



ZIMBABWE'S PRESIDENTIAL ELECTIONS: A PROGNOSIS.
(SITO and the Research and Advocacy Unit, Zimbabwe)

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In order to do some crystal ball gazing as to how political events are likely to unfold in the next few weeks and months it is necessary to revisit how we come to be in the current position. The confluence of political and economic forces and the modus operandi of the various protagonists that determined our current status continue to exert an influence and allow a tentative prognosis to be made. The emphasis needs to be on the word "tentative" as a day is a long time in Zimbabwean politics and the political situation can change rapidly and suddenly.

The Past

The four harmonised elections of 29th March 2008, (held for local government, the two Houses of Parliament and presidency) were not free and fair. They were unfair in the way that voter registration and constituency delimitation were skewed in favour of ZANU PF, and in the manner in which freedom of expression, both in the electronic media and through rallies, continued to be denied to the MDC. The public broadcaster was heavily slanted in favour of ZANU PF and Electoral Regulations in relation to non-partisan broadcasting flouted without intervention from the Zimbabwe Electoral Commission (ZEC). Other state resources were also deployed to the benefit of ZANU PF, most notably in relation to food aid. The objective of the SADC mandated negotiations, conducted under the auspices of South Africa's Thabo Mbeki and commenced in March 2007, was expressly stated as being to ensure that the results of the elections were credible. In this Thabo Mbeki failed dismally. However, some benefits did emerge.

Although the elections were not fair, they were certainly the most free to date. While the legislative changes to the electoral terrain made as a result of the SADC talks proved to be of little importance there was a significant change to the electoral ethos. This showed in the fact that there was compliance with various electoral laws which had been lacking previously. As a result, MDC campaign material was flighted on the public broadcaster for several weeks prior to the election, the MDC was able to campaign in rural constituencies which had previously been no-go areas, its polling agents were able to be present at most polling stations throughout the polling process, and the safeguards to prevent ballot stuffing and rigging were implemented – including the requirement that results were posted outside each polling station and successive collation centres, a requirement that had been clarified as a result of the SADC negotiations. There was no endemic violence which had characterised previous elections. These factors, while salutary in themselves, also sent a message to the electorate that ZANU PF's power was no longer all pervasive and absolute.

The Result

The result of the election (although it ought not to have done) stunned everyone, and ZANU PF most of all. The combined MDCs took 109 of 210 House of Assembly seats against ZANU PF's 97¹. The elected seats in the Senate split 50:50. The presidential poll gave 1 195 562 votes (47.9%) to Morgan Tsvangirai, 1 079 730 votes (43.2%) to Robert Mugabe, 207 470 votes (8.3%) to Simba Makoni and 14 503 votes (0.6%) to Langton Towungana. Two other aspirant presidential candidates Chiota and Shumba had their nomination papers rejected and instituted legal proceedings.

Tsvangirai thus beat Mugabe by 115 832 votes or 4.7%. Simba Makoni was presented as a "third way" candidate for those disaffected with Mugabe but not enchanted with Tsvangirai. The third option caused splits within ZANU PF. Some ZANU PF candidates were in fact known Makoni supporters and the electorate voted accordingly. Furthermore, in some constituencies two ZANU PF candidates stood for election, and the split vote lost ZANU PF seats they would otherwise have won². This split allows a useful deduction to be made by comparing the House of Assembly result with that of the Senate.

The MDC Mutambara faction pledged its support for Makoni. Since there was no Makoni candidate in the Senate, it is reasonable to assume that those who voted for the Makoni candidate standing on the ZANU PF ticket in the House of Assembly, voted for the MDC Mutambara candidate in the Senate. ZANU PF's share of the votes in the Senate is 4.42% less than that in the House of Assembly. This suggests that of Makoni's 8.3%, 4.42% were those prepared to change allegiance to the MDC when no other option was available. Had this percentage voted for the MDC candidate, in the first instance, rather than splitting the vote, Morgan Tsvangirai would have won 52.3% of the vote, an absolute majority which would have obviated any need for the run off between the two leading contenders required by section 110(3) of the Electoral Act.

It is worth noting here that the Second Schedule of the same Act requires the Chief Elections officer to pronounce the person with a simple majority of votes as the winner. Prior to the election ZEC was approached by Zimbabwe Lawyers for Human Rights and asked to specify which of these conflicting provisions it would follow. ZEC replied by affirming (correctly) that there would be a run off if no candidate received an absolute majority, and that this would take place within 21 days of the first poll.

¹ One seat was won by independent Jonathan Moyo, and, due to the death of candidates after nomination day, three seats, in MDC strongholds, are yet to be contested.

² The divisions within MDC had the same effect.

The Reaction

The first response of ZANU PF was to conceal the result. This required the compliance and assistance of ZEC which was readily forthcoming, belying its motto of "Independence, Transparency and Impartiality". The manner of counting and collating the tally of the votes in all elections meant that ZEC must have been in possession of all results by the Monday after the Saturday poll³. The results of the House of Assembly election were eked out 30 at a time over the next working week, and the Senate results given in the following week. The presidential results did not emerge until the 2nd of May, 2008 and the formal gazetting of the local government results is still not complete. In order to ensure this initial concealment of the results, ZEC and the ZANU PF government were obliged to engage in creative interpretations of the Electoral Act, particularly in relation to provisions concerning verification and recounts of the poll⁴. Thabo Mbeki invoked widespread outrage by suggesting that these violations of the law did not constitute a crisis but were part of a "normal electoral process".

The second tactic of ZANU PF was to conceal the fact of the loss. ZEC obliged by releasing the results of the parliamentary election as if dealing a pack of cards, with one seat for each party revealed, so that at the end of each pronouncement there was a rough parity of seats. The state owned media reported the parties as being "neck and neck", and when the final results were known, ignored the combined tally of the MDC, declared that no party had a majority and that the result was a "hung" parliament. The parliamentary results were treated in the state media as being insignificant, irrelevant and unimportant. A similar tactic was deployed for the presidential election which was announced in the Herald under the headline "NO WINNER". The results of the local government elections where MDC made significant gains were, and continue to be, largely ignored.

The third tactic deployed by ZANU PF was to make it abundantly clear that having lost the elections, it had no intention of relinquishing power.

The Retention of Power

The retention of power has been achieved in several ways, and the denial of the electoral loss has been a consistent tactic. Firstly, it was achieved in a purely legalistic way by the manipulation of the electoral law. The Chief Elections officer did not comply with the requirement that the results of the presidential election be released "forthwith". ZEC wrongly announced that the presidential election results could not be released until the parliamentary results were released. Those results were themselves delayed on the

³ For a detailed analysis of this see "An Inconvenient Truth" Part 1 available at www.kubatana.net

⁴ For a detailed analysis of the recount see "An inconvenient Truth" Part 2 available at www.kubatana.net

(false) suggestion that results were awaited from far flung polling stations. When this excuse was no longer sustainable ZEC (unlawfully) claimed that the results could not be announced until an extensive and itself unlawful recount had taken place. Since this recount process took several weeks, the requirement that the run-off take place within 21 days of "the previous election" could not be met. Despite ZEC's own previous announcement in this regard, the 21 days of the "previous election" was (wrongly) reinterpreted to mean 21 days from "the announcement of the result". Even this reinterpretation was not then complied with and ZEC purported to use powers which the Supreme Court has previously suggested it does not have, to extend the run off date to the 27th June, 2008.

Accordingly, Mugabe's term of office (and those of his ministers) has effectively been extended by two months under (unconstitutional) regulations drafted by a body appointed by him and thereafter approved by a Minister appointed by him. Mugabe and his ministers have thus continued to exercise the powers of their office and Mugabe presided over Independence Day celebrations on the 18th April, 2008 as if no election had taken place. In fact, the electorate had indicated a preference that Mr. Tsvangirai carry out the functions he was then performing. At the local government level despite being required to convene the newly elected councils "as soon as practicable" the Minister of Local government has refused to do so and today indicated (unlawfully) that they would not be sworn in until the presidential election was complete. Until then he has appointed Commissions to run the councils, effectively temporarily annulling the local government elections and retaining ZANU PF power at local level.

The second means of retaining power has been through the reintroduction of endemic and systemic violence accompanied by the reestablishment of ZANU PF militia torture bases throughout the country. There are several intended effects of this violence. Firstly, it is a display of raw power and intended as a sharp reminder to the electorate as to who remain in control, regardless of any election results. Through threats against the police both from senior officers and the militia, the militia have been able to carry out atrocities against MDC and perceived MDC supporters with impunity. Often persons reporting violence to the police have themselves been arrested, rather than the perpetrators. The effect is to show that ZANU PF's power is pervasive and cannot be confronted or contested.

Secondly, the stated purpose by the militia for the violence is to stop the electorate from voting for Tsvangirai a second time. This is done in several ways.

- a) Through a threat of repeated violence against people who again vote for Tsvangirai.
- b) Through displacing MDC supporters from the wards in which they will be required to vote.
- c) Through confiscation or destruction of MDC supporters' IDs which must be shown in order to vote.

- d) Through attacks on polling agents, who monitored the poll, to discourage any MDC supporter from again undertaking this duty, and thus allowing the possibility of electoral fraud.
- e) Through intimidating perceived MDC supporting election officers, who play a key role in ensuring that electoral procedures are followed. This intimidation has been through militia attacks, often on teachers, many of whom carried out this function, and arrests on flimsy charges by the police citing electoral irregularities from the March 29th poll.

Thirdly, in a functioning democracy, a run off would not be necessary and in such circumstances the losing candidate would probably concede defeat. A run off is intended to meet circumstances where the third candidate picks up a substantial number of votes, and it is uncertain where those voting for the third candidate would place their second choice vote.

In practical terms, this situation did not arise from the March 29th poll. Tsvangirai fell only just short of an absolute majority. Mugabe would need all but 1.5% of the third candidate's vote to succeed. And this leaves aside over three million people in the Diaspora, who have already voted with their feet. Mugabe has clearly lost popular support.

The question thus arises as to the basis upon which, in a matter of a few months, the electorate suddenly would decide, contrary to the expression of its will but a short while ago, that Mugabe, rather than Tsvangirai ought to be president. What major policy change or inducement could cause such a swing in the electoral preference? While officially denying that violence is taking place or cynically attributing it to MDC supporters, ZANU PF has made its answer to that question widely known. It intends to bludgeon its way to victory on the 27th June. This third tactic may prevent some ZANU PF waverers from jumping ship on account of perceiving ZANU PF as a lost cause after the first poll. Furthermore, it provides ZANU PF with a bargaining chip which would otherwise leave it devoid of negotiating power. The tacit threat is for MDC either to negotiate with ZANU PF in a manner which leaves ZANU PF with a substantial amount of power or they will bludgeon their way to victory. The show of force also implies that even if the run off is lost, power will not be conceded.

Various Scenarios

With the cards thus dealt, how are the hands likely to be played?

Before the run off

There are two plausible scenarios here.

1. Fearful that the bludgeoning tactic of ZANU PF will work, that ZANU PF will cling to power even if it loses the run off, many are urging the MDC to negotiate a government of national unity with ZANU PF, before the run off takes place. The run off is certainly a risky strategy for ZANU PF, and it is highly likely that the approach is causing no little disquiet amongst middle ranking ZANU PF cadres. The MDC is not prepared to contemplate a GNU where ZANU PF, and Mugabe in particular, retain any significant political power. Their talk is rather of a transitional government with some assurances of indemnity from prosecution for those who have committed crimes against humanity. This option is attractive to ZANU PF doves unwilling to be sacrificed to save the skins of ZANU PF bigwigs. The hawks are fully aware that without retaining some political control through Mugabe no indemnity from prosecution can in fact be assured and the extensive economic benefits of political patronage maintained. Accordingly, they feel they have nothing to lose from a run off and have added to their crimes against humanity in pursuing this option. They have also made clear that the run off will be neither free nor fair, and that the democratic space opened during the first round, will be closed.

The MDC, however, has done its arithmetic. In successive polls, if one candidate gains 55% and the other 45%, although the gap between the two is 10% in the next election, it would be for the losing candidate to persuade not 10% but 5% plus to switch allegiance to gain a majority. Being generous and giving Mugabe half of the Makoni vote, Mugabe has a 4.7% gap to close. This would require 2.35% to switch allegiance. This may explain why much of the violence is taking place in areas which were previously ZANU PF strongholds, but returned a surprising number of Tsvangirai votes. Although the 2.35% is not a big number it is highly improbable that any real Tsvangirai voter will switch allegiance to Mugabe. An intimidated waverer is more likely simply not to vote at all. The other alternative then for Mugabe, and which the strategy of violence is also ostensibly intended to achieve, is to reduce Tsvangirai's vote by 4.7 or about 120 000 votes, that is, ensuring that this number of people who voted for Tsvangirai in the first round, do not vote at all in the second. This is a difficult, though on its own not impossible, task to achieve. However, ZANU PF will be acutely aware that despite the deployment of violence for similar purposes in the presidential election of 2002, it still required some creative electoral fraud to claim official victory in the 2002 election.

ZANU PF's problems are further compounded by the fact that it was a despondent and thus apathetic electorate it faced in the first round. Sensing a real possibility of victory, it is likely that the low polls in MDC strongholds will be significantly improved in MDC's favour come the run-off. With xenophobic attacks taking place against Zimbabweans in the Diaspora, many may be back in Zimbabwe to cast their vote on

June 27th. Furthermore, ZANU PF lacks the resources for the handouts that characterised the first round. The MDC are thus prepared to take their chances with the run-off and any pre run off settlement would need to place power firmly in their hands. The sop to ZANU PF would be the promise of indemnities. The MDC will have considered that even if they lose the run off, while ZANU PF's hand is strengthened somewhat, ZANU PF's position is extremely difficult and untenable in the long term, as will be seen in considering the scenarios under that head.

While an increasing number of members of SADC favour a pre-run off solution, and ZEC might again postpone the poll if it appeared that something might emerge from negotiations in this direction, it seems that the power wielded by the hawks in the Mugabe administration, and the diminished incentive for the MDC to settle, render this scenario improbable.

Accordingly, the prognosis on this scenario is: unlikely but not impossible.

2. Mugabe dies before the run-off. The constitution requires that Parliament will need to convene to appoint a new president. Fresh presidential elections will then need to be held. The joint houses of Parliament will sit as an electoral college. 18 of the 33 non-constituency seats in the Senate will determine the vote. The 18 are chiefs, generally perceived to be beholden to Mugabe. Ten of the 33 are provincial governors who will not have been appointed, and five presidential appointees likewise unappointed. If all chiefs vote with ZANU PF this would give a slim majority in Parliament (assuming the three by-elections take place and are won by MDC) of three seats. The death of Mugabe, especially at this juncture, would result in considerable political realignments.

Prognosis: very unlikely but not impossible.

3. Tsvangirai dies before the run off. There have been numerous reports of assassination threats against Tsvangirai and attempts to kill him in the past. In such a case a fresh presidential election will need to be held. MDC will struggle to find a candidate who commands equal support and ZANU PF will set the date as soon as possible to capitalise on this.

Prognosis: unlikely but not impossible.

After the poll

A. Possibilities following a Tsvangirai Victory.

1. ZANU PF accepts the result immediately and there is a transfer of power in accordance with electoral and constitutional law. Notwithstanding such a victory, the MDC would probably invite some more acceptable members of ZANU PF into the cabinet, who would be given difficult portfolios such as the Ministry of Labour where a crisis of expectations would need to be managed. This would serve to reassure SADC that their desires for a GNU, and not the total eclipse of ZANU PF, are at least partially satisfied. Mugabe would be allowed to retire without MDC instituting an immediate prosecution in the interest of stability. Transitional justice institutions will, however, be established. Anticipated donor and aid organisation support will be forthcoming together with foreign investor interest. Property prices will shoot up and the housing crisis will be exacerbated. Some immediate economic stability can be expected as industrial production recommences and balance of payment support improves water and power supplies.

Prognosis: very unlikely, but not impossible.

2. The election result is not immediately announced. ZANU PF engages in obfuscatory and pseudo legal mechanisms to prevent disclosure of the result. The simplest means ZANU PF has at its disposal is to have the Supreme Court declare that Chiota and Shumba's nomination papers should not have been rejected and that they must be given a chance to contest in a fresh presidential poll, annulling the first round.

Other tactics may include replaying the recount subterfuge in a more extended manner than before, claiming electoral fraud through missing ballot boxes, and an extended "verification" process. ZANU PF may bring legal challenges to the verification process and ZEC will withhold the result "until these are determined by the court". Less likely, though not impossible, Mugabe will claim the presidential power to annul the result, citing that an election cannot be free and fair while the country is "under sanctions" or ZEC will draw regulations effectively claiming the same thing. During this delay, there will be rumours of a coup by the service chiefs with the intention of persuading the MDC to negotiate a settlement to prevent this from happening. Increased violence against MDC will be an added incentive to negotiate. SADC will lean on the MDC to settle. However, ZANU PF's position will be seriously weakened and their settlement terms are likely to be around the question of amnesty and retaining the benefits of patronage accrued under Mugabe's rule. This period may be prolonged if MDC believes the threat of a coup is a bluff (see below) and declines to negotiate at all.

This scenario will present several constitutional difficulties. For example, parliament may not go more than 180 days without sitting. That period expires on July 18th. Ministers, who lost their parliamentary seats, will also lose their positions when parliament convenes. The economic melt down will continue to escalate over this period. This scenario will be a coup in all but name and a settlement will eventually be reached under SADC pressure.

Prognosis: most likely.

3. ZANU PF refuses to accept or release the result. The military declares that free and fair elections are not possible while the country is "under sanctions" or that electoral chaos needs to be resolved and the constitution must be suspended to allow this to take place. The military announces that it is taking control and that the country will be run under martial law. Once sanctions are lifted or an agreement on elections reached, fresh elections will be held. A Burma scenario develops.

In this scenario SADC may finally have had enough and will exert considerable pressure upon the military to hand over power to the MDC or in terms of a negotiated agreement. Stated or tacit economic restrictions from SADC will render it almost impossible for the military to function on an extended basis. How soon the military is brought to the negotiating table will depend upon the strength of the SADC response. The deterioration of economic conditions, if such a scenario develops, will be severe and aid organisations will probably not be able to operate at all.

It will have been noted from the introduction preceding the scenarios that for all its faults ZANU PF has to date always attempted to justify its actions on the basis of the law, regardless of how tenuous its interpretation of the law may have been or how feigned the compliance. A declared coup would be a unique departure from ZANU PF's usual modus operandi, hence scenario A2 is considered more likely – though bear in mind that the situation faced by ZANU PF is itself unique.

Prognosis: unlikely but not impossible

B. Possibilities following a Mugabe Victory.

4. A Mugabe win will be greeted with considerable scepticism by all except perhaps Angola, Namibia and possibly Malawi, given that the endemic violence has already tainted the electoral process. ZANU PF will seek to explain the victory by claiming to have awoken "sleeping ZANU PF voters" who did not come to the polls in the first round and by saying it had healed divisions within the party. Mugabe will then seek immediately to negotiate a GNU. Part of this deal will include Mugabe's retirement and he will be in a

position to implement the plan put in place by constitutional amendment number 18 where Parliament sits as an electoral college. The anointed successor will be one who will guarantee Mugabe's security. This negotiation is likely to be extended as no party will have the upper hand. Parliament cannot pass legislation (without a two thirds majority), in the absence of Mugabe's assent, and Mugabe cannot legislate using presidential powers without parliamentary approval after eight days. Parliament must be convened before mid-July. Presidential powers legislation may also not be used for any money bill, making passing a budget impossible for any period of time.

In such a deadlocked situation Mugabe is empowered to dissolve parliament and fresh elections must be held. He is unlikely to adopt this route. A united MDC, which lost seats through a split vote between the two factions, would further weaken ZANU PF's position and ZANU PF's resources for a further campaign are greatly diminished. The constitutional deadlock could also develop if, as is quite likely, the MDC refuse to accept or recognise a Mugabe win.

Prognosis: quite possible

These prognoses are deduced from current circumstances, circumstances which, in the Zimbabwean context of opaque governance, are notorious for changing suddenly and in an unexpected direction. However, it can be said with some certainty that NGO's in Zimbabwe are likely to be faced with an extremely unstable situation over the next few months during which humanitarian work is likely to be viewed with hostility by those ZANU PF authorities still wielding power. However, all the above scenarios anticipate some form of settlement with the MDC emerging sooner or later as the new ruling party. An administration with any substantial MDC influence is likely to be very NGO friendly allowing humanitarian agencies to form linkages with each other to ensure effective needs assessment and delivery to those requiring assistance.

Conclusions

There are more scenarios that can be contemplated, but these seem the most probable. However many scenarios there are, it is clear that the political landscape of Zimbabwe has been irrevocably changed, and there is no possibility for ZANU PF to return to the status it held before the March election. By its own admission, ZANU PF lost to the MDC, and this has demonstrated to the entire world that it now rules not through the consensus of Zimbabwe's citizens, and even more so when the number of Zimbabweans in the Diaspora is taken into account. It would, in addition, be difficult to claim that ZANU PF commands any but the most trivial support amongst the 3 million or so Zimbabweans living outside the country.

For SADC, who now hold the poisoned chalice, this puts the various Presidents between a rock and a hard place, stuck between trying to obtain a negotiated settlement, or ensuring a genuine election in June. For those that argue in favour of the negotiated settlement, it must be borne in mind that this will not be simple: the issues to be resolved are complex in the extreme. Who will lead the government and how will SADC obtain the guarantees of impunity so necessary to reassure ZANU PF? The longer the negotiations continue, the more serious the Zimbabwe crisis will become, for it is wholly unlikely that any substantial financial support will be forthcoming from the West until the final deal is struck. SADC will remain immersed in the Zimbabwe problem until a deal satisfactory to all parties, including the West, is complete.

The alternative, ensuring a genuine election, without all the subversion of the Electoral Act and the Constitution that took place in the previous election, also has its complications. The upside is that ensuring a free and fair election, and accepting the most probable outcome that Tsvangirai wins again, will allow SADC to walk away from Zimbabwe and leave all the thorniest problems – guarantees of impunity – to Zimbabweans themselves. They can stand back and join the rest of the world in helping Zimbabwe get on with re-building. The downside is that this will require SADC to be highly assertive, recognise the winner immediately, demand that the military and ZANU PF accept the result, and apply serious pressure if they do not. Given the past history of SADC in dealing with Zimbabwe, and the serious divisions within SADC, this is improbable.

So the most likely eventuality is a messy and largely illegitimate electoral process, an even messier count, a lengthy delay and recount, and then a long drawn-out negotiation; essentially a mixture of the scenarios posited above. The losers in the short-term will be the Zimbabwean people, but the long-term loser will be SADC and its credibility amongst the international community and the investors.

The views expressed in this report do not necessarily represent the views of IDASA