

**Position Paper of the Movement for Democratic Change with Regard to the Zimbabwe Global
Political Agreement Signed on 15th September 2008**

Date: 19 January 2009

Introduction

In March of 2008, the Movement for Democratic Change (MDC) won the majority of National assembly seats and the majority of votes in the presidential elections. Zimbabweans and African Observer missions rightly dismissed the June re-run of the presidential election as an election that was neither free and fair, nor met the standards of both SADC and the African Union. Therefore, the MDC had a legitimate claim to be the party with the electoral mandate to form the new government of Zimbabwe.

Nonetheless, at the behest of the African Union and SADC, the MDC entered into negotiations with Zanu PF and the smaller MDC faction, in good faith and in the national interest with the aim of establishing a power-sharing arrangement leading to a transitional inclusive government that could address the political and economic crisis in Zimbabwe.

When the MDC signed the power-sharing agreement on 15 September, we did so believing that the settlement would result in the MDC having an equitable share of government power and we remain deeply committed to implementing the agreement in its letter and spirit.

In this regard, the position of the MDC has not changed in that we remain committed to the letter and spirit of the agreement subject to the resolution of the five outstanding issues detailed below as per the resolutions of the party's National Council. The detailed resolutions are attached as Annexure 1 & 2.

These issues must be fairly, transparently and comprehensively addressed prior to the formation of an inclusive government. This is the firm position of the MDC.

Status of the Talks

After the signing ceremony of the 15th of September, 2008, the SADC Troika on Politics, Defence and Security met in Harare on 28th October 2008, to deal with implementation issues of the global political agreement. The Troika meetings did not resolve the outstanding issues and referred the same to the full summit of the SADC which met on November 9th 2008, in South Africa. The summit urged the parties to form an inclusive government. The Summit also made a recommendation that the Ministry of Home Affairs be co-ministered by Zanu PF and the MDC. This recommendation was not accepted by the negotiators and the National Council of the MDC. On November 25 & 26 2008, the negotiating parties met and without prejudice negotiated and initialled a draft Amendment to the Constitution of Zimbabwe to give legal effect to the inclusive government agreement. On December 25, 2008, the President designate, Robert Mugabe sent a letter accompanied by a passport to the President of the MDC, Morgan Tsvangirai purportedly appointing him Prime Minister. The President of the MDC responded to the letter of appointment (See attached response marked Annexure 3).

In an attempt to bring about a quick resolution to the outstanding issues, the MDC has requested that South African President and SADC Chairman, Mr Motlanthe, convene a meeting between Mr Tsvangirai and Mr Mugabe. Only if the two principals meet and agree on the resolution of the outstanding issues can this process move forward. See attached letter to President Motlanthe marked Annexure 4.

The key challenge to this agreement has been its implementation. The implementation of the Memorandum of Understanding (MOU) and the Global Political Agreement (GPA) required honesty, good faith and goodwill to be displayed by the parties to the agreement. Regrettably, following the signing of the agreement, ZANU PF has acted in a manner that is contrary to the spirit of the agreement and has displayed duplicity and bad faith in regard to the implementation of various aspects of the agreement.

The Outstanding Issues & the MDC Position

1. National Security Council

The question of the composition, function and constitution of the National Security Council is a critical issue in view of the dangerous and partisan role that has been displayed by the security services in Zimbabwe.

In this regard, our position is that an Act must be enacted by Parliament which will must regulate and oversee all State security and intelligence agencies. This Act must seek to balance the need for accountability and transparency with the competing principles of national security and sovereignty. More importantly, is the principle that national institutions and state security agents cannot be partisan and cannot be an extension of any political party.

Annexure 5 contains a draft of the proposed National Security Council Bill containing the minimum demands of the MDC.

This bill must be tabled before parliament immediately and or at the same time with Amendment 19 to the Constitution.

2. Equitable Sharing of Ministerial Portfolios

In order to bring finality to this matter, find below what the MDC considers to be an equitable distribution of Ministries and if this and other outstanding issues are resolved as stated in this position paper then we will be in a position to form an inclusive government.

Key Ministries

MDC-T

1. Home Affairs
2. Finance
3. Media, Information and Publicity
4. Local Government, Rural & Urban Dev.
5. Agriculture

ZANU-PF

1. Defence
2. National Security[1]
3. Foreign Affairs
4. Justice and Legal Affairs
5. Lands and Land Resettlement

Other Ministries

MDC-T

6. Economic Planning and Investment Promotion
7. Constitutional and Parliamentary Affairs
8. Environment, Natural Resources and Tourism
9. Women, Gender and Community Development
10. Information and Communications Technology
11. Health and Child Welfare
12. Labour and Social Welfare
13. Public Service
14. Water Resources Development and Management
15. Public Works
16. National Housing

ZANU-PF

6. Small and Medium Enterprises and Cooperative Development
7. Mines and Mining Development
8. Youth, indigenization and Empowerment
9. Transport
10. Higher and Tertiary Education
11. State Enterprises & Parastatal Management
12. Energy and Energy Development
13. Science & Technology

Ministry Allocations for MDC-M

1. Industry & Commerce,
2. Regional Integration and International Trade
3. Education, Sport & Culture

The President and the Prime Minister will also each appoint one Minister of State in their respective offices as full Cabinet Members.

The issue of the equitable allocation of ministerial portfolios has unnecessarily delayed the consummation of the Global political agreement to the detriment of resolving the other outstanding issues. Therefore, unless the above allocation is accepted we see no point in any further discussions on this matter.

3. Appointment of Governors and Senior Civil Servants

In terms of the Constitution of Zimbabwe, 10 Provincial Governors must be appointed. Contrary to the terms of the MOU on 24th August 2008, Mr. Mugabe unilaterally appointed the governors yet again illustrating his unwillingness to abide by the letter and spirit of the agreements he signed. On the day of the signing ceremony, the then South African President Mbeki publicly acknowledged that this issue was outstanding and had to be resolved. The appointment of governors is a straight forward issue that has again unnecessarily delayed the consummation of the agreement. To put finality to this, we present the following democratic formula for the allocation of these posts.

In this regard, our proposals are that the party that got the majority of seats, on a province by province basis, in the House of Assembly elections of the 29th March 2008, should have the governorship of that province. This would result in the MDC having five provincial governorships, Zanu PF four, and Professor Mutambara's party, one as follows.

MDC-T	MDC-M	ZANU-PF
Manicaland	Matabeleland South	Mashonaland Central
Masvingo		Mashonaland East
Matabeleland North		Mashonaland West
Bulawayo		Midlands
Harare		

The inclusive government represents a new administration and therefore all Senior appointments in government and its agencies have to be made in line with the GPA i.e. by agreement between the President and Prime Minister and where applicable by agreement between the President and his deputies and the Prime Minister and his Deputies.

4. Breaches to the MOU and the GPA

4.1 Unilateral Appointments

Reserve Bank Governor

The reappointment of Reserve Bank Governor, Gideon Gono on 26th November 2008 contravenes both the Reserve Bank Act and the GPA. A Central Bank Governor should play an essential role in the economic stabilisation of Zimbabwe and therefore, in terms of the GPA no one person should make such an appointment.

It is our firm position that this appointment be reversed and that the Prime Minister designate and President designate agree on his replacement prior to the consummation of this agreement.

Attorney General

Similarly, the Attorney General was appointed unilaterally by Mr Mugabe on 17th December 2009. Considering that the country had been without a substantive Attorney General for three years there was no need to fast track this appointment. The office of the Attorney General is a key constitutional position and as such, no person genuinely interested in building an inclusive government would proceed to make such a unilateral appointment.

Once again, our firm position is that this appointment be reversed and that the Prime Minister designate and President designate agree on his replacement prior to the consummation of this agreement.

4.2 Rule of Law and Abductees

All persons who were not properly arrested by the police but abducted (kidnapped) by state security agencies from October 2008 as confirmed by the Police and Acting Minister of State Security in court must be released immediately. To date a total of 27 people have been abducted by the state security agents, 16 of whom have appeared in court and have since been remanded in custody. The continued remand and detention of these individuals whose initial arrests were unlawful is in breach of their constitutional rights and the rule of law.

In addition the following individuals are still missing, have not appeared in court and have not been seen since their abduction. Lloyd Tarumbwa, Terry Musona, Fanwell Tembo, Larry Gaka and Gwenzi Kahiya who were abducted in Banket in Mashonaland West province on 29 October 2008. Charles Muza, Ephraim Mabeka and Edmore Vangirayi who were abducted on 10 December 2008 in Gokwe, Midlands province, while Graham Matehwa was abducted on 17 December 2008, in Makoni South, Manicaland province, and Peter Munyanyi in Gutu South in Masvingo province on 13 December 2008.

It is the MDC's firm position that all abductees, including those currently in remand prison must be released immediately.

Furthermore, the Zanu PF regime must make a firm commitment to respect the rule of law and any future court orders.

4.3 Bad Faith

On the 11 September 2008 the leaders of the political parties signed the "Global Political Agreement." The terms of this agreement were then supposed to be incorporated into the document that was then formally signed by the parties on 15 September 2008. However, after the formal signing it was discovered significant alterations had been made in the final document to the terms agreed to on 11 September, 2008. These unilateral changes were made by ZANU PF's chief negotiator, Patrick Chinamasa, who drafted the final agreement document. The most important alterations were these:

- As ZANU PF already had 5 non-constituency seats in the Senate, it was agreed that an additional 6 senators would be appointed. Out of the six, four would be from the MDC Tsvangirai and two from the Mutambara MDC. However in the final agreement that clause was changed and substituted with a clause saying there would be 9 new senate seats, to be shared equally between the three rival parties.
- Two clauses in the original agreement were omitted from the final agreement. The first provided that persons appointed as Deputy Prime Ministers and Vice Presidents would automatically become ex officio members of Parliament and if they were already members of Parliament their political parties would be entitled to appoint non-constituency members of Parliament. The second omitted clause provided that the Prime Minister and his Deputy Prime Ministers and the President and his Vice Presidents would sit to make appointments of senior government officials like Ambassadors and Permanent Secretaries.

The lack of good faith and the absence of a paradigm shift by Zanu PF and, more importantly, the lack of trust and respect they have exhibited towards the other parties and the negotiation process itself are at the epicentre of the current impasse.

4.4 Hate Speech

The political agreement stipulate that steps must be taken to ensure that the public media provides balanced and fair coverage to all political parties for their legitimate political activities. It further provides that both the public and private media must refrain from using abusive language that may incite political intolerance. [Article 9.1 (d) and (e)]. These provisions continue to be breached by the sole electronic broadcaster and the sole daily newspaper, both of which are controlled by ZANU PF. This media continues to provide partisan

coverage of political events that is full of hate, malice and untruths and completely biased in favour of ZANU PF. They carry many articles attacking and abusing the MDC. They give almost no coverage to statements and comments made by the MDC.

The Mugabe caretaker administration which controls these media has made no attempt to put a stop to these egregious breaches of the agreement. This must be done now.

4.5 Democratic Space

The agreement was supposed to result in the opening up of democratic space. This has not happened. Article 12 recognises the importance of the freedoms of assembly and association in a multi-party democracy.

It then goes on to oblige the parties to work together to ensure the full realisation of these rights. The police are supposed to receive training to appreciate the necessity to respect this right. In complete violation of the spirit of this agreement the police have continued violently to break up entirely peaceful protests mounted by civic organisations such as women and student organisations, inflicting injuries on unresisting protestors and arresting participants. In one protest action it is alleged that a number of the protestors were abducted and badly assaulted by ZANU PF supporters.

The Mugabe caretaker administration remains in control of the police force and other law enforcement agencies and has done nothing to prevent the police from violating these rights. Since the signing of the agreement, there has been a major curtailment of the democratic space in Zimbabwe. Public meetings are not allowed to take place and, as of now, there is a ban on all political meetings and gatherings contrary to the provisions of the GPA.

Regrettably ZANU PF continues to display complete intolerance of the MDC in particular and Zimbabweans in general. The peoples' freedoms must be restored now.

4.6 Abuse of Power

The MDC is also concerned about the continuing abuse of power by the Governor of the Reserve Bank on behalf of ZANU PF. The so-called quasi-fiscal measures of the Governor not only have no legal basis but also they are often used to benefit ZANU PF members and to fund partisan political activities by ZANU PF. These activities are contrary to the provisions of the agreement.

The illegal siphoning off of funds to be used for this purpose must be halted immediately.

5. Constitutional Amendment No. 19

A draft Amendment to the Constitution was negotiated and agreed by the three parties who were then to agree on the final version to be presented to parliament. In clear breach of this, Zanu PF unilaterally gazetted the Amendment on Saturday 11th December 2008.

Procedurally therefore, before the bill can be tabled in parliament, there must be agreement on the final version or on any amendments to the gazetted bill. Once this has been done, the bill must be passed by parliament, executed by the President and enforced into law and a government formed.

Conclusion

When the Global Political Agreement was signed on 15th September 2008 it raised the hopes of the people of Zimbabwe who supported the concept of a negotiated settlement to the political crisis in the country. They also realized that the foundations of such an agreement must be solid and that any government that does not reflect the people's will as expressed on March 29th 2008, will not be legitimate or viable.

Unfortunately, events following the 15th September signing have shown that in Zanu PF, the MDC has an unreliable partner with whom we are expected to form an inclusive government. As such, nothing can be left to chance or to faith and all practical modalities of this proposed working relationship must be embedded and enforceable in law. As the then South African President, Mr. Thabo Mbeki, rightly said in his letter to the President of the MDC dated September 1, 2008 "the agreement concluded by the parties will and must have legal force, deriving from constitutional amendments which will be effected by the Parliament of Zimbabwe: accordingly, nobody or institution should be given responsibilities without the legal power to discharge these."

The African Union and SADC are supposed to be the underwriters and guarantors of this agreement meaning, among other things, that these organizations must ensure that all parties adhere to the agreement by putting in place an oversight mechanism. Unfortunately this has not yet happened, despite the overwhelming evidence that such a mechanism would have a key role to play in ensuring the success of this agreement.

The People of Zimbabwe have become impatient with the unnecessary delays in bringing about a new government that reflects their wishes and strives to meet their aspirations and they hope that in the coming days wise counsel, that has the best interests of Zimbabwe at heart, shall prevail.