

23 June 2008.

Attention: Honourable Justice Chiweshe

The Chairman
Zimbabwe Electoral Commission
7th Floor, Century House
HARARE

Dear Sir,

Re: **PRESIDENTIAL RUN-OFF ELECTION SCHEDULED FOR THE 27TH JUNE 2008**

I write this letter to advise you that for reasons set out in this letter, it is no longer possible for the holding of the Presidential run-off election set for the 27th June 2008.

In my considered view, the conditions presently obtaining throughout the country make it virtually impossible for a proper election envisaged in both the Constitution of Zimbabwe and the Electoral Act [Chapter 2.13] to take place. This being the case, the election scheduled for Friday 27th June 2008 cannot be an election as provided for by our law and accordingly, it will be a nullity if it were to be proceeded with.

Section 107 of the Electoral Act deals with the withdrawal of candidature from a Presidential election. Subsection 1 thereof provides that a nominated candidate for election as President may, by notice in writing addressed to the Chief Election Officer withdraw his or her candidature before 21 days from the day or first day

as the case may be on which the poll in an election to the office of President is to be taken. This section in my respectful view does not apply to a Presidential run off election. Section 110 (3) provides that where two or more candidates for President are nominated, and after a poll taken in terms of subsection (2) no candidate receives a majority of the total number of valid votes cast, a second election shall be held within 21 days after the previous election. It is quite clear therefore that Section 107 (1) was clearly not designed for a presidential run-off election as it would not make sense to expect a candidate from a presidential run-off election to give 21 days notice of his/her withdrawal where such election has to be held within 21 days anyway.

Section 107(3) makes it much more clearer that Section 107 does not apply to a presidential run-off election. It provides that:-

"where a candidate for election as President has withdrawn his/her candidature in terms of this section, the sum deposited by or on his behalf in terms of subsection (1) of Section 105 shall be forfeited and form part of the funds of the commission".

No money was ever deposited for the Presidential run-off election in terms of Section 105 by any candidate.

Furthermore, there has been no rules prescribed for the conduct of a presidential run-off election and in particular the notice period set for the withdrawal of candidature by a participant. Accordingly, any candidate wishing to withdraw his candidature is free to do so at any time before such an election.

In any event, as I have already pointed out, the election set for the 27th June 2008 is not a proper election but a nullity. In the circumstances, the question of the withdrawal from such an election and the notice thereof cannot be an issue.

REASONS FOR WITHDRAWAL

In terms of Section 61(4) of the Constitution of Zimbabwe, the Zimbabwe Electoral Commission is obliged by law to ensure that elections are conducted efficiently, freely, fairly, transparently and in accordance with the law.

Section 3 of the Electoral Act sets out in detail the principles which must govern democratic elections. This Section provides as follows:-

"Subject to the Constitution and this Act, every election shall be conducted in a way that is consistent with the following principles-

- (a) the authority to govern derives from the will of the people demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot; and***
- (b) every citizen has the right-***
 - (i) to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the ground of race, ethnicity, gender, language, political or religious belief, education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;***
 - (ii) to join or participate in the activities or and to recruit members of a political party of his or her choice;***
 - (iii) to participate in peaceful political activity intended to influence the composition and policies of Government;***

- (iv) to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government;***
- and***
- (c) every political party has the right-***
 - (i) to operate freely within the law;***
 - (ii) to put up or sponsor one or more candidates in every election;***
 - (iii) to campaign freely within the law;***
 - (iv) to have reasonable access to the media”.***

What has been going on in this country immediately after the elections held on the 29th March 2008 is a clear testimony that the elections scheduled for the 27th June 2008 cannot be held efficiently, freely, fairly, transparently and in accordance with the law.

On the 21st May 2008, after having noted the sad events that were happening, I instructed my Legal Practitioners Dube Manikai & Hwacha to write a letter to you setting out in detail various concerns which were an impediment to the holding of a free and fair election. For ease of reference, I attach a copy of the said letter. Sadly, that letter was neither acknowledged nor responded to. In my view, if your commission had taken steps to abide by its constitutional mandate, the situation would have probably not worsened. Regrettably, the situation since the letter from my lawyers has worsened to such an extent that no proper election can be carried out. I set out below few examples of the adverse conditions that vitiate the holding of a free and fair election as envisaged in our law:-

1. **THE FAILURE BY THE ELECTORAL COMMISSION TO ENSURE FREE AND FAIR ELECTIONS**

Your Commission has failed to discharge its mandate in the following respects;

- 1.1 Your Commission failed to declare a winner of the Presidential elections as provided for in the Third Schedule of the Electoral Act. This point was well articulated by my lawyers in their letter of the 21st May 2008 and I associate myself with the submissions made in that letter in regards to this issue. In my view, a Presidential run-off election should have been conducted after due compliance by your Commission and in particular the Chief Election officer with this Section.
- 1.2 Your Commission has failed to stop and/or condemn continued utterances by senior Zanu PF officials including Mr Robert Mugabe to the effect that irrespective of the election result, Mr Robert Mugabe was not going to move out of his office. The failure by your Commission to condemn such utterances right from the beginning clearly encouraged Zanu PF, war veterans aligned to Zanu PF, senior Zanu PF officials and Mr Robert Mugabe to make it their theme during their campaigns that a President does not come to power through the electoral process but rather through the barrel of the gun. This theme which has become pervasive throughout the Zanu PF campaigns makes people wonder whether we are in an election or in a war.
- 1.3 Your commission failed to abide by the provision of the Electoral Act when it failed to conduct the presidential run-off election within 21 days from the date of announcement of the presidential elections results conducted on the 29th March 2008.

2. **VIOLENCE**

The violence currently obtaining in this country which has resulted in numerous deaths, destruction of homes, displacement of various people and injuries to people is something that is clearly in the public domain. As of today, the country has recorded at least 86 deaths, 10 000 homes destroyed , 200 000 people displaced and 10 000 people injured.

The victims have been MDC supporters. The violence has been clearly state sponsored and carried out in most cases by members of the Zimbabwe National Army and ZANU PF militia. It is true that in some instances our supporters have fought back, inmost cases in self defence. Because of our inability to access the rural areas, the above statistics may be understated.

If this present scenario is compared to the period towards the 29 March harmonised election, it is evident that the conditions on the ground have fundamentally changed for the worse. The above statistics clearly show that the electoral environment is not conducive to the holding of a free and fair election.

3. **THREATS OF WAR**

Throughout its campaigns, Zanu PF has threatened that there will be war if an MDC win in the presidential run-off is pronounced. Mr Mugabe made it quite clear recently that power cannot be taken by a pen but by a gun. War veterans aligned to him have articulated this position throughout the country. These sentiments were echoed by senior Zanu PF officials including the President's wife when she clearly made the point that even if I was to win, I was never to set my foot at the State house. Mr Mugabe also came out on National television encouraging his party members to

conduct a war-like campaign. These kind of threats coming as they did from Senior Zanu PF officials including the President of Zanu PF should certainly be taken seriously. Indeed, these threats were taken seriously by our population with the result that a free and fair election is something that cannot be dreamt of under these conditions.

4. **PARTICIPATION OF THE UNIFORMED FORCES IN ZANU PF CAMPAIGNS**

It is common cause that the Zimbabwe National Army through its senior officers has actively campaigned for Zanu PF and continues to do so. This has been the position with the Zimbabwe Republic Police where senior officials have publicly campaigned for Zanu PF. As if this was not enough, the senior officers of the uniformed forces have forced junior officers to vote for President Mugabe. On the 18th June 2008, my lawyers wrote to you advising you of these developments and the fact that officers from the police, prisons and the army were forced to apply for postal ballots. These officers from the reports we have received have already voted in the presence of a senior officer and were forced to vote for Mr Robert Mugabe. I attach herewith a copy of my lawyers letter dated 18th June 2008 which letter as usual was neither acknowledged nor responded to. In the circumstances, one cannot talk of a free and fair election which can be conducted on the 27th June 2008.

5. **INTIMIDATION**

The level of intimidation which is currently being subjected to our population particularly in the rural areas is alarming. People are being forced to attend Zanu PF meetings during the night. People are being told to record serial numbers on the ballot papers and disclose them to Zanu

PF official who are responsible for carrying out the intimidation. These incidents have been brought to your attention but unfortunately nothing has been done by your Commission by way of assuring the voters that their votes are secret as was the case during the run up to the March harmonised elections. Infact, the voter education campaign which was reasonably conducted during the run up to the March 2008 harmonised election has not been repeated. You have simply allowed Zanu PF, war veterans aligned to Zanu PF and Robert Mugabe to scare the people by suggesting quite clearly that presidential run-off vote is between a choice of war and Robert Mugabe.

In my view, there can never be a free and fair election under these circumstances.

6. **NON-ACCESS TO MEDIA**

The law clearly provides that a political party is entitled to enjoy reasonable access to the media. My party booked space for its advertisements with Zimpapers newspapers namely Herald, Sunday Mail, Chronicle, Sunday News and the Manica Post which adverts were to commence on the 13th June 2008. We were advised that our publications could not be published because of the shortage of newsprint. What surprised us was that Zanu PF's campaign advertisements are being carried in these newspapers on a daily basis. We also encountered problems with our electronic advertisements with the Zimbabwe Broadcasting Holdings which effectively resulted in our failure to have access to media. This is in sharp contrast with what occurred during the run up to the March 2008 harmonised elections where we were given reasonable access to the media. The importance of media advertisement in any election is quite critical and it is for this reason that media access

was specifically provided for in our law. Without this right, there can be no free and fair elections.

7. **THE BANNING OF MDC RALLIES AND MEETINGS AND
DISRUPTION OF MDC MEETINGS**

Since I launched my campaign for the presidential run-off elections, I have encountered numerous difficulties occasioned by agents of the State. I have been detained at police stations on numerous occasions and thereby denied time to campaign. Our meeting and rallies have been banned by the police. We have had to approach the High Court on no less than 3 occasions for the court to intervene to enable us to go ahead with our rallies. On the contrary, Zanu PF is being allowed to conduct its campaign rallies even during the night. In the few cases that our rallies have been allowed to go ahead pursuant to these Court Orders, Zanu PF supporters have disrupted such rallies. On Sunday the 22nd June 2008, our star rally in Harare, in respect of which a High Court Order had to be applied for to proceed with such rally was disrupted by Zanu PF supporters. Clearly it is impossible for any political party to campaign let alone to exist without being allowed to have access to the voting population. In these circumstances, it cannot therefore be said that the environment presently obtaining is conducive for the holding of a free and fair election.

8. **DISENFRANCHISEMENT OF VOTERS AND LACK OF ACCESS TO
RURAL AREAS**

As you are aware voting in the Presidential election is constituency and ward based. In other words no person can vote outside his or her constituency and ward. The massive displacement of people already

referred to herein (mainly from rural to urban areas) will result in the disenfranchisement of these people. The confirmed reports we have received confirm that there has been massive and systematic confiscation of national identity documents of our supporters by ZANU PF militia and people claiming to be war veterans. Until our supporters are able to replace these identity documents (which cannot be done by Friday 27 June 2008) they are obviously not going to be able to vote.

Furthermore, more than two thousand of our polling agents throughout the country have been arrested and kept in custody on flimsy allegations. They will certainly be unable to vote. We have trained replacement polling agents, but unfortunately we cannot possibly make arrangement for their deployment in rural areas as it is common cause that the rural areas have virtually been sealed off by ZANU PF militia, some members of the Zimbabwe National Army and people claiming to be war veterans. We will therefore be unable to deploy polling agents at more than 50% of the polling stations in rural areas. Certainly there can be no pretence of holding a free and fair election under these conditions.

From the foregoing and indeed due to several other reasons not necessarily covered in this letter, it is quite clear that no proper election can be held under the present conditions. The present conditions constitute a good example of conditions that vitiate the holding a free and fair election. My party and I have been giving serious consideration to this whole issue for some time, during which time it was hoped that a semblance of a conducive environment may be created as has been the case with other elections where we have participated under protest. The situation obtaining now is very different from what has been experienced in this country since independence. The violence, intimidation, death, destruction of property is just too much for anyone to dream of a free and fair election let alone expect our people to be able to freely and independently

express to free themselves. For this reason, my party and I have resolved that we cannot be part to this flawed process. For the avoidance of any doubt the presidential election question remains unresolved until such time a free and fair election is held.

We accordingly urge you to abide by your mandate clearly spelt out in our constitution and in particular ensure that a proper environment conducive for the holding of an efficient, free, fair, and transparent election is held in the shortest period of time possible. It is only in that kind of an election that my party and I will participate in.

By copy of this letter ZANU PF's candidate Mr. Robert Mugabe, the Chief Election Officer and your Commissioners are advised accordingly.

Yours sincerely

Morgan Tsvangirai
PRESIDENT
MOVEMENT FOR DEMOCRATIC CHANGE

Cc: Mr. R. G Mugabe (ZANU PF Headquarters)
Cc: ZEC Commissioners