

MDC-Alliance Rejects Captured Constitutional Court Ruling

Friday, August 24, 2018

The MDC notes with grave concern and rejects today's evidently captured decision of the Constitutional Court to endorse a patently sham election and to entrench an illegitimate regime that used brazen subterfuge and brutal violence to steal the people's vote.

While we respect the Court, we don't accept its manifestly unjust decision.

The struggle for democracy, constitutionalism and the rule of law in Zimbabwe has been failed by the rule of men who put themselves above the law with impunity. It is tragic that where the powerful men, who consider themselves Zimbabwe's stockholders, have trampled on the rights of the people, the national institutions that are expected to protect and give effect to those rights have dismally not lived up to their constitutional obligations.

On objective grounds, today's decision of the Constitutional Court against the 2.6m people who voted for President Nelson Chamisa and in favour of an illegitimate regime, whose leader clearly lost the presidential election, shows beyond reasonable doubt that our judiciary and our chapter 12 institutions are not fit for purpose. They are not independent, not impartial and not transparent. In this vein, it is impossible for rational people—who are law abiding citizens—in a modern, constitutional democracy such as ours; to accept an irrational and unjust decision by a constitutional body that lacks requisite independence, impartiality and transparency.

Although our respect for the Constitutional Court restrained us, it was clear from the beginning that Chief Justice Luke Malaba had no interest in affording our President, Advocate Nelson Chamisa, a fair hearing. Chief Justice Malaba's approach was to find a window for Emmerson Mnangagwa to escape justice:

1. He refused our ZEC server subpoena without considering it and without any legal basis. No reasons were given for denying us access to this critical primary evidence.
2. He directed the Registrar to reject our bundles which contained additional evidence.
3. During the hearing he harassed our legal representative, interjecting over a dozen times, while he allowed the legal representatives of the 1st and 23rd respondents to present their arguments without interruption.

Add to this that Mnangagwa's chief election agent, Ziyambi Ziyambi, abused his role as outgoing Minister of Justice, Legal and Parliamentary affairs to deny Advocate Chamisa his right to be represented by a full complement of legal representatives of his choice, who included senior advocates from the region.

There is no reasonable court, committed to the attainment of justice for all, that can accept that the Zimbabwe Electoral Commission (ZEC) acted lawfully in issuing three different sets of results under the incomprehensible principle that "facts are more important than figures". ZEC announced results on television. It then issued a CD to observers and stakeholders; the results on this CD were different from those announced on television. By the time

ZEC got to court it had abandoned both the television results and the CD results and presented a third set of results to the court. This is an intolerable absurdity and we would be failing in our duty and responsibility to and for the people if we did not expose the court for what it is – an appendage of Zanu PF.

It is also notable that before the ruling was handed down, General Chiwenga appeared on television boasting loudly that the Constitutional Court would change nothing – Emmerson Mnangagwa would remain President. These brazen public boasts are sufficient evidence that General Chiwenga was certain the judgment would be in his favour. It is also important to remember that Emmerson Mnangagwa publicly declared that he has the capacity to intervene in the justice system and had intervened to secure Tendai Biti's release. These are his own words.

In the circumstances, **the national question before us is clear:** can an entire generation be cheated out of its constitutional rights, out of happiness and opportunity by a handful of corrupt men who are way past their sell-by date? The answer is invariably no. We will not congratulate criminals, nor will we accept that they have won anything. The truth cannot be set aside for the purposes of the convenience of power grabbers.

To the people of Zimbabwe: we urge you to be calm. The endorsement of a sham election by the Constitutional Court does not and cannot take away your constitutional rights, including those enshrined in Section 59 of the Constitution. Over the next few days, we will be announcing a vigorous programme of action in response to this electoral theft of the century. Specifically, we are going to show Mr. Mnangagwa and the world that the peaceful masses have rejected him. They will never accept him. Our constitution is our shield and the rights expressed therein will be utilised to the fullest extent of the law.

Our message to Mr. Mnangagwa is clear: You can rig the elections. You can capture ZEC. You can capture judiciary. But you will never capture the people. Their will shall prevail. The people shall govern!

MDC Information Department