

Online Policy Dialogue Forum No. 7 of 2020 : The Recall of Parliamentarians in Zimbabwe

greetings to all those who have been with us the last three months in this surplus transportation forum on zoom the hundreds on zoom and the thousands on facebook and special welcome to those who are joining us for the first time we have the last three months this is the seventh in a series that has captured the imagination of many in zimbabwe in the region on content and abroad and a constant theme that underlines this discussion this series is the pursuit for political settlement peace and sustainability of peace in our dear countries involved and therefore the seventh in the series is looking at the recall of parliamentarians in zimbabwe and to consider whether this is an assault on the constitution and democracy and therefore a threat to the such for political settlement in zimbabwe that's the question before us this evening we have a different format at least for the first half an hour which has to do with the fact that asa bca are covering us for the first half an hour and therefore what i was seek to do is to introduce each one of our pandas and discussions in the first instance and ask each one of you to give briefly three minutes summary of your appreciation or understanding of the topic before us and then on the hour at six o'clock we

go back
and begin with alex mcguise i will
outline
the problematic have a reaction from
douglas moon zora and poor mangwana
and then we move to our discussions so
i'll start
the first alex magaisa
does he need to introduction i don't
think he does alex for geysers
through his blog bsr has become
an institution in his own right
welcome alex alex is out there in london
in the uk then at home i have my teacher
douglas small zora
from the mtct
uh douglas moons mr zara
good evening and welcome special welcome
to you
and then paul manguana
poor maguana
welcome paul welcome the significance of
our
three panels is less about
the fact that they may represent certain
persuasions certain political
affiliations in his bible
than the fact that they are among our
leading
lawyers in our country jurors in their
own right
and the three of them were involved in
the copac
the constitution making exercise in 2013
and even though they came from different
parties
they worked remarkably well to reduce
that constitution
so the the belief that zimbabweans
are divided by political affiliation is
far from true
certainly not in the case of such
professionals and such bright
lawyers as we have before us

then i'll introduce our discussions
chipotle
chipotle sipo
a young academic professor of political
science out in the us
with a baby there welcome chipotle
suppose one of our discussions then
brian cagoro
another brian
kagoro brian
brian another a luminary
and an old hand in the civic movement in
zimbabwe
an important figure continues to be
and we rely on him immensely in such
discussions
last for the for this time round but not
by far the least truly madonce my dear
sister
welcome to zimbabwe
truly
julie you want to see you
truly
she's over there hello julie welcome
welcome nice to see you
okay so let's go back to alex
like to start three minutes introduction
of the topic
just three minutes a summary
you you need to unmute me
okay thank you very much for
the introduction and uh you know
thank you very much also for convening
this very important platform
uh i welcome all my colleagues who are
on the platform the issue of
recalls from parliament is a
fundamental issue that lies at the heart
of our
democratic system or at least a system
that is trying hard to be democratic
for me democratic legitimacy
is at the heart of any
democratic system and democratic

legitimacy is based
on the principle of consent
in other words those who are governed
must give must show
must demonstrate their consent
to those who govern them and this is
done
through the process of an election
in other words every five years
people go to an election and they choose
their leaders
now the idea is that those who
sit in parliament and those who are in
the executive
are persons who have been chosen by the
people
people to whom consent has been granted
by the governed so
it also means that the removal
of those who have been chosen by the
people
should also repose in the hands
of the people who make those decisions
the recall clause which we have in our
constitution
section 129 subsection 1
paragraph k
is one that sits uncomfortably
with the idea of democratic consent
or at least it has been made to sit
uncomfortably
with the principle of democratic consent
the reason i say so is that it
awards the power to remove
democratically elected representatives
of the people
in the hands of a political party
now i say so and i hold up my hands
as one of those who set in coppack
prior to 2013 and agreed that this
clause should be
in the constitution but i also want to
make the point that it was not an
invention

of coppack as i hope my two colleagues
who are here
who are here who sit with me in those
committees
will agree this is a clause that
originates
from the late 1980s in fact it might
rightly be called the techera clause
because it was
introduced as a way of responding
to the expulsion of
edgar tekere a veteran nationalist
who was a member of zanu-pf who had been
expelled
from the party but then alex alex i have
to stop you now
i'll bring you back let's move to
douglas manzo
three minutes initially three minutes
please uh
and meet you and meet yourself jesus and
mute
thank you you hear me
just three minutes in the first instance
i'll come back to you just three minutes
oh thank you very much my appreciation
of this topic
uh is very very simple it's a very
simple topic
um first of all the records that have
happened
in zimbabwe in the context of
recalls from parliament happening after
the
supreme court decision are they
constitutional
that's number one number two do they
offend
uh democratic principles
number three do they pose a danger
to the um today to the
political settlement uh whatever
political settlement that people are
thinking about

uh i need to dispense with the first
issue very very simply
as alex magaza rightly pointed out in
terms of the constitution
of zimbabwe we have three sections that
deal with
recall the first section is section 129
1k of the constitution and it says
that a party can recall a person who is
who is ceased to belong to it
and that person must have been a member
of that party
at the time of the election that's
number one
clause number two uh is uh section 129
one uh k sorry l
and this deals with a person who enters
parliament as an
independent and then joins a political
party
this is what we famously call the
jonathan moyer clause
the third clause is close to 78
that it deals with the recall of members
of parliament
now the very simple issue there is that
fact sorry not issued a very simple fact
is that
recalls are provided for by the law of
the land they are provided for by the
constitution
of the country and there was a reason
why there was a recall clause
uh recall clauses are there um and
they're a common feature of many
constitutions in the world
they are not a zimbabwean invasion uh
only uh
they you find them in other countries in
other democracies
and people are recalled because they've
ceased to belong to a political party
to which they belonged at the time of
the election

and the assumption is that when the
people voted
they had an idea of the identity of the
political party
uh to which the mp or councillor
belonged
and they associated the mp and the
councillor
with that political party and if
thanks a lot we'll come back to you paul
montgomery
that's paul
for just three minutes in the first
instance
and mute yourself and mute
and mute
technology fails okay
thank you okay the basis of the recall
clause
um is from the fact that what is elected
into parliament the what is giving a
mandate to rule the country
is a political party it is not
individuals
it is political parties which sponsor
candidates
to parliament people elect a candidate
on the basis of the political party to
which
he or she belongs and because they agree
with the
um with the policies of that political
party
so when you are in parliament you are
representing the interests of the
political party
when the constituents voted for you they
voted you
for you on the basis of the political
party to which you belong
so if you cease to represent
the philosophy the ideology the
the program of that political party then
the political party has a right to

withdraw you so that if you continue to say
my constituents is in agreement with my views you have a right to contesting a by-election
as an independent so it does not take away your right to contest now on your own without the blessing of the political party
so in order for for for democracy to be tested as to whether or not your views are in line with the thinking of the constituents
a by-election is then called you are free to go and contest and put up your program as an independent and if you don't if you so win
then the constituencies in agreement with you if you don't succeed then it means that the constituents is not in agreement with you so we are giving the people an opportunity to test as to whether your views are in line with the thinking of that but of the constituents
all of the political parties so the political party is saying you no longer represent our our philosophy our ideology our thinking
and let us test as to whether your views are in line with the thinking of the constituents so by election is called and you can contest it
so we'll come back to you paul vector our discussions a minute and a half each cheapo
your appreciation of this topic and we'll come back to you more substantively later cheaper
and meet yourself uh so i think this is

quite interesting but
at the heart of the zimbabwean crisis uh
since independence is this
dual core existence of on one hand you
have constitutionalism and legalism but
on the other hand you will have
a complete abuse of paralegal structures
by the ruling party and now by the
mdc-tt copy faction so the problem in
zimbabwe has never been about
understanding the law uh clearly three
quarters of the people
in our country are lawyers uh but the
real problem in zimbabwe is the
application of the law
and so what we see in this case is that
the women's family
and the other opposition party are
abusing
right they're abusing the constitution
to push forward their goals
and agendas
and this has been happening even before
independence so what happened after
independence is that
zonophilia just took over another
arsenal in their toolbox
and that arsenal is called you know uh
lying via the constitution
if you will and i think my minute is
in the first instance brian
right thank you so much um
sava's trust uh for this invitation
let me say that there is a
misunderstanding of constitutionalism
in some of the things that i've heard
saying
the right to recall in our constitution
is a hereditary practice borrowed from
an archaic
uh british practice and
the british themselves in 2015 as alex
magaisa will tell you
realized two things that there was no

mechanism for doing a recall
so they passed an entire act to regulate
how recalls would happen so in british
constitutional practice recalls can be
done by voters
directly so you have to show in
constituencies that at least 10 percent
of the voters that elected the
parliamentarian
wants to recall it's a performance
related recall
the second was a legality or crime
related record
where a member of parliament is
convicted of an offence
the third was a floor-crossing related
recall
where a member of parliament ceased to
be a member of a political party
that they represent so the fundamental
question in zimbabwe is
what is the democratic process or
procedure within a political party
that must be complied with before
a recall is undertaken a mere letter to
the speaker
does not meet the spirit of the
constitution as articulated in section
117
and does not meet the spirit because the
constitution assumes that legislative
authority is confirmed by the people
so it's important that we realize that
the
provision in the zimbabwean constitution
has not
ever really been fully complied with
because it has to be read with other
provisions
in the constitution that talk about fair
hearing
before a decision is made that
fundamentally affects one's rights
or legitimate expectation but number one

we'll come back to you
julie welcome julie
julie
and meet yourself
and meet yourself truly and mute
thank you for this privilege just
firstly to
indicate that i am not as a mum when i
enter this
dialogue on the basis of
democratic internationalism
also an understanding that zima is part
of sadaq
and therefore what happens in zimbabwe
impacts
this attack ecosystem in the african
ecosystem
my view is that any country that wishes
to recall parliament
or to alter the democratic landscape
beyond the elections has to comply
with the african charter on democracy
elections etc
we must also understand that 2020 was
supposed to be the final year
on the silencing of the guns in africa
and part of
silencing the guns in africa is
democratic
governance that is incurred in the rule
of law
so it's not enough that a country would
comply with the letter of its
constitution it
must comply with the spirit of democracy
and that is embodied in the african
charter on democracy elections
in in related matters and i do
think that what has happened in in the
country right now does not only create
instability
in the country it creates instability in
the region
and i'm concerned that unlike commercial

that jumped to try and solve the problem
when there was a problem
in cote d'ivoire sardic leaders
are taking their time in intervening in
zimbabwe
and there's an american native saying
that says if you don't fix the hem of
your dress
you will soon be without a dress thank
you
thank you thank you julie thank you very
much
and welcome again we brought you
and i think you have yours you are
really assisting us by
drawing on the charter the african
charter for human rights i think it's
very important we'll come back to you
so now uh i now
invite uh mcgeyser
to make his substantive presentation
alex
okay um
okay thank you very much
i hope you can hear me now okay
excellent right
um so some of the issues have already
been
uh touched on by my core panelists
and the discussions but i want to focus
specifically
on section 129 subsection one
paragraph k of the constitution of
zimbabwe
which says that an mp who ceases to
belong
to the political party to which he was a
member
when he was elected can be recalled
by that political party when that
political party
sends a written notice to the speaker
the national assembly or the president
of the senate now

this looks very simple but
there has to be detail to it you cannot
just apply this provision in the way
that we have done it
you know especially in the last seven
years without the detail
of how that takes place i think brian
cagoro
has already alluded to the fact that
there is need for
specific detail on how the democratic
process
of carrying out this process should be
handled
unfortunately we don't have it and so
far
we have only been guided by decisions of
the constitutional court
and without due respect i think those
decisions of the sub
of the constitutional court leave a lot
to be desired
in terms of our understanding of the
democratic process i have already made
an allusion
to the fact that democratic legitimacy
is based on concern
and that consent comes from the people
which therefore means that
removal of an mp should also
involve the people what i would wish for
zimbabwe is that there would be an
act of parliament which specifically
provides
for the processes that need to be
undertaken
for the realization of section 129
subsection 1
a paragraph k the issue of
when an mp is removed is itself a
factual
inquiry you have to ask a number of
questions
including number one has that mp

really ceased to be a member of that political party
the next question would be which political party has the right to carry out that process to write that written notice to the speaker of parliament as well as to the president of the senate then you've got to ask another question was he a member of that party and finally you have to ask the question whether the political party that is entitled to write to the speaker of parliament and to the president of the senate is actually the one that has done so as i said these are factual questions these are factual questions that require a factual inquiry because you may have a situation where two political parties lay claim to an mp someone has to make that decision so far the decisions that we have seen from our constitutional court proceed on the assumption that the right political party is the party that is written to the speaker of parliament and the speaker of parliament he has no role whatsoever except to simply accept that written notice and proceed to announce that the mp has been recalled but as we have seen this has brought a lot of problems a lot of challenges with mps themselves challenging that recall process so this brings us to the issue that brian is already alluded to which is the question of a fair hearing

now
our constitution in section 69
subsection 3 provides for
the right to a fair hearing that
any person in zimbabwean is entitled to
have
access to a court of law for their
dedication and resolution
of any dispute that you may have
pertaining to their rights
now we see that mps who have challenged
their rco those processes
are still ongoing those processes have
been ongoing
but even as they have been ongoing we
have also seen
that the other processes for example the
zimbabwe electoral commission
then calls up and says now we have
vacancies that have a reason
and we have a duty in terms of the law
to fuel those vacancies
and they've proceeded to do so prior to
the resolution
of the dispute that has been raised by
that mp
now in my opinion there is a fundamental
problem there
because our electoral law is in conflict
with the rise to a fair hearing with the
rise to fair
administrative conduct which is also in
section 69
of the constitution what we have seen is
that the speaker
and the president of the senate have
accepted what they believe to be
the right letter that has come from the
right political party
and they pretend that they have not
engaged in any factual inquiry
that they are simply accepting a letter
but the reality is that once there is
someone who is making a claim

a contrary claim then the speaker and
the president of senate
are being called upon to play a question
judicial role
in which they must conduct an inquiry as
to whether or not this is the correct
party which is sending the letter
and if so they must be able to afford
the other party's a fair hearing in
other words parliament itself
could have set up its own processes to
carry out this process
but they have not done so and they have
proceeded on the basis that what they
have received
is the correct letter from the correct
political party
in my opinion there is an anomaly in
that regard which has resulted in the
challenges
that we now have so i just want to go
as i conclude with my presentation which
is that
constitution makers do not intend
never intend to create absurdities in
the law
it is absurd that you
have a party or you have a process for
the replacement of an
mp who is challenging his rico
but that process is almost made
redundant because
the other process of replacing him or
her
continue regardless so we have a
situation right now where zac
can actually confirm that these mps who
were affected by the recalls in the
current moment
have lost their seats but their disputes
have not been resolved
i do not think that constitution makers
i do not think that
the legislature would have legislated

for such an absurdity
that something can be done and concluded
while the process of resolving that
dispute
is continued i also do not think that
legislators
would have envisaged an absurd situation
in which the representatives of the
people are recalled
and then their replacements come
without any consultation whatsoever
coming from a situation such as we have
right now
where people who contested an election
against those candidates who have been
recalled
are now brought back by the backdoor to
become mps of the same people
who rejected them i do not think that
the legislature
constitution makers who they have
envisaged such an acidity because it is
not in line with the principle of
democratic legitimacy
as i said you cannot talk about recalls
without talking about how the
replacement takes place
and what we are now seeing is the
situation where
the replacements are coming in they are
coming in as a result
of selection by
a small group of people which is very
elitist
and the reason why people are
questioning this whole process
is because the people in those
constituencies people in those provinces
have not been consulted people who voted
for their mps
have not been consulted in fact
uh to wrap up
there are a number of issues dr madison
which we need to really interrogate in

this whole process and i start by saying
that
none of the political parties in
zimbabwe at the moment
and by this i refer to zanu peal i
referred to mdct
led by dr cooper i referred to the mdc
alliance
led by advocate nelson chamisa each one
of them
has exercised the right of rico and they
have exercised the right of rico in a
manner
that i do not believe is democratic so
we have to start from there this is not
an accusation
that one party is better than the other
it is a situation about
a system that is being applied in a
manner
that does not accord to the principle of
democratic legitimacy
so that's number one number two it is
about the right to
fair representation the right of the
electorate
to choose their own leaders so that the
people
brian has mentioned the british system i
was going to make reference to it but i
don't need to repeat it
the way that it operates is that the
electorate is consulted
the electorate has the say in the
process of recalling
the mps we don't have that because we
don't have an
act of parliament that makes provision
for that our system privileges the
political party
as uh mr manguana has pointed out at the
expense
of the people who elected those people i
think that this can be resolved very

easily
by having an act of parliament that
regulates the process
of recalling mps so that is not just
left in the hands of the political party
but it's also given to the people
a point that has also been made by
professor mcgonzela
in relation to the african charter on
elections
and other matters what we have also seen
by way of conclusion dr madaza is that
all the political parties in zimbabwe
have abused the recall provision
they have abused the recall provision in
order to
settle political schools someone that
has probably said or done things that
the party does not like
because of course the system privileges
the political party and other people
without even consulting the people they
go on and recall people
but not only that they go on and impose
people of their own liking to become the
replacements
to that in my opinion this system lacks
democratic legitimacy
i conclude on that note
thanks very much alex i think you have
outlined everything so i'll now
move to doug's monster
and perhaps in addition to what other
reactions you have to
alex's uh submission would you consider
that the
current recall of parliamentarians
is in fact an assault
not only on the constitution but on the
democratic principles
in particular the rights of the voter
thank you very much and i want to thank
alex for
his arguments uh i want to pre to start

by saying that
with all due respect uh alex is wrong
we are not in compact too we are not
about to change the constitution we are
not making a new constitution
we have a constitution that exists we
have a constitution
that is there uh it is there in black
and white
and this is not the first time that the
vehicles have taken place
um some time i've forgotten the year
morgan chandrai
who was in the same party with the
gentile meeting and
alex magaissa and myself recalled
the entire children with uh counselors
on the basis that what they had done and
this
is to to accord with the principles of
the party
we recalled them uh and it was all right
and uh
my friend magaisa didn't raise an issue
on that
um after the rebellion by gentile media
company
morgan chiang rai myself and alex
magazine was a member of that party
we recalled 29 21 sorry
members of parliament on the basis that
they had ceased to belong to the mdct
in may 2018
nelson chamisa in his capacity as the
president
of the mdct recorded togozami coupe from
parliament
on the basis that wasani could have
ceased to belong to the mdct
um in after the
supreme court ruling we have recalled
members of parliament
now we don't change laws we don't change
uh attitudes because the people who are

being recalled
are our friends or our comrades the law
is the law
now the question is in recalling these
people
did the mdc behave in accordance with
the law
i already said section 129 of the
constitution
provides for instances where a party can
recall
members of parliament and it is that
section
that we used and when we use that
section
we were challenged both at parliament
and
in the course of law we succeeded in the
code of law
we were adjudged to be right and there
is a section
uh that deals with cancerous section
278 we followed that section
and we went on to recall just as we had
done before zanu-pf has recalled its
members of parliament as well
and so on now in terms of the mdc
constitution and again i go to alex
there
he is talking about the issue of fair
hearing and so on
his assumption is that the constitution
of the mdc
was not followed in terms of the
constitution of the mdc
if you be if you cease to belong
to the mdct if you form another
political party other than
the mdct the termination of your
membership
is automatic and this is a very very
clear
and short uh a clause in the
constitution

if you form another political party or
if you cease to belong to the
to the to the mdct your termination is
automatic in other words you terminate
your membership
yourself these mps these current
counselors have recalled themselves
by joining another political party how
did we know
whether wisely or unwisely what the mdc
alliance people went on to do
after the supreme court judgment was to
produce
massively um affidavits in this after
that is where to the effect to be signed
by the elected officials including the
mps these affidavits were to the effect
that they ceased to belong to the mdct
and that they were now members of the
mdc
alliance party now
in in in in court documents some of the
mps went on to say
that they ceased to belong to the mdc
team
or they seem to have been oblivious of
section
510a of the mtc constitution
which says that if you cease to belong
to the mdc
team you you if you if you form another
political party or below
another political party you
automatically terminate
your membership so it was their fault
and these are people we should have
known better
we are talking of people who were
secretary generals of the party
uh people who had access to uh
legal services now
the question that alex has asked
did these people belong to the mdct or
to the mgc alliance

on the 5th of august 2017
morgan chiangrai and six political
leaders
concluded and signed an alliance
agreement
this allies agreement was concluded and
signed at
this public ground at this public
grounds and this
alliance agreement is in two parts the
first one
it is a non-compete pre-election pact
the second part is that it is a
post-core it is a post-election
coalition
in other words if we had won the
elections
we will deformed a coalition government
now you don't form a coalition
government
with the people of the same party you
form a coalition
government with people of different
parties so that was the nature of the
alliance agreement it was the
constitutive
agreement it was the constitutive
document can i come in
says they're going to come in the
question which is being asked out there
is
why is the mgct
recalling parliamentarians is it to do
the constitution
or is it a political politics at play i
would before you come back to that i
will
just ask alex to come in
with some of the issues you raised
yourself alex
alex
i'll meet yourself alex i'll meet
yourself
right and meet yourself yes yes i have

yes i have thank you very much
er look i i don't want to
take a lot of time because we've got
many people who i think have got very
brilliant ideas i just wanted to pose
two simple questions to
my brother mr monzota when i say
that the clause has been abused because
of weaponization
of the law he says that mdc alliance
members who have chosen to
declare their allegiance to the mgc
alliance automatically
expelled themselves from the mgct
my question is why then has it taken the
mdct
to act in stages recalling six mps there
recalling seven amps there recalling a
few councillors here
a few councillors there do they not know
that all these mps and all these
councillors
because they are members of the mgc
alliance have chosen to align themselves
with the mgc alliance
why are they doing it in stages they are
doing it in stages
because it's political and this is why
i'm saying that it's the weaponization
of the law
they could easily have gone to the
speaker of parliament into the president
of the senate
and the minister of local government and
said
all these mps and councillors who belong
to the mgc alliance
have ceased to become members of the
mgct by virtue
of their allegiance to the mdc alliance
and therefore
we are now recalling them but instead
they are doing so
in a very staged process which is part

of what i refer to
as the weaponization and abuse of the
law second
is the issue of what he talks about the
mdc alliance constitutive document
that is an internal matter within the
mdc alliance itself
the speaker of parliament does not have
a quasi-judicial rule
but if he accepts that the speaker of
parliament is a quasi-judicial rule
to carry out a factual inquiry into the
internal matters of the party
then of course it changes the world
argument because it says that this mps
should have been given
a fair hearing by the speaker before
they were recalled
but he did not do that he simply
accepted what he had been given
by the mdct in order to thanks uh thanks
alex
thanks alex uh zara monza you want to
respond quickly before i move to mangwon
and meet yourself
and meet yourself yes
now alex very brief very very briefly
very briefly uh alex makes a point that
this these mps are being recalled in
stages
um yes because we are dealing with these
people on a case-by-case basis
we rely on evidence that is before us
and before we get that evidence we
cannot just recall people
so we record people on the basis of the
evidence
as it manifested itself we looked at
this aortic case
like
they have documents which they signed
before the course of law
but what is important is that the mdc
alliance

is a constitutive document which is not a private document it is a public document the mdc alliance agreement that nobody wants to talk about and that alliance agreement says that it is a pre-election pact it is a post-election coalition agreement it goes on to say that each political party returns its individual identity and autonomy that is section two section three goes on to say that each political party will be given a quarter of mps or councillors to fill the under the alliance and then it goes to say in clause 4.1.7 that each of the political parties has the right to recall its members of parliament so the mdc alliance was not a political party in the conventional sense it was a group of political parties so round number one these mps belonged to the mdct at the time of the election uh number two they seized it to belong to the mdct now um alex says also that uh they have lost this guy yeah the mdc alliance is opposed to the mdc alliance party he should have listened to dave the quarter jeff decorator said uh in one of his tweets that the mdc alliance had been formed as a political party in may 2019 and then in in 2020 we had the mdc alliance producing a constitution in june of 2020 if we go by what quarter says then the mdc alliance party did not compete in the elections because

it was formed at aguero
according to jeff cordette and if we go
by its constitution
produced in 2020 it was formed in 2020.
these mps belonged to the mdct
they were subjected to in terms of the
constitution of the mdc
we'll come back to you i think it's less
about parties than about the
the right of the of the voter that we're
trying to look at i'll now turn to
paul manguana and i'm not asking paul to
be a referee
between them gcg and mdc alliance but
also as a lawyer
the constitutional lawyer that to
reflect on some of the points raised
by by by participants on this
on this conversation one that since
political parties are
essentially undemocratic inherently
undemocratic
how can therefore political parties have
primacy
all the voters in the that's one
question the other one of course is the
second question is that all of the
speaker
i think alex made a lot of
a lot of
emphasis on the role of the speaker in
providing a fair hearing
to those who are being recalled that
instead what we have seen
is haste utmost haste
almost to preempt not only not only the
fair hearing but
to preempt anything that might upset the
recall of the parliament
so i'll ask you to comment uh both as a
as a constitutional lawyer in your own
right but also as a politician of course
i think let me start by underscoring
one fact we are losing that

the population elects a political party into parliament then the political party is represented by representatives so zanu-pf is the one which is elected into parliament it fills a person to represent its interests in parliament that is the fundamental basis on which the recall clause is best so the political party is saying you are elected into parliament to promote the interests of the party you are elected into parliament so that you put into effect the manifesto of the party which sponsored you into parliament you no longer represent the interests of that political party which filled the due into parliament to promote its interest and we are recalling you this is the fundamental basis on which the recall clause is best if you want to to represent yourself and your interests in parliament our constitution allows you to fill yourself as an independent but once you have agreed to belong to a political party to be fielded as a candidate by that political party you are also losing your right to independent views you must then promote the views of the political party which sponsored you that is the fundamental basis on which the recall clause is best that is why it is important for the political party to produce a certificate to the speaker that we are now withdrawing our right to be represented by this particular mp in in parliament because that particular mp is no longer representing the interests of the political party

which is sponsored
into parliament so as long as
we have polling political party
democracy
or the basis of representation being
you are representing a political party
which sponsors
you then the recall clause is important
because you cannot then go into
parliament
and start debating and arguing against
the fundamental principles
of the political party which sent you to
parliament
but the mandate to rule the country is
then given to a political party
with a majority of um representatives
in parliament if a political party does
not
raise enough members of parliament to
form a majority in parliament
it will not be able to pass any bills it
will not be able to
to push its policies and principles
through
into implementation because it does not
have the requisite numbers
so the political party must make sure
that
it has got representatives who
who initiate and promote the policies on
which
that political party was elected by the
electorate into parliament i think let
us not lose
that fundamental fact that uh um the
population would be saying we want
this political party to form a
government that political party can
reform a government if it has got a
majority
of members of parliament so if those
members of parliament are not
subscribing

to the ideology to the principles of the political party then they do not represent the interest of that political party and if you lose it will lose its right to rule at the next election it will lose the election because um it is it's murdered in fact his policies have no one to to promote in parliament and that is the but but would you agree would you agree that there's an inherent contradiction or tension between the primacy of the party on the one hand and the right of the of the voter on the other would you agree that this is attention no the voter chooses a political part let us understand that the voter while this you have the name of the member of parliament in the ballot box but you also have the political party which he represents so the same member of parliament if i if i leave the npf today members of zanu-pf will decide as to whether they want to continue to support me or not but i cannot go away with with the electorate on my own when i decided to be an independent or i decided to join mdc that is why a by-election has to be to be held is to so that the electorate can decide as to whether on my own i still represent the interests of the electorate because if the electorate has a right to be represented in parliament to be governed by

a political party we in zimbabwe we have
what we call political party democracy
so it is the political party which is
elected
not the individual okay
okay paul just one another question
really on on
on political or unconstitutional
principles
is there a difference between the people
who are elected to parliament or
appointed to parliament
on the basis of party list the
proportional presentation
and those who are directly elected by
the voter you make a distinction between
that and secondly
which party did zanu-pf contest
at the elections
you are asking me which part my
interpretation
is that we contested the mdct
which was affected the mdct and various
other political parties which were
in an alliance i've seen those documents
and there was an alliance agreement so
they they retained their individual
identities but
they contested as an alliance from the
papers which i saw
okay but the electorate
yes they literally does sorry
the tension between those who are
getting to parliament through party
representation such as the party list
proportional representation on one end
and those who are elected directly
don't you see a difference between those
two categories there is not
there is no difference because
fundamentally if you look at the ballot
paper
the political party is it comes first
the political party then the candidates

so you must you cannot just be a can if
you want to be an independent
then you do not have to subscribe to a
political party but
you your your in fact your right to
contest an election
is signed for by the secretary general
of your political party
you must say yes they must sign a
document to say
we've agreed that this person contests
the election
as our representative without that
signature you cannot represent zambia
is there something else so you have been
sponsored by a political party
is there something you want to add
before i moved on to the discussions uh
in one minute anything else you want to
that's burning in your mind want to put
on the table
basically i would want the listeners to
understand
the viewers and listeners to understand
that we have what is called
political party democracy in zimbabwe
and that is what they approved
when the constitution was approved if we
want to move away from from political
party democrats
to direct representation where the
member of parliament
is representing the electorate on his
own
then we have to make a fundamental
constitutional change but what we agreed
to
in our constitution is that the basis of
representation
in parliament is indirect you are
representing
represented by a political party but we
also accept that
if you do not be represented through a

political party
you can stand as an independent so that
for those who want
direct representation then they choose
independence those who want indirect
representation
then they choose a political party and i
think the people should understand this
this is a fundamental
constitutional position if the
population one want us to change
then we have to make a constitutional
change
someone is asking what section of the
constitution
are you relying on to assert the primacy
of the party
in elections with sexual constitution
in fact it's not a section of the
constitution
we are our constitutional democracy is
based on political party representation
if you
if you you have to read the word
constitution rather than to say section
so says you are you are being
represented political but our practice
in our consumer democracy is best this
is why you are
fielded by a political party
okay read the electoral act again thanks
paul
let me move to chipotle we have heard
the panelists i now ask you to
comment uh yes
yes as a political science professor i
think this is very worrying i think
uh law schools need to encourage people
to take basic political science classes
just to piggyback honorable mangana
you're absolutely wrong there is nothing
called
political party democracy what in fact
you're trying to explain

is representative democracy in which individuals vote for an individual to then go and represent them in parliament now this is not about the political party being affected in a democracy in zimbabwe individuals vote for an individual who happens to be a member of a political party but both you and mr monzo are wrong in that what you're assuming is that we have something called a party-list democracy now particularly election we don't have a particular election if we had that then the system would function fundamentally different to how it works right now right in zimbabwe individuals the less first at primary elections within political parties and then from primary elections they go on to a general election so both parties have primary elections and then you go to a general election where individuals then make this election now to mr um wonder my first question for you is then who does the individual in parliament represent right a member of parliament must represent a constituency through which they were given the mandates to to speak on behalf of so the individuals that have now been selected by the new mdc-tt who do they represent in parliament and to go back to your argument of what was done by changrai and uh other leaders over time and and mr

madison said the same thing or dr mccain
say the same thing
what this alludes to is that since the
inception of the new constitution we've
had
constant violations of the constitution
by all the political parties and the
reason i say this is because a
constitution right
it's supposed to regulate a relationship
between the governors
and the government but if you're
constantly having political parties
play you know chess on their own without
the government
then you violated what the constitution
fundamentally uh represents which is to
represent the government and right now
in this entire conversation
the people for whom the constitution was
created
had not been represented like the voters
have not been represented
and so that's where we have to ask
ourselves
who do parliamentarians represent
and can those represented by that
individual
recognize them right so if that person
was to go back to the people
will the people say that we have given
you the right
the legitimacy to represent us it's one
thing for political parties to engage in
conversations about legalese
when legally itself is violated
constantly and this is what you've all
alluded to that shangri
did this and in that case chandra
violated the constitution
we've seen multiple cases of the
constitution being violated in zimbabwe
the land reform being another example
right it went back to property ownership

that was constantly violated
in action so the constitution says one
thing
but what the constitution is speaking of
is on behalf of the voter
of the general public the constitution
doesn't serve
politicians which is what this
conversation is saying
you're all alluding to the fact that you
think that the constitution
saves political parties and that it
saves it serves the elite it hasn't
served the elite
it serves the people so where are the
people that's my question to all of you
where are the people in this
conversation have the people given their
minds their authority
to talk wasani kubenko to chemistry
in court to say these new people that
you're selecting
they represent us because fundamentally
and i have to keep repeating this but
fundamentally the constitution is about
the people it is about the water
it is about the government and the
government are not in this conversation
at all what we have is legally
what we have is people playing around
with words and
sections but you've completely forgotten
that the mandate to govern
comes from the people so if the people
that
kupe has replaced uh ngct alliance with
if they go to
to the various constituencies can
those
people in the constituencies recognize
them and say
look i give you the right to speak for
i give you the right to represent me and
then the other problem with what mr

monzora has said in fact
what all of you have said then is that
if the mdc
alliance was the party on the ballot
then in fact people voted for the mtc
alliance you see
then we get ourselves into various
entanglements
with the way that politics has happened
in zimbabwe so i really want to
pause there and ask each of you to bring
back the voter and explain
where the relationship with the
constitution
and the recalls exist for the voters
thanks archibo you really brought a new
dimension to the debate
and not surprising coming as you do from
the field of political science
our field thanks people brian
we are now engaged in a serious game of
smokes and mirrors
let me deal with mr manguana he's easier
to deal with because chipotle has dealt
with
my brother i'm afraid as a
constitutional lawyer
myself your understanding of
constitutional
law is flawed uh and chipotle has
explained but section 117 because you
asked for a section
is very clear on where the
uh legislative authority
reposes in zimbabwe it reposes with
the people
and um to that i'll add chipotle's
uh uh other points let me come to mr
monsoor
my brother let me start with the
smallest of
issues you
are you are wrong and almost
misleading uh let me explain

the internet is awash with videos of you
standing to be president of something
called
mtc alliance
and then you stepping down for chinese
and then you going to something called
the congress in gueru
and contesting fact number one
fact number two madame tugazane coupe
formed a thing called mdct
elected officials in a congress of this
thing called mdct
stood for an election against the
coalition or party or whatever you want
to call it
that you the monzora were representing
or competed
for the election under now let
me say why i said that's a small point
the they are on the mdct
constitution that you saw cited suggest
that a member
ceases to be a member under the
following circumstances section
5 10 section 5
11 section 5 12.
let me explain number one you cease to
be a member
if you join or support a political party
other than the mdc
when you went to gueru to a congress
and stood need you
violate section 510
if you didn't then the people you are
recalling have not
when madame coupe formed a thing called
mdct did she become as you suggested
automatically expelled from the mdc
notwithstanding the circumstances that
motivated it
to form meat section 511
if you escape section 510 section 511 of
the mdc constitution
suggests that a member ceases to be a

member
if two-thirds of the national council
rules that this person no longer
represent right
and however when you go the national
council route
or route the person has to be notified
in writing
and the grounds have to be clear or if
it's disciplinary action
the person has the right of appeal
according to section 512
of the mdc constitution
now the expulsions have to be endorsed
by congress
uh it seems to me that it doesn't matter
which official you take of the mtct
if you are saying there's an original
mtct
your five-year mandate had expired
by the time you were purporting to write
letters
all of you to expel people or to recall
people
when your mandate has expired and no
congress has taken place
what is the legal position those were
the small matters
now let's go back to what i believed
were the legal arguments that you are
making
number one that people cease to be
that the the ring call so the recall can
only become legal i'm not even talking
about legitimacy
because dr magais talked about
legitimacy
if according to section that you cited
of the constitution
the member has ceased to belong to the
political party
of which he or she was a member when
elected to parliament and the political
party concerned

by written notice to the speaker or the president
now having given you the situation of madame if your arguments are correct then when madame could perform their mdct
she automatically terminated her membership of the mdct that you purport to like to
to represent which would then bring me when
you stood against nyamsan chamisa or with nelson chamisa wanting to be elected first as president and then as i think secretary general or something
of the mtc alliance party the thing that you are accusing
these people you are recalling of having joint you yourself mr manzovo would have violated section 510 of the mtc's constitution which says a member your membership is automatically terminated when you join or support a political party other than the mdc clearly we are the festival of absurdities
this game of smokes and mirrors seeks to undermine democratic sovereignty in the absence of a mechanism of recall and in the absence of a proper hearing by an executive which has mandate that has not yet expired in terms of its own constitution what we are witnessing dr mundus
is a festival of illegalities by people claiming constitutionalism
the premise of any parliamentary democracy or any democracy especially legislative authority is clearly stated
in section 117 of the zombie constitution
that the authority reposes with the

people
and as chibo has said the people have
not been brought
into this conversation let's assume that
we're
all wrong and moana is right and the
authority repository in the political
party
then everybody who's purporting to act
on behalf of the so-called mbct
is guilty of violation of section 510
of their own constitution because
there is video and other evidence of the
attempt to support if you say mdc
alliance
is another party an election
a a an another political party other
than
mdct i am dismayed
by the lack of honesty in this matter
everybody has violated the constitution
but i would want
us as honest zimbabweans to say what
is going on and unpack it for what it is
it's nothing constitutional nothing
legal
nothing legitimate
thanks brian i would like to welcome
julie to what brian calls the festival
of our facilities
the festival of illegalities julie
welcome my dear sister
thank you doc thank you colleagues
i think all colleagues have made some
valid points
to a certain extent uh however
there has to be some point where we all
agree
where i come from again is back to the
african charter on democracy elections
and governance
the question we have to ask is
whether what happened is
democratic and not just

in form but in substance as well
we also have to ask ourselves in terms
of
the african charter on democracy
elections and governance article 3
7 emphasizes the importance of people
participation
and i do agree with our colleague
and the last colleague who just spoke
now and that we can't leave the people
out
so with due respect i disagree with the
colleague who said it's all about
parties
democracy is about the people demos
kratos it's a combined greek word
people's power and everything that we do
is for the people it's the government of
the people
for the people by the people
the whole idea is to have representative
democracy in fact
once you're in parliament you're
supposed to represent
everyone including the people who didn't
elect you
however i do agree with some some of the
colleagues that have spoken that
it's a little bit more complex it
doesn't mean that the party has no
hold over you which takes us to the
point that you raised
yourself um uh dr
madaza about is there a difference
between
a pr system in a constituency system
the answer is yes when it's constituency
there's direct accountability to the
people
it really doesn't make sense that you
would recall a person who has been
elected
by the people why have
a people rely on this person

if this person can be replaced a day later
because that really would be defrauding the people because then you could
give people somebody that is popular and then they think oh my god this person is gonna improve our quality of life and then two weeks later you replace this person with your own person
and therefore the idea is i agree with um i think it was colleague alex who said that the intention of the constitution is not to create a theater for absurdities and and that's the truth with any constitution
if this matter where to go to the constitutional court of south africa or the defunct sadaq quote they would take a purposive and contextual interpretation of this situation and they would ask themselves regarding what happened is it in line with the domestic constitution is it also in line though with this country's obligations understand that instruments uh africa's shared values and instruments such as the universal declaration of human rights and i don't believe that this action would be found to be in line with the african charter on democracy elections and governance particularly article three seven and an eight seven on participation aid on fairness and transparency
i do also agree with the suggestion that was made by i think it was dr alex

magaisa
that perhaps the constitution perhaps a
law
should clarify this because just an
ending dear colleagues
whatever happens should not just be just
it should be seen to be just and all of
these instruments are there to regulate
relationships between human beings and
if the people feel that
there's unfairness if the people feel
that there's no accountability to them
and there's no representation for them
that becomes
a recipe for lack of trust
lack of trust in democratic institutions
and the rule of law flies out of the
window
thank you thanks julie thanks very much
very refreshing
of course i'll give all the panelists
and the discussions
uh time to wrap up at the end i've put
so many hands up
so many hands and i have to move to the
to the
participants but before i do that i
really want to
to warn our viewers and our participants
those out there there's loads of
homophobic comments
vile language please this is the
professional forum
we let respect each other including
those who are participating
please desist from such language
let's keep it simple just keep it
civilized so
the question is i think our channel died
are you near nearby tender
jenna can die
tender is not there
moyo
yes hello yes can you hear me

yes i can hear you okay my uh
most of my questions were being answered
by
yes most of my questions have been
answered by
robert by goro and chipo i think i
wanted to ask
that why was why is he saying
a mdc alliance is effect of what
of of political parties but he did go
and
contest in in i think it was 2019
congress
and he was also candidate in that and he
also campaigned
in the 20 2018 elections supporting
the chamissa as the president
and also other mps and stuff he was very
instrumental in the campaigning and he
also campaigned for the
congress so why is he now turning back
and also supporting dr dr
cooper who formed his her own party as
mdc
t away from the mbct that was
rice one so i wanted to ask the last
question but i think it was addressed
so i think he will answer those
questions
thanks sir thanks so much i love
shadrick
shadrick
admit yourself and meet yourself we
can't hear you
okay can you hear me now yes i can hear
you
okay thank you um i was i was um
i've got a question for honorary books
for senator monzora um
i i want to know from from him
it did mean that he won the uh the
congress elections
would we have um uh would we have left
the the mtc alliance and also

now that i hear um um
jacob um who
has won the mayoral elections
uh would you accept that he have
actually lost
yeah people are in support of mgc
alliance
okay next one please
you know blessing blessing
blessing hello hello yes
blessing yes it's blessing can you hear
yes please go ahead okay
um in all this um
don't you don't you think we are not are
we not forgetting
how we ended up here was from where i
stand
i would want some clarification going
back
when uh when i forget chamisa
grabbed power from tokozanku
was it constitutional if then if it
wasn't constitutional
then what should have been the limit
going forward
or we can just put that under the carpet
forget about it
and we say move on because i understand
we are addressing the current
uh situation which from
where i stand it only passes blame
to the people who are according to
mr magister and chipotle who are
currently violent violating
the constitution but what about those
who started with
this whole fiasco uh uh
i'd forget the chinese are not great the
power unconstitutionally
where we're going to be here and what
should be the limit going forward
thank you walter
walter please kevin
after all i'll have shumba then brian

then marshall
in that order please be on standby
i'm waiting for walter
the vulture is not ready
okay hello i'm i'm ready yeah i i was uh
muted okay come in
my question is to brian
alex and professor tully
i just wanted to check on the previous
presidents in south africa where
president
becky was recalled then subsequently
president
zuma was also recalled did the anc
went back to the electorate to ask
the people to say can we recall the
president
because the president was reported by
the people
on the anc party card
thank you thank you
shumba
yes sir thank you very much thank you
thank you
some of our our women to come
in please i'm going to defer to women
callers
thank you for the opportunity boom
welcome
i think my question is to uh douglas
monsoon team
at the end of the day it's not all about
uh political parties it's about the
people
did they go back to the people to ask if
we should recall
the parliamentarians that were voted in
by the people
because you cannot talk of the
constitution
and um uh that you are actually
violating yourself
then you bring it back to the people and
saying no we are following the

constitution

at the end of the day you are not
following what the people want
so at the end of the day it's about what
the people want that's my point
thanks thanks walter schumbach
brian

brian the other brain not our brain
oh yes yes yes can you hear me yes i can
hear you

yeah thank you my my question uh is uh
for brian i think we we all agree that
uh as you rightfully put it to us that
there was lack of

honesty everyone has violated
the constitution and you said nothing is
legitimate

on that basis how do you envisage that
we

can all political parties at play here
can

forge a way forward we know that the
level playing field is not right
and was never right how do we map a way
forward

in your in your own perspective thank
you

doctors doctors please talkers
welcome doctors i can see you
and meet yourself
talk us go ahead

doctors go ahead um thank you can you
hear me

i can hear you now wonderful um chipotle
makes a point about a strong point about
the population and

the everyday person and i think alex
arguments are always anchored to the
people

could you tell us how can the average
zimbabwean all of us

become more educated and more
knowledgeable in our constitution
because we have to we have to to anchor

our knowledge
and our votes to the constitution i'm
just wondering
um an
everyday woman a young person um can
become
much more informed about their rights so
that we we all challenge this
on a knowledgeable basis
yes thank you elaine elaine's there
elaine is gone i'll have marshall
marshall and then tartanda
then lastly watcher
attend are you there the agenda
yes yes coming can you hear me
yes i can hear you okay uh i have a
question to
to douglas monsola uh containing what
happened today i think
somebody that is actually asked about it
but i want to reinforce us about it
we have seen that uh jacob has won the
election uh
at the as a mayor what is the position
to douglas mozart says this guy is
openly
uh affiliated to national chemistry is
he going to recall him again
so that he can replace him again
like what like what they did to to gomba
that's my
question thank you so much
thanks very much
watch are you there
what you no longer there i'm gonna i'm
gonna start back to front i'm gonna
start with uh
uh truly to answer questions and to sum
up
and end up with the first speaker alice
alex mcgeyser
so can you hear me
julie welcome
thank you talking thank you for the

question what a wonderful question
firstly two wrongs don't make a right
assuming south africa had gotten it
wrong
it doesn't mean that zimbabwe has to get
it right
assuming some of the political parties
got it wrong
previously it doesn't mean we have to
get it wrong right now
we are the intelligentsia of our
countries
we are in this boat that is called
africa
if it sinks we're going down and ancient
wisdom
has always been about those who have
eyes should see for those who don't have
eyes
and we have an opportunity to understand
our constitutions not just in terms of
the letter of the constitution but also
the spirit of the constitution and
clearly
these constitutions are about putting
the demos which is the people
at the center of the craters
which is power and anything that
deviates
from that is going to create lack of
trust or a trust deficit
and instability now going back to the
issue of
and direct elections president beggie
was never elected by us
no president in democratic south africa
has ever been
elected by us the people and hence we're
calling for electoral reform
whereas the people we can elect the
president and
insulate him from having daggers and
threats from his party
that threaten him with possible recall

particularly when he acts decisively
against his own party members and
president zuma was elected via
proportional representation
and so was president biggie what happens
in south africa is that
we elect a party and these parties have
no more than two million people the nc
is about 1.2 million
eff about 2 million and then these
parties elect a president for 59 million
people
in parliament and of course they can
also ask that
president to resign on his own accord or
have a vote of no confidence against him
but again the numbers
would threaten any president and he can
resign on his own just
again my parting words to all of you
dear colleagues is thank you for the
privilege to participate in this
we have an opportunity in crisis
such as this to think better about
how do we implement the instruments that
we created and constitutions do not
cover all bases
but we can interpret them constructively
purposefully and contextually to achieve
stability
and to put people at the center of our
democracies
thank you oh that's powerful truly
most powerful and thank you very much
it's something to save us really i mean
a lesson in comparative
constitutionalism uh
professor dendire brian
cagoro there are a number of questions
to you and of course can you sum up as
well
brian i'm trying to unmute myself
thank you dr vandaza um just as truly as
said the

the subtle difference between south
africa and zimbabwe is that
the president of south africa is elected
by the national assembly
but there's a requirement in south
african law that
such a president must show that they
have the support of the majority
of parliamentarians when
the party which is the majority in
parliament uh
through its nac recalls a president it
doesn't necessarily mean that they cease
to be president
they still needs to be that
parliamentary process our president is
not elected by the
um by the parliament
so i think truly has explained that if
you ask me what the way forward is
i i think we are so skilled
or rather we've been playing in what i
characterize dr mandaza as the premier
league of pettiness
a lot of what's happening with these
recalls is
childish petty politics vindictiveness
and it really doesn't matter
when this festival of illegalities
started
and this is not a a political beauty
pageant
we're not in a political beauty
pageantry to determine whether the
monzora faction
the chamissa faction also and so which
one is correct
no we're simply saying
the country requires a law on the record
of
mps that will set out the procedures for
recalling nps
and the requirements that each political
party must satisfy when it reports to

recall mds that's number one
number two i think for my colleagues
within the opposition
this blood letting
this uh hanging on to little technical
legal niceties
uh is not
what the country requires
if we are going to have political
parties play
a developmental role in zimbabwe
it is important that those political
parties be developed be mature
and be mature in processing an approach
and not consume
time in a country where 7.5 million
people are
facing hunger and the entire population
is facing covert 19
on these little games of decapitating
the capacity for effective
representation
during the time of covert it would appear
to me that
if you want a commission of inquiry into
how chinese i became president of the
mdc and why whether this recalls
well go and have that but when the
people voted they were not mistaken
about who they wanted to be a member of
parliament
so if you're going to remove that member
of parliament you cannot impose
another person without going back to the
people
right or at least complying
with some of these internal requirements
that i have said that said dr mandela i
think you were
you brought us here to discuss
principles
and the principles are something has
gone fundamentally wrong with our
politics

national interest is often sacrificed
by clever arguments to
win to win to consolidate
to conquer political power and i really
don't care at this moment
my brother monzora and others know my
position on this
that in the absence of dialogue within
the opposition itself
in the absence of dialogue across all
political parties on constructing
an effective response by a united people
to covet to our economic malaise
and all the other challenges we face dr
mangas
i fear we have grown men playing dolly
house
and it is sad grand men and grown women
playing dolly house
and we just need to get out of this
nonsense and focus on the importance of
the business before us
nobody owes zima we're leaving no one
owes us a meal
if we're to fix our country let's start
off by dealing with things that are
important
and serious and constitutionalism is not
joking matter
of points quarry thanks brian
characteristically sharp strong
it was a pleasure to have you brian
my young professor cheapo
another bite cheapo
i i want to end by saying that you know
on a more positive note uh
two honorable men that are um
uh honorable mongana and alex mc and dr
mccain although i don't think uh dr
magazine would consider himself a
politician
and to say that i think you as
politicians are doing what
you're supposed to do for your political

parties right so in a democracy
part of the job of politicians is to
speak up for you for your political
parties and in that sense i don't want
us to come out as though
this is an attack on your person but a
recognition that you're doing what
you're supposed to do for your political
parties
but the way that democracy works and
constitutions work
and i think this is where the zimbabwean
population
has been um missing in the conversation
that
we assume that once the constitution has
been drafted and it's been passed
that this document can survive on its
own without the support of people
but constitutions as uh professor tulima
denzel has already said
they also depend on our interpretation
based on context and what we've seen
is that the context of the past
continues to create
this environment that allows for
constitutional abuse
and on one hand that's a reflection of a
citizenry
that has not been educated on their
rights
right on their right to engage in the
conversation
so that's important and then one of my
favorite
american politicians um i wanted to say
this
madison say this that if men were angels
no government would be necessary
if angels were to govern men then
neither external nor
no internal controls on government would
be necessary
in framing a government which is to be

administered by man over man
the great difficulty lies in this you
must first
enable the government to control the
government
and then in the next place obliges to
control
itself and so this is why we find
ourselves
in this complication where those that
are in power
of governing right now whether it's mdc
under chemistry or mdc
undercover or zanu-pf they have taken
the power
unto themselves and they have forgotten
that
this is a continuing conversation
with the people right that in order to
govern a democracy
we must continue to have a conversation
and the conversation must say are these
decisions that we're making
the right ones do people agree with
these decisions
and then to someone's very important
question on how do we
make the citizenry aware of the
constitution you know i think in our
public school education in our
universities people
must be required to take zimbabwean
politics 101
or constitutionalism one-on-one because
our
rights are held within the constitution
but the constitution cannot
function in a vacuum it cannot function
on itself
in our courtroom thanks chipo thanks
excellent as usual thank you very much
paul paul manguana
so some questions you paul but also
your wrap up

admit yourself paul yes thank you okay
you're on now we adopted the principle
of
representative democracy
a president i'll give an example for
president who is directly elected by the
people
that president can be removed from
from the office by parliament
parliament which is elected through
various means
so we do not call to the people again to
say you are the ones who elected the
president into office
now we are not happy with the president
or if the people think that they are not
helping the president
we ask the people to hold a referendum
as to whether the president should
continue or not
we've got parliament which is deemed to
be represented
the people and the people in parliament
can recall
a president who is directly elected by
the people i'm giving this as an example
just to emphasize the point that the
type of democracy we
are enjoying in all countries of our
constitution
is representative democracy in the same
manner
when a member of parliament is
contesting an election
they are sponsored by a political party
you will not be allowed to contest an
election
on the basis of a political party ticket
without the signature
of the secretary general of that
political party why do we have
that provision so that this confirmation
that the policies here are going to be
debating

and putting in place in parliament um
are they the policies and ideologies of
that political party which is sponsoring
you
that is the basis for the existence of
that provision
where if the political party which
sponsored you
tells the speaker that this member of
parliament is no longer representing our
interests
it must have the power to recall you
and when they recall you a by-election
if you are representing a constituent
will be held
and you are free to contest as an
independent and if the
so you are not taking away the rights of
the of the electorate again
in expressing their views if they feel
that the political party and there are
quite a number of examples
where political parties actually
withdrew their support from a candidate
and that candidate could uh went on to
contest an election
and won the election as an independent
we've got quite a number of
instances which have taken place in our
democratic you know democratic history
so so we are not taking the that
provision does not take away
the right of the constituents to choose
the representative whom they want
so in my closing remarks i'm saying
the constitution is okay the
constitution as it is
is all right we we adopted
representation
through political parties therefore the
political party
has a right to confirm as to whether or
not a representative is still
representing his interests if he's not

representing their interests
then they they record that person and
the right to recall is important
for us to continue to have political
parties having a say
a measurement as to whether the
representatives in parliament are still
representing
their interests because at the end of
the day come the conclusion of five
years
the politic if we allow members of
parliament to represent their own
interests when they're in parliament
that political party will not be not be
able to retain power
thanks thanks paul thanks paul thanks
very much
for coming to the debate thank you
indeed we
will meet again soon douglas monsola
douglas desert
oh thank you very much i would want to
thank everybody who has directed their
questions
to me uh i want to address the two
professors uh professor de niro and
professor matt donsella
thank you very much for your comments
but there is one point that i want to
make clear
we are we discussing law
constitution or are we discussing
morality
we are discussing law what does the law
say
what does the constitution say does the
constitution of zimbabwe provide for
recalls
does the post constitution of south
africa provide for recourse
yes they provide for recalls president
jacob zuma addressing
um the honorable matteo and president

jacob zuma survived
seven fourths of no confidence in the
parliament
the anc had not gone to the people to
the generality of the south africans
the 59 million to say we are about to
pass a vote of no confidence
they acted as a party president becky
was removed was recalled by the anc
it was not as precedent by a referenda
of the south african people so was
president zuma
it is the same principles that apply now
i want to
answer the question by professor daenery
about where the people
are where is the water let's remember
that the voter in this country voted for
a constitution
in a referendum in 2013 that
constitution provides for political
rights
it provides for formation of political
parties as
agents of the people if that same
constitution goes on to give the
political powers the powers of recall
and to professor daenery let me again uh
uh correct you then zimbabwe does have a
party list system
this is what we call proportional
representation where
a party provides a list of people to be
elected either into senate or into the
national assembly as part of the women's
quarter and those people are chosen by a
political
party and when it comes to a recall they
are recalled by that political party
that chose them they are replaced by
that political party
that record them that is what the law
says when it comes to the people who are
directly elected by the electorate

the law gives the political party the
power of recall
and the person is subjected back to the
electorate
and the electorate can vote for that
person or not for that person
so they are not completely prejudiced so
there is involvement of the people i
want to go to my brother brian
and i want to say thank you very much
for what you have said and it was very
passionate
but you betrayed one thing my brother
you did not
research and i want to
demonstrate to you my brother and you
can check this
the congress that was held in where
the congress in which i unsuccessfully
contested the post of secretary general
was not an mdc alliance congress
it was in mdc mdc chiangrai
congress how do you know that brian you
go to the resolutions of that congress
you will see and you can google them
it is they they are they are entitled
resolutions of the fifth congress of the
nbc
and again it was called the fifth
congress
and if it was the congress of the mdc
alliance it should have been the first
congress in the same year in 2019
um in september or october i think 14
october
we celebrated the 20th anniversary of
the
mdc it couldn't have been the mdc
alliance
because the mdc alliance was barely a
year old
so again you did not uh look at face my
brother and i want to refer you
um for the to to go to the twitter

handle of nelson chamisa
between um end of february 2018
so 2019 uh to end
of june 2019. and you will see
uh chamissa there telling people
about the mdc congress and if you
go to the election material for welshman
without nuendo and so on their campaign
posters they are campaigning for the mdc
if you go to the resolutions read by
tabitha kumar
she refers to the mdc and not the
mdc alliance the mdc ally that is why
also
at the same congress we were coming back
sum up please so the point
i'm making is that everything that was
done
it was done above god that is what the
law says
that is what the constitution of the mdc
says
we in the mdc want to take over
governmental power
through peaceful democratic and
constitutional means and one of the
starting points is that we must respect
our constitution
to the letter no matter how inconvenient
it may be to certain people
no matter how it may have pledged our
friends
we have recalled people because they did
not belong to our political parties
some of the people we recalled is
because they are female
in corruption
thank you very much thank you for
participating this
thank you it's good to have you i love
alex my geiser
alex and me okay okay
thank you very much um i've listened
very patiently to

the submissions that have been made by
my colleagues
and i want to thank them for a very
civilized
discussion that we had today i just
wanted to say to
komapo maguana that in fact
political parties do go to the people
when it shows them
in 2017 during the coup
zanu-pf went to the people it corralled
people
fooled people into believing that they
were participating in the removal
of president robert mugabe and
unfortunately that right
to demonstration is no longer allowed
in this new so-called second republic
uh the point about a party list that
uncommander gay has made reference to is
very interesting
because you would have to ask that when
people went to zach
in 2018 to submit the party list which
party
submitted the party list to my
understanding
it would have been the mdc alliance
zanu-pf
mdct led by dr cooper
and those are the positions that were
taken in allocating
those party lists but that's a technical
point i don't want to get too much into
all those things i just want to conclude
in summing up that the issue that we
face
is an ethical issue uh senator monzora
wants to say
it's about the law legal is constitution
and so forth
fair enough but what uh chipotle was
saying
what uh tuli was saying what brian have

been saying all these guys
is that there is a danger in taking a
very legalistic approach to
issues that concern the lives of the
people that it
is politics that in this politics there
are also
ethics when i started i said
all parties are to blame i said the mdct
is to blame the mdc alliance is to blame
the zanu-pf is to blame because they
have
all used this provision in a manner
that is vindictive in a manner that
tries to uphold their
own political position at the expense of
those who oppose them
and i thought that that was going to set
out the context of this discussion
but to my surprise it looks to me like
some of us came here to defend ourselves
as opposed to discussing issues of
principle
and i thought that we were going to
round on those issues focus on
what our democracy should be how things
should be so the discussion
should never have been about what is but
it should also have been
what ought to be what are the issues
that we should
what are the standards that we should
aspire to have is it right for us
to say that the party is supreme at the
expense of the people
should we not be going back to the
people should we not be setting up a law
that allows for democratic
representation of the people
in the process of rico i thought that
those were the kind of discussions
that we were going to have as opposed to
i'm right there wrong
because that doesn't take us anywhere

finally dr mendez
it's an issue of public trust as
politicians
as intellectuals as activists and as
you know you know people who are
concerned with our respective countries
in our countries
we must always consider is what we are
doing
relevant in terms of the people
is what we are doing sufficient to
maintain public trust in politics
if you ask the average zimbabwean today
they are very disillusioned
they are disillusioned by the political
process because it's a political process
that has become exclusionary
it's a political process that is
privileging the elites
a few people who consider them to be
leaders of political parties
to make decisions on their behalf not
only to recall
their mps but also to impose their own
people
what ethics are they when you go out
there and take someone
who lost an election and lost that
election dismal
and you say that that person is coming
back into parliament
to become an mp for that constituency
for that province
to even become the leader of the
opposition in parliament
it doesn't make sense it is an assault
on public trust and these are the
reasons why people
begin to leave and stop engaging in
politics we have so many young people
today who say
why should i go and vote in 2023 when
my vote is not going to make any
difference when someone is going to

change the decision
and bring someone else that i rejected
to become my mp
i want to conclude by saying that in
politics as in law
it's not just about written rules the
written constitution that we have
is a great document it has its
weaknesses
but constitutions on their own do not
resolve issues even a country like the
united states of america
with a 200 year old constitution even
the united kingdom
with the constitution that goes back
centuries there are certain unwritten
rules
of the game that politicians abide by
that politicians and the people abide by
rules like respect for the other person
rules like forbearance
forbearance means very very simple thing
you have power
but you don't have to use it so even if
the supreme court had given the mdct
power
and say that you are now the opposition
party the fgct could have exercised
forbearance and said well we don't have
to do that
likewise in 2015 the mdc led by
president chandra at the time did not
have to recall those
mps who had chosen to go and form
another party
they could have exercised forbearance
likewise example
what i'm saying is that in dealing with
our political system
let's not just focus on what we see as
the rules in black and white
let us also consider the values those
and written rules that govern relations
between politicians and between

politicians and the people i conclude
there
thanks alex texans who can ignore
those compelling concluding remarks
the issue of public trust ethics
there is morality in politics there can
be morality in politics
and i think that uh the the debate
although you're a bit
depressed about the focus on legalities
and
and constitutional issues i think the
debate
helped us to raise those very issues of
public trust
the issue of morality national interest
brian called it
above where else and also
democracy as truly as emphasized demo
comes from the greek word democracy
comes from the greek word of demo
the people the primacy of the people and
i think if anything that has
emerged in this discussion is the extent
to which
the as brian calls it the festival of
absurdities and the illegalities
is the extent to which i realized
through this very education educational
session that we have forgotten the
people
almost entirely and i think the point
made earlier by
by uh alex himself you look at the
constitution again but also the
point made by tully in the reference to
the
african charter we have very imperfect
constitutions let alone
democratic principles and i think this
movement
the experience so far and even the
discussion some extent
it really made us

a sense of guilt that we really the
people are nowhere to be seen in this
discourse
and i think that there are many the
comments coming from people
on this is to emphasize again and again
that the first-past-the-post
in our constitution in electoral law
really is is and always has been
emphasized on the voter
and i think the recall of parliament in
my view
and in the in the in the in summing up
the debate
is real an assault on not only the
position but on democracy
in particular we will continue
uh in this conversation
next the next debate is beyond this
burning issue of the of the
of land the land question is about the
unresolved land question
so join us again in twix time when you
look at the land question
and the implications thereof for the
pursuit of a settlement in our country
which i think is remains the agenda
of this series again to thank you all
alex tejara
young man paul
young professor chippo
our guru brian and
above all my sister truly coming as she
did
and gracing our forum a reminder that
really
in southern africa we're just one
country one big country thank you very
much
we look forward to seeing you again
thank you thank you