



# BULAWAYO SOUTH CONSTITUENCY

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20<sup>th</sup> February 2006

Mr. Gibson Sibanda,  
Vice President,  
MDC.

Dear Gibson,

**Reference: proposal to broker an amicable divorce**

I refer to our discussion in Harare on the 8<sup>th</sup> February 2006 when I first raised with you the possibility of trying to secure an amicable divorce between the two factions. As I explained to you then I have made this suggestion with regret as I firmly believe that the two factions of the MDC will never be as effective apart from each other as they would as one united and cohesive body. For that reason as you know I have been working with others to mediate since October but those efforts appear to have failed.

As I told you when we met on the 8<sup>th</sup> February 2006 I discussed the idea of an amicable divorce with Morgan in Bulawayo when I met him there on the 27<sup>th</sup> January 2006 and he is, in principle, prepared to consider proposals in this regard. I have accordingly attached to this letter a copy of an almost identical letter as this written to him today. I am also aware that Welshman Ncube and Tendai Biti have informally discussed this notion as well. I apologise for the delay in getting back to you which has partly been occasioned by the finalization of the detailed report on the inspection of the voting materials in your Presidential Election challenge case. The report will be sent to you shortly for your information.

Turning to the issue of an "amicable divorce" - what deeply concerns me at present is the attitude which appears to be adopted by both sides that only their faction is the legitimate MDC. I have also been concerned by the intolerance displayed by both sides towards each other; it appears as if both sides refuse to recognise that the other side has the right to exist. Both sides claim that they are the legitimate MDC. Both sides claim that the other does not have the right to use the MDC name, logo etc. If this attitude persists beyond the two congresses scheduled to be held in the next month, I have no doubt that the next few years will see both sides focused on fighting one another instead of the Mugabe regime.

For so long as both sides claim to be the legitimate MDC party, the strife of the last few months will continue. I am aware that some on both sides believe that if their respective congresses are well attended that that in itself will confer legitimacy on their faction. That may well be so politically but that notion does not hold water legally. If the vying claims to legitimacy are not settled by mediation they will have to be settled by the courts. If the Zimbabwean courts are entrusted with the role of settling these issues that in itself will play directly into the hands of the Mugabe regime. If both factions cannot agree to settle these disputes they will in essence give the



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regime the power to decide through the courts how long they want this conflict to go on for and who ultimately they want to deal with. Furthermore court proceedings will be extremely expensive both financially and politically. I fully expect that during the next two years the Zimbabwean public will be subjected to the bizarre spectacle of the two factions fighting each other in court. Within the next two years there will almost certainly be another presidential election and this internecine struggle will play wonderfully into the hands of ZANU PF. I have no doubt that the spectacle of opposition leaders fighting each other in court and wrangling over names and assets will greatly diminish those same politicians in the eyes of the Zimbabwean electorate. There is already very serious disillusionment in the electorate and that will only grow if these issues are not resolved in a mature and sober fashion.

Accordingly I believe that it is imperative that if the two factions cannot be reconciled they must agree on a process that will result in an agreement which will in turn amicably govern the relationship in future between the two factions. I am not under any illusions as to how difficult it will be to reach a consensus but the alternative of court proceedings will be so destructive to both factions that I hope that reality will encourage both to compromise. There is no doubt that a settlement will not be reached unless both sides compromise in some way.

## **The issues**

It seems to me that there are at least six contentious issues which will need to be resolved:

### **1. The name of the party**

The name "MDC" is of course the most valuable asset of the party. It is difficult to envisage how the name can be split or shared in any way as that will cause confusion in the electorate. Be that as it may agreement will have to be reached as to which faction will use the name or, if both factions intend using the name or part of it, how they will be distinguished so as not to cause confusion.

### **2. The logo of the party**

The logo of the party, the open hand, is the second most valuable asset and similar considerations apply to it.

### **3. Party slogans**

A variety of party slogans have been devised during the last six years. Whilst they are not as valuable as the name and logo, agreement will have to be reached as to which faction will be allowed to use the same, and how the slogans will be used so as not to cause confusion.

### **4. The physical assets of the party**

During the last six years the MDC has acquired substantial assets including Harvest House, other immovable properties elsewhere in the country, motor vehicles, computers and furniture. These properties are worth billions of dollars. The temptation of course will be to adopt a winner take all mentality but this will inevitably result in protracted litigation. The attempted eviction of either party from the premises they currently occupy will be met with spoliation proceedings. Because those proceedings will only be able to be decided by a



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determination as to which faction is the legitimate MDC, which in turn will involve trial proceedings (because the facts will inevitably be in dispute), they will be long, drawn out, fractious and expensive affairs. I doubt very much whether a final determination will be reached within two years. Agreement accordingly will have to be reached to divide the property between the two factions.

## **5. The monetary assets of the party**

The party has a variety of bank accounts and it appears as if both factions have access to monies donated to the party. No doubt of particular concern is the money the MDC is entitled to receive in terms of the Political Parties' Finance Act. Agreement is going to have to be arrived at as to which faction will be entitled to use the various bank accounts and how any proceeds emanating from the Political Parties Finance Act will be shared between the two factions.

## **6. Members of Parliament**

Both factions have threatened to expel from Parliament those Members of Parliament who are not in their faction in terms of Section 41 (1) (e) of the Zimbabwean Constitution which reads:

*"...the seat of a member of Parliament shall become vacant if (having been elected to Parliament) having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in Parliament."*

In other words two things have to happen for a Member of Parliament to lose his or her seat: firstly, the Member of Parliament must have ceased to be a member of the political party he was a member of at the time of his election **and**, secondly, that party must give written notice to the Speaker. Unless both conditions are met a Member of Parliament cannot lose his or her seat. This allows for two or more separate political parties to be formed from the original one which contested the election and for those original Members of Parliament not to lose their seats if agreement is reached that neither faction will give written notice to the Speaker. It seems to me that agreement should be reached that neither faction will write to the Speaker so that at least until the next general election there will not be a plethora of by-elections. Furthermore it seems to me to be utterly foolhardy for either faction to think that the forcing of by-elections in the current electoral environment will do anything other than play into the hands of ZANU PF.

No doubt there will be other issues that have to be dealt with but I believe that those listed above constitute the most important and difficult issues that need to be resolved.

### **The way ahead**

I hope that as an interim measure the current national executives of both factions will agree in principle to pursue the suggestions set out in this letter. Thereafter I recommend that the following steps be taken:

#### **1. Obtain an official mandate from the new National Executives**



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Both factions are in such a state of flux pending their respective congresses and I do not think that anything concrete can be agreed to until both congresses have been held. Once they have been held and the new National executives for both factions have been elected I hope that both sets of National executives would agree in principle to settle this dispute and to appoint members to liaise with those involved in the mediation process. I believe that the mediation should be conducted as far as possible internally and would recommend that people such as Washington Sansole and Beatrice Mtetwa be asked to assist me.

## **2. Agree the issues and the process**

Both factions should then submit a list of what they believe the contentious issues to be and their suggestions regarding the process that should be agreed to, to resolve those issues.

## **3. Submission of proposals/ mediation**

Once the issues and process have been agreed to both sides should then submit their respective proposals as to how the issues should be resolved. It will then be up to the mediators to attempt to hammer out an agreement. I should stress that this will not be a process of arbitration and I am not suggesting that this mediation process be given any powers to decide finally on any issue. I recognise that there is far too much distrust for that to work. The mediation is designed to avoid court proceedings not to substitute court proceedings. If the mediation fails then either party can then resort to litigation.

## **4. Written agreement**

Assuming that agreement can be reached on all the issues, or at least some of the issues, then the terms of that agreement should be committed to writing and signed by the leadership of both factions. Where necessary transfers of properties will then follow immediately.

### **The objective**

My hope is that a successful mediation process will result in two legitimate political entities that both have the same goal of bringing an end to ZANU PF tyranny and the birth of democracy; save that each will have different strategies of reaching that common goal. If both of the new political entities respect the other's democratic right to exist and the bona fides of the other entity then the split in the MDC post 12 October 2005 could still yet be a positive development in the battle to bring democracy to Zimbabwe. If the mediation is successful the regime could still be confronted with two separate organisations, double trouble, both pursuing similar goals but using different means. That would have the effect of dividing the available resources of the regime to monitor and contending with both organisations.

Furthermore if an amicable divorce can be achieved it will inevitably reduce the current rancour that exists between the two factions and, paradoxically, the divorce may well itself facilitate in future a political remarriage or coalition. One of the greatest tragedies I have witnessed as I have spoken to a variety of people throughout Zimbabwe in the last few months is the fact that at grassroots level most MDC supporters are not themselves divided. They still believe in the founding principles and objectives of the MDC but have been forced to take sides. I remain of the



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view that if we can get beyond the present antagonistic phase these common desires of the people may yet force reconciliation between the leaders of the present two factions.

## My own neutrality

For reasons I fully understand questions have been raised regarding my own neutrality and therefore acceptability to perform this role. Obviously I have views on what has transpired over the last few months; I would not be human if I did not have any views of my own. However I have had concerns regarding the actions of both factions and have openly expressed my concerns to both factions and indeed to both you and Morgan. I do not believe that we will be able to find anyone who is truly neutral. However as you know I have already given an undertaking to both factions that I will not attend either Congress and that I will not accept nomination from either side. I will not in fact be attending either Congress and now give formal notice to both you and Morgan of this and of the fact that I will revert to being an ordinary member the MDC once both congresses have been concluded.

I am taking this step to demonstrate my commitment to seeing this process through as fairly as I can. Once the goal of an amicable divorce has been achieved, or once it has demonstrably failed, I will then at that juncture obviously have to choose a political home. Until then I undertake to at least try to achieve these common goals so that the tremendous sacrifices made by so many people over the last six years are not in vain.

Please would you reply to me in writing as soon as possible? When you do so I would be grateful if you would send me both a reply on paper (to the above address) and a copy by e-mail to me at [byosouth@yahoo.com](mailto:byosouth@yahoo.com). I think it would also be advisable to copy your letter to Morgan so that he knows where you stand.

Yours sincerely,

David Coltart

Secretary for Legal Affairs