

# **THE FUTURE OF ZIMBABWE**

## **1. INTRODUCTION**

For those who may not know, Zimbabwe, formerly Rhodesia, is a landlocked country situated in South Central Africa between the Limpopo and Zambezi rivers. It is bounded by Zambia to the north and north-west, South Africa to the south, Mozambique to the east and north-east and Botswana on the south-west. At 150 873 square metres, it is about three times the size of England. It has one of the finest climates in the world, warm without being oppressive with a daily average of bright sunshine ranging from four to ten hours all year round. Zimbabwe's altitude moderates the tropical temperatures that might be expected by reason of its latitude while its inland position keeps the humidity comfortably low. This is a beautiful country and should be the Jewel of Africa.

## **2. BRIEF HISTORY**

A brief history of Zimbabwe is helpful in understanding some of the problems it confronts presently and in figuring out, to the extent possible, its future. Very little is known and recorded of Zimbabwe before the 19<sup>th</sup> century. We know that David Livingstone, a missionary explorer saw the Zambezi river in 1851 and discovered the Victoria Falls in 1855. Gold was discovered in parts of Zimbabwe around 1867 and Cecil John Rhodes from whom the name Rhodesia was derived, obtained a concession from Lobengula, the Ndebele ruler to mineral rights in the region. A Royal Charter was granted to the British South Africa Company to promote among other things trade, commerce, civilisation and good government in the then Mashonaland, the northern part of Zimbabwe. Formal occupation of the area followed in 1890 but there was an uneasy truce between the pioneers and the Ndebele people from 1890 until the outbreak of the Matebele War in 1893. This

ended in the defeat of the Ndebele at the hands of the forces of the British South Africa Company. Rebellion however further broke out again among Ndebele and the Shona in 1896 and peace was only restored in 1897.

The British South Africa Company was largely a commercial venture but it provided the administration for the territory under its control, Its charter ended in 1914 and was further extended for another 10 years. In 1922, the settlers were given the choice of either having “responsible government” or being incorporated as a fifth province of South Africa. In a hotly contested referendum, there was a majority vote in September 12, 1923 for responsible government and Southern Rhodesia as it was then known was formally annexed to the crown and became a self governing colony within the British empire.

For a period of 10 years between 3 September 1953 and 31<sup>st</sup> December 1963, Southern Rhodesia was part of a Federation with Northern Rhodesia, now Zambia and Nyasaland, now Malawi. The landmark 1961 constitution was passed in Southern Rhodesia, which among other things extended the franchise for the special benefit of black Zimbabweans but also increased the powers of the Government of Southern Rhodesia. After the breakup of the Federation, Northern Rhodesia and Nyasaland became independent while on the 11<sup>th</sup> November 1965, the Rhodesian Government declared independence unilaterally and this remained the case until the Lancaster House Conference and the agreement reached in London on the 21<sup>st</sup> December in 1979. This resulted in the signing of a ceasefire and the subjection of Zimbabwe to the rule of a British Governor until elections were held and formal independence granted on the 18<sup>th</sup> April, 1980.

### 3. **INDEPENDENCE**

The 1980 elections gave birth to the new nation of Zimbabwe, ended white rule, with Robert Mugabe as the Prime Minister. Although the new Government sat about dismantling a regime that was not only racist but also fundamentally authoritarian, it nevertheless maintained the machinery of state security. In addition to the Army, the Police and a domestic intelligence agency, the legal state of emergency which had paved the way for large scale abuses of human rights during the last 15 years of white rule was re-enacted by the new parliament in 1980 and was extended every six month interval until the unity agreement signed in 1987. The retention of the bad colonial laws was significant in that in spite of the constitution, enshrining justiciable fundamental rights, the inclination of the new rulers of Zimbabwe towards totalitarian rule was evident.

### 4. **ZIMBABWE NOW**

In the period between 1987 and 1999, the popularity of Robert Mugabe was progressively eroded. The cause for this was largely the failure to run the economy of Zimbabwe efficiently and fairly. Things were made worse by a consistent failure to respect and observe the rule of law, the authority of the Courts and the basic rights of individuals. This alienated the Government from the governed and demonstrated that the new Zimbabwe political class was not as good at protecting the freedoms of the people as it was in securing them.

During 1999, Robert Mugabe now President of Zimbabwe, heeded the concerns of many Zimbabweans that the Lancaster House Constitution had outlived its usefulness and should be replaced by a home grown product. He therefore set up a Constitutional Commission and a draft constitution was produced at the end of December 1999. A referendum was held on the draft constitution in February 2000.

Although many of the provisions of this draft constitution were a vast improvement on the Lancaster House Constitution, as a result of the unpopularity of President Robert Mugabe and his tinkering with some of its provisions, the draft constitution was rejected by substantial majority. This signalled to the ruling class that they had lost all popularity and retribution followed, first against the white farming community and their employees and eventually against all and sundry except members of the ruling Zanu PF party. Several elections were held which most observers felt were rigged in favour of the ruling party, the most significant and obvious being the 2008 election in which Morgan Tsvangirai, leading the opposition received a larger slice of the popular vote than Robert Mugabe. Even that result and its accuracy has been questioned. There followed a Government of National Unity in circumstances which most of you may be aware of.

## **5. THE FUTURE OF ZIMBABWE**

The advent of the unity or coalition Government between the opposition led by Morgan Tsvangirai (and a smaller MDC led by Professor Mutambara) and ZANU PF led by Robert Mugabe had its positive effects, primarily in that it arrested the economy decline which had caused severe hardships to Zimbabweans. You may recall that there was a time when supermarket shelves were empty and for many Zimbabweans, a trip to the grocer or supermarket was a journey of some 500 hundred or more kilometres and across national borders. Unfortunately, the impact of the Government of National Unity in terms of the Global Political Agreement brought very little change to many. In a report produced in June 2010, a mission comprising the Chairman of the General Council of the Bar of England and Wales, the President of the Commonwealth Lawyers Association, a representative of Advocats Sans Frontiers, representatives of the Belgian and Flemish Bars, the

Chairman of the Bar Human Rights Committee, the Project Co-ordinator of the Bar Human Rights Committee and members of the English Bar, which spoke to many lawyers and other human rights defenders and members of civil society drew the following conclusions about Zimbabwe after the Global Political Agreement and I quote loosely;

- 5.1 The overwhelming weight of reports was to the effect that rule of law issues had not improved in the course of the year since the signing of the Global Political Agreement and many interviewees expressed the view that the position had grown worse,
- 5.2 Incidents of extra judicial killings, kidnapping, torture and other serious human rights abuses have been perverse in Zimbabwe for years but assumed epidemic proportions during the Presidential runoff elections of June 2008. Such human rights abuses continued to occur and these human rights abuses remain uninvestigated by the authorities,
- 5.3 The culture of impunity on the part of the Police and the State Security Forces noted with dismay on many previous occasions over the course of the past 10 years by many independent bodies remains unchanged. In a negative development the Army even appears to have extended its operations to unlawful diamond extraction and trading in the diamond fields of Marange. This culture of impunity has not been addressed by the present Government,
- 5.4 By far the majority of the senior judiciary remains fundamentally compromised by State patronage, grants of land and other gifts given to them by the former Government. The present Government has not sought to claw back such inducements on the senior judiciary nor has there been any

policy initiative directed at re-establishing the integrity of the senior judiciary in the eyes of the public,

- 5.5 The Magistracy is under pressure as it has been for years and Magistrates are subject to threats, intimidation, arrest and prosecution when they displease the authorities,
- 5.6 The Law Society of Zimbabwe endeavours to represent its membership against the background of intimidation and harassment of and in particular human rights lawyers. It reflects greatly to the credit of Law Society that in the absence of Government action in relation to the compromising of the senior judiciary, the Law Society has taken the initiative in seeking open dialogue with the judiciary,
- 5.7 Accounts of harassment and intimidation of lawyers were reported,
- 5.8 Access to justice is virtually nonexistent. The legal aid system is so starved that the Legal Aid Directorate is itself is on the verge of collapse,
- 5.9 The mission concludes that there has been no improvement and quite possibly a further decline in the respect of the rule of law since the signing of the Global Political Agreement”.

The above does make unhappy reading but then comes this jewel;

“Notwithstanding the prolonged and systematic assault on the rule of law by the authorities over the course of the past decade or more, it is a testament to the commitment and bravery of the Law Society of Zimbabwe, Zimbabwean Lawyers, an honourable minority in the serving judiciary, certain retired Judges, groups representing civil society and human rights defendants that

Zimbabwe has retained the intellectual infrastructure in which respect for the rule of law will flourish in more propitious political conditions”.

Notwithstanding the gloom and doom that is the lot of Zimbabweans, there is every reason to believe that greater times lie ahead. At the heart of the political problems Zimbabwe has experienced in the past decade is the view by many of the liberation heroes that they are entitled by reason of their role in liberating Zimbabwe to rule forever. This is a belief that has not received support from the governed. For this reason, our liberation heroes are largely discredited and they have lost popular support. I am convinced in my own mind that they cannot win a free and fair election.

In spite of all these problems, there is currently in terms of the Global Political Agreement the following processes which give reason for hope. Firstly work on the framing of a new constitution is slowly coming to a close. Also negotiations on the electoral framework appear to have been concluded to include certain additional safeguards and the various time lines. There are sticking issues of course, the biggest one being the role of the security forces, in particular the Army, the Police and the Intelligence Services in the election process. For what it is worth, the SADC leaders have assured us that they will not allow another election in Zimbabwe which is unlikely to produce an undisputed outcome. Also, Zimbabweans generally, including the political class, are tired of the unproductive squabbling. There is squabbling within the body politic generally but also in the various political formations. There is a sense that most of the players would welcome a period of peace and tranquillity which would enable Zimbabwe to make progress.

**6. MY PART IN ALL THIS**

I started the practice of law in early 1976 and was formally admitted as an attorney in April 1978. My first brushes with the law in Zimbabwe were in defending political detainees and arrested combatants in the period between 1978 and 1980. At the time, the country did not enjoy a justiciable constitution and it was under a state of emergency which permitted arrest and detention without warrant and without trial. Unfortunately, even after Independence this oppressive regime remained in place and was only removed towards the end of the first decade. It was in this era that the notorious massacres of innocents occurred in the Matebeland and the Midlands resulting in the death of up to 20 000 civilians. Although there has not been any closure to this, it is heartening to see that the subject is publicly discussed in Zimbabwe presently with the possibility that a healing process might eventually be put in motion. There is of course the question whether retribution as opposed to conciliation is the preferred answer. In the past decade, I have been involved in a number of human rights and constitutional matters before the Court. If there is one conclusion, I have drawn from these experiences, it is that our Constitutional Court as currently structured does not share our passion for human or fundamental rights. I also had the misfortune to witness the disbanding of the last truly independent Zimbabwe Appeal Court led by Retired Chief Justice Antony Roy Gubbay. I had the burden and responsibility of representing him when he was effectively removed from office. I was glad to be able to arrange for him to retire in Zimbabwe in peace and relative safety receiving his pension and free of any harassment. It is the best I could do for him.



## **7. CONCLUSION**

The picture painted above is perhaps not as rosy as one would like. It took the western civilisations centuries to get going. For some strange reason, we appear to have expected countries like Zimbabwe to do it in less than a hundred years. In spite of our obvious difficulties and the immense suffering of our people, I still believe that we have made progress and Zimbabwe does has a future.

22/08/2011

**MORDECAI PILATE MAHLANGU**