

# THE CARTER CENTER



## Zimbabwe

**NGO Submission to the U.N. Human Rights Committee**

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## **Reporting Organization**

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

## **The Carter Center in Zimbabwe**

Former U.S. President Jimmy Carter and The Carter Center have had a long-standing interest in the development of democracy in Zimbabwe. In 1980, President Carter recognized the newly independent state of Zimbabwe and advocated for the development of robust and durable democratic institutions in the formation of the new government.

The Carter Center began working in Zimbabwe in 1989 with the "Project Africa" initiative, designed to improve food security by increasing food production in rural villages. The initial success of this program made Zimbabwe a breadbasket for the region prior to the onset of the country's economic crisis and hyperinflation.

Over time, as the prospects for democratic strengthening declined, the Center explored several potential governance projects. In 2002, the Democracy Program expressed interest in observing the general election, and a team traveled to Harare to meet key stakeholders to discuss preparations for the polls and the prospects for a credible, democratic election. Ultimately, the Zimbabwean government decided it would not extend an invitation to The Carter Center to observe the election. The Center issued a short statement indicating that the pre-election period fell short of international standards and was "seriously flawed."

In 2013, The Carter Center carried out a pre-election visit to Zimbabwe in advance of the polls to assess whether Carter Center engagement in the elections would be welcomed by stakeholders. During the visit, key stakeholders, including representatives of the three major political parties, indicated they would welcome a Carter Center observation presence in Zimbabwe. However, the Zimbabwe Electoral Commission later declined the Center's application for observer accreditation, and The Carter Center was unable to deploy an observer mission.

In 2018, The Carter Center deployed an expert mission to observe the harmonized elections, which began with a pre-election assessment in March, continued with the observation of the elections in May, and concluded in August. While in country, The Carter Center expressed concern about post-election violence and called on Zimbabwe's political actors to engage in responsible leadership, to avoid furthering the tension. Additionally, The Carter Center called on the ZEC to publish the election results expeditiously and transparently to allow political parties to verify the integrity of the results and to increase public confidence.

### **Issues and Suggested Questions for the Human Rights Committee**

This submission builds on the data collected by The Carter Center's 2018 election observation mission to Zimbabwe and observation of the pre-election period ahead of the 2018 polls. It addresses gaps in the legal framework for elections in Zimbabwe, as well as observed issues related to the implementation of elections during the 2018 election cycle. This submission offers questions that the Committee may consider asking of the State Party, and provides some key recommendations to ensure that various stages of the electoral process are implemented in accordance with Zimbabwe's obligations under the ICCPR in the future.

### **Article 19: Freedom of Opinion and Expression**

Zimbabwe's legal framework and its international and regional commitments create obligations related to the campaign environment, including the right to freely express opinions and to participate in public affairs.<sup>1</sup> Zimbabwe's Electoral Act includes an electoral code of conduct, which details the commitments of political parties and candidates during the campaign period as well as prohibited activities, which together create a competitive, democratic campaign environment and a climate of tolerance in which election activity may take place without fear, coercion, intimidation, or reprisals.<sup>2</sup>

Other legislation, specifically the Public Order and Security Act (POSA) and the Access to Information and Privacy Act (AIPPA), undermine both the constitution and the Electoral Act. The 2013 Constitution calls for freedom of expression and freedom of the press.<sup>3</sup> However, these two laws curtail freedom of the press by allowing for the sanction and detainment of journalists. POSA's mandate grants Zimbabwe Republic Police a wide range of powers, from the power to ban public demonstrations to the power to use force against citizens. The latter was invoked in the aftermath of the 2018 election and culminated in the fatal shooting of protestors.

AIPAA, on the other hand, grants citizens and permanent residents' access to government information, but it has countless exemptions made in the name of national security. Advocates have suggested that these deceptive exemptions undermine access to information. Moreover, the AIPAA law mandated a Media and Information Commission, whose autonomous status is undermined by its close ties to the government and partisan actors. The law also allows for the jailing of journalists whose actions are deemed a threat to national security. This fosters an environment where state media, which favors incumbents, is privileged.

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<sup>1</sup> ICCPR, Article 19(2); ACHPR, Article 13(2); ICCPR, Article 19; ACHPR, Article 13

<sup>2</sup> Electoral Act – Fourth Schedule, 13(2)

<sup>3</sup> Section 64 of the Constitution

The Public Order and Security Act (POSA) and the Access to Information and Privacy Act (AIPPA) were not invoked during the campaign period; however, they were invoked during the post-election crisis to justify military deployment.

The POSA and the AIPPA acts should be repealed to reduce the threat of violence and intimidation and strengthen protection for fundamental freedoms. The lives of citizens must be safeguarded by the state at all times, and the use of force by the government should be avoided at all costs.

*Recommendations:*

Repeal or amend the Public Order and Security Act and the Access to Information and Privacy Act to allow for the free exercise of political and civil rights under the Zimbabwean constitution including respect for the freedoms of assembly, speech, and the press.

Steps should be taken to further amend the Electoral Act to bring the law into greater alignment with Zimbabwe's 2013 Constitution, to ensure the constitutional right of all citizens to vote in elections, including those in the diaspora. The electoral law should also strengthen the independence of the ZEC and recognize its constitutional authority to accredit interested parties to observe the electoral process, among others.

Uphold the legal rights of citizens and the country's domestic and international commitments to the U.N. human rights conventions, the African Charter on Human and Peoples' Rights and the Declaration of Rights of the Zimbabwe constitution (Chapter 4, Section 50: Protection of the Rights of Accused and Detained Persons.)

Investigate in a transparent fashion the violent events of Aug. 1 so that perpetrators may be brought to justice, according to local and international laws.

*Questions for consideration:*

What steps will Zimbabwe take to repeal or amend POSA and AIPPA to ensure that Zimbabwe's ICCPR and Constitutional commitments to freedom of opinion and expression are fulfilled?

**Article 25: The Right to Participate in Public Affairs (Misuse of State Resources)**

Zimbabwe's Electoral Act does not include any measures regarding the misuse of state resources during electoral campaigns. This is inconsistent with international obligations and best practices that ban "the use of State property for purposes other than those for which they were intended for the benefit of the public official or a third party."<sup>4</sup>

The near absence of campaign-finance regulations undermines the transparency and accountability of political financing. While the legal framework provides for public funding of political activities, there are numerous gaps in the campaign-finance regulation framework. There is no ban on corporate or trade union donations to political parties or candidates, which puts zero limitations on

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<sup>4</sup> 46 AU, Convention on Corruption, Article 4

the abilities of corporations with government contracts to donate to candidates and parties. Furthermore, there are no limitations on using state resources to promote or suppress parties or candidates. The campaign-finance system also lacks a reporting and oversight mechanism.

The lack of regulation on the use of state resources prompted several issues during the 2018 elections. Freedom of assembly was undermined by widespread reports of the ruling party's use of state resources as well as actions by village chiefs to exert pressure on voters to support the ruling party and to dissuade them from attending opposition rallies. Additionally, 50 Observers cited the use of state resources, the lower distribution of BVR kits in the MDC strongholds of Harare and Bulawayo, rumors that voters' secrecy of the ballot would be compromised by ZANU-PF by the introduction of biometric voter registration, traditional chiefs putting pressure on people to attend rallies, and the use of food aid. These instances demonstrated the absence of a clear distinction between the state and the ruling party, and negatively affected the ability of candidates to compete under equal conditions. While the campaign period was more competitive and peaceful than in previous elections, these factors, coupled with a lack of campaign-finance regulations, negatively affected the electoral process.

In the absence of provisions in the Electoral Act barring such misuse of state resources, no action by the authorities was taken to address the violations.

*Recommendations:*

Amend the Electoral Act to introduce provisions on the misuse of state resources and bring the law into alignment with the constitution. Strengthen other campaign-finance regulations to increase the transparency and accountability of political financing. State resources should not be used to conduct partisan political activities.

Authorities should be sensitive to all instances of abuse of state resources and take timely and effective action to address any violations that occur to ensure the right of effective legal remedy throughout the electoral process. To further strengthen the enforcement of the electoral code of conduct, sanctions should be introduced for parties and candidates that violate its principles.

*Questions for consideration:*

What steps will the Zimbabwean government take before the next elections to amend the Electoral Act to include provisions on the misuse of state resources?

How will Zimbabwe strengthen campaign-finance regulations to increase transparency and accountability and ensure that state resources are not used to aid in partisan political activities?

What concrete actions will Zimbabwe take to ensure that there is effective legal remedy regarding the abuse of state resources?

**Article 6 and Article 20: Right to Life and Protection from Violence**

Despite a few high-profile incidents, including the bombing of a Mnangagwa rally that killed two and injured forty-one, the 2018 pre-election campaign period was notable for being less violent

than past elections.<sup>5</sup> Yet, the substantially peaceful pre-election and election day period was shattered on August 1<sup>st</sup> when Zimbabwean soldiers and anti-riot police fired on demonstrators marching near ZEC's Election Results Center, killing six and injuring more than a dozen. Security forces then raided the headquarters of the opposition MDC-A, arrested several members, and seized its equipment. This escalation of force has yet to be explained by the government.

Shortly after the presidential election results were announced on August 3<sup>rd</sup>, Carter Center staff observed a raid by police, in full riot gear, on a scheduled press conference by MDC leader and the presidential candidate Nelson Chamisa at Harare's Bronte Hotel. Media, Information, and Broadcasting Services Minister Simon Khaya Moyo later apologized, as did President Mnangagwa, and eventually the press conference took place without incident. Shortly thereafter, however, a series of raids on the homes of MDC leaders were reported. Numerous MDC officials were arrested; others went into hiding.<sup>6</sup> Among the latter were MDC Alliance leaders Tendai Biti (himself elected MP for Harare East on July 30) and Morgen Komichi and youth leader Happymore Chidziva. They were accused of inciting the riotous demonstration and violence that rocked Harare on Aug. 1.<sup>7</sup> Specifically, warrants were issued for their arrest for "participating in a gathering with intent to promote public violence, breaches of peace or bigotry."<sup>8</sup>

While the validity of the charges against MDC officials should be assessed by an independent judicial process, the aggressive behavior of the security forces marks a severe deterioration from the peaceful pre-election and election period. Similar incidents of harassment and serious charges (including treason) against MDC in the past have proven to be specious.

A video made public by international media depicts soldiers, in army uniforms, using live ammunition against a civilian population, including people not involved in the violent demonstration.<sup>9</sup> It was unclear who ordered the military onto the streets of Harare in the days following the incidents. The state-run Herald newspaper quoted a police spokesperson as saying that because of the police's inability to quell rising civil unrest, the commissioner general of police "invoked the provisions of Section 37 (1) of the Public Order and Security Act Chapter 11.17 and approached the Minister of Home Affairs and Cultural Heritage to request the assistance of the Defense Forces [ZDF] for the suppression of the commotion and disturbances in Harare Central Business District," and that the ZDF "remain under the command and supervision of the Commissioner General of Police." Just days later, however, some government officials, including Army Chief Philip Sibanda, denied that the perpetrators were even actual military, perhaps in an effort to obscure blame and responsibility. None but the principals know precisely who ordered the troops to deploy and, importantly, authorized them to fire live ammunition.

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<sup>5</sup> See Election Situation Room (ESR) website for documented incidents during pre-election and election period

<sup>6</sup> <https://www.dailynews.co.zw/articles/2018/08/03/crackdown-on-opposition-mdc-leaders>

<sup>7</sup> <https://www.myzimbabwe.co.zw/news/29240-government-intensifies-crackdown-on-opposition-leadersmanhunt-for-tendai-biti-and-company-launched-see-names.html>

<sup>8</sup> Under the Criminal Investigations Department for Contravening Section 37 of the Criminal Law Codification and Reform Act, Chapter 9:23

<sup>9</sup> [77 https://www.zimbabwesituation.com/news/zimbabwe-election-unrest-turns-deadly-as-army-opens-fire-onprotesters/](https://www.zimbabwesituation.com/news/zimbabwe-election-unrest-turns-deadly-as-army-opens-fire-onprotesters/)

Zimbabwe's electoral code of conduct prohibits politically motivated violence or intimidation. For those who violate this, multiple sanctions are listed including imprisonment, fines, and disqualification from voting or holding public office.<sup>10</sup> The validity of the charges against MDC officials involved in this violence should be assessed by an independent judicial process.

Recommendations:

Repeal or amend the Public Order and Security Act and the Access to Information and Privacy Act to reduce the threat of violence and intimidation, while protecting fundamental freedoms enshrined in Zimbabwe's 2013 Constitution and the international treaties they are part of.

Transparent investigation and identification of the perpetrators of the Aug. 1 violent events should be conducted, according to local and international laws. The Zimbabwean judiciary should uphold the legal rights of its citizens and the country's domestic and international commitments to the U.N. human rights conventions, the African Charter on Human and Peoples' Rights and the Declaration of Rights of the Zimbabwe constitution (Chapter 4, Section 50: Protection of the Rights of Accused and Detained Persons.)

Questions for consideration:

What steps will Zimbabwe take to repeal or amend POSA and AIPPA to protect against violence and to protect the right to assembly?

How will Zimbabwe ensure that the perpetrators of the violence on August 1<sup>st</sup> are impartially identified and persecuted? What steps has Zimbabwe taken to prevent electoral violence in the future?

### **Article 3 and Article 25: Equality between Men and Women**

The 2013 Constitution includes measures to increase women's representation in elected bodies, including a temporary quota for two parliamentary terms (through 2023) to ensure a minimum of 30 percent women's representation in parliament. The quota reserves seats for an additional 60 women to be elected through a system of proportional representation based on the votes cast for political party candidates in the National Assembly. Although the population of the 10 provinces varies considerably, the number of seats allocated to women in each province is fixed at six.

After adding the 60 reserved seats, the female representation in the National Assembly is 31.5%. While this percentage is almost 8% above the world average for women representation in parliaments (23.8%), it is a decrease of 3.5% from 2013, and it remains well below the 50% required by Zimbabwe's constitution.<sup>11</sup>

Recommendations:

Develop additional measures to reinforce the constitutional requirement and institutional mechanisms designed to achieve gender parity in government institutions.

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<sup>10</sup> Electoral Act – Fourth Schedule, 13(2)

<sup>11</sup> Develop additional measures to reinforce the constitutional requirement and institutional mechanisms designed to achieve gender parity in government institutions.

Allocate the seats reserved for women in the National Assembly, as well as the 60 elected seats in the Senate, proportionally according to the population of each of the 10 provinces to guarantee equal representation.

Conduct greater and more comprehensive voter education, with an increased focus on reaching women, youth, and disabled voters.

Questions for Consideration:

What will the Government of Zimbabwe do before the next elections to ensure that the constitutional requirement of gender parity in government institutions is achieved?