall be informed in due course.” However, President Mbeki went to Harare on 9 August 2008, and Mugabe’s spokesman George Charamba said that President Mugabe would meet with Tsvangirai on 10 August 2008, while reports suggested the signing of an agreement was imminent.

On 12 August 2008, the power-sharing negotiations continued, with reports indicating that the MDC-T and ZANU-PF were still deadlocked. President Mugabe and Mutambara (of the MDC-M) were reported to have signed an agreement on 12 August 2008 that excluded Tsvangirai, but later in the day President Mbeki denied that a deal was signed between any of the three negotiating parties, stating that Tsvangirai had left the negotiations earlier in the day to reflect on them. MDC-M Secretary-General Welshman Ncube also said that no agreement had been reached.

5.8. Negotiations Between Party Leaders

Mugabe, Tsvangirai and Mutambara met in Harare on 4 October 2008 for talks on the distribution of portfolios, but could not reach an agreement. According to Charamba, President Mugabe's spokesman, the negotiating teams would meet again to discuss the allocation of the portfolios of finance and home affairs. Spokesmen for the MDC-T and the MDC-M also acknowledged the failure to reach an agreement and said that negotiations would continue. The

MDC-T's Nelson Chamisa said on 5 October 2008 that all of the Cabinet portfolios were in question, not just two of them, as claimed by Charamba.

The negotiators met briefly on 7 October 2008, but again failed to reach an agreement. According to Nelson Chamisa, the parties were “still in different worlds in a fundamental way.” For his part, Biti said that he and fellow MDC negotiator Elton Mangoma left the meeting in outrage after the ZANU-PF negotiators said that they were only present “to justify why they needed the two ministries of home affairs and finance” (Meredith, 2002:197). Biti insisted that the MDC had never agreed to the allocation of any ministries and that it was deceptive for ZANU-PF to claim that there were only two in dispute. He expressed the hope that President Mbeki could help resolve the situation, saying that if President Mbeki was unsuccessful the only remaining hope was divine intervention. It was reported at this time that the power-sharing agreement was near collapse. It was reported that some members of the ZANU-PF leadership were adamant that the party needed to hold the key portfolios, believing that ZANU-PF would be in grave danger if it did not control those ministries.

Tsvangirai said on 9 October 2008 that the talks were deadlocked and progress was impossible unless President Mbeki intervened. Meanwhile, Information Minister Sikhanyiso Ndlovu dismissed the claim of a deadlock entirely: “Deadlock is the figment of imagination by our detractors from outside Zimbabwe.” According to Ndlovu, it was necessary for ZANU-PF to “teach the art of government formation and implementation of policies” to the MDC, as they were “still new.” Nevertheless, President Mugabe, Tsvangirai, and Mutambara met on 10 October 2008 and agreed that Mbeki's mediation was needed.

5.9. ZANU-PF And The Opposition Parties

On more than one occasion President Mugabe promised President Mbeki good behaviour. Following one meeting, President Mugabe appeared on camera to declare that he would uphold the rule of law, that veterans who harassed farmers would be arrested and that all war veterans would soon be forced to leave the farms they had invaded in 2000. In return President Mbeki promised to provide aid and mediate with the International Monetary Fund (IMF) for funds.

Once President Mbeki had left, however, President Mugabe publicly asserted that he had never said any of the things that he had in fact said the day before.

Even after Mugabe's blatant defaulting on his promises, Mbeki continued to back him in the international community. At the UN Millennium Summit in New York in September 2000, President Mbeki tried to negotiate deals between the UN, UK and Zimbabwe, only to have them ripped apart when Mugabe once again refused to allow transparency and uphold the rule of law. In an interview with the BBC in 2001, President Mbeki conceded that President Mugabe had ignored his quiet diplomatic advice and that he had tried persuading President Mugabe to reform, but that he "didn't listen to me."

Mbeki and South African government officials met personally with Mugabe and Zimbabwean government officials on many different occasions. This was in keeping with a "quiet diplomatic" approach, but did not prove productive in any real sense.

5.10. South Africa Has Finished With Its Mediation

A spokesperson for South African President Jacob Zuma in his position as the region's appointed mediator to Zimbabwe's shaky unity government, expressed satisfaction with the way he mediated the Zimbabwean crisis. President Zuma's international adviser, Lindiwe Zulu, said that South Africa's mediation role had officially ended on 31 July 2008. Zulu told the paper that the Global Political Agreement stipulated that her country would be involved until Zimbabwe held elections, with GPA guarantor SADC taking over after that. "It's now with SADC. President Zuma has done everything he was supposed to do and did exactly what the GPA said. There is a summit soon and SADC will receive a report, obviously from the chairman and chairman of the Troika, and once the report is received, SADC will decide on the way forward." Zulu is further quoted saying: "We are absolutely satisfied in the last three-and-a-half years in keeping together the parties in doing what they had to do. We have played our role as a team and developed all the documents they used in the process." However, questions still remain as to whether President Zuma and the region did everything they could to effectively solve the Zimbabwean question.

ZANU-PF had already said there was no longer any need for President Zuma's mediation, with the party's spokesman Rugare Gumbo saying: "We have won the elections. President Mugabe's landslide has actually put an end to facilitation; hence there is no need for facilitation in Zimbabwe anymore because the elections went well" (Zungu, 2003:79). Most African countries have already congratulated President Mugabe on his win, with Botswana by contrast breaking ranks and calling for an independent audit of what it termed an unfair election.

5.11. South Africa To Inform SADC About Ending Mediation In Zimbabwe

President Jacob Zuma is expected to inform the Southern African Development Community (SADC) that the four-year facilitation process, which he headed, is over, following the conclusion of Zimbabwe's elections. SADC heads of state will gather for a two-day summit in Lilongwe, Malawi where they will focus on the recent elections. President Jakaya Kikwete of Tanzania, who heads the SADC organ that was concerned with Zimbabwe, is due to present the regional observer mission's final report. Based on the report, South Africa will officially be released from its mediation. The regional body is also expected to lobby Western countries like Britain and the US to drop sanctions against Zimbabwe as part of a plan to help its economic recovery.

5.12. SADC Summit

The round of talks in Harare ended on 12 August 2009. Tsvangirai expressed continued commitment to dialogue on 13 August 2009, saying that any agreement needed to "put the people first, not leadership positions and titles." President Mbeki, who had left Zimbabwe, maintained that it was still "possible to conclude these negotiations quite quickly" (Meredith, 2002:171). Meanwhile, it was announced that Ian Khama, the President of Botswana, would not attend the summit unless an agreement was reached in Zimbabwe.

On 15 August, the day before the summit, Tsvangirai spoke to a gathering of Cabinet ministers from the SADC countries. In his speech, he acknowledged that the MDC and ZANU-PF remained divided on the question of how executive powers should be allocated in the national

unity government. According to Tsvangirai, the sides had agreed on leaving Mugabe in office as President and establishing a new position of Prime Minister for himself. Tsvangirai explained that he wanted to have strong, executive powers: as Prime Minister, he “must chair the cabinet and be responsible for the formulation, execution and administration of government business including appointing and dismissing his ministers”, stressing that he could not succeed in the role if he was given “responsibility without authority.” President Mugabe, according to Tsvangirai's proposal, would be a head of state without veto power; he would remain commander-in-chief of the military, but would act in that capacity on Tsvangirai's advice. ZANU-PF, on the other hand, favoured an agreement in which Tsvangirai would become Prime Minister while President Mugabe would remain in charge of the cabinet.

At the summit on 16 August 2008, SADC leaders held talks with President Mugabe and Tsvangirai. The SADC summit ended on 17 August 2008, with the two sides still unable to agree. President Mbeki said that the negotiations would continue after the summit; Biti, speaking for the MDC, expressed continued commitment to dialogue, as did Zimbabwe's Minister of Information, Sikhanyiso Ndlovu. In a statement the SADC leaders called on the parties to “conclude the negotiations as a matter of urgency to restore political stability in Zimbabwe.”

5.13. President Zuma Mediates Power-Share Deal

President Jacob Zuma visited Zimbabwe to try and break the deadlock on the political agreement which led to the formation of the inclusive government more than a year ago. President Zuma had to arrive in Harare amid growing signs of stalemate in the 13-month-old unity government. And just a day before his arrival, Zimbabwe's Prime Minister Morgan Tsvangirai was already weighing in.

He said the unity government has failed to institute significant democratic reforms and accused his old rival, President Robert Mugabe, of blocking them. ZANU-PF has said it would not make any more concessions to MDC claiming it has fulfilled everything expected of it under the power-sharing agreement. Mr Tsvangirai has appealed for President Zuma to intervene in his key role within the regional body of Southern African Development Community (SADC), which has

guaranteed the political agreement. But the prime minister has a tough road ahead. President Mugabe has stripped several MDC ministers of their power and gave them to his own ZANU-PF allies. One of the ministries controls elections, and is headed by the Justice Minister, Patrick Chinamasa. Calls to Chinamasa were not returned. The MDC said it wanted to persuade President Zuma that the only solution to the deadlock was fresh elections. President Mugabe has also called for new elections. Apart from stripping the MDC ministers of their jobs the MDC said it would tell President Zuma that its main concern remained the appointment of the pro-ZANU-PF attorney-general, Johannes Tomana, who was accused of selective prosecutions focusing on the MDC.

The MDC also said the appointment of Tomana was unilateral and, therefore, in violation of the political agreement. President Mugabe said the main obstacle to progress in the unity government was US and European Union travel and financial restrictions against the hierarchy of ZANU-PF and some of their companies. During his recent state visit to Britain, President Zuma called on Prime Minister Gordon Brown to lift the targeted sanctions against Zimbabwe. President Zuma's team on Zimbabwe, which is headed by political adviser Charles Nqakula, has been working with the parties in Zimbabwe since December 2009.

5.14. The Global Political Agreement

The SADC mediation that followed the largely unrecognised Presidential run-off election in June 2008 continued until September 2008 when the Global Political Agreement (GPA) was signed between the three parties.

After the GPA came into operation in February 2009, the implementation of its terms continue to be slow and highly contested, obstructed largely by the blockages of the Mugabe regime. For most of 2009 until the present several outstanding issues around appointments, decision-making in the Inclusive Government, the proposed constitutional reform process, and the problem of "sanctions" against key members of ZANU-PF, ruined the agreement. Additionally, the military and security sector have persistently blocked the process of state reform. This is a particular problem because ZANU-PF's continued existence is largely based on the coercive apparatus of

the state, and the challenge of security sector reform did not form a part of the mediation discussions and the final terms of the GPA. ZANU-PF has consistently stated, at least in public, that the current standing and future of the military is not up for discussion. This position needs to be understood against the background of ZANU-PF reliance on the military to remain in power, and the spread of the military-economic complex in the country which now has a foothold in all the major areas of the economy, and particularly in the diamond-rich Chiadzwa area. Thus the accumulation project of the ruling elite is intricately tied to its control of the military. The fear of losing this foothold would both threaten this project and result in the demand for national and international accountability for human rights abuses.

It is in this context that the Mugabe regime views the continued “sanctions” of the EU and the US, as a “regime change” strategy, designed to overturn a nationalist party. ZANU-PF also see the humanitarian-plus policy on current engagement with the Inclusive Government as a strategy to maintain Zimbabwe as a humanitarian case while Mugabe remains in power, rather than move towards more substantive development assistance. Moreover this is a position that has been largely supported by SADC and South Africa. President Zuma has been careful not to get caught on the wrong side of the debate on the legacy of the liberation movements in the region and national sovereignty. This is a dilemma for Western policy on Zimbabwe, for while the “sanctions” continue to put pressure on the ZANU-PF elite, the lack of substantive development assistance to the economy is likely to also weaken the MDC and its social base. “ZANU-PF maintains control of the coercive levers of the state, and through that, access to key mineral resources which are likely...to allow it to maintain... a security state” (Hammar, 2003:243).

The diplomatic challenge of the SADC mediation remains to reach an agreement with ZANU-PF’s military-security-economic complex that will create favourable conditions for a generally acceptable election process, which will allow for a new engagement between a legitimately elected government and the international community. It remains to be seen whether this mediation can deal with the challenge.

Presently, there are conflicting statements coming from the Principles of the GPA about the possibility of an election in 2011 to attempt once again to resolve the Zimbabwe crisis through

electoral means. However, there is still much to be done in the GPA to settle the political zone of engagement in the country, and there is a real danger that an early election could result in further violence and the need for a renewed round of mediation. Thus an election which takes place too early would be as bad as one that is unnecessarily delayed. Any diplomatic interventions by the West need to be keenly aware of this dilemma.

For the Nordic countries the challenge is to continue to encourage the positive developments in the Inclusive Government, and to push for further dialogue between the EU and the transitional government under the Cotonou Agreement. One option that is reportedly being considered in European Union (EU) circles is to suspend the “sanctions” until the next elections. It is such changes in diplomatic initiatives that are most likely to open up political spaces in Zimbabwe.

5.15. Global Political Agreement (GPA) Was Signed

After intensive negotiation efforts by President Mbeki, a power-sharing deal, titled the Global Political Agreement (GPA), was signed by the ZANU-PF, MDC-T and the MDC-M in Harare in September 2008. This agreement was the basis for the Government of National Unity, which was formed in February 2009. With the signature of the GPA the Government of National Unity committed itself to the introduction of reforms which would create a genuine, viable, permanent and sustainable nationally acceptable solution to the Zimbabwe situation.

The events leading up to the signing of the GPA and the establishment of the Government of National Unity were all but smooth. President Mbeki adopted an approach of “quiet diplomacy” and held discussions behind closed doors, expressing his dislike for what he called “megaphone diplomacy” as promoted by the west. From the very start the MDC-T did not have full trust in President Mbeki as a mediator and repeatedly called for President Mbeki to step down. On other accounts President Mbeki was also criticised for his style of mediation as being too soft on Mugabe.

In 2009 SADC appointed Jacob Zuma, the newly elected President of South Africa, as mediator to the Zimbabwean crisis. The entry of President Zuma was welcomed by the MDC-T, and this

was supported by various media reports which have depicted Zuma as a tougher negotiator. His current task is to facilitate the Zimbabwe political dialogue and assist with the implementation of the GPA.

5.16. Agreement And Memorandum Of Understanding

ZANU-PF and both groups of the MDC signed a Memorandum of Understanding outlining a framework for talks on 21 July 2008 in Harare. Both President Mugabe and Tsvangirai were present to sign the agreement; they shook hands on this occasion, and it was reportedly the first time they had met in about 10 years. According to President Mbeki, who was also present, the agreement “commits the negotiating parties to an intense programme of work to try and finalise negotiations as quickly as possible”. President Mugabe said that the aim of the talks was to “chart a new way...of political interaction”, while Tsvangirai described the agreement as “the first tentative step towards searching for a solution for a country that is in crisis”.

Under the terms of the agreement, the parties agreed to end political violence and work towards a national unity government and a new constitution; the agreement also required that the parties not use the media as a means of negotiation and set the period for negotiations at two weeks. President Mbeki’s spokesman Mukoni Ratshitanga subsequently said that this was not a strict limit and talks could continue after two weeks if necessary.

5.17. National Referendum for new Constitution

On 16 March 2008, Zimbabweans voted on a new constitution in a national referendum. The voting was largely peaceful, and the turnout higher than expected, with over 3 million people voting. With all major parties supporting it, the result was a resounding 93% “yes”. This endorsement paved the way for elections. It was also an important signal that a new commitment to moving forward had been reached, one that international donors have agreed to respect with the removal of further “sanctions”.

The constitution is naturally a compromised document, one hammered out in Parliament by all the parties. It involved wide consultation, with inputs from the public. Given Zimbabwe's immediate political past, it is in many respects a remarkable achievement. It is, of course, rough at the edges, and not everyone agrees with every section, but it now does exist, and should be celebrated. One of the controversial areas remains the issue of land. Some are very unhappy about the provisions, blaming the MDC in particular for conceding too much.

5.18.Land And The Draft Constitution

The draft constitution was finally released, after long, hard negotiations. It has some interesting things to say about land: Access to agricultural land is seen as a fundamental right: "Every citizen of Zimbabwe has a right to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of agricultural land regardless of his or her race or colour." The draft notes that, following colonial occupation and the liberation war, "the people of Zimbabwe must be enabled to re-assert their rights and regain ownership of their land." Amongst the general principles for land use, the draft argues that "the allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interests" and that "the land tenure system must promote increased productivity and investment by Zimbabweans in agricultural land" (Knight, 2002:77). Gender balance in land distribution is an interesting constitutional principle, although nothing is specified about how it will be brought about, and the comment on "tenure systems" similarly does not specify any particular form of property rights.

Continued rights over land occupied under existing policies (presumably referring to the Fast-Track Land Reform) are assured, and the draft emphasises the importance of tenure security for those occupying land with the following statement: "The State must take appropriate measures, including legislative measures, to give security of tenure to every person lawfully owning or occupying agricultural land" (Knight, 2002:97).

Under the proposed constitution, compulsory acquisition of land, and transfer of title to the State, is allowed for public purposes including resettlement, while compensation on improvements, but not the land, must be paid. The draft goes on to note "the obligation of the former colonial power

to pay compensation for land”, but indicates that the Zimbabwean state has no such obligation. In other words, in practice there is no expectation of compensation for land, but only improvements, except for land protected by investment treaties and owned by foreigners (BIPPAAs), where compensation for land and improvements is required.

The constitution proposes the establishment of a Zimbabwe Land Commission. The government of the day will have a constitutional obligation to ensure that the commission “is able to exercise its functions efficiently and independently”, and that the membership should act fairly and impartially. A key role of the commission will be to carry out periodic land audits. The constitution specifies the one farm policy quite pointedly in the following statement: “The State may not alienate more than one piece of agricultural land to the same person and his or her dependents”, suggesting that multiple farms held within a family are unconstitutional.

Overall, these appear to be solid constitutional provisions, and should help the country move forward, consolidating the land reform and dealing with the outstanding issues of tenure security and compensation in a clear and transparent manner. Having an independent commission to oversee audits will be important also.

5.19 Power-Sharing in Government

At the subsequent SADC summit in Johannesburg, the SADC leaders proposed the immediate formation of a cabinet with shared control of the Ministry of Home Affairs. Tsvangirai rejected this and criticised SADC for not confronting President Mugabe. Returning from the summit on 10 November 2008, Mugabe said that the new cabinet would be appointed “as quickly as possible” and expressed his hope that the MDC would accept the SADC proposal. Chinamasa said that the MDC had been invited to submit names for the cabinet. On 12 November 2009, MDC-T spokesman Chamisa said that his party would not join the cabinet until “outstanding issues such as the issue of governors, equity and allocation of key ministries were resolved” (Hill, 2003:279).

On 24 November 2009, Motlanthe, former President of South Africa, urged the parties to reach an agreement, warning that if they did not, “the situation would get worse and would implode or collapse altogether”. Talks between ZANU-PF and the MDC restarted in South Africa on 25 November 2009, again mediated by President Mbeki who described the negotiations as “the same as ever, forward and backwards, sideways and around ... the usual.” Tsvangirai released a statement on 26 November calling on President Mbeki to step down. According to Tsvangirai, Mbeki “does not appear to understand how desperate the problem in Zimbabwe is, and the solutions he proposes are too small.” He also accused President Mbeki of supporting ZANU-PF and said that the MDC could not “continue negotiating under his facilitation.” Two days later, a letter from President Mbeki sharply criticising Tsvangirai's position was published. In this letter, President Mbeki urged Tsvangirai to “take responsibility for the future of Zimbabwe” instead of devoting himself to “being a militant critic of President Mugabe and ZANU-PF.” In response to Tsvangirai's accusation that the SADC leaders lacked the courage to confront President Mugabe, President Mbeki said that Tsvangirai had “described us in a manner that is most offensive in terms of African culture.” He also suggested that Tsvangirai perhaps believed “that others further away, in Western Europe and North America, are of greater importance” to Zimbabwe than those countries in the region and Africa as a whole.

On 28 November 2008, the details of the bill to change the constitution were agreed, but four other issues remained open. When asked how the talks were going, Nelson Chamisa stated that “the glass was either half-full or half-empty, depending on the point of view.” In the 30 November 2009 edition of *The Sunday Mail*, Chinamasa said that the negotiators had prepared the text for this amendment, but that it still needed to be approved by the leaders on both sides.

5.20. Final Power-Sharing Deal

Leaving the talks on 11 September 2009, Tsvangirai told the press that a deal had been reached. Mbeki said that the deal would be signed in Harare on 15 September 2009 in the presence of other African leaders; he did not explain the terms of the deal, saying that they would not be revealed until the deal was signed. The Zimbabwean Permanent Representative to the United

Nations (UN), Boniface Chidyausiku, described the agreement as a “triumph for African diplomacy.”

The SADC postponed a meeting of its defence committee indefinitely until President Mbeki could finalise a unity deal in Zimbabwe. Confirming that he would attend the meeting, President Mbeki told journalists that, if the deal fell through at the last minute, he would tell the SADC that he had done his best as mediator, and that the deal fell through because one or more of the parties were not serious about the negotiations.

At the end of the fourth day of negotiations President Mbeki announced that President Mugabe, Tsvangirai, and Mutambara had signed a power-sharing agreement “memorandum of understanding.” President Mbeki stated:

“An agreement has been reached on all items on the agenda ... all of them [Mugabe, Tsvangirai, and Mutambara] endorsed the document and signed it. The formal signing will be done on Monday 10 am. The document will be released then. The ceremony will be attended by SADC and other African regional and continental leaders. The leaders will spend the next few days constituting the inclusive government to be announced. The leaders will work very hard to mobilise support for the people to recover. We hope the world will assist so that this political agreement succeeds.”

The deal is also expected to result in a *de fact* amnesty for the military and ZANU-PF party leaders. Opposition sources said “Tsvangirai will become prime minister at the head of a council of ministers, the principal organ of government, drawn from his Movement for Democratic Change and the president's ZANU-PF party; and President Mugabe will remain president and continue to chair a cabinet that will be a largely consultative body, and the real power will lie with Tsvangirai.” The executive power would be shared by the president, the prime minister and the cabinet. Mugabe, Tsvangirai and Arthur Mutambara have still not decided how to divide the ministries. Jendayi E. Frazer, the American assistant Secretary of State for African Affairs, said: “We don't know what's on the table, and it's hard to rally for an agreement when no one knows the details or even the broad outlines” (Zungu, 2003:112).

Reportedly, the deal would include the following provisions:

- Mugabe would lead the army and the NSC, Tsvangirai the government and the police.
- A new constitution will be drafted within 18 months; following a referendum on the new constitution, early elections would be held within three months.
- The MDC will have 16 ministers, the ZANU-PF 14.

An MDC official said on 13 September 2009 that the MDC wanted to control the key ministries of Home Affairs, Finance, and Justice; in return, the official said that the MDC was willing to concede the ministries of Defence and State Security to ZANU-PF.

On 15 September 2008, SADC leaders witnessed the signing of the power-sharing agreement, facilitated by President Mbeki. With a symbolic handshake and warm smiles at the Rainbow Towers hotel, in Harare, President Mugabe and Tsvangirai signed the deal to end the violent political crisis. Under the terms of the deal, Mugabe was to remain President, Tsvangirai would become Prime Minister, the MDC would control the police, ZANU-PF would control the Army, and Mutambara would become deputy Prime Minister.

5.21. Negotiations on Cabinet Composition

The parties planned to hold talks regarding the allocation of cabinet portfolios beginning on 16 September 2009, but these talks were delayed. Chinamasa said that the necessary constitutional amendments to provide a legal basis for some aspects of the agreement would be considered by Parliament after it began sitting on 14 October 2009. However, he also said that other aspects of the agreement would not require constitutional amendments. President Mugabe, in a speech to the ZANU-PF Central Committee that was broadcast live on 17 September, described the agreement as a “humiliation”, but said that the party could have avoided the situation if it had not “blundered” when it failed to win a parliamentary majority. However, he asserted that ZANU-PF was still in “the driving seat” and would “not tolerate any nonsense” from the MDC. The Central Committee approved the agreement, while expressing concern that attacks against ZANU-PF supporters could have a negative effect on relations between the parties. On the same day,

Tsvangirai said that he was confident that the deal would hold and that President Mugabe was committed to it.

The parties held talks regarding the allocation of portfolios on 18 September, but according to Nelson Chamisa, the MDC-T spokesman, no agreement was reached and “the matter was referred to the negotiators.” The negotiators met on 19 September 2009, but according to Nelson Chamisa they failed to reach an agreement. Chamisa said that ZANU-PF had a “take, take and take mentality” and wanted to hold all of the most important portfolios, while the MDC favoured a “give and take situation” in which the most important portfolios would be divided fairly. In particular, the MDC wanted to control the Finance portfolio, justifying this by pointing to the disastrous state of the economy, but ZANU-PF objected.

5.22. Announcement Of Cabinet

On 11 October 2009, *The Herald* published an official list showing the allocation of ministries to the three parties: Defence, Home Affairs, Foreign Affairs, Justice, and local government were among the 14 portfolios allotted to ZANU-PF. The MDC-T’s 13 portfolios included Constitutional and Parliamentary Affairs, Economic Planning and Investment Promotion, Labour and Social Welfare, Sport, Arts and Culture, and Science and Technology Development, while the MDC-M’s three portfolios were listed as Education, Regional Integration and International Co-operation, and Industry and Commerce. According to *The Herald*, only the Finance ministry remained in dispute, and it said that Mbeki would travel to Zimbabwe to assist in negotiations on the matter. The allocations published in *The Herald* were not approved by the MDC-T, which rejected them outright. MDC-T spokesman Nelson Chamisa denounced the publication of the list as “unilateral, contemptuous and outrageous”, saying that such imbalance in the importance of the portfolios would effectively give ZANU-PF control of the government. He warned that ZANU-PF’s “arrogance” would “put the deal into jeopardy”. At a rally in Harare on 12 October 2009, Tsvangirai said that the MDC-T would withdraw from the agreement if ZANU-PF did not relent on the allocation of ministries. MDC-M spokesman Edwin Mushoriwa also rejected the list of allocated ministries, saying that it was a “hallucination on the part of ZANU-PF.”

5.23. The MDC have 16 ministers and ZANU-PF 15 ministers

An official close to the presidency said the dilution of Mugabe's powers promised in the agreement was “illusory”, and described the MDC as merely a “junior partner” whose only role would be “to gain legitimacy and international funds.” ZANU-PF planned to take the ministries of Defence, Justice, Home Affairs, Farming, Information, and Mines. The mining sector is the last occasionally functioning part of the economy given the country’s wealth of natural resources and this carries huge opportunities for corruption. The MDC would be offered the Finance ministry, in an effort to persuade donors that real reform was taking place in order to attract billions in aid and reconstruction. The presidential official said “It’s a tricky situation for the MDC...nonetheless we now have the opposition in government and they have to fix the economy, just as they told the electorate.” A ministerial post involving kick-starting foreign aid is seen by some as a poison chalice for the MDC. If the party were to succeed it would help add up support for the ZANU-PF and make it harder to oust the party in the future, while a failure would cause the MDC to be branded as incompetent and would undermine its own support.

MDC officials were said to be aware of the risk of being manipulated, and refused to sign up for a ministry that lacks real authority. According to an MDC spokesman, “It would appear that ZANU-PF does not understand power-sharing. We are still poles apart, with them insisting on taking all the key ministries, literally rendering the opposition peripheral in government...in fact, a situation where we would be in, but out of government.”

Msika and Mujuru were sworn in as vice-presidents by President Mugabe on 13 October 2009. Justice Minister Chinamasa said that this represented another step in the process and that it would be followed by the swearing in of the prime minister and the new cabinet. According to Chinamasa, parliamentary approval of the constitutional amendments was not necessary prior to the appointment of the prime minister; he said that the amendments would enable Tsvangirai and Mutambara to take up seats in Parliament, and that having seats in Parliament would merely provide them with constitutional legitimacy after they assumed office as ministers. In other comments, Chinamasa blamed the MDC for stalling the situation and complained that it was trying to renew discussion on matters that had been previously settled.

5.24. Government of National Unity in Zimbabwe

The 2008-2009 Zimbabwean political negotiations between the opposition Movement for Democratic Change (led by Morgan Tsvangirai), its small splinter group, the Movement for Democratic Change-Mutambara (led by Arthur Mutambara), and the ruling Zimbabwe African National Union-Patriotic Front (led by President Robert Mugabe) were intended to negotiate an end to the partisan violence and human rights violations in Zimbabwe and create a framework for a power-sharing executive government between the two parties. These negotiations followed the 2008 presidential election, in which President Mugabe was controversially re-elected, as well as the 2008 parliamentary election, in which the MDC won a majority in the House of Assembly.

Preliminary talks to set up conditions for official negotiations began between leading negotiators from both parties on 10 July, and on 22 July, the three party leaders met for the first time in Harare to express their support for a negotiated settlement of disputes arising out of the presidential and parliamentary elections. Negotiations between the parties officially began on 25 July in Pretoria, mediated by South African President Thabo Mbeki. A final deal was reached on 11 September 2008, providing for Mugabe to remain President while Tsvangirai would become Prime Minister. The deal was formally signed on 15 September.

5.25. Convening Parliament

The SADC leaders' statement also included the suggestion "that while negotiations are continuing, it may be necessary to convene Parliament to give effect to the will of the people." On 19 August 2008, the government announced its intention to convene Parliament in the subsequent week; five months after the parliamentary election had been held. The MDC said on the same day that it did not oppose convening Parliament, as long as it was not accompanied by the formation of a new cabinet, desiring that the new cabinet should be appointed only after the conclusion of a power-sharing agreement. On 20 August 2008, however, the MDC took a firmer stance, declaring the move to convene Parliament to be unacceptable, with Biti stating that it would "be a clear repudiation of the Memorandum of Understanding, and an indication beyond reasonable doubt of ZANU-PF's unwillingness to continue to be part of the talks. In short

convening Parliament decapitates the dialogue.” While on a visit to Nairobi, Tsvangirai said on 21 August 2008 that convening Parliament and appointing a cabinet would violate the conditions of the talks, according to which each step in the process was to be taken by common consensus, and suggested that Mugabe’s decision could mean he was “abandoning the basis for the talks.” He also referred to the need to balance the powers that would be held by the President and Prime Minister under a power-sharing arrangement, in which both would possess as much responsibility as authority.

Despite the MDC-T’s objections, the members of Parliament were sworn in on 25 August. On the same day, an election was held for the post of Speaker of Parliament; the vote resulted in a victory for MDC-T candidate Lovemore Moyo, who received 110 out of 208 votes in a secret ballot. ZANU-PF did not present a candidate against Moyo and instead supported Paul Themba Nyathi of the MDC-M.

ZANU-PF and MDC delegations met separately with President Mbeki on 29 August 2008. MDC-T spokesman Chamisa said on 31 August that “nothing was achieved” in the talks two days prior and that the negotiators had returned to Zimbabwe. The chairman of the Executive Council of the African Union, Tanzanian Foreign Minister Bernard Membe said on 2 September that the African Union hoped that an immediate agreement, providing for power to be split equally between ZANU-PF and the MDC, was still possible.

US assistant Secretary of State for African Affairs, Jendayi Frazer, said on 5 September 2008 that negotiations should continue, warning that her government would consider a cabinet formed unilaterally by President Mugabe to be a “sham.” MDC-T leader Tsvangirai on 7 September called for early elections under international supervision if the talks failed.

On 9 September 2008, talks resumed with new proposals, with President Mbeki flying in from South Africa to mediate. A fresh proposal by President Mbeki was tabled that would propose making Tsvangirai an executive prime minister. All three leaders of the major political parties spoke of progress in the talks, and reports of President Mugabe backing down on his earlier threats to exclude the MDC surfaced in the foreign press. The day before, Mutambara’s group of

the MDC announced that they would refuse to work with ZANU-PF if talks were deadlocked. Both Tsvangirai and President Mugabe spoke positively of the talks on 10 September 2008.

5.26. New Unilateral Threats And MDC Capitulation

In remarks published in *The Herald* on 5 December 2009, President Mugabe told the ZANU-PF Politburo that “if the arrangement fails to work in the next one and a half to two years”, there would be an early election. On 13 December 2008, the draft constitutional amendment was published in the government gazette. According to Motlanthe, the amendment marked a “major step towards the formation of an inclusive government in Zimbabwe”, and he expressed his hope that Tsvangirai would be sworn in immediately; it was believed that Mugabe was authorised to swear in Tsvangirai as Prime Minister without waiting for parliamentary approval of the amendment. Chamisa stressed that the outstanding issues of cabinet portfolios and provincial governors still needed to be resolved, while Chinamasa echoed President Mugabe’s earlier warning that he would call a new election if power-sharing was not successful.

On 4 January 2008, President Mugabe fired 12 ministers and deputy ministers who had lost their seats in Parliament from the cabinet:

- Chen Chimutengwende (Public and Interactive Affairs)
- Rugare Gumbo (Agriculture)
- Amos Midzi (Mines and Mining Development)
- OpaMuchinguri (Women's Affairs and Community Development)
- Samuel Mumbengegwi (Finance)
- MunachoMutezo (Water Resources and Infrastructure Development)
- Sikhanyiso Ndlovu (Information and Publicity)
- Michael Nyambuya (Energy and Power Development)
- Sithembiso Nyoni (Small and Medium Enterprises)
- David Chapfika (deputy minister for Agriculture)
- Edwin Muguti (deputy minister for Health)
- Kenneth Mutiwekuziva (deputy minister for Small and Medium Enterprises)

On 15 January 2009, President Mugabe announced that he would hold talks with Tsvangirai again within a week. On 18 January 2009, President Mugabe issued an ultimatum, calling on Tsvangirai to join the unity government or “break from it”, refusing to concede on any points of contention.

After another SADC meeting on 26 January 2009, there were conflicting reports. The SADC and ZANU-PF claimed that it had been agreed that the Constitutional Amendment would be adopted on 5 February 2009 and the new government, including Tsvangirai, sworn in on 11 February 2009, while the MDC stated that there had been no agreement on key issues. However, on 29 January 2009 the MDC confirmed that it would join the Inclusive Government and that the MDC’s national council would vote on the issue on 30 January 2009; it approved the deal. South African President Motlanthe pledged to assist Zimbabwe in the rebuilding process once the unity government was in place.

The news of the MDC’s entry into government was followed by outbreaks of last-minute farm raids by war veterans, who feared that the coalition government would rein in the land reforms as a liberalising measure for the economy. On 5 February, both houses of Parliament passed the unity government bill unanimously. Motlanthe expressed optimism on 8 February, saying that President Mugabe and Tsvangirai “seem to be getting along fairly well.”

On 10 February 2009, the law creating a National Security Council, which would include President Mugabe and Tsvangirai, was passed by Parliament. Tsvangirai designated the MDC’s choices for cabinet positions on the same day; these included Tendai Biti as minister of Finance and Giles Mutseyekwa as co-minister of Home Affairs. President Mugabe’s ministerial appointees for ZANU-PF were subsequently announced; this list was dominated by members of the ZANU-PF old guard.

Tsvangirai and the deputy prime ministers were sworn in on 11 February 2009 as planned. On 13 February 2009, shortly before the planned swearing-in ceremony of the government, the MDC's nominee for deputy agriculture minister, Roy Bennett, was arrested at the Harare airport.

5.27. Conclusion

The signing of the Global Political Agreement (GPA) in September 2008 and the instalment of the Government of National Unity (GNU) in February 2009 after the controversial presidential elections of March 2008 and the inter-party negotiations supervised by South African President Thabo Mbeki have heralded a new era in Zimbabwe. For the first time since the country's independence in 1980, the leading party, Zimbabwe African National Union - Patriotic Front (ZANU-PF), is sharing power with two opposition parties, the Movement for Democratic Change-T (MDC-T) and the Movement for Democratic Change-M (MDC-M). ZANU-PF's Robert Mugabe has kept his position as President of the country, but MDC-T's leader Morgan Tsvangirai has been sworn in as Prime Minister of the Government of National Unity.

The international community expected South Africa to assume the lead role in dealing decisively with President Mugabe, given its vast moral authority and its considerable economic power in the region. This expectation is warranted, given that President Mbeki has espoused good governance and democracy as imperatives in the African Renaissance. However, this expectation was perhaps overly optimistic, since President Mbeki's policy of quiet diplomacy with Zimbabwe has so far proved ineffective. In an application of the quiet diplomacy indicators, the following became evident: President Mbeki has met personally with President Mugabe several times. However, most of these meetings have proved fruitless, with Mugabe either reneging on his promises, or denying that they had been made in the first place.

Mbeki's choice of actors has also been questionable. He seems to have surrounded himself with policymakers who were unable to overcome President Mugabe's assistance to the liberation struggle during apartheid and who choose not to see what is really taking place in Zimbabwe. He has ignored views from respected public figures such as Desmond Tutu and former President Mandela. The South African government has followed a policy of constructive engagement, which President Mbeki insists is working, although there are no results to back up this claim. Mbeki also continues to assert that Africa has to solve its own problems and must be left to do so by the rest of the international community. However, since South Africa is unwilling to step on

any toes it is evident that even in African multilateral forums; the Zimbabwean crisis remains unresolved.

Evidently, South Africa's humiliation in its unilateral dealings with Nigeria in 1995 has influenced its subsequent foreign policy choices. South Africa cannot afford to be shunned by the rest of Africa. Consequently, African solidarity has once again been given more weight than respect for good governance principles. Moreover, South Africa does not regard any alternative to quiet diplomacy as being viable. President Mbeki has warned against using any sanctions, which he insists will be detrimental to the ordinary people of Zimbabwe. He maintains that such harsh action will exacerbate the situation in Zimbabwe even further.

Mbeki's quiet diplomacy towards Zimbabwe has not affected purposeful change in that country. The result has simply been that South Africa appears to have, once again, chosen pragmatism over principle, sacrificing its high ideals of African renewal to appease its fellow Africans. Chapter Six concludes the study and suggests the way forward.

CHAPTER 6

6. CONCLUSION AND RECOMMENDATIONS

6.1. Conclusion

For as long as it is unresolved, the issue of land in Zimbabwe will be an emotional issue that is highly susceptible to manipulation from politicians. It will always create an irrational inclination towards harmful radical land reform programmes. The level of human rights violations that have transpired in the process of land reform in Zimbabwe is unacceptable. This should not detract from the fact that unresolved land iniquities will foster anger and frustration from the landless, directed at those who have the resources. Unfortunately, race will always play a role; as a legacy of the past political dispensations of minority rule, whites own most of the resources, especially commercial agricultural land.

While every attempt should be made to redress the wrongs of the past and also to achieve an equitable distribution of resources so as to fight poverty, there is no clear directive on how these resources should be reacquired.

International law is conspicuously silent on how to deal with the acquisition of property of citizens in instances of former colonies where the states do not have resources to pay even minimal compensation and yet there is a need to acquire land to meet the urgent and growing public interest over this resource. The Campbell case is, at the end of the day, more than just a decision on the human rights abuses in Zimbabwe. It will be a judgment on land reform as a process and will determine how other SADC countries approach it as there is already ample examples of how not to do it. As long as the crisis in Zimbabwe is not resolved, the progress of regional integration will be stalled. Poorly structured land reform can also stunt economic growth and development. In its current situation, Zimbabwe cannot effectively implement its obligations with regard to regional economic integration. The outcome of the Campbell case will enhance the credibility of SADC as a regional institution that is committed to democracy, human rights and the rule of law.

Zimbabwe's inclusive government has made significant progress in improving the country's economic situation and reversing the decline of the past decade. For example, Zimbabwe has seen a marked improvement in its health system. However, despite a decline in the HIV prevalence over the past decade and the adoption of new guidelines on treatment in 2011, the number of HIV positive Zimbabweans requiring but not receiving treatment remain high. Huge challenges also remain on the political front, with elections a key point of contention within the Government of National Unity (GNU).

Two years into Zimbabwe's power-sharing government, President Robert Mugabe and the Zimbabwe African National Union-Patriotic Front (ZANU-PF), have used violence and repression to continue to dominate government institutions and hamper meaningful human rights progress. The former opposition party, the Movement for Democratic Change (MDC), lacks real power to institute its political agenda and end human rights abuses.

The power-sharing government, formed in February 2009, with Robert Mugabe continuing as president and opposition leader Morgan Tsvangirai installed as prime minister, has failed to end rights abuses or to institute fundamental reforms. It has also made no attempt to repeal or substantially amend repressive legislation such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA), which continue to be used by Mugabe's Zimbabwe African National Union-Patriotic Front (ZANU-PF) to harass political opponents and human rights activists.

The brutal response of President Robert Mugabe and the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) to their loss in general elections in March 2008 plunged Zimbabwe deeply into political turmoil.

The human rights situation in Zimbabwe continues to be of grave concern. Repressive laws such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) remain in place. The government continues to use these laws to suppress criticism of government and public debate, and those most affected include representatives of

Zimbabwe's civil society, opposition party supporters, and the independent media. The government also tabled new legislation in Parliament regulating the operations of non-governmental organizations (NGOs), and the AIPPA Amendment Bill which reportedly seeks to tighten existing media laws. Concerns were expressed that these new laws would further curtail the fundamental rights to freedom of expression and association.

The government closed *The Daily News on Sunday*, as police armed with automatic rifles burst into the newspapers' offices in central Harare and ordered all staff to leave. Nqobile Nyathi, the editor, and Simon Ngena, the production manager, were arrested and taken to Harare Central Police Station. They were later released. Tafataona Mahoso, Chair of the Media and Information Commission (MIC), was quoted as saying he would have been surprised if the police had not taken any action because "*The Daily News* does not exist in terms of the laws of the country." These actions were widely condemned by both local and international actors as being a serious violation of media freedom. *The Daily News* was charged under AIPPA for operating without a licence; police confiscated computers and other equipment at *The Daily News* offices, saying the equipment would be retained as exhibits. Associated Newspaper of Zimbabwe (ANZ), in turn, applied to the High Court for an order for the equipment to be released because the police did not have a court order to seize the exhibits.

High Court Judge, Justice Yunus Omerjee ruled that ANZ could resume publication. This followed an urgent application by the newspaper organisation to have its equipment returned and to be allowed to resume publication. Omerjee noted that the Supreme Court judgment had not convicted the paper of a criminal offence but had merely declared that the newspaper was acting outside of the law. The company's equipment could only be seized pursuant to a court order. The judge further noted that ANZ had started operating within the law from the day it lodged its application for registration with the Media and Information Commission.

MIC refuses to register the ANZ newspapers and police defy the High Court order. The MIC unanimously refused the ANZ newspapers' registration application on the basis that it had not met the 31 December 2002 deadline; had been operating in breach of the law and had openly stated it would not register. Armed police officers refused to vacate the paper's offices and prevented staff from accessing its offices. The police also refused to return *The Daily News'*

computers and other equipment, allegedly seized as exhibits. ANZ applied to the Administrative Court for review of MIC registration denial.

AIPPA makes it illegal for anyone to practise journalism without being accredited by the Media and Information Commission (MIC) (section 83). Only citizens and permanent residents may be accredited and the MIC may refuse to accredit anyone who does not possess “the prescribed qualifications” (section 79). Accreditation, once obtained, lasts for one year (section 84). Pursuant to section 85, the MIC shall develop and monitor a code of conduct for journalists; anyone who fails to observe the conditions of the code may have his or her accreditation revoked.

Regulations adopted in 2002 provide for accreditation to be approved by the Minister, as well as for an annual fee of Zim\$6,000 for journalists working for local media and US\$1050 for journalists working for foreign media. As noted above, ANZ journalists were recently denied accreditation on the basis that the newspapers had not been registered, forcing the newspapers to cease publication. Prior to that, the main impact of the accreditation rules had been on foreign journalists, who have also been targeted through visa rules. As far back as early 2001, Mercedes Sayagues, correspondent for the *Mail and Guardian*, had her application for renewal of her residence permit refused. As a result of accreditation and visa measures, both before and since AIPPA, there are no longer any foreign correspondents based in Zimbabwe.

Andrew Meldrum, journalist with the British-based *Guardian*, expelled in May 2003, was the last one in the country. The issue of foreign journalists continues to be an active one, although now it revolves around visiting correspondents, given that there are no foreign correspondents based in Zimbabwe. In April 2013, two journalists attempting to cover a cricket tournament, Mihir Bose and Telford Vice were expelled from Zimbabwe on the grounds that they had applied late for accreditation. The real reason is almost certainly interest sparked by a strike on the part of Zimbabwean players about a player selection dispute.

The Independent Journalists’ Association of Zimbabwe (IJAZ) challenged sections 79, 80, 83 and 85 of AIPPA as impinging on freedom of expression and freedom of the press. It argued that

the accreditation system for journalists, which is actually a licensing system, not a system of accreditation, failed to pass constitutional muster for a number of reasons. First, it did not promote any legitimate government objective or, in legal terms, the measures adopted were not rationally connected to any legitimate aim. Although the promotion of professional standards is a laudable goal, it is neither appropriate nor effective to attempt this through licensing of journalists. The constitution does not allow for restrictions on freedom of expression on this ground, but only on the much narrower ground of protecting the rights of others.

Secondly, the measures adopted, even if they served a legitimate goal, were not carefully tailored to achieve this goal so as to impair freedom of expression as little as possible. If the aim was to protect the rights of others, this could be achieved through carefully drafted rules on content, such as defamation laws and rules relating to privacy. As the experience in other countries shows, there is no need to institute a licensing system for journalists to protect the rights of others.

Thirdly, the harm to freedom of expression inherent in the licensing system is disproportionate to any possible benefit. The possibility that an individual may be banned from practising as a journalist through a refusal to provide him or her with a license simply cannot be justified. This has been the clear conclusion of international, as well as national courts, including those from the region. It is also reflected in a range of authoritative international statements and the practice of countries around the world, including states in Southern Africa.

IJAZ also argued that the MIC lacks the independence from government required of a body with regulatory powers over the media. In particular, the fact that a politically controlled body has the discretion to refuse to license a journalist is open to serious abuse. The full impact of the licensing system has been demonstrated quite clearly in the case of *The Daily News*, where, in a cruel twist of fate, it has effectively prevented the newspaper from publishing. On 5 February 2004, over a year after the matter had been heard, the Supreme Court finally rendered judgment in the IJAZ case. Chief Justice Godfrey Chidyausika, together with three other Supreme Court justices, upheld the sections relating to the licensing system as constitutional. In a dissenting

minority judgment, Justice Wilson Sandra found all of the contested sections to be unconstitutional.

The majority judgment held that it was necessary to accredit (license) journalists for public order reasons. Unfortunately, the court provided no reasoning whatsoever to support this conclusion, apart from referencing a Sri Lankan case which deals with regulation of the broadcast media, a totally different matter, and which does not in any case suggest that such regulation is justified by reference to public order. In a minor victory for freedom of expression, the court effectively rewrote part of the Act, substituting "must" for "may" in relation to section 79(5), which states that the MIC may accredit journalists who meet the conditions listed. This should at least partially limit the discretion of the MIC to refuse accreditation. The Court found that although the power to prescribe qualifications for obtaining accreditation is apparently unfettered, any such qualifications would have to be set out in regulation and, should such regulation be unconstitutional, it might be challenged directly.

This totally fails to recognise the well-established principle that it is illegitimate to grant undue discretion to officials where there is a possibility that this might be used in such a way as to limit a guaranteed right. Instead, the primary legislation should provide clear parameters for the exercise of such discretion. In this case, it would have been a simple matter to provide at least a framework set of required qualifications. Importantly, it also fails to take into account the fact that setting any conditions on who may practise journalism breaches the right to freedom of expression.

The court also upheld the provisions regarding the code of conduct, again without providing any reasoning. Regarding the issue of the independence of the MIC, the court held that the matter had not properly served before it, since the relevant sections had not formally been challenged. In any case, the court referred to its judgment in the Broadcasting Services Act case in favour of the proposition that this was not a constitutional problem. In that case, the court found that the direct powers over licensing exercised by the Minister were unconstitutional and, in the present case, the court again noted that the direct ministerial powers, found in the regulations, were constitutionally suspect and could be challenged.

However, the court declined to address this issue on the narrow technical ground that these provisions had not been challenged. This highly formalistic approach is quite inappropriate to constitutional interpretation, given the fact that the exercise of fundamental rights is in question. It is particularly illegitimate in this case, given that the matter of undue political control was directly in question and that the court had just held a very similar power to be unconstitutional in the broadcasting case.

In August 2013, following Tsvangirai's defeat in the election, he announced that he and his party, the MDC would no longer work with Robert Mugabe's ZANU-PF party, arguing that the elections had been rigged and the results fraudulent. This could likely mean that Tsvangirai will resign as the Prime Minister of Zimbabwe, and announce the collapse of the power-sharing deal.

Since 2000, the economic collapse and the political repression in Zimbabwe caused three to four million Zimbabweans to migrate south, which severely strained the capacities of the South African public services and the labour market and bred popular xenophobic sentiments, threatening public order. It did not cause any surprise that, right from the beginning, South Africa firmly took the lead regarding the resolution of the crisis affecting its northern neighbour. Indeed, from 2002 to 2009, former South African President, Thabo Mbeki, had been the key mediator between the Zimbabwean actors, alternatively in the name of the Commonwealth, the SADC and the African Union (AU).

President Mbeki's approach comprised of quiet diplomacy: to privilege discussions behind closed doors between the Zimbabwean partners, to refrain from public criticism, to use African channels of multilateralism and to keep the west out of African affairs. Because of internal South African politics, Mbeki was always very sceptical of the MDC-T's abilities to exert power and repeatedly tried to marginalise it in his mediation.

However, after the flawed elections in 2008, Mbeki's approach produced some tangible results with the signing of the GPA and the formation of the GNU. Under Mbeki, the EU and South Africa had very different understandings of the Zimbabwean crisis and how to resolve it and

were following divergent objectives. The discussions regarding the issue were tense and conflictual: the EU was highly critical of South Africa's perceived closeness with ZANU-PF and of the lack of progress in mediation, while South Africa frequently denounced the so-called western imperialism and its interference in African affairs. Throughout Mbeki's mediation, South Africa jealously kept the EU in the dark about the content of its talks with the Zimbabwean leaders and its results. South Africa's grip over the mediation process and the reluctance of its diplomacy to bring other partners on board left the EU no room to manoeuvre. All that was left for the EU was verbal injunctions on the South African side in bilateral meetings to be less biased and more decisive when dealing with the Zimbabwean actors. Ultimately the approach of quiet diplomacy indeed proved to be ineffective.

At some stage after the 2008 elections the EU tried to bypass South Africa by calling directly for the African Union to intervene in the country, without any success – the EU finally had to pledge support to the mediation process supervised by Mbeki. The EU had to swallow this bitter pill: the way to Harare, Zimbabwe leads through Pretoria, South Africa. The elections of May 2009 saw a change in South African leadership. This leadership change impacted on the tone of South Africa's mediation and its interactions with the EU regarding Zimbabwe. President Zuma and the new ANC leadership have been more publicly critical of ZANU-PF and Mugabe than their predecessors. The methods did not change (rounds of talks behind closed doors under SADC authority), but the strategy was reconsidered: the MDC-T was now recognised as a legitimate partner and part of the solution. There were several factors contributing to this shift.

Among these were MDC-T's victory in the 2008 legislative elections and the well-publicised political violence surrounding ZANU-PF which damaged Mugabe's credibility and made him somewhat of an embarrassment, even in the eyes of some of his African peers. SADC endorsed a new South African mediation team; some of its members were known critics of Mugabe. The mediation team runs the day-to-day discussions between the Zimbabwean parties regarding disagreements on the implementation of the GPA while President Zuma regularly intervenes regarding major issues.

There is now a greater convergence between the EU and South Africa. South African leaders and diplomats are much more open about their mediation and regularly brief their European counterparts on its progress. However, the parties are still divided regarding their means of action, with South Africa arguing for a removal of the EU's restrictive measures which, it says, harm its mediation. Nevertheless, the new South African mediation team has obtained no tangible results so far. ZANU-PF is fiercely obstructing the implementation of most of the GPA's measures and the functioning of the GNU, while the MDC-T is not yet ready for compromise. Here, the regional dimension of the crisis plays itself out. Indeed, the SADC is frustrating South Africa's attempts to be more decisive and bring the Zimbabwean actors into line, especially ZANU-PF. At the latest SADC Summit in August 2010, none of the European Union, Institute for Security Studies, or South Africa's reports and recommendations about the situation in Zimbabwe was endorsed by the organisation.

Notably, SADC's Secretary-General supported Mugabe's rejection of the report. Moreover, the SADC summit did not grant South Africa an extension of the mediation prerogatives it was asking for. Clearly, the summit left South Africa's mediation undermined. This has opened space for ZANU-PF, which acted promptly: a few weeks after the summit, Mugabe defied the South African team by unilaterally appointing pro-ZANU-PF provincial governors, in breach of the GPA.

The media of Zimbabwe is now once again diverse, having come under tight restrictions between 2002 and 2008 by the government during the growing economic and political crisis in the country. The Zimbabwean constitution promises freedom of the media and expression. Since the appointment of a new Media and Information minister in 2013, the media is currently facing less political interference and the Supreme Court has ruled some sections of the strict media laws as unconstitutional. In July 2009 the BBC and CNN were able to resume operations and report legally and openly from Zimbabwe. CNN welcomed the move. The Zimbabwe Ministry of Media, Information and Publicity stated that, "the Zimbabwe government never banned the BBC from carrying out lawful activities inside Zimbabwe." The BBC also welcomed the move saying, "We're pleased at being able to operate openly in Zimbabwe once again."

In 2010 the Zimbabwe Media Commission was established by the inclusive, power-sharing government. In May 2010 the commission licensed three new privately owned newspapers, including the previously banned *The Daily*, for publication. *Reporters Without Borders* described the decisions as a “major advance”. In June 2010 *News Day* became the first independent daily newspaper to be published in Zimbabwe in seven years. ZBC's monopoly in the broadcasting sector was ended with the licensing of two private radio stations in 2012.

Since the 2002 Access to Information and Protection of Privacy Act (AIPPA) was passed, a number of privately owned news outlets were shut down by the government, including *The Daily* whose managing director Wulf Mbanga went on to form the influential *The Zimbabwean*. As a result, many press organisations have been set up in both neighbouring and western countries by exiled Zimbabweans. Because the internet is currently unrestricted, many Zimbabweans are allowed to access online news sites set up by exiled journalists. *Reporters Without Borders* claim the media environment in Zimbabwe involves “surveillance, threats, imprisonment, censorship, blackmail, abuse of power and denial of justice to keep firm control over the news.” The main published newspapers are *The Herald* and *The Chronicle* which are printed in Harare and Bulawayo respectively. The heavy-handedness on the media has progressively relaxed since 2009.

Zimbabwe’s commercial farming sector was traditionally a source of exports and foreign exchange, and provided 400,000 jobs. However, the government’s land reform programme badly damaged the sector, turning Zimbabwe into a net importer of food products. For the past ten years, the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) has been assisting Zimbabwe’s farmers to adopt the conservation agriculture technique– a sustainable method of farming that can help increase yields. By applying the three principles of minimum soil disturbance, legume-based cropping and the use of organic mulch, farmers can improve infiltration, reduce evaporation and soil erosion, and build up organic soil content. Between 2005 and 2011, the number of smallholders practising conservation agriculture in Zimbabwe increased from 5,000 to more than 150,000. Cereal yields rose between 15 and 100 per cent across different regions.

Increasing internal tensions and confiscation of farm properties in the late 1990's contributed to creating a sharp economic downturn and subsequent hyperinflation, which peaked in 2008. To combat the hyperinflation and stabilise the economy, the government officially substituted the Zimbabwean Dollar for the US Dollar in 2009.

The much disputed elections in March 2008 were the culmination of several years of increased tension between ZANU-PF and the opposition parties MDC-M and MDC-T. Negotiations under the auspices of South Africa led to the Global Political Agreement (GPA) in 2008, and a transitional government was established with the participation of ZANU-PF, MDC-T and MDC-M in 2009. As agreed under the GPA, a new constitution was drafted and endorsed by the Zimbabwean people in a national referendum on 16 March, 2013. Full implementation of the constitution is still outstanding. The so-called Government of National Unity was dissolved following the general elections on 31 July, 2013. On this occasion, ZANU-PF won a convincing victory over MDC-T, but the elections were subject to accusations of electoral fraud.

In the aftermath of the election the MDC-T split and a new opposition party, Democratic Union, was formed by a breakaway group and another MDC faction. The opposition is still regrouping and seems to pose no immediate threat to ZANU-PF's grip on power. At the recently concluded ZANU-PF congress, Minister of Justice, Emmerson Mnangagwa, was appointed 1st Vice-president, leaving him as the putative heir apparent. Robert Mugabe is currently in his 34th year as the President of Zimbabwe.

Since the dollarisation, Zimbabwe's economy has experienced some progress from a decade-long crisis, but it is an ambiguous picture of progress defined by repeated downgrades of future economic prospects. The government is, however, showing signs of forward movement in its re-engagement with international financial institutions, recently receiving praise from the International Monetary Fund (IMF) on its efforts under the Staff Monitored Programme. Access to food, schools and basic health services has been partially restored, but remains below the level that was characteristic of Zimbabwe prior to the turmoil of the late 1990's. Implementation of substantial reforms is still outstanding. Intimidation, violence and human rights abuses still occur, although less frequently than in the past. The fragile financial sector, wage pressures in

the public sector and limited state revenue as a result of massive unemployment continues to create uncertainty about the Zimbabwean economy's sustainability. Adding to this is the fact that Zimbabwe's investment climate is significantly weakened due to a lack of reform, political uncertainties and inconsistent application of the rule of law.

Since the defeat of the constitutional referendum in 2000, politics in Zimbabwe have been marked by a move from the norms of democratic governance, such as democratic elections, the independence of the judiciary, the rule of law, freedom from racial discrimination, the existence of independent media, civil society and academia. Recent years have seen widespread violations of human rights.

Political power in Zimbabwe is split between three branches: the executive, the legislative and the judicial branches, with the President as the head of the executive branch, the Prime Minister as the head of the legislative branch and the Chief Justice of the Supreme Court of Zimbabwe as the head of the judicial branch.

Elections have been marked by political violence and intimidation, along with the politicisation of the judiciary, military, police force and public services. Statements by the President and government politicians have referred to a state of war, or *Chimurenga*, against the opposition political parties, in particular the Movement for Democratic Change – Tsvangirai (MDC-T). Newspapers not aligned with the government have been closed down; members of the judiciary have been threatened or arrested. Repressive laws aimed at preventing freedom of speech, assembly and association have been implemented and subjectively enforced. Members of the opposition are routinely arrested and harassed, with some subjected to torture or sentenced to jail. The legal system has come under increasing threat. The MDC has repeatedly attempted to use the legal system to challenge the ruling ZANU-PF, but the rulings, often in favour of the MDC, have not been taken into account by the police.

6.2. Recommendations

As a way forward it is suggested that the system of governance in Zimbabwe needs to be accountable, transparent and democratic. This will encourage rule of law that will bring a free social and political environment. Land reform should be seen as vital in the solution of Zimbabwe's problems. The electoral system should be independent. This will allow everyone to participate freely.

The researcher suggests that in order to solve political disputes in Zimbabwe, all heads of states and governments in Southern Africa should convene a general meeting of all leaders in the SADC region. At that meeting they should discuss all problems affecting their countries in general. If possible the Zimbabwean political disputes should be a priority on the agenda. If such a meeting could occur, it would contribute to the solution of Zimbabwean disputes, because a meeting of that nature would promote bilateral relationships among countries in the region. Basically, a relationship of co-operation and understanding amongst countries in the region would come into existence. It is also suggested that the Zimbabwean government should invite the United Nations (UN) and Africa Union (AU) members to help them solve their disputes. If they so choose, the involvement of UN and AU would help in providing funding where it is needed.

South Africa should also apply conditionality concerning at least economic reform with regard to the proposed credit line to Zimbabwe. This would entail a monitoring mechanism so it can assure itself that the conditions are met and the fund is used for the intended purposes. African states and African institutions should conduct meaningful regional diplomacy with Zimbabwe, including efforts to pursue political mediation.

It is further suggested that South Africa should understand that Zimbabwe is a sovereign state like any other state in the world. It is suggested that the South African policy of quiet diplomacy towards Zimbabwe should be appreciated, because it played a crucial role for the formation of the Government of National Unity in Zimbabwe and contributed towards the solution of Zimbabwean political disputes.

This study suggests strongly that the Zimbabwean government with their citizens should be responsible for their own country. Help may be sought from other countries. It would probably be better if the Zimbabwean government invited other countries to help to solve the Zimbabwean political disputes than for other countries to offer their assistance unsolicited. An outsider would not know if the Zimbabwean people were voluntarily participating and receptive to solving their problems through external help. The Zimbabwean government itself and other relevant stakeholders in Zimbabwe should first be willing to sit around the table and try to solve their own differences before others should intervene.

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APPENDICES

QUESTIONNAIRES

Questionnaires on the South Africa's Diplomatic Relations with Zimbabwe from 1990 to 2010.

BIOGRAPHICAL INFORMATION AND OTHER QUESTIONNAIRES

Please tick in the Appropriate Box

1. Gender

Male	
Female	

2. Age:

20-30	
30-40	
40-50	
50-above	

3. Education

Grade 7-8	
Grade-8-12	

4. Tertiary Education

Institution	
Year of study	
Qualification	

Institute for Global Dialogue (IGD)

1. What does IGD Stand for?

.....

.....

2. What are the primary functions of IGD?

.....
.....

3. What are its roles and functions in South Africa's democracy?

.....
.....

4. Does IGD target only South Africa's democracy?

.....
.....

5. Does quiet diplomacy contribute anything to Zimbabwean political conflict?

.....
.....

DEPARTMENT OF FOREIGN AFFAIRS

1. What are the main aims of quiet diplomacy?

.....
.....

2. Does quiet diplomacy contribute anything so far to the Zimbabwean political conflict?

.....
.....

3. How would you describe the relationship between South Africa and Zimbabwe?

.....
.....

4. Are MDC and ZANU-PF interested in the contribution of South Africa in their solution?

.....
.....

5. Are you experiencing problems with quiet diplomacy?

.....
.....

ZIMBABWEAN PEOPLE

1. For how long have you been in South Africa?

.....
.....

2. What do you think of land economic policy in Zimbabwe?

.....
.....

3. Have the Zimbabwean political problems affected all people in Zimbabwe and neighbouring countries equally?

.....
.....

4. What do you know of South Africa's quiet diplomacy?

.....
.....

5. Do you think quiet diplomacy should contribute better to the solution of Zimbabwean political conflict?

.....
.....

6. What are your views about land issues / land reform in Zimbabwe?

.....
.....

7. What are your views about the role of press in Zimbabwe?

.....
.....

8. What type of political system would help solve Zimbabwe's economic and political problems?

.....
.....