



# WORLD MOVEMENT *for* DEMOCRACY

## *Confronting the Challenges to Democracy in the 21<sup>st</sup> Century*

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### **SOUTHERN AFRICA SUB-REGIONAL DISCUSSION & ZIMBABWE NATIONAL STRATEGIC PLANNING DISCUSSION**

**Harare, Zimbabwe, 28-30 May 2009**

#### **REPORT**

The World Movement for Democracy organized one of the first-ever international meetings of representatives of leading democracy and human rights groups in the still highly politically polarized Zimbabwe, on 28-30 May 2009. The meeting was divided into two parts: the first part was to facilitate a Southern Africa sub-regional discussion on recent developments in the region regarding restrictive environments for civil society with a view to developing concrete civil society strategies to overcome recent challenges; and the second part was to engage Zimbabweans in a national strategic planning, focused on legal reforms and securing civic space during the country's transitional period. However, given Zimbabwe's current critical situation, the workshop participants devoted a significant part of the workshop to exchanging their ideas on how to ensure Zimbabwe's democratic transition, based on their experiences in transitions in other countries.

As a participant from the media in Zimbabwe highlighted in his welcoming remarks, this workshop was meaningful as Zimbabwean civil society continued exploring how best to engage with Zimbabwe's Government of National Unity (GNU) to ensure democratic progress. Almost three months after the establishment of the GNU, Zimbabwean civil society groups expressed concern about the nature of the GNU and the direction in which the country was headed. This workshop was a rare opportunity for numerous Zimbabwean democracy and human rights groups within and outside Harare to come together with leaders of civil society groups from other countries to share ideas and experiences. The workshop participants felt that it was fortuitous to hold the workshop at a time when Zimbabwean groups needed to learn from other countries' experiences in dealing with transitions. Organizing this meeting in Harare in early 2009 would actually have been unthinkable.

Just a few days before the workshop, the Ministry of Justice and the Ministry of Labor jointly introduced a draft amendment to the Private Voluntary Organizations (PVO) Act, making the workshop discussion highly relevant to Zimbabwe. Several civil society groups, led by the National Association of NGOs (NANGO), have already begun reacting to the draft amendment by arguing that it would further restrict the operation of a wide range of civil society groups in the country, particularly those registered as trusts (many human rights groups are registered as trusts because the registration process is simple).

#### ***SOUTHERN AFRICA SUB-REGIONAL DISCUSSION ON DEFENDING CIVIL SOCIETY***

The workshop included over 15 representatives of civil society groups in Zimbabwe and 10 civil society representatives from other neighboring countries, including Mozambique, South Africa, Swaziland, and Zambia. Because Zimbabwean participants expressed interest in learning from the experiences in Kenya and countries in Latin America, civil society representatives from Kenya and Mexico were also present at the workshop.

As in other sub-regional workshops, the Southern Africa workshop began with sharing information about recent developments related to civil society space and legal frameworks. A representative from an organization based in Mozambique provided a regional overview of legal frameworks for civil society in Southern Africa, arguing that the general trend is fairly positive. He and other participants highlighted that the Southern Africa Development Committee (SADC) seemed helpful in fostering democratic culture and practice in the sub-region by pushing to develop common legal frameworks on many issues. However, he also pointed out that countries like Angola, Malawi, and Mozambique still face numerous obstacles to the enjoyment of freedoms of association, assembly, and expression. In his presentation, a participant from South Africa emphasized the importance of noting that, under Section 3 of South Africa's Non-Profit Organization (NPO) Act, the State is clearly responsible for providing NPOs with an enabling environment to operate freely and effectively. While acknowledging the progressiveness of South Africa's legal framework, he warned that the State's capacity to implement such legislation might be weak. For example, while the law mandates that the NPO Directorate to decide on NPO registration applications within 2 months, it normally takes 6 months in practice. A participant from Zambia explained that his country introduced a draft NGO bill in 2007, which defines NGOs as voluntary organizations, and omits organizations working on democracy and human rights. In addition to a cumbersome registration process, the government sought to "harmonize" NGO activities with the national development plan through the draft NGO bill. This NGO bill was withdrawn from the Parliament; however, the World Movement Secretariat was informed recently that the Zambian government is planning to re-introduce the draft NGO bill to the Parliament in mid-July.

As discussed in the Kampala workshop, the Harare workshop participants also recognized that it is highly relevant to review broader legal frameworks in addition to the NGO laws. For example, Zimbabwe's Public Order Security Act and Swaziland's Anti-Terrorism Act need to be taken into account in assessing restrictive environments for civil society. Kenyan participants also pointed out that, in Kenya, the National Security Service Act and the draft Statistics Act need to be addressed. Under the draft Statistics Act, any group wishing to publish the result of polls would be required to submit the content of the intended publication to a government agency at least 30 days before publishing. This Act would affect NGOs that work on public surveys and election monitoring.

During the workshop, participants also discussed the role of donor and aid agencies, particularly UNDP. They highlighted the involvement of UNDP in the process of developing Zimbabwe's controversial NGO bill in 2004 and Mozambique's current efforts to draft an NGO law. This discussion was a reminder that UNDP also helped draft Liberia's first version of the NGO policy in 2007, which was rejected by NGOs. Participants encouraged monitoring UNDP's role in legal reform projects, particularly in transitional countries, like Zimbabwe.

The workshop discussion also identified opportunities in regional and international mechanisms for enhancing civil society space and securing freedoms of assembly, association, and expression. The African Union (AU) Constitution Act, the African Commission on Human and Peoples' Rights, and the Pan-African Parliament were identified as mechanisms that the workshop participants could utilize more effectively in their ongoing efforts. Although recommendations and resolutions by these mechanisms are often not legally binding, participants were encouraged to use those recommendations and resolutions as advocacy tools and entry points for dialogue with governments. Civil society groups also need to make the regional mechanisms and the member states more accountable in following up and implementing those recommendations and resolutions, according to the workshop discussion. A participant from South Africa also pointed out the importance of using domestic mechanisms, such as the Constitutional Court. South Africa's Constitutional Court is required to reference international treaties and other countries' jurisdictions. This would help promote international principles and standards in domestic judicial systems. Another example of domestic mechanisms is Chapter 3 of Swaziland's 2005 Constitution, which serves as Bill of Rights, guaranteeing freedom of association. While political activities might be restricted, civil society activists can use Chapter 3 to secure their rights.

## **NATIONAL STRATEGIC PLANNING DISCUSSION**

A national strategic planning discussion took place immediately following the Southern Africa sub-regional discussion.

The national strategic planning workshop successfully brought together the highly divided NGO community in the country's transitional period to discuss how to engage in the transitional process to ensure freedom of assembly, association, and expression. For several years, civil society groups have been operating in a highly politically polarized and severely restrictive environment. With the Global Political Agreement signed by the political parties in September 2008, and with the establishment of the Government of National Unity (GNU) in February 2009, the country is currently undertaking a constitution-making process, reviewing media reforms, and discussing the possibility of electoral reforms. Although the country still faces vast political, economic, and humanitarian challenges, the transition period has presented significant opportunities for civil society to put democratic principles in place. Instead of narrowing the workshop discussion to the NGO law and regulations, the workshop participants thus engaged in discussion of various reform opportunities.

Prominent leaders of Zimbabwean civil society agreed that their country is at a tipping point and that it is critical for civil society to engage in the transition from many different angles and at many different levels. Participants identified the following opportunities for engagement:

- Constitution-making process,
- National healing,
- Electoral reforms,
- Media reforms, and
- Establishment of a Human Rights Commission.

The workshop discussion highlighted that the Constitution is the most important mechanism to protect freedom of assembly, association, and expression; therefore, the Constitution-making process presents a significant opportunity. However, many civil society groups agreed that the current arrangement for the Constitution-making process is political-party driven, not people driven. Given that all political parties are interested in political power, the draft Constitution that would emerge from the current process would not include democratic reforms that the Zimbabwean people expect from the process. However, civil society groups are divided about how to participate in the process. Some argued that it would be best not to take part in the current process in which political parties do not allow civil society to be a true partner. Other groups believe that it is important to engage in the official process, rather than boycotting it, because the process would move forward regardless of civil society participation, and that being "inside" the process would allow civil society to make at least some input. Also, some groups, particularly those based outside of the capital city, expressed their concerns that many issues have been discussed only within Harare, and that those outside of Harare have been feeling excluded from the "transitional" process. While there were some differences in approaches to the Constitution-making process, participants recognized and agreed that civil society organizations should coordinate and collaborate to establish an alternative process in which people throughout the country and civil society groups can fully participate and contribute to what their country's new Constitution might include. Learning from Kenya's experiences, some participants suggested a sector-based approach to engage in various communities in different sectors: "youth," "women," "business leaders," "trade unions," etc. The military and security apparatus is another crucial sector that civil society should engage with in creative ways. By doing so, civil society could cultivate a democratic culture in society, which is extremely important in the long term.

While the Constitution-writing process is the top priority, participants emphasized that electoral, media, and judicial reforms are needed to ensure a successful Constitution-writing process and to build democratic institutions. Participants were reminded that the harmful role of the Electoral Commission was one factor that led the country into post-election violence and chaos in 2008. Currently, the head of the Electoral Commission is appointed by the President. Many groups are currently engaged in efforts to push electoral reforms that would ensure the independence of the Commission and enhance the competency of the Commission. Looking to engage in the Constitutional Referendum scheduled for mid-next year and subsequent elections, participants warned that without significant electoral reforms, Zimbabwe would most likely repeat its history.

Ensuring a democratic constitutional referendum and democratic elections requires sufficient independent media to provide an equal playing field for political parties and the airing of different perspectives. The Minister of Media, Information, and Publicity is currently exploring ways to allow at least two independent daily newspapers to publish and independent radio stations to operate. Currently, the media is dominated by the State-run media. For example, there is only one daily newspaper, which is State run. Civil society groups recognized the need to support efforts, such as those of the Media Ministry, while not being “co-opted” by the government.

As part of the workshop, the World Movement facilitated a dialogue between civil society representatives and government representatives. A special guest, Deputy Minister Jameson Timba of Media, Information, and Publicity, provided some insight into how the GNU seeks to overcome various challenges in pushing necessary reforms for democratic progress. Recognizing that there is a sense of disillusionment among some civil society groups about the GNU and the Global Political Agreement (an agreement signed by political parties in September 2008), Deputy Minister Timba encouraged civil society groups to remain engaged in the current transitional period by seeking to hold the GNU accountable. Boycotting some key political processes, such as the Constitution-making process, is not a solution, he said, because “we cannot simply afford” to lose this imminent opportunity. Pointing out that civil society groups tend to focus on the Executive Branch too much, he also advised the workshop participants to find a way to utilize the Parliament because it is where various legislative reform initiatives ought to be discussed. The workshop participants were encouraged by the Deputy Minister to work with the Parliament on the issue of a recently introduced draft amendment to the PVO Act because it needs to hold a debate on it after it is introduced by the government. Following up on his comment, a participant recalled, however, that it was the Parliament that blocked the controversial NGO bill in 2004.

A government official also participated in a dialogue with workshop participants. He is a former civil society leader and World Movement participant, and he acknowledged the difficult and challenging position civil society groups currently face for exploring effective ways to engage in the transitional process. He explained that the GNU has two main agendas: the “stabilization” agenda and the “democratization” agenda. He strongly encouraged the workshop participants to work with the GNU, particularly those “reform-minded” members, on the democratization agenda to ensure successful constitutional reforms.

After reflecting on the discussions with government representatives and participants from other countries, the Zimbabwean participants devoted the final day to developing cohesive strategies to engage in the transitional process and ensure democratic progress in their country. Participants identified the following key strategies:

- Effective coordination among civil society groups. While acknowledging differences in approaches, groups need to come together for a broader objective: to build democracy in Zimbabwean society. Through more cohesive coordination, civil society as a whole can push democratic reforms from “inside” and “outside” of the official processes.
- Clearer messages from civil society groups. As part of effective coordination, civil society activities should carry common messages even though their approaches and activities might be different. During

this confusing transitional period, it is important that civil society groups become clear about their common goals and objectives. Having clear and cohesive messages would also help Diaspora groups and other international organizations to build stronger international solidarity.

- Focusing on the process. Participants stressed the importance of focusing on the process, not just on the technical part of reform initiatives. By focusing on the process, civil society would engage a broader population and deepen the public's understanding of democracy. It would also help build more sustainable democratic institutions.
- Development of new civic leaders. Civil society groups need to recognize the vast talents in rural areas and among youth, and civil society leaders should encourage new forces to become stronger and more effective. To do so, the workshop participants were encouraged to provide more opportunities for those new activists to take part in discussions such as this workshop.

To conclude, the workshop participants agreed that civil society needs to engage in the political process of transition in many different ways while remaining independent in order to hold the government and political parties accountable.