

Introduction

1. In 2016, as part of the second UPR cycle, Zimbabwe supported recommendations to amend existing laws governing the activity of security forces; protections for freedom of expression, press, and peaceful assembly; measures intended to help persons with disabilities; right of effective remedy; combating corruption; institutional reform; and compliance with the 2013 Constitution and international treaties and agreements.
2. Zimbabwe has ratified several international treaties that impose human rights obligations including the African Charter on Democracy, Elections, and Governance (ACDEG); the African Charter on Human and People's Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR); the African Union Convention on Preventing and Combating Corruption (AUCPCC); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of Persons with Disabilities (CRPD). Zimbabwe's 2013 Constitution and the 2004 Electoral Act also contain provisions that relate to the advancement of human rights.

Regarding upholding the right to public affairs and other obligations relevant to electoral processes, Zimbabwe has not made efforts to advance human rights since the last UPR cycle, and has several domestic laws in effect, including the Electoral Amendment Act of 2018 and the 2019 Maintenance of Peace and Order Bill (MOPB), that serve to undermine the new Constitution or otherwise endanger the credibility of the electoral process.

3. This submission addresses the degree to which Zimbabwe has addressed the recommendations of the second UPR cycle and fulfilled its human rights obligations.
4. *The Carter Center in Zimbabwe*: The Carter Center sent teams in 2002, 2013 and 2018 to assess the pre-election environment. Lacking accreditation from the Zimbabwean government, the Center was limited to deploying an expert mission to assess the 2013 presidential and parliamentary elections. In 2018, the Center was invited to observe, and deployed an expert mission to assess key aspects of the electoral process. This submission is based on the data collection and analysis of the 2018 mission. A key summary of this mission can be found [here](#).

Findings for Consideration

1. The Right to Participate in Public Affairs and Right to Vote

5. Transparency and accountability for political financing continue to be significant issues, with few restrictions existing in Zimbabwe's Electoral Act on corporate or trade union donations to candidates. This becomes problematic because corporations with

government contracts face no limitations on their ability to contribute to candidates or parties, undermining the integrity of the electoral process. Zimbabwe's government committed itself to upholding the transparency, impartiality, and accountability of its institutions with its principles of good governance as enshrined in the 2013 Constitution. Zimbabwe's failure to bring domestic laws in alignment with the 2013 Constitution in this respect violates the commitments it made during the Second UPR cycle. Most relevant is recommendation 131.96, made by Switzerland, which mandated that Zimbabwe "take concrete and immediate legislative measures to ensure the participation of citizens in the electoral process in keeping with its Constitution."

6. The Zimbabwean government does not limit the employment of state resources to promote or suppress political parties or specific candidates during the elections process. During the 2018 electoral cycle, there were multiple reports of state actors incentivizing support of the incumbent party, the Zimbabwe African National Union – Patriotic Front (ZANU-PF), through the manipulation of food aid and agricultural programs. Reports of lower relative distribution of biometric voter registration (BVR) kits to the cities of Harare and Bulawayo, where the primary opposition party, the Movement for Democratic Change Alliance (MDC-A), draws support, were equally egregious. These actions unfairly advantaged ZANU-PF in the elections among rural voters. The Amalgamated Rural Teachers Union of Zimbabwe also filed a petition alleging that ZANU-PF forced schoolchildren and teachers to attend political rallies and requisitioned the use of school resources for rallies. These issues represent the continuation of pre-coup political norms that are damaging to efforts to increase the credibility of Zimbabwe's electoral process, contradict language in article 4 of AUCPCC barring "the diversion by a public official or any other person (...) for his or her own benefit or that of a third party, of any property belonging to the state or its agencies," and are again in violation of its obligation to meet the expected actions proposed by recommendation 131.96.
7. During the second cycle, Zimbabwe supported recommendation 131.34, in which the United States of America advised that the Zimbabwean government "establish a credible (...) electoral commission." The 2018 Electoral Act does not mandate the publishing of Zimbabwe Electoral Commission (ZEC) procedures or disclosure of the ZEC's private contracts to the public or to international elections observers. According to the nonpartisan domestic election monitoring organizations Zimbabwe Lawyers for Human Rights (ZLHR) and Zimbabwe Election Support Network (ZESN), aspects of the Election Amendment Act of 2018 are inconsistent with the 2013 Constitution.¹ By using this as the legal framework underpinning the ZEC's activities, Zimbabwe ensures that the ZEC does not function as a credible body.
8. Section 161 of the 2013 Constitution compels the ZEC to conduct boundary delimitation exercises every ten years to ensure the continued democratic principle of equality of vote. The last delimitation was in 2007/8, and delimitation was not performed by ZEC prior to the 2018 elections. As of June 2021, Zimbabwe has not completed boundary delimitation,

although it has expressed its intent to complete delimitation ahead of the 2023 harmonized elections. Zimbabwe supported recommendation 131.96 during the second cycle. The delayed delimitation fails to uphold this obligation and Zimbabwe's commitment to article 25 of the ICCPR, which mandates that citizens are afforded the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage."

9. These examples of misconduct, flawed policy, and problematic law during the 2018 elections process contravene article 4 of the African Union Convention on Preventing and Combating Corruption (AUCPCC), article 13 and 13.2 of the African Charter on Human and People's Rights (ACHPR), and article 25 of the ICCPR.

2. Freedom of Opinion and Expression

10. Observers reported several incidents of intimidation during the pre-election period. The politicization of traditional leaders was especially noted in the Carter Center's expert mission report on the elections: "pre-election pressure by village chiefs to pressure voters to support the ruling party and to dissuade them from attending opposition rallies."³ This contravenes recommendation 132.95 by Canada, which Zimbabwe supported during its 2016 UPR review, that states Zimbabwe should "ensure individuals are able to exercise their rights to freedom of expression, association and peaceful assembly, free from intimidation and harassment." Traditional leaders are also barred from participating in partisan politics by section 281 of the 2013 Constitution, although this did not halt the practice during the 2018 elections. Article 13 of the ACHPR also mandates that "every citizen shall have the right to participate freely in the government of his country (...) in accordance with the provisions of the law."
11. Two pieces of legislation - the Maintenance of Peace and Order Act and the Patriotic Bill - introduced after the 2018 election also pose significant problems. In the 2018 elections, two domestic laws, the Public Order and Security Act (POSA) and the Access to Information and Privacy Act (AIPPA), attracted significant criticism for failing to respect Zimbabwe's human rights obligations and enabling state-led violence. The POSA afforded the Zimbabwe Republic Police Force broad powers to suppress political dissent, including the ability to prevent meetings of more than five people and the capacity to use force against civilians. In 2019, the POSA was repealed and replaced by the MOPB, which has been termed "POSA under a different title" and retains sections of the POSA that limit the freedom of expression.⁴ The Patriotic Bill is still draft legislation, and its contents are not public; according to various sources, the bill allegedly attaches criminal penalties to making or promoting statements that are perceived as harming the image or reputation of Zimbabwe. Zimbabwean activists believe that the legislation reflects a desire by the government to criminalize dissent.⁵ The MOPB should be repealed and the Patriotic Bill reconsidered in order to adhere to obligations to recommendation 132.90 by New Zealand, which specifically suggested that Zimbabwe "repeal and amend legislation that infringes on the right to freedom of expression in line with the international obligations and Constitution of Zimbabwe, such as (...) the Public Order and Security

Act,” and 132.91, where the United States stated the same sentiment.

12. Incidents of intimidation and legislation intended to suppress opposition parties violate several obligations to international agreements. These include articles 19, 21, and 25 of the ICCPR, which provide for “the right to hold opinions without interference” and that “no restriction may be placed [on the right of peaceful assembly]” other than under limited circumstances; article 13 of the ACHPR; and article 8 of the African Charter on Democracy, Elections, and Governance (ACDEG), which requires that “State Parties shall eliminate all forms of discrimination, especially those based on political opinion.” Additionally, these acts contravene Zimbabwe’s commitments during its review in the second cycle to support recommendations made by several countries, including New Zealand, Canada, and the United States of America.

3. Arbitrary Arrest and Detention and The Right to Security of the Person

13. The pre-election period in 2018 was largely without violence. However, in the wake of the July 30, 2018 election, Zimbabwe invoked both the POSA and AIPPA laws to justify the military deployment and use of force against civilians. On August 1, 2018 in particular, protestors were met with lethal force, killing six and wounding several more. In addition, MDC-A staff and resources were targeted by the government in the immediate post-election period, leading to a series of raids on offices and the homes of MDC-A leaders. Shortly after the announcement of the results of the presidential election on August 3, The Carter Center observed a police raid on a scheduled press conference held by MDC-A’s leader Nelson Chamisa. While President Mnangagwa later apologized for the incident and the press conference later occurred without further issue, observers also reported that MDC-A officials were arrested and taken into custody on separate occasions. Among these officials was Tendai Biti, who had only days previous stood as a candidate and had been elected as a MP for Harare East, and Morgen Komichi. The post-election violence represents a failure to “ensure that violence directed against political activists, regardless of political affiliation, and human rights defenders will not be tolerated and that perpetrators will be held accountable in accordance with the law” as stipulated by Sweden and subsequently supported by Zimbabwe with recommendation 131.97 during the second cycle.
14. The suppression of MDC-A leadership and climate of intimidation both before and after the election calls into question the military’s dedication to ensuring a peaceful electoral process. Legal measures should be taken to regulate the activities of the military and police to prevent arbitrary arrests or violence. Both contravene article 4 of the ACHPR, which requires that state parties “commit themselves to promote democracy, the principle of the rule of law, and human rights,” and a recommendation made by Ukraine during the second cycle, 131.63, in which Ukraine recommended that Zimbabwe “cease ungrounded arrests and detentions, as well as the excessive use of force, torture, intimidation and harassment, interference and anti-protest discrimination.”

15. Despite the commitments made by the Zimbabwean government during the second cycle to Sweden, Zimbabwean security forces employed lethal force against civilians and acted to suppress the population in the wake of the election. Additionally, arrests were also made that potentially violate Zimbabwe's commitment to recommendations made by Ukraine. Violence from security forces affiliated with Zimbabwe violates article 4 of the ACHPR and language from articles 6 and 9 of the ICCPR that establish that "no one shall be arbitrarily deprived of his life" and that "everyone has the right to liberty and security of person."

4. Participation of Women in Political and Public Life

16. Increasing women's representation in elected bodies remains a concern. After the 2018 elections, as a consequence of section 124 of the 2013 Constitution requiring that 60 seats be reserved for women, women comprised of 31.5 percent of the National Assembly. This figure, although roughly 8% above the world average female participation in parliamentary bodies (23.8 percent), also represents a regression from Zimbabwe's previous electoral cycle. Compared to 2013, this figure is down 3.5 percent. This contravenes Zimbabwe's acceptance of recommendations 131.55 and 131.57 from Ecuador and Maldives, respectively, during the 2016 review to introduce policies and promote institutions that promote the role of women in the political sphere.⁶ Further, this continuing struggle to introduce domestic laws to have the National Assembly emulate the example of equal gender representation set by the Zimbabwean Senate introduces issues of compliance with articles 29.2 and 29.3 of the ACDEG, which contains language requiring states "ensure gender parity in representation at all levels" and to take steps for the "full and active participation of women in the decision-making processes and structures. This also undermines Zimbabwe's commitment to articles 3 and 25 of the ICCPR, the former of which protects the "equal right to the enjoyment of all civil and political rights set forth [in the ICCPR];" and article 7 of the CEDAW, which requires states "ensure to women, on equal terms with men, the right (...) to participate in the formulation of government policy."

5. The Right to an Effective Remedy

17. In the 2018 elections, Zimbabwe suffered from issues relating to electoral dispute resolution that harmed the credibility of ZEC and the judiciary and undermined the integrity of the elections process.
18. The ZEC is empowered to receive and resolve complaints throughout the electoral cycle, however domestic laws do not include mechanisms and procedures for receiving and resolving complaints except those relating to voter registration during the pre-election period. Existing laws introduce financial barriers to seeking remedy; the Electoral Act requires security fees ranging from \$1000 to \$5000 associated with bringing a petition to ZEC. In combination, these shortcomings introduced substantial obstacles to actors seeking an effective remedy during the electoral process.

19. Problematically, the Electoral Act and the electoral officer's manual used in the 2018 elections did not provide any procedures or instructions for party agents to file complaints on election day, leaving party agents without proper recourse. Electoral disputes are resolved by the judiciary, specifically the Electoral and High Courts. While cases filed with the four Electoral Courts were reportedly resolved in a timely fashion, the EU Election Observation Mission reported a systemic delay in the High Court in delivering judgments. Under current domestic laws, the courts do not expedite election-related cases before Election Day, potentially hindering access to justice. The domestic laws and policies in effect during the 2018 elections were inadequate, and significant changes have not yet been made in response to these issues. In 2016, Chile provided recommendation 131.81, which stipulated that Zimbabwe "implement measures to strengthen the system of justice administration in order to ensure equal access and due process."
20. Section 93 of the 2013 Constitution failed to provide for an adequate timeframe to gather substantiating information and conduct a proper investigation by the court into allegations, which potentially affected the success of a challenge to the outcome of the presidential election brought by MDC-A in the Constitutional Court. In addition, arrests of MDC-A leaders, police raids targeting party headquarters, and confiscation of party resources undermined the opposition party's ability to engage with the legal system properly and build a case. This case serves as a visible undermining of Zimbabwe's adherence to recommendation 131.87, in which Togo stated that Zimbabwe should "take further measures to improve citizens' access to justice." The laws regarding postelection challenges should be revised to allow complainants adequate time to file complaints and the relevant court enough time to investigate alleged violations.
21. These shortcomings represent a failure by Zimbabwe to adhere to recommendations made by Togo and Chile accepted during the second cycle. This also contravenes article 2 of the ICCPR, which stipulates that people "shall have an effective remedy (...) determined by competent judicial, administrative, and legislative authorities," and section 157 of the 2013 Constitution. The electoral framework should be reviewed and both ZEC's policies regarding electoral dispute resolution and Zimbabwe's domestic laws harmonized with its international obligations to the right to legal remedy.

References

1 <https://kubatana.net/2018/06/22/analysis-electoral-amendment-act-28-may-2018-outstanding-reforms-ahead-30-july-elections/> Website accessed June 11, 2021

2 The IRI/NDI Zimbabwe International Elections Observation Mission Final Report details one incident in the Chegutu West constituency during which international elections observers reported that the MDC-A candidate received the most votes, but an error in recording tallies resulted in ZEC declaring the ZANU-PF candidate victorious. The full report is available [here](#), see page 11 for the account of incident in Chegutu West.

3 See The Carter Center's 2018 Election Expert Mission Final Report, page 9.

4 <https://www.hrforumzim.org/publications/an-analysis-of-the-maintenance-of-peace-and-order-bill-2019/>

5 <https://kubatana.net/2021/03/25/nhimbe-trust-decries-zimbabwes-intention-to-enact-a-patriotic-act/>
Website accessed June 11, 2021

6 Recommendations 131.55 and 131.57, respectively, from Zimbabwe's review during the second cycle.