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# After Elections, Zimbabwe Government's Legitimacy in Limbo

*Zimbabwe's disputed elections have reinforced political divisions as the Constitutional Court hears an opposition challenge of the results. The military crackdown on opposition protesters highlights the urgency of reform if the government is to preserve stability and, by extension, its re-engagement strategy with international donors.*



## Piers Pigou

Senior Consultant,  
Southern Africa

🐦 PiersPigou

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The Zimbabwean government posited that the first elections after the November 2017 ouster of Robert Mugabe would enhance the state's credibility and strengthen the country's prospects for economic recovery. Voters responded in kind, heading to the polls in unprecedented numbers. The results, however, confirmed that the country is deeply divided, with the opposition contesting the electoral commission's determination that Emmerson Mnangagwa won the presidency. Several parliamentary challenges are also underway in separate petitions. The opposition is accusing the electoral commission of bias and fraud in its legal petition to overturn the election results. The Constitutional Court is expected to announce its judgment in the case later in August.

Divisions deepened further after soldiers fired live ammunition upon protesters in the streets of Harare for the first time. The president and senior ruling party figures called for calm, blaming the opposition for the violence, yet remained conspicuously silent about any malfeasance on the security forces' part. These conditions are a recipe for further unrest.

*“The Zimbabwean government’s credibility is in jeopardy.”*

The Zimbabwean government’s credibility is in jeopardy – as is the international good-will generated by Mugabe’s departure. If it is to resuscitate momentum toward its vaunted goals of re-engagement and recovery, the government should hasten to demonstrate both at home and abroad that it is serious about reform and national unity. It should work harder to include the political opposition and other interested parties in its deliberations, act on its commitments to transparency and accountability, and take concrete steps toward strengthening civilian oversight over the security sector.

### **A Closely Watched Vote**

On 1 August, the electoral commission announced that the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) had won a two-thirds majority in parliament: 144 seats to the Movement for Democratic Change (MDC) Alliance’s 64, reflecting a gain and loss of fifteen seats, respectively, compared with 2013. The commission has not provided an aggregated breakdown of actual votes per party. Unconfirmed assessments give ZANU-PF about 54 per cent of the parliamentary vote. The commission has not made public the results of local government polling.

The following day, the commission declared Emmerson Mnangagwa the victor in the presidential race, with 2,460,463 votes, over 300,000 more than his main rival Nelson Chamisa, who secured 2,147,436. These figures gave Mnangagwa 50.8 per cent compared to Chamisa’s 44.3 per cent, thereby averting a second round of polling by just under 38,000 votes. The 21 other presidential candidates collectively garnered less than 170,000 votes (5 per cent of the total), showing that the opposition’s fragmentation is not as profound as some had predicted.

According to state media, turnout was over 4.8 million – more than 85 per cent of registered voters – the highest since independence, with almost 1.5 million more voting than in any previous poll. Mnangagwa secured 350,000 more votes than Mugabe had in his 2013 landslide, while Chamisa scored almost double the tally of MDC’s former leader,

Morgan Tsvangirai, showing a resurgence of opposition support. A parallel voter tabulation exercise conducted by civil society groups agreed that Mnangagwa had beaten Chamisa but said he had fallen short of the margin needed to avoid a second round.

Zimbabwe's 2018 elections are some of the most closely scrutinised on the African continent in recent years. Preliminary reports from both official and informal observers have exposed an array of anomalies. A number of detailed and at times disparate assessments of the electoral commission's data are ongoing. The **European Union mission** and the joint mission of the U.S.-based National Democratic Institute and International Republican Institute, for example, gave much greater attention than the **African Union, Southern African Development Community** and **African National Congress** missions to media bias and abuse of state resources. In their final reports, the observer missions will need to carefully consider the extent to which these problems reflect deliberate manipulation, as alleged by the opposition, or simply unremarkable administrative glitches. The opposition has made some very strong claims about the evidence it purportedly has proving fraud, but several **domestic** commentators are dismissing these as unsubstantiated hyperbole.

Notwithstanding doubts about reported turnouts of over 90 and even 100 per cent at some polling stations, the massive participation rate shows significant interest in the electoral process, reinforcing perceptions that conditions for elections were significantly freer than in previous polls. The campaign environment was relatively peaceful; the opposition was able to hold rallies unmolested. This brief window of opportunity somewhat mitigated the distortion of which the opposition complains, but it is clear that the playing field was not level.

### **The MDC Alliance's Legal Challenge**

On 10 August, the MDC Alliance submitted a weighty petition to Zimbabwe's Constitutional Court challenging the presidential results and accusing the electoral commission of improper conduct. The Alliance claims that it in fact won the presidency by over 650,000 votes. The court must now decide whether the evidence presented supports charges of fraud and whether the raft of discrepancies and alleged administrative and technical faults is so disturbing as to call Mnangagwa's 50.8 per cent tally into question. The electoral commission has already admitted certain mistakes, reducing the margin to 50.59. The Alliance claims that examination of the commission's servers will establish that the numbers were falsified in

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Mnangagwa's favour. The common law system in Zimbabwe discourages activist courts, however, and the judges are likely to regard such an audit as a fishing expedition. There is also growing speculation that the court might use technicalities to avoid engaging the substance of the case. In their responses, both Mnangagwa and the electoral commission have argued that petitioners violated legal process.

The constitution gives the court three options: declare a winner; invalidate the election and call for a fresh vote; or issue any other order it deems appropriate. It could, for example, adjudicate that there was no widespread fraud as alleged by the opposition, but that the cumulative import of technical and administrative faults undermines the conclusion that Mnangagwa won 50.8 per cent of the vote. In that case, the presidential vote would go to a second round. The court has fourteen days from 13 August in which to make its ruling, which will be carefully studied, but Zimbabwean courts have a habit of deferring publication of detailed arguments.

## Repression

As expected, the 30 July polling was largely peaceful. The following day the electoral commission started to announce results and then inexplicably halted, resuming only some eighteen hours after midday on 1 August.

Alliance leaders had publicly warned that they would defend the vote. The Progressive Democratic Party leader and former finance minister in the 2009-2013 Zimbabwe Government of National Unity, Tendai Biti, claimed Chamisa had won. But the parliamentary results pointed to a massive ZANU-PF victory, which the opposition did not believe was possible without rigging. Tensions rose as riot police deployed across the central business district of Harare. Several hundred opposition protesters took to the streets, a few of whom damaged property. The riot police, who appeared well equipped to deal with the situation, stepped back, yielding to soldiers (seemingly from the presidential guard) who had been waiting in the wings. Firing live ammunition and wielding *sjamboks* (whips), the soldiers moved in, shooting dead six people, several in the back, and injuring many more.

Mnangagwa and senior ZANU-PF leaders blamed the MDC for the violence, which some commentators misleadingly described as “clashes”. But it was clearly a military crackdown, with disproportionate force, upon unarmed civilians. Although the president softened his line, announcing a commission of inquiry into the shooting, a roundup of opposition activists ensued, leading several to go into hiding. The police

said they were looking for Biti, on the grounds that he incited the violence by illegally declaring victory for Chamisa, though his lawyers claim that they asked the authorities several times if he was wanted for questioning and were told he was not. Biti, who was brutally tortured by security officers over a decade ago, fled to Zambia, seeking asylum. Despite a Zambian High Court order interdicting his **deportation**, the Zambian police handed Biti over to their Zimbabwean counterparts. He is now facing charges of public violence and illegally announcing election results.

The opposition and civil society organisations have claimed over 150 attacks upon their supporters and staff, including cases of abduction, sexual abuse, torture and assault. This number is expected to increase. In most instances, witnesses have identified members of the military or unidentified security operatives as alleged perpetrators. **Zimbabwe's Human Rights Commission** has confirmed many of the violations. The police raided the MDC Alliance's headquarters and the homes of a number of its officials, including several polling officers; there appears to be a direct correlation between the clampdown and the opposition's challenge of the election results. Arsonists have also burned down a number of homes of MDC Alliance polling agents in the post-election period.

The crackdown has raised questions about who is really in control of the country – civilian authorities or the military. The Zimbabwe Defence Force's commander, Lieutenant General Valerio Sibanda, **told international media** that he did not know who had deployed the troops on 1 August and had demanded to learn who did. The police claim that they invoked a section of the notorious Public Order and Security Act enabling them to seek military assistance. **Mnangagwa has publicly backed this reasoning**. But this provision is almost certainly unconstitutional as the military's deployment is a presidential prerogative. The government has committed to repealing the law.

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The outgoing deputy finance minister, Terence Mukupe, who lost in the parliamentary vote to MDC Alliance principal Biti, claimed that the

police favoured having the military step in. Just ahead of the election, **he had controversially predicted** that the military would not accept an MDC victory.

Some suggest that Mnangagwa was unaware of the soldiers' deployment and that Vice President Constantino Chiwenga, Sibanda's predecessor and the man who led the November 2017 coup against Mugabe, made the decision. Chiwenga oversees the country's security cluster and was given direct responsibility for the defence portfolio by Mnangagwa, an arrangement that also has dubious legal standing since the constitution provides that the defence minister should have this job. Speculation that Chiwenga is the real power behind Mnangagwa has morphed into allegations that another coup is pending and that the security sector is increasingly divided. The absence of clear leadership by the president has fuelled the suspicion. Chiwenga is looking to soften his image, opening a Twitter account that echoes the peace and unity messaging of Mnangagwa, as well as reaching out to civil society organisations to look into their allegations against the security forces.

Whatever the backroom manoeuvres, the army's deployment on the streets of Harare to quell protest confirms the uncomfortable truth that, almost nine months after Mugabe's removal, the military remains a pre-eminent force in Zimbabwe's politics. It raises serious questions about how the government can guarantee civilian oversight of the security and intelligence services. It has also reinforced concerns about the extent to which Mnangagwa is beholden to the military elements that put him in office.

### **Implications for Re-engagement, Reform and Recovery**

After assuming the presidency, Mnangagwa distanced his administration from Mugabe's, promising reforms and financial propriety, as well as re-engagement with the West and international financial institutions, aimed at attracting foreign and domestic investment as an integral part of economic recovery. This also included ill-defined commitments to improvements in governance, democracy and human rights. The West largely welcomed this stated shift in the ZANU-PF's vision.

Observer missions and international journalists witnessed the elections and the violent aftermath first-hand. Inevitably, their reports home will set back the government's re-engagement strategy. The question remains: to what extent?

The electoral turmoil poses a particular dilemma for the West, and the Mnangagwa government will watch its next moves very closely. The [Zimbabwe Democracy and Economic Recovery Amendment \(ZDERA\) Act](#), signed by U.S. President Donald Trump on 8 August, is widely interpreted as authorising new sanctions, but it does not. The amendments in fact provide a set of conditions to be met if ZDERA penalties, first imposed in 2001, are to be lifted. Several of these conditions refer to specific aspects of election conduct, such as ensuring that the military stay in the barracks. In light of what happened on 1 August, Washington is unlikely to remove sanctions any time soon. It remains to be seen whether Mnangagwa can make sufficient reforms to dissuade the U.S. from invoking ZDERA provisions that could hinder the Zimbabwean government's access to desperately needed lines of credit.

In the meantime, re-engagement by the West is now likely to slow down. To regain lost ground and momentum in terms of building trust with those countries, the government will have to rapidly implement some of its promised reforms. In particular, it should focus on addressing concerns regarding its post-election conduct and what that means in terms of respect for the rule of law and inclusive governance. This, in turn, will entail reaching out to the opposition, focusing on political reconciliation, and more broadly reforming the security and intelligence sectors, as well as the criminal justice system. Taking such measures, in addition to tackling major fiscal and monetary challenges the government has pledged to address, would be key to rebuilding international confidence and, in turn, fostering economic recovery and longer-term stability.

How the government of Zimbabwe rejuvenates its re-engagement strategy will be critical to the country's prospects for economic recovery and political cohesion. For now, however, the government faces an immediate challenge, which is to persuade a deeply divided nation that it has the interests of all Zimbabweans at heart. An important first step in that direction would be to quickly appoint the proposed commission of inquiry into post-election violence and ensure that it is genuinely independent from government interference. [Mnangagwa's promise to include international experts](#) is, for Zimbabwe, an unprecedented move; carrying it out would be a significant one.