

# Zambia General Elections and Referendum

11 August 2016



The Commonwealth



# **Report of the Commonwealth Observer Group**

## **ZAMBIA GENERAL ELECTIONS**

11 August 2016



**The Commonwealth**

# Map of Zambia



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**Table of Contents**

<b>Letter of Transmittal.....</b>	<b>v</b>
<b>Executive Summary .....</b>	<b>viii</b>
<b>Chapter 1 .....</b>	<b>1</b>
INTRODUCTION .....	1
Terms of Reference .....	1
Activities.....	2
<b>Chapter 2.....</b>	<b>3</b>
POLITICAL BACKGROUND.....	3
Historical Overview .....	3
Summary of Recent Elections.....	3
Political Environment Ahead of the 2016 Elections .....	5
Politically-Motivated Violence.....	6
Ethnic and Regional Politics .....	6
Application of the Public Order Act (POA).....	7
Constitutional Review .....	8
Zambia and the Commonwealth .....	8
<b>Chapter 3 .....</b>	<b>10</b>
ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION .....	10
Background .....	10
Legal Framework and International and Regional Commitments.....	10
The Electoral Commission.....	11
Eligibility Requirements for Voting and Voter Registration .....	12
Candidate Eligibility and Nomination.....	12
Boundary Delimitation .....	13
Complaints, Appeals and Election Petitions .....	13
National Referendum .....	14
Inclusive Participation and Representation.....	15
Key Issues.....	16
Recommendations.....	21
<b>Chapter 4.....</b>	<b>24</b>
ELECTORAL CAMPAIGN AND MEDIA .....	24
Election Campaign .....	24
Campaign Issues .....	25
Recommendations.....	28

Media .....	29
Recommendations .....	33
<b>Chapter 5 .....</b>	<b>34</b>
VOTING, COUNTING AND RESULTS .....	34
Background .....	34
Key Procedures for Opening and Voting.....	34
Assessment of the Opening of the Polls and Voting .....	35
Key Procedures for Closing and Counting .....	36
Assessment of Closing and Counting.....	37
Key Procedures for Results Tabulation: Constituency Totalling Centre and National Results Centre .....	38
Assessment of the Results Tabulation - Constituency Totalling Centre and National Results Centre .....	39
Overview of the Countrywide Observation .....	40
Presidential Results .....	45
Referendum Result.....	45
Recommendations.....	46
<b>ANNEX I: Biographies of Chairperson and Observers.....</b>	<b>48</b>
<b>ANNEX II: Deployment Plan .....</b>	<b>53</b>
<b>ANNEX III: Arrival Statement.....</b>	<b>54</b>
<b>ANNEX IV: Joint Declaration .....</b>	<b>56</b>
<b>ANNEX V: Interim Statement.....</b>	<b>58</b>

# Letter of Transmittal



The Commonwealth

Commonwealth Observer Group  
Zambia General Elections and Referendum  
11 August 2016

## *Letter of Transmittal*

17 August 2016

Dear Secretary-General,

On behalf of the Commonwealth Observer Group you constituted to observe the 11 August General Elections and Referendum in Zambia, I am pleased to submit our final report to you.

In carrying out our task of assessing relevant aspects of the electoral cycle according to the standards for democratic elections under Zambia's own laws, we consulted with a range of stakeholders. In this regard we met with the Electoral Commission of Zambia (ECZ), the Police and political parties including H.E. President Edgar Lungu who was presidential candidate of the Patriotic Front (PF) and the Hon. Hakainde Hichilema, candidate of the United Party for National Development (UPND) who came second. Also we talked to civil society organisations including women and youth groups, and faith based organisations among others.

We had the opportunity of engaging Zambia's dynamic and youthful citizen observer groups, as well as other international observers, in order to obtain a holistic appreciation of trends and developments across the entire electoral cycle.

The Groups overall assessment of the voting and counting process at the polling stations on Election Day is that it was conducted in accordance with the laws of the Republic of Zambia, in a credible, peaceful, inclusive and orderly manner. Many of the key benchmarks for democratic elections were met. In our report, we have offered recommendations for addressing some of the shortcomings, particularly in the pre-election and results management phases.

We commend the people of Zambia for the peaceful and orderly manner in which they exercised their franchise on Election Day. We were further impressed by the patriotism and commitment of young people who served as polling officials and citizen observers.

We must also commend the Commonwealth's role in contributing to peace in Zambia during these tense elections, through your decision to appoint a Special Adviser on Political Dialogue to the ECZ.

It was a privilege to stand shoulder to shoulder with our Commonwealth family in Zambia as they determined the course of their democracy. Thank you for the honour

of chairing this eminent and committed group of experts in undertaking this important duty. They are a testament to the rich diversity of expertise in the Commonwealth. Likewise, we are grateful to the capable staff team whose support was invaluable.

As we depart Zambia, we urge the country's leadership and its people to patch up the differences that generally surface during closely contested elections such as these, and to take further strides towards deepening democracy in Zambia in the spirit of peace, unity and political tolerance. This is the Zambian and the Commonwealth way.

  
Jakaya Kikwete

**FORMER PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA AND  
CHAIR OF THE COMMONWEALTH OBSERVER GROUP TO ZAMBIA**





Angela Taylor



Elizabeth Ohene



Pravin Nikam

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Ollen Mwalubunju



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Mandla Mchunu



Constance Mitcham

Julius Nkato



## **Executive Summary**

The Commonwealth Observer Group for the 11 August General Elections and Referendum was present in Zambia from 4 to 17 August 2016. The Group's arrival was preceded by an Advance Observer Team which was in the country from 22 July 2016.

As part of its terms of reference, the Group assessed the various aspects of the electoral cycle against the national, regional, Commonwealth and international standards for democratic elections that Zambia has committed itself to. In doing so, the Group consulted a range of national stakeholders and other election observer missions in its briefing sessions in Lusaka, and subsequently, in eight of the ten provinces of Zambia.

These consultations, as well as the Group's observations ahead of and on Election Day, informed the Group's assessment of the electoral process. The Group's recommendations for strengthening Zambia's electoral processes and the environment within which they occur, are offered in the spirit of contributing to the deepening of democracy in Zambia. We highlight four issues here, which we believe if addressed, will significantly improve future elections.

### ***Zambia's History of Largely Peaceful Elections***

Zambia has a history of closely contested, yet largely peaceful elections. Consequently, the reports of a marked escalation of violence in these elections compared to previous ones was of concern to not only Zambians but the Group. It was therefore encouraging to observe efforts by the people of Zambia themselves, the Electoral Commission of Zambia (ECZ), Church Groups and other Civil Society Organisations, in defusing political tensions ahead of election day. In this context, the Group was pleased to note the valuable peace brokering role played by the Commonwealth throughout the electoral cycle, spearheaded by the Secretary-General's Special Adviser on Political Dialogue to the ECZ, Professor Ibrahim Gambari.

It is to the credit of the people of Zambia themselves that election day turned out to be peaceful and orderly. Zambians upheld their country's reputation for peace. Going forward, we urge political party leaders, the ECZ, the Security forces, and Civil Society organisations, among others, to bolster the country's national peace architecture and to continue to encourage inter-party dialogue beyond the electoral cycle.

### ***Mobilising Voters Along Ethnic Lines***

Many stakeholders with whom the Group met, were concerned about the polarisation of issues along ethnicity rather than policy. While this trend surfaced in previous elections, as highlighted by previous Commonwealth Observers, for these elections it appeared more prominent. Political party leaders, Church Groups, the media,

Civil Society organisations, among others, have a leadership role to play in fostering Zambia and the Commonwealth's shared values of unity, tolerance and respect.

### ***The Electoral Playing Field***

A number of developments cast a shadow over the pre-election environment and the ability of all parties to campaign on a level playing field. These recurring issues were highlighted by previous Commonwealth Observer Groups (in 2006 and 2011) and include the misuse of public resources for campaigns; media bias by the state-owned broadcaster in favour of the ruling party; and the misuse of the Public Order Act (POA) in a manner that prevented some candidates from freely campaigning earlier in the process. These are addressed more fully in the body of this report.

### ***The Results Management Process***

Some political parties, citizen and international observers expressed concerns on the integrity, transparency and the lack of clarity on key procedural aspects of the results process. For instance, lack of clarity regarding the usage and distribution of the Announcement of Results Form, GEN 12 raised suspicion about the integrity of the process. It is the hope of the Group that the ECZ will clarify and strengthen these procedures in order to bolster trust and confidence in the entire cycle.

### ***Overall Assessment***

The Groups overall assessment of the voting and counting *process* at the polling stations on election day is that it was conducted in accordance with the laws of the Republic of Zambia, in a credible, peaceful, inclusive and orderly manner.

The Group also notes the low number of rejected votes, which corroborates the observations of the teams deployed to the regions that generally voters appeared to be conversant with the voting process for the General Elections, with the exception of the Referendum. We commend the ECZ, civil society and other stakeholders for the efforts invested in voter education on the General Elections. Many of the key benchmarks for democratic elections were met.

We offer the following recommendations for addressing the shortcomings, particularly in the pre-election and results phases, and more generally, to further strengthen democracy in Zambia.

### **Electoral Framework and Election Administration**

#### ***Electoral Reform and Legal Framework:***

- To avoid operational or implementation delays, confusion and potentially conflicting provisions, international good electoral practice advocates that there should not be substantive changes to the legal and electoral framework six to twelve months prior to an election. It is recommended that a comprehensive electoral processes calendar/timeline is developed and publicised to outline all routine and anticipated elements related to the electoral cycle.

- To ensure that a robust and complete legal framework underpins the electoral process, a review and passage of all outstanding subsidiary legislation and regulation is recommended.
- The statutory and regulatory framework of the Electoral Commission of Zambia as outlined in the Constitution (as amended), the Electoral Commissions Act No 25, 2016 and the Electoral Process Act No 35, 2016 should be reviewed, with a view to enabling the Commission's capacity to fully exercise its administrative and oversight functions in accordance with national provisions and international standards.
- As stipulated in Article 7 of the Electoral Process Act No. 35, 2016, the Register of Voters should be kept under continuous review, to maintain its integrity and accuracy.
- To ensure equal suffrage is provided for all Zambians, a more comprehensive review and delimiting of boundaries is recommended.
- The Electoral Commission, civil society groups, church leaders, other local stakeholders in the democratic process, the Commonwealth and other international partners, should continue to encourage constructive dialogue between political parties, with a view to reducing hostility and violence throughout the electoral cycle. Additionally, political party dialogue structures should be strengthened to build trust in the electoral cycle, and to function regularly, and not just during elections.
- To strengthen the functioning of the Commission, highlight the achievements and identify the weakness, a post-election performance review is recommended.

### *Referendums*

- It is recommended that civic education should be undertaken in sufficient time in advance of any future referendum.
- It is recommended that the development of the referendum question should be done in consultation with other stakeholders, with the aim of promoting a consultative approach and ensuring simplicity of the question.

### *Inclusive Participation and Representation:*

- The Observer Group commends the passage of the Gender Equity and Equality Act (2015), noting, in particular, its progressive provisions on strengthening women's political participation and ensuring gender equality in decision-making processes. We urge the Government of Zambia, political parties, the legislature, the electoral commission, and all relevant stakeholders to play their part in the implementation of the prescribed measures under this Act, to address the low representation of women as political leaders in Zambia, in subsequent elections.

- We recommend that consideration be given to the introduction of mandatory quotas to increase the representation of women both the National Assembly and Local Councils levels, as one practical measure for achieving a gender balance in decision-making.
- Noting the important role that political parties can play in addressing gender imbalance in political leadership, we urge that political parties in Zambia commit to the necessary measures required to achieve gender balance in their own decision making structures and processes as a starting point, and to address some of the aforementioned identified barriers to women's political participation in Zambia.
- We commend the part played by various women's groups in Zambia in supporting women candidates. We note some of the measures introduced by some groups in this regard, such as the Women Campaign Support Fund Zambia established by the Zambia National Women's Lobby. We encourage the introduction and use of such mechanisms.
- We commend the on-going civic education campaigns, especially those targeting women, youth and the illiterate. We recommend the prioritisation of such campaigns to ensure increased participation of these groups.
- Noting the effect of the increase of candidate nomination fees and the Grade 12 eligibility rule on certain groups, particularly women, we urge the Electoral Commission to review the impact of the following measures on the inclusiveness of the candidate nomination process in the 2016 election, in order to guide the formulation and implementation of future policies or measures:
  - The nomination fees set by the Electoral Commission for candidates at all levels; and
  - The Grade 12 eligibility requirement for contesting elections.

## **Election Campaign**

- To promote a more level playing field, the legal provisions governing the use of public resources during campaigns, political party funding and campaign financing, need to be clarified and strengthened. The Group noted that despite the requirements for the regulation of political parties funding and campaign financing by Article 60(4) of the amended Constitution of Zambia (amendment) Act 2016, there is no legislation or regulation giving effect to this provision. A review and passage of all outstanding subsidiary legislation and regulation is recommended.
- With respect to consistency in the application and enforcement of the Code of Conduct enshrined in the Electoral Process Act 2016, it is noted that Section 11 of the Code of Conduct empowers the ECZ to take the necessary action, including reporting breaches of this Code to the Police and other authorities where necessary. Consideration should be given to the development of measures and

procedures to strengthen the enforcement of the Code of Conduct and accountability by all parties.

- To foster great citizen participation and reverse the trend of voter disillusionment, it is recommended that political parties and candidates focus on concrete policy platforms that share a positive vision for improving the country.
- To demonstrate impartiality and thereby increase public confidence in the Police, it is recommended that the Police exercise their discretionary powers under the POA within the spirit of the freedoms guaranteed under the Constitution of Zambia.
- Particularly during election periods, political parties and candidates must demonstrate leadership through tolerance and condemnation of all forms of violence. Additionally, political parties and candidates must take greater responsibility for the conduct of their supporters (particularly youth) as they are a reflection of the goals and spirit of the party.
- The ECZ, civil society groups and the international community should continue efforts to encourage constructive and systematic dialogue between political parties, with a view to reducing hostility and violence in the election period. It is recommended that initiatives and mechanisms promoting and enabling a peaceful resolution of election-related disputes should be supported and strengthened.

## **Media**

- The ECZ should enforce the Electoral Code of Conduct to address issues of bias and irresponsible reporting during the campaign period.
- In its coverage, ZNBC must ensure proportional access to political parties and candidates in its programming, particularly in news bulletins, which tend to attract more viewers.
- The media should establish a credible, independent, self-regulatory authority that sets out standards and appropriate codes of behaviour for the media. This is necessary to safeguard freedom of expression while holding the media to account in cases where the codes of behaviour are breached. Such a self-regulatory authority must have an effective complaints mechanism to allow members of the public to register complaints against the media where there are legitimate grounds for doing so.

## **Voting, Counting and Results**

- The Group observed challenges not exclusive to Zambia, but familiar in a number of developing democracies: notably, in some polling locations the infrastructure was not always conducive to the management of a smooth election. For example, inadequate lighting, and the lack of facilities for the disabled, elderly and pregnant to access some polling stations easily, were some of the common

challenges. These are issues that not only impact inclusivity and access, but also the transparency of the process. It is the Group's hope that as Zambia prospers, the infrastructure for elections, which are often the same as those for development, such as schools and community centers, will be given due consideration.

- To ensure greater consistency in the application of electoral procedures, strengthening and lengthening the duration of the training of polling officials is recommended.
- As noted in Chapter 3, the compressed timeline for the Referendum had an impact on civic and voter education for the Referendum vote. Consequently, the limited understanding or full appreciation by the electorate resulted in some voters rejecting the Referendum ballot. We recommend that adequate civic education be undertaken for any future Referendum, and that it is delinked from other elections.
- We note the low number of rejected votes, which corroborates the observations of our teams deployed to the regions that generally voters appeared to be conversant with the voting process for the General Elections, with the exception of the Referendum. We commend the ECZ, civil society and other stakeholders for the efforts invested in voter education on the General Elections.
- The Group notes that for the 2016 General Elections, the variation in population size across Zambia's districts and constituencies remained an issue of concern to several stakeholders. To ensure fairness and equal access, a review of the constituency boundaries should be undertaken in an inclusive, non-partisan and transparent process, with a view to standardising the numbers of voters across constituencies to ensure fair and equal representation.
- To avoid fatigue and thereby minimise human errors, it is recommended that the Commission considers deploying its officials in shifts whereby the Presiding Officer and polling assistants hand over the counting process to a Counting Officer and counting staff.
- The Group notes, with concern, that questions were raised about the transparency and consistent application of procedures in the results process; specifically, the issue of the Announcement of Results Form (GEN 12). In such a highly contested and tense process, in order to increase transparency, minimise human errors, and instill confidence in the electoral process, the results collation and tabulation process should be strengthened and made more transparent.
- To ensure that all eligible voters, particularly those with critical responsibilities such as Police and medical officials are not disenfranchised, it is recommended that timely and adequate special voting arrangements for these groups are made, as prescribed under Section 48 of the EPA, are enforced.
- At the conclusion of the electoral period, a review of policies, procedures and staff capacity is recommended to identify the successes, challenges and lessons

that can be learned to build and strengthen the capacity of the ECZ for future elections.



# Chapter 1

## INTRODUCTION

At the invitation of the Ministry of Foreign Affairs of the Republic of Zambia, the Commonwealth Secretary-General, Rt Hon Patricia Scotland QC, constituted an Observer Group for the 11 August 2016 General Elections and Referendum. In line with usual practice, the Secretary-General sent an Assessment Mission to Zambia in May 2016, to assess the prevailing situation as well as the pre-electoral environment, prior to her final decision on whether to constitute a Commonwealth Observer Group.

The Commonwealth Observer Group for the 2016 General Elections and Referendum was led by His Excellency Dr Jakaya Kikwete, Former President of the United Republic of Tanzania, and comprised seventeen eminent persons.

A six-person staff team from the Commonwealth Secretariat supported the Observer Group. A full list of members is at Annex 1.

### Terms of Reference

*“The Group is established by the Commonwealth Secretary-General at the invitation of the Ministry of Foreign Affairs of the Republic of Zambia. It is to observe relevant aspects of the organisation and conduct of the General Elections and Referendum that are scheduled to take place on 11 August 2016, in accordance with the laws of Zambia.*

*The Group is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Zambia has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.*

*The Group is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgment accordingly. In its Final Report, the Group is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters that would assist the holding of future elections.*

*The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Zambia, the Electoral Commission of Zambia (ECZ), political and civil society organisations, and thereafter to all Commonwealth Governments.”*

## Activities

The Observer Group was present in Zambia from 4 August 2016, and was preceded by an Advance Observer Team which arrived on 22 July 2016.

During its mission, the Advance Observer Team consulted key electoral stakeholders in order to assess the electoral environment and the state of preparedness of the Electoral Commission of Zambia (ECZ).

These stakeholders included the ECZ, representatives of political parties, civil society organisations (CSOs), including women and youth groups, the Human Rights Commission, the Police, faith-based organisations and representatives of other election observation missions. It also had the opportunity to observe some election campaign rallies. On the arrival of the Observer Group, the Advance Observer Team provided a briefing on its preliminary observations.

On 9 August, the Group issued an arrival statement outlining its terms of reference (Annex 2). During three days of briefings, the Group also met with the ECZ, political party representatives, CSOs, women's groups, youth representatives, media, Commonwealth High Commissioners, the Police, religious leaders, citizen<sup>1</sup> and other observer missions.

The Observer Group was subsequently deployed across eight of the ten provinces of Zambia. The Group's deployment plan is at Annex 3. All teams coordinated with other observers, building up a comprehensive picture of the conduct of the process in their respective areas.

On the eve of elections on 10 August, the Group issued a joint statement with African and other international election observation groups, urging peaceful and credible elections (Annex 4).

Subsequently, on the basis of the Group's initial findings and observations, the Chairperson issued an Interim Statement on 13 August (Annex 5).

The Group's report was completed in Lusaka on 17 August, prior to departure, and transmitted to the Commonwealth Secretary-General thereafter.

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<sup>1</sup>General convention has shifted, and Domestic Observers are now referred to as Citizen Observers.

## **Chapter 2**

### **POLITICAL BACKGROUND**

#### **Historical Overview**

The Republic of Zambia, formerly known as Northern Rhodesia, gained independence in 1964. In 1972, Zambia was declared a one party-state, with the ruling United National Independence Party (UNIP) as the only legal party led by President Kenneth Kaunda. In 1991, a multi-party constitution was adopted, with the Movement for Multiparty Democracy (MMD) winning the first multi-party elections in 23 years. Since then, Zambia has held five general elections (in 1996, 2001, 2006, 2011, and 2016) and two Presidential by-elections (in 2008 and 2015).

#### **Summary of Recent Elections**

##### **2006 General Elections**

Presidential, National Assembly and Local Government elections were held on 28 September 2006. President Levy Mwanawasa, of the Movement for Multiparty Democracy (MMD), was re-elected, with 42.98 per cent of the vote, while Michael Sata of the Patriotic Front (PF), obtained 29.37 per cent and Hakainde Hichilema, of the United Party for National Development (UPND), obtained 25.32 per cent. Voter turnout was 70.77 per cent.

A Commonwealth Observer Group led by Hon Paul Berenger, former Prime Minister of Mauritius, was present for the General Elections. It concluded that in most parts of Zambia a largely successful effort was made to enable the will of the people to be expressed. It also noted some issues to be addressed, particularly with respect to transparency and credibility of the collation, tabulation and transmission of the results process.

##### **2008 Presidential By-election**

President Mwanawasa passed away on 19 August 2008. A Presidential By-election was held on 30 October 2008 for a replacement to serve out the remainder of his term. Four candidates contested the election. Acting President Rupiah Banda, MMD, was elected with 40.09 per cent, defeating Michael Sata, PF, 38.13 per cent, Hakainde Hichilema, UPND, 19.70 per cent and Godfrey Miyanda of Heritage Party, 0.76 per cent. Voter turnout was 45.43 per cent. President Banda's margin of victory was a narrow 35,209 votes, and Mr Sata alleged fraud. He petitioned the Supreme Court for a recount. This petition was rejected.

A two-person Commonwealth Secretariat team was present for the Presidential By-election. Their overall assessment was that the electoral process was generally well managed, that conditions existed for voters to freely express their will, and that, on the whole, the outcome broadly reflected the wishes of the majority of Zambians who voted.

Following the elections, the two leading opposition parties, PF and UPND, formed an electoral pact in June 2010. This alliance soon became embroiled in acrimony over several issues, including the question of who would be joint presidential candidate, how other candidates would be chosen, and a joint manifesto. Mr Hichilema announced the UPND's withdrawal from the pact on 7 March 2011.

## **2011 General Elections**

General elections were held on 20 September 2011. Michael Sata of the Patriotic Front (PF) won the Presidential Election, defeating incumbent Rupiah Banda of the MMD, and was sworn into office on 23 September. The PF emerged as the largest party in the National Assembly, winning 60 seats. Mr Sata was announced winner of the election with 43 per cent. Banda received 36.1 per cent, and other minor parties trailed in the poll. Hakainde Hichilema received 18.7 per cent of the votes.

A Commonwealth Observer Group, led by HE General Yakubu Gowon, former Head of State of Nigeria, was present for the elections. It found that, despite some shortcomings, overall the process was credible. Key findings included:

- The democratic principles of participation and representation, as well as the basic freedoms of association, assembly and movement were largely met.
- The Group noted with regret a decrease in the number of women candidates for the National Assembly (14 per cent).
- The regulatory framework for the campaign set out in the Code of Conduct prohibited, among other things, use of intimidating or provocative language and the use of state resources for campaign purposes (save for the President and Vice-President). However, there were no rules on campaign funding, no spending limits and no requirements to report on campaign expenditure, thus foreclosing the obligation for accountability and transparency in this regard.
- During the 2006 elections it was found that state resources were misused by the ruling party for campaign purposes. This trend continued in 2011, remaining a source of concern. Furthermore, the power of incumbency was exercised in a manner that compromised the level playing field between the competing candidates and parties.
- Media coverage of the elections was another area of concern. On the whole, media practitioners fell short of ethical standards of fair electoral reporting.
- The Electoral Code of Conduct was a good innovation and set out the responsibilities of stakeholders in the election process. However, not all stakeholders adhered to its provisions and the ECZ was ill-equipped to ensure adequate enforcement.
- The ECZ was well prepared for the elections. On the day of the elections, voting proceeded generally well across the country. The count at polling

stations was also highly transparent. Overall, the ECZ delivered a transparent and reasonably timely result which was accepted by all stakeholders as reflecting the will of the voters.

## **2015 Presidential By-election**

President Sata died on 28 October 2014, three years into his term of office. As a result of the vacancy of the Office of President, a Presidential By-election was to be held within 90 days of the office becoming vacant as per Article 38 (1) of the Constitution. A Presidential By-election was duly held on 20 January 2015 to elect a President to serve the remainder of the term. The ruling PF candidate Edgar Lungu won by a narrow majority of just 27,757 votes (1.66 per cent) against Hakainde Hichilema of the UNDP, now the main opposition party following the disintegration of the MMD. Mr Hichilema denounced the elections as a sham but urged his supporters to remain calm.

The Commonwealth deployed a two-person staff team to observe these elections. The team concluded that the election was generally a reflection of the will of the people despite certain observed shortcomings. The team recommended the need for encouraging and supporting a dialogue platform for political parties to help address issues pertaining to intolerance and politically-motivated violence.

## **Political Environment Ahead of the 2016 Elections**

### **Polarised Environment**

The 2016 General Elections were the first in which Zambians would vote in five separate ballots. These consisted of elections for the President, 156-member National Assembly and over 1,600 Local Government Councils, as well for the first time, directly electing Mayors/Council Chairs. Additionally, a Referendum on the Bill of Rights was conducted alongside the elections.

The political environment leading up to the 2016 elections was highly polarised, particularly between the two main political party leaders, the ruling PF's Edgar Lungu and the main opposition party leader, the UPND's Hakainde Hichilema.

The 2016 elections took place some 18 months after the last Presidential By-election, in which the PF won by a very slim majority (1.66 per cent of votes). The 2016 elections were widely expected to be a two-horse race between the PF and the UPND, following the disintegration of the MMD; despite a plethora of other parties having nominated candidates, all indicators pointed to the likelihood of competitive elections between the incumbent PF and the opposition party, the UPND. These circumstances added to political tensions.

Furthermore, the stakes were very high for both leading contenders owing to their personal circumstances: UPND Leader Hakainde Hichilema was running for President for the fifth time, and viewed the election to be his best shot at victory yet, especially against the backdrop of the closeness of the last election results and the country's current challenging economic indicators that militated in his favour. On

the PF side, President Lungu was looking to consolidate his position after 18 months in the State House, following a fractious leadership battle in the aftermath of President Sata's death. There were reports of internal divisions within his party - with a number of defections of senior party members (at ministerial level) to the UPND and other opposition parties.

The absence of a robust mechanism for inter-party political dialogue added to the tensions. There are several mechanisms in place for the peaceful resolution of election-related disputes in Zambia, but stakeholders pointed to their ineffectiveness. There is a party liaison committee and other *ad hoc* committees established by the ECZ. Additionally, ahead of these elections, other civil society initiatives, including those of the Zambia Centre for Interparty Dialogue, the Situation Room and peace initiatives by the Christian Churches Monitoring Group (CCMG), played their part in brokering peace and calming political tensions, even though some stakeholders alleged that some of these were biased.

### **Politically-Motivated Violence**

Stakeholders indicated that there had been a significant increase in the frequency and intensity of politically-motivated violence ahead of the 2016 elections. Several violent clashes, mainly between the ruling party's cadres and those of the UPND were reported. Clashes reportedly involved the use of machetes, clubs and other weapons, with frequent reports alleging that the parties were recruiting and training militia. The leaders of these parties often traded accusations at each other for systematically orchestrating, sponsoring and instigating violence. Some other political parties also reported violent attacks on their members by the ruling party's cadres.

The Group noted that the Police were criticised for appearing powerless and sometimes partisan in the face of the actions of the ruling party's cadres. In its briefing to the Observer Group, the Zambia Police Service rejected these accusations, and informed that the Police had contributed significantly to preventing political violence and had acted in an impartial manner. The Police also advised that between 30 May and 5 August 2016, 97 cases of political violence were reported to the Police, out of which 29 arrests had been made. One incident of death of a member of a political party cadre had been recorded at the time of the presentation, and was still being investigated. The Police further provided data to support the assertion that the general crime rate from 2013 to date was on the decline. However, they were unable to disaggregate the data on politically motivated crime from that of other offences, leaving the picture unclear.

### **Ethnic and Regional Politics**

The Group noted with concern the escalating pattern of ethnic-centred politics in these elections. It was observed that although politicians have repeatedly sought to appeal to particularly ethnic or regional groupings since the introduction of multiparty politics in 1991, the level and degree to which this has been exploited were more pronounced in these elections.

## Application of the Public Order Act (POA)

The implementation of the POA featured prominently throughout President Sata's presidency, and continued to be an issue in 2016. The POA was not an innovation of the PF Government as it was a piece of colonial legislation that had been put in place by the British administration in 1955, to exercise greater political control by restricting freedoms. This Act was inherited and used by successive regimes to thwart the activities of political rivals.

Nonetheless, during President Sata's leadership, civil society, opposition political parties and other relevant stakeholders complained that there was a significant increase in the enforcement of the Act by the PF Government. The issue, they advised, was not with the Act itself, but with its interpretation and application, especially by the Police. Whereas the Act calls for notification to Police prior to holding public meetings or rallies, the Police were said to interpret it unfairly to mean seeking permission to hold a meeting or a public rally.

In these elections, it was alleged that this legislation was used to curtail the freedoms and rights of opposition political parties, notably freedoms of association, assembly and expression. The ECZ issued a public statement in March 2013 condemning the Police for their actions with regard to the enforcement of the Act.

In 2013, the Law Association of Zambia (LAZ) filed a petition with the High Court to challenge the constitutionality of certain provisions of the POA on grounds of its susceptibility to misinterpretation and manipulation (*The Law Association of Zambia v The Attorney-General*). The LAZ alleged that using the Act, members of opposition political parties were often prevented from holding meetings and were sometimes arrested, imprisoned for several days or weeks without charge, and/or violently disbanded if they held meetings without Police approval.

In a statement dated 3 June 2016 in response to the Supreme Court's judgement on this case, the LAZ pointed out two positive aspects of the ruling: the fact that the Court had agreed that the POA had been implemented in a biased manner in Zambia; and the Court's finding that where the Police took the position that a public meeting must be rescheduled due to lack of capacity to monitor the event, an alternative date for the event must be given in the shortest possible time. LAZ was however disappointed that the ruling did not find the discretionary powers of the Police under the Act unconstitutional. The relevant parts of the statement read:

*"...the Supreme Court agreed with LAZ that there are clearly issues with the biased manner in which the POA is implemented in Zambia. LAZ had hoped that the Supreme Court would have gone further by finding the discretionary powers under Section 5 of the Public Order Act, under which the Police Service has a wide discretion over when and how public assemblies take place, are contrary to the constitutional provisions on freedom of expression and freedom of assembly. LAZ*

*wishes to reaffirm its position that the POA in its current form is undesirable in a democratic state...”<sup>2</sup>*

The Group noted that allegations of Police bias continued in the lead up to the 2016 elections, increasing distrust in national institutions. However, the Group observed that the frequency of allegations of the use of the POA to block meetings reduced during the campaign period, which officially commenced in May 2016.

When the Group engaged with the Zambia Police Service on the misuse of the POA, the latter dismissed the allegations of bias, affirming that its officers were expected to ‘abide by the law, uphold human rights, and maintain impartiality throughout the electoral process.’ The Police further stated that where rallies had been prevented from being held on a particular day due to a clash with an existing and previously scheduled rally in the same vicinity, they had advised that the rally be rescheduled.

## **Constitutional Review**

The revision of the Constitution (Constitution of Zambia Amendment Act no 2 of 2016) introduced some major changes that affected the conduct of the electoral process. It introduced a 50% +1 threshold for the Presidential Election, required presidential candidates to have a vice-presidential running mate, introduced direct election of Mayors and Council chairpersons, and a minimum Grade 12 certificate requirement for candidates seeking political office. The introduction of the required Grade 12 certificate resulted in a number of politicians being disqualified from the race.

The revised Constitution necessitated the revision of about 33 subsidiary pieces of legislation. Unfortunately, due to time constraints, only two election-related bills were tabled in Parliament before its dissolution: the Electoral Commission of Zambia Bill of 2016 and the Electoral Process Bill of 2016. These two bills were adopted by Parliament late in the evening on the day Parliament was dissolved (11 May 2016). Civil society groups said they believed these bills were rushed and did not benefit from sufficient consultation given that they were tabled less than two weeks before the dissolution of Parliament. Some stakeholders indicated to the Group that the amendments to the Constitution exacerbated a climate of political uncertainty ahead of the elections.

## **Zambia and the Commonwealth**

Zambia has played an active role in the Commonwealth: in 1979 it hosted the Commonwealth Heads of Government Meeting, which adopted the seminal Declaration on Racism and Racial Prejudice. Former President Kenneth Kaunda was one of the leading figures in the Commonwealth for many years, particularly active in the Commonwealth’s campaign against apartheid in South Africa.

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<sup>2</sup> The LAZ statement dated 3 June 2016 on the Supreme Court’s Judgement on the Public Order Act is available on their website: <http://www.laz.org.zm/>



In the lead-up to the 2016 General Elections, Commonwealth Secretary-General, Rt Hon Patricia Scotland QC, appointed Professor Ibrahim Gambari as her Special Adviser on Political Dialogue to the ECZ. The appointment was made in consultation with the ECZ. Professor Gambari, a former Nigerian Minister of Foreign Affairs and senior United Nations diplomat, supported the ECZ in its efforts to enhance trust and promote a conducive and peaceful environment ahead of and directly following the polls.

## **Chapter 3**

### **ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION**

#### **Background**

On 11 August 2016, Zambians voted in General Elections, for the President, a 156-member National Assembly, and over 1,600 Local Government Councils. In addition, for the first time, Zambians also directly elected Mayors/Council Chairs. A Referendum on the constitutional Bill of Rights was also presented. These elections were the 6th General Elections held in Zambia since the introduction of multi-party democracy in 1991.

In Zambia, executive power rests with the President, who is the Head of State, Head of Government and Commander-in-Chief of the armed forces. The President is elected for a five-year term and can serve a maximum of two terms in office. The President is elected in a single national constituency.

As a result of the January 2016 amendments to the Constitution, a successful presidential candidate requires over 50 per cent of valid votes cast in order to be duly elected. In the absence of the required majority, the two leading candidates go forward to a second round of voting no later than 37 days from the official declaration of results. No thresholds exist in the second round; whichever candidate gets the majority of votes cast is declared the winner.

Legislative powers are vested in the unicameral National Assembly. Following the establishment of 29 new districts by the late President Sata in 2014, the number of districts increased from 74 to 103. Consequently, the Electoral Commission conducted a delimitation exercise in 2014; six new constituencies were created. The National Assembly now consists of 156 elected members. However, the President retains the right to appoint up to eight non-constituency Members of Parliament. The 156 members are elected for a five-year term from single-member constituencies on the basis of the first-past-the-post system.

#### **Legal Framework and International and Regional Commitments**

Zambia's Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association, and participation in elections. The following national laws provide the legal and regulatory framework for the conduct of these elections:

- The Constitution of Zambia Act No. 18 of 1996;
- The Constitution of Zambia (Amendment) Act No. 2 of 2016;
- The Electoral Process Act No. 35 of 2016;
- The Electoral Commission Act No. 25 of 2016;
- The Referendum Act No. 13 of 1994 (as amended by Referendum Act no. 5 of 2015);
- The Penal Code Act No. 5 of 1972 (as amended);

- The Public Order Act No. 10 of 1959 (now No. 30 of 1996 as amended);
- Electoral Regulations of 2016; and
- Constitutional Court Act of 2016.

In addition, Zambia has signed or agreed to some significant regional and international instruments and commitments relevant to the conduct of elections.

These include:

- The African Charter on Human and Peoples Rights;
- The African Union Declaration on the Principles Governing Democratic Elections in Africa;
- The Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of all forms of Discrimination Against Women;
- The International Convention on the Elimination of all forms of Racial Discrimination; and
- The Commonwealth Charter.

### **The Electoral Commission**

The Electoral Commission of Zambia (ECZ) is established in accordance with Article 229 of the Constitution, and the Electoral Commission Act No. 25 of 2016. According to the Constitution, the Commission shall: "implement the electoral process; conduct elections and referenda; register voters; settle minor electoral disputes, as prescribed; regulate the conduct of voters and candidates; accredit observers and election agents, as prescribed; and delimit electoral boundaries." The Chairperson of the Commission is the Returning Officer for the Presidential Election.

The ECZ is comprised of a Chairperson, Vice-Chairperson and up to three other members, appointed by the President and subject to ratification by the National Assembly. The Chairperson must have held, or be qualified to hold, high judicial office. All members of the Commission are appointed for seven-year terms, which may be renewed. The current Chair is Justice Esau Chulu who was appointed in April 2015. Prior to joining the Commission, Justice Chulu was an Advocate of the High Court and Supreme Court of Zambia.

Under the oversight of the Commission is a Secretariat, headed by the Director of Elections, who manages the operational aspects of elections. The Commission appoints the Director of Elections. The current Director of Elections is Ms Priscilla Isaac, who has served in the Commission for more than 16 years and has been Director of Elections for five years.

Although prescribed by the Constitution (as amended), at present, the Commission does not have the requisite decentralised permanent structures. As with previous elections, for the 2016 elections, local government officers were temporarily appointed as Provincial Electoral Officers. Town Clerks or District Council

Secretaries were temporarily appointed as District Electoral Officers with responsibility for coordinating electoral preparations in District and Local Government structures for the purpose of administering the polls.

### **Eligibility Requirements for Voting and Voter Registration**

The eligibility requirements for voting in Zambia are that a person must have a national registration card and a voter registration card. To be registered, a person must be a citizen of Zambia, at least 18 years of age and possess a national registration card. All persons registered are issued a voter's card. The National Identity Unit within the Ministry of Home Affairs issues the national registration card. The Electoral Commission issues the voter registration card.

The Electoral Process Act No 35 of 2016 prescribes continuous voter registration. Voter registration in Zambia is based on a digital capturing of a voter's biometric and biographical data, photo and thumbprint. For the purpose of the 2016 General Elections, the process for compiling the data for the register occurred in two phases. In advance of the registration exercise, the Central Statistical Office of Zambia estimated that the total number of eligible voters was 7,528,091 based on the projected total population of 15,933,883.

From 14 September to 11 November 2015, the Commission conducted a mobile registration exercise, deploying to 7,809 registration centres, registering new voters and facilitating amendments to existing voter details. Following the mobile registration exercise, from 10 December 2015 to 31 March 2016, the Commission continued voter registration at District Council offices.

A provisional register was displayed from 15 to 21 May 2016 in 7,700 registration centres, during which those that had registered could verify and confirm their details. The final register was certified on 31 July 2016. For the 2016 General Elections, there were 6,698,372 registered voters, with the following gender disaggregation: 3,372,935 women and 3,325,437 men. In addition, according to the Electoral Commission, it was estimated that there were approximately 1.6 million new voters, most of whom were young people.

### **Candidate Eligibility and Nomination**

#### *Presidency*

To qualify as a presidential candidate, one must: be a citizen by birth or descent; be ordinarily resident in Zambia; be at least thirty-five years old; obtained, as a minimum academic qualification, a Grade 12 certificate or its equivalent; declare assets and liabilities, as prescribed; pay the prescribed election fee; be fluent in the official language; and be supported by at least 100 registered voters from each Province.

For the 2016 elections, there were nine presidential candidates, one of whom was a woman.

For the first time, at nomination, each presidential candidate was required to name a person as their vice-presidential running mate.

### *Parliament and Local Council*

The same nationality, registration and education criteria as for presidential candidates apply to parliamentary candidates. However, they must be supported by at least 15 registered voters in the constituency in which they are standing for election. Candidates can be sponsored by political parties or stand as independents. For these elections, there were 651 parliamentary candidates, of which there were 106 female candidates contesting.

At the local council level, similar nationality and education criteria as specified for parliamentary candidates apply. However, candidates should also be at least 19 years of age, a citizen or holder of a resident permit, or resident in the district in which they are contesting and a certificate of clearance showing payment of council taxes. For these elections, at the mayoral and council chairperson level there were 331 candidates of which there were 45 female candidates, and 4,566 candidates as councillors of which there were 415 female candidates.

### **Boundary Delimitation**

Article 58 of the Constitution (as amended) states that the "Electoral Commission shall, at intervals of not more than ten years, review the names and boundaries of constituencies and wards."

Further, Article 59 of the Constitution (as amended) states that "The Electoral Commission shall, in delimiting the boundaries of constituencies and wards, take into account the history, diversity and cohesiveness of the constituency or ward; have regard to population density, trends and projections; ensure that the number of inhabitants in each constituency or ward is reasonable, taking into account the means of communication and geographical features; ensure that constituencies and wards are wholly within districts; and seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated areas."

Article 58(7) of the Constitution (as amended) further stipulates the Constitutional Court is to review decisions of the Electoral Commission on the delimitation of boundaries of constituencies and wards. As earlier indicated, the Electoral Commission conducted a delimitation exercise in 2014, and in 2016 the National Assembly adopted and created six new constituencies. Zambia is currently divided into 156 constituencies for the purpose of the national Assembly elections.

### **Complaints, Appeals and Election Petitions**

Article 113 of the Electoral Process Act No. 35 of 2016 empowers the ECZ to manage electoral conflicts and resolve disputes. In pursuance of its mandate, the Electoral Commission established Conflict Management Committees. These Committees, established at the district level, are comprised of political parties, civil society

representatives and security personnel. The National and District Conflict Management Committees have powers to: mediate electoral conflicts; advise the conflicting party in an election conflict; and recommend the revocation of accreditation of any monitor or observer to the Commission. The Committees also determine allegations of alleged bias against electoral officers appointed by the Commission.

While the Committees have overriding powers and responsibilities to mediate electoral conflicts, there are limitations. These Committees do not have judicial powers, cannot disqualify the candidature of any person participating in the elections, cannot declare or announce the election results, cannot order the recount of votes in case of a dispute over election results and cannot fine or imprison an offender.

In addition, the Electoral Process Act of 2016 incorporates a Code of Conduct, which binds political parties, candidates, and their supporters regarding conduct throughout the electoral process. The Act also outlines election offenses liable for prosecution. These offenses include illegal and corrupt practices, such as: bribery; treating; undue influence; personation; illegal voting; false statements; and intimidation. These offenses are punishable by a fine and/or imprisonment.

Election petitions may be presented for all elections. Presidential election petitions are to be presented to the Constitutional Court. A voter, candidate or the Attorney General may present a presidential petition. The petitions must be submitted within seven days of the official declaration of results, and the Constitutional Court has 14 days to hear the petition.

National Assembly election petitions are presented in the first instance to the High Court. An aggrieved candidate, a registered voter or the Attorney-General may present a National Assembly petition. Parliamentary petitions must be submitted within 14 days of the official declaration of results. The court of first instance has 90 days to hear a petition. Decisions of the High Court may be appealed to the Constitutional Court. All petitions are heard in open court.

For local government elections, petitions are presented to *ad hoc* tribunals established by the Chief Justice. These tribunals are presided over by a magistrate and two legal practitioners appointed by the Chief Justice. An election petition should be heard within thirty days of filing. The decision of a local government elections tribunal may be appealed to the Constitutional Court.

### **National Referendum**

On 5 January 2016, the National Assembly of Zambia assented to amendments of the Constitution. However, according to the Constitution, any amendment to the Bill of Rights or Article 79 requires a Referendum.

With the acceptance of the amendments to the Constitution, alterations to the Bill of Rights and to Article 79 were proposed. The Bill of Rights sets out the fundamental

rights and freedoms of every Zambia citizen, while Article 79 of the Constitution outlines the process and parameters for amending the Constitution.

Under Article 79 of the Constitution the eligibility requirement for voting in a Referendum states that the individual “must be entitled to be registered as a voter.” According to Article 8 of the Electoral Process Act No 35 of 2016, a person qualifies for registration as a voter if that person is a citizen of Zambia, is at least 18 years of age, and in possession of a national registration card. The threshold for success requires that more than 50 per cent of eligible voters must vote yes.

The proposed amendments for Article 79 include alterations to the above stated eligibility requirements, the threshold for success, and the Constitutional provisions that require a Referendum in order to be amended. Regarding the amendments to the Bill of Rights, additional provisions were included such as free primary and secondary education, gender equality, increasing the age of consent for marriage to 19, further rights for persons with disability, young people and children.

The Referendum question states: *“Do you agree to the amendment to the Constitution to enhance the Bill of rights contained in Part III of the Constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?”*

Consequently, in addition to the four ballots voters were to receive, they also received a fifth ballot for the Referendum.

### **Inclusive Participation and Representation**

The Commonwealth Charter and international human rights instruments recognise that gender equality, access and political participation of people with disabilities and women’s rights are essential components of human development and basic human rights. In Zambia, these instruments provide the linkage between good governance and more inclusive political participation as a means of achieving sustainable democracy.

#### *Gender*

Zambia’s legal framework seeks to promote equal representation and participation of women in decision-making processes. This is underscored in Section 24 of The Gender Equity and Equality Act of 2015, which explicitly seeks to give effect to Zambia’s international and regional gender commitments including the SADC Protocol on Gender and Development. According to 2010 census figures, women represent 50.7 per cent of the total population. For these elections, according to the Voter Register, women comprised 3,372,935 registered voters, representing 50 per cent of eligible voters.

Women’s equal participation and representation in the electoral process relates to various roles, that is, as voters, as candidates, as political party members, agents and leaders, as monitors/ observers or as officials within the national electoral machinery, the Electoral Commission of Zambia.

Zambian women remain significantly under-represented in the National Assembly. In the last Parliament, of the 150 members there were only 22 female members, representing 14 per cent. At the Presidential level, only one of the nine candidates was a woman, while three of the nine vice-presidential candidates were women. At the National Assembly level, of the 651 candidates, only 106 were women and of the 106 female candidates, 11 were running as independents. At the Mayoral and Council Chairperson level, of the 331 candidates, 45 were women.

### *Youth*

The Zambian Government defines youth to include those between 15 to 35 years of age. According to the 2010 Census report, young people represent 37 per cent of the population. For these elections, young people between ages 18 and 35 comprised 3,623,401 registered voters, or 54 per cent. Additionally, youth participation in the electoral process as party agents, elections officials and as observers was quite high.

### *People with Disabilities*

The proposed amended Bill of Rights aims, amongst other things, to enshrine rights for people with disabilities. For the 2016 General Election, the Electoral Process Act No. 35 outlined provisions for facilitating the participation of people with disabilities and those requiring assistance to vote. Voters with disabilities could select a person of their choosing to assist them or have an Election Official assist them.

## **Key Issues**

### *1. Electoral Reform and the Legal Framework*

On 5 January 2016, the Constitution of Zambia Amendment Act No. 2 of 2016 was assented to by the National Assembly. This Act was the culmination of a 12-year constitutional review process. Consequently, the 11 August 2016 General Elections were the first elections conducted under the revised constitutional framework.

The Constitution (as amended) introduced new elements into the electoral system and processes. Examples of some of these include: the 50% +1 provision for the Presidential Elections; the education qualification for standing for elections at Presidential, National Assembly and Local levels of government, which required candidates be in possession of a Grade 12 certificate or its equivalent; the direct elections of Mayors and Council Chairpersons; and the creation of six new constituencies.

As a result of these new elements, revisions to subsidiary legislation and regulations were required to guide and inform the amended process. On 31 May 2016, the last day of business for the National Assembly, only two of a series of key subsidiary legislation were passed: the Electoral Processes Act No. 35 of 2016 replaced the Electoral Act No. 12 of 2006, and the Electoral Commission Act No. 25 of 2016 replaced the Electoral Commission Act No. 24 of 1996. There are several legal



provisions in the Constitution (as amended) that were not enacted in advance of the elections.

Additionally, the timeline for the delivery of the Constitution (as amended) as well as the associated legislation had implications for the development and delivery of the requisite regulations, which were to operationalise the process.

The compressed timeline for the delivery of the Constitution and the subsidiary legislation was also a source of frustration for stakeholders, with many interlocutors expressing concern and even criticising the constitutional amendment process for being "late and rushed." Many also noted they did not feel able to substantively review and contribute to the final products.

The national legal framework is a critical basis for credible, competitive elections. International good practice advises against substantive changes to the national legal framework six to twelve months prior to an election. This allows the various stakeholders in the process to prepare and participate effectively.

## *2. Electoral Commission*

For the 2016 General Elections, perceptions of the credibility and independence of the Electoral Commission remained a challenge. The criticisms of the Commission centred on its political independence. The Commission was also accused of bias in favour of the ruling party by some political parties.

In advance of these elections, there were some controversial issues that fuelled concerns regarding the operational independence and capacity of the Commission. An example consistently noted by stakeholders was the decision of the Commission on the tendering process for the printing of ballot papers abroad.

According to the Electoral Commission, a Dubai-based company emerged as the preferred bidder for the printing of the ballot papers. Some individuals raised questions regarding how the decision was arrived at and the transparency of the procurement process. In addition, there were several allegations regarding the credibility of the selected company. However, following an internal review, according to the Commission, many of the allegations against the company were found to be without merit. As a result, the Commission maintained its decision to procure the ballot papers from the selected company. Moreover, to demonstrate its transparency, the Commission funded the cost of a political party mission to Dubai, to observe the development, printing process and transportation of the ballots papers to Zambia.

Another highlighted concern of stakeholders centred on the credibility of the register of voters. The underlying issue for most people was the apparent number of deceased people, underage persons, and foreign nationals on the register. According to some estimates, there were more than 400,000 foreign nationals on the register.

In response to this allegation, the Electoral Commission, with funding support from the United Nations, procured the services of external independent auditors to review the register. The Observer Group was informed that on 12 July the findings of the auditors' report were presented to key Zambian stakeholders. According to the final report, there was no evidence to support the allegation of the inclusion of foreign nationals in the provisional register of voters, because all registration records had associated National Registration Card (NRC) numbers, issued by the Department of National Registration, Passport and Citizenship, which conforms to the legal requirement. However, the report did find that 132,837 voters on the register shared NRC numbers, while 2,555 people shared NRC numbers, names and dates of birth.

Finally, the Commission's perceived cautious approach to public relations led to increased suspicion by opposition parties of its impartiality.

### *3. Register of Voters*

As noted previously, the Electoral Process Act No 35 prescribes continuous voter registration. In advance of the 2016 General Elections, the Electoral Commission was unable to establish the national network to achieve this requirement.

A point of note is the absence of an alphabetical index in the register. Some of the confusion on the part of voters and the subsequent delays in the processing of voters observed on Election Day seemed to be a direct result of the absence of such an alphabetical index.

### *4. Candidate Nominations*

In May 2016, during the candidate nomination period, one of the key concerns noted by many stakeholders was the significant increase in the fees required to contest as a candidate at the respective levels. The fee for presidential candidates increased from K20,000 to K75,000.<sup>3</sup> The fee for parliamentary candidates increased from K500 to K10,000. The fee for local council candidates increased from K50 to K1,500 for a candidate in a rural area and K2,000 in an urban area.<sup>4</sup>

Several stakeholders noted the potential prohibitive impact on economically disadvantaged people generally, and, specifically, women and youth who were more likely to contest elections at the local government level. Consequently, the Electoral Commission reduced the fees for candidates at all levels. The fee for presidential candidates was reduced to K 60, 000 and K 7, 500 for National Assembly candidates. The fees for candidates contesting at the mayoral and council chairpersons levels were reduced to K 5,000 and K 2,000 respectively, while the fees for city and municipal councillors was K 750, and K 400 for councillors at the district level. However, the fees for parliamentary candidates remained high.

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<sup>3</sup> K10,000 Kwacha is approximately £770 as of the time of this report.

<sup>4</sup> K1,000 Kwacha is approximately £76 as of the time of this report.

The other issue of concern for many stakeholders was the requirement for a Grade 12 education certificate or its equivalent for candidates contesting at all levels. Although many acknowledged and appreciated the value of and the principles behind the requirement, in the Zambian context, this requirement had far reaching implications for the rights of citizens to stand for elections, especially women at the local government level.

The Zambia National Women's Lobby (ZNWL), a non-governmental organisation that advocates for the representation and participation of women in decision-making, estimated that at least 85 to 90 per cent of aspiring female candidates at the Local Government level were disqualified as result of this requirement. According to the ZNWL, a number of women who were serving as Councillors were effectively prevented from obtaining nominations to contest in the 2016 Local Government Elections.

The ZNWL informed the Group that while they were not opposed to the requirement, seen by many as necessary to strengthen the quality and capability of leadership in Zambia and contribute to higher literacy levels, its implementation should have been phased in gradually or postponed until after these elections.

The Observer Group noted that the Grade 12 eligibility requirement was a barrier for a number of people who would otherwise have been nominated as a candidate particularly at the Local Government level. It was also noted that the education requirement disproportionately impacted older women, who were less likely to have attained grade 12 due to historical gender disparity in education access. However, the Group agreed with the opinion that because the initiative sought to achieve a public good in the long-term, its immediate negative short term impact could have been mitigated by a gradual implementation.

### *5. National Referendum*

The decision to hold a national Referendum in parallel with the General Elections introduced an extra layer of operational complexity.

As noted in the Constitution (as amended), the only eligibility criteria for voting in a Referendum is that the individual be at least 18 years of age and possess a national registration card. Consequently, this meant that individuals not on the voters register could participate in the process. Operationally, to facilitate the participation of all eligible citizens, the Electoral Commission had to establish a system for delineating between those on the register and the unregistered. The Commission introduced an additional stream at polling stations dedicated to unregistered eligible voters, exclusively voting in the Referendum. This subsequently increased the numbers of electoral and security officials required at each polling station.

In addition, as the mandate of the Electoral Commission includes voter education on elections and more broadly on the process, the Commission was obligated to develop a voter education strategy for the Referendum. While general voter education on the electoral process started in 2015, voter education for the Referendum only

began following the passage of the bill in Parliament on 29 May 2016. The Referendum question was formulated and approved by the Office of the President.

Moreover, the complex structure of the question further exacerbated confusion regarding the Referendum. The Referendum ballot in fact combined two distinct questions. The first was about changes to the Bill of Rights in the Constitution. The second was about the repeal and replacement of article 79 of the Constitution. Combining the two issues into one contributed to the complexity of the Referendum question and partly explains the difficulties experienced by some voters.

There was also a suggestion that the choice of symbols - an eye for 'yes'; an ear for 'no' - might prejudice voters, in that, the eye is viewed as a more favourable sign than the ear.

The compressed timeline for the Referendum had an impact on civic and voter education. Consequently, a number of stakeholders raised concerns that the majority of people did not fully understand or appreciate the substance of the issues on which they were to cast their vote.

Lastly, holding the Referendum in parallel with the General Elections led to the politicisation of the referendum issue. A number of stakeholders noted that voters were encouraged to vote 'yes' or 'no' based on the party they were supporting. They noted that holding the Referendum at the same time as a political election created further confusion in the minds of voters. The politicisation of the Referendum diminished its credibility and impact.

## *6. Boundary Delimitation*

One of the key recommendations from the 2011 Commonwealth Observer Group was that "to ensure equal suffrage is provided for, constituency boundaries for the National Assembly need to be reviewed in order to take account of the variation in population size."

For the 2016 General Elections, the variation in population size across Zambia's districts and constituencies remained an issue of concern. To illustrate the discrepancies in population size within constituencies, in the Central Province for example, population ranges from 9,080 in the constituency of Lufubu in the District of Ngabwe, to 103,986 in Kapiri Mposhi constituency, in the Kapiri Mposhi District.

The six newly created constituencies were noted. However, as the above example illustrates, the inconsistencies are still significant and therefore more needs to be done to ensure equal suffrage and access is provided for all citizens.

## *7. Inclusive Participation and Representation*

A number of stakeholders, particularly representatives of women and youth organisations, indicated that the representation of both women and young people remains consistently low at the level of the National Assembly and in Local Councils. While no disaggregation of youth representation was available to the Group, it was noted that women comprised only 14 of 150 Members of Parliament.

The Group noted that Section 24 of the Gender Equity and Equality Act of 2015 mandates the Minister responsible for Gender, in liaison with the Commission for Gender Equity and Equality, to ensure equal representation of both sexes in decision making by formulating and implementing strategies, policies and programmes that achieve this purpose.

However, there are currently no temporary special measures such as the provision of voluntary or mandatory quotas by the State or political parties to redress this under representation. Observers were informed that some of the parties had committed to the SADC principle of 30 per cent women's representation. However, many were unable to fulfil this intention.

In addition, the increase in candidate fees by the Electoral Commission, and the Grade 12 qualification requirement for contesting elections actually decreased opportunities for some women.

The Group was also informed that some women were deterred from standing as candidates owing to the violence and verbal abuse against female candidates. The only female presidential candidate, Edith Nawakwi, President of the Forum for Democracy and Development (FDD) informed the Group that the violence against her had been "immense".

The Electoral Commission was of the view that a significant factor in increasing women's participation as candidates is increased support from political parties, as well as the introduction of quotas. Commission officials also highlighted that women complained that they were facing violence in these elections.

Conversely, women participated actively as voters, election officials and party polling agents. It is commendable to note that the Commission was proactive in appointing women as election officials. Moreover, the Group observed a gender balance among election officials in almost all the polling stations visited.

Another observation was the number of women among party polling agents, often making up a third or half the number of agents. The turnout of women on election days was notable, as they comprised the majority of voters at some polling stations observed.

While it was observed that women and youth participated in significant numbers in the election process, the Group noted with concern that neither women nor young people appear to have equal access and opportunity to contest elections.

## **Recommendations**

### *Electoral Reform and Legal Framework*

- To avoid operational or implementation delays, confusion and potentially conflicting provisions, international good electoral practice advocates that there should not be substantive changes to the legal and electoral framework six to

twelve months prior to an election. It is recommended that a comprehensive electoral processes calendar/timeline is developed and publicised to outline all routine and anticipated elements related to the electoral cycle.

- To ensure that a robust and complete legal framework underpins the electoral process, a review and passage of all outstanding subsidiary legislation and regulation is recommended.
- The statutory and regulatory framework of the Electoral Commission of Zambia as outlined in the Constitution (as amended), the Electoral Commissions Act No 25, 2016 and the Electoral Process Act No 35, 2016 should be reviewed, with a view to enabling the Commission's capacity to fully exercise its administrative and oversight functions in accordance with national provisions and international standards.
- As stipulated in Article 7 of the Electoral Process Act No. 35, 2016, the Register of Voters should be kept under continuous review, to maintain its integrity and accuracy.
- To ensure equal suffrage is provided for all Zambians, a more comprehensive review and delimiting of boundaries is recommended.
- The Electoral Commission, civil society groups, church leaders, other local stakeholders in the democratic process, the Commonwealth and other international partners, should continue to encourage constructive dialogue between political parties, with a view to reducing hostility and violence throughout the electoral cycle. Additionally, political party dialogue structures should be strengthened to build trust in the electoral cycle, and to function regularly, and not just during elections.
- To strengthen the functioning of the Commission, highlight the achievements and identify the weakness, a post-election performance review is recommended.

### *Referendums*

- It is recommended that civic education should be undertaken in sufficient time in advance of any future referendum.
- It is recommended that the development of the referendum question should be done in consultation with other stakeholders, with the aim of promoting a consultative approach and ensuring simplicity of the question.

### *Inclusive Participation and Representation:*

- The Observer Group commends the passage of the Gender Equity and Equality Act (2015), noting, in particular, its progressive provisions on strengthening women's political participation and ensuring gender equality in decision-making processes. We urge the Government of Zambia, political parties, the legislature, the electoral commission, and all relevant stakeholders to play their part in the

implementation of the prescribed measures under this Act, to address the low representation of women as political leaders in Zambia, in subsequent elections.

- We recommend that consideration be given to the introduction of mandatory quotas to increase the representation of women both the National Assembly and Local Councils levels, as one practical measure for achieving a gender balance in decision-making.
- Noting the important role that political parties can play in addressing gender imbalance in political leadership, we urge that political parties in Zambia commit to the necessary measures required to achieve gender balance in their own decision making structures and processes as a starting point, and to address some of the aforementioned identified barriers to women's political participation in Zambia.
- We commend the part played by various women's groups in Zambia in supporting women candidates. We note some of the measures introduced by some groups in this regard, such as the Women Campaign Support Fund Zambia established by the Zambia National Women's Lobby. We encourage the introduction and use of such mechanisms.
- We commend the on-going civic education campaigns, especially those targeting women, youth and the illiterate. We recommend the prioritisation of such campaigns to ensure increased participation of these groups.
- Noting the effect of the increase of candidate nomination fees and the Grade 12 eligibility rule on certain groups, particularly women, we urge the Electoral Commission to review the impact of the following measures on the inclusiveness of the candidate nomination process in the 2016 election, in order to guide the formulation and implementation of future policies or measures:
  - The nomination fees set by the Electoral Commission for candidates at all levels; and
  - The Grade 12 eligibility requirement for contesting elections.

## Chapter 4

### ELECTORAL CAMPAIGN AND MEDIA

#### Election Campaign

The official campaign period for the 2016 General Elections commenced on 16 May 2016, and officially concluded at 1800hrs on 10 August 2016. There are 63 registered political parties in Zambia. Of these, nine parties nominated a presidential candidate as below:

- Patriotic Front (PF): Edgar Lungu
- United Party for National Development (UPND): Hakainde Hichilema
- Forum for Democracy and Development (FDD): Edith Nawakwi
- People's Alliance for Change (PAC): Andyford Banda
- United Progressive Party (UPP): Saviour Chishimba
- Rainbow Party: Wynter Kabimba
- United National Independence Party (UNIP) Tilyenji Kaunda
- Greens: Peter C Sinkamba,
- Democratic Alliance (DA): Maxwell Mwamba

#### *The Conduct of the Campaigns*

Election campaigns are conducted in accordance with electoral laws outlined in Constitutional provisions discussed in Chapter 3. Additionally, the Code of Conduct sets out a framework of certain permissible and forbidden activities during the campaign period. For example, it outlaws violent or inflammatory language or conduct, and false statements about opponents during the campaign. It is expressly provided that public meetings must comply with the Public Order Act (POA), detailed in Chapter 2.

The major focus of all party campaign strategies was the holding of large-scale rallies. Rallies were attended by large numbers of men, women and young people, including children. Additionally, for maximum publicity, parties posted fliers, placards, announcements and billboards in strategic and visible locations in the cities and villages. They also utilised radio adverts, held debates, and engaged in door to door campaigns. The Group observed that the incumbent President's campaign materials dominated in most of the strategic areas, and in campaign messages on public radio and television.

Although political parties had manifestos, the Group observed that, particularly in the context of the presidential campaign, these were often overshadowed by personality politics in speeches and media coverage.

The ruling party, the PF, campaigned on its development record during the period that it had been in power. It launched a number of development projects across the country during the campaign period. The main opposition party, the UPND, focused



its messaging on criticism of the Government for its perceived failure to achieve economic growth and prosperity for the people of Zambia.

There were a number of policy issues highlighted in these elections, especially by opposition parties. Some of these included: the state of the economy, which has been affected largely due to a fall in the price of copper;<sup>5</sup> the devaluation of the Kwacha;<sup>6</sup> reduction in returns from agriculture; unemployment and the need for job creation; inability to provide adequate opportunities in the education sector; failing standards in the health sector; insufficient energy; and poor infrastructure. However, these policy issues were overshadowed by other issues which dominated the campaign period, as outlined below.

## **Campaign Issues**

### *Ethnicity*

According to many stakeholders with whom the Group met, issues of ethnicity were more heightened in these elections than in previous ones. Some stakeholders highlighted the abuse of ethnic differences to mobilise as well as to divide voters, and the polarisation of issues on the basis of ethnic and regional lines rather than on policy matters. The Group was concerned about this development.

### *Use of Public Resources*

The Electoral Process Act No. 35 of 2016 obligates state authorities and the public media to give equal treatment to all candidates. The Code of Conduct outlaws the use of public property or revenues for campaign purposes and criminalising the use of government or parastatal transport or facilities for campaign purposes. This prohibition does not, however, apply to the President and Vice-President in connection with carrying out the duties of their respective offices.

A number of the stakeholders with whom the Group met observed that during the campaign period, the President participated in ceremonial openings or inaugurations of large-scale public works, roads or hospitals that were widely reported in the media, blurring the boundaries between the official functions of the Presidential Office and his position as both the leader of his party and a presidential candidate. In addition, the Group was informed of allegations about public servants using their office to campaign for the ruling party, in violation of the law.

This issue was exacerbated when the President decided to retain his entire cabinet ahead of the elections, which many stakeholders argued was in contravention of the Constitution. The LAZ petitioned the Constitutional Court to review this decision and determine whether the continued stay of ministers and deputy ministers in office after the dissolution of Parliament was legal. On 7 August, Zambia's Constitutional Court ruled that all cabinet and provincial ministers should vacate their posts ahead of the elections on 11 August, as remaining in office was in breach of the law. The

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<sup>5</sup> Zambia depends on copper for over two-thirds of its export revenues.

<sup>6</sup> In the past two years the currency, the Kwacha, has lost around 40 per cent of its value against the dollar.

Court also demanded that all ministers should refund any payments given over this period.

The PF issued a statement following this judgement, highlighting that the decision "gives credence to a robust and independent judiciary that Zambia has where the courts can enter judgements against the state." Similarly, the UPND also issued a statement saying that the Court had vindicated its position that the PF "has been abusing its position during the campaign period in a desperate attempt to hold onto power at any cost."

### *Campaign Finance*

Despite the requirement for regulation of political party funding and campaign financing by Article 60(4)<sup>7</sup> of the amended Constitution of Zambia (amendment) Act 2016, no legislation has been enacted. Therefore, the existing legal framework in Zambia does not currently provide for the regulation of campaign finance or state funding of duly nominated electoral candidates for any election. For this reason, there has been a lack of transparency and accountability with regard to the sources of funding and how this has been spent. This undermines the levelling of the political playing field in Zambia.

### *Security and the Police*

The Constitution of Zambia provides for fundamental rights and freedoms, including freedom of expression, assembly and association.

As earlier noted, the POA requires the Police to be informed of planned meetings at least seven days in advance of the proposed event. Whereas previously, to hold and conduct a rally, a party needed a Police permit, this was changed in 1996 following a Supreme Court judgment that stakeholders were simply required to provide seven days' notice to the Police Service. In spite of this clear provision of the law, many stakeholders observed that the POA has been abused to prevent opposition parties, notably UPND, from holding public rallies.

Additionally, during consultations held with various stakeholders, the Group was informed that, in some cases, the Police disrupted opposition rallies on grounds of undisclosed 'security' reasons, then proceeded to allow the ruling party to hold a public event. As noted in Chapter 2, the LAZ recently reaffirmed its position that the POA in its current form was undesirable in a democratic state.

As highlighted in Chapter 2, in meetings with representatives of the Police Service, the Group was advised that the Police only prevented public meetings in instances

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<sup>7</sup> Zambia Amendment Act [No 2 of 2016] Article 60, sub section 4

(4) The following shall be prescribed with regard to political parties:

- a) the establishment and management of a Political Parties Fund to provide financial support to political parties with seats in the National Assembly;
- b) the accounts of political parties which are funded under the Political Parties' Fund and the submission of audited accounts by political parties;
- c) the sources of funds for political parties;
- d) the maximum amount of money to be used for campaigns during elections; and
- e) matters incidental to matters specified in this clause.

where they had received intelligence of a security threat, where they did not have sufficient resources to provide security at the public event, or where there would be a clash with a previously scheduled rally.

### *Political Violence and Rhetoric*

The campaign environment of the 2016 General Elections was marked by increased instances of hostile rhetoric by candidates, politically-motivated violence by their supporters, and inflammatory media reporting, all of which had an impact on the pre-election environment and the ability of all parties and contestants to campaign without hindrance at all times. Additionally, the perception of the uneven application of the POA by the Police undermined stakeholder confidence in the institution.

Given this disturbing picture ahead of these elections, the Group was particularly pleased to note that the campaigns conducted on the eve of elections were generally peaceful, and that Election Day itself followed this positive trend. However, the Group was greatly concerned and so noted the earlier reports of violence, particularly in the highly-contested Lusaka and Copperbelt provinces, which have a combined total population of one-third of registered voters.

Some of the specific incidents of violence conveyed to the Group included the following:

- Following a fatal incident, the ECZ suspended campaigns in Lusaka and Namwala Districts from 9 to 18 July.
- In Lusaka, it was reported that the Police shot dead a female UPND supporter, who was among hundreds of others who were blocked from marching to a venue for a campaign rally in the Chawama area. The rally had been cancelled by Police who cited security concerns. A Government spokesperson accused UPND supporters of using arms to attack law enforcement officers. The Opposition claimed the marchers were unarmed and peaceful.
- The Group was advised by Police that on 31 July 2016, in Mazabuka District in Southern Province, a young man wearing PF party clothing was killed by six people believed to be supporters/cadres of the UPND. The six were apprehended.

The Police's response to its alleged involvement in some of these issues are highlighted in Chapter 2.

The Group was informed that the political violence was mainly perpetrated by cadres of the rival parties of PF and UPND. The Group also observed a high level of political intolerance between the front runners of the UPND and the PF.

In an attempt to reduce the level of tension, and prevent further violence, efforts were made by various stakeholders, including civil society groups and faith-based organisations, to bring contesting parties together in constructive dialogue.

Notably, the Commonwealth Secretary-General, in consultation with the ECZ, appointed Professor Ibrahim Gambari, former Foreign Minister of Nigeria and senior UN diplomat, as the Commonwealth Special Adviser on Political Dialogue. This engagement aimed to help moderate and facilitate a dialogue platform for political party leaders before, during and after the elections. Working with the Electoral Commission, Professor Gambari obtained the commitment of five out of nine political parties to peaceful campaigns when they signed a peace pledge on 15 July. With the support of the Electoral Commission, Professor Gambari continued to work with the political parties and with days until the elections, eight of the nine political parties had eventually signed the peace pledge. Unfortunately, UPND remained the only party that did not sign the pledge. The Group was informed by a variety of stakeholders that Professor Gambari's interventions had been very well received and that his role in supporting a peaceful process was highly valued.

## **Recommendations**

- To promote a more level playing field, the legal provisions governing the use of public resources during campaigns, political party funding and campaign financing, need to be clarified and strengthened. The Group noted that despite the requirements for the regulation of political parties funding and campaign financing by Article 60(4) of the amended Constitution of Zambia (amendment) Act 2016, there is no legislation or regulation giving effect to this provision. A review and passage of all outstanding subsidiary legislation and regulation is recommended.
- With respect to consistency in the application and enforcement of the Code of Conduct enshrined in the Electoral Process Act 2016, it is noted that Section 11 of the Code of Conduct empowers the ECZ to take the necessary action, including reporting breaches of this Code to the Police and other authorities where necessary. Consideration should be given to the development of measures and procedures to strengthen the enforcement of the Code of Conduct and accountability by all parties.
- To foster great citizen participation and reverse the trend of voter disillusionment, it is recommended that political parties and candidates focus on concrete policy platforms that share a positive vision for improving the country.
- To demonstrate impartiality and thereby increase public confidence in the Police, it is recommended that the Police exercise their discretionary powers under the POA within the spirit of the freedoms guaranteed under the Constitution of Zambia.
- Particularly during election periods, political parties and candidates must demonstrate leadership through tolerance and condemnation of all forms of violence. Additionally, political parties and candidates must take greater responsibility for the conduct of their supporters (particularly youth) as they are a reflection of the goals and spirit of the party.

- The ECZ, civil society groups and the international community should continue efforts to encourage constructive and systematic dialogue between political parties, with a view to reducing hostility and violence in the election period. It is recommended that initiatives and mechanisms promoting and enabling a peaceful resolution of election-related disputes should be supported and strengthened.

## **Media**

### **Context**

The media sector in Zambia expanded in 1994 when the Zambia National Broadcasting Corporation (Licensing) Regulations opened up the media sector to several new owners and operators, which included commercial, community and religious radio stations. This led to a rise in the number of community radio stations which subsequently mushroomed across the country. However, state media, which includes print, television and radio, continues to dominate the media landscape.

### **Media Environment**

There is a marked polarisation of the media along party lines in Zambia. The main state-owned national broadcaster, the Zambia National Broadcasting Corporation (ZNBC), which enjoys national coverage, is accused by many stakeholders of being aligned with the ruling party. State-owned newspapers are also viewed as campaign tools of the ruling party. The main Government newspapers are The Times of Zambia and Zambia Daily Mail. The Daily Nation and The Post newspaper are both independently owned, however the Daily Nation is largely seen as pro-government and The Post is generally viewed as the only voice which is critical of the Government.

### **Print Media**

The following are the state-owned media in Zambia:

- The Times of Zambia
- Zambia Daily Mail

The independent media comprise the following:

- Daily Nation
- The Post Newspaper

### **Broadcasting**

The state-owned Zambia National Broadcasting Corporation (ZNBC) operates three radio stations: Radio 1, which broadcasts a mix of news, cultural and call-in programmes in local languages; Radio 2, which produces similar programmes in English; and Radio 4, an English language entertainment station.

### **Radio**

There are over 80 independent radio stations across the country. It is the dominant media in Zambia and includes commercial, community and religious stations. Radio reaches many rural communities and in areas where literacy levels are low. Many local radio stations are owned by local communities. Independent radio stations can provide a wider range of views and opinions because they are not controlled by the Government.

## **Television**

The first private television channel began broadcasting in 2004. There are two main television stations in Zambia and some regional broadcasters. ZNBC is state-owned with two stations. Muvi TV, which is privately owned, is a combination of news and entertainment. There is also a growing multichannel pay-television market.

## **Social Media and Messaging Media Services**

There has been a steady growth in web-based media, and this is reflected in the growth of internet bloggers and online news agencies. In the last two years, internet access has grown from approximately 2.6 million users to just over three million in 2016. There are a number of online news agencies which are widely seen as an alternative to traditional print media. The Zambia News Agency (ZANA) is the main provider of domestic news, while the Pan African News Agency (PANA) collects and redistributes news from other African countries.

Overall, social media platforms such as Facebook and messaging media services like Whatsapp have dominated the media landscape in the last six months. This has accelerated access to a diverse media which is seen as a positive development. The Zambian Eye, Lusaka Voice and Zambian Voice are just some of a number of notable new sites.

## **Media Regulation and Laws**

The media in Zambia is regulated through the Electoral Process Act of 2016 and the ZNBC Act (Chapter 154, 1987). There is no functional and effective mechanism through which the media achieves self-regulation. Although attempts have been made to establish a self-regulatory framework under the Zambia Media Council, such a framework has not yet been established.

There are a number of laws and regulations that apply to the media:

- Constitution of Zambia of 2016 (as amended);
- Penal Code Act (Defamation of the President, Section 69);
- State Security Act, Cap III, 1969 (Communication of Certain Information, Section 4);
- Public Order Act, Cap 113 (Penalty for making statements or doing Acts intended to promote hostilities between sections of the community, Section 12); and
- Electoral Process Act No35 2016 Code of Conduct (Section 110).

Section 7 to 9 of the Code of Conduct states that:

“Print and electronic media shall:

Provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period;

Report election news in an accurate manner and not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, sex, political or religious conviction;

Public and private media personnel shall conduct interviews with candidates with fairness both in the style of the interview and in the amount of the time given;

Public television, radio and electronic media shall allocate public air time equally to all political parties and candidates for their political broadcasts”.

The Independent Broadcasting Authority (IBA) was established through an Act of Parliament No.17 in 2002. It became operational in July 2013. Its role is to promote a pluralistic and diverse broadcasting industry. It has the power to grant, renew, suspend and cancel radio and television broadcast licences.

As detailed above, the Electoral Code of Conduct, which is a schedule to the Electoral Process Act, mandates the media to provide fair and balanced coverage to all political parties and their candidates. From the Group’s observations, it would appear that the Code of Conduct had little effect.

While the Electoral Code of Conduct applies to only public media, the ECZ incorporated private media into the Journalist Code of Conduct, which was issued ahead of these elections and was made available on the ECZ’s website.<sup>8</sup>

### **Media Coverage of the Election Campaign**

There is a marked polarisation of the media along party lines in Zambia and this has seemingly led to biased reporting. In 2015, a press freedom watchdog, Freedom House, rated Zambia’s press ‘not free’, citing a number of criminal, defamation and obscenity laws that were being used to restrict journalists.<sup>9</sup>

The Media Institute for Southern Africa (MISA) Zambia Chapter monitored election coverage during the election period. It found that while public and community media stations showed a clear bias towards the ruling party, more coverage was given to the main opposition party on commercial radio stations. Its research revealed that

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<sup>8</sup> [https://www.elections.org.zm/journalist\\_code.php](https://www.elections.org.zm/journalist_code.php)

<sup>9</sup> Freedom House <https://freedomhouse.org/report/freedom-press/2015/zambia>

UPND received more positive election coverage on commercial radio stations compared to PF.<sup>10</sup>

In addition, a lack of a self-regulatory body may have exacerbated biased reporting by the media in these elections. In February 2016, MISA Zambia issued a press statement highlighting the organisation's concerns relating to the high level of political bias in the public media, which is largely seen as pro-government. The relevant text of the statement reads:

*'... it seems all views deemed to be critical of government have been 'blackened out', in order to portray the sitting government in a good light. The public media, particularly ZNBC, Zambia Daily Mail and Times of Zambia should have a character of true public service media which exist to serve the public by providing a platform for participatory democracy, accountability and information dissemination'.<sup>11</sup>*

On 21 June 2016, The Post newspaper, whose reporting has been considered by many stakeholders to have a strong critical voice over the years, was closed by the Zambia Revenue Authority (ZRA) over a K53.8 million (GBP £4.3 million) unpaid tax bill. The Post concedes that it owes money to the ZRA but disputes the amount. The two organisations have been in a longstanding legal dispute. Stakeholders advised the team that other media outlets also owe money to the ZRA but have not faced the same treatment. They were of the view that the move was politically motivated due to The Post's criticism of the incumbent Government.

The Human Rights Commission of Zambia issued a statement in June 2016, appealing to the Government to reconsider the decision to close down The Post newspaper. It stated that The Post had been instrumental in promoting the right to freedom of expression providing checks and balances to various state and non-state institutions as well as promoting transparency and accountability.<sup>12</sup> It should be noted that the Post continued limited publication throughout the election period.

It is the impression of the Group that both public and private media in Zambia have, in some cases, reported events in a biased manner, especially those which have not been in favour of their respective sympathising party.

## **Media monitoring**

There are three main media monitoring bodies operating in Zambia. They are:

- Media Institute for Southern Africa (MISA Zambia)
- Media Liaison Committee
- Press Association of Zambia

During its briefings the Observer Group met with the Media Institute for Southern Africa (MISA) Zambia Chapter. The team was informed that the organisation was

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<sup>10</sup> MISA Zambia Media Monitoring Report 2016

<sup>11</sup> MISA Zambia.org

<sup>12</sup> <http://www.hrc.org.zm>



undertaking a media monitoring project on the coverage of the elections and that it was producing periodic reports online.

MISA has called for the enactment of an 'Access to Information' Bill, which the Government had committed to in 2011, but has yet to add to the legislative agenda.

## **Key Issues**

The Group notes that Zambia would benefit from the presence of a robust and diverse media that could fairly inform issues and choices during elections and hold political candidates to account. A vibrant media, which provides 'fair and balanced reporting', as stated in the ECZ's Electoral Code of Conduct, and forms part of the Journalists Code of Conduct, is critical to an effective and healthy democracy. Zambia's media currently falls short of that standard.

Most stakeholders expressed the view that the media in Zambia was polarised, with outlets demonstrating a clear bias for and against particular presidential candidates and parties. However, the Group notes that the public media should be held to a higher standard of responsibility to provide balanced coverage and equal access to airtime for all political parties.

The Group noted that campaign messages on both private and public media in radio and television were dominated by the ruling party. For example, news bulletins of the state-owned radio and television channels of the ZNBC were dominated by PF at the expense of the main opposition party. The right of voters to have access to a broad range of impartial news was in most cases undermined. The Group is of the view that polarised media reporting may have contributed towards creating a tense situation, mainly between PF and UPND. In light of these observations, the Group offers the recommendations below.

## **Recommendations**

### **Media**

- The ECZ should enforce the Electoral Code of Conduct to address issues of bias and irresponsible reporting during the campaign period.
- In its coverage, ZNBC must ensure proportional access to political parties and candidates in its programming, particularly in news bulletins, which tend to attract more viewers.
- The media should establish a credible, independent, self-regulatory authority that sets out standards and appropriate codes of behaviour for the media. This is necessary to safeguard freedom of expression while holding the media to account in cases where the codes of behaviour are breached. Such a self-regulatory authority must have an effective complaints mechanism to allow members of the public to register complaints against the media where there are legitimate grounds for doing so.

## Chapter 5

### VOTING, COUNTING AND RESULTS

#### Background

On 11 August 2016, polling was scheduled to occur from 0600hrs to 1800hrs and was organised in 7,700 polling stations, which were sub-divided into 10,818 polling streams across the country. The Electoral Process Act provides for an extension of time in case of delays. Polling stations were primarily located within or outside public facilities such as schools, churches and community centres.

A Presiding Officer, supported by an Assistant Presiding Officer and up to four Polling Assistants, staffed each polling station/stream. Unarmed Police officers were also present to maintain law and order. Polling agents, accredited citizen and international observers were also authorised to be present at polling stations.

Each polling station was to contain five colour-coded ballot boxes: for the President, National Members, Mayoral/Council Chairperson, Councillors and the Referendum ballots. Each polling station was to have a separate stream for non-registered Referendum voters.

The law required that political campaigning end at 1800hrs the night before Election Day.

#### Key Procedures for Opening and Voting

The key prescribed procedures for opening and voting are as follows:

##### *Opening of the Polls*

- Voting is officially scheduled to start at 0600hrs
- Prior to the opening of the polls, the five ballot boxes are shown to all-present to confirm they are empty; the boxes are then sealed with numbered seals.

Accredited party polling agents, domestic and international observers are allowed to be present for the opening.

##### *Voting*

- Voters approach the first polling official one-by-one. The voter must present both their National Registration Card and Voter's Card, which are then verified against the register.
- The register is marked and the voter's name and National Registration Card number, as well as the voter's card number, are called out.

- The voter moves to another official who inspects the voter's right thumb to ensure that they have not already voted. The thumb is then marked with indelible ink.
- The voter then proceeds to the next official who records the voter's registration number on the counterfoil of the ballot, stamps the back of the ballot with the official mark of the Commission, and then issues the Presidential and Referendum ballots.
- The voter proceeds to the next official who again records the registration number on the counterfoil of the ballot, stamps the back of the ballot with the official mark of the Commission and issues the National Assembly, Mayoral/Council Chairperson and Councillors ballots.
- The voter proceeds to a voting screen and marks their choice.
- The voter then deposits the ballot papers in the corresponding colour-coded ballot box and exits the polling station.

The Electoral Process Act No 35 of 2016 outlines provisions for assisted voting, enabling a voter requiring physical assistance to vote, by having a person of their choice assist them on Election Day.

### **Assessment of the Opening of the Polls and Voting**

On Election Day, Observers reported a largely peaceful process that was well managed and transparent with voters free to exercise their franchise. Party agents, national, regional and international observers were largely present at the polling stations observed. Turnout of voters was higher at the outset of voting.

*Some of the key observations of the teams were:*

- In most of the polling stations observed, voting commenced on time and these stations were well administered.
- The prescribed layout within polling stations was adhered to, and was conducive for orderly voting. However, in densely populated areas, the compounds surrounding some of the schools, and even polling tents, were too small to accommodate the large queues in an orderly manner. Likewise, inadequate lighting at the commencement of the polls when it was still dark proved challenging for some polling officials in conducting the opening procedures.
- The Team was impressed with the conduct and professionalism of polling officials. Polling officials were competent and diligent in carrying out their duties. It was encouraging to see the large number of young people and women among them.

- In some cases, we witnessed assigned Police personnel assisting the presiding officers in queue management. Their presence was non-intrusive.
- At most polling stations observed, priority was given to people with disabilities, the elderly, the infirm, and pregnant women.
- In some constituencies, there was an appreciable balance of women and men polling officials at the level of presiding officers.
- The register, with few exceptions, accurately reflected the voters who had registered. However, it lacked an alphabetical index locating and confirming the voter's name and registration number. This created confusion amongst voters regarding the appropriate streams, and contributed to the slow pace of voting in some instances.
- The secrecy of the ballot was respected.
- The Group noted the Commission's attempt to simplify the complicated voting process for five elections by using colour-coded ballot papers with corresponding ballot boxes. Furthermore, the Group observed that the polling assistants responsible for guiding voters to place their ballots in the correct boxes played a critical role in facilitating this process.
- Adequate security was provided and order was maintained at most polling stations observed.
- While there were some inconsistencies noted in the application of polling procedures by polling officials, these did not appear to be deliberate.

### **Key Procedures for Closing and Counting**

The key stated procedures for the closing and counting process are as follows:

- The polls were officially scheduled to close at 1800hrs. However, voters waiting in line at the close of poll are allowed to vote and voting continues until the last person in line has voted.
- Following the last voter, the Presiding Officer closes the polling station/stream and starts preparing for the count. Polling agents, citizen and international observers are permitted to witness this process.
- The aperture of each ballot box is sealed and the numbers on each of the seals are reconfirmed.
- The polling station is rearranged to enable a clear view of the count process, with trays organised for the votes of each candidate and for the rejected ballots.
- The Presidential ballot box is opened first and emptied.

- Ballots are counted to determine the total number of used ballots.
- Each ballot paper is displayed to party agents and observers, to confirm the official stamp mark of the Commission.
- Each ballot paper is displayed to party agents and observers to confirm the vote, simultaneously sorted by candidates, and placed in the corresponding tray.
- Ballots for each candidate are counted and tallied for totals votes.
- The Presiding Officer completes the Record of the Proceedings on the Count Form ECZ 18, listing the candidate with the highest number of votes. This Form is witnessed and signed by polling agents and monitors present.
- Upon completion of the count process, the Announcement of Results Form, GEN 12, is completed and is to be witnessed and signed by polling agents and monitors present, following which all results are posted outside the polling station.
- Results are delivered to the Returning Officer at the Constituency centre.

### **Assessment of Closing and Counting**

At polling stations where the Group was present, the vote count was largely transparent, with polling agents, citizen and international observers afforded a clear view of the entire process.

*Some of the key observations of the teams were:*

- In some instances, due to the late start and long queues, a few polling stations did not start the count until late in the evening. As a result, in some cases, the count continued into the following day.
- Where Commonwealth Observers were present, the close and count process was largely transparent and inclusive, with candidates, party agents, national, regional and international observer groups welcomed to observe the process.
- To demonstrate their commitment to the transparency of the process, many polling officials slowly and deliberately communicated every aspect of the counting and tallying process to party agents and observers.
- In some cases, however, the application of the counting processes appeared inconsistent. This seems to suggest that training of polling staff in those particular areas may have been inadequate.

- The conditions for the count were not always conducive. For instance, in some areas it was quite dark by the time the count was completed. Although officials were provided with battery-operated lamps, these did not provide adequate lighting in all cases.
- The Police were visible to ensure the security of the process, and their presence was unobtrusive.

### **Key Procedures for Results Tabulation: Constituency Totalling Centre and National Results Centre**

The key stated procedures for the results tabulation process from the constituency totalling centres to the national centre are as follows:

- Both the GEN 12 and ECZ 18 Forms are provided to the Returning Officer.
- The Returning Officer verifies the completeness and consistency of the results as recorded on GEN 12 and ECZ 18.
- The Returning Officer announces the polling station results within the totalling centre by reading out the GEN 12, which is captured on a wall by the Assistant Returning Officer.
- Utilising the GEN 12 and ECZ 18, the Assistant Returning Officer enters the votes obtained by each candidate in the Results Management System. The Results Management System runs on laptop based kits, utilising satellite modems for transmission of results to the Head Office (the National Results Centre <sup>13</sup>).
- After capturing at least five polling stations results, the Assistant Returning Officer prints and hands-out Provisional Records of the Proceedings, ECZ 19 to all polling agents, monitors and observers present.
- The Assistant Returning Officer scans the GEN 12 (Presidential Elections only) on to the Results Management System.
- Upon receipt of all results from all polling stations within the constituency, a complete ECZ 19 is printed and handed out to all polling agents, monitors and observers present.
- Once the ECZ 19 is verified, the Assistant Returning Officer sets the polling station results in the Results Management System as 'Closed for Capture.'
- The Assistant Returning Officer prints the consolidated constituency results, the Announcement of Results of the Totalling GEN 13 and ECZ 19.

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<sup>13</sup> For the 2016 General Elections, the National Results Centre was established at Mulungushi International Conference Centre. At the Centre servers were configured for the receipt of the results from the Totalling Centres. There were also fax machines receiving the faxes of the Totalling Centres.

- The Returning Officer signs the GEN 13 and ECZ 19 and invites party agents, monitors, and observers present to also sign the forms. The Returning Officer should give a copy of the signed GEN 13 and ECZ 19 to each of the party agents, monitors, and observers present.
- The Returning Officer announces the results by reading out the GEN 13 form.
- The Assistant Returning Officer scans the signed GEN 13 and ECZ 19.
- The Assistant Returning Officer transmits all the results captured and scanned to Head Office, using the Results Management System via satellite.
- The Returning Officer completes the GEN 13 and pastes the results outside the Totalling Centre.
- The Returning Officer then faxes the GEN 13 and ECZ 19 to Head Office.
- At the National Results Centre, upon receipt of the figures through the Results Management System, the Assistant Returning Officer verifies them against the scanned GEN 13 and ECZ 19 forms. This process is witnessed by one Polling Agent of each of the candidates.
- The Electoral Commission then receives and verifies the results, which are also verified by party agents.
- The Commission authorises the announcement and release of the results.
- Upon receipt and verification of the results from all constituencies, the Returning Officer (ECZ Chairperson) declares the results.
- Results are displayed on the screens, website and social media. Printed copies are also provided to the media, monitors and observers.

### **Assessment of the Results Tabulation - Constituency Totalling Centre and National Results Centre**

The Group notes that the results process is one of the most sensitive aspects of any election. As such, the process for accounting and delivery of the results must be clear and transparent. The Group heard concerns around the integrity, transparency and the lack of clarity on key procedural aspects of this process.

By design, electronic results management systems are not easily visible and traceable, unless results transmission transactions are reflected on screens as they happen for all to experience and observe. Consequently, observing and commenting on the results tabulation and transmission phase can be a challenge, as Observers cannot independently verify and thereby attest to the accuracy of the data transmitted.

In addition, lack of clarity regarding the usage, and distribution of the GEN 12 and ECZ 18 forms, is a point of frustration and concern for several key political stakeholders. It is the hope of the Group that the Commission will continue to be transparent and responsive to all key stakeholders.

## **Overview of the Countrywide Observation**

Commonwealth teams were deployed to eight of the ten Provinces of Zambia including Lusaka. Our teams observed the voting, counting and results tabulation. They also met with electoral officials, observers and other stakeholders at the constituency level to build a broader picture of the conduct of the process. The following are some of the observations they made in their respective deployment locations.

### **Copperbelt Province (Ndola)**

- The Team witnessed a largely peaceful atmosphere on Election Day. There were long queues but these were relatively orderly, with voters waiting patiently. Electoral officials at the stations appeared to systematically check voter registration, and were generally helpful and vigilant.
- On Election Day, Police officers were adequately deployed, one per each stream at polling stations; officers acted appropriately, were non-intrusive, and were often helpful to the process, for example by directing voters to the correct streams.
- The lack of uniformity in the set-up of polling stations, due to varying sizes of rooms or space available, and an inadequate supply of ballot boxes, resulted in some voters having to cast four votes in one room and to cast the Referendum vote in another. After waiting in long queues to cast the first four votes, some refused to cast the last one.
- The counting of ballots at polling stations visited was done transparently in the presence of observers and political party representatives. The process at the tallying centres visited on 12 August appeared to be carried out systematically, in a transparent manner with observers and party representatives present. However, the Team was unable to verify the accumulation of the votes from each tally centre with the number of votes eventually declared.

### **Copperbelt Province (Kitwe)**

- The desire of people to vote was evident on Election Day due to the large and early turnout of voters, with many patiently waiting in long queues.
- There was a significant disparity in the number of registered voters within a constituency and per polling station. For example, one polling station observed had 90 registered voters while another had more than 5,000.



- It was noted that not every eligible official obtained a Certificate of Authorisation to vote. However, from what was observed this was a tiny minority.
- At polling stations observed most officials were women.

### **Eastern Province (Chipata)**

- Almost all polling stations visited opened on time, with large crowds already in the queue waiting to cast their ballots.
- Polling agents of all the major parties, monitors and observers were present at almost all polling stations observed. The composition of electoral staff was balanced between men and women, with women being presiding officers in some of these polling stations. Unarmed Police officers were also present at all polling stations visited but their presence was non-intrusive.
- In many of the polling stations visited in the rural settlements it appeared that there were more women voters compared to men, underscoring the importance of the participation of women in national civic processes.
- The Counting process, albeit very transparent, was slowed down by the scrutiny of each ballot by polling agents. As a result, counting took the whole night, with results only being posted at about 12h00 on 12 August, the following day.

### **Luapula Province (Mansa)**

- Ahead of Election Day, the atmosphere appeared calm and there was confidence in the preparation for polling. The Team observed no signs of fear or intimidation in the areas covered. The Police appeared to have a good level of preparedness and the observer team was informed that all streams were assigned an officer, with officers on call if trouble spots arose. The Police informed the team that no significant incidents had occurred in the lead up to the elections.
- On Election Day, most polling centers opened on time with long queues prior to opening, which continued throughout the morning in a number of cases. There was a peaceful, calm and orderly atmosphere without exception, and people were clearly eager to exercise their right to vote. Polling officials were knowledgeable of the process and procedures except in very few cases. Party agents and citizen observers were present in all polling stations - most visible were UPND and PF. Security personnel were present and visible in all stations visited except one.

- More women than men were voting, and it was evident that many were young women. A majority of polling staff were women, however, Presiding Officers were primarily male where the Team observed.
- There were voters in most centres requiring assistance due to age and/or illiteracy. In most cases polling staff rather than relatives provided assistance.
- The Referendum streams were very quiet. The Team observed that most voters in the Referendum were young people. Many voters - especially the elderly and illiterate - neither understood the Referendum process nor the Referendum question. Polling staff provided explanation and education as far as possible.
- The closing and counting was transparent and open, and procedures and processes were generally followed. One instance of concern was that party agents and citizen observers were asked to and did participate in the counting, handling ballot papers for the purpose of counting and verifying the vote.
- The consolidated results were posted outside the polling station at approximately 0600hrs on Friday 12 August, and signed by all party agents and citizen observers present.
- One of the tabulation centers was well organised and efficient. The other was not at the same standard. For example, in the second centre, few results were being displayed and for those that were, it was unclear which election the results referred to.

## **Lusaka Province**

- At 0545hrs on polling day there were already long queues with some voters informing us that they had been waiting since 0300hrs. A few of the polling stations observed did not open promptly at 0600hrs.
- Many of the buildings used had no electricity and as it was still dark at the opening of the polls and before then, poor visibility made it difficult for the first few voters to cast their ballot. The ECZ official also had some issues reading the voter register.
- The Team witnessed only one incident in which the Police had to be called in for crowd control. This was due to overcrowding at a busy polling station and a small group of people exacerbating the situation. The Police quickly restored order without incident, and voting resumed as normal.
- The counting of votes started late as ECZ officials wanted to ensure that everyone in the queue had cast their ballot. Once the box had been checked by all party officials present, it was opened and every vote had to have unanimous agreement as to who it was cast for. In this way the counting process was very transparent and fair.

- The Team also witnessed a political rally held by PF following the announcement of results. The crowd numbered an estimated 50,000. The atmosphere was a celebratory one. Speakers who addressed the crowd, including President Lungu, called for peace and reconciliation with the UPND supporters.

#### **Northern Province (Kasama)**

- Polling officials at all polling stations visited were well-trained and knowledgeable professionals. At most polling stations observed there was a good mix of men and women serving as officials, and a good number of them were young people. The consultative manner in which they engaged with party agents and local observers and monitors was notable and is to be commended.
- The register of voters had no alphabetical index and this made locating and confirming the voter's name and registration number unduly slow. The Team observed four people at three polling stations, with both required cards but whose names could not be found - they were denied votes and sent off to the Referendum only stream.
- Generally, there appeared to be lack of understanding about the Referendum especially in the rural areas, where voters frequently sought the guidance of polling officials about it.
- The ballot counting observed was meticulously done - efficient, transparent and inclusive of the party agents and local observers. Police officers at each station were unarmed, observant, relaxed and friendly.
- Political party agents, local observers and monitors made a significant contribution to the election process. They were friendly and cooperated amongst themselves. They frequently assisted the polling officials to find names in the register, and they engaged constructively when a problem arose with a voter's registration.

#### **North-Western Province (Solwezi)**

- One of the polling stations observed had 11,500 registered voters and 12 streams; the turnout of voters was high, particularly at the start of the day. Voting was slow but voters waited patiently in extremely long queues in order to exercise their franchise. Due to the multiple streams and large number of registered voters, voting continued late into the evening.
- There were accessibility issues at some polling stations observed but polling officials assisted the elderly, frail and incapacitated.
- Candidate agents, national, regional and international observers were largely present at the polling stations observed.

- Although it did not appear deliberate, standard procedures were not consistently applied at a few polling stations observed.

### **Southern Province (Livingstone)**

- On the eve of the elections, the team witnessed the deployment of polling officials and security officials from the town's Civic Center to the 68 Polling Stations in Livingstone. The Returning Officer explained that these officials would all be sleeping at the polling stations guarding the materials until election day the next day. They were equipped with their suitcases and blankets.
- On election day, the team observed long queues in some polling stations. A presiding officer in one such station in the District of Mwaata informed the team that it was the largest voter turnout he had seen in three elections.
- It was very refreshing to note that all the political agents in the stations visited had colour voter registers complete with photographs of the voters since some political parties had earlier complained to the Group in its earlier briefings that they did not have copies of the voter register as yet.
- Opening procedures were duly followed. Ballot boxes were transparent and demonstrated to be empty. The boxes were sealed and the serial numbers on each seal announced. Voting generally appeared to proceed smoothly.
- However, the Team came across some incidents where voters refused to take the Referendum ballot. One presiding officer informed the team that as he was having difficulty getting the voters to accept them, he threw them in the ballot box.
- Where the team was present for the close of polls, the process again proceeded smoothly. However, a number of Police officers and polling assistants turned up shortly after the close of polls with 'Certificate of Authority to Vote'<sup>14</sup> and the poll was reopened to allow them to vote, except one who had forgotten his voter identification card.

### **Western Province (Mongu)**

- Generally, the polling stations in Mongu opened on time. However there were five polling stations in the Nalolo constituency, at which voting did not start until 1400hrs.<sup>15</sup> The Team was informed that these polling stations were located in remote parts of the constituency. Poor terrain and a sandy road network made access difficult. The team was informed by the District Electoral Officer that trucks transporting the ballot boxes and papers had

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<sup>14</sup> This is the document issued by the Returning officer to a person unable to vote at the polling station at which they are entitled because s/he are employed in an official capacity for election duties at another polling station.

<sup>15</sup> These are Silwana, Namabunga, Kaanda and Mapungu polling stations.

gotten stuck in the sandy plains despite the teams having been dispatched on 8 August 2016. Furthermore, the rescue team dispatched to assist the officials also got stuck, further complicating the process of electoral material delivery.

- The Boma Ministers' Hall in Mongu town was where the tallying for Mongu central constituency took place. Tallying of results did not commence until 1100hrs on 12<sup>th</sup> August 2016. This was to allow the poll officials some time to rest as well as allow their colleagues from the out of town stations to travel to Mongu town.

## Presidential Results

Candidates	Affiliations	Votes
Edgar Lungu	PF	1,860,877
Hakainde Hichilema	UPND	1,760,347
Edith Nawakwi	FDD	24,149
Andyford M Banda	PAC	15,791
Wynter M Kabimba	Rainbow	9,504
Saviour Chishimba	UPP	9,221
Tilyenji C Kaunda	UNIP	8,928
Peter C Sinkamba	Greens	4,515
Maxwell Mwamba	DA	2,378

Registered Voters: 6,698,372  
 Total Votes Cast: 3,781,505  
 Total Votes Rejected: 85,795  
 Turnout: 56.45 per cent

## Referendum Result

Yes	No
1,852,559	753,549

Threshold: 50 per cent of 7,528,091 eligible voters  
 Total Votes cast: 3,345,471  
 Total Rejected Votes: 739,363  
 Turnout: 44.44 per cent

## Recommendations

- The Group observed challenges not exclusive to Zambia, but familiar in a number of developing democracies: notably, in some polling locations the infrastructure was not always conducive to the management of a smooth election. For example, inadequate lighting, and the lack of facilities for the disabled, elderly and pregnant to access some polling stations easily, were some of the common challenges. These are issues that not only impact inclusivity and access, but also the transparency of the process. It is the Group's hope that as Zambia prospers, the infrastructure for elections, which are often the same as those for development, such as schools and community centers, will be given due consideration.
- To ensure greater consistency in the application of electoral procedures, strengthening and lengthening the duration of the training of polling officials is recommended.
- As noted in Chapter 3, the compressed timeline for the Referendum had an impact on civic and voter education for the Referendum vote. Consequently, the limited understanding or full appreciation by the electorate resulted in some voters rejecting the Referendum ballot. We recommend that adequate civic education be undertaken for any future Referendum, and that it is delinked from other elections.
- We note the low number of rejected votes, which corroborates the observations of our teams deployed to the regions that generally voters appeared to be conversant with the voting process for the General Elections, with the exception of the Referendum. We commend the ECZ, civil society and other stakeholders for the efforts invested in voter education on the General Elections.
- The Group notes that for the 2016 General Elections, the variation in population size across Zambia's districts and constituencies remained an issue of concern to several stakeholders. To ensure fairness and equal access, a review of the constituency boundaries should be undertaken in an inclusive, non-partisan and transparent process, with a view to standardising the numbers of voters across constituencies to ensure fair and equal representation.
- To avoid fatigue and thereby minimise human errors, it is recommended that the Commission considers deploying its officials in shifts whereby the Presiding Officer and polling assistants hand over the counting process to a Counting Officer and counting staff.
- The Group notes, with concern, that questions were raised about the transparency and consistent application of procedures in the results process; specifically, the issue of the Announcement of Results Form (GEN 12). In such a highly contested and tense process, in order to increase transparency, minimise human errors, and instill confidence in the electoral process, the results collation and tabulation process should be strengthened and made more transparent.

- To ensure that all eligible voters, particularly those with critical responsibilities such as Police and medical officials are not disenfranchised, it is recommended that timely and adequate special voting arrangements for these groups are made, as prescribed under Section 48 of the EPA, are enforced.
- At the conclusion of the electoral period, a review of policies, procedures and staff capacity is recommended to identify the successes, challenges and lessons that can be learned to build and strengthen the capacity of the ECZ for future elections.

## ANNEX I: Biographies of Chairperson and Observers

**HE Jakaya Mrisho Kikwete** was the fourth President of Tanzania. He served two terms in office from 2005 to 2015. Prior to serving as President, he was the Minister of Foreign Affairs from 1995 to 2005. During his tenure in the Ministry of Foreign Affairs, he led Tanzania's efforts to bring about peace in the Great Lakes region, particularly in Burundi and the Democratic Republic of Congo (DRC). Before he was Minister of Foreign Affairs, he also served as Finance Minister, the youngest in the history of Tanzania. From 2008 to 2009, he served as the Chairperson of the African Union and from 2012 to 2013 was the Chairman of the Southern African Development Community Troika on Peace, Defence and Security. HE Kikwete holds a Bachelor of Arts in Economics from the University of Dar Es Salaam.

**Angela Taylor (Barbados)** has held the post of Chief Electoral Officer (CEO) of Barbados since February 1, 2005. As CEO she is responsible for the overall management of the Electoral and Boundaries Commission - Electoral Department, which includes undertaking the functions assigned by the Electoral and Boundaries Commission; the general management of the Electoral Department (Finances, Human Resources and Operations); management of the electoral and national registration systems and managing the conduct of elections. Having previously served as Financial Controller of the Queen Elizabeth Hospital of Barbados and being on the management team that transitioned the hospital to a Statutory Board, Mrs. Taylor levies significant management skills to the post of Chief Electoral Officer. In this regard, she is currently spearheading the implementation of a Multi-Purpose ID card system. Since coming to Office, Mrs. Taylor has managed the conduct of general elections in 2008 and 2013 and a by-election in 2011.

**Julius Nkafu (Cameroon and United Kingdom)** is a practising Barrister in both the UK and Cameroon, specialising in Litigation and Alternative Dispute Resolution. Previous roles included: Solicitor, Teacher, Councillor for London Borough of Hackney (2002 - 2014); Labour cabinet member responsible for Crime and Community Safety and Engagement; and one of the founding member of 'Team Hackney,' Hackney's local strategic partnership. Julius is an experienced and skilled international public speaker, having chaired the first Recommendation 61 (Macpherson report) Monitoring Group in the United Kingdom amongst others. He is the founder of 'Africans for Labour' promoting greater policy understanding and mutually beneficial activities between the Labour party and Africans both in the UK and on the continent. He is involved in a number of community initiatives including pro-bono advisory work and addressing social inequalities such as the disproportionately high level of young black boys in the criminal justice system, and also unemployment and under employment within this group.

**David Langtry (Canada)** is Acting Chief Commissioner of the Canadian Human Rights Commission (CHRC). Since joining the CHRC as a full-time Commissioner in 2006, David has delivered a significant number of decisions on discrimination complaints. Under David's leadership, the CHRC has prioritised services to the most vulnerable groups in Canadian society. He spearheaded outreach to Aboriginal peoples, and ensured effective implementation of a change to the *Canadian Human Rights Act* that extended human rights protection to residents of First Nations



communities. David works closely with other human rights commissions both in Canada, and around the world. He sits on an international accreditation committee responsible for determining whether national human rights institutions in other countries meet a defined set of criteria including independence, pluralism, and the authority to advise their governments when human rights violations occur. David is an accomplished lawyer and senior executive with more than 35 years of experience in both the private and public sectors.

**Virisila Buadromo (Fiji)** is a social development professional specialising in gender (in law, political participation, and young women) and human rights based approach. She currently serves as a regional council member of the Asia Pacific Forum on Women, Law and Development and is a member of five-member steering committee that is working towards establishing an Urgent Action Fund for Women Human Rights Defenders Asia Pacific in 2017. Virisila has more than 20 years of experience serving in senior leadership roles in the private and not-for-profit sector. She has a postgraduate diploma in development studies and is currently pursuing her Masters in gender and development.

**Elizabeth Ohene (Ghana)** is a Ghanaian writer/broadcaster/politician. She was a newspaper editor in Ghana before she joined the BBC World Service. She became a well-known voice on the BBC African Service where she worked as a producer and correspondent for many years. Ms Ohene entered frontline politics when she served as a Minister of State in the Government of President J.A. Kufuor from 2001 to 2009. She retains an active interest in politics and writing.

**Pravin Nikam (India)** is an educator, a gender equality advocate, an environmentalist, a writer, lawyer, a humanitarian, and community mobiliser. Pravin Nikam was awarded the prestigious National Youth Award from the Government of India for providing education to children and improving health conditions of teenage girls and women where he empowered them on issues around menstrual management and reproductive health rights. Pravin Nikam is the first Indian to be elected as Asia Regional Representative of the Commonwealth Youth Council (CYC). He is named as a Peace Scholar for his work in the field of conflict prevention and justice reconciliation. He is the founder of "ROSHNI "an organisation focused on menstrual hygiene management and life skills. Pravin Nikam is also founder and chairman of " Nitikushal - Center for Policy Research", a think tank engaged in research on social science and humanities.

**Kennedy Nyaundi (Kenya)** Dr Ken M. Nyaundi has served in the public and private sector in several capacities: as a Commissioner with Kenya's Interim Independent Electoral Commission (IIEC); as a Director of the South-South Centre, an entity tasked with coordinating the sharing of resources amongst developing nations; as a Director of the Coffee Development Fund; as a Director of the Communications Authority of Kenya; as the Chairman of the Complaints Commission of the Media Council of Kenya; as a member of the Task Force on Devolution in Kenya; and as a member of the National Land Commission's Task Force on Historical Land Injustices. He has taught at Baraton University and the Kenya School of Law. He is the immediate former chairman of the International Commission of Jurists (K) Chapter and has also served as the Chairman of Kituo Cha Sheria. Ken is a Fellow of the American Bar Association, South African Institute for advanced Constitutional,

Public, Human Rights and International law, as well as the United Nations University. He is currently engaged in litigation and consultancy work. He holds a PhD degree in International Law from the University of Cape Town.

**Mohlabi Kenneth Tsekoa (Lesotho)** has held three cabinet positions in the Government of Lesotho between 2001 and 2015. He was Minister of Finance, Education and Foreign Affairs. He served as Foreign Affairs Minister for over ten years. During that period, he served the Southern African Development Community as chairman of the Organ on Politics, Defence and Security Cooperation for one year and the African Union as a member of the Peace and Security Council. He has also served as a member of the Commonwealth Ministerial Action Group. Before he became Cabinet Minister, he was High Commissioner to the United Kingdom and Ambassador to Ireland, Spain and Portugal concurrently for six years. He holds Masters degrees in Educational Management and Diplomacy, and International Relations from the Universities of Massachusetts and London respectively.

**Ollen Mwalubunju (Malawi)** is the Executive Director of the National Initiative for Civic Education (NICE) Public Trust in Malawi. Ollen has also been a founding member and has had hands on experience in establishing and overseeing the growth of a number of CSOs in Malawi and Southern Africa in the field of governance, conflict management, human rights and elections. Prior to joining NICE, he held senior positions in state and non- state actors such as; head of the Africa capacity building program on conflict management at the Centre for Conflict Resolution (CCR) based in South Africa, as well as the Regional Coordinator for the Southern Africa Human Rights Defenders Trust, also based in South Africa. From 2005-2008, he served as a Human Rights Commissioner for the Malawi Human Rights Commission. Ollen is an accomplished policy analyst, political scientist and civil society activists with over 19 years of experience working with state and non-state actors in Africa.

**Rosslyn Noonan (New Zealand)** served as Chief Commissioner for the New Zealand Human Rights Commission from 2001 to 2011, where she led the transformation of the Commission from an anti-discrimination body to an internationally recognised and accredited national human rights institution. From 2010 to 2012 she was Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, now the Global Assembly of National Human Rights Institutions (GANHRI). In this role she supported the establishment and strengthening of independent national human rights institutions to ensure they met international standards. Ms Noonan is currently Director of the New Zealand Centre for Human Rights Law, Policy and Practice at the University of Auckland's Law School. She continues to work with national human rights institutions across Asia-Pacific and to advise governments on their establishment.

**Ambassador Adekunle Adeyemi (Nigeria)** graduated with a B.A.(HONS) History in London in June 1963. Ambassador Adeyemi joined the Nigerian Foreign Service, rising through the ranks to the highest level of the service, first being named Nigeria's Ambassador to the United Nations in Geneva and heading the Directorates of International Affairs and African Affairs before retiring from the service. He later joined the UN Secretariat as Senior Political Affairs Officer, serving in UN Peace-Keeping Operations in Central African Republic and Liberia between 1998 and 2004.

He was Nigeria's Facilitator to the Peace negotiations on Darfur at Abuja. Later he joined Lagos multi-door Courthouse as an accredited Mediator.

**Christina Giwe (Papua New Guinea)** is a passionate internationally recognised Youth Leader, Advocate and Volunteer who started her leadership journey through Volunteerism at age 16. She is a Queen's Young Leader and an executive member of the Commonwealth Youth Council (CYC); the largest most diverse youth led organisation in the world. She is also an Associate Fellow of the Royal Commonwealth Society, a Commonwealth Champion, and was named a Commonwealth Young Achiever 2015, featuring in a book titled 'YOUTH- Commonwealth Young Achievers 2015' and published in 2015 to celebrate the theme 'A Young Commonwealth.' She has represented the young people of her country, region and the Commonwealth across the Pacific, Asia and Europe.

**Ambassador Constance V. Mitcham (St Kitts and Nevis)** is an accomplished Senior Attorney, who was called to the Bar of various countries and territories, including England, Wales, St. Kitts and Nevis, Antigua, the British Virgin Islands and Anguilla. She served as Chief Magistrate and Registrar of the Supreme Court, and was appointed Supervisor of the British Virgin Islands Elections. She is a Member of the Middle Temple Inn of Court of the United Kingdom, the Founder of the Caribbean Law Firm of Mitcham & Benjamin, and was a member of the constitutional team which negotiated the St. Kitts and Nevis Independence from Britain. In 1984, Ms. Mitcham made history by becoming the first woman elected to the Parliament and the first female Cabinet Minister of St. Kitts and Nevis. She established the first Ministry of Women's Affairs in the Region and served at various times in the portfolios of Health, Women's Affairs, Labour and Acting Prime Minister. In addition to her Legal Practice, she is an Ambassador at Large and Special Adviser to the Prime Minister.

**Prof Mandla Mchunu (South Africa)** is a lawyer by training. He obtained his LLM degree from Bristol University in England. He lectured at the Universities of the North (now called University of Limpopo) and Natal (now called University of KwaZulu-Natal) and was a guest professor at the University of Illinois in Chicago, USA. He has held positions of Director for the Centre for Socio-Legal Studies (CSLS); First Deputy Secretary of the Adjudication Secretariat for the Mandela election (1994); Deputy Director-General for the Department of Constitutional Development (1996); Chief Electoral Officer of the Independent Electoral Commission (1997); Director-General for the Provincial Government of KwaZulu-Natal (2006); and Commission Secretary for the Presidential Remuneration Commission (2013). In the private sector Prof. Mchunu has held positions of Chairman and Deputy Chairman for Eyesizwe Coal Ltd. and SAAB Grintek Defence Ltd., respectively. He is currently the Executive Chairman of the AfriCore Group, which consults and specialises in electoral democracy, focusing on the professional delivery of elections in Africa, in the public and private sectors. He has travelled widely on electoral missions as a consultant for the United Nations and other multi-lateral organisations, and has observed democratic elections in many countries, in Africa and beyond.

**Kumudini Samuel (Sri Lanka)** is a co-founder of Sri Lanka's Women and Media Collective, providing resources to and fostering networks among women seeking to advance their rights since 1984. Ms. Samuel has advised government bodies on

gender and peace, including as an advisory member of the Parliamentary Women's Caucus; a member of the Sub-Committee on Gender Issues advising the plenary of the peace talks; she currently serves on the Zonal Task Force on Reconciliation Mechanisms. Ms. Samuel is an Executive Committee member of DAWN - Development Alternatives with Women for a New Era. She has consulted on gender and development for the United Nations Population Fund; gender and peace for UNESCAP and on citizenship and good governance for the International Centre for Ethnic Studies. Ms. Samuel has a master's degree in women's studies from the University of Colombo.

**Irene Ovonji Odida (Uganda)** was an elected Member of the East African Legislative Assembly from 2001-2006. Her key contributions as a legislator included spearheading initiatives to increase transparency and accountability of the EALA to marginalised constituencies, increasing effective participation of African legislators in international trade negotiations, including chairing a daily coordination forum in Cancun WTO Ministerial; and leading an EALA conflict resolution investigation on fishing disputes. She has also been a member of, or headed, various national and regional government-appointed bodies set up to formulate policies, design programs or fact-find. She was recently appointed to a UN High-Level Panel on Illicit Financial Flows from Africa. She has authored or contributed to publications on women's land rights in Uganda, constitutionalism and East African regional integration. Ms Ovonji-Odida has a Bachelor of Law degree and Master's in comparative jurisprudence, specialising in international human rights law and international law.

## ANNEX II: Deployment Plan

NO.	TEAMS	LOCATIONS
1	Ms Elizabeth Ohene (Ghana) Ms Yvonne Apea Ms Lainy Malkani	LUSAKA
2	Mr Andrew Schofield Ms Zippy Ojago	LUSAKA
3	Ms Angela Taylor (Barbados) Mr Alexander Came	COPPERBELT PROVINCE (Ndola)
4	Ms Irene Ovonji Odida (Uganda) Mr Julius Nkafu (Cameroon)	COPPERBELT PROVINCE (Kitwe)
5	Prof Mandla Mchunu (South Africa) Ms Kumudini Samuel (Sri Lanka)	EASTERN PROVINCE (Chipata)
6	Mr Ollen Mwalubunju (Malawi) Mr David Langtry (Canada)	LUAPULA PROVINCE (Mansa)
7	Ms Rosslyn Noonan (New Zealand) Mr Pravin Nikam (India)	NORTHERN PROVINCE (Kasama)
8	Ms Clara Cole	NORTH-WESTERN PROVINCE (Solwezi)
9	Amb. Constance Mitcham (St Kitts and Nevis)	SOUTHERN PROVINCE (Livingstone)
10	Mr Kennedy Nyaundi (Kenya) Ms Virisila Buadromo (Fiji)	WESTERN PROVINCE (Mongu)

## ANNEX III: Arrival Statement



### COMMONWEALTH OBSERVER GROUP TO ZAMBIA

Statement by Vice Chair  
Mr Kenneth Tsekoa, former Cabinet Minister, Lesotho

*Lusaka, 9 August 2016*

The Commonwealth is honoured to have been asked by Commonwealth Secretary-General the Rt. Hon Patricia Scotland QC, to lead the Commonwealth Observer Group to Zambia's General Elections scheduled for 11 August 2016.

The Group was constituted following an invitation from the Government of Zambia. It is made up of 17 eminent persons drawn from across the different regions of the Commonwealth, including Africa, Asia, the Americas, Pacific and Caribbean. The Group arrived on 4 August and will stay in Zambia until 18 August.

The group brings a wealth of experience from across the social and political spectrum: from civil society, women's and youth groups, human rights organisations and the media.

Our briefings, which began on Saturday 6 August, have been wide-ranging from the Electoral Commission of Zambia and local stakeholders including citizen observers to political parties and youth groups. We have also heard from our Advance Observer Team who has been on the ground in Zambia since 22 July.

The Group notes efforts that have been made to strengthen the legal framework that will enhance governance of the electoral process from the constitutional amendments to the adoption of new legislation. Our role as independent observers is to scrutinise the entire election process, then take a view whether it has been conducted to the national, regional, Commonwealth and international standards to which Zambia has committed itself.

We are aware of the significance of these elections to the people of Zambia. Our presence here affirms the Commonwealth's support to the country and its democratic processes.

We will perform our observation role with impartiality, independence and transparency.

Observer teams were deployed to nine districts across the country to observe preparations ahead of polling day. On Election Day, they will observe opening, voting, closing, counting and the results management process.



We will issue an Interim Statement on our preliminary findings on 13 August. A final report will then be prepared and submitted to the Secretary-General, and subsequently shared with relevant stakeholders and the public. The Group is scheduled to depart on 18 August 2016.

We hope that our Group's presence will demonstrate the Commonwealth's solidarity with the people of Zambia.

We urge all stakeholders to play their part in ensuring peaceful and credible elections. We further urge all political leaders and their supporters to commit to accepting the results to be announced by the ECZ.

On behalf of the Group, I wish the people of the Republic of Zambia, well as they exercise their franchise on Thursday.

*Note to Editors:*

The Commonwealth Observer Group will function impartially and independently and will conduct itself according to the standards expressed in the International Declaration of Principles for Election Observation.

The 17 Commonwealth Observers will be in Zambia from 4 to 18 August 2016. An Advance Observer Team was deployed to Zambia on 22 July 2016.

Find out more at [www.thecommonwealth.org/zambiaelection2016](http://www.thecommonwealth.org/zambiaelection2016)

The Commonwealth is a voluntary association of 53 independent and equal sovereign states. It is home to 2.2 billion citizens, of which over 60% are under the age of 30. The Commonwealth includes some of the world's largest, smallest, richest and poorest countries, spanning five regions. Thirty-one of its members are small states, many of them island nations. Commonwealth countries are supported by an active network of more than 80 intergovernmental, civil society, cultural and professional organisations.

For more on the work of the Commonwealth visit our website at [www.thecommonwealth.org](http://www.thecommonwealth.org)



## ANNEX IV: Joint Declaration



### **JOINT STATEMENT BY AFRICAN AND INTERNATIONAL ELECTION OBSERVATION MISSIONS TO THE 11<sup>TH</sup> AUGUST, 2016 GENERAL ELECTIONS AND REFERENDUM IN THE REPUBLIC OF ZAMBIA**

**10 AUGUST 2016**

1. We, the undersigned Heads of Election Observation Missions have collectively deployed our members to all 10 provinces of the Republic of Zambia to observe the 11 August, 2016 General Elections and National Referendum in the Republic of Zambia.
2. We note that the Electoral Commission of Zambia (ECZ) has indicated its readiness to hold the Presidential, Parliamentary, Mayoral and Councillor Elections concurrently with the National Referendum.
3. We also take note of the concerns raised by various stakeholders, including the ECZ, regarding the widely reported sporadic acts of inter-party violence which have occurred in some parts of the country during this pre-election period.
4. We are similarly cognisant of the assurances from the Zambia Police Service (ZPS) to provide the necessary security for the General Elections and Referendum to ensure that they take place in an environment which is free of intimidation and violence. In this regard, we urge the ZPS to provide even-handed security services.
5. We further, appeal to all the stakeholders to refrain from making any utterances and / or performing acts that could trigger tensions and negatively affect the electoral environment.
6. We encourage political parties and other stakeholders to cherish and embrace peace, tolerance and non-violence during the pre- election and post-election phases of the electoral process, a virtue for which Zambia is known.
7. We urge all citizens to turn out and perform their civic responsibility peacefully and lawfully on the Election Day.
8. We further appeal to all political actors and other stakeholders to embrace the Zambian democratic values and practices in line with the Constitution and electoral laws of the Republic of Zambia; and seek redress through established legal mechanisms; and in accordance with the provisions of the revised SADC Principles and Guidelines Governing Democratic Elections; the provisions of Article 6 (h) of the COMESA Treaty, the COMESA Guidelines on Election Observation; the African Charter on Democracy, Elections and Governance, the UN Declaration of Principles for International Election Observation, and other regional and international obligations.
9. We also appeal to the political parties and candidates to continue to promote a climate of peace, tolerance, and national unity throughout the electoral process, and



encourage their supporters to refrain from political violence within the framework of the Peace Pledge and the Electoral Code of Conduct.

10. We emphasise that as international election observation missions, our role is to purposefully gather information regarding the electoral process and make informed assessments and recommendations that could assist the country holding elections in strengthening its democratic processes.

**SADC Election Observation Mission (SEOM)**

Head of Mission: His Excellency Oldemiro Baloi, Minister of Foreign Affairs and Cooperation of the Republic of Mozambique

**Common Market for Eastern and Southern Africa (COMESA)**

Head of Mission: Ambassador Ashraf Rashed, Member of Committee of Elders from Egypt

**African Union Election Observation Mission (AU EOM)**

Head of Mission: His Excellency Goodluck Jonathan, Former President of the Federal Republic of Nigeria

**Commonwealth Observer Group**

Head of Mission: His Excellency Jakaya Kikwete, Former President of the United Republic of Tanzania

**Electoral Institute for Sustainable Democracy in Africa (EISA)**

Head of Mission: His Excellency Cassam Uteem, Former President of Republic of Mauritius

**Carter Centre**

Head of Mission: Her Excellency Sylvie Kinigi, Former Prime Minister of the Republic of Burundi

**SADC Parliamentary Forum (SADC PF)**

Head of Mission: Honourable Advocate Taska R. Mbogo

**European Union (EU EOM)**

Head of Mission: Cécile Kashetu Kyenge, Member of the European Parliament

**International Conference on the Great Lakes Region (ICGLR)**

Head of Mission: Senator Dr. Wilfred Gisuka Machage

## ANNEX V: Interim Statement



### Interim Statement

Chairperson of the Commonwealth Observer Group

His Excellency Jakaya Kikwete

Lusaka, 13 August 2016

The Commonwealth Observer Group commends the people of the Republic of Zambia for the peaceful and orderly manner in which they exercised their right to vote on 11 August 2016.

The Group has been present in Zambia since 4 August. Our arrival was preceded by an advance team which has been in the country since 22 July.

We have met with the Electoral Commission of Zambia (ECZ), political parties, civil society, including women and youth groups, media representatives, the Police, Commonwealth High Commissioners and other election observer missions.

On 9 August, our teams were deployed throughout the ten provinces of Zambia to observe the election environment and preparations. Ahead of Election Day, our teams met electoral officials, political parties and the police at the district level to gain a comprehensive picture of the electoral processes and environment. Commonwealth teams also observed the final campaign events around the country. The following is an initial assessment of the critical aspects of the election process and the electoral environment. Our final report, which we will complete before our departure, will be issued at a later date.

### Key Findings

#### *Pre-election environment and issues*

##### The Campaign

In our briefings with a number of stakeholders, we were informed that there had been a significant increase in the frequency of politically-motivated violence in the pre-electoral environment.

We note, for instance, that the ECZ suspended campaigning in Lusaka and Namwala districts from 9 to 18 July following two separate fatal incidents.

We were further concerned about complaints that the Public Order Act was being applied in such a manner that it prevented some parties from campaigning, earlier in the process. In meetings with representatives of the Police Service, the Group was advised that the Police only cancelled public meetings in instances where they had received intelligence of a security threat, or where they did not have sufficient resources to provide security at the public event.

We were therefore particularly pleased to note that the campaigns conducted on the eve of elections, were lively and generally peaceful.

The Group will analyse the impact of the application of the Public Order Act in the greater detail in the final report.

## **The Media Environment**

Most stakeholders expressed the view that the media in Zambia is polarised, with outlets demonstrating a clear bias for and against particular presidential candidates and parties.

It is the impression of the team that both public and private media in Zambia have, in some cases, reported events inaccurately, especially those which have not been in favour of their respective sympathising party. This type of reporting may have also been enhanced because of the lack of a self-regulatory body.

However, the Group notes that the public media should be held to a higher standard of responsibility to provide balanced coverage and equal access to airtime for all political parties. Therefore, we encourage a more robust regulatory framework for public media institutions.

The Group notes that the Electoral Code of Conduct which is a schedule to the Electoral Processes Act, 2016, requires the media to provide fair and balanced reporting during elections, and to allocate public air time equally to all political parties and candidates. The enforcement of these provisions need to be strengthened.

## **The Revised Electoral Framework**

Zambia's 2016 General Elections was conducted under a revised constitutional framework. The constitutional review process that had been underway for the past 12 years culminated in the passage of the Constitution of Zambia Amendment Act No. 2 of 2016, which was enacted by Parliament early this year.

Some of the major changes introduced, include the 50% plus one threshold for the winner of the presidential elections, as well as the minimum Grade 12 certificate requirement for candidates seeking political office.

The revised Constitution necessitated the revision of about 33 subsidiary pieces of legislation. However, due to time constraints, only two election-related bills were tabled before Parliament before its dissolution.

We note the positive aspects of the election related bills. For instance, the integration of the code of conduct into the Electoral Process Bill, 2016.

However, we heard concerns that these bills were rushed through Parliament and did not benefit from sufficient consultation. Furthermore, subsidiary legislation was not subsequently passed, which limits the ability of the ECZ to conform fully with the new constitution and with regional and international standards. We shall address this issue more comprehensively in our final report.

## **Election Day**

### **The Voting Process**

On Election Day, our observers reported that most voting stations opened on time with a few exceptions. For instance, five polling stations in Nalolo District in the North Western Province, remained closed at 1230hrs.

Like other Observers, we were struck by the very long queues in some polling stations. In one polling centre in Solwezi District (North Western Province) there were 11,500 voters on the register, and the centre had 12 streams.

The prescribed layout within polling stations was adhered to, and was conducive for orderly voting. However, the compounds surrounding some of the schools, and even polling tents, were too small to accommodate the large queues in an orderly manner.

At the opening of polls, polling officials largely followed the opening procedures and voting generally proceeded in an atmosphere of calm and orderliness, even if slow in some instances.

The voter register lacked an alphabetical index locating and confirming the voter's name and registration number. This created confusion amongst voters regarding the appropriate streams and contributed to the slow pace of voting in some instances. In some cases, we witnessed assigned police personnel assisting the presiding officers in queue management. Their presence was non-intrusive.

We noted the ECZ's attempt to simplify the complicated process of voting in five elections by using colour coded boxes and corresponding ballot papers. We observed that the polling assistants responsible for guiding voters to place their ballots in the correct boxes played a critical role in facilitating this process.

We commend the contribution made to the process by party agents, as well as citizen observers and monitors, most of whom were young people. Party agents we met observed the rules of the polling station, were friendly and cooperated among themselves. They frequently assisted the polling officials to find names in the register, and engaged constructively when a problem arose.

In summary, we wish to highlight the following positive trends that we observed on polling day:

- An encouraging turn-out
- A largely peaceful process.
- A robust voter register.
- An inclusive process with a balance of Zambian women and men playing their roles as voters and as polling officers. However, we note, with concern, the very low participation of women as candidates which we will address in our final report. We further note that differently abled people as well as the elderly, mothers with young children, and pregnant women were assisted to vote.
- There was a visible presence of citizen observers across the country, most of whom were young people.
- Electoral processes were largely followed.

We however note the following challenges during the voting process:

## **The Referendum**

It appeared that civic education on the Referendum, which commenced rather late, following the passage of bills in Parliament on 29 May 2016, was inadequate.

Observers came across a disturbing number of incidents where voters shunned the Referendum ballot, refusing to collect it, either due to lack of understanding or owing to the politicisation of this ballot. The inclusion of the Referendum vote, together with the four ballots, meant it did not receive the due attention it deserved.

Our sense, yet to be borne out by the results, is that the Referendum may have suffered from inadequate civic education on its importance. We note that in our briefing sessions, this development was foreshadowed by a number of stakeholders.

## **Queue management**

Our advance observers were informed in their briefings that where polling stations had more than 500 voters on their voter registers, they would be split into multiple streams to handle the flow of voters. We note, however, that this did not seem to have occurred in a number of polling stations with overwhelming numbers of voters.

In some cases, queues caused congestion in the affected polling stations, and voters had to wait for long hours in vote. We note that in one polling centre, the Red Cross had provided a rest facility for those who might require it.

In a highly contested election such as this, where the political landscape is quite polarised, unwieldy queues could spark unruly behaviour. We will provide some recommendations on this issue in our final report.

## **Late opening of a few polling stations**

We note the late opening of a relatively few number of polling stations. According to the ECZ, some of the lost time was compensated with the late closure of those polling stations affected.

## **Voting for polling officials and security personnel on duty**

We witnessed cases where the ‘certificates of authority’ required by security personal and polling officials to vote in their duty locations had not been given to them, particularly in the Copperbelt area.

We understand that in some cases, these certificates arrived just before the close of polls. This incident brings to the fore the need to strengthen special voting arrangements for the next election.

We conclude that the voting process appeared to be smooth and peaceful. The voter register appeared robust with relatively few incidents where voters could not find their names. Our teams note that where there were anomalies in the application of certain procedures, they were not of such gravity as to negatively impact the credibility of the process.

## **Closing, counting and the results process**

At the close of polls at 6:00pm, our Observers reported that there were still a significant number of voters in the previously long queues.

Our Observers reported that those voters in the queue at the close of polls were allowed to vote, in line with the law.

In the main, closing procedures were followed. The counting process was transparent, and spoilt ballots were determined in a consultative manner among the polling officials and party agents.

In some cases, however, the application of the counting processes appeared inconsistent. This seems to suggest that training of polling staff in those particular areas may have been inadequate.

## **Overall conclusion**

Our overall conclusion is that the voting, closing and counting process at the polling stations on 11 August, were credible and transparent.

However, we are mindful that the results process is ongoing. Our final assessment on the entire process, will be contained in our final report.

It is the Commonwealth's hope and expectation that this spirit of orderliness, tolerance and peace, which has characterised the voting process, will prevail as the results phase continues.

We urge all political parties and candidates to respect the will of the people of Zambia as it emerges over the next few days, and to seek redress for any grievances through peaceful dialogue, and through prescribed legal channels. This is the Zambian Constitutional way. It is also the Commonwealth way.

We reiterate the appeal we made to all Zambians, in the joint statement by African and International Election Observation Missions on 10 August 2016, to refrain from making any utterances and/or performing acts that could trigger tensions and negatively affect the post-election environment.

As we underscored in that statement, Zambia has committed itself to certain democratic values contained in the national, regional, Commonwealth and International obligations it has chosen to subscribe to. This country has a history of upholding these values during elections. We urge all stakeholders to cherish this history.

### **Declaration of Principles for International Election Observation**

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.







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Commonwealth Observer Groups are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.

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**The Commonwealth**