

The “Real Deal” or another walk down the garden path?

Research & Advocacy Unit [RAU]

It seems in Zimbabwe that the more things change the more they stay the same, and we are all wondering who is leading who down the garden path. Herald reporter, Caesar Zvayi claims it is the MDC, playing the hare to ZANU PF's baboon by trying to re-interpret the Agreement, whilst the MDC claims that ZANU PF is negotiating in bad faith, and what could be a greater demonstration of bad faith than doctoring the Agreement?

Despite all the warming exhortations of SADC, it does not appear that the political crisis has moved beyond the startling election results of March 2008, except perhaps that we have an “agreement”. However, even this agreement now seems to have intractable problems, and the latest statement from the MDC indicates that there is still much more to discuss than merely the issue of who controls the Ministry of Home Affairs. It seems increasingly evident that this Agreement will fail, and it seems important to try to see what might then be the way forward.

It also appears that many parties and persons have not read the Agreement very carefully, especially in regards as to how the Agreement will interface with all the existing Zimbabwean legislation. There have recently been two detailed opinions on the Agreement and its implications, each starting from different assumptions.¹ This is not the place to recapitulate these arguments, for it is sufficient to point out that both outline many problems that can (or will) emerge as a consequence of this deal: whilst power-sharing is the aim, it is apparent from both analyses that the Agreement, when implemented in Zimbabwean law, will leave ZANU PF in much the same position as it was prior to the March election.

The difference in the two analyses is that one assumes that the “good will” that is supposed to permeate the Agreement and its implementation – and which drips its way through the Preamble – will be sufficient to overcome most of the difficulties inherent in the Agreement.² The assumption is fair and it is clearly on the basis of assumed “good will” that the MDC remain in the ongoing dialogue, but it is continually to the good will that all the interested external parties, and especially SADC, keep referring. The second analysis proceeds from an entirely different assumption; that ZANU PF has no intention of sharing power, and hence, with the complete absence of “good will”, the Agreement will not lead to any change, except the most trivial. It is worth repeating, however, that, despite the very different assumptions, both analyses agree on the significant problems that will emerge once actual government begins.

As indicated above, it is not the intention here to provide a detailed comparison of the two analyses, but it is worth going to the crux of the problem, the powers of the President under the Agreement. Both analyses are in agreement that the powers of the presidency remain considerable, whilst the powers of the prime minister – which is yet to be specified in Zimbabwean law – are ambiguous and probably subject in virtually all cases to the powers of the presidency. This seems remarkable in the light of the recent elections; the MDC clearly emerged as the front runner in the March elections, whilst the result of the June Presidential election was repudiated by all external observers.

¹ SITO (2008), *Some Preliminary Comments on the Agreement*. Compiled for the Research and Advocacy Unit. 16 October 2008, Pretoria: IDASA; RAU (2008), *LOSING FOCUS: ZIMBABWE'S “POWER-SHARING” AGREEMENT*. Derek Matyszak. Research and Advocacy Unit, Zimbabwe.

² Here see SITO (2008), *Some Preliminary Comments on the Agreement*. Compiled for the Research and Advocacy Unit. 16 October 2008, Pretoria: IDASA.

ZANU PF. And yet the Agreement, will try to place the MDC in the position of the junior party in the putative government. Thus, scarcely surprising that there are difficulties in finalising this deal.

However, it is also evident that the country is in a parlous position, and worsening by the day, and so there is anxiety about what to do with the deal. There is a view that it should be implemented, warts and all, for the good of the country: a bad deal is better than no deal at all. Then there is another view, essentially coming from the MDC's members – the winning electorate in March – that argues that a good deal is better than a bad deal. Then there is a quiet voice that seems to suggest that the deal should be abandoned in favour of new elections, which has come both from the MDC and the Botswana government. However, there is a formal deal on the table, signed by both parties, a contract if you will, and there need to be good reasons for tearing up this contract. It is worth remembering here that this is a mere agreement, binding on the parties to it but one which will only become part of the law of the land when Constitutional Amendment 19 is passed through Parliament.

The question of confidence building and goodwill thus seems to be of prime importance and we ought to look to the confidence-building that has followed the Agreement, much of which is covered in the Preamble to the Agreement. The Preamble describes the intentions of the parties, both in acknowledging what has gone on in the past as well as stating their intentions for the future. One important clause in paragraph 19, states that the parties will “*build a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality.*” Implicit in this statement, and there is no attribution of blame, is the notion that such things do not currently apply in Zimbabwe: if they did, why would the parties to the Agreement bother to mention them, why would we need an Agreement if Zimbabwe was a nation in which *justice, fairness, openness, transparency, dignity and equality* were common and widely applied values?

So, using the analogy of commercial exchange, how have the parties tried to demonstrate their good will since the signing of the Agreement?

The MDC have voiced continual concerns, and refused to attend the Troika meeting in Swaziland, but have stayed with the negotiation process in an attempt to finalise details of a contract that will be mutually beneficial, and, importantly, beneficial to the nation. Many suggest that they are wasting their time, but the MDC has continued to try to “make the deal work”. ZANU PF, on the other hand, has not, importantly because they hold de facto political power, have shown no signs that could even charitably be described as “good will”.

Examine the facts since the signing of the Agreement. There has been no attempt to put Constitutional Amendment 19 before the House of Assembly and to create the position of Prime Minister and Deputy Prime Ministers. Then there are the continuing arguments over the assigning of Minister portfolios, and even an attempt to do so unilaterally through the deployment of Presidential powers. We can gloss over the observation that, with the ink hardly dry on the Agreement, Robert Mugabe indicates that he will continue to use his absolute power just as he has for the past 20 years. These, however, are not the only breaches of faith.

ZANU PF declined to give Morgan Tsvangirai a passport, which led to his refusal to go to Swaziland, a decision that virtually all agreed was foolish since this was done to the person that ZANU PF has agreed will share the government with them. Even if the government was shown on paper, it might be felt that they could make a special case here to build confidence!

Then there is the continuing violence. Students bringing a petition to Parliament are brutally dispersed, and again women and students are brutally dispersed when trying to bring a petition to the negotiation taking place at the Rainbow Towers. The WOZA women are brutally dispersed in Bulawayo, and then Jenni Williams and Magodonga Mahlangu are arrested, denied bail, and kept in jail for more than

weeks now. MDC supporters are violently attacked in Epworth, with 20 persons injured, and five needing hospital treatment. MDC members are abducted by ZANU PF supporters, and reports indicate that one of them was murdered. So much for the attempt to build a society *free of violence and intimidation!*

Jabulani Sibanda, notorious “war veteran”, makes a public statement threatening violence, and yet no attempt is made to arrest him. This behaviour likely to create a breach of the peace: that charge is reserved for the WOZA leadership. The state-controlled press, radio and television have shown no attempt to open the media space, desist from hate speech and derogatory remarks about the opposition. There has been no space given to the prime minister designate to address the nation, but rather the continued presentation of the MDC as “enemy”.

This very brief review of the developments since the signing of the Agreement, and there is much more that could be added, leaves no doubt that ZANU PF has made little or no attempt to demonstrate the kind of good will necessary for the agreement to have any effect.

What should then be done? Dismiss the deal completely; re-negotiate the deal; or accept the deal for the good of the nation? Perhaps the first start would be to understand why ZANU PF, having lost so comprehensively in March, still insists on staring a gift horse in the mouth.

The simplistic answer is given all the time: they refuse to give up power and its benefits. This is true in the most simple fashion, but the deeper reason lies in their fear; fear of accountability and fear of another election. The fear of accountability can be deduced from the acceptance that Zimbabwe is characterised by *violence, fear, intimidation, hatred, patronage, and corruption*, charges that can be laid at the door of ZANU PF, and the consequences of which follow them daily in the many demands for truth and justice. It was therefore startling to many that ZANU PF was not able to insert the expected clause on impunity in the Agreement.

Given the history of the past 28 years, ZANU PF fears about accountability are hardly surprising, but there is little doubt that accountability in some form cannot be avoided. It may take many years, and may take a form that is yet to be defined, but as the examples of the past and now the present – Milosovic, Habre, Taylor, etc – all show accountability will happen. Even if it is merely the way in which history will be written, the truth will out!

Accountability can be avoided in the short term by the device of holding onto political power, and this is certainly one motive in ZANU PF's obduracy. There is a much greater worry for ZANU PF however, and this revolves around elections. Having lost the power to rig elections in ways that were “acceptable”, or at least did not disturb their neighbours unduly, ZANU PF needs to delay the prospect of elections for as long as possible. The Agreement suggests that this should take place in under two years time: 18 months to get a new constitution and the government is constituted, and elections certain to follow shortly thereafter. It is doubtful that ZANU PF will emerge victors from such an election!

But herein lie one of the strangest phenomena concerning Zimbabwean, and African politics. Everybody, including ZANU PF, agrees that the March poll was valid and the result was accepted. True, there were many election petitions mounted, but these are all failing in Zimbabwean courts, and hence the March results are acceptable by all standards. The Presidential poll in June was not so acceptable, only ZANU PF claims them as valid. SADC repudiated the result, but continued to treat Mugabe as if he were president, which leads to an august body into horrible contradictions: in their submission to the SADC Tribunal, they admit that they do not recognise Mugabe as President, but also state that they will not bar him from SADC summits and meetings. So does he attend as President or not-President?

The outcome does challenge common sense. When Ben Jonson cheats in winning the 100 metres at the Olympics, he is disqualified, the medal is given to the person that came second. The Olympic Committee did not invite Ben Jonson and Carl Lewis to a meeting to discuss sharing the medal. Playing with this analogy a little more, we have the situation that Tsvangirai won the heat before the final, which is little like Carl Lewis beating Jonson in the heat but losing the final, and losing it by a mile. But politics is not like athletics, and the stakes are rather higher than a mere gold medal.

However, the analogy does help a little in seeing a way forward. Since the March poll was acceptable, but not the June one, why not have a new Presidential election, internationally supervised, and have done with all the games around trying to make the Agreement work. This is unlikely to meet with any interest from ZANU PF, and for the very simple reason that Morgan Tsvangirai would win by a landslide margin in such a contest against Robert Mugabe. This is actually understood by all Zimbabweans, including ZANU PF, as well as by external parties to the crisis, even by SADC.

However, political common sense is not prevailing in the Zimbabwe crisis, and the world watches as one man holds an entire country to ransom with the support of his presidential peers. This is the problem, and the Agreement will not solve this: Robert Mugabe, lawful under the Zimbabwean constitution and the laws of the country, will remain in power, and, unless there is radical re-negotiation of the Agreement, any deal will end up a "bad" deal, and one that will not encourage re-investment in Zimbabwe. Those that advocate a deal at any cost must convince Zimbabweans that this will still produce the goods: the IMF and World Bank will re-engage, the donors will re-engage with balance of payments support and development assistance, and investors will return. These are very doubtful outcomes of a bad deal, one in which Mugabe and ZANU PF stay in power, and the MDC is a junior partner.

Against the bad deal can be juxtaposed the "new" deal. Tear up the Agreement, and strike a new deal for a new presidential election, internationally supervised, on a one-man, one-constituency vote, with perhaps even those in the diaspora allowed to participate. There are no prizes for guessing the result, and it would leave Robert Mugabe and ZANU PF with two choices: lose with dignity, or resign and hand the victory to the person that won the first race in March.

SADC, the AU and the UN could make this happen if they had the will, and were willing to put the lives of ordinary Zimbabweans above those of a tiny elite. One single election, and then all three bodies could retire from the problem, leaving Zimbabweans to sort out accountability, constitution, economy, and the like. The alternative will be more and more negotiations while ZANU PF plays for time, and Zimbabwe sinks into that worst of all scenarios, the failed state.