

## THE PRISONERS OF HOPE: CIVIL SOCIETY AND THE OPPOSITION IN ZIMBABWE

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There are many debates as to what constitutes the essence of our African humanity and, indeed, Zimbabwean-ness. The country has had a difficult but illustrious history characterised by turmoil and tenacity, chaos and courage, corruption and compassion. Zambia's Kenneth Kaunda once described forgiveness as "a constant willingness to live in a new day". In this article I intend to demonstrate why there has not been any revolt in Zimbabwe, despite unparalleled repression. Perhaps it is the ingrained capacity of Zimbabweans to constantly hope for a new day that has made us prisoners of hope. I wish to focus my comments on the effect the ZANU-PF's authoritarian regime has had on political opposition in Zimbabwe, on the architecture of civil society, and in particular on the role of civil society organisations. A particular area of concern is the threat to their functioning posed by the new NGO Bill.

### Introduction

On the evening of ZANU-PF's victory at the polls on 4 March 1980, prime minister-elect Robert Mugabe addressed the nation on radio and television. He assured peace and stability for individuals and the nation as a whole. He promised to uphold both the letter and the spirit of the constitution, to maintain fundamental rights and freedoms, including property rights, and to secure the pensions of public servants. These were the promises upon which the independent nation of Zimbabwe was to be founded, and it was through visionary and pragmatic leadership that further bloodshed had been averted. At the time Mugabe argued that "[o]nly a government that subjects itself to the rule of law has any moral right to demand of its citizens obedience to the rule of law ...".<sup>1</sup>

We felt the moment demanded of us a spirit of magnanimity rather than that of arrogance, a spirit of national unity rather than division, a spirit of reconciliation rather than vindictiveness and retribution ... We felt that the past and its wounds and grievances had to be buried and forgotten, but that the past, and the lessons it had taught us all about evils of racial oppression, undemocratic rule and economic exploitation, had always to be remembered. To us, the time had now come for those who had fought each other as enemies to accept the reality of a new situation by accepting each other now as allies who, in spite of their ideological, racial, ethnic or religious differences, were now being called upon to express one loyalty to Zimbabwe and embrace nationhood.<sup>2</sup>

In his book *Our leadership and the destiny of Tanzania*, Julius Nyerere observed that when people find that things are going wrong, they expect to receive explanations - and corrections where possible. When remedial actions are not forthcoming, people lose faith in the integrity of the government, and gradually that government loses their support and consent. Sadly, Zimbabwe has long since reached this stage. The abysmal decline of Zimbabwe is the result of several factors, some internal and others external.

It shall be argued here that Zimbabwe's current dilemma is the result partly of a dysfunctional transition from colonial rule to independence and partly of the failure of ZANU-PF to transform itself into a party capable of democratic government. Both these lines of argument explain the Zimbabwean situation, in particular the politics of chaos and coercion that prevail. In other words, the Zimbabwean crisis is the result of a failure of leadership and of the political-party system. Good governance entails the accountability of the leadership to the electorate; respect for, and protection of, fundamental human rights; and respect for the constitution and rule through just law. In the Zimbabwean polity, however, values have never taken precedence over visions, strategic plans and actions. In sum, the real problem with the post-independence state is that its politics have been transacted largely in an ethical vacuum, with no clear baseline to establish right and wrong.

### **The ruling party's dilemma**

Prior to the February 2000 constitutional referendum, ZANU-PF could be described as a party that was confident of its ability to overcome serious challenges to its political hegemony in Zimbabwe. The presence of the party leadership at all levels of society induced silence and fear among the people. Party supporters often behaved like a choir reduced to docility and praise-singing for the government and the leader. The party did not countenance the expression of popular discontent. Instead of taking as its fundamental purpose the free flow of ideas from the people

to the government, it constructed barriers that forbade such ideas.

ZANU-PF leaders often behaved like militia supervisors, frequently reminding the people of the need for silence in the ranks. This suppression of the rank and file did not heal the regional and ethnic cleavages established during the war of liberation. Repeatedly, rumours of factionalism in Masvingo province and Manicaland made headlines in the media. What would otherwise have been straightforward political competition within the body politic effectively became ethnic/regional contests.

Some argued that the so-called national party was essentially a tribe/region that had made itself into a party. This was particularly true of the people from Matabeleland, Midlands and Manicaland, who felt marginalised by the government. Mugabe's response was to engage in a very complex and delicate ethnic/regional balancing act in his allocation of government appointments and party positions. Ultimately, ZANU-PF, a party that claimed after the 1987 Unity Accord to be national and to speak in the name of the totality of the people, secretly, sometimes even openly, organised an authentic regional dictatorship. The ministers, the members of cabinet, the ambassadors, top civil servants and heads of parastatals were chosen largely from the same region as the president; sometimes directly from his own family. The seeds of a bitter succession wrangle were sown soon after the Unity Accord and fertilised by this intricate regional balancing act.

Zimbabwe's crisis of governance, therefore, must be located within the context of dysfunctional political parties as well as ideological and moral bankruptcy. It is a crisis of both leadership and followership. This can be explained, in part, by the godlike influence wielded by the leader. ZANU-PF, from an outsider's perspective, is organised like a gang in which the toughest persons prevail, which inevitably results in an "infallible leader" or "big man" syndrome. The ascendancy of such personalities and their power over others is often mentioned and people become complicit in this perception, having no hesitation in declaring that such leaders induce terror in their collaborators and enemies alike.

Since the mid-1990s the country has been

obsessed with the question of who is to succeed Mugabe. What will happen to the country if Mugabe steps down or somehow disappears? Many people in our society seem to have abdicated any sense of political purpose that is not identified with him. Some have become irresponsible, oblivious to everything and essentially preoccupied with the comfort of doing nothing. Perhaps not all Zimbabweans are guilty of indifference; others might genuinely suffer from various degrees of ignorance. The resolution of the Zimbabwean crisis might actually be related to the resolution of the ZANU-PF succession dilemma. This is why the ZANU-PF congress - with all the attendant drama - was a significant national event. It confirmed for those within ZANU-PF what those of us outside have known for decades: that authoritarianism reigns supreme at the chicken-house. Some important actors within the ruling party have insinuated that the presidium had become the party, the congress and the constitution, operating above the will of the electorate.

It is common cause that the judiciary has become hostage to the ruling party, as has parliament. In an environment of single-party dominance it is safe to surmise that the complaints made by Jabulani Sibanda and others concerning ZANU-PF's internal authoritarianism come down to what is essentially (as manifested outside the ruling party circle) the national problem of governance. Resolving one would effectively solve the other.

### **The vision for change and the MDC**

The working people of Zimbabwe, who yearned for a political structure that was organised differently from ZANU-PF, formed the Movement for Democratic Change (MDC) in 1999. These people did not see a political party as an authority, but as a vehicle through which they as the people could exercise their rights and express their will. The Zimbabweans who founded the MDC had observed the dangers inherent in conflating the party with the government. They had seen impostors pretending to be party militants as a short-cut

to gaining private wealth, or holding a post in the government, or stepping up the ladder, obtaining promotion and making a career for themselves. The founders of the MDC had keenly observed how these self-serving party militants perverted the nature of national politics. Those who started the MDC were actuated by the desire to replace mob-rule with a "more tolerant politics, an accountable, truly national and transparent way of governance".<sup>3</sup>

At the time of writing the MDC has been in existence for almost six years, and so it is apposite to inquire whether it has realised any of these ideals in its operations and leadership. That is, setting aside the obvious external threats it labours under, to ask the question: is the MDC tolerant of opposition/diversity, accountable, transparent and peaceful? Space constraints do not permit me to delve into this subject; readers should come to their own conclusions. While doing so it may also be an idea to ask the question: does the MDC represent a different leadership model from that of ZANU-PF? In addition, does the MDC have the depth of leadership to present a true alternative to the gang-like parties that Zimbabwe has seen so far?

### **The Rhodesian demon: Instrumental statism - a legacy from bygone days**

The fundamental problem with Rhodesia was twofold: the refusal of white settlers to accept the principle of universal adult suffrage embodied in the slogan "one person, one vote", and the racial segregation of society. These primary evils combined to form a lethal economic, political and social policy framework.

The 1980 independence elections signified a symbolic end to colonialism and injustice. Nevertheless, the economic inequalities and Rhodesian state apparatus remained intact. Repressive laws such as the Law and Order Maintenance Act were not repealed; they were simply deracialised. The former freedom fighters and war collaborators were not rehabilitated. Thus the new nation continued to harbour the violent legacy and horrors of the era preceding the Lancaster House negotiations. The politics of retribution that have manifested

themselves in the last four years are outgrowths of the critical national questions that were not addressed, as they should have been, during the period of transition to majority rule.

On 18 December 1981 the ZANU headquarters in Harare were bombed. But for sheer good fortune, Mugabe and his central committee would have been killed.<sup>4</sup> In 1982 the air force base at Thornhill was sabotaged. Apartheid-ruled South Africa was behind these assaults on Zimbabwe's sovereignty. Mugabe and other leaders in Southern Africa, like President Samora Machel of Mozambique, knew very well that it was South Africa's plan to stir up violence in Zimbabwe. The common thinking within ZANU-PF was that South Africa had enlisted the help of internal collaborators. As a result, Mugabe branded leaders of the opposition as malcontents. This was followed by the deployment of the Korean-trained Fifth Brigade in the Midlands and Matebeleland regions in 1983. Horrible murders, rapes, abductions and torture were perpetrated by these armed forces. The demon of Rhodesia had resurfaced, as the same laws and tactics that had been used in the old regime were employed against the people of Midlands, Matebeleland and Chipinge. (It is also important to note that ZANU-PF had lost the 1980 elections in these regions to ZAPU and ZANU (NDONGA) respectively.) After the loss of many lives and the disruption of whole communities, the madness in Matabeleland ended with the signing of the Unity Accord on 22 December 1987. For a significant period afterwards, Zimbabwe enjoyed relative peace.

The next major unravelling of the social fabric occurred when ZANU-PF lost a constitutional referendum, organised under the National Constitutional Assembly (NCA) on 12 February 2000, to civil society groups and opposition political parties. Since then, the state has been implicated in a vicious cycle of organised violence and human rights abuses, targeted mainly at perceived supporters of the principal opposition party, the MDC.

The spectrum in which violence occurs in Zimbabwe is broad; thus to make peace, violence has to be approached in its raw nature. It has been adequately demonstrated that the violence that besets Zimbabwe today

has been inherited through the policies, laws and institutions established by the colonial governments, the main areas of contestation being political power and control over the economy. The unequal wealth and income distribution in Zimbabwe remains a contributory factor.

At the time of writing, Zimbabwe had endured two national elections since the February 2000 referendum: the June 2000 parliamentary election and the March 2002 presidential election. The country has also experienced several by-elections (Bikita West, Marondera West, Kadoma West, Kuwadzana, Zengeza, Makonde, Highfields, Insiza, and Lupane) as well as a host of local authority elections. All were contested in an atmosphere of violence and hatred. In the presidential poll in 2002 ZANU-PF went to extraordinary lengths to secure an election victory. The election failed to meet the fundamental requirements of the constitution of Zimbabwe, international human rights law, the norms and standards adopted by the SADC Parliamentary Forum, and those of all African electoral institutes. It is apparent that the largest proportion of administrative hitches were experienced by groups known to be generally sympathetic to the opposition. Many people in Zimbabwe had no access to views other than those of the ruling party during the campaigning period. The police prevented the MDC from holding rallies. The state-controlled media (still operating an unconstitutional monopoly over radio and television) ran a propaganda campaign in favour of ZANU-PF. The heads of the security forces made it clear they would not accept the opposition candidate if he won the election. The voters' roll, which was in complete disarray, was kept secret. Urban dwellers, most of whom supported opposition candidates, were discouraged or prevented from voting through the restricted number of polling stations. The Electoral Supervisory Commission (ESC) had to rely on monitors chosen by government and the number of independent observers allowed to monitor the election was severely limited. There were also indications of vote rigging. In contrast to the severe reductions in the number of urban polling stations, many new rural

mobile voting stations were introduced. In the ultimate analysis the presidential election was neither free nor fair, even though the right to freedom and fairness belongs not merely to the contestants but to the people. The state's actions were not only unconstitutional, but a betrayal of the fundamental rights and the ideals of the liberation struggle. All the foregoing vitiated the legitimacy of ZANU-PF's victory and launched Zimbabwe's government into a crisis of legitimacy.<sup>5</sup>

### **Attack on civil society**

The Minister of Public Service, Labour and Social Welfare, Paul Mangwana, was quoted in a local newspaper on 5 April 2004 as having said the following about civil society groups:

Some NGOs and churches are causing too much confusion in the country because they are converting their humanitarian programmes into politics ... The government cannot allow that to happen, so we are saying they should go under scrutiny where we revise all modalities of their operations in the country. <sup>6</sup>

These sentiments were uttered prior to the tabling in parliament of the most vicious instrument of repression so far, the NGO Bill. The implications of the new NGO legislation can best be understood within the context of Zimbabwe's history of relations between the state and civil society.

Zimbabwe's experience of colonialism, imperialism and dictatorship taught us that political domination has to be secured first as a political victory, in which public relations play a part.<sup>7</sup> However, such a victory can be secured only if it is accompanied by a sense of justice, or at least justification.<sup>8</sup> The arguments given by the government of Zimbabwe for exercising control over civic space and the citizenry, and for increased supervision and surveillance of civil society, have great appeal and, indeed, many supporters within the political establishment. The justification for this intrusion on democracy is not rooted in power or guns, but in reasoning that has a

pseudo-moral base. Indeed, authoritarianism often gains support for its actions by justifying a supposedly moral position to the mass of the people - often at the expense of truth and integrity.<sup>9</sup> This has been true of the new NGO legislation.

In the fluid political and economic situation that prevails in Zimbabwe, civil society organisations (CSOs) have acted as watchdogs over the political protagonists and as safety nets for the millions of Zimbabweans living below the poverty datum line (PDL). Their advocacy of transparency, human rights and good governance (both local and national) has enabled citizens to participate more meaningfully in the policy-making process. In modern political systems, elections are an insufficient gauge of the performance of any government, no matter how popular or well intentioned, hence the need for governments that are committed to genuine democracy and development to consistently interact with civil society. The role of governing in a democracy carries a dual obligation: to exercise state authority responsibly, and to accept criticism from the governed in a responsive manner. The very notion of a law-governed state presupposes that all authority is exercised in the general interest of the citizenry, and that the government's interests are not in conflict with those of the free individuals it purports to represent. In other words, that responsibility and accountability are necessary concomitants of power. The NGO Act is a disingenuous attempt by the state to shield itself from scrutiny by its own citizens.

### **State-civil society relations in Zimbabwe**

Relations between the state and civil society in Zimbabwe have always been contentious. Examples abound of serious curtailment of the activities of civic organisations during the Rhodesian era. This was often done under the guise of defending national sovereignty or fighting the so-called terrorists (black freedom fighters). Advocating democratic governance was seen as terrorism - and therefore banned - by the minority racist regime of Ian Smith. Rhodesian state authoritarianism was justified under the

seemingly benign guise of defending state security and national sovereignty. This rigid construction of politics produced murderous identities and a morality that condoned the use of terror against people representing any kind of different view or opposition.

Rhodesian authoritarianism was rooted not only in racism but also in the denial of equal citizenship and rights to those citizens critical of the government of the day. It made human rights a privilege to be dispensed at the discretion of state elites. It justified intolerance, violence and political xenophobia in the name of patriotism. Conversely, criticism of government policies was characterised as anti-state and treasonous. Supervision and surveillance were entrenched in a culture of the containment of discontent. Many laws were enacted to limit and criminalise the right of the citizenry to question authoritarianism. This was particularly true of repressive laws such as Law and Order Maintenance Act (LOMA), which empowered the police to detain citizens without trial.

Zimbabwe's pre-independence history demonstrated a tendency for civic formations to transform themselves into political entities that would later wage war against colonial rule and compete for power. It also created another trend in which the state's predictable response to growing unpopularity has always been either to ban civic formations, or to introduce stringent licensing requirements for them.

The Rhodesian regime's response to African calls for democratisation can therefore be framed into three broad approaches:

### ***Criminalisation***

This had a dual application. The state criminalised all forms of democratic protest and discourse, and the citizenry saw the state and its agencies as criminal elements that prevented the exercise of their rights. This severe limitation by the government of democratic space and dissenting voices led to the armed struggle. Deviance or extra-legal activity became part of the inevitable strategy towards liberation from colonial rule adopted by these civil society groups. Arguably, laws passed by a criminal settler regime could be responded to only

through acts of defiance. The settlers' notions of criminality thus became the black majority's notions of justice and redemption.

### ***Coercion (force)***

Coercion naturally followed from criminalisation. The government gave the arms of state (such as the intelligence unit, army and police force) the power to maim and kill on the most nebulous suspicion that a prohibited political act had been, or was about to be, committed. This power became a sword hanging over the heads of those citizens who dared to defy the colonial state and its many layers of illegitimacy. Notably, repressive laws gave rise to, and justification for, the pervasive problem of police brutality. Extreme physical force used against the state's perceived political opponents became an acceptable institutional practice among the security forces. It is arguable that the administrative arms of government had equal disdain for the voices of the opposition under colonial rule.

### ***Co-option***

The media, state security forces and public order laws contained various clauses that encouraged citizens to spy on one another, with the result that some people became willing agents for the colonial state. These laws also attempted to create false distinctions between so-called good and bad citizens. Perhaps one can call this a state-determined civic morality. There were consequences (good and bad) for associating with either group of citizens.

Zimbabwe's colonial history therefore teaches us that authoritarian state politics require certain pre-conditions for the survival of the regime:

- Coercive arms of state must be efficient, loyal and ruthless.
- Civic authorities and institutions such as the courts and the civil service must be complicit with the government's aims.
- Civic, economic and political spaces in society must be closed up. This results in patronage and repression because no other organised conduit of expression or action is

possible outside the state.

- Information must be controlled by the political elite, who use the private and public media as mouthpieces. Through their monopoly over the public media, print and electronic, these politicians define for the country what is to be true, what has to be true, who is entitled to know such truth, and the form in which it should be told. The net result is that the ruling elite assumes a monopoly over all legitimate conduits of expression and information in the hope that it will become the only source of knowledge within the country.
- Tight controls must be maintained over the operation of all social movements, NGOs and organised groups in civil society. This is often achieved through a complex system of criminalisation, licensing, supervision and surveillance. The crudest manifestation of this occurs when the government seeks to control the funding and leadership of non-state entities.

The rationale for repressive legislation in Rhodesia went beyond the limited intention of silencing dissent and criticism. The real objective was to create a compliant citizenry. This article suggests that political and legal systems generally have the capacity - if not resisted - to drastically impinge upon our citizenship. Clearly there are parallels between Rhodesia and independent Zimbabwe on this aspect.

### **The operating environment of NGOs**

Zimbabwe's recent history has seen the government enacting legislation that circumscribes and criminalises the activities of key sectors of civil society. There have been incidents of indirect threats and state-sponsored attacks on individuals and organised elements of civil society. Several government ministers have threatened unspecified harmful action against NGOs and civil society generally.

Given the extreme polarisation arising from the political context described above, CSOs working in Zimbabwe cannot avoid coming face to face with issues of fundamental human

rights and governance. The increased number of human rights violations combines with adverse socio-economic conditions to cause rapid changes in the needs of the communities that CSOs serve. This requires consistent reorientation of programmes to make them more responsive and relevant to the needs of their target groups. In essence, the prevailing environment precludes the implementation of project activities and processes within the parameters set by their original mandates. More significantly, both aid agencies and their partners have been forced to shift their activities to more discreet arrangements because the operating environment in Zimbabwe has become so difficult.

Several donor countries and aid agencies have had to decide whether to stay on in Zimbabwe. These aid agencies have found themselves in a quandary about whether to engage or disengage. They also need to reconcile the tension between seeking to strengthen Zimbabwean civil society and signalling their disapproval of the prevailing politics of chaos. The donor/aid agencies remaining in the country are now faced with a government that intends to exercise greater control and supervision of their activities (and especially those of their local partners). The limitations contained in the NGO Act will lead to a withdrawal of aid from vulnerable social groups that the government has been unable to support effectively over the last two decades. In this sense the new NGO legislation directly threatens the chances of survival of these groups.<sup>10</sup>

Many CSOs are working to create an environment conducive to the support of human rights, the promotion of economic growth, and the development of sustainable social services. The key question is: what legislative, strategic and resource interventions are required to achieve such an environment? What should NGOs define as their primary objective? How can NGO operations be made more sustainable in the prevailing environment? How can NGOs be made more transparent and accountable to their constituents and funders, and to each other? How can NGOs be secured as operating in a non-partisan arena, free from

foreign control and political-party interests? Should these questions be made into legislative objectives at all? These matters merit an open and robust national discussion. This is primarily because policy regarding the regulation of CSOs in a democracy must be consensually evolved. Further and as far possible, there must be a clear distinction between the state and civil society. This can be achieved through self-regulation of the civil society sector, while government retains a monitoring role. To the extent that the proposed NGO Act seeks to control and constrain the operations of CSOs, it threatens the autonomy and existence of a robust civil society. The NGO Act proposes to introduce a regime change of voluntarism enacted from above.

The real motivation behind the new legislation governing CSOs was the desire to ensure that the March 2005 parliamentary election would be won without any adverse local or international reporting on human rights violations. We can assume that the government believed that this could be achieved through banning or collapsing those groups that have built the capacity to report on human rights violations. Tsunga and Mugabe<sup>11</sup> have summarised the government's motivation thus:

A desire by government to restrict democratic space and reduce scrutiny of its human rights record;

A desire by government to further limit enjoyment of universally recognised rights and fundamental freedoms by the people of Zimbabwe;

To create a black-out of news on Zimbabwe filtering out to the regional and international community; and

To reinforce an uneven playing field in matters of political governance and maintain the status quo.<sup>12</sup>

The immediate reason for the attempt to have the NGO Act passed before the 2005 parliamentary elections seemed to be the government's vindictive and punitive response to the adverse report published by the African Commission on Human and Peoples' Rights

(ACHPR) after its fact-finding mission to Zimbabwe. According to the *Herald* of 6 July 2004, "the report was similar to reports produced by the British-funded Amani Trust, which is well known for its anti-Zimbabwe stance and falsifying the situation in the country". The *Sunday Mail* of 11 July 2004 carried a story accusing the Zimbabwe Association of Doctors for Human Rights (ZADHR) of being a political grouping which had been instrumental in the compilation of the ACHPR's report on gross human rights abuses in Zimbabwe.

A week later, the *Sunday Mail* reported that the Minister of Local Government, Public Works and National Housing had accused NGOs of creating parallel governance structures in their areas of operation (instead of fulfilling their proper mandates) in an effort to help the opposition to destabilise the country. It is apparent from the foregoing that the motivation behind the new law is purely political. The bill must therefore be seen as a visceral reaction to criticism of the country's shoddy human rights record.

### **Proposed changes: General overview of the NGO Bill**

The new NGO legislation constitutes a grave abrogation by the government of Zimbabwe, not only of its responsibilities to the citizens of Zimbabwe, but of its obligation to the regional and international community. The new legislation for NGOs proposes to criminalise foreign funding for this range of crucial work. Banning all foreign funding will not only put a stop to essential support activities, but it will work against the values these human rights NGOs propound. In essence this is tantamount to undermining democracy in Zimbabwe.

The NGO law creates an NGO Council composed of five nominees from civil society and nine government representatives, all appointed by, and at the discretion of, the Executive. Furthermore Section 10 of the bill details the information which directors of NGOs will be compelled to provide when applying for their organisations to be registered by the NGO Council. These requirements are needlessly intrusive and show an appetite

on the part of government to use the law as a tool of intelligence-gathering against the NGOs, their boards and management. These provisions are sinister.

As already indicated, the new NGO Council will have only five NGO nominees (who will not be elected by NGOs). However, there will be nine high-ranking government employees, plus the registrar, chosen from different ministries or departments. Apart from the question of why certain ministries are involved at all (for example the Office of the President), it is quite clear that effective control of the council will be placed in the hands of the government's representatives. They will unquestionably be instructed by their political masters as to what line to take. When one looks at the powers of the council, it is again impossible to justify the control given to the government over NGOs.

The new NGO Bill also distinguishes between local and foreign NGOs. The reason for this distinction is that, although both have to be registered, a foreign NGO may not be "if its sole or principal objects involve or include issues of governance" (clause 9(4)). This provision is a clear infringement of the rights to freedom of expression and association. To prohibit the advocacy by anyone, foreign or not, of good governance or the promotion of human rights cannot possibly be healthy - certainly not in a democratic society. Indeed, one would imagine that any attempt to control the advocacy of human rights is the antithesis of what is expected of a democracy. While there is room for disagreement on the scope of human rights, a democratic society should embrace open and robust debate on all matters of significance, human rights being one of them.

The proposed NGO legislation also makes provision for the declaration of all foreign funding. It is difficult to see how the requirement for disclosure can be justified under any of the enumerated grounds. If freedom of association exists, and the objects of the association are lawful, it is of no concern to anyone who is funding the association. There is nothing sinister or subversive in the promotion of human rights or good governance.

The NGO world is a big industry and

the possibilities it holds for scams and incompetence are enormous. It would be reasonable to attempt to ensure that donors' money ends up where it is intended to go, that bodies representing themselves as existing for charitable purposes actually carry them out, that money is not wasted on administration, unnecessary and frivolous travel, and so on. All of this can be done without interfering with two important constitutional rights, those of freedom of expression and of association.

It is thus constitutional to provide that NGOs be registered, and it would follow that it would be constitutional to provide for some mechanism for registration, and a person or board to supervise the process. However, there is no restriction in the constitution on the purposes for which an association may be formed. The only limitations that may be imposed under any law are those interests of defence, public safety, public order, public morality or public health. (These are similar to the permissible restrictions on freedom of expression.) To the extent that the new NGO legislation exceeds these constitutionally permissible parameters it is *ultra vires* the constitution of Zimbabwe. There is thus ample room to challenge the new legislation or some of its provisions on the basis that it is patently unconstitutional.

## Conclusion

The political players in Zimbabwe have a daunting task if they hope to resolve Zimbabwe's multi-layered crisis. The situation on the ground, viewed objectively, suggests that if the crisis is not resolved, the following consequences are to be expected.

- The crisis will deepen and all the problems highlighted above will be exacerbated.
- There will be a further decline in the national economy and in the GDP.
- Key national institutions and sectors - in particular education, health, tourism and agriculture - will collapse, leading to further cycles of poverty. This will have a contagion effect on the entire Southern African Development Community (SADC) region.

- Existing socio-economic problems such as poverty, the HIV/AIDS infection rate and the number of deaths resulting from that disease will extrapolate. The latest United Nations Economic Commission for Africa (UNECA) figures show a severe decline in the social indicators measured by the Human Development Index (HDI).
- The rights and welfare of women and other vulnerable groups (over 80 per cent of the population are now living below the poverty datum line) will deteriorate further.
- There will be a lasting reversal of the gains made by the country in the first ten years after independence. This will also taint the image and achievements of the liberation movements.
- The deep psychological scarring and emotional trauma suffered by poor and marginalised people in particular will become more difficult to heal.
- The possibility of civil strife breaking out will increase.

### ***Regional implications***

The Southern African Development Community (SADC) region cannot wish the Zimbabwean question away; nor can it afford to ignore it.

- The Zimbabwean crisis is already affecting the region. No country in Southern Africa is untouched by it. Some of these states are tightening their immigration laws and policies to deal with the ever-growing numbers of Zimbabwean economic and political refugees.
- Notwithstanding the benefits that have accrued to some countries in the region through replacing Zimbabwe's market share in the European Union (EU) and the international markets, the interdependent nature of the regional economies means that Southern Africa's economic welfare is being undermined by the persistence of the Zimbabwe crisis.
- The continued prevarication by some regional leaders over supporting the process of political transition in Zimbabwe jeopardises the current and future economic

and political prospects of Southern African Development Community (SADC), the AU, and NEPAD. More generally, it impinges on the welfare of the peoples of the region.

Zimbabwe is caught in a destructive political impasse that will require decisive intervention by the sub-region beyond the Guidelines and Principles on Free and Fair Elections.

### ***Creating an enabling environment***

To create a future environment conducive to holding credible, legitimate, free and fair elections and avoiding similar controversy to that surrounding the March 2005 parliamentary poll, the following conditions have to be fulfilled:

- The youth militia should be disbanded.
- The partisan distribution of food should be stopped.
- All arbitrary arrests, intimidation, and subjective prosecution of members of the opposition and civil society activists should cease.
- Activists from civil society and opposition political parties should be released, and unjustified political prosecutions of such persons withdrawn.
- Repressive laws, in particular Public Order and Security Act (POSA), Access to Information and Protection of Privacy Act (AIPPA), Non-Governmental Organisations Act (NGOA) and the Broadcasting Services Act should be repealed or suspended.
- Equal access to the mass electronic media should be allowed to all political players.

These preconditions represent the immediate expectations of Zimbabwean civil society. They should be put in place through a memorandum of agreement endorsed by all stakeholders. This would give Zimbabwe the opportunity to live down its rogue state image and become a better version of itself. But such a move would take great political will, commitment and leadership. The effort to turn Zimbabwe around and transform its politics from the

uncivil politics of grudge and hate into a more democratic model will require encouragement and solidarity from the Southern African Development Community (SADC) and AU governments and from civil society throughout Africa.

## Notes

- 1 Adapted from Victor De Waal (1990) the politics of reconciliation, Africa World Press, Trenton. Speech by Prime Minister Robert Gabriel Mugabe, addressing the Assembly of the Organisation of African Unity in Freetown, Sierra Leone, on 22 July 1980.
- 2 Ibid, p.46.
- 3 Mugabe, *ibid*.
- 4 Ibid, p.92.
- 5 The crisis of legitimacy extends to the presidency of Mr. Mugabe, his government's actions and policies. It brings into serious dispute the regional political leadership's commitment to democracy and political pluralism.
- 6 Herald Newspaper, 5 April 2004, comments attributed to Minister of Public Service, Labour and Social Welfare, Paul Mangwana.
- 7 For instance an junior minister in the president Mugabe's office boasted on the main news on ZTV on 30 July 2004, that "we have successfully defended our régime". The justification peddled for the enactment of Rhodesian/Apartheid-type laws is the claim that Zimbabwe is under siege from imperial forces and their stipendiary in civil society and the opposition. In a sense it is suggested that repression, injustice and denial of freedom are acceptable defenses against the siege factor. That therefore, the motivation on the part of government is purely to protect Zimbabwean citizens as opposed to safeguarding the power fortunes of the regime.
- 8 There has been a desperate attempt after the corruption-riddled land reform exercise to create a new justification for subverting democratisation projects. The government has conveniently hinged its defense on a narrow construction of sovereignty and pan-Africanism that dismisses the discourse of human rights as a privilege that government is entitled to confer or withdraw.
- 9 The African Commission on Human and Peoples Rights (ACHPR) sent a fact-finding mission to Zimbabwe, which established that there are numerous violations of fundamental rights by the Zimbabwean government.
- 10 The ideal of developing solely on African resources is one to be cherished. But rhetoric must meet reality. Zimbabwe currently does not have sufficient resources to meet the social needs of her citizens. Whilst political elites can posture and pontificate about grand political theorems, the masses need primary health care; basic social services and freedom to live and earn a living.
- 11 A Tsunga & T Mugabe, (2003), *Zimbabwe's NGO bill: Dangerous for human rights defenders: Betrays Degree of Government Paranoia and Contempt for the Regional and International Community*; Unpublished Mimeo.
- 12 Unpublished mimeo, Zimbabwe Lawyers for Human Rights, Harare.