

# 'You can't get answer right from wrong formula'

## Zimbabwe's constitution-making

Zimbabwe is in the process of drawing up a new constitution to replace the Lancaster House Agreement of 1979. But, as **Munjodzi Mutandiri** writes, this has been a unilateral government process where rallies to consult people have been disrupted by violence. Such a constitution cannot address the needs of future generations.

**A**frica is awakening to a new wave of building working democracies. Ordinary people are claiming a stake in the governance of their countries. There is a growing understanding that constitutions and politics are the business of ordinary people and not just a select few. Many are demanding participation, accountability and openness. There is a deep-rooted belief in constitutionalism as the foundation of a progressing and prosperous state.

The NCA (National Constitutional Assembly) is a foot soldier of constitutionalism. Its founding principle is that constitutional deficiencies lie at the heart of economic, social and political misfortunes.

### BACKGROUND

After the defeat of colonial regimes, national liberation movements inherited a constitution from exiting regimes. These cease-fire documents or constitutions were a preserve of the political elite who were involved in the negotiations and a few legal experts.

People hoped that new

governments would create a platform for the nation to draw up a social contract to define the relationship between those in power and society. They hoped that a constitution would reflect their aspirations and the past of the nation for those who would come in future. But in most cases in Africa this did not happen with the exception of South Africa and Namibia.

Because of the euphoria of independence this was not questioned by the masses. As economies started to shrink and political repression increased people began to search for where things went wrong. Civics, masses and political opposition began to articulate that they never agreed on the kind of nation they wanted to build. This questioning often came in the wake of an election with allegations of rigging.

These early constitutions are now seen as instruments of repression especially with the introduction of amendments that further entrench the power of ruling parties. The 1987 Temporary Presidential Powers Act is an example that gave sweeping powers to the Zimbabwean

president which had little to do with the national interest.

Often there has been the re-introduction of old colonial laws but under a different name. In Zimbabwe such laws as the Public Order and Security Act and Access to Information and Privacy Act followed this pattern.

### PEOPLE-DRIVEN PROCESS

There has been a wave of demands in Africa for constitutional reform since the late 1980s and in the 1990s. Governments have been forced to acknowledge that people no longer accept the constitution as a document to take the country forward.

This demand has however not been an isolated one. In most cases it is a rallying point for a shift in the way the state conducts its affairs. At the core of this call for reform has been the yearning of ordinary people to *meaningfully* participate in national issues. Gone are the days when politicians were first citizens and everyone else second citizens.

This new thinking is evidenced by the SADC (Southern African Development Community) civil society declaration which gives guidelines for constitution-

making. Other protocols which SADC, the African Union and the United Nations have produced have also fostered the spirit of constitutionalism. Importantly these instruments came as a result of the lobbying of ordinary men and women.

The demand for a new constitution is not just about producing a document, but about people having a say in the way they are governed. This has created much debate on who should drive the constitution-making process.

The term 'people-driven' was coined in direct opposition to 'politician-driven'. The emphasis is on both the process and the content of the constitution. The NCA says constitution-making is like solving mathematics: *You can't get the answer right from a wrong formula.*

Politicians often argue that they have been elected by the people so they are qualified to drive the process. But the same governors cannot dictate how they will govern, we must tell them. The body that spearheads the writing of

the constitution is fundamental in the legitimisation of the process and ultimately the document.

#### CONSTITUTION AND ZIMBABWE

The 14 February 2000 referendum affirmed the right of Zimbabwean people to input into the constitution-making process. Any process must involve the people and ensure that their views are captured.

The NCA believes that a constitution must not be imposed by politicians. But until now there has been no genuine input from people; the process has been top down.

The NCA is not there to write a constitution. Its role is to assist in a process led by an independent commission which is transparently appointed. The role of politicians is to facilitate the appointment of this commission which will draw up a constitution.

Zimbabwe is not about three political parties. It is about its people. Political parties come and go so it is wrong to organize a constitution making process along

political lines. When writing a constitution you must see people as people, without putting them into categories.

The method of getting people's views is also important. The commission must go to universities, high schools and colleges and to women's clubs. It must go wherever the people are.

#### CONCLUSION

The NCA is educating the public not to depend on personalities but on institutions. We have an opportunity to reach the level of development where people stop looking at what politicians say but rather examine what their interests are.

If Africa fails to meet its obligations to its citizens and advance to better governance, if its political upheavals are not addressed, part of the autopsy must read: *constitutional deficiency.* <sup>LB</sup>

*Munjodzi Mutandiri is the NCA regional coordinator Africa representing Zimbabwe.*

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