

The reasons why I cannot join the Tsvangirai faction

It is 7 months since the divisive meeting of the MDC National Executive was held on the 12th October 2005. I have refrained from making public statements since then but am now of the view that the public have a right to know my perspective.

I have always believed that the two factions of the MDC, which emerged after the 12th October 2005 meeting, would never be as strong independent of each other as they were as one united party. Accordingly despite my deep concerns about certain issues, I felt it was necessary to try to reconcile the two factions and, failing that, to broker an amicable divorce between them. Moments after Morgan Tsvangirai walked out of the National Executive meeting on the 12th October I proposed that the remaining members of the Management Committee meet with him urgently to convey our continued support for him as MDC leader and our desire to accommodate his concerns.

During October, November and December I met with and wrote to MDC National Executive members in both factions urging them to refrain from making the vitriolic statements that so badly exacerbated the tensions between the two camps. For example, on the 12th November I met with Morgan Tsvangirai in Bulawayo and urged him to reign in those in his camp making divisive and inflammatory statements. On the 19th November I met with Gibson Sibanda, Gift Chimanihire and Job Sikhala. I urged Gibson Sibanda, likewise, to reign in those in his camp and I challenged Gift Chimanihire and Job Sikhala regarding some of the statements made by them. I repeatedly wrote and spoke to Eddie Cross during October, November and December about some of his newsletters which in my opinion exacerbated tensions between the two factions.

Believing that the unresolved intra party violence was one of the main stumbling blocks to reconciliation I put forward proposals to both Morgan Tsvangirai and Gibson Sibanda in November and December as to how that issue could be dealt with. When it became apparent to me in January, for reasons I will elaborate on below, that those proposals would not be accepted I accepted that reconciliation was unlikely. I however made a few further attempts to reconcile. I met with Morgan Tsvangirai and a few leaders of his faction in Bulawayo on the 27th January and urged those leaders, who were responsible for making divisive statements, to stop. I met with other leaders in both factions in January and early February but by mid February it was clear that both factions were determined to go ahead with their respective Congresses and that the holding of separate Congresses would end any hope of reconciliation.

Accordingly on the 20th February I wrote identical letters to both Morgan Tsvangirai and Gibson Sibanda advising them that I would attend neither of the Congresses and would not seek office in either faction. I offered to assist, with others, to mediate a settlement between the two factions. In doing so I did not offer to arbitrate (in other words I did not suggest that I be given any power to decide finally on the various contentious issues). I set out what I believed to be the contentious issues, including the question of the name,

the assets of the party and the position of MPs. I did not suggest how I thought those issues should be resolved. In other words I did not say which faction I thought, for example, should be allowed to use the name. All I set out was a suggested process in terms of which these issues could be resolved. I stressed that irrespective of whatever support either faction thought it enjoyed these issues could only be resolved through either mediation or litigation. I pointed out that litigation would not be in either faction's best interests as that route would effectively give Zanu PF the power to determine the length of the process and the final outcome.

I concluded by recognising that both leaders would have to await their respective Congresses and the election of respective National Executives before responding to my offer. I also said that once the mediation process was over I would then have to decide on my own political future. Both letters were hand delivered. On the 29th March I received a letter from the Mutambara faction accepting my offer to mediate. Having not heard from the Tsvangirai faction I spoke and wrote to several National Executive members of the Tsvangirai faction to ask them whether the issue had been discussed. Eventually on the 2nd May I received a letter from Tendai Biti, in his capacity as Secretary General of the Tsvangirai faction, rejecting my offer to mediate.

I can but speculate why my offer was rejected. One of the reasons given by Tendai Biti was that I was not neutral, something that I readily concede and indeed made mention of in my original letters to Tsvangirai and Sibanda. I pointed out that no-one is genuinely neutral, and I am no different, but some have to at least try to mediate if litigation is to be avoided. Other National Executive members of the Tsvangirai faction I have spoken to state that they found themselves in a catch 22 situation: if they agreed to mediate that would undermine their claim that there is in fact no division and therefore no need for an amicable divorce (with the corollary that the Mutambara faction is not a faction at all but just a small renegade break away group); and yet if they turned me down on those grounds it would appear petty in the minds of MDC supporters who are generally distressed by the divisions and who would like the dispute to be resolved amicably.

Be that as it may the fact is that my own efforts to mediate have clearly failed and I must now move on. I have indicated recently that I have one of four options: to join the Tsvangirai faction, join the Mutambara faction, be an independent or resign and go back to civil society. Becoming an independent is well nigh impossible constitutionally and not attractive personally. Most people I have consulted with so far want me to remain in politics and I believe that I have an obligation to the people who elected me. That leaves me with a choice between the two factions, neither of which is palatable because of my fundamental belief that the split has gravely weakened the opposition in its battle to bring freedom and democracy to Zimbabwe.

The reasons for the split in the MDC are numerous and complex. It has become a deeply emotive issue and many are so entrenched in their positions that they have stopped listening. Accordingly it will serve no purpose to enumerate or analyse all the reasons for the split. I will simply deal with what is for me personally the key issue, namely our commitment to non violence in waging this battle against tyranny. I reiterate that there

are many other important issues involved but our approach to this particular issue is pivotal to me.

I have had the misfortune of experiencing two civil wars in Zimbabwe. As a teenager I saw the horrors of war first hand during the liberation struggle. As a young lawyer I had to represent many victims of the Gukurahundi and my wife, a physiotherapist, had to treat many of the injured. Those experiences made me vow that I would do all in my power to prevent further conflict in Zimbabwe. Those experiences taught me to be very sceptical of elderly politicians who are very happy to sacrifice the lives of gullible and impressionable youths to achieve their own political ends.

Zimbabwe is afflicted with a disease akin to alcoholism, namely endemic violence. For well over 150 years leaders of this beautiful country, bounded by the Zambezi and Limpopo, have used violence to achieve their political objectives. Violence was used by Lobengula to suppress the Shona. Violence was used to colonise and the threat of violence was used to maintain white minority rule. Violence was used to overthrow the white minority. And since independence violence has been used to crush legitimate political opposition. The use of violence has been compounded by another phenomenon – namely a culture of impunity. Those responsible for use of violence have never been brought to book. Not only is there a long history of violence being used successfully to achieve political objectives but also those who have committed horrendous crimes have prospered through their actions. As a result the use of violence is now deeply imbedded in our national psyche. Political violence is accepted as the norm.

Political violence is not the norm in democratic societies. It may be the norm in tyrannical states; it may have been used in the formative stages of democracies. But it is now anathema in democracies. There is also no doubt that the use of violence inhibits economic development and creates a whole barrage of social problems including domestic violence. The sustained and long term use of violence in Zimbabwe lies at the very core of many of the problems our nation faces today. We are indeed afflicted by a very serious disease and need help.

What then attracted me most to the MDC was its commitment to breaking this cycle of violence by using non violent means to achieve its political objectives. I was also impressed by its commitment to end impunity in Zimbabwe. Whilst there has always been a vigorous debate within the MDC about whether tyranny could be ended solely through the use of non violent methods, there was always a broad consensus that this was the only course open to us if we were to act in the long term national interest. It goes without saying that there was a similar consensus regarding the intra party operations of the MDC. For me this was clear cut battle between the MDC, committed to non violence, and Zanu PF, a party that boasted of having “degrees in violence”.

Accordingly the attempt by some MDC youths to murder MDC Director for Security, Peter Guhu, on the 28th September 2004 in Harvest House was deeply shocking, because it breached a fundamental tenet of what we stood for. Even worse were the subsequent revelations made at the enquiry into the Guhu incident that senior ranking MDC officials and employees were either involved or sympathetic to the youths. No action was taken

against any of those responsible for this violence and in that inaction we saw for the first time a culture of impunity developing within the MDC itself, which in some respects was the worst thing of all. Young men often have a predisposition towards violence; that happens the world over and Zimbabwe is no different. What controls that predisposition is the manner in which it is handled by leaders. If it is not dealt with a culture of impunity develops and violence perpetuates itself.

That is precisely what happened. Those responsible for the September 2004 violence were not immediately disciplined and it came as no surprise when the same youths were used to seriously assault MDC staff members in mid May 2005. A further enquiry was held and its report was presented to the National Council meeting held on the 25th June 2005. It was resolved that one member of staff found responsible for directing the youths be expelled. The youths themselves had already been expelled in late May by the Management Committee and the expulsion of the youths was confirmed. That was undoubtedly progress but regrettably it was clear from the evidence that other senior members of the MDC and staff members were also involved or sympathetic towards the youths. Before a full debate about their fate could be held the meeting was ended much to the dissatisfaction of many, including myself.

I was so concerned about our failure to get to the bottom of the violence that I prepared a statement that was tabled at the next meeting of the National Executive held on the 15th July. Parts of it bear repeating:

“The MDC’s commitment to nonviolence, demonstrated so powerfully in the last six years, has earned us deep respect both within Zimbabwe and internationally. It has ensured that we command the moral high ground. It has also been our most powerful weapon against ZANU PF as we have been determined not to fight them on ground they are familiar with.

The attempted murder of the Director for Security last year and the assaults on loyal members of staff in May constitute the most serious assault on the credibility of the MDC since it was established in September 1999. These actions have already seriously undermined the credibility of the MDC.

I believe that our commitment to nonviolence is so fundamental that extraordinary measures need to be taken in dealing with this scourge. If we do not send out a clear and unequivocal message to Zimbabweans in general and in particular to our own members and staff that violence will not be tolerated then we will simply reduce the standing of the MDC to that of our opposition ZANU PF.”

I reiterated my belief that the investigation had been incomplete and that further investigations and disciplinary action was needed. Regrettably none of my recommendations were adopted.

The party accordingly lurched forward towards the Senate issue with these very serious issues remaining unresolved and whilst, as I have stated above there are many different reasons for why the MDC split on the 12th October, few seem to appreciate the profound influence these issues had on the decision taken that day. The situation was compounded

by the fact that in the National Executive meeting held on the 12th October it emerged that some of the same people suspected of being behind the September 2004 and May 2005 violence (but not disciplined) were also organising teams to intimidate Provincial committees to vote against participation in the senate. For example Manicaland, a Province inclined *against* participation, came with a delegation instructed to vote *for* participation in direct reaction to the intimidatory tactics employed. Delegates from other Provinces made similar complaints in the meeting. Indeed several National Executive members who were personally against participation voted for participation in protest against these intimidatory tactics. To that extent the vote to participate in the senatorial elections had very little to do with the elections per se and more to do with the philosophy of the MDC.

It was with this in mind that I suggested to Morgan Tsvangirai when I met him on the 12th November that an independent commission of enquiry into violence be established. I suggested that Harare lawyer Innocent Chagonda and retired judge Washington Sansole be appointed to investigate and report on *all* the allegations of intra party violence, including allegations made by those in the so called anti senate camp against those in the pro senate camp. Tsvangirai promised to consider the suggestion.

It was particularly poignant that on the very evening after I discussed this issue with Morgan Tsvangirai a supporter of the Tsvangirai faction Bekithemba Nyathi was seriously injured by youths from the so called pro senate faction. This incident made it all the more imperative that the issue be firmly addressed and that violence be completely rooted out.

I pursued the suggestion over the next few weeks and discussed it with Gibson Sibanda as well. On the 8th December I received a call from Innocent Chagonda advising that he was phoning on behalf of Morgan Tsvangirai to advise that he (that is Chagonda) felt he could not be on the commission but that Tsvangirai wanted me to chair it. I replied in writing the same day and suggested the following terms be applied:

1. The commission shall investigate the circumstances, causes and participants of all intra-party violence afflicting the MDC throughout the country with effect from 1st October 2004 (*I was under the impression then that Peter Guhu had been assaulted in October 2004*) up until 31st December 2005;
2. The commission shall have the right to subpoena any witnesses and all members of the party shall co-operate with the commission, and if they do not co-operate that action in itself will result in disciplinary action against the person concerned (we cannot have the situation that prevailed last year when a key witness refused to appear – obviously every person has the right to refuse in terms of Zimbabwe's laws but if they do so then they render themselves liable to party discipline);
3. The commission shall report on its findings to the National Council and shall make recommendations to the National Council;
4. The National Council shall make the findings public within one week of the production of the report, failing which the commission shall have the right to make the same public;
5. In cases where the report finds that a member has been involved in violent acts directly or indirectly, or has been responsible for organising the same, the National Council shall immediately refer the case to the Disciplinary Committee and request the Chairperson of

- the DC to suspend the member in terms of Section 9.1 of the Disciplinary Code of Conduct pending the appearance of the member before the DC;
6. The commission shall be comprised of (at your suggestion) myself as chair and (at my suggestion) Washington Sansole and Beatrice Mtetwa and if needs be decisions regarding findings of fact and recommendations shall be by majority vote;
 7. The commission shall endeavour to complete its work before the party's congress and any person found, prima facie, to be involved in violence shall be barred from contesting for office at the congress.

I the same letter I advised that I had discussed the matter with Gibson Sibanda who had agreed to the suggestion in principle. I pointed out that the suggestion would only work if both factions supported the initiative and said that I hoped it could get under way early in the New Year. Having not heard back from Innocent Chagonda I wrote to him again on the 8th January 2006 asking to hear from him urgently. A few days later I was phoned by a senior National Executive member in the Tsvangirai faction to say that my proposal was a "dead letter". It was explained to me that Morgan Tsvangirai was no longer interested in pursuing the suggestion. I subsequently had a private meeting with Tsvangirai on the 27th January and it was clear in that meeting that he was not interested in pursuing the proposal any further. It was also then clear to me that reconciliation was impossible and from that moment on I changed tack and promoted the concept of an amicable divorce between the two factions.

The two factions' Congresses have now come and gone. I have of course hoped that irrespective of my efforts the violence issue would be addressed by both factions. I had hoped that the mediation process itself would yield an agreement that would prevent inter factional violence. Accordingly I have taken the rejection of the effort to mediate by the Tsvangirai faction as an indication that there is still no desire to tackle this disease.

In addition I have become increasingly dismayed by the following:

1. The senior member of staff dismissed by the National Council in its June 2005 meeting has been re-employed by the Tsvangirai faction.
2. The youths responsible for the violence in Harvest House in September 2004 and May 2005 expelled from the party by the Management Committee (and endorsed by the National Council) have been re-employed by the Tsvangirai faction.
3. At least one of these youths was involved in the unlawful hi-jacking of a vehicle in the lawful possession of the Mutambara faction in March. It appears as if no internal disciplinary action has been taken against that youth.
4. The senior members of the National Executive and MPs implicated in the Harvest House violence were all elected to the National Executive and some are on the new Management Committee of the Tsvangirai faction.
5. Senior members of staff implicated in the Harvest House violence have retained their positions.
6. Tsvangirai faction Chairman of Harare Province Morgan Femai was quoted in the press as having told a rally in Mufakozé on the 2nd April 2006 that "before we remove Zanu PF we will stamp them (the Mutambara faction) out." No statement rebutting this policy has been issued by the leadership of the Tsvangirai faction.

7. The Tsvangirai faction's winning candidate in Budiriro is one of the very people suspended by the MDC National Council in June last year for 2 years on the accusation of being involved in the Harvest House violence.
8. The Budiriro by election has been marked by violence and illegal activity including the tearing down of the Mutambara faction candidate's posters.

In the last few weeks leaders within the Tsvangirai faction, including Morgan Tsvangirai himself, have *spoken* about their commitment to non violence. That is obviously a step in the right direction but mere statements do not impress me. Even Zanu PF leaders have spoken about their belief in non violence recently. In this regard the pledge that Martin Luther King drafted in 1963 is relevant. All those involved in non violent civil disobedience activities in Alabama were required to "refrain from the violence of the fist, tongue and heart". It is the last injunction that is all important; for it is easy for leaders themselves not to be involved in violent activities and to convey the pretence of a commitment to non violence in their speeches. Zimbabwe's history is littered with examples of leaders who have preached non violence whilst at the same time have organised violent actions behind closed doors. This gets to the very nub of my concerns – for it appears to me that the Tsvangirai faction has shown no inclination whatsoever to deal with this cancer. Indeed if anything it would appear that the only concern of leadership of that faction is not to be *openly associated* with violence. All the evidence, as set out above, points to an inclination merely to pay lip service to the principle of non violence, and to ensure that all those responsible for violent acts in the past are free to use similar tactics in future.

In contrast it seems to me that the Mutambara faction is prepared to root out the problem. It is willing to set up an independent enquiry to investigate and address all incidents of intra party violence and was prepared to engage in mediation. It has not sought to protect the youths responsible for the assault on Bekithemba Nyathi, all of whom are now facing criminal charges. From the evidence before me it seems that the Mutambara faction has not pursued a violent or unlawful course since its Congress. In stating this I am not suggesting that the Mutambara faction is made up of saints; there is no such thing in politics. But it does appear to me that it is at least prepared to confront the problem.

Some may consider my concern about violence as trivial. Some have argued that because we are confronting an evil regime fire must be used against fire. Others have argued that non violent techniques were appropriate when Gandhi tackled British colonialists in India and when Martin Luther King challenged racism in the USA, but that these techniques are wholly inappropriate in confronting a violent Zanu PF regime. I have been criticised for being naïve or out of touch with reality. In any event, say others, the most important task is to remove the regime and the issue of violence can be addressed once the main task has been completed. The same people argue that one should therefore back the faction that has the most support irrespective of the techniques they use. In essence their argument is that the end justifies the means.

I beg to differ for a number of reasons.

Firstly, I think the failure to deal with violence within our own ranks now is of paramount importance for the future of Zimbabwe. If we perpetuate violence and impunity ourselves how will we ever address this problem nationally? And if it is not addressed nationally then are we not then going to ensure that this cycle of violence and impunity is perpetuated. Edmund Burke once wrote:

“The use of force alone is but temporary. It may subdue for a moment: but it does not remove the necessity of subduing again; and a nation is not governed which is to be perpetually conquered.”

If we are going to change Zimbabwe into a modern, successful, democratic state we simply have to break this cycle of violence now. We will find that if we do not stamp out violence in our ranks now it will come back to haunt us. If we do not prevent leaders with violent inclinations from gaining high office within the opposition they will naturally assume influential positions in government and once they have done so they will then have access to all the levers of national governmental power – a far more frightening prospect. Given their natures, which are there for all to see, there is no doubt that they will continue to use the violent methods they employed in opposition, in government. Ironically that is precisely the Zimbabwean experience of the last 26 years but we do not appear to have learnt a thing.

Secondly, we must realise that we are a nation in denial regarding the extent of this problem. We are a bit like an alcoholic. We do not recognise this default mode of resorting to violence as a disease. We have become so accustomed to violence being used as an acceptable political weapon that we have lost sight of the fact that the democratic world has moved on and that such methods are anathema elsewhere. We do not recognise that we have adopted the very same methods as the regime we oppose. By a silent and insidious process of osmosis we have absorbed this disease and tragically we do not understand the extent of the problem. We are so consumed by the Zimbabwean catastrophe that we do not understand why we need to take bold and decisive measures to heal this affliction in our ranks. I have no doubt that our failure to nip this problem in the bud is the single biggest cause of the MDC split. If we do not deal with it now then our political woes will continue.

Thirdly, non violent methods are the most effective in tackling this regime. It is wrong to think that non violence and civil disobedience/mass action are incompatible or that anyone who believes in non violence opposes mass action. On the contrary peaceful mass action is the very thing that the Zanu PF regime fears the most. But you cannot expect leaders with a predilection for violence to organise peaceful mass action successfully. If youths are undisciplined and given free reign in dealing with internal party issues then it is inevitable that they will use similar methods in confronting the regime. However if leaders have instilled discipline in their subordinates they can have confidence that any demonstrations they lead will not degenerate into violence. I suspect that one of the reasons Morgan Tsvangirai, and other MDC leaders from both factions for that matter, have not lead protest marches yet is because they may have little confidence in the discipline of their followers. The problem now is that these methods may have become

deeply ingrained and in the 100 or so days left in this short winter of discontent it will be difficult to change those ways.

Fourthly, the method most feared by the regime is non violence for the simple reason that they have no answer to it. The regime's claim to have "degrees in violence" is no idle boast. This is the very territory they are most comfortable in. Their gratuitous acts of violence in the last 6 years have not just been designed to intimidate; they have also been designed to provoke the opposition into a physical fight. The regime desperately needs a pretext to use all the power at its disposal. In addition the regime desperately needs a scapegoat or a diversion because it has no answer to the economic problems it has created for itself. It simply does not wash with the public for these woes to be blamed on sanctions or drought. But if the nation were to descend into a bloodbath it will have a wonderful diversion - which it will if mass action is not carefully organised by people who have a deep rooted commitment to, and understanding of, non violent techniques.

Leadership is ultimately about taking responsibility for the welfare of others. Good leaders have a responsibility to ensure that the people who repose faith in them are not unnecessarily endangered. If a political leader is privy to information that can harm his or her followers (which information those followers do not have) then that leader has a responsibility to warn those followers of the potential danger. Leaders must not simply listen to what people at grassroots are thinking and follow what they want to do willy-nilly. Whilst leaders must obviously respect the goodwill and wishes of their supporters, if they know that the beliefs of their supporters are based on falsehoods, misconceptions or propaganda, leaders have an obligation to warn people. Leaders cannot just act like lemmings and hurtle over the cliff with their supporters simply because the majority of people are doing that. If leaders know that an organisation their supporters have placed so much faith in has serious flaws then they have a duty to warn people of those flaws. If leaders do not then they fail the very people whose welfare they are responsible for.

It is in this context that I have decided that I would do a disservice to the people who have elected me and put so much faith in me if I were to join a faction of the MDC which I fear does not appreciate the gravity of the problem caused by its failure to root out violence. I am not swayed by mere numbers; if I were I would have joined Zanu PF a long time ago. I am not swayed by the undeniable fact that the Mutambara faction of the MDC has a mountain to climb if it is ever to rule Zimbabwe. What I am swayed by is the responsibility I have to the people who long for a new beginning and an end to the long and desolate nightmare of fascist rule. Until leaders take a principled stand to break the cycle of violence and impunity in Zimbabwe no meaningful and long term solutions will be found to the crisis Zimbabwe finds itself in today.

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