

## **Prospects for Advancing Democracy in Zimbabwe**

Statement of Carl Gershman, President  
National Endowment for Democracy  
Before the  
Subcommittee on Africa and Global Health  
Committee on Foreign Affairs  
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Congressman Payne, Congressman Smith, and Members of the Subcommittee:

Thank you for inviting me to testify on the opportunities for the advancement of democracy in Zimbabwe. As we approach the 25<sup>th</sup> anniversary of the National Endowment for Democracy, I would also like to thank the Committee for its bi-partisan support for the Endowment over the years. I would also like to thank you personally, Congressman Payne, for your nine years of service on the NED Board and for all that you do for democracy, especially in Africa.

As you are aware, the Endowment is a nonprofit, bipartisan grant-making organization created in 1983 to strengthen democratic institutions around the world through non-governmental efforts. With its annual Congressional appropriation, the Endowment makes over a thousand grants each year to assist pro-democracy groups in Africa, Asia, Central and Eastern Europe, the former Soviet Union, the Middle East, and Latin America.

Programs in the fields of labor, free-markets and political party development are conducted by the NED's four core institutes: The American Center for International Labor Solidarity (ACILS), the Center for International Private Enterprise (CIPE), the International Republican Institute (IRI), and the National Democratic Institute for International Affairs (NDI). In addition, the NED's discretionary grants program assists pro-democracy groups working in areas such as: human rights, independent media and free flow of information, civic education, and political participation, particularly focused on women and youth.

Through its grants program, the Endowment has long been active throughout the African continent. In Zimbabwe specifically, the Endowment currently provides assistance to 13 civil society organizations. With support to both well-established NGOs and nascent youth groups, funding has concentrated on expanding civil society's access to rural communities. In preparation for the March 2008 elections, Endowment partners organized a series of civic education campaigns to combat voter apathy. These campaigns marked the first time civil society groups were able to access rural communities and provide an alternative voice to government propaganda and disinformation campaigns.

Well-established Endowment partners such as the Zimbabwe Election Support Network (ZESN), the Media Institute of Southern Africa (MISA), Zimbabwe Congress of Trade Unions (ZCTU), Zimbabwe Community Development Trust, and Zimbabwe Lawyers for Human Rights organized large national campaigns focusing on electoral reform, unbiased media coverage, organizing victims of Operation Murambatsvina and farm invasions, and providing legal support to human rights defenders. Other partners such as Youth Forum, Youth Agenda, the Student Christian Movement, Savanna Trust, and the Zimbabwe Human Rights Association (ZimRights) organized civic education campaigns in politically sensitive areas targeting marginalized communities, especially youth. These efforts were pivotal in the struggle for meaningful change, helping to energize an electorate that had resigned itself to ZANU-PF rule.

I will explicitly address the questions raised by the committee by drawing not only on our own in-house analysis and reading of the situation, but also on the insights and observations of NED grantees who have been in the forefront of the recent struggle and remain actively engaged at the grass roots level.

### **How does the NED assess the Government of National Unity in Zimbabwe?**

Although President Mugabe recently boasted that "nothing has changed" and while it is difficult to make the case that Zimbabwe has a genuine Government of National Unity, there are nevertheless clear signs of progress both economically and in terms of the public mood.

The replacement of the Zimbabwean currency by the U.S. Dollar and South African Rand has stabilized prices; goods are returning to the shelves and there has been a marked shift

in the political climate. Public sector workers are being paid in US dollars, although the trade unions are threatening widespread strike action if such payments are not sustained.

Recent polling conducted by the Mass Public Opinion Institute, a NED grantee, shows a surprising degree of public confidence and optimism. Some 70% of respondents described the country's economic condition as better than in the previous year; 61% said their personal economic circumstances had improved compared to a year ago; and 82% expected both their own and the country's economic condition to be better or much better in a year's time.

There is clearly a degree of optimism and considerable expectation that the new government will deliver on its promises.

### **Continuing Challenges**

While there are continuing reports of political violence and continuing harassment and detention of civil society activists, journalists and members of the MDC, there has been a marked decrease in human rights violations and relative peace and stability have been restored.

Still, judged strictly in terms of whether there has been a substantial transfer of power, the available evidence suggests that ZANU-PF has retained most of the key levers. Mugabe's ZANU-PF still controls the police, army, judiciary, broadcast media and all daily newspapers. Where MDC ministers have acquired key portfolios, their decisions are consistently flouted, countermanded or ignored.

Speaking at the National Endowment for Democracy just last week, finance minister Tendai Biti stated that corrupt hardliners within Zimbabwe's former ruling party are sabotaging efforts to realize the reform commitments of the September 2008 global political agreement. He blamed the "catfish" - creatures that prefer to lie in the mud of corrupt patronage - for sponsoring "toxic activities" designed to prevent genuine power-sharing.

The MDC has told the international financial institutions and Western donors in the US and European Union that financial assistance is imperative for it to take advantage of the current window of opportunity to foster reform. But few observers have been able to identify

tangible progress on political reform, and the United States and the European Union remain reluctant to release funds without evidence of a genuine shift towards rule of law and transparency – and not without reason.

The September power-sharing pact provides several specific benchmarks for gauging political reform, but in his comments to the NED Biti was unable to point to visible progress other than to stress that violence has diminished. The Joint Monitoring and Implementation Committee (JOMIC), the body charged with monitoring the September pact, lacks a budget for its activity and has shown little energy or inclination to pursue its mandate.

In discussions over the past week, President Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara, failed to break an impasse that threatens to fracture the three-month old government. The MDC is challenging Mugabe's authority to appoint provincial governors, permanent secretaries and ambassadors, charging that several such unilateral decisions and appointments violated the GPA, including the rehiring of Reserve Bank Governor Gideon Gono and the appointment of Johannes Tomana as Attorney General. Mugabe has also tried to arbitrarily wrest control of telecommunications (and therefore phone-tapping) from the portfolio of MDC minister Nelson Chamisa.

Continued harassment and detention of opposition activists, especially in rural areas, the ongoing land seizures and the arrest of MDC deputy agriculture minister Roy Bennett all suggest that ZANU-PF hardliners not only remain in control of key state security agencies, but also appear determined to undermine the GPA and sabotage meaningful reform.

This week a court authorized the re-arrest of 18 democracy activists previously released as part of the Global Political Agreement, as ZANU-PF supporters within the judiciary and security services pressed ahead with the prosecution of activists charged with conspiracy to violently overthrow the Mugabe regime. The activists had their bail revoked on Tuesday despite evidence that they had been illegally abducted and tortured.

The accused include MDC officials Chris Dlamini and Ghandi Mudzingwa, civic activist Jestina Mukoko, and Shadreck Manyere, a journalist. Mudzingwa, Manyere and Dlamini are currently detained while receiving medical treatment for injuries sustained during torture while incarcerated. The magistrate denied bail despite defense lawyers' arguments that the

Joint Monitoring and Implementation Committee could confirm that there was a joint agreement to grant them bail.

The activists have since been granted bail but charges have not been dropped. So long as political prisoners remain incarcerated and security service chiefs openly disdain the Prime Minister, the government of national unity remains one in name only, Tyanai Masiya, chairman of the Mutare-based Centre for Research and Development, told the NED recently.

The armed services chiefs boycotted Morgan Tsvangirai's swearing-in ceremony and have consistently refused to salute or otherwise recognize the Prime Minister. Defense Minister Emmerson Mnangagwa, reportedly the leader of the hard-line faction within ZANU-PF, has similarly refused to respond to demands from Parliament that he explain his stance.

The security and armed services chiefs - Defence Forces Commander General Constantine Chiwenga, Army Commander Lieutenant General Phillip Sibanda, Prisons Commissioner Paradzai Zimondi, Police Commissioner General Augustine Chihuri, and Air Marshall Perence Shiri - are widely perceived to be set on sabotaging the power-sharing agreement and are considered most vulnerable to extradition and prosecution for egregious human rights abuses.

### **Opportunities for Moving Forward**

Mr. Chairman, neither analysts nor activists have had any illusions about the prospects for genuine power-sharing. "The fact that Mugabe remains in power as head of state and head of government means the MDC is the one coming into this deal as a junior partner," said Lovemore Madhuku, head of National Constitutional Assembly, a NED grantee, when the pact was negotiated.

Article 6 of the agreement establishes a 19-month process for the drafting and adoption of a new constitution subject to endorsement by referendum. And there are encouraging signs that democratic forces within civil society are taking advantage of the greater political space to articulate their agenda for serious and sustainable reform.

But we share the concerns of civil society groups that the constitution should not be based on the Kariba Draft that was negotiated in September 2007 by representatives of the ruling

ZANU-PF and the two factions of the Movement for Democratic Change meeting in secret at Lake Kariba. At issue is not just the substance of the draft, particularly the absence of adequate checks and balances, but the secretive process by which it was drafted.

In February 2009, President Robert Mugabe fed suspicions that this would be the case when he seemed to hint that GPA provisions for civil society engagement in constitutional reform process would be largely cosmetic. "There is already a draft that the three parties agreed on," he said. "They call it the Kariba Draft because that is where they came up with the document. We shall all look at it and when we are all satisfied, it shall be put to the people in a referendum."

The Kariba draft is deeply problematic since, as the National Constitutional Assembly notes, it is undemocratic "in terms of both process and content." Under the draft, all executive authority rests with the Presidency and parliament's prerogatives are severely limited. As the NCA notes:

"If the Draft were enacted, it would establish a government that would be dominated by the Executive. Parliament, the Judiciary and numerous public offices and bodies would be subject to political manipulation and control. Many of the fundamental rights and freedoms to which Zimbabweans are entitled would not be protected."

For this reason, as indicated in the recommendations below, the Endowment supports the calls for a "people-centered" participatory and consultative constitutional reform process.

Earlier this week, Zimbabwean civic groups called for an overhaul of the electoral system to minimize conflict and ensure transparency, demanding a "paradigm shift" towards a more inclusive and participatory electoral system. Arguing that the current transitional phase presents opportunities to reform institutions and democratize the electoral framework, the joint report from the Zimbabwe Election Support Network (ZESN) – a former NED grantee - and the Electoral Institute of Southern African (EISA) also proposed an independent impartial body to ensure the "professionalization" of the security forces.

The report calls for an end to the abuse of state resources for party political purposes, a comprehensive overhaul and independent audit of the electoral roll and reform of political parties' financing. "There is need for a comprehensive audit, not only of electoral laws but

also of other laws which impact on the electoral process and its outcome and the requirements for a free and fair election," said Irene Petras of the Zimbabwe Lawyers for Human Rights, another NED grantee, in endorsing the report.

Civil society groups are already monitoring the GPA process and reporting to the JOMIC. Given the limitations of the pact, civil society has a vital role in monitoring the government and holding it accountable; in being a catalyst and driver for change, not least in pushing for constitutional reform; and in assisting the legitimate and genuinely reformist sections of government by providing its expertise and by acting as a communications channel between the government and the people.

The importance of constitutional reform cannot be overstated. We might consider the parallel between the GPA and the Dayton Accords that ended the war in former Yugoslavia. It is imperative that the US and its allies ensure that the GPA does not become a similar power-sharing settlement negotiated to bring an end to one conflict but which contains the seeds of stagnation or future violence if genuine progress is not made in establishing robust democratic institutions.

### **Time for a Reassessment?**

Clearly, the advent of a new administration in Washington provides an opportunity to assess and review policy, and the specific situation and acute challenges in Zimbabwe cannot be divorced from the wider challenges across the sub-continent.

For the NED's part, some 25 years of actively supporting democratic actors across sub-Saharan Africa leads us to strongly dispute the "Afro-pessimist" view that the continent has been politically stagnant or regressed over that period. There remains a strong case for continuing to invest in "institutions of countervailing power", including electoral systems, national legislatures, the judiciary, local government, civil society, and the press.

Indeed, one of the most important democratic developments anywhere in the world since the NED was founded 25 years ago has been the emergence in Africa of a mass movement of civil society, with human rights defenders at the forefront. According to Professor Larry Diamond, this development has been the principal factor accounting for Africa's "second liberation" -- the growth since 1990 of the number of democracies in sub-Saharan Africa

from three (Botswana, Mauritius, and the Gambia) with a total population of just three million to more than twenty African democracies in 2008. The pressure for this transformation came from the bottom up, generated by an enormously diverse array of civil society actors: from women's and civic-education groups to think tanks and bar associations, from trade unions to student and other youth groups, from religious bodies to independent journalists and community radio broadcasters, and of course human rights organizations.

Similarly, Zimbabwe's civil society organizations continue to mobilize to consolidate access to rural communities and encourage citizens to engage with the government. Among NED grantees, for example, the Zimbabwe Community Development Trust works with victims of violence and torture to develop a platform to present their concerns to leading political and civil society actors. The Savanna Trust continues to train theatre groups to promote civic education among the large and potentially illiterate audiences of Zimbabwe's high-density suburbs and rural areas. Youth Agenda and the Student Christian Movement of Zimbabwe conduct ambitious, nationwide programs of workshops, rallies, and focus group discussions with youth and students. Zimbabwe Lawyers for Human Rights and the Zimbabwe Human Rights Association have launched new human rights awareness campaigns in rural communities. Such efforts ensure that the electorate remains energized and continues to press for a government that reflects the will of the people.

### **What recommendations do we have for U.S. policy options going forward?**

Our recommendations fall into the following six categories: supporting human rights and the rule of law, including the release of political prisoners; developing an inclusive and transparent process of constitutional reform; supporting civil society; fostering independent media; establishing transitional justice mechanisms and a process for truth and reconciliation; and encouraging a "humanitarian plus" program of assistance, including economic aid and support for building state capacity.

**1. Supporting Human rights and the rule of law:** The new government should release all remaining political prisoners and order a review of pending cases. Given the demonstrable bias and partisanship of members of the judiciary appointed by Mugabe, an independent commission should be established to review judicial appointments as the first step towards re-establishing genuine rule of law.

**2. Developing an inclusive and transparent process of constitutional reform:** We endorse the assessment of the NCA and other leading civil society groups that the constitution-making process outlined in the Global Political Agreement is too elitist and remains vulnerable to manipulation in the absence of genuine transparency. We support civil society demands for a people-driven constitution-making process, prefaced by extensive grassroots civic education.

"This inclusive government brings a democratic agenda and that includes the constitution making process. It must be people-driven," Prime Minister Morgan Tsvangirai said recently. But some civil society groups suspect that the MDC remains lukewarm about a genuinely consultative and participatory process.

The NCA and other civic groups make a convincing case for an All Stakeholders Conference to determine the appropriate structures and procedures for the constitutional process and that will include representatives from government, political parties, trade unions, business, churches, traditional religion, women's groups, youth, farmers, veterans, traditional leaders, media, the diaspora and the broader civil society. Under this process, stakeholders would establish an All Stakeholders Commission to be chaired a judge or former judge of the Supreme Court or High Court, which will conduct extensive public consultation on vital constitutional issues; compile and disseminate a draft constitution and arrange a nationwide public referendum to determine whether or not the draft will become the new constitution.

**3. Supporting civil society:** It is imperative that support continue to be extended to Zimbabwe's independent voices and democratic actors. Operating procedures that target non-governmental organizations must be lifted, including an end to the ban on pro-democracy organizations. NGOs involved in humanitarian food aid, family and child protection, and the care of the elderly and disabled were recently allowed to resume activities, but NGOs working on human rights, justice and governance remain banned.

As already noted civil society groups are already monitoring the GPA process and reporting to the JOMIC. They have a vital role to play in assisting the legitimate and genuinely reformist elements within the government by acting as a channel of communication between the government and the people.

In this respect, civil society can provide something of a countervailing power to authoritarian forces within the state. In doing so it may also impede the co-optation of the MDC, a prospect to which democrats are alert given the ominous precedent of the Unity Accord of 1987 when ZANU violently repressed and then absorbed Joshua Nkomo's ZAPU.

**4. Fostering independent media:** The GPA states that Zimbabwe's citizens have a right to accurate, impartial and responsible information delivered through independent media. Yet the media remains largely state-controlled.

The government should immediately move to restore freedom of expression by lifting restrictive media laws, specifically the Public Order Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA).

As harsh as the conditions are in Zimbabwe, it is not North Korea or Cuba. There are already opportunities, even under existing laws, to develop capacity for independent newspapers and broadcasting, including local commercial radio stations, community-based radio and unallocated medium wave channels.

Additional measures, including improving access to state-controlled media, easing the availability of operating licenses, and providing assistance to enhance the capacity of independent media, should be developed to guarantee genuine media freedom, pluralism, and diversity as the best means to ensure that the people have access to accurate, impartial and responsible information.

**5. Establishing a process of transitional justice:** A process of truth and reconciliation needs to occur if Zimbabwe is to move beyond its recent trauma. Civil society groups are concerned that the GPA offers an amnesty to security services personnel responsible for violent atrocities and human rights violations. Zimbabwe's National Association of Non-governmental Organizations has called for "retributive justice" and "truth seeking", while the Zimbabwean Congress of Trade Unions (ZCTU), the largest and arguably most democratic force in civil society, is leading the fight against what it calls the "culture of impunity".

Recent post-conflict transitions confirm the difficulty and the delicacy of securing an appropriate and equitable balance between justice and reconciliation. The dilemma is, of

course, that with elections expected to follow constitutional reform within two years, the prospect of prosecution gives an incentive to culpable members of the ruling elite to sabotage the process. As a recent Congressional Research Service report notes, “Mugabe and other senior officials may resist a peaceful exit from power if they fear subsequent prosecution.”

The formation of transitional justice, truth and reconciliation mechanisms must, of course, be driven by Zimbabweans themselves and reflect their preferences, needs and circumstances, including the harsh political realities. But it may be worthwhile for an independent panel of experts to examine similar transitional-justice processes in post-conflict societies to determine the most appropriate mechanisms and measures to adopt.

**6. Providing “humanitarian plus” assistance:** In the absence of genuine reform, the international community has understandably been reluctant to release funds for the Government of National Unity. Yet the legitimacy and credibility of democratic reformers within the government will largely depend on its ability to restore not only the economy but also basic services and living standards.

Consequently, there is a compelling case to be made for a more creative approach to funding that targets specific needs, bypasses corrupt or partisan institutions like Zimbabwe’s Reserve Bank, and assists both the Zimbabwean people and reform-minded elements within the government with the process of economic recovery and reconstruction.

A “humanitarian plus” approach, whereby purely humanitarian aid is complemented by support for reconstruction in areas of education and health, infrastructure, water, sanitation, food security and governance, will provide a major boost to reformers within the government.

There is, of course, a risk that some resources may be squandered or diverted by ZANU-PF elements. But, as one diplomat told the International Crisis Group, “It is a calculated risk. The costs and the risks of doing something are definitely less important than the costs and risks of doing nothing”.

## **Concluding comments**

The chances of realizing the commitments of the GPA – developing genuine power-sharing agreement and initiating meaningful constitutional reform prior to free and fair elections – will, of course, be dependent on political will. In the end, it is the people of Zimbabwe who must grapple with solutions to the many challenges they face.

But it is also imperative that the international community be engaged as fully as possible, alongside regional parties like SADC and South Africa, in supporting the forces for democratic reform, economic recovery and sustainable political stability. There's now an opportunity for Zimbabwe to move forward after a terrible period of trauma, and it should be seized.