

LAW AND JUSTICE

Justice, peace and unity under a democratic and people-driven constitution

At the heart of the MDC's law and justice policy lies its recognition of two principles:

-  Fundamental human rights and freedoms are universal and inviolable.
-  The country's constitution, as its supreme law, must be consistent with this and be in accordance with the people's wishes for all governance structures.

It recognizes that it is futile to ignore international standards and laws, as those aggrieved may go beyond domestic courts, and it considers such conduct both wrong and unsustainable in the modern world. The MDC accepts, too, that the constitution and constitutionalism, including the rule of law, are the keys to good governance.

It accepts that prosperity and development cannot be isolated from democracy, that democracy cannot function in a lawless society, and that the foundation for good governance, justice, peace and unity in Zimbabwe can exist only under a democratic and people-driven national constitution.

The MDC remains alive to the popular national demand for, and the necessity of, affording the people of Zimbabwe the opportunity to create and found the constitution that they desire – a constitution that enshrines freedom, democracy, transparency and good governance.

It recognizes the work done already and that a truly people-driven final constitution can be created only in an open environment where all can debate and participate freely – the timid with the bold – and that is not possible in the current situation, where many rights are not yet recognized in the constitution or in practice, and where the society is deeply polarized and conditions are not conducive to completing that task. An enabling environment is urgently needed to continue the process and to complete the new constitution required.

The MDC's law and justice policy therefore covers constitutional principles as well as law and justice-delivery objectives underpinned by those principles.

POLICY OBJECTIVES

-  To ensure that a comprehensive new constitution for Zimbabwe is finalized, following open, informed debate by all its people, and is enacted into law with their concurrence.
-  To immediately initiate, and then maintain, a participatory, effective system

of law delivery, working with Parliamentarians, stakeholders and experts to improve law-making methods, and ensuring progressive law reform and development consistent with the country's needs and peoples' desires and our international obligations.

- ✎ To operate and maintain a principled, efficient system of justice delivery by:
 - ✎ Immediately and accurately establishing all facts concerning outstanding civil and criminal cases, prisoners on remand and those serving custodial sentences, and all the components of justice delivery to ensure rapid appropriate remedial action on all bottlenecks and backlogs.
 - ✎ Ensuring the provision of sufficient resources for the courts through adequate sustainable budgeting, planning and review, thereby enabling recruitment, training and staff retention.
 - ✎ Developing and maintaining a humane, efficient criminal-justice correctional system.
- ✎ To have any criminal records based on any unlawful laws (those violating rights, e.g. POSA, AIPPA) independently reviewed on request and expunged.
- ✎ To promote and secure the rule of law by ensuring the independence of the judiciary and of the legal profession, and through training to provide legal services based on integrity and recognized legal principles, which are fundamental to justice and good governance.
- ✎ To promote access to law and justice by promoting accessible legal information for the public, providing and promoting sustainable quality legal-aid and paralegal services, and ensuring the proximity and accessibility of courts and facilities, using simpler court procedures.
- ✎ To protect and promote human rights and social justice through empowering Zimbabweans to articulate and enjoy their human rights, and educating and empowering Zimbabweans to respect other people's rights.

THE CONSTITUTION

The Constitution of Zimbabwe must provide for one sovereign state, Zimbabwean citizenship, and a democratic system of government responsive to the needs and demands of all its people, committed to achieving equality between men and women and people of all races in a free and just society.

Human rights are the basis of the State's relationship with its people. Everyone is entitled to enjoy all universally accepted fundamental rights, freedoms and civil liberties, including economic, social and cultural rights as well as equality, dignity and other civil and political rights. The State and all its organs are obliged to respect, promote and defend such rights, which shall be provided for and protected by entrenched justiciable provisions in the constitution, and by bodies established

and protected by the constitution that are effective, broad-based and independent in accordance with the people's wishes and Zimbabwe's international undertakings. Sovereignty, accordingly, shall not be misconstrued as impunity, and Zimbabwe will be governed in line with the law of nations and, in particular, in accordance with all the international standards it has agreed upon or acceded to. When Zimbabwe accedes to international conventions and treaties, Parliament will pass appropriate local laws to enshrine them.

The constitution will prohibit racial, gender and all other forms of discrimination, and will promote racial and gender equality and a national unity that is based upon tolerance of diversity. The State and government must make every effort to integrate all the peoples of Zimbabwe while recognizing their ethnic, religious, political and cultural diversity, and to promote a culture of co-operation, understanding, appreciation, tolerance and respect for the customs, cultures, languages, traditions and beliefs of others.

Diversity of languages, cultures and beliefs will be acknowledged and protected, and conditions for their promotion encouraged.

The constitution will be the supreme national law, and anything inconsistent with it will be void and of no force or effect. It will be binding on all organs of the State, at all levels of government, and on all persons, and respected and upheld by all. Everyone who exercises State power does so in trust for the people of Zimbabwe, and must exercise such power in accordance with his or her responsibilities to the people, solely to serve and protect the people's interests, and within the bounds of lawful authority set out in the constitution and other laws of the country. The State and all its organs must be committed to the rule of law, and no person or institution shall be above the law.

The legal system will ensure the equality of all before the law and equitable legal processes. Equality before the law includes laws, programmes and activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour, gender, disease or disability, so as to achieve a proper balance in these as soon as reasonably possible.

The constitution will provide for the separation of powers with all appropriate checks and balances to ensure accountability, responsiveness and openness. The constitution must accept the Legislature, Executive and Judiciary as three necessarily separate pillars of the State, recognize their proper roles, and provide for the due distribution of power amongst them.

In line with the wishes of the people of Zimbabwe already expressed, it will ensure that:

-  Parliament is the centre of power, enacts laws, controls State finances, and performs an effective oversight role over the Executive, while remaining fully answerable itself to the people.
-  Neither the Head of State nor any other person has unbridled or perpetual power.
-  The Executive shall always be fully accountable to the people.
-  The manner of appointment, tenure and other provisions relating to the Judiciary are in accordance with the best international practice, and that it retains its independence from the other pillars and its ability to uphold and enforce the law; the Judiciary will be appropriately qualified, capacitated, independent and impartial, and have the power and jurisdiction to safeguard and enforce the constitution and all fundamental rights.

The free and informed will of the people is the only legitimate basis of authority for any government. The State is based on democratic principles, which empower and encourage the active equal participation of all citizens at all levels of government. There will be representative government embracing multi-party democracy, with regular, transparent, free and fair elections that enable a vote in secret to all adult Zimbabweans, and provision for representation that is broadly proportionate at every level.

An electoral system to ensure this must be provided for in the constitution in accordance with the people's stated ideas and aspirations, protected against interference by lesser laws or manipulation arising from political expediency. It will follow best practices and regional standards in regard to the independent administration of all elections, transparency and fairness, universal and equal suffrage, and aim to ensure that results are not distorted, inequitable or distrusted.

The MDC recognizes, as the people of Zimbabwe have done, the virtues and weaknesses in single-member constituency representation and also in proportional representation in Parliament, and endorses the establishment of a balance between these two systems.

In line with SADC's and other international principles, the electoral authority must be independent, impartial, all-inclusive, competent, open, and completely accountable in all aspects of its administration. It must have the legal and financial independence and power to fully organize all aspects of the electoral process in accordance with the constitution, which will incorporate open democratic practices and the need for free and fair elections in every respect.

The constitution must ensure freedom of information, expression and the media so that there can be open, accountable administration at all levels of government, and free informed choice by those whom each level governs, to promote good governance for their benefit and development with integrity.

Government will be structured at national, provincial and local levels, with devolution of powers and recognition of the lower tiers' right to adequate financial and legal autonomy. Every level of government will be based on elected representation. This principle will not derogate from the principle below regarding respect also for traditional leadership. Legislative organs at all levels of government will adhere to formal legislative procedures.

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, will, on the basis of the principles of non-discrimination and free association, be recognized and protected.

The right of employers and employees to form and join employer organizations and trade unions and to engage in collective bargaining will be recognized and protected. Provision will be made that every person has the right to fair labour practices.

The institution, status and role of traditional leadership, according to customary law, will be recognized and protected in the constitution, and customary law, like common law, will be recognized and applied by courts, subject to the fundamental rights contained in the constitution and to legislation dealing specifically therewith.

The functions, independence and impartiality of every service commission, the Reserve Bank, Attorney-General, Auditor-General and the Public Protector (Ombudsman) will be provided for and safeguarded by the constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in public service.

There will be an efficient, non-partisan, career-orientated public service, broadly representative of the Zimbabwean community, functioning on a basis of fairness, that will serve all members of the public in an unbiased and impartial manner, and, in the exercise of its powers and administrative functions and in compliance with its duties, loyally execute the lawful policies of the government of the day.

The structures and functioning of the public service, as well as the terms and conditions of service of its members, will be regulated by law so as to encourage

openness, accountability and excellence. The law will protect public officials from victimization and ensure advancement on merit.

Every member of the public service will be entitled to a fair remuneration and pension.

All members of the security forces (police, military and intelligence), and the security forces as a whole, will be required to perform their functions and exercise their powers in the national interest in accordance with the Declaration of Rights and be prohibited from furthering or prejudicing party political interests. Their own fundamental rights will be recognized and adequately protected. Adequate safeguards will exist against any corruption of the armed forces.

The Anti-Corruption Commission and any other commission or constitutional body will be properly independent of government and political interference, impartial, all-inclusive, competent, open and accountable in all aspects of its administration. The constitution will recognize the role of key stakeholders, as defined in and under the treaty of SADC, and respect the need for such stakeholder involvement in selecting independent commissions. Protection will be provided against the arbitrary removal or victimization of any member of such bodies.

Amendments to the constitution will require special procedures involving consultation with the people and special majorities. Universal rights will remain always inviolable.

OTHER ASPECTS OF LAW AND JUSTICE

Institutional Transformation

The justice system in Zimbabwe is expected to deliver democracy, full freedom for all, dignity, equality before the law, and justice at the individual level. It must help to ensure that all public officials appreciate that, in a democratic society, government must please the people – not the other way around. Clearly the justice system is not doing this now, so it must be transformed.

Through the constitution and other appropriate laws and measures, the MDC will ensure that the judiciary at all levels, and related institutions such as prisons, are transformed in line with the nation's new democratic, rights-based thrust.

As justice cannot be delivered without a better police force, the Ministry of Justice will interact with the Ministry of Home Affairs and stakeholders to create a broad-based, credible, and effective Independent Police Complaints Commission.

The administration of elections under an MDC government will also be done on a professional, unbiased basis so the electoral wishes of the people are seen to be accurately captured and that the process is not politically manipulated or distorted.

Appointments and Remuneration

An MDC government will ensure that all recruitment into the public service is on the basis of merit, and that the judiciary and other public servants are adequately remunerated to avoid temptation.

All officers in the legal system will be appointed on a non-political basis. While gender imbalance and similar issues will be actively redressed, the primary criterion for the post will be professional competence to perform the job.

The responsibility for the appointment and removal of all judicial officers (including magistrates) will rest with the Judicial Service Commission. The composition of that Commission must inspire confidence that it will reach its decisions on a purely professional basis and will not take into account political or tribal considerations.

Parliament

At the heart of any democratic system is Parliament. To carry out its work effectively, Parliament must have a strong, functional Portfolio Committee system. The framework for strengthening Parliament exists, and an MDC government will immediately take this further by fully implementing the recommendations of the Zimbabwe Parliamentary Reform Committee of 1998.

Constitutional Court

The setting up of a constitutional court deserves special mention. The MDC government will show its commitment to a new constitutional order by moving quickly to set up a constitutional court with the best expertise available. The court will include top practising and academic lawyers, as well as full-time judges, and the head of the court will be the overall head of the judiciary in Zimbabwe.

Prisons and Alternatives to Imprisonment

The state of Zimbabwe's prisons is shocking. Apart from the over-crowded and filthy conditions, the attitude of prison administrators and officers towards prisoners is appalling. Prisoners are not being treated as human beings and their rights are being grossly violated.

Some members of the public believe that those who have done harm to society by committing crimes – or who simply stand accused of this – should forfeit all their rights, and that they deserve whatever they get in prison. Regrettably, some

magistrates, judges, prosecutors, police officers and prison officers share these attitudes.

A major thrust of an MDC government will be to create a prison environment that is humane and considerate. In pre-trial sections preparations for prompt, fair trials will be facilitated, while in the convicted sections the approach will generally be geared towards rehabilitating prisoners rather than punishment. For this to happen, adequate resources will be channelled towards the Prison Service.

Problems of overcrowding can be reduced by avoiding unnecessary imprisonment through the greater use of fines and community service as an alternative to imprisonment. Presently, too many people are sentenced to effective custodial sentences in circumstances where alternatives should be suitable. Training and sensitizing judicial officers will go some way towards reducing the prison population, and training and reorientation will also be required for prison officers.

A CULTURE OF HUMAN RIGHTS

Zimbabweans have endured serious human rights violations for a long time. When it is elected into government, the MDC will make a clean break with that past and establish a strong human rights culture. It will be necessary to deal with all past abuses: a separate section in this document, on National Integration, includes provision for a Truth and Justice Commission to deal with this issue. It will also be necessary to construct durable and effective structures to ensure that similar violations do not occur in future. As part of this programme, the MDC will introduce re-orientation programmes for all those affected.

Nothing can be gained by condoning violations of international law in our domestic law: victims will go above Zimbabwe's law and courts to international tribunals.

The MDC will follow the principles for dealing with human rights violations that have been set out by the Economic and Social Council of the United Nations and are as follows:

First Principle – The Right to Know

This is not restricted to the violation of the human rights of specific victims or those closely connected to them but extends to rest of society to become a collective right. This is meant to ensure that violations are recorded in history so as to prevent their recurrence.

The Second Principle – The Right to Justice

This implies that all victims will have an opportunity to assert their rights and receive fair and effective remedy, ensuring that the perpetrators stand trial and that the victims obtain reparations. It also places an obligation on the State to investigate, prosecute and punish the guilty.

The Third Principle – The Right to Reparations

This involves both individual and collective measures. At the individual level, victims, relatives and dependants must have an effective remedy, and for this to happen the applicable procedures must be circulated widely. The right to reparation must cover all injuries suffered by the victims:

-  Restitution (seeking to restore victims to their previous state).
-  Compensation (for physical or mental injury, including lost opportunities, physical damage, defamation and legal-aid costs).
-  Rehabilitation (medical care, including psychological and psychiatric treatment and counselling).

The Fourth Principle – The Right to Non-recurrence

This will be crucial, and the following measures will be taken to achieve this objective:

-  Disbanding militias and other armed groups.
-  Guaranteeing security of assets.
-  Repealing all emergency laws, abolishing emergency courts, and recognition of the inviolability and non-derogability of habeas corpus.