

A perspective on the Zimbabwean talks and the election of the Speaker
Senator David Coltart
September 03, 2008

During the last few weeks there has been frenzied media speculation that Robert Mugabe has entered into, or is about to enter into, a deal with the MDC formation led by Arthur Mutambara (MDC M) *1. The MDC M in honouring the terms of the MOU has steadfastly maintained a media silence which in turn has created a vacuum of information. That vacuum has been filled by media speculation, propaganda issued by ZANU PF and statements made by leaders of the MDC formation led by Morgan Tsvangirai (MDC T). In addition a few belligerent statements of Arthur Mutambara and the attendance of Arthur Mutambara and other leaders at the Heroes Acre ceremony and elsewhere have reinforced the perception in the minds of the public and that there is indeed a deal. Indeed many newspapers, with some noteworthy exceptions such as the New York Times, have taken it as given that there was a deal reached. Whilst the existence of a deal has been emphatically denied, the controversy surrounding the election of Speaker in the last week has served to enhance the perception that there is some deal.

It is my belief that there is a very serious gap between the public's perception of what is taking place and the truth. It also deeply concerns me that even colleagues in the struggle to bring democracy to Zimbabwe appear to have deliberately distorted the truth for partisan ends. I cannot see how that can advance our just cause; all it serves to do is to further divide those who oppose the Zanu PF regime. In short I believe that there needs to be a truth telling so that all those genuinely concerned with the Zimbabwean crisis can be better informed.

I am in the relatively privileged position of being in possession of, in my capacity as secretary for legal affairs of the MDC M, copies of all the documents relating to the ongoing talks, including the document entitled "Framework for a new government" agreed to by all the negotiators on the 28th of July 2008. I have also spoken at length to members of our negotiating team including the Hon. Moses Mzila Ndlovu MP and a member of the technical support team, Josephat Tshuma, who has also been a partner in my law firm for the last 20 years. I should stress that Josephat Tshuma is not a politician but a lawyer of the highest repute, who is not only the present Chairperson of Zimbabwe Lawyers for Human Rights but is also one of the lead Counsel in the well-publicised SADC Tribunal case brought recently in Windhoek on behalf of displaced Zimbabwean farmers. In other words much of the information I have is not based on evidence given to me by partisan sources; indeed most of the information I have is based on hard written documentation and the testimony of people who in my experience have a long track record of telling the truth.

Historical context

Much of the hysteria of the last few weeks is based on the widely held perception that somehow the MDC M is to blame in the first place for the MDC T's failure to win both the Parliamentary and presidential elections outright in March. What is commonly leveled against the MDC M is that had the MDC fought the election together Morgan Tsvangirai would have easily secured over 50% of the vote and the combined MDC would have enjoyed comfortable majorities in both the House of Assembly and Senate. It is self evident that had we fought the election together as an MDC coalition many of our current woes would not have arisen. What is not clear is who is to blame. Whilst all of this is ancient history and it does not serve much purpose in resurrecting these issues, because the MDC M is accused of "selling out" against the backdrop of the March election, it is necessary to recount certain facts in this regard. Firstly, as far back as April 2007 the MDC M, including Arthur Mutambara, agreed that it would support the sole opposition Presidential candidacy of Morgan Tsvangirai. Secondly, it was the MDC T which rejected the agreement reached by the two teams of negotiators in May 2007. Thirdly, in January

2008 the MDC M agreed again to support the sole candidacy of Morgan Tsvangirai. Once again it was the MDC T which rejected the agreement reached this time by the leadership of the two political entities on spurious grounds related to the Parliamentary election, which has always been secondary to the all-important presidential election. When the agreement was rejected by the MDC T on the 3rd February 2008 many MDC T leaders and aspiring MPs were delighted that the coalition had failed; on the contrary virtually all in the MDC M were despondent, including those who had no Parliamentary aspirations. It was only after the rejection of the agreement on the 5th February that Simba Makoni announced his candidacy; having been rejected by the MDC T and rather than confuse the electorate even more by putting up our own candidate, a decision was taken to support Makoni's candidacy. Had

the coalition agreement reached in January been honoured by the MDC T there is no way that the MDC M would have supported Makoni's candidacy. Fourthly, after it became clear that there would have to be a Presidential run off election between Robert Mugabe and Morgan Tsvangirai, the MDC M threw its full weight behind Tsvangirai's candidacy.

In this regard I need to make mention of a recent opinion put out by my good friend and fellow lawyer Sheila Jarvis regarding the need for a run off in the first place. She was responding to a statement made recently by Welshman Ncube in which he said "The game was that you had more than two players. One of the players had to get 50 + 1 percent for power to move to him". Sheila went on to state the following:

"If intended as a statement of law, this is directly contradicted by the Electoral Act, Ch 2:13 subparagraph 3(1) of the Second Schedule."

Sheila argued in the paper that Welshman Ncube had in effect incorrectly stated the Electoral Law. She concludes by saying:

"As a lawyer and accredited observer I have felt obliged to draw attention to the rules that the Professor and his political party, and Mugabe and his political party, endorsed before the games, and to the obvious breaking of those same rules. I don't know if the Professor's motive for ignoring these rules is his reported intense dislike of Tsvangirai; or a hope of sharing now in the absolute power that Mugabe failed to transfer under Paragraph 3(1) after the people's votes in March were counted and recounted; or some other motive."

Welshman Ncube had argued that the Electoral Law states that in the event of no candidate getting over 50% of the vote a run off became necessary. Welshman based this on the clear meaning of Section 110 of the Electoral Act. Sheila Jarvis's argument is based on the Second Schedule of the Act which does not require a run off. She did not refer to Section 110 in her article.

In short there is a contradiction in the Electoral Act between Section 110 and the Second Schedule. The question is which provision prevails - Section 110 or the Second Schedule? Or in other words would there need to be a run off or wouldn't there? This is a question that concerned me prior to the election so much so that I sought an opinion from two of Southern Africa's leading Constitutional lawyers namely Senior Counsel Adrian De Bourbon and Jeremy Gauntlett.

The opinion I got back was as follows:

"The usual rule is that where there is a conflict between a section of an Act and that one of the provisions in a schedule, the enactment in this section prevails over that in the schedule. In *Executive Council, Western Cape Legislature & Ors v President of the Republic of South Africa & Ors* 1995 (4) SA 877 (CC) para [33], page 894, Chaskalson P said: "Ordinarily, the position with regard to matter contained in a schedule is as set out by Kotze JA in *African and European Investment Co Ltd v Warren and Others* 1924 AD 308 at 360: 'No doubt a schedule or rule attached to a statute and forming part of it is binding, but in case of clear conflict between either of them and a section in the body of the statute itself, the former must give way to the latter.' Craies Statute Law 7th ed (by Edgar, 1971) at 224 notes: "A schedule in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part," but if an enactment in a schedule contradicts an earlier clause the clause prevails against the schedule. (Citation omitted)." See also *De Reuck v Director of Public Prosecutions, Witwatersrand Local Division & Ors* 2004 (1) SA 406 (CC) para [37], page 426 and *R v Kok* 1955 4 SA 370 (T) at 374 per Ramsbottom J

Therefore, it is my view that the requirement for a run-off in section 110 (3) prevails over the more general provision in the Schedule."

In other words Senior Counsel do not agree with Sheila Jarvis' interpretation of the law and nor did Welshman Ncube who is also of course a Professor of Constitutional Law. All believe that whether we like or not, the moment no candidate managed to get over 50% of the vote in the 29th March 2008 election a run off became necessary in law. It may have been unfair, the results may well have been manipulated but that is what the law says.

But this incident illustrates the level of bias that has built up in our society. An honest legal opinion expressed by Welshman Ncube is interpreted as a deliberate attempt to misstate the law, which once again reinforces the public perception that there is some dark and sinister plot afoot, which in this case was simply not true.

The point of this is not to regurgitate history but to show that in fact the MDC M has consistently opposed Robert Mugabe and sought to get into office people who will change the status quo, not perpetuate it. Whilst the MDC M has very clear differences of opinion regarding policy with the MDC T it has never sought any form of electoral pact or coalition agreement with Robert Mugabe and ZANU PF.

The vast majority of the members of the MDC M National Council have consistently opposed the excesses of the Mugabe regime going back to the genocide of the 1980s. Given their lengthy human rights track record it is simply disingenuous for anyone to suggest that these are the people who would so readily jump into bed with the Mugabe regime. Any such actions would be expedient in the extreme. Ironically the very losses suffered by many MDC M leaders in the March Parliamentary elections show that this political formation is not led by opportunists; it did not take a clairvoyant to predict that all those standing on an MDC M ticket in Harare would lose their seats by a wide margin. All of them could have acted expediently and opportunistically to retain their seats by crossing the floor to the MDC T but they chose to act on principle instead. All this begs the question: if these people did not act opportunistically in the past then what possibly would motivate them to do so now, especially in the sure and certain knowledge that the Mugabe regime is on its last legs?

In short the history of the MDC M and its leaders does not support any thesis that it would enter into a bilateral pact with ZANU PF. On the contrary any such pact would run against virtually everything these people have stood for their entire working lives.

An accurate record of what has happened since the 21 July 2008

The Memorandum of Understanding was signed in Harare on the 21 July 2008. Intensive negotiations began in South Africa on the 24th July 2008. It should be stressed of course that these negotiations took off from where the negotiations had ended prior to the March 2008 elections and built on agreements and legislation, including a new draft constitution which was signed by all the negotiators in Kariba on the 30 September 2007, agreed to during that process.

Between the 24th July 2008 and the 6 August 2008 the negotiators reached agreement on a wide range of issues. Unfortunately I am not at liberty to reveal the details but suffice it to say that the agreements reached are wide ranging and deeply heartening in most respects. For example there is a commitment to creating an acceptable, inclusive process which will result in Zimbabwe having a new democratic Constitution within 18 months. There is an agreement to set up a mechanism to achieve national healing in respect of victims of pre-and post independence political conflicts. There are signed agreements regarding land, security of persons, humanitarian and food assistance, and freedoms of assembly and association. Importantly there is an agreement that the implementation of the overall agreement is to be guaranteed and underwritten by the President of South Africa, SADC and the AU.

On the 28 July 2008 the negotiators agreed to and signed a document entitled "Framework for a new government". In terms of this document Robert Mugabe would continue in office as President. He would appoint three Deputy Presidents, two nominated by ZANU PF and one by MDC T. Morgan Tsvangirai was to become Prime Minister and they would be three Deputy prime ministers one each nominated by the parties. It was agreed that they would be a Cabinet made up of 38 ministers; comprising 17 ministers from ZANU PF, 16 ministers from MDC T and five ministers from MDC M. This breakdown of ministers largely reflected the percentage of votes received by the three political parties in the March Parliamentary elections.

On the 6 August 2008 the negotiators adjourned on the understanding that certain outstanding issues including the powers and duties of the President and Prime Minister respectively would have to be resolved by the Principals.

On the 9 August 2008 President Mbeki and his team arrived in Harare. Negotiations involving the Principals commenced on the 10 August 2008. Morgan Tsvangirai tabled a position paper, paragraph 2 of which demands that the Prime Minister be the Head of Government, formulate and carry out policies of the government, execute, direct and administer the operations of government, conduct the business of government in Parliament, chair Cabinet and appoint and dismiss Cabinet.

During the discussions which followed Morgan Tsvangirai also asked that the agreement regarding the framework for a new government, agreed to by the negotiators on the 28 July 2008, be revisited. He proposed that the 38 member Cabinet be cut down to a 31 member Cabinet, reducing the respective ministers to 15 ZANU PF, 14 MDC T and 2 MDC M. In addition he proposed that the three Deputy Presidents be cut down to two, both of whom were to be nominated by ZANU PF and that the three Deputy Prime Ministers be cut down to two, one from MDC T and one from MDC M. As an aside the original formulation was designed to meet MDC T demands that both MDC T Vice President Thoko Khube and MDC T Secretary General Tendai Biti would have senior positions.

The above-mentioned changes regarding the framework were agreed to by the Principals along with other issues. In the early hours of the 11 August 2008 President Mbeki produced a working document highlighting five areas of concern including the duration of the government, the constitution, the framework of the new government (reflecting the agreement reached following the proposed changes as set out in the paragraph above), the powers and functions of the Prime Minister and the National Security Council. Without reaching agreement on these issues the meeting adjourned on the early hours of the 11 August 2008.

It should be mentioned at this juncture that before the meeting concluded in the early hours of the 11th August 2008 President Mbeki urged both Morgan Tsvangirai and Arthur Mutambara to attend the Heroes Day celebrations later that day as a confidence building measure. Arthur Mutambara only attended because he agreed to President Mbeki's request and was of the understanding that Morgan Tsvangirai was going to attend. Accordingly what was done as an act of good faith has been perceived as another sign that Mutambara was in cahoots with Mugabe.

When the negotiations resumed on the afternoon of the 11 August 2008 Morgan Tsvangirai tabled further notes together with an annexure responding to the five outstanding areas of concern set out in President Mbeki's working document. From this document it is clear that there was largely common cause relating to the duration of the government, the Constitution and the framework for the new government and indeed by the end of that discussion all the Principals had reached agreement regarding these issues. The only major outstanding issue related to the role of the Prime Minister.

Overnight further work was done by President Mbeki's team on a document setting out the role of the Prime Minister. A first draft of this document was presented to the Principals when negotiations resumed on the afternoon of the 12 August 2008. Considerable debate followed and in the course of the afternoon and early evening the original document was amended several times. In the course of the afternoon and evening the debate had narrowed down to two critically important issues namely that the Prime Minister should be "Head of Government" and should chair cabinet. In the belief that all had agreed a final draft was prepared by President Mbeki's team, and in the belief that this was acceptable to the MDC T and Morgan Tsvangirai, Arthur Mutambara indicated that he would agree to what was set out in the final document. However Morgan Tsvangirai after consulting his colleagues advised that the final document was unsatisfactory and the meeting ended.

The point of this paper is not to debate whether the powers of the Prime Minister as set out in the agreement are satisfactory. The allegation has been made that the MDC M collectively or Arthur Mutambara individually entered into a bilateral agreement with ZANU PF on the evening of the 12th August. The Zanu PF mouthpiece the Herald newspaper announced this as fact the following morning and many international newspapers and media organisations reported the same thing. Despite the fact that a press conference was held by Arthur Mutambara on the afternoon of the 13th August 2008 denying that there was or would be any bilateral agreement, the belief has stuck.

It should be clear from what has been described above that no bilateral agreement was entered into, nor was it the intention of the MDC M or Arthur Mutambara to enter into any such Pact.

Three further points should be made in this regard.

Firstly, both the agreement entitled "Framework for a new government" signed on the 28 July 2008 and paragraph 20.1.1 of the subsequent draft composite agreement (which incorporates all the various agreements reached prior to the meeting of the Principals) makes it quite clear that the office of Prime Minister "shall be occupied by Morgan Tsvangirai". In other words the allegations made by some journalists and political analysts that Arthur Mutambara would step in to that office are simply ludicrous. If there is any doubt about that it was dispelled by President Mbeki in his subsequent press statement in which he stressed that they would have to be a tripartite agreement.

Secondly, it should be stressed that the MDC M itself agrees that the entire agreement, including the sub agreement dealing with the role of the Prime Minister, does not meet our ideal aspirations for a new democratic order in Zimbabwe. However we are aware of the political reality that exists in Zimbabwe at present. Effective power, including control of the military, remains in the hands of ZANU PF. Millions of Zimbabweans are literally starving to death. Daily we receive reports of families who have completely run out of food. If the conduct of ZANU PF over the last eight years is anything to go by, it is not unreasonable to assume that they are callous enough to not care about this ongoing suffering. There are also pitiful examples elsewhere in Africa of political leaders who are prepared to take their countries down to the depths we have witnessed in Somalia and Liberia. It is in this context that we have negotiated in good faith, in what we believe is the best interests of Zimbabwe. The deal on the table is not perfect but in our view it will take the process forward and end the intense suffering of Zimbabweans.

Thirdly, there is the irrefutable fact that since the 12th August there has been no bilateral agreement with Zanu PF. Since the 12th August 2008 The MDC M has repeatedly said there would not be any bilateral agreement and that is borne out what has actually happened. There is no doubt that had Mugabe been able to persuade MDC M leaders or Parliamentarians to join his cabinet, he would have gone ahead with forming a cabinet that excluded the MDC T and Morgan Tsvangirai. But he has not been able to do so because the MDC M and its leadership have been consistently clear that they would not accept any such arrangement. Of course Zanu PF and its mouthpieces have repeatedly put out that there is an agreement but that is simply self-serving propaganda designed to promote their cause and to divide those opposed to them. The irony is that so many people, including many in the international media have swallowed their story - hook, line and sinker.

If we have any difference of opinion with our colleagues in the MDC T it is rooted in the fear that they may overreach their demands. No matter how legitimate some of their demands may be, there exists the real danger that the Hawks in ZANU PF will dig their heels in. And whilst time may well be on the side of both the MDC M and the MDC T as political institutions it is not on the side of the millions of Zimbabweans who are starving to death. Zanu PF leaders have shown in the last 28 years of their rule how callous they are towards the plight of Zimbabweans and there is no indication that they have changed. In that context we do not have the luxury of sitting back indefinitely to wait for ZANU PF to fold or for them to have sympathy for the people they claim to represent.

We are not alone in this belief. In an interview given on the 4th September 2008 to Voice of America the highly respected Professor Brian Raftopolous (and former advisor to Morgan Tsvangirai) expressed similar concerns to the ones I have outlined above. It is pertinent to include the full text of the report:

"There is a view among some Tsvangirai advisors that he should not settle for anything less than overall executive authority, and Mr. Mugabe's role as president would become ceremonial. They argue that as long as the status quo continues, Zimbabwe will continue to deteriorate, resulting in a complete collapse of Mr. Mugabe's government.

But the Director for Research and Advocacy at Solidarity Peace Trust, Brian Raftopoulos, says with Mr. Mugabe in power, the opposite is true.

"My concern is this belief that the deterioration will somehow deliver political change," he said. "Now the problem with that scenario is that the deterioration of the economy can actually deliver worse, you can get a more repressive state, a party that digs in, and we know that this is a party that really does not care about its citizenry; it is prepared to let the situation continue to deteriorate."

Raftopoulos argues that Mr. Tsvangirai should take the initiative and seek a compromise that will bring a transitional government into being.

"So I think that we really do need to find a compromise and I think that is absolutely necessary," he said. "And even if as the opposition, as the civics, [we think] the agreement does not deliver everything we want, we should see it as a first stage in a longer battle."

Both Habib and Raftopoulos argue that once in government Mr. Tsvangirai will be in a position to vigorously manage the situation to ensure that he and his party move to a position of control and authority.

Raftopoulos suggests it is about capacity. "Well, the biggest challenge will be the capacity to deal with the institutions of the state and to be able to wield the powers within the state in whatever areas they have the most authority in order to deliver policy changes," he said.

"So it is a question of capacity, capacity of the MDC to be able to take up positions in the state and to be able to fight for the delivery of those policies which will begin to shift the balance of political power away from ZANU-PF," he added."

It is in this context that we are all deeply angered by the suggestion that we would enter into a bilateral agreement that is not in the best interests of all Zimbabweans. We have not entered into such an agreement and will not in future. But our belief remains that the draft agreement on the table, as imperfect as it is, is the best deal that we are going to get at this juncture. We concede that we may be wrong in this assessment because of course we do not enjoy a monopoly of wisdom; all that we ask of the Zimbabwean public is that it be acknowledged that we are at least acting in good faith.

Election of Speaker

In any democratic country the office of Speaker is crucial in establishing and maintaining the integrity of Parliament. Throughout the Commonwealth Speakers are chosen primarily because of their actual and perceived neutrality. One of the greatest tragedies in Zimbabwe since 2000 is that the office of Speaker has been occupied by overtly partisan individuals who have made a mockery of the principles of free, fair and open Parliamentary debate. As a result in the last two Parliaments many parliamentary sessions have been reduced to farcical levels.

Because of all the trauma of the last eight years and especially because of the extreme violence perpetrated mainly by ZANU PF against mainly (in the last 18 months that is) our colleagues in the MDC T our nation remains deeply polarized. The hostility between ZANU PF and the MDC T is intense. However sympathetic we may be towards our colleagues in the MDC T the fact remains that our country is in a deep crisis and we will need level heads to recover. If Parliament is to remain a battleground then it will be difficult to find a consensus on the way forward.

It was in this context that we suggested in the negotiations to ZANU PF and the MDC T that agreement should be reached that one of our nominees should be the Speaker. The suggestion was not made from any sense of entitlement but purely from a belief that a relatively neutral person might be able to bridge the huge gulf that will surely exist in the new Parliament as it is presently constituted.

Regrettably that suggestion was rejected by both parties. During discussions regarding who would be acceptable as a Speaker the MDC T negotiators eventually indicated that they would prefer to nominate Dumiso Dabengwa than people nominated by the MDC M such as Gibson Sibanda or Paul Temba Nyathi. In other words notwithstanding the joint history and the support given to Morgan Tsvangirai's candidacy in the run off, much of the focus of the negotiations was on the intra MDC party dispute, rather than on presenting a common front against ZANU PF. Having tried to get a consensus with our colleagues in the MDC T and failed we still were of the view that as we had the right to nominate our own Speaker and that was in our belief the best thing for the new Parliament, we should nominate our own candidate. Accordingly in the National Council meeting held on the 20th August 2008 we debated the matter and chose Paul Temba Nyathi as our candidate for Speaker.

Anyone who knows Paul Temba Nyathi will agree with me when I say that he is a man of absolute integrity; a man of great humility; a man with a wonderful sense of humor who has the ability to make

even his fiercest adversary laugh; and a man who is simply a great human being. I had the honour of being in Parliament with him between 2000 and 2005 and missed his presence more than anyone else in the last Parliament. In addition Paul is a genuine war veteran and an ex detainee. That history gave him a unique ability to argue against ZANU PF and importantly to persuade ZANU PF MPs across to his point of view. Paul also served with distinction in civic organizations prior to becoming a Parliamentarian. I am obviously biased but there are many others who share my view of him. Judith Todd's book "Through the Darkness" details Paul's superb work and delightful character during the 1980s. In short we believe that he would have been the best person to turn the Zimbabwean Parliament into an institution we can all be proud of.

I have deliberately labored my praise of Paul Temba Nyathi because some of our colleagues in the MDC T, including some people who should know better, have stated and written that our nomination of Paul Temba Nyathi was part of an agreement with ZANU PF. Other MDC T propagandists have stated that Paul Temba Nyathi was in fact "Zanu PF's nominee". If this was indeed so, it must follow that Paul Temba Nyathi was aware of the agreement and either agreed with it or condoned it. Anyone who knows Paul Temba Nyathi will know just how outrageous such an allegation is.

The fact of the matter is that our National Council (not a few individuals) met on Wednesday the 20th August 2008 and unanimously nominated Paul. Thereafter a concerted effort was made to lobby individual MDC T and ZANU PF MPs to vote for Paul. We knew the obvious - that without getting votes from people from other parties our objective would fail. A sizeable number of MDC T MPs were very happy that he had been nominated and indicated that they would vote for him. Ironically the response from ZANU PF was that they believed that the MDC T would not be able to get more than 96 of its MPs into Parliament (because of their understanding that 4 MPs were in either exile or in hiding) and because of this they would be able to elect a ZANU PF MP as Speaker. It was only at 10 a.m. on Monday the 25th August 2008 that we learned that ZANU PF were not going to put up a candidate (when they realised that the MDC T had managed to get virtually all its MPs into the House) and that they would vote for Paul Temba Nyathi.

Our hope that we would get a sizeable number of MDC T MPs to vote for Paul did not materialize. On the evening of Sunday the 24th August a meeting of the MDC T Parliamentary caucus was held and its members were threatened with expulsion and the loss of their Parliamentary seats if they voted for Paul. If anyone doubts the truth of this the fact remains that when the vote for Speaker was conducted MDC T MPs were obliged to show their ballots to MDC T MP and Vice President Thoko Khupe prior to voting. There is both video evidence and the testimony of MPs to support this allegation. I understand that the allegation is not even denied by the MDC T; one MDC MP spoke at a meeting with church leaders in Harare last week and confirmed the allegation. They were forced to disclose their vote because of the well founded fear that many MDC T MPs would vote for Paul.

Two issues arise from this incident. Firstly, section 6 of the Standing Orders of the Parliament of Zimbabwe, Sixth Edition published in 2005 states "If more than one person is proposed as Speaker, the clerk shall conduct the election of Speaker by a secret ballot." This is a standard provision throughout the Commonwealth, which is fiercely respected throughout the Commonwealth and indeed in most democratic nations. All other Parliamentary votes are made in public that this provision is deliberately designed to ensure that MPs are not constrained by partisan orders or interests in selecting the Speaker. It is in fact designed to ensure as far as possible that a neutral Speaker is elected. Accordingly the insistence that MDC T MPs show their ballots to Thoko Khupe prior to voting is not only unlawful but also runs against one of the fundamental tenets of democratic parliamentary practice. In short the election of Lovemore Moyo was illegal, could be set aside by a court and establishes an unacceptable standard of behavior for the new Parliament. I have heard that some have argued that only a few "suspected" MDC T MPs had their ballots checked; that is irrelevant. Even if only one MP had his or her ballot checked that alone would have been despicable and would be sufficient to render the entire process invalid. It should also be pointed out that despite concerns in the MDC M caucus that some of our own MPs would not vote for our candidate we nevertheless respected the secret ballot.

Secondly, the insistence that MDC T MPs show their ballots prior to voting was successful. Our assumption was that a sizeable number of MDC T MPs would vote for Paul and that would be sufficient to secure his election. Although some MDC T MPs were brave enough to defy the order (some refused to show their ballots) the fact remains that most felt constrained to vote for the MDC T candidate and that what we hoped would be a demonstration of nonpartisanship was subverted into a

perception that we had entered into some unholy alliance with ZANU PF. Nothing could be further from the truth.

Subsequent allegations that MDC M MPs were induced to vote for Lovemore Moyo and that a senior former ZANU PF Cabinet minister and MP for Nkayi North, Lovemore Moyo's mother in law Sithembiso Nyoni, campaigned for him have further besmirched the entire process. In short this election, far from being a celebration of the new order many of us have fought for, is in reality a reminder of how much further we still have to travel to achieve a new democratic order in Zimbabwe. That some of our MDC colleagues went to such great lengths to defeat the candidacy of an outstanding founder member of the MDC of impeccable standing is distressing.

Conclusion

I have not enjoyed writing this article. It deeply concerns me that given the extreme suffering the most Zimbabweans are enduring today that my time has had to be taken up rebutting a variety of falsehoods rather than attending to the needs of starving and impoverished Zimbabweans. I ask the following question of all those who are purporting to bring about a new order of freedom, transparency, democracy and tolerance in Zimbabwe - "Is truth important?" Whilst I have no doubt that I and my colleagues have made serious errors of judgement in the past, and because we are fallible human beings will continue to do so in future, I believe that what is written in this article is true. If what I have written is true then those who have made such outrageous allegations against individuals genuinely striving to create a better future for us all, have an obligation to withdraw those allegations and to apologize for having made them.

I concede that truth is often difficult to establish especially in such a charged and polarized environment that Zimbabwe is today. We are all subjective and biased in our outlook and views and it is with that in mind that I must address another issue, namely the right of the MDC M to be involved in these negotiations at all. Some clearly hold the view that we as the MDC M have no right to be involved in these negotiations. Others believe that Arthur Mutambara should not be involved in the negotiations between Robert Mugabe and Morgan Tsvangirai.

However these views ignore the fact the negotiations which started in July 2008 and the subsequent talks involving the Principals, have their roots in the negotiations which started in March 2007 which involved all 3 political entities then. Nearly all of the agreements reached since July 2008 are based on earlier agreements and legislative amendments. Likewise the MOU is rooted in these negotiations and would never have arisen without the negotiations. The MOU was not signed by Robert Mugabe in his so called capacity as President of Zimbabwe but in his capacity as President of ZANU PF and likewise Morgan Tsvangirai signed in that capacity and so did Arthur Mutambara. So they are there as the Principals of the political parties that secured 99, 100 and 10 seats respectively in Parliament.

There is another reason why the MDC M should be represented in these talks and that is because our party secured some 8.6% of the votes (over 200,000 people voted for the MDC M) in the March election. I am sure every single democrat will agree that 8.6% of the electorate should be represented in these talks and that anything other than that would be a negation of democracy. Although the talks involving the Principals have focussed on issues specifically germane to Morgan Tsvangirai, such as the powers of the Prime Minister, they have also dealt with a wide range of general issues including the duration of any transitional government and the process which will be employed to agree on a new democratic constitution. There has already been considerable controversy aroused by the exclusion of civic groups in these talks; any exclusion of a party which represents almost 10% of the electorate would only fuel that controversy further.

However this is not only about a small political party having a voice. I believe that when the dust settles and an objective history is written Zimbabweans will recognise that our little party has played a constructive role. Indeed it is already a fact that had the much vilified Welshman Ncube not been involved in the negotiations they would probably broken down ages ago. For just as our Parliament is highly polarised so are the negotiating teams. People I trust have told me that on many occasions it was only Welshman Ncube's sane voice and determination to get a result that kept the talks on track. In short there is no doubt in my mind that had the MDC M not been involved in these negotiations, aside from our right to be involved that is, our nation would be far worse off. I know that is not the conventional wisdom at present but from all the facts before me I am steadfast in that belief.

It is in this context that I have been greatly encouraged recently by Jim Wallis' new book "Seven ways to change the World; Reviving Faith and Politics". Quoting John Howard Yoder, Wallis writes:

"A minority group with no immediate chance of contributing to the way things go may still by its dissent maintain the wider community's awareness of some issues in such a way that ideas which are unrealistic for the present come to be credible later. The acceptance of the role of prophetic minority means to reject majority status and acceptance and is, at the same time, the key to the community's ultimate political impact. Another way a minority can be the conscience of society is to continue to voice the claims of unrepresented peoples and causes, when they do not yet have the ear or the heart of the majority. A minority can do for a society what the conscience does for an individual.

Majorities normally don't change things; creative minorities do, and the majority just goes along in the end. As anthropologist Margaret Mead famously said, 'Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.'"

Whether we deserve to be called a prophetic minority only time will tell. However and whatever the case, unless we all commit ourselves to a higher standard of conduct our dream of establishing a new democratic Zimbabwe will be stillborn. Unless we all we dedicate ourselves to confronting the real enemy, namely the evil political system which has been created in Zimbabwe during the last four decades, we will end up simply perpetuating a system we all detest so much. What we desperately need are statesmen and women who will rise up above petty partisan interests to pursue the good of the Zimbabwean nation.

Notes

*1 The descriptions MDC M and MDC T are used for convenience sake. In law following the 29th March 2008 election the correct description of the two parties is MDC and MDC (Tsvangirai) being the names used on the ballots as determined by the two parties. Accordingly I am, for example, referred to in Parliament as an MDC Senator. However the press continue to use the suffixes "Mutambara" and "Tsvangirai" and so I have used the same format to avoid confusion.