The Watchers on the Wall



Picture Credit, Zimbabwe Council of Churches 2000 Parliamentary Election Monitoring Report

Reflecting on the Role of Election Observers as Human Rights Defenders in Zimbabwe's Elections.

Abstract

The paper argues that election observers play a crucial role in protecting and monitoring human rights by securing the right to vote and redressing election-related human rights violations. The paper also argues that election observers must be accorded the status of human rights defenders and that they must be protected from harassment and intimidation. The paper concludes by calling on institutions such as the Zimbabwe Electoral Commission (ZEC) and the Human Rights Commission to play a leading role in ensuring that election observers can carry out their work freely and without fear of reprisals.

TDGHR consult

During the build-up to the 2023 harmonized elections in Zimbabwe, I wrote a piece on The Role of International Election Observers in the 2023 Zimbabwe Harmonized Elections. The paper reflected on what election observers can and cannot do to ensure the credibility of the August 23 harmonized election. I concluded by noting election observers play a critical role in ensuring the credibility of elections. However, in the paper, I failed to appreciate the role of election observers as human rights defenders. This position changed on the night of August 23, when the offices of the Election Resource Centre (ERC) and the Zimbabwe Election Support Network (ZESN) were raided by the police under the guise of preventing them from announcing the election results ahead of the Zimbabwe Electoral Commission (ZEC).

The arrest and subsequent detention of the observers got me reflecting on their role in elections and concluded that they go beyond simply observing elections to protecting and monitoring human rights during elections. In this regard, must we consider election observers as human rights defenders? As I read and researched more it became obvious that this is a relatively old but new field, and in many cases, election observation has been viewed as separate from human rights monitoring and protection. The release of the statement on "The Situation of Election Observers as Human Rights Defenders" by the UN Special Rapporteurs Clément Nyaletsossi Voule, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and Mary Lawlor, Special Rapporteur on the Situation of Human Rights Defenders, has shifted how election observers are viewed globally.

The first step in understanding and appreciating the role of election observers as human rights defenders is to understand what constitutes a human rights defender. Defined, a human rights defender is anyone who acts to promote or protect human rights in a peaceful manner, either individually or with others. To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek to promote and protect civil, political, economic, social, and cultural rights in accordance with the Universal Declaration of Human Rights, the International Covenant for Civil and Political Rights and other international instruments.

The second step is to understand and appreciate the nexus between human rights and elections. Elections facilitate the enjoyment of multiple human rights, such as the right to participate in the affairs of the State. If they are genuine and credible, they empower the people to express their will and provide an essential way by which people can have a voice in their governance. Human rights such as freedom of expression, opinion, association, peaceful assembly, the right to information, and the right to an effective remedy help to ensure a safe environment for elections if they are strictly respected.

The third step, in the context of elections, is to determine the role of election observers as human rights defenders. Election observers play a crucial role in protecting and monitoring human rights by securing the right to vote, as provided for under civil and political rights, and redressing election-related human rights violations that are often associated with electoral contests. The election process cannot be free and fair if human rights such as the freedom of association, assembly, expression, opinion, and movement are not enjoyed by participants and stakeholders in elections. Elections are about the protection of the right to participate in public affairs, and challenging issues related to elections require the attention of all key stakeholders because they adversely affect the enjoyment of the right to participate in public affairs. Election

observers are human rights defenders because they work to protect and promote the human rights that are essential for free and credible elections. They play a crucial role in protecting these rights by monitoring the election process, reporting on any irregularities or violations, and advocating for reforms to ensure that future elections are credible. They can also help to raise awareness of the importance of human rights in elections and to build public pressure for governments to respect these rights.

This is what the Zimbabwe Election Support Network (ZESN) and Election Resource Center (ERC) have been doing for a long time. However, in the lead-up to the 2023 Zimbabwe harmonized election, the country saw a further closing of space for election observers, in addition to arbitrary arrests, incommunicado detention, threats, intimidation, harassment, and even physical violence. One of ZESN's observers was beaten up at a polling station in Gutu West Constituency. Negative rhetoric against civil society organizations (CSOs) to undermine their credibility in society was similarly witnessed. The Herald Newspaper, for example, carried an article titled US$37 Million Dangled to Subvert Harmonized Polls, the article was seen as meant to discredit the work of observers during the harmonized election. Nowhere in the article and others of a similar nature did the paper provide evidence to support this claim.

The ERC reported receiving numerous reports from its network of accredited observers who observed the 23 and 24 August 2023 Harmonized Election and continue to be harassed and intimidated because of their election-related work. This involved home visits and calls to attend at the ZEC offices to sign new election results forms. In addition, the cost of accreditation and deployment of long-term and short-term observers was excessively high, and the process was centralized and cumbersome, making it deliberately costly and difficult to accredit observers. The delays in accrediting election observer organizations to carry out vote education meant that there was limited information on voters' rights before the elections. Legal instruments have also been used to curtail the work of observers, such as the Private Voluntary Organization (PVO) Bill in Zimbabwe and the Cyber Security Laws. The Public Health Emergencies Regulations (COVID) have also been used to deny observers access to elections.

Reflecting on the foregoing, it becomes apparent that election observation in Zimbabwe has a similar role in protecting and safeguarding human rights. Election observers must therefore be accorded the status of human rights defenders. By monitoring the election process, reporting on irregularities and violations, and advocating for reforms, election observers help to ensure that citizens can participate in credible elections and that their votes are counted fairly. To this end, election observers in the country must be accorded the same rights and protection as those of human rights defenders. This includes enacting and strengthening existing and enforcing laws that protect election observers. The Electoral Act must be amended to criminalize violence and threats against election observers, guarantee their right to freedom of association and assembly and clearly state their rights and obligations. They must be provided with access to justice and legal aid and filing complaints against those violating their rights with the ZEC.

In conclusion, an environment that supports the work of observers in the country must be created by providing them with access to funding, training, and other resources. In addition, institutions such as the Zimbabwe Electoral Commission (ZEC) and the Human Rights Commission must play a leading role in this regard. They must take steps to ensure that election observers can carry out their work freely and without fear of reprisals. They must also raise awareness of the importance of election observation among the general public, political parties,

and other electoral stakeholders. Collaboration and coordination between election observer organizations, civil society, and government institutions to ensure the effective protection of election observers' rights must be pursued and supported. Furthermore, ZEC must condemn the continuous harassment of election observers post the harmonized election. Remaining silent further reinforces the notion that ZEC is complicit in the harassment of election observers. Being professionally offended and perpetually outraged by calls to do its work is not helping ZEC and the country.

Taona E. Mwanyisa *is a democracy, governance, and elections consultant. He specializes in research, policy analysis, programme design and implementation, monitoring and evaluation, results-based management, coaching and management development, as well as institutional and capacity development. He possesses over seventeen (17) years of senior management experience working with national, regional, and international organizations in the fields of democracy, governance, elections, peace and security, and human rights promotion and protection in stable, post-conflict and high-risk environments. You can reach him at tanyaona@gmail.com*
